



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

2003 asp 13

PART 16

MEDICAL TREATMENT

Designated medical practitioners

233 Designated medical practitioners

- (1) The Commission shall compile and maintain a list of medical practitioners who appear to the Commission to have such—
 - (a) qualifications; and
 - (b) experience,as the Commission considers appropriate for the purposes of discharging the functions conferred on designated medical practitioners by virtue of this Part of this Act.
- (2) A medical practitioner included for the time being in the list mentioned in subsection (1) above is referred to in this Act as a “designated medical practitioner”.
- (3) The Commission shall ensure that the list mentioned in subsection (1) above includes child specialists.
- (4) A designated medical practitioner may, for the purposes of discharging any functions conferred by virtue of this Part of this Act—
 - (a) interview a patient at any reasonable time and require any such interview to be conducted in private;
 - (b) carry out a medical examination of a patient in private at any reasonable time; and
 - (c) require any person holding medical records of a patient to produce such records for inspection by the designated medical practitioner.
- (5) A designated medical practitioner shall undertake such training as the Commission may require.

Status: This is the original version (as it was originally enacted).

- (6) The Commission shall pay to designated medical practitioners for or in connection with the discharge of the functions conferred on them by virtue of this Part of this Act such fees, expenses and allowances as may be prescribed by regulations.

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.

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.
- (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

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(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.

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.

(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.

*Safeguards for other medical treatment***237 Electro-convulsive therapy etc.**

- (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 section 243 of this Act, the types of medical treatment mentioned in subsection (3) below may be given to the patient only in accordance with section 238 or 239 of this Act.
- (3) The types of medical treatment referred to in subsection (2) above are—
 - (a) electro-convulsive therapy; and
 - (b) such other types of medical treatment as may be specified in regulations for the purposes of this section.
- (4) Before making regulations under subsection (3)(b) above the Scottish Ministers shall consult such persons as they consider appropriate.

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.

239 Treatment mentioned in section 237(3): patients incapable of consenting

- (1) Subject to subsections (2) to (4) below, medical treatment mentioned in section 237(3) of this Act is given to a patient in accordance with this section if a designated medical practitioner who is not the patient's responsible medical officer certifies in writing that—
 - (a) the patient is incapable of understanding the nature, purpose and likely effects of the treatment;
 - (b) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; 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.
- (2) Where the patient resists or objects to the treatment, certification under subsection (1) above is effective only if, instead of certifying the matter mentioned in paragraph (c) of that subsection, the designated medical practitioner certifies that—
 - (a) the patient resists or objects to the treatment; but
 - (b) it is necessary to give the treatment to the patient for a purpose mentioned in any of paragraphs (a) to (c) of section 243(3) of this Act and specified in the certificate.
- (3) Where the patient is a child, certification under subsection (1) above is effective only if done—
 - (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.
- (4) Where the patient is not in hospital, subsection (1) above does not authorise the giving of medical treatment by force to the patient.

240 Treatments given over period of time etc.

- (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 (4) below and to section 243 of this Act, the types of treatment mentioned in subsection (3) below, when given as treatment for mental disorder or in consequence of the patient having a mental disorder, may be given to the patient only in accordance with section 238 or 241 of this Act.
- (3) The types of treatment referred to in subsection (2) above are—
 - (a) any medicine (other than the surgical implantation of hormones) given for the purpose of reducing sex drive;
 - (b) any other medicine;
 - (c) provision, without the consent of the patient and by artificial means, of nutrition to the patient; and
 - (d) such other types of treatment as may be specified in regulations for the purposes of this section.
- (4) Subsection (2) above does not apply to the giving of medicine in a relevant period until 2 months have passed since the patient was first in the relevant period given any medicine that was not, when given, a treatment specified under subsection (3)(d) above or section 234(2)(b) or 237(3)(b) of this Act.
- (5) The Scottish Ministers may by order amend subsection (4) above for the purpose of substituting a period specified in the order for (as the case may be)—
 - (a) the period of 2 months mentioned in that subsection; or
 - (b) the period that is for the time being mentioned in that subsection in place of that period of 2 months.

- (6) For the purposes of subsection (4) above—
“medicine” does not include medicine such as is mentioned in paragraph (a) of subsection (3) above or any treatment specified in regulations under paragraph (d) of that subsection; and
“relevant period”, in relation to a patient, means any period during which the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act.
- (7) Before making regulations under subsection (3)(d) above the Scottish Ministers shall consult such persons as they consider appropriate.

241 Treatment mentioned in section 240(3): patients refusing consent or incapable of consenting

- (1) Subject to subsections (3) and (4) below, medical treatment mentioned in section 240(3) of this Act is given in accordance with this section if a designated medical practitioner who is not the patient’s responsible medical officer certifies in writing that—
- (a) the patient—
 - (i) does not consent to the treatment; or
 - (ii) is incapable of consenting to the treatment;
 - (b) the giving of medical treatment to the patient is authorised by virtue of this Act or the 1995 Act; 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.
- (2) If the condition mentioned in subsection (1)(a)(i) above applies, the designated medical practitioner shall—
- (a) if the reason for refusal of consent is known, have regard to the reason for the refusal; and
 - (b) if the designated medical practitioner is of the opinion that the treatment should be given, include in any certificate under subsection (1) above a statement of the reason for that opinion.
- (3) Where the patient is a child, the certification of the matters mentioned in paragraphs (a) to (c) of subsection (1) above is effective only if done—
- (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.
- (4) Where the patient is not in hospital, subsection (1) above does not authorise the giving of medical treatment by force to the patient.

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.

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

- (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—
 - (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.

*Urgent medical treatment where patient detained in hospital***243 Urgent medical treatment**

- (1) This section applies where the detention in hospital of a patient is authorised by virtue of—
- (a) this Act; or
 - (b) the 1995 Act.
- (2) Where it is necessary as a matter of urgency for medical treatment to be given to the patient for any of the purposes mentioned in subsection (3) below, the treatment may, subject to subsections (4) and (5) below, be given notwithstanding that the patient—
- (a) does not consent; or
 - (b) is incapable of consenting,
- to the treatment.
- (3) The purposes are—
- (a) saving the patient's life;
 - (b) preventing serious deterioration in the patient's condition;
 - (c) alleviating serious suffering on the part of the patient; and
 - (d) preventing the patient from—
 - (i) behaving violently; or
 - (ii) being a danger to the patient or to others.
- (4) Subsection (2) above authorises the giving of medical treatment—
- (a) for a purpose mentioned in any of paragraphs (b) to (d) of subsection (3) above only if the treatment is not likely to entail unfavourable, and irreversible, physical or psychological consequences;
 - (b) for a purpose mentioned in paragraph (c) or (d) of that subsection only if the treatment does not entail significant physical hazard to the patient.
- (5) Subsection (2) above does not authorise the giving of electro-convulsive therapy if the patient is capable of consenting but does not consent to the treatment.
- (6) Where the patient is given medical treatment by virtue of subsection (2) above, the patient's responsible medical officer shall, before the expiry of the period of 7 days beginning with the day on which such treatment is given (or first given), give notice to the Commission of—
- (a) the type of treatment given; and
 - (b) the purpose mentioned in subsection (3) above for which it was given.

*Additional safeguards for certain informal patients***244 Scottish Ministers' power to make provision in relation to treatment for certain informal patients**

Regulations may prescribe conditions that must be satisfied before types of medical treatment specified in the regulations may be given to patients—

- (a) who are under 16 years of age; and
- (b) in respect of whom the giving of medical treatment is not authorised by virtue of this Act or the 1995 Act.

Supplementary

245 Certificates under sections 235, 236, 239 and 241

- (1) This section applies to certificates under sections 235, 236, 239 and 241 of this Act.
- (2) A certificate shall contain such particulars as may be prescribed by regulations.
- (3) Before giving a certificate, the person giving it shall consult—
 - (a) subject to subsection (4) below—
 - (i) the patient; and
 - (ii) the patient’s named person; and
 - (b) such person or persons as appear to the person giving the certificate to be principally concerned with the patient’s medical treatment.
- (4) The person giving a certificate need not consult any person such as is mentioned in paragraph (a) of subsection (3) above in any case where it is impracticable to do so.
- (5) A person who gives a certificate shall, before the expiry of the period of 7 days beginning with the day on which the certificate is given, send a copy of it to the Commission.

246 Certificates under section 238

A certificate under section 238 of this Act shall contain such particulars as may be prescribed by regulations.

247 Scope of consent or certificate under sections 235, 236, 238, 239 and 241

Any—

- (a) consent; or
- (b) certificate,

given under section 235, 236, 238, 239 or 241 of this Act may relate to a plan of treatment under which (whether during a specified period or otherwise) one or more of the types of treatment to which the consent or certificate relates is to be given to the patient.

248 Sections 235, 236, 238, 239 and 241: review of treatment etc.

- (1) Where medical treatment is given to a patient by virtue of section 235, 236, 239 or 241 of this Act, the patient’s responsible medical officer shall—
 - (a) on the next occasion after the giving of the treatment on which the patient’s responsible medical officer submits a record to the Tribunal under section 87(2)(b) of this Act or, as the case may be, makes an application to the Tribunal under section 92 of this Act; or
 - (b) at such other time as the patient’s responsible medical officer is required to do so by the Commission,submit to the Commission a report as to the treatment given and the patient’s condition.
- (2) The Commission may at any time by notice to the patient’s responsible medical officer revoke, with effect from such time as may be specified in the notice, a certificate given under section 235(2) or (3), 236(2) or (3), 238(1), 239 or 241(1) of this Act.

- (3) A time specified in a notice under subsection (2) above may not be earlier than the time of the notice.

Interpretation of Part

249 Interpretation of Part

In this Part—

“child” means a person who has not attained the age of 18 years; and

“child specialist” means a medical practitioner who has such qualifications or experience in relation to children as the Commission may determine from time to time.