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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for certain surgical operations etc.

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

(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.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 235 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.

Commencement Information

I1 S. 235 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by 2015 asp 9 s. 1(2)
- s. 65(7) inserted by 2015 asp 9 s. 1(3)