



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

## 2003 asp 13

### PART 16

#### MEDICAL TREATMENT

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

#### **234 Certain surgical operations etc.**

- (1) The types of medical treatment mentioned in subsection (2) below may be given to a patient only in accordance with section 235 or 236 of this Act.
- (2) The types of medical treatment referred to in subsection (1) above are—
  - (a) any surgical operation for destroying—
    - (i) brain tissue; or
    - (ii) the functioning of brain tissue; and
  - (b) such other types of medical treatment as may be specified in regulations for the purposes of this section.
- (3) Before making regulations under subsection (2)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

#### **Commencement Information**

- I1** S. 234 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161, art. 2, Sch. 1](#)
- I2** [S. 234](#) in force at 5.10.2005 in so far as not already in force 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](#))

#### **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.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Safeguards for certain surgical operations etc. is up to date with all changes known to be in force on or before 19 January 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*

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- (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.
- (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

**I3** 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)

### 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

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Safeguards for certain surgical operations etc. is up to date with all changes known to be in force on or before 19 January 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*

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- (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.
- (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.

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#### Commencement Information

**I4** S. 236 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, Cross Heading: Safeguards for certain surgical operations etc. is up to date with all changes known to be in force on or before 19 January 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.

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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\(3\)](#)