



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.

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 236 is up to date with all changes known to be in force on or before 18 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

- (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.

Commencement Information

- II** 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)

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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\(3\)](#)