



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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for other medical treatment

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—

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 239 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](#)

- (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.

Commencement Information

- II** [S. 239](#) 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\(3\)](#)