

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 1

Public Health Responsibilities

Power of Scottish Ministers to intervene

Section 8 Power to direct health boards and local authorities

17. This section gives the Scottish Ministers the power to direct a health board or a local authority to exercise its public health functions where it is necessary for the purpose of protecting public health. This power applies where the Scottish Ministers consider that a health board or a local authority has failed, is failing or is likely to fail to exercise the functions conferred on it by the Act or has failed, is failing or is likely to fail to exercise them in a manner which the Scottish Ministers consider acceptable.
18. Subsection (3) sets out what should be specified in any such direction, that is the function to which it applies, the period within which the function is to be carried out, or the manner in which it is to be carried out and any other conditions imposed by the Scottish Ministers. Subsection (4) allows the Scottish Ministers to vary or withdraw any direction made.

Section 9 Power to direct that functions be exercised by other persons

19. Under this (1)section the Scottish Ministers may direct that the functions of a health board or a local authority be performed by a person other than the health board or local authority whether or not they have made a previous direction under section 8. However, if a direction to a health board or a local authority has been given under section 8, the Scottish Ministers may not give a direction under this section unless the period specified in the first direction has expired or that direction has been withdrawn.
20. Subsection (3) sets out the persons that may be specified in a direction by the Scottish Ministers, namely: a health board, the common services agency, a local authority, an employee of any of these bodies, a member of staff of the Scottish Administration or any other person the Scottish Ministers consider appropriate.
21. Subsection (4) sets out the information that must be contained in a direction under this section, that is: the function to which it applies, the person receiving the direction, the period for which that person is to perform the function, the extent to which it will be performed, and any other conditions imposed by the Scottish Ministers as they consider appropriate. Subsection (5) allows the Scottish Ministers to vary or withdraw a direction.

Section 10 Directions under section 9(1): supplementary

22. Subsection (1) provides that anything done or omitted to be done by a person or body exercising a function as a result of a direction under section 9 remains the responsibility of the health board or local authority whose function it is. A person dealing in good faith and for value with a person exercising a function under a direction does not have to check whether the person exercising the function is doing so in accordance with the terms of the direction. Unless it is specified otherwise in the direction, the health board or local authority whose function is the subject of the direction must remunerate and pay the expenses of, and any other costs reasonably incurred by, the person exercising the function.

Section 11 Power to direct allocation of resources

23. This section allows the Scottish Ministers, if they are satisfied that it is necessary to do so, to direct resources between health boards, between local authorities and between health boards and local authorities, in connection with the performance by the recipient board or authority of its functions relating to the protection of public health.