

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 4

Public Health Functions of Health Boards

Removal to and detention in hospital

Section 41 Application to have person detained in hospital

80. This section deals with applications to the sheriff for an order to have a person detained in hospital. A health board may make such an application where it knows that a person in its area has an infectious disease or is contaminated, where there is a significant risk to public health and it is necessary, to avoid or minimise that risk, for the person to be detained in hospital. An application can be made for the person to be removed to and detained in hospital, if not in hospital already, or to be detained there, if the person is there already. Such an order is referred to as a “short term detention order”.
81. Subsection (4) sets out what must be specified in the application: the person to whom the order will apply; why the health board considers it necessary for the person to be detained in hospital; the hospital in which it is proposed to detain the person; the steps (if any) in section 46(2) that the board considers it is necessary to take in respect of the person; confirmation that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by the health board competent person, indicating satisfaction that the criteria for the making of the application have been met.

Section 42 Order for removal to and detention in hospital

82. This section sets out the circumstances in which a sheriff may grant an order for removal and detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a removal and detention order have been met. The order authorises a constable, an officer of the health board or local authority or any other person the sheriff considers appropriate to remove the person to the hospital specified in the order; to detain the person in hospital for a period not exceeding three weeks; and the taking of steps (if any), set out in section 46(2), as is considered appropriate.
83. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital to which the person is to be taken (and in which the person is to be detained); the period for which the person is to be detained, up to a maximum of three weeks; and the steps (if any) to be undertaken as set out in section 46. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate. Subsections (5) and (6) grant a power of entry, including the use of reasonable force, and permit the power to be exercised at any time.

84. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

Section 43 Order for detention in hospital

85. This section sets out the circumstances in which a sheriff may grant an order for detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a detention order have been met. The order can authorise the detention of a person in hospital for a maximum period of three weeks and the taking of steps (if any) set out in section 46(2) as the sheriff considers appropriate.
86. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to be detained; and the steps (if any) to be undertaken as set out in section 46(2). The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.
87. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

Section 44 Application where long term detention in hospital necessary

88. This section deals with applications by the health board to the sheriff for an “exceptional detention order”. A health board can make an application where a person is detained in hospital under an order granted under section 42 or 43 (a short term detention order) and the health board is satisfied that the criteria under which the short term detention order was granted continue to apply; it continues to be necessary for the person to be detained in hospital to avoid or minimise a significant risk to public health; and it is necessary for that person to be detained for a longer period than permitted under the short term detention order.
89. Subsection (4) states that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to continue to be detained in hospital and for a period longer than that permitted under a short term order; the hospital in which it is proposed to detain the person; the steps, if any, in section 46(2) which the health board considers it is necessary to take in respect of the person; that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by a competent person from a different health board to the one which made the original application, indicating satisfaction that the criteria for the making of the application have been met.

Section 45 Exceptional detention order

90. This section sets out the circumstances in which a sheriff may grant an exceptional detention order and what that order must contain. The sheriff must be satisfied that the criteria for an exceptional detention order have been met and that the health board has fulfilled the conditions set out in section 44 regarding applications. The order will authorise the continued detention of a person in hospital and the taking of steps (if any) set out in section 46(2) as the sheriff considers appropriate.
91. Subsection (4) sets out what an exceptional detention order must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to be detained, up to a maximum of 12 months; and the steps (if any) to be undertaken as set out in section 46(2). The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.