



# Mental Health (Scotland) Act 1984

## 1984 CHAPTER 36

### PART X

#### CONSENT TO TREATMENT

#### 96 Preliminary.

- (1) This Part of this Act applies to any patient liable to be detained under this Act except—
  - (a) a patient who is liable to be detained by virtue of an emergency recommendation;
  - (b) a patient who is liable to be detained by virtue of sections 25(2), 117 or 118 of this Act or [<sup>F1</sup>section 58(9) of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995];
  - (c) a patient who has been conditionally discharged under sections 64 or 68(2) of this Act and has not been recalled to hospital.
- (2) Any certificate for the purposes of this Part of this Act shall be in such form as may be prescribed by regulations made by the Secretary of State.

#### Textual Amendments

- F1** Words in s. 96(1)(b) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(11)**; S.I. 1997/1712, art. 3, **Sch.**

#### Marginal Citations

- M1** 1995 c.46.

#### 97 Treatment requiring consent and a second opinion.

- (1) This section applies to the following forms of medical treatment for mental disorder—
  - (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and

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- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.
- (2) Subject to section 102 of this Act, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and—
  - (a) a medical practitioner (not being the responsible medical officer) appointed for the purposes of this Part of this Act by the Mental Welfare Commission and two other persons (not being medical practitioners) appointed for the purposes of this paragraph by the Commission have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
  - (b) the medical practitioner referred to in paragraph (a) of this subsection has certified in writing that, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.
- (3) Before giving a certificate under subsection (2)(b) of this section the medical practitioner concerned shall consult such person or persons who appear to him to be principally concerned with the patient's medical treatment.
- (4) Where any person has given a certificate under subsection (2)(a) or (b) of this section he shall send a copy thereof to the Mental Welfare Commission within 7 days of the day on which the certificate was given.
- (5) A medical practitioner or other person appointed as is mentioned in subsection (2)(a) of this section may, for the purpose of exercising his functions under this Part of this Act or (as the case may be) subsection (2)(a) of this section, at any reasonable time—
  - (a) in private visit and interview any patient; and
  - (b) in the case of a medical practitioner, examine any patient and require the production of and inspect any records relating to the treatment of the patient.
- (6) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

## **98 Treatment requiring consent or a second opinion.**

- (1) This section applies to the following forms of medical treatment for mental disorder—
  - (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State; and
  - (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) of this subsection or section 97 of this Act) at any time during a period for which he is liable to be detained as a patient to whom this Part of this Act applies if 3 months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.
- (2) The Secretary of State may by order vary the length of the period mentioned in subsection (1)(b) of this section.
- (3) Subject to section 102 of this Act, a patient shall not be given any form of treatment to which this section applies unless—
  - (a) he has consented to that treatment and either the responsible medical officer or a medical practitioner appointed for the purposes of this Part of this Act by the Mental Welfare Commission has certified in writing that the patient is capable

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of understanding its nature, purpose and likely effects and has consented to it; or

- (b) a medical practitioner (not being the responsible medical officer) appointed as aforesaid has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it, but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.
- (4) Before giving a certificate under subsection (3)(b) of this section the medical practitioner concerned shall consult such person or persons who appear to him to be principally concerned with the patient's medical treatment.
  - (5) Where any person has given a certificate under subsection (3)(a) or (b) of this section he shall send a copy thereof to the Mental Welfare Commission within 7 days of the day on which the certificate was given.
  - (6) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

## 99 Review of treatment.

- (1) Where a patient is given treatment in accordance with section 97(2) or 98(3)(b) of this Act a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Mental Welfare Commission—
  - (a) on the next occasion on which the responsible medical officer furnishes a report [F2 under section 30 or 31B of this Act renewing the authority for the detention of the patient]; and
  - (b) at any other time if so required by the Mental Welfare Commission.
- (2) The Mental Welfare Commission may at any time give notice to the responsible medical officer directing that, subject to section 102 of this Act, a certificate given in respect of a patient under section 97(2) or 98(3)(b) of this Act shall not apply to treatment given to him after a date specified in the notice, and sections 97 and 98 of this Act shall then apply to any such treatment as if that certificate had not been given.

### Textual Amendments

F2 Words in s. 99(1)(a) substituted (1.4.1996) by 1995 c. 52, ss. 5(10), 7(2)

## 100 Plans of treatment.

Any consent or certificate under section 97 or 98 of this Act may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

## 101 Withdrawal of consent.

- (1) Where the consent of a patient to any treatment has been given for the purposes of section 97 or 98 of this Act, the patient may, subject to section 102 of this Act, at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

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- (2) Without prejudice to the application of subsection (1) of this section to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 102 of this Act, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

## **102 Urgent treatment.**

- (1) Sections 97 and 98 of this Act shall not apply to any treatment—
- (a) which is immediately necessary to save a patient's life; or
  - (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or
  - (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
  - (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.
- (2) Sections 99(2) and 101 of this Act shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with sections 97 and 98 of this Act if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.
- (3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.
- (4) Where a patient is given treatment under this section the responsible medical officer shall, within 7 days of the day on which the treatment is given, notify the Mental Welfare Commission as to—
- (a) which of paragraphs (a) to (d) of subsection (1) of this section applied in relation to the patient; and
  - (b) the nature of the treatment given to the patient.

## **103 Treatment not requiring consent.**

The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 97 or 98 of this Act, if the treatment is given by or under the direction of the responsible medical officer.

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