



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;
 - ^{F1}(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)

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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\(3\)](#)