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.

(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.