



Mental Health (Care and Treatment) (Scotland) Act 2003

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for certain surgical operations etc.

234 Certain surgical operations etc.

- (1) The types of medical treatment mentioned in subsection (2) below may be given to a patient only in accordance with section 235 or 236 of this Act.
- (2) The types of medical treatment referred to in subsection (1) above are—
 - (a) any surgical operation for destroying—
 - (i) brain tissue; or
 - (ii) the functioning of brain tissue; and
 - (b) such other types of medical treatment as may be specified in regulations for the purposes of this section.
- (3) Before making regulations under subsection (2)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

235 Treatment mentioned in section 234(2): patients capable of consenting

- (1) Medical treatment mentioned in section 234(2) of this Act is given to a patient in accordance with this section if the requirements set out in subsections (2) and (3) below are satisfied.
- (2) Subject to subsection (6) below, the first requirement is that a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—
 - (a) the patient is capable of consenting to the treatment;
 - (b) the patient consents in writing to the treatment; and

Status: This is the original version (as it was originally enacted).

- (c) having regard to the likelihood of its alleviating, or preventing a deterioration in, the patient's condition, it is in the patient's best interests that the treatment should be given to the patient.
- (3) The second requirement is that two other persons (not being medical practitioners) appointed by the Commission for the purposes of this subsection certify in writing that—
 - (a) the patient is capable of consenting to the treatment; and
 - (b) the patient consents in writing to the treatment.
- (4) A person appointed for the purposes of subsection (3) above may—
 - (a) interview the patient at any reasonable time; and
 - (b) require any such interview to be conducted in private.
- (5) If the patient withdraws consent to the treatment (in writing or otherwise) at any time before its completion, this section shall then apply as if the remainder of the treatment were a separate treatment.
- (6) Where—
 - (a) the patient is a child; and
 - (b) the patient's responsible medical officer is not a child specialist,the first requirement is that the matters mentioned in paragraphs (a) to (c) of subsection (2) above are certified in writing by a designated medical practitioner who is a child specialist.
- (7) References in subsections (2) and (6)(b) above to a patient's responsible medical officer include, in any case where a patient does not have a responsible medical officer, references to the medical practitioner primarily responsible for treating the patient.

236 Treatment mentioned in section 234(2): patients incapable of consenting

- (1) Medical treatment mentioned in section 234(2) of this Act is given to a patient in accordance with this section if—
 - (a) the requirements set out in subsections (2) to (4) below are satisfied; and
 - (b) the patient does not resist or object to the treatment.
- (2) Subject to subsection (6) below, the first requirement is that a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—
 - (a) the patient is incapable of consenting to the treatment;
 - (b) the patient does not object to the treatment; and
 - (c) having regard to the likelihood of its alleviating, or preventing a deterioration in, the patient's condition, it is in the patient's best interests that the treatment should be given to the patient.
- (3) The second requirement is that two persons (not being medical practitioners) appointed by the Commission for the purposes of this subsection certify in writing that—
 - (a) the patient is incapable of consenting to the treatment; and
 - (b) the patient does not object to the treatment.

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- (4) The third requirement is that on the application of the patient's responsible medical officer, the Court of Session has made an order declaring that the treatment may lawfully be given.
- (5) The Court of Session may make an order such as is mentioned in subsection (4) above only if it is satisfied that—
 - (a) having regard to the likelihood of its alleviating, or preventing a deterioration in, the patient's condition, it is in the patient's best interests that the treatment should be given to the patient; and
 - (b) the patient does not object to the treatment.
- (6) Where the patient is a child, the first requirement is that the matters mentioned in paragraphs (a) to (c) of subsection (2) above are certified—
 - (a) where the patient's responsible medical officer is a child specialist, by a medical practitioner approved for the purposes of this subsection by the Commission;
 - (b) where the patient's responsible medical officer is not a child specialist, by a child specialist who is on the list maintained under section 233(1) of this Act.
- (7) References in subsections (2), (4) and (6) above to a patient's responsible medical officer include, in any case where a patient does not have a responsible medical officer, references to the medical practitioner primarily responsible for treating the patient.