



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

## 2003 asp 13

### PART 22

#### APPEALS

#### **320 Appeal to sheriff principal against certain decisions of the Tribunal**

- (1) This section applies to the following decisions of the Tribunal—
- (a) a decision under section 50(4) of this Act refusing an application for revocation of a short-term detention certificate;
  - (b) a decision under section 64(4)(a) or (b) of this Act making or refusing to make a compulsory treatment order;
  - (c) a decision to make an interim compulsory treatment order under section 65(2) of this Act;
  - (d) a decision to make an order under section 102(1)(c) or (d) of this Act confirming the determination of a patient's responsible medical officer extending a compulsory treatment order;
  - (e) a decision to make an order under section 103(1)(a) or (b) of this Act on an application by the patient's responsible medical officer for an order extending and varying a compulsory treatment order;
  - (f) a decision to make an order under section 103(2)(c) or (d) of this Act on an application for revocation of the determination of a patient's responsible medical officer extending a compulsory treatment order;
  - (g) a decision to make an order under section 103(3)(b) or (c) of this Act on an application under section 100(2)(a) of this Act to revoke a compulsory treatment order;
  - (h) a decision to make an order under section 103(4)(a) of this Act on an application by a patient's responsible medical officer to vary a compulsory treatment order;
  - (i) a decision to make an order under section 103(4)(b) of this Act refusing an application under section 100(2)(b) of this Act to vary a compulsory treatment order;

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- (j) a decision to make an order under section 104(1)(a) of this Act varying a compulsory treatment order;
  - (k) a decision not to revoke under section 120(2) of this Act a certificate granted under section 114(2) or 115(2) of this Act;
  - (l) a decision to make or refuse to make an order under section 125(5) or 126(5) of this Act preventing a transfer or requiring that a transferred patient be returned;
  - (m) a decision to make an order under section 166(1)(c) or (d) of this Act confirming the determination of a patient’s responsible medical officer extending a compulsion order;
  - (n) a decision to make an order under section 167(1)(a) of this Act on an application by the patient’s responsible medical officer for an order extending a compulsion order;
  - (o) a decision to make an order under section 167(2)(a) or (b) of this Act on an application by the patient’s responsible medical officer for an order extending and varying a compulsion order;
  - (p) a decision to make an order under section 167(3)(c) or (d) of this Act on an application for revocation of the determination of a patient’s responsible medical officer extending a compulsion order;
  - (q) a decision to make an order under section 167(4)(b) or (c) of this Act on an application under section 164(2)(a) of this Act;
  - (r) a decision to make an order under section 167(5)(a) of this Act on an application by a patient’s responsible medical officer to vary a compulsion order;
  - (s) a decision to make an order under section 167(5)(b) of this Act refusing an application under section 164(2)(b) of this Act to vary a compulsion order;
  - <sup>F1</sup>(t) .....
  - (u) a decision to make or refuse to make an order under section 257(2) of this Act declaring an acting named person not to be a named person or appointing a person to be a patient’s named person in place of an acting named person;
  - (v) a decision to make an order under section 257(3) of this Act;
  - (w) a decision, in relation to a patient who is not subject to a restriction order, a hospital direction or a transfer for treatment direction—
    - (i) to make or refuse to make an order under section 264(2), 265(3) or 266(3) of this Act;
    - (ii) under section 267(2) of this Act to recall or refuse to recall an order made under section 264, 265 or 266 of this Act;
    - (iii) to make or refuse to make an order under section 268(2), 269(3) or 270(3) of this Act;
    - (iv) under section 271(2) of this Act to recall or refuse to recall an order made under section 268, 269 or 270 of this Act; and
  - (x) a decision granting or refusing an application for an order requiring the managers of the hospital to cease to detain a patient under section 291 of this Act.
- (2) A relevant party to proceedings before the Tribunal may appeal to the sheriff principal against a decision to which this section applies.
- (3) An appeal to the sheriff principal under subsection (2) above shall be to the sheriff principal—

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- (a) of the sheriffdom in which the person to whom the decision relates is resident at the time when the appeal is lodged;
  - (b) where the person to whom the decision relates is detained in a hospital at the time when the appeal is lodged, of the sheriffdom in which the hospital is situated; or
  - (c) in any other case, of any sheriffdom.
- (4) If the sheriff principal to whom an appeal is made considers that the appeal raises an important or difficult question of law that makes it appropriate to remit the appeal to the Court of Session the sheriff principal may—
  - (a) *ex proprio motu*; or
  - (b) on the motion of any party to the appeal,do so.
- (5) Subject to subsections (6) to (9) below, in this section “relevant party” means—
  - (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person;
  - (e) the mental health officer; and
  - (f) that person’s responsible medical officer.
- (6) Where the person to whom the decision relates is a person to whom subsection (7) below applies, “relevant party” means—
  - (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person; and
  - (e) the Scottish Ministers.
- (7) This subsection applies to a patient who is subject to—
  - (a) a compulsion order and a restriction order;
  - (b) a hospital direction; or
  - (c) a transfer for treatment direction.
- (8) Where the appeal is against a decision mentioned in paragraph (w) of subsection (1) above, “relevant party” means—
  - (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person;
  - (e) the Commission; and
  - (f) the relevant Health Board (within the meaning of section 273 of this Act).
- (9) Where the appeal is against a decision mentioned in paragraph (x) of subsection (1) above, “relevant party” means—
  - (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person;

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- (e) the managers of the hospital; and
- (f) if the person who applied for the order does not fall within paragraphs (a) to (d) above, the person who applied for the order.

#### Textual Amendments

- F1** S. 320(1)(t) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 24(5)**, 61(2); [S.S.I. 2017/197](#), art. 2, sch.

#### Modifications etc. (not altering text)

- C1** S. 320 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer: patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **14** (with reg. 2)
- C2** S. 320 applied (with modifications) (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **9** (with reg. 2)

#### Commencement Information

- I1** S. 320 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)

### 321 Appeal to Court of Session against decisions of sheriff principal

- (1) A relevant party to an appeal to the sheriff principal under section 320(2) of this Act may appeal to the Court of Session against the decision of the sheriff principal allowing or refusing the appeal.
- (2) In subsection (1) above, “relevant party” has the same meaning as in section 320 of this Act.

#### Modifications etc. (not altering text)

- C3** S. 321 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer: patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **14** (with reg. 2)
- C4** S. 321 applied (with modifications) (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **9** (with reg. 2)

#### Commencement Information

- I2** S. 321 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)

### 322 Appeal to Court of Session against certain decisions of the Tribunal

- (1) This section applies to the following decisions of the Tribunal—
  - (a) a decision to make an order revoking a compulsion order under section 193(3) or (4) of this Act;
  - (b) a decision to make an order revoking a restriction order under section 193(5) of this Act;

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- (c) a decision to make an order varying a compulsion order under section 193(6) of this Act;
  - (d) a decision to make an order conditionally discharging a patient under section 193(7) of this Act;
  - (e) a decision, under section 193 of this Act, to make no order under that section;
  - (f) a decision, under section 215(2) of this Act, to make no direction;
  - (g) a decision to make a direction under section 215(3) or (4) of this Act;
  - (h) a decision to make or refuse to make an order under section 219(5) or 220(5) of this Act preventing a transfer or requiring that a transferred patient be returned; and
  - (i) a decision, in relation to a patient who is subject to a restriction order, a hospital direction or a transfer for treatment direction—
    - (i) to make or refuse to make an order under section 264(2), 265(3) or 266(3) of this Act;
    - (ii) under section 267(2) of this Act to recall or refuse to recall an order made under section 264, 265 or 266 of this Act;
    - (iii) to make or refuse to make an order under section 268(2), 269(3) or 270(3) of this Act; or
    - (iv) under section 271(2) of this Act to recall or refuse to recall an order made under section 268, 269 or 270 of this Act.
- (2) A relevant party to proceedings before the Tribunal may appeal to the Court of Session against a decision to which this section applies.
- (3) Subject to subsection (4) below, in this section “relevant party” means—
- (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person; and
  - (e) the Scottish Ministers.
- (4) Where the appeal is against a decision mentioned in paragraph (i) of subsection (1) above, “relevant party” means—
- (a) the person to whom the decision relates;
  - (b) that person’s named person;
  - (c) any guardian of the person;
  - (d) any welfare attorney of the person;
  - (e) the Commission;
  - (f) the relevant Health Board (within the meaning of section 273 of this Act); and
  - (g) the Scottish Ministers.

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**Modifications etc. (not altering text)**

- C5** S. 322 applied (with modifications) (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **15** (with reg. 2)

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#### Commencement Information

- I3** S. 322 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)

### 323 Suspension of decision of Tribunal pending determination of certain appeals

- (1) Where the Scottish Ministers appeal under section 322(2) of this Act against any decision of the Tribunal under section 193 of this Act, or a decision of the Tribunal to make a direction under section 215(3) or (4) of this Act, the Court of Session may, on the motion of the Scottish Ministers, order—
- (a) that the patient in respect of whom the Tribunal’s decision was made shall continue, subject to subsection (2) below, to be detained; and
  - (b) that both the compulsion order and restriction order or, as the case may be, the hospital direction or transfer for treatment direction to which the patient is subject shall continue to have effect accordingly.
- (2) An order under subsection (1) above has the effect of continuing the patient’s detention—
- (a) in a case where no appeal is made to the [<sup>F2</sup>Supreme Court] against the decision of the Court of Session under section 322(2) of this Act, until the expiry of the time allowed to so appeal to the [<sup>F2</sup>Supreme Court]; or
  - (b) in a case where such an appeal is made, until it is abandoned or finally determined.

#### Textual Amendments

- F2** Words in s. 323(2)(a) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 83; S.I. 2009/1604, art. 2(d)

#### Commencement Information

- I4** S. 323 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)

### 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).

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- (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.

#### Commencement Information

- I5** S. 324 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)
- I6** [S. 324](#) in force at 5.10.2005 in so far as not already in force 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:**

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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\(3\)](#)