

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16 – Medical Treatment

Patients incapable of consenting

443. [Section 239](#) sets out the conditions that must be met before any treatment specified under section 237(3) can be given to patients who are incapable of consenting.
444. A designated medical practitioner must certify under subsection (1) the following three matters: first, that the patient is incapable of understanding the nature, purpose and likely effects of the treatment; second, that the giving of medical treatment to the patient is authorised by virtue of the 2003 Act or the 1995 Act; and third, that it is in the patient's best interests that the treatment be given, having regard to the likelihood of the treatment alleviating, or preventing a deterioration in, the patient's condition.
445. Subsection (2) provides that if the patient resists or objects to the treatment, the treatment can be given only if instead of certifying that third matter the designated medical practitioner certifies that the patient resists or objects to the treatment but that the treatment is necessary under one of the urgent medical treatment provisions of section 243(3)(a) to (c) (namely, to save the patient's life, to prevent serious deterioration in the patient's condition or to alleviate serious suffering on the part of the patient).
446. If the patient is aged under 16, subsection (3) sets out special rules which must be complied with in relation to the certification under subsection (1).

Sections 240 and 241: treatments given over period of time etc.

447. Subsections (1) and (2) of [section 240](#) provide that the types of treatment mentioned in subsection (3) may be given to a patient to whom the giving of medical treatment is authorised by virtue of the 2003 Act or the 1995 Act only in accordance with section 238 or 241. Subsection (3) sets out three types of treatment and enables the Scottish Ministers to make regulations specifying other types.
448. Subsection (2) is subject to subsection (4) and the provisions on urgent treatment in section 243.