



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

## 2003 asp 13

### PART 16

#### MEDICAL TREATMENT

##### *Safeguards for certain surgical operations etc.*

#### **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.
- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.