

# **MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 22 – Appeals**

633. This part creates an appeal structure against decisions of the Tribunal. Most appeals are made to the sheriff principal but complex cases may be remitted to the Court of Session. There is a further right of appeal from the sheriff principal to the Court of Session. Appeals concerning restricted patients go directly to the Court of Session. The grounds for any appeal are set out in section 324(2).

#### ***Section 320: appeal to the sheriff principal against certain decisions of the Tribunal***

634. **Section 320** provides that a relevant party may appeal to the sheriff principal against a range of decisions of the Tribunal, which are listed in subsection (1). Subsection (3) makes provision about the sheriff principal to which the appeal is to be made.

635. Subsection (4) enables the sheriff principal, either on the motion of one of the parties or at his or her own behest, to remit an appeal to the Court of Session. The test for so doing is that the appeal raises an important or difficult question of law.

636. Subsections (5) to (9) make provision about the persons who may appeal decisions.

#### ***Section 321: appeal to the Court of Session against decisions of sheriff principal***

637. **Section 321** provides for a further appeal from the sheriff principal in relation to applications made under section 320. The same parties as set out in section 320 will have the right of appeal to the Court of Session.

#### ***Section 322: appeal to Court of Session against certain decisions of the Tribunal***

638. The decisions listed in section 322(1) which apply in relation to orders or directions made in the context of criminal proceedings are to be appealed directly to the Court of Session.

639. For these purposes, the patient, his or her named person, his or her guardian or welfare attorney and the Scottish Ministers may appeal (subsection (2)). Where the decision has been made in relation to detention under conditions of excessive security, the managers of the hospital concerned and the Commission may also appeal (subsection (3)).

#### ***Section 323: suspension of decision of Tribunal pending determination of certain appeals***

640. Where the Scottish Ministers appeal a Tribunal decision made under section 193 or against a decision of the Tribunal to make a direction under section 215(3) or (4)

*These notes relate to the Mental Health (Care and Treatment) (Scotland)  
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

they may apply to the Court for an order authorising the patient's continued detention pending the outcome of the appeal.

641. Such an order will remain effective until the appeal is either abandoned or finally determined (subsection (2)).

***Section 324: appeals: general provisions***

642. Subsection (2) specifies the grounds on which any appeal from the Tribunal, either to the sheriff principal or the Court of Session, must be based.
643. Subsections (3) and (4) make provision about the participation of the Tribunal in any such appeal.
644. If an appeal succeeds, the appellate court must either substitute its own decision for that of the Tribunal (where it is possible on the established facts to do so) or remit the case back to the Tribunal for consideration afresh (subsection (5)). Where a case is remitted, the court may make directions that the Tribunal now to consider the case must be differently constituted from the original Tribunal and such other matters about the consideration of the case as it considers appropriate (subsection (6)).
645. There is no time limit specified in the 2003 Act for the making of any appeal. Regulations may provide for this (subsection (7)).