Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 238 is
up to date with all changes known to be in force on or before 19 July 2023. 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

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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for other medical treatment

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.

Commencement Information

I1   S. 238 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)

Changes to legislation:
Mental Health (Care and Treatment) (Scotland) Act 2003, Section 238 is up to date with all changes known to be in force on or before 19 July 2023. 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.
View outstanding changes

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)