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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for other medical treatment

237 Electro-convulsive therapy etc.

(1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.

(2) Subject to section 243 of this Act, the types of medical treatment mentioned in subsection (3) below may be given to the patient only in accordance with section 238 or 239 of this Act.

(3) The types of medical treatment referred to in subsection (2) above are—

(a) electro-convulsive therapy; and

(b) such other types of medical treatment as may be specified in regulations for the purposes of this section.

(4) Before making regulations under subsection (3)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

238 Treatment mentioned in sections 237(3) and 240(3): patients capable of consenting and not refusing consent

(1) Subject to subsection (3) below, medical treatment mentioned in section 237(3) or 240(3) of this Act is given to a patient in accordance with this section if the patient's responsible medical officer or a designated medical practitioner certifies in writing that—

(a) the patient is capable of consenting to the treatment;

(b) the patient consents in writing to the treatment;

(c) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; and

(d) 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.

(2) 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.

(3) Where the patient is a child, any certificate under subsection (1) above shall be given by a child specialist.

239 Treatment mentioned in section 237(3): patients incapable of consenting

(1) Subject to subsections (2) to (4) below, medical treatment mentioned in section 237(3) of this Act is given to a patient in accordance with this section if a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—

(a) the patient is incapable of understanding the nature, purpose and likely effects of the treatment;

(b) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; 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.

(2) Where the patient resists or objects to the treatment, certification under subsection (1) above is effective only if, instead of certifying the matter mentioned in paragraph (c) of that subsection, the designated medical practitioner certifies that—

(a) the patient resists or objects to the treatment; but

(b) it is necessary to give the treatment to the patient for a purpose mentioned in any of paragraphs (a) to (c) of section 243(3) of this Act and specified in the certificate.

(3) Where the patient is a child, certification under subsection (1) above is effective only if done—

(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.

(4) Where the patient is not in hospital, subsection (1) above does not authorise the giving of medical treatment by force to the patient.

240 Treatments given over period of time etc.

(1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.

(2) Subject to subsection (4) below and to section 243 of this Act, the types of treatment mentioned in subsection (3) below, when given as treatment for mental disorder or in

consequence of the patient having a mental disorder, may be given to the patient only in accordance with section 238 or 241 of this Act.

(3) The types of treatment referred to in subsection (2) above are—

(a) any medicine (other than the surgical implantation of hormones) given for the purpose of reducing sex drive;

(b) any other medicine;

(c) provision, without the consent of the patient and by artificial means, of nutrition to the patient; and

(d) such other types of treatment as may be specified in regulations for the purposes of this section.

(4) Subsection (2) above does not apply to the giving of medicine in a relevant period until 2 months have passed since the patient was first in the relevant period given any medicine that was not, when given, a treatment specified under subsection (3)(d) above or section 234(2)(b) or 237(3)(b) of this Act.

(5) The Scottish Ministers may by order amend subsection (4) above for the purpose of substituting a period specified in the order for (as the case may be)—

(a) the period of 2 months mentioned in that subsection; or

(b) the period that is for the time being mentioned in that subsection in place of that period of 2 months.

(6) For the purposes of subsection (4) above—

"medicine" does not include medicine such as is mentioned in paragraph (a) of subsection (3) above or any treatment specified in regulations under paragraph (d) of that subsection; and

"relevant period", in relation to a patient, means any period during which the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act.

(7) Before making regulations under subsection (3)(d) above the Scottish Ministers shall consult such persons as they consider appropriate.

241 Treatment mentioned in section 240(3): patients refusing consent or incapable of consenting

(1) Subject to subsections (3) and (4) below, medical treatment mentioned in section 240(3) of this Act is given in accordance with this section if a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—

(a) the patient—

(i) does not consent to the treatment; or

(ii) is incapable of consenting to the treatment;

(b) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; 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.

(2) If the condition mentioned in subsection (1)(a)(i) above applies, the designated medical practitioner shall—

(a) if the reason for refusal of consent is known, have regard to the reason for the refusal; and

(b) if the designated medical practitioner is of the opinion that the treatment should be given, include in any certificate under subsection (1) above a statement of the reason for that opinion.

(3) Where the patient is a child, the certification of the matters mentioned in paragraphs (a) to (c) of subsection (1) above is effective only if done—

(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.

(4) Where the patient is not in hospital, subsection (1) above does not authorise the giving of medical treatment by force to the patient.

242 Treatment not mentioned in section 234(2), 237(3) or 240(3)

(1) This section applies where the giving of medical treatment to a patient is authorised by virtue of this Act or the 1995 Act.

(2) Subject to subsection (6) below and to sections 234(1), 237(2), 240(2) and 243 of this Act, medical treatment may be given to the patient only in accordance with subsection (3) or (4) below.

(3) If the patient—

(a) is capable of consenting to the treatment; and

(b) consents in writing to the treatment,

medical treatment is given to the patient in accordance with this subsection if the treatment is given by, or under the direction of, the patient's responsible medical officer.

(4) If the patient—

(a) is capable of consenting to the treatment but—

(i) does not consent; or

(ii) consents otherwise than in writing; or

(b) is incapable of consenting to the treatment,

medical treatment is given to the patient in accordance with this subsection if the requirements in subsection (5) below are satisfied.

(5) Those requirements are—

(a) after having regard—

(i) in a case where subsection (4)(a)(i) above applies, to the reason for not consenting (if it has been disclosed to the patient's responsible medical officer);

(ii) to any views expressed by the patient;

(iii) to any views expressed by the patient's named person;

(iv) to any advance statement made by the patient; and

(v) to the likelihood of the treatment's alleviating, or preventing a deterioration in, the patient's condition,

the responsible medical officer determines that it is in the patient's best interests that the treatment be given;

(b) in the case of a patient subject to an assessment order, an approved medical practitioner who is not the patient's responsible medical officer determines, after having regard to the matters mentioned in sub-paragraphs (i) to (v) of paragraph (a) above, that it is in the patient's best interests that the treatment be given;

(c) the treatment is given by, or under the direction of, the patient's responsible medical officer;

(d) the patient's responsible medical officer records in writing the reasons for giving the treatment; and

(e) in the case of a patient subject to an assessment order, the approved medical practitioner who makes the determination referred to in paragraph (b) above records in writing the reasons for that determination.

(6) Where the patient is not in hospital, subsection (4) above does not authorise the giving of medical treatment by force to the patient.