



MENTAL HEALTH RIGHTS, DETENTION & AFTERCARE

The Mental Health Act

Understanding the legal framework for assessment, treatment, detention and patient rights.

The key idea

The Mental Health Act provides legal powers and safeguards for certain situations where a person needs assessment or treatment for mental disorder. Detention is a legal status with specific criteria, procedures, rights and routes to challenge.

What is the Mental Health Act?

The **Mental Health Act 1983** is the main legal framework in England and Wales governing compulsory assessment, detention and treatment for mental disorder. It also contains safeguards, review mechanisms and rights for people who are subject to its powers.

The 1983 Act remains central

A **Mental Health Act 2025** has been passed to amend and modernise the 1983 Act. However, most of its major reforms are being brought into force in stages. This resource distinguishes the law currently in force from reforms that are not yet operational.

What does being 'sectioned' mean?

People often use the word **sectioned** to mean detained under a section of the Mental Health Act. Different sections have different purposes, criteria, time limits and rights. Being assessed or treated by mental health services does not automatically mean somebody is detained under the Act.

Voluntary or informal patients

Many people receive inpatient mental health care voluntarily. An informal patient is not detained under the Mental Health Act simply because they are staying on a mental health ward.

A legal framework, not a diagnosis

The Act does not apply simply because somebody has a particular diagnosis. The relevant legal criteria for the particular power must be met, and decisions should be made through the procedures and safeguards required by law.

Scope

This guide focuses on the Mental Health Act framework in **England**. The 1983 Act also applies in Wales, but services, guidance and some reforms differ because health is devolved.

Assessment, detention and treatment

The Mental Health Act contains several legal routes. Some allow detention for assessment, some for treatment, some provide short-term holding powers, and others concern police powers, courts, community treatment or aftercare.

Assessment

A person may be assessed under the Act to determine whether the statutory criteria for detention are met and what care or treatment is needed.

Detention

Where the relevant criteria are satisfied, a person can be required to remain in hospital for a legally defined purpose and period. The precise rules depend on the section being used.

Treatment

The Act contains specific rules about treatment for mental disorder. Detention does **not** mean that every treatment can automatically be given without consent; different safeguards apply to different treatments and circumstances.

Common sections

Sections commonly encountered include **Section 2** for assessment, **Section 3** for treatment, short-term holding powers under **Sections 5(2) and 5(4)**, leave under **Section 17**, Community Treatment Orders under **Section 17A**, and police powers under **Sections 135 and 136**.

Dedicated sections guide

The next PDF in this collection will explain the commonly encountered Mental Health Act sections individually, including their purpose, usual duration and key distinctions.

How can detention happen?

The process depends on the legal section and circumstances. For civil admission under Sections 2 or 3, applications and medical recommendations must meet statutory requirements.

Approved Mental Health Professional

An **Approved Mental Health Professional (AMHP)** has a distinct statutory role in many applications for detention. AMHPs are specially trained professionals who act independently when exercising Mental Health Act functions.

Medical recommendations

Civil detention under Sections 2 and 3 ordinarily involves medical recommendations meeting the Act's requirements. The clinicians and AMHP must consider whether the relevant legal criteria are satisfied.

Necessity and alternatives

Compulsory powers should not be treated as the automatic response to mental health difficulty. Decision-makers must consider the statutory criteria and relevant alternatives, including whether care can be provided without detention.

The 2025 reforms

The Mental Health Act 2025 is intended to strengthen the criteria and scrutiny around detention and community treatment, increase patient involvement and choice, and reduce inappropriate detention of autistic people and people with learning disabilities. Most of these reforms are **not yet in force** as at September 2026.

Emergency situations

Different provisions can apply where urgent assessment or immediate safety concerns arise. Police powers, hospital holding powers and emergency applications each have different legal purposes; they should not be treated as interchangeable.

Your rights under the Act

Detention under the Mental Health Act does not remove a person's legal rights. Hospitals and professionals have duties to provide information and enable access to safeguards.

Information about detention

A detained person should be given information about the section they are detained under, why they are detained, how long it may last and relevant rights, in a form they can understand as far as practicable.

Independent Mental Health Advocate

Qualifying patients have a right to support from an **Independent Mental Health Advocate (IMHA)**. An IMHA can help someone understand their rights, treatment and options for raising concerns or challenging decisions.

Mental Health Tribunal

Eligible detained patients can apply to the **First-tier Tribunal (Mental Health)**. The Tribunal is independent of the hospital and can consider whether the legal criteria for continued detention are met.

Hospital managers

Hospital managers also have powers relating to discharge and can review detention through their own statutory process.

Legal representation

People may be entitled to specialist legal advice and representation in connection with detention and Tribunal proceedings. Mental health law is a specialist area, and advocacy and legal representation perform different roles.

Rights deserve their own guide

A later PDF in this collection will focus specifically on **Your Rights When Detained**, including information, communication, advocacy, treatment, leave, review and challenging detention.

Treatment and consent

The Mental Health Act contains powers concerning medical treatment for mental disorder, but those powers are accompanied by safeguards. The rules vary according to the treatment, how long medication has been given and the person's legal status.

Detention does not equal unlimited consent

Being detained does not create a general power to provide any treatment without consent. Some treatments have additional statutory safeguards, and treatment unrelated to mental disorder usually relies on ordinary consent and capacity law.

Medication

Under the law currently in force, special safeguards apply to medication for mental disorder once the relevant statutory period has elapsed. Depending on the circumstances, consent or an independent second-opinion process may be required.

Second Opinion Appointed Doctor

A **Second Opinion Appointed Doctor (SOAD)** is an independent doctor appointed through the statutory system to provide an additional safeguard for specified treatment decisions.

Mental Capacity Act and Mental Health Act

The two Acts can interact but they are not interchangeable. The Mental Capacity Act primarily concerns decision-making for people who lack capacity; the Mental Health Act contains specific powers relating to mental disorder, including detention and treatment in circumstances defined by that Act.

Ask which legal framework applies

A useful question is not simply whether somebody lacks capacity, but **what decision or intervention is proposed and which legal framework authorises it.**

Leave, community treatment and discharge

Detention does not necessarily mean remaining inside the hospital continuously until discharge. The Act contains mechanisms for authorised leave, community treatment and ending detention.

Section 17 leave

A responsible clinician can grant a detained patient leave from hospital under **Section 17**, subject to conditions where appropriate. Leave may be short, longer-term or for particular purposes.

Community Treatment Orders

Some patients detained for treatment can be discharged from hospital onto a **Community Treatment Order (CTO)** under Section 17A where the statutory criteria are met. A CTO carries legal conditions and powers of recall.

Discharge

Detention can end through different routes, including action by the responsible clinician, hospital managers, a Tribunal and, in some circumstances, the person's statutory family representative under the law currently in force.

Aftercare

Some people detained under qualifying sections are entitled to **Section 117 aftercare** after leaving hospital. This is a statutory duty and is not the same as ordinary means-tested social care.

Dedicated aftercare resource

Section 117 can involve important questions about eligibility, responsibility, what aftercare can include and when the duty ends. It will therefore have its own PDF later in this collection.

Family involvement and representation

The Mental Health Act contains specific legal roles relating to family and representation. These should not be confused with informal labels such as 'next of kin'.

Nearest Relative

Under the law currently in force, the Act uses the statutory role of **Nearest Relative**. The person is identified according to legal rules and can have particular powers and rights in relation to admission, information and discharge.

The future Nominated Person reform

The Mental Health Act 2025 creates a new **Nominated Person** model intended to replace the Nearest Relative system and give patients greater choice over who represents their interests. As at September 2026, this major reform has **not yet been commenced**.

Current versus future law

Until the relevant 2025 Act provisions are brought into force, resources and practice should not present the Nominated Person system as though it has already replaced the Nearest Relative framework.

Confidentiality still matters

Family involvement does not automatically create a right to all confidential clinical information. Professionals must balance confidentiality, the person's wishes, legal duties, safeguarding and any specific rights created by the Mental Health Act.

We will explore this separately

The dedicated **Nearest Relative & Family Involvement** resource will explain the current role, how it differs from next of kin and the future Nominated Person reform.

The Mental Health Act 2025: what has changed?

The Mental Health Act 2025 received Royal Assent on **18 December 2025**. It amends the Mental Health Act 1983 rather than simply replacing the whole framework overnight.

Phased implementation

Most reforms require commencement regulations before they become operational. The first commencement regulations brought **sections 51 and 52** of the 2025 Act into force on **6 April 2026**. Many of the reforms most relevant to patients remain changes for future implementation.

What the reforms are designed to do

The legislation includes reforms intended to strengthen patient voice and choice, increase scrutiny of detention, alter detention and CTO criteria, introduce care and treatment planning requirements, replace the Nearest Relative with a Nominated Person, strengthen advocacy and change how the Act applies to autistic people and people with learning disabilities.

Do not assume 'new Act' means all new rules apply

The distinction between **enacted** and **in force** is essential. A provision can have been passed by Parliament but still require a future commencement date before services and patients use the new rule.

Why our collection will flag dates

Each legal resource in this collection will include an information-review date. Where a 2025 reform has not yet commenced, we will identify it as a future change rather than mixing it into the description of current rights.

Information reviewed

This resource reflects the position checked on **24 September 2026**. Mental health legislation is currently in a period of phased reform, so operational guidance should always be checked for later commencement changes.

Practical reminders

- Receiving mental health care does not automatically mean somebody is detained under the Mental Health Act.
- Different sections have different purposes, criteria, durations and safeguards.
- Detention does not remove the person's rights or create unlimited powers of treatment.
- Qualifying patients can access independent advocacy and routes to review or challenge detention.
- The Mental Capacity Act and Mental Health Act have different legal functions, although they can interact.
- Section 17 leave, CTOs, discharge and Section 117 aftercare are distinct parts of the framework.
- The current law still uses the Nearest Relative framework; the Nominated Person reform is not yet operational.
- The Mental Health Act 2025 is law, but most major reforms are being implemented in stages.

A useful starting question

If somebody is being restricted, treated or required to remain somewhere, ask: **What is the legal basis, which section or power is being used, what safeguards apply, and how can the person exercise their rights?**

About this resource

This PDF provides general educational information about the Mental Health Act in England. It is not individual legal advice. Mental health law is complex and is currently undergoing phased reform; specialist advice may be appropriate where rights, detention or treatment are disputed.

Information reviewed: 24 September 2026

References & further information

Mental Health Act 1983. The principal statutory framework governing detention, compulsory treatment and related safeguards in England and Wales.

Mental Health Act 2025. Legislation amending the 1983 Act, including reforms concerning detention criteria, treatment, advocacy, representation and aftercare.

Mental Health Act 2025 (Commencement No. 1) Regulations 2026. Brought sections 51 and 52 of the 2025 Act into force on 6 April 2026.

Department of Health and Social Care. Mental Health Act 2025 information and explanatory materials describing the aims and phased reforms.

Mental Health Act 1983 Code of Practice. Statutory guidance for professionals on the exercise of functions under the Act in England; users should also check for current updates during implementation of the 2025 reforms.

Next in this collection

The next resource will be **Understanding Mental Health Act Sections**, giving a practical explanation of the commonly encountered sections, what each is for and the important differences between them.