



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

2003 asp 13

PART 16

MEDICAL TREATMENT

Safeguards for other medical treatment

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—

Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 241 is up to date with all changes known to be in force on or before 17 August 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. 241 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, Section 241 is up to date with all changes known to be in force on or before 17 August 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.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- s. 241(1) modified (temp.) by [2020 c. 7 Sch. 9 para. 10](#)

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\(3\)](#)