



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

2003 asp 13

PART 22

APPEALS

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 [^{F1}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 [^{F1}Supreme Court]; or
 - (b) in a case where such an appeal is made, until it is abandoned or finally determined.

Textual Amendments

- F1** 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

- II** 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](#))

Changes to legislation:

Mental Health (Care and Treatment) (Scotland) Act 2003, Section 323 is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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\(3\)](#)