



# Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

## PART 6

### MISCELLANEOUS

#### *Appeals under Public Health (Scotland) Act 1897*

#### **36 Amendment of Public Health (Scotland) Act 1897: appeal against certain orders etc.**

After section 156 of the Public Health (Scotland) Act 1897 (c. 38), insert—

#### **“156A Appeal to sheriff or sheriff principal in certain cases: sections 54, 55 and 96**

- (1) Any person in respect of whom—
  - (a) an order under section 54(1) (for removal to a hospital) or under section 54(3) (for transfer to another hospital) (referred to in this section and section 156C as a “section 54 order”);
  - (b) a direction under section 55(1) (for detention in a hospital) or under section 55(3) (for removal to another hospital) (referred to in this section and section 156C as a “section 55 direction”); or
  - (c) a decision under section 96 (for removal to a hospital) (referred to in this section and sections 156B and 156C as a “section 96 decision”),is made, or any person having an interest in the welfare of the person in respect of whom the order, the direction or, as the case may be, the decision is made, may appeal under this section against the order, the direction or, as the case may be, the decision.
- (2) An appeal under this section against—
  - (a) a section 54 order or a section 55 direction by a sheriff may be made to the sheriff principal;

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*Status: This is the original version (as it was originally enacted).*

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- (b) a section 54 order or a section 55 direction by a justice may be made to the sheriff principal of either of the sheriffdoms mentioned in subsection (3);
  - (c) a section 96 decision may be made to the sheriff of either of those sheriffdoms.
- (3) The sheriffdoms are—
- (a) the sheriffdom in which the person (in respect of whom the section 54 order, section 55 direction or section 96 decision in question is made) is resident immediately before it is made;
  - (b) the sheriffdom in which the hospital (in which that person is detained pursuant to the section 54 order, section 55 direction or section 96 decision in question) is situated.
- (4) An appeal under this section may be made on either or both of the following grounds—
- (a) that the section 54 order, section 55 direction or section 96 decision in question was based on an error of law;
  - (b) that the section 54 order, section 55 direction or section 96 decision in question was not supported by the facts found to be established by the sheriff or justice who made the order or direction or, as the case may be, the local authority who made the decision.
- (5) An appeal against a section 54 order, section 55 direction or section 96 decision may be made before the expiry of the period of 21 days beginning with the day on which the order, the direction or, as the case may be, the decision is made.
- (6) An appeal against a section 54 order or section 55 direction by a justice or a section 96 decision is to be made by way of summary application.
- (7) In an appeal under this section against a section 54 order, section 55 direction or section 96 decision, the sheriff principal or, as the case may be, the sheriff may—
- (a) confirm the order, the direction or, as the case may be, the decision;
  - (b) direct that the order, the direction or, as the case may be, the decision ceases to have effect;
  - (c) make such other order or direction as the sheriff principal or, as the case may be, the sheriff thinks fit.

### **156B Further appeal to sheriff principal: section 96 decision**

- (1) Where, in an appeal under section 156A against a section 96 decision, the sheriff confirms the decision, the person in respect of whom the section 96 decision was made, or any person having an interest in the welfare of that person, may appeal to the sheriff principal against the decision of the sheriff in the appeal on either or both of the grounds mentioned in subsection (2).
- (2) The grounds are—
- (a) that the decision of the sheriff in the appeal under section 156A was based on an error of law;
  - (b) that that decision was not supported by the facts found to be established by the sheriff in the appeal.

- (3) An appeal under this section may be made before the expiry of the period of 21 days beginning with the day on which the decision of the sheriff in the appeal under section 156A is made.
- (4) In an appeal under this section, the sheriff principal—
  - (a) may allow the appeal and when doing so must direct that the section 96 decision ceases to have effect;
  - (b) may refuse the appeal and confirm the decision of the sheriff;
  - (c) may make such other order or direction as the sheriff principal thinks fit.

#### **156C Further appeal to Court of Session: sections 54, 55 and 96**

- (1) Where, in an appeal under section 156A against a section 54 order or section 55 direction, the sheriff principal confirms the order or, as the case may be, the direction, the person in respect of whom the decision in the appeal is made or any person having an interest in the welfare of that person may, with the leave of the sheriff principal, appeal to the Court of Session against the decision of the sheriff principal on either or both of the following grounds—
  - (a) that the decision of the sheriff principal in the appeal under section 156A was based on an error of law;
  - (b) that that decision was not supported by the facts found to be established by the sheriff principal in the appeal.
- (2) Where, in an appeal under section 156B against a decision of the sheriff in an appeal under section 156A, the sheriff principal confirms the decision of the sheriff in the appeal under section 156A, the person in respect of whom the decision of the sheriff principal is made or any person having an interest in the welfare of that person may, with the leave of the sheriff principal, appeal to the Court of Session against the decision of the sheriff principal on either or both of the following grounds—
  - (a) that the decision of the sheriff principal in the appeal under section 156B was based on an error of law;
  - (b) that that decision was not supported by the facts found to be established by the sheriff principal in the appeal.

#### **156D Effect of appeal in relation to section 54 order, section 55 direction or section 96 decision**

A section 54 order, a section 55 direction or a section 96 decision may be given effect notwithstanding that an appeal may be or is made against, or in relation to, it under this Act.”.