

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16 – Medical Treatment

Patients refusing consent or incapable of consenting

449. Subsection (1) of [section 241](#) sets out the conditions that must be met if medication for mental disorder is to be given for more than 2 months, nutrition by artificial means is to be administered or any other treatment specified in regulations made under section 240(3) is to be given to a patient who is unable to or refuses to consent. A designated medical practitioner must certify as to the matters set out in that subsection.
450. Subsection (2) requires a designated medical practitioner to take into account the views of a capable patient who refuses consent; and if, having considered those views, the designated medical practitioner is of the opinion that the treatment should still be given, requires him or her to state the reason in the certificate under subsection (1).
451. If the patient is aged under 16, the special rules in subsection (3) as to certification under subsection (1) must be complied with.
452. Subsection (4) provides that if the patient is not in hospital, subsection (1) does not authorise the giving of medical treatment by force to the patient.

Section 242: treatment not mentioned in [section 234\(2\)](#), [237\(3\)](#) or [240\(3\)](#)

453. [Section 242](#) sets out conditions for the giving of medical treatment to patients to whom the giving of medical treatment is authorised by the 2003 Act or the 1995 Act where the treatment is not specified elsewhere in the Part as requiring particular safeguards.
454. The rules are set out in subsections (3) and (4). Those rules are, however, subject to the provisions mentioned in subsection (2).
455. Subsection (3) deals with patients who are capable of consenting and who consent in writing. Medical treatment for mental disorder may be given provided it is given by or under the direction of the responsible medical officer.
456. Subsection (4) deals with patients who are capable of consenting but do not consent or consent other than in writing and those incapable of consenting. Medical treatment can be given if the requirements in subsection (5) are met.