



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

## 2003 asp 13

### PART 22

#### APPEALS

#### 324 Appeals: general provisions

- (1) An appeal—
  - (a) to the sheriff principal under section 320(2) of this Act; or
  - (b) to the Court of Session under section 322(2) of this Act,may be made only on one or more of the grounds mentioned in subsection (2) below.
- (2) The grounds referred to in subsection (1) above are—
  - (a) that the Tribunal's decision was based on an error of law;
  - (b) that there has been a procedural impropriety in the conduct of any hearing by the Tribunal on the application;
  - (c) that the Tribunal has acted unreasonably in the exercise of its discretion;
  - (d) that the Tribunal's decision was not supported by the facts found to be established by the Tribunal.
- (3) The Tribunal may be a party to an appeal under section 320(2) or 322(2) and in any appeal from the decision of the sheriff principal under section 321(1).
- (4) The court may, where it considers it appropriate, order the Tribunal to be represented at any hearing of an appeal under section 320(2), 321(1) or 322(2).
- (5) In allowing an appeal under section 320(2), 321(1) or 322(2) of this Act the court—
  - (a) shall set aside the decision of the Tribunal; and
  - (b) shall—
    - (i) if it considers that it can properly do so on the facts found to be established by the Tribunal, substitute its own decision; or
    - (ii) remit the case to the Tribunal for consideration anew.

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*Status: This is the original version (as it was originally enacted).*

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- (6) If the court remits a case under paragraph (b)(ii) of subsection (5) above, the court may—
- (a) direct that the Tribunal be differently constituted from when it made the decision; and
  - (b) issue such other directions to the Tribunal about the consideration of the case as it considers appropriate.
- (7) Regulations may specify the period within which an appeal under section 320(2), 321(1) or 322(2) of this Act shall be made.
- (8) In this section, “the court” means the sheriff principal or the Court of Session as the case may be.