



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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for other medical treatment

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—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 242 is up to date with all changes known to be in force on or before 25 May 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*

- (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.

Commencement Information

- II** S. 242 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\(3\)](#)