

# **PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

3. The Act is in 10 Parts. The main provisions of the Act are as follows:

#### **Part 1 – Public Health Responsibilities**

- This Part sets out the duties of the Scottish Ministers, health boards and local authorities to continue to make provision to protect public health in Scotland. These are without prejudice to existing duties imposed on the Scottish Ministers and health boards in the National Health Service (Scotland) Act 1978. It defines “protecting public health” in terms of protecting the community, or any part of the community, from infectious diseases, contamination or other hazards that constitute a danger to human health. Health boards and local authorities are required to designate “competent persons” to undertake functions assigned to them under the Act and which require professional input at a particular level. The qualifications, training and other requirements for competent persons to be able to undertake these functions will be set out in regulations.
- A duty of co-operation is placed on health boards and local authorities in exercising the functions under the Act, and for them to plan, together, for public health protection.
- This Part also sets out the Scottish Ministers’ powers of intervention if those bodies fail to exercise functions in an acceptable manner, including power to direct other persons (or organisations) to undertake the functions, and to direct the allocation of resources between them.

#### **Part 2 – Notifiable Diseases, Notifiable Organisms and Health Risk States**

- This Part replaces the current statutory arrangements for the notification of infectious diseases and the voluntary reporting of organisms by NHS-related laboratories with a statutory notification system. Suspected or diagnosed infectious diseases and health risk states are to be notified by registered medical practitioners and diagnostic laboratories in Scotland that are focused on human infections are to notify organisms. The notifiable diseases and organisms are set out in schedule 1.
- This Part allows the Scottish Ministers to vary the list of notifiable diseases and organisms and all other aspects of notification by regulations. It also sets out the penalties for non-reporting.

#### **Part 3 – Public Health Investigations**

- This Part defines a “public health investigation” and sets out the powers available to investigators who may be appointed by the Scottish Ministers, a health board competent person, Health Protection Scotland (a division of the Common Services Agency for the Scottish Health Service), a local authority competent person or two or more of these bodies or persons acting together. The powers will be available

*These notes relate to the Public Health etc. (Scotland) Act 2008 (asp 5) which received Royal Assent on 16 July 2008*

only in defined circumstances and where there are reasonable grounds to suspect that those circumstances are likely to give rise to a significant risk to public health.

- This Part also makes provision about offences under this Part and the compensation arrangements for any loss or damage caused by an investigator or person authorised by an investigator in the course of an investigation.

#### Part 4 – Public Health Functions of Health Boards

- This Part replaces many of the powers currently available to local authorities and which relate directly to infected people and assigns them to health boards. It also confers new powers on health boards.
- Existing powers that are being transferred from local authorities to health boards include: the exclusion of persons from work and school (now extended to cover a wider range of settings); application to a sheriff for an order for a person to be medically examined; and the removal and detention in hospital of a person suffering from a serious infectious disease (now extended to include persons who are contaminated).
- New powers for health boards include the power to restrict persons' activities in order to reduce the spread of contamination and infection; power to quarantine individuals; and power to require a person to be disinfected, disinfested or decontaminated, in defined circumstances, and where there is a significant risk to public health.
- With the exception of exclusion orders and restriction orders, all health board powers will be exercisable only where the health board has obtained an order from a sheriff. The procedures for applying for and granting orders contain safeguards with regard to personal freedom, include a right of appeal, restrictions on duration and regular reviews. It will be an offence to breach the terms of any order.

#### Part 5 – Public Health Functions of Local Authorities

- This Part contains powers which replace existing powers of local authorities to order a range of public health measures in relation to premises and things, including disinfection, disinfestation and decontamination, in order to prevent, or prevent the spread of, infectious disease or contamination.

#### Part 6 – Mortuaries etc.

- This Part places a duty on health boards to ensure mortuary provision, including post-mortem facilities, for hospital-related deaths; and on local authorities to ensure the provision of mortuary and post-mortem facilities for other deaths (including for Crown Office and Procurator Fiscal Service (COPFS)-instructed post-mortem examinations).
- It also replaces provisions in the Public Health (Scotland) Act 1897 with regard to the handling of dead bodies in order to reduce the risk to public health with new provision.

#### Part 7 – International Travel

- This Part provides the Scottish Ministers with a power to make regulations to protect public health from risks arising from vehicles arriving in or leaving Scotland, including regulations to comply with International Health Regulations 2005.

#### Part 8 – Regulation of Provision of Sunbeds

- This Part regulates the use, sale and hire of sunbeds. It provides for offences, penalties and enforcement.

#### Part 9 – Statutory Nuisances

- This Part amends the Environmental Protection Act 1990 (“the 1990 Act”) for Scotland to constitute insect infestation, artificial light pollution, and nuisance associated with water on land as statutory nuisances for the purposes of Part III of the 1990 Act. It introduces a regulation-making power to amend the statutory nuisance regime in the future, and enables local authorities to offer a fixed penalty to persons who fail to comply with the requirements of an abatement notice served under section 80(1) of the 1990 Act.
- This Part also amends the Water Services etc. (Scotland) Act 2005 to remedy an unforeseen dis-application of the enforcement provisions in schedule 3 to the 1990 Act as regards sewerage nuisance.

#### Part 10 – General and Miscellaneous

- This Part contains general and miscellaneous provisions, including provision about information disclosure and penalties for offences under the Act. It sets out the procedures that will apply to the making of subordinate legislation. It also deals with the repeal of legislation which is superseded by this Act.

## **Part 1**

### **Public Health Responsibilities**

#### **The Scottish Ministers**

##### ***Section 1 Duty of Scottish Ministers to protect public health***

4. Subsection (1) requires(1) the Scottish Ministers to continue to make provision, or secure that provision is made, for the protection of public health in Scotland
5. This updates the requirements in a number of public health statutes which are being repealed by the Act, including the Public Health (Scotland) Act 1897 and the Public Health (Scotland) Act 1945.
6. Subsection (2) defines “protecting public health” as the protection of the community or any part of it from infectious diseases, contamination or other such hazards which constitute a danger to human health and includes the prevention and control of, and provision of a public health response to, such diseases, contamination or other hazards. “Contamination” is defined in subsection (5) as meaning contamination with or by a biological, chemical or radioactive substance; “infectious disease” is defined as an illness or medical condition caused by an infectious agent (including an organism listed in Part 2 of schedule 1 to the Act).
7. Subsection (3) provides that for the purpose of protecting public health, the Scottish Ministers may provide assistance, including financial assistance, to any person who exercises functions in relation to public health. Subsection (4) states that the duty placed on the Scottish Ministers in subsection (1) is without prejudice to the general duties of the Scottish Ministers to provide a health service and promote the improvement of the health of the people of Scotland as outlined in section 1 and 1A of the National Health Service (Scotland) Act 1978 (the “1978 Act”).

#### **Health boards**

##### ***Section 2 Duty of health boards to protect public health***

8. This section requires each health board to continue to make provision, or secure that provision is made, for protecting public health in its area, without prejudice to its general duty to promote the improvement of the health of the people of Scotland under

section 2A of the 1978 Act. Functions under this Act are also to be construed as functions conferred on health boards by the Scottish Ministers under section 2(1) of the 1978 Act.

### ***Section 3 Designation of competent persons by health boards***

9. This section places a duty on health boards to designate a sufficient number of persons for the purpose of exercising certain functions relating to public health under the Act and other enactments in each health board area. Persons designated under this section are to be known as “health board competent persons”. Subsection (4) provides that the (1)(3) Scottish Ministers may, by regulations, prescribe the persons or classes of person who may be designated as health board competent persons; the qualifications, training and other requirements to demonstrate competency which they must meet; and any other matters relating to the terms and conditions of such a designation as the Scottish Ministers consider appropriate. The regulations may provide that certain functions of health board competent persons may be carried out only by those with particular qualifications, training or other prescribed competencies. The regulations will be made by negative procedure.

## **Local authorities**

### ***Section 4 Duty of local authorities to protect public health***

10. This section places a duty on each local authority to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.

### ***Section 5 Designation of competent persons by local authorities***

11. Similarly to section 3, section 5 places a duty on local authorities to designate a sufficient number of persons for the purpose of exercising certain functions relating to public health under the Act and other enactments, in each local authority area. Persons designated under this section are to be known as “local authority competent persons”.
12. The Scottish Ministers may, by regulations, prescribe the persons or classes of person who may be designated as local authority competent persons; the qualifications, training and other requirements to demonstrate competency which they must meet; and any other matters relating to the terms and conditions of such a designation as the Scottish Ministers consider appropriate. The regulations may provide that certain functions of local authority competent persons may be carried out only by those with particular qualifications, training or other prescribed competencies. The regulations will be made by negative procedure.

## **Co-operation and planning**

### ***Section 6 Duty of health boards and local authorities to co-operate***

13. This section places a requirement on health boards and local authorities, (1) in carrying out their functions under this Act, to co-operate with any relevant person who appears to have an interest in or a function relating to the protection of public health.
14. Subsection (2) defines a “relevant person” as a health board; a special health board; a local authority; the common services agency; and the Scottish Ministers. The section is without prejudice to existing duties of co-operation set out in section 13 of the 1978 Act.

### ***Section 7 Joint public health protection plans***

15. The section imposes a duty on each health board to prepare plans relating to the protection of public health in its area as the board considers appropriate. Subsection (2) states that in preparing a plan, a health board must consult the relevant local authority.

16. The plan must be prepared in accordance with guidance from the Scottish Ministers, and can be incorporated within any other plan which the health board is required to prepare under any other enactment. There is a duty on the health board which prepares the plan to publish it, either as a stand alone document, or as part of any other plan in which it is incorporated. The health board is empowered to vary any plan prepared under this section and must then publish it, as varied. “Relevant local authority” is defined as the local authority for the area in relation to which the board is constituted or, where the area of that health board includes the areas of two or more local authorities, both or all of those authorities.

## **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.

## **Part 2**

### **Notifiable Diseases, Notifiable Organisms and Health Risk States**

#### **Notifiable diseases and organisms**

### ***Section 12 Lists of notifiable diseases and notifiable organisms***

24. This section defines “notifiable disease” and “notifiable organism” as a disease listed in Part 1 or an organism listed in Part 2 of schedule 1 respectively. (2) It states that the Scottish Ministers may amend the lists in schedule 1 by regulations, including by adding or removing items from the list. A disease or organism may be added only if the Scottish Ministers are satisfied that it is likely to give rise to a significant risk to public health and having regard to whether the disease is serious (or in the case of an organism, whether the organism would cause a serious disease) and easily transmissible through casual contact.

#### **Duties to notify**

### ***Section 13 Notifiable diseases: duties on registered medical practitioners***

25. This section places a duty on a registered medical practitioner who has reasonable grounds to suspect that a patient has a notifiable disease, to notify the health board of that area in writing not later than 3 days after forming the suspicion. The notification must include the patient’s name, address and postcode, the patient’s occupation, the name, address and postcode of the patient’s place of work or education (if considered relevant by the practitioner), the patient’s sex, the patient’s date of birth, the disease which the patient has and the patient’s NHS identifier. The NHS identifier means the community health index number or, where that is not known, the NHS identification number. Where both are unknown, any other number or indicator used from time to time to identify a patient individually will suffice.
26. A registered medical practitioner who has reasonable grounds to suspect a notifiable disease and who considers that the case is urgent must orally notify the health board as soon as possible. The registered medical practitioner must have regard to the following factors when considering whether a case is urgent or not: the nature of the disease, the ease of transmission of that disease, the patient’s circumstances (such as the patient’s age, sex and state of health), and any guidance issued by the Scottish Ministers.
27. A registered medical practitioner does not need to notify if there are reasonable grounds to believe that another registered medical practitioner has complied with the notification requirement under this section or section 14 in respect of the patient.

### ***Section 14 Health risk states: duties on registered medical practitioners***

28. This section places a duty on a registered medical practitioner who has reasonable grounds to suspect that a patient has been exposed to a health risk state to notify the health board of that area in writing no later than 3 days after forming the suspicion. The notification must include the patient’s name, address and postcode, the patient’s occupation, the name, address and postcode of the patient’s place of work or education (if considered relevant by the practitioner), the patient’s sex, the patient’s date of birth, the health risk state to which the patient has been exposed and the patient’s NHS identifier.

29. A registered medical practitioner who has reasonable grounds to suspect that a patient has been exposed to a health risk state and considers that the case is urgent must orally notify the health board as soon as possible. In determining whether the case is urgent, the practitioner must have regard to the nature of the health risk state, the nature of the exposure to that state, the patient's circumstances (such as the patient's age, sex and state of health) and any guidance issued by the Scottish Ministers. A registered medical practitioner does not need to notify if there are reasonable grounds to believe that another registered medical practitioner has complied with this section or section 13 in respect of the patient.
30. A "health risk state" is defined as meaning a highly pathogenic infection (i.e. an infection highly likely to cause a serious disease), or exposure to any contamination, poison or other hazard that is a significant risk to public health. A patient's exposure to a health risk state means either physical contact with or contamination by a health risk state or physical contact with or contamination by a person who, or an object which, has been in physical contact with, or been contaminated by, a health risk state.

### ***Section 15 Notifiable diseases and health risk states: duties on health boards***

31. This section places a duty on (1)(a) a health board which receives notification of a disease or health risk state (under section 13 or 14) from a registered medical practitioner either orally or in writing, relating to a patient who usually resides within that health board's area, to send a return in writing to the Common Services Agency. The return must contain the following information for each patient, in so far as it is known to the board: postcode, occupation, sex, date of birth, the suspected disease or health risk state to which the patient has been exposed, and the patient's NHS identifier. The health board's return will not include the patient's name or address. (2) The return is to be sent no later than the end of the week in which the information is received; or, if this is not practicable, as soon as practicable thereafter.
32. Subsection (4) states that (4) where the notification received by a health board relates to a person who does not usually reside in that health board's area, the health board must transmit the patient's information to the health board for the area in which the person usually resides. Subsection (5) sets out that when that other health board receives the information, it must send a return in writing to the Common Services Agency no later than the end of the week following receipt of the information, or, if that is not practicable, as soon as practicable thereafter.

### ***Section 16 Notifiable organisms: duties on directors of diagnostic laboratories***

33. This section places a duty on the director of a diagnostic laboratory, (1) where the laboratory identifies a notifiable organism, to (b) provide written confirmation of the organism to the relevant health board and the Common Services Agency, no later than 10 days after identification. If the director of the diagnostic laboratory considers that the case is urgent, the director must orally notify the relevant health board as soon as possible. In determining whether a case is urgent, the director must have regard to the nature of the organism, the nature of the disease which that organism causes, the ease of transmission of that disease or organism, the patient's circumstances (such as the patient's age, sex and state of health, where known), and any guidance issued by the Scottish Ministers.
34. For the purposes of subsection (1), a diagnostic laboratory identifies a notifiable organism where the laboratory identifies the organism itself or the organism is identified by another laboratory under an arrangement with that diagnostic laboratory. This will include identification of organisms by laboratories outwith Scotland under an arrangement with a diagnostic laboratory in Scotland. In these cases, the day of identification for the purposes of notification will be the day on which the first diagnostic laboratory becomes aware of the identification by the other laboratory with which it has the arrangement.

35. The “relevant health board” in this section means the health board in whose area the diagnostic laboratory is situated. Where a health board receives notification from the director of a diagnostic laboratory and the information relates to a person who does not usually reside in that board’s area, the information must be transmitted to the health board for the area in which the person usually resides.
36. This section defines the director of a diagnostic laboratory as a clinical microbiologist, consultant pathologist or other registered medical practitioner or other person in charge of a diagnostic laboratory or to whom the function of making a notification has been delegated, thus providing that the role of director of a diagnostic laboratory can be fulfilled by a person with a non-medical background.

## **Offences**

### ***Section 17 Notifiable organisms: offences***

37. This section states that it is an (1) offence for the director of a diagnostic laboratory to fail without reasonable excuse to comply with the duty of notification. Where the director of a diagnostic laboratory commits an offence and is employed by a body corporate, the body corporate also commits the offence. In proceedings for an offence under this section, it is a defence for the accused director of a diagnostic laboratory to prove that all due diligence was exercised and all reasonable steps taken to avoid committing the offence. For the accused body corporate, it is a defence to prove that the body corporate (or its employee or agent) exercised all due diligence and took all reasonable steps to avoid committing the offence.

## **Supplementary provision**

### ***Section 18 Electronic notification***

38. This allows a registered medical practitioner, a health board or the director of a diagnostic laboratory to use electronic means (such as e-mail) (1) to satisfy the notification requirements. The electronic document must be capable of being reproduced in legible form. It is taken to be received on the day of transmission.

### ***Section 19 Notifiable diseases etc.: further provision***

39. This section allows the (1) Scottish Ministers to make provision, by regulations, (a) as to the way in which notification is to be made, including the way in which the information is to be provided and the manner in which the authenticity or integrity of any electronic communication may be established. The provision in regulations may include: the person by whom the information is to be provided; the person to whom it is to be provided; the nature of the information to be provided; the form and manner in which it is to be provided; and the time by which the information is to be provided. Regulations made under this section may modify any enactment, including this Act, and are to be made by negative procedure.

## **Part 3**

### **Public Health Investigations**

#### **Public health investigations**

### ***Section 20 Public health incidents***

40. A public health incident exists if one or more of the circumstances described in subsections (2) to (6) occurs; and there are reasonable grounds to suspect that the circumstance is likely to give rise to a significant risk to public health.

### ***Section 21 Public health investigations***

41. This section states what a public health investigation is and outlines who may carry out such an investigation. Subsection (2) provides that the Scottish Ministers, a health board competent person, the Common Services Agency, (d)a local authority competent person, or two or more of these acting together, may appoint a person to carry out a public health investigation. In this Part, that person is referred to as an “investigator”. A health board competent person or a local authority competent person may be appointed as an investigator. Subsection (4) enables the investigator to exercise the powers relating to entry to premises in section 22, other investigatory powers in section 23, and powers relating to questioning in section 24.

### **Investigators’ powers**

#### ***Section 22 Powers relating to entry to premises***

42. This section sets out the powers an investigator may exercise to enter premises when it is considered necessary for the purpose of a public health investigation. The use of the power of entry in relation to a dwellinghouse is subject to section 26. This section allows an investigator, on entering any premises which that investigator has reason to believe it is necessary to enter, to take any other person (including a constable, if there is reasonable cause to expect any serious obstruction in obtaining access); it allows an investigator to take any equipment or materials which might be necessary for the investigation; and to direct that any premises or anything in them be left undisturbed for as long as the investigator considers appropriate. Subsection (2) places an obligation on an investigator who uses these powers to enter unoccupied premises to leave the premises as effectively secured against unauthorised entry as the investigator found them.
43. The powers contained in this section and the rest of Part 3 sit alongside existing powers of investigation in other legislation, and are not intended to supersede these (see section 25(5)). In particular it is not intended that these powers will be used to investigate incidents arising at nuclear sites, as provision in that area falls outwith the legislative competence of the Scottish Parliament, and existing legislation adequately provides for investigations into such incidents.

#### ***Section 23 Other investigatory powers***

44. Subsection (1) sets out the investigatory powers being made available to an investigator. The investigator may take measurements and photographs, make recordings which are considered necessary for the investigation, obtain and take samples of any articles or substances found in or on the premises and of the air, water or land in or on the premises or in the vicinity.
45. The investigator also may dismantle or test (g)any article or substance found in the premises under investigation which appears to be the cause of the public health incident, but may not damage or destroy it unless necessary. Where this power is proposed to be used, the person responsible for the premises being investigated may request that the action be taken in the person’s presence. In addition, the investigator must consult appropriate persons on the premises to determine what dangers there may be in taking this action.
46. The investigator may ask for the production of any records (including electronic ones) which are necessary for the purposes of an investigation and inspect and take copies of the records. Such records includes those which may not be in the possession of the person but which it is reasonable to require the person to obtain for this purpose. The investigator may make such examination and investigation as may in the circumstances be necessary. Nothing in this section compels any person to produce a document which that person would be entitled to withhold on grounds of legal privilege.

### ***Section 24 Power to ask questions***

47. This section provides for a power for investigators to require any person whom the investigator has reason to believe has information relevant to the investigation to answer such questions as the investigator sees fit. A person required to answer questions may nominate one other person to be present during questioning. The only persons who may be present during such questioning are the person (if any) nominated by the person being questioned and any other person authorised by the investigator to be present.
48. The section also states that no answer given by a person being questioned under these powers is admissible in evidence against that person in any criminal proceedings.

### ***Section 25 Supplementary***

49. This section provides that an investigator may also require facilities and assistance from any person in relation to any matter or thing which is under that person's control or in respect of which the person has responsibilities.
50. Subsection (3) enables the Scottish Ministers, by regulations, to give such additional powers to investigators as they consider necessary. Regulations will be made by affirmative procedure, except where the Scottish Ministers consider that they need to be made urgently, in which case the procedures in subsections (6) to (10) of section 122 apply. Subsection (5) states that powers outlined in this Part are without prejudice to any other powers conferred on an investigator by this Act or any other enactment, or by any rule of law.

### ***Section 26 Entry to dwellinghouses***

51. This section places conditions on the exercise of the power of entry by an investigator proposing to enter a dwellinghouse. The first is that the investigator must give 48 hours' notice of the proposed entry to the occupier of the dwellinghouse. The second is that the dwellinghouse may only be entered if the occupier has consented or a warrant has been issued under section 27. However, these conditions do not apply where the investigator considers, on reasonable grounds, that there is an emergency, as defined in section 28. Subsection (4) defines "dwellinghouse" as used in this Part.

### ***Section 27 18Public health investigation warrants***

52. This section sets out the circumstances in which a sheriff or a justice of the peace may grant a warrant for the purposes of a public health investigation. Subsection (1) lists the circumstances which must exist before a warrant may be applied for and granted: that the investigator has been refused entry to premises or expects to be refused; that the premises are unoccupied; that the occupier is temporarily absent and there is urgency; that an investigator has been prevented from exercising a power (other than the power of entry) or expects to be prevented; or that an application for admission to the premises would defeat the object of the investigation.
53. Subsection (2) states that the sheriff or justice of the peace may authorise the investigator to exercise the power in relation to those premises according to the warrant and to take any other person (including a constable if serious obstruction is expected) as well as any equipment or material required for the purpose for which the power of entry is being exercised. The power of entry under the warrant may be exercised at any time and includes power to use reasonable force to obtain entry. The investigator may also direct that the premises be left undisturbed and may also exercise any other power mentioned in sections 23 to 25.
54. Subsection (3) specifies that a sheriff or justice of the peace must not issue a warrant authorising entry to a dwellinghouse unless the condition requiring 48 hours' notice has been satisfied and the period of notice has expired. A warrant under this section continues in force until the purpose for which the warrant is issued is fulfilled.

### ***Section 28 Use of powers in emergencies***

55. If an investigator, who is entitled to enter premises under section 22, considers that there is an emergency, the premises may be entered at any time, using reasonable force. The investigator need not satisfy the conditions set out in section 26 (entry to dwellinghouses) nor apply for a warrant. The investigator on entering any premises under this section may take any other person (including a constable if serious obstruction is expected) as well as any equipment or material required for the purpose for which the power of entry is being exercised. The investigator may also direct that the premises and anything in or on them may be left undisturbed for as long as the investigator considers appropriate. All other investigatory powers may also be exercised.
56. This section defines an “emergency” as existing if there is a significant risk to public health and the nature of that risk is such that immediate action is necessary to verify the existence of the risk; to determine the cause of the risk; or to take action to prevent, or prevent the spread of, infectious disease or contamination.

## **Offences**

### ***Section 29 Public health investigation offences***

57. Subsection (1) lists the offences under this Part of the Act. Subsection (2) sets out the defence in line with other parts of the Act, whereby it is a defence if the person is able to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence. Subsection (3) states that where a person (such as a body corporate) commits an offence due to another person’s act or omission, the body corporate may be prosecuted even if the other person is not. This links with section 119 which makes provision generally about the circumstances in which an offence under this Act can be committed by an individual as well as a body corporate.

## **Compensation**

### ***Section 30 Public health investigations: compensation***

58. **Section 30** sets out two different situations in which compensation will be paid for loss or damage caused by an investigator (or any other person) exercising certain functions under this Part. In the first situation, compensation will be paid for loss or damage caused by the exercise of the power of entry in section 22, unless the loss or damage is due to the fault of the person who sustained it. In the second situation, compensation will be paid for damage or destruction of an article or substance in the exercise of the power in section 23 unless the article or substance was found to be the cause of the incident. In either case, the person responsible for paying compensation for any damage or loss caused by an investigator or a person authorised by the investigator is the employer of the investigator or of the authorised person, as the case may be. A single arbiter appointed by agreement between the parties to the dispute, or, if such agreement cannot be reached, an arbiter appointed by the sheriff will settle any dispute as to a person’s entitlement to compensation and as to the amount of such compensation.

## **Part 4**

### **Public Health Functions of Health Boards**

#### **Duty to give explanation**

### ***Section 31 Duty of health boards to give explanation of need for action***

59. This section provides that if a health board is proposing to take any action mentioned in section 32(a) to (c) or if a health board competent person is proposing to take any

action mentioned in section 32(d) or (e) (known as a “relevant action”) in respect of a person, the health board must explain such action to that person. The explanation must convey that there is a significant risk to public health, the nature of that risk and why the board finds it necessary to take the proposed action. In the event that an explanation cannot be given before the relevant action is taken, the health board must, as soon as reasonably practicable after taking action and in so far as it is reasonably practicable to do so, give the explanation. If the person is incapable of understanding the explanation, for whatever reason, explanations should be given to any person having parental responsibilities and parental rights (in respect of those under 16) and in other cases to any guardian, welfare attorney or any other person appointed or having authority to intervene in the affairs of the person.

### ***Section 32 Relevant actions***

60. This section lists the relevant actions to which section 31 applies. These are applications for orders to do any of the following: require a person to be medically examined; require a person to be quarantined; require a person to be detained in hospital; require a person to be removed to and detained in hospital; require a person to be detained in hospital under an exceptional detention order. Relevant actions also include the making by a health board competent person of an order excluding a person from specified places (an exclusion order) or from carrying on specified activities (a restriction order).

### **Medical examinations**

#### ***Section 33 Application to have person medically examined***

61. This section deals with applications to the sheriff for orders to have a person medically examined. A health board may make such an application where it knows or suspects that a person in its area has an infectious disease; has been exposed to an infectious organism which causes such a disease; is contaminated or has been exposed to a contaminant and it appears to the health board that as a result there is, or may be, a significant risk to public health and it is necessary, to avoid or minimise that risk, for the person to be medically examined.
62. Subsection (3) outlines the matters which need to be specified in the application to the sheriff which include the nature of the examination the health board proposes to be carried out, why the health board considers it necessary, who will carry out the examination and whether an explanation has been provided. All applications must include a certificate from a health board competent person that the criteria set out in subsection (1) have been met.

#### ***Section 34 Order for medical examination***

63. This section sets out the circumstances in which a sheriff may grant an order authorising a health care professional to medically examine the person to whom the application under section 33 relates. Subsection (1) requires the sheriff to be satisfied with the matters in subsection (2). Those include the fact that an explanation under section 31 was given, or, where no such explanation was given, it was not reasonably practicable to do so. Subsection (4) states that a medical examination authorised under this section must be carried out within 7 days of the order being made. Subsection (5)(a) states that if an appeal is made (under section 60(1)) before the medical examination is carried out, the order is suspended, and no account is taken of the period during which the order is suspended in calculating the 7 days within which the medical examination must take place. The order must specify the person to whom it applies and the class or classes of health care professional who will carry out the examination. “Health care professional” is defined in section 33(4). The sheriff may also make provision in the order about such other matters as the sheriff considers appropriate (subsection (3)). The order must be notified to the person to whom it applies and be notified to any person to whom

an explanation was given under section 31 and any other person the sheriff considers appropriate.

### ***Section 35 Medical examination: least invasive and least intrusive procedures***

64. Subsection (1) sets out that a health care professional authorised to undertake a medical examination under section 34 must not use invasive or intrusive procedures unless they are necessary to achieve the purpose for which the examination is being carried out. However, if that professional needs to carry out such procedures, the least invasive and least intrusive procedures practicable must be used.
65. Subsection (2) lists the medical procedures which are not considered to be invasive for this Part of the Act.

### ***Section 36 Medical examination of groups***

66. Subsection (1) states that where a health board is satisfied that the conditions relating to the need for a medical examination of a person have been met and the person is one of a group of two or more persons, the health board may apply to the sheriff for an order relating to all of the persons in the group and for each member of the group to be medically examined.
67. Under subsection (2), the competent person must certify that it is necessary, to avoid or minimise an actual or anticipated risk to public health, for all the persons in the group to be medically examined. The sheriff may grant the order in relation to the group if the conditions relating to the need for a medical examination apply in relation to at least one member of the group. The rules in sections 31(3) to (5) in relation to giving explanations for actions apply to each person in a group in the same way as they apply to individuals.

## **Exclusion orders and restriction orders**

### ***Section 37 Exclusion orders***

68. This section allows a health board competent person to make an “exclusion order” which will exclude a person from any place or type of place specified in the order, and impose such conditions (if any) on the person as the competent person considers appropriate. Subsection (1) provides that an exclusion order may be made where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. In addition the health board must consider that there is a significant risk to public health and it is necessary to exclude that person from certain places to avoid or minimise that risk.
69. Under subsection (3), before making an exclusion order, the health board competent person must be satisfied that the criteria set out in subsection (1) have been met and have regard to imposing the least restrictive order necessary to protect public health.
70. Subsection (4) sets out what must be specified in an exclusion order: the person to whom it applies, the places from which the person is excluded, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers appropriate. In the case of an exclusion order stopping a child from attending school, for example, that might be the head teacher. An exclusion order may not specify a person’s own place of residence as a place from which that person can be excluded. The exclusion order comes into effect from the time it is served on the person to whom it applies.

### **Section 38 Restriction orders**

71. This section allows a health board competent person to make a “restriction order” which will prohibit a person from carrying on any activity specified in the order, and impose such conditions (if any) on the person as the competent person considers appropriate. The section applies only where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Restriction orders can be made only where the health board considers that there is a significant risk to public health and it is necessary for the person to be prohibited from carrying on certain activities to avoid or minimise that risk.
72. The health board competent person must be satisfied that all the required criteria are met and have regard to imposing the least restrictive order necessary to protect public health.
73. Subsection (4) sets out what must be specified in a restriction order: the person to whom it applies, the activity or type of activity which the person is prohibited from carrying on, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers is appropriate. The restriction order comes into effect from the time it is served on the person to whom it applies.

## **Quarantine**

### **Section 39 Application to have person quarantined**

74. This section deals with applications to the sheriff for an order to require a person to be quarantined in the person’s home or other setting, other than a hospital. A health board may make such an application where it knows or suspects that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Applications can only be made where there is a significant risk to public health and it is necessary to avoid or minimise that risk for that person to be quarantined.
75. Subsection (3) sets out that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to be quarantined; the place in which the person is to be quarantined; the steps (if any) in section 46(2) which the board considers it is necessary to take in relation to the person; the conditions (if any) which are to be applied, 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 40 Quarantine orders**

76. This section sets out the circumstances in which a sheriff may grant a quarantine order and what information that order must contain. The sheriff must be satisfied that the criteria for a quarantine order have been met. The order will authorise the person to be quarantined in the place specified in the order and the taking of such steps (if any) in section 46(2) which the sheriff considers appropriate. The sheriff may also impose such conditions in relation to the quarantine as is considered appropriate. Where the person is not in the place specified, a constable, an officer of the health board or local authority, or any other person authorised by the sheriff may remove the person to that place.
77. Subsection (5) lists the kinds of conditions which may be imposed by a quarantine order. These include: those who may have access to the place of quarantine and for what purposes; those who may have access to the quarantined person and for what purpose;

and any conditions relating to the welfare of the quarantined person. The list is not intended to be exhaustive.

78. Subsection (6) sets out what must be specified in a quarantine order: the person to whom it applies; the place where the person is to be quarantined; the period for which the person is to be quarantined, up to a maximum of three weeks; the steps (if any) under section 46(2) which may be taken; and any conditions imposed on the person. 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.
79. 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).

## **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.

## **Quarantine and detention: steps that may be taken**

### ***Section 46 Authorised steps***

92. This section sets out authorised steps which may be taken under a quarantine order, a short term detention order or an exceptional detention order. These are disinfection, disinfestation and decontamination.

### ***Section 47 Authorised steps: least invasive and least intrusive procedures***

93. This section provides that where any of the steps mentioned in section 46 have been authorised under a quarantine, short term detention or exceptional detention order, the health care professional authorised to carry out the steps must not use invasive or intrusive procedures unless it is considered that the procedures are necessary to achieve the purpose for which the step is being taken. Where there is a need to carry out such procedures the health care professional must use the least invasive and least intrusive procedures practicable.

## **Variation and extension of orders**

### ***Section 48 Variation of exclusion and restriction orders***

94. This section provides that, where a person is subject to an exclusion or restriction order, a competent person of the appropriate health board may, if considered appropriate, modify the order. In the case of an exclusion order, the order may be modified by varying the place or type of place from which the person is excluded. In the case of a restriction order, the order may be modified by varying the activity or type of activity which the person is prohibited from carrying on. The competent person may also impose conditions, where none had been imposed in the original orders, and modify any condition that had been imposed by adding, varying or removing a condition. If an order is varied, the competent person must notify the subject of the order and any person to whom it was notified of the changes made.

### ***Section 49 Extension of quarantine and hospital detention orders***

95. The section provides that where a person is subject to a quarantine order, a short term detention order or an exceptional detention order, the health board may apply to the sheriff for an extension to the order. The application must be made by the health board before the period specified in the current order expires. An application must include a certificate from a health board competent person in accordance with subsection (4).
96. Before granting an extension of the order, the sheriff must be satisfied that the criteria for the order still apply. If satisfied, the sheriff may grant, in the case of a quarantine or short term detention order, an extension for a further three weeks, up to a maximum continuous period of 12 weeks; or, in the case of an exceptional detention order, an order extending the order for a further period up to a maximum continuous period of 12 months. An order may be extended on more than one occasion.

### ***Section 50 Application for variation of quarantine and hospital detention orders***

97. This section provides that a health board, if it considers it appropriate, may apply to the sheriff for an order modifying a quarantine, short term detention or exceptional detention order.
98. Subsection (3) sets out what must be specified in such an application: the order which it is proposed to modify; the person to whom it applies; and the modification which it is proposed to make. An application must include a certificate from a health board competent person in accordance with subsection (4).

### ***Section 51 Variation of quarantine and hospital detention orders***

99. Subsection (1) provides that a sheriff may, if satisfied that the conditions for making a quarantine, short term detention or exceptional detention order continue to apply, make an order modifying the order to which the application relates. In the case of a quarantine order, the place in which the person is to be quarantined may be modified, and conditions may be added, varied or removed. In the case of a short term detention order or an exceptional detention order, the hospital in which the person is detained may be varied. In both cases, steps mentioned in section 46 which are authorised by the order may be added or removed. Orders modified under this section are to have effect from the time at which the order under subsection (1) is made.
100. Subsection (4) provides that where any modification varies the place in which a person is to be quarantined or, in the case of a hospital detention order, the hospital in which the person is to be detained, the order under this section authorises the removal of the person to that place or to the hospital by a constable, an officer of the health board, an officer of a local authority or any other person the sheriff considers appropriate, and authorises the quarantine or detention there.
101. Subsection (5) sets out that an order granted by the sheriff must specify the person to whom the order applies and the modification made. It must be notified to the person to whom the order applies, to any person to whom an explanation was given under section 31, and to any other person the sheriff considers appropriate.

### **Review of orders**

#### ***Section 52 Duty to review exclusion and restriction orders***

102. This section places a duty on health board competent persons to keep exclusion and restriction orders under review. Regardless of whether the subject of an order has requested a review under section 53, the health board competent person must carry out a review during the last week of each three-week period to consider whether the conditions for the order continue to apply and whether it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
103. If the health board competent person is not satisfied that these conditions continue to apply or that it continues to be necessary for the person to be subject to the order, the health board competent person must revoke it.

#### ***Section 53 Duty to keep exclusion and restriction orders under review***

104. This section provides that if a person subject to an exclusion or restriction order requests a review of that order, a health board competent person of the appropriate health board must consider whether the conditions for the order continue to apply and whether it continues to be necessary for the person to be subject to the order. In addition, the health board competent person must from time to time carry out such a review. If the health board competent person is not satisfied that the conditions for an exclusion or restriction order continue to apply or that it continues to be necessary for the person to be subject to the order, then the health board competent person must revoke it.

#### ***Section 54 Duty to keep quarantine orders under review***

105. If a person subject to a quarantine order requests a review of that order, a competent person of the health board which applied for the order must consider whether the conditions for the order continue to apply. In addition, the competent person must carry out such a review from time to time. If the health board competent person is not satisfied that the conditions for the quarantine order continue to apply or that it continues to be necessary for the person to be subject to the order, then the health board competent person must revoke it.

***Section 55 Duty to keep hospital detention orders under review***

106. This section makes the same provision concerning reviews for persons subject to short term or exceptional detention orders as section 54 does in respect of persons subject to quarantine orders.

**Compensation**

***Section 56 Compensation for voluntary compliance with request***

107. Subsection (1) provides that a health board must compensate any person who suffers any loss as a result of voluntarily complying with a request to be quarantined, excluded from certain places or prohibited from carrying on certain activities. Such a request must be made by a health board in writing and must specify the action required of the person.
108. Subsection (4) states that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (5) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.
109. Subsection (6) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies. Regulations will be made by negative procedure.

***Section 57 Compensation for persons subject to certain orders***

110. Subsection (1) provides that a health board may compensate any person who is subject to an exclusion order, restriction order or quarantine order and who incurs any loss caused by complying with the order.
111. Subsection (2) states that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (3) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.
112. Subsection (4) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies. Regulations will be made by negative procedure.

***Section 58 Compensation for carers***

113. This section applies where a person (the relevant person) is subject to an exclusion order, a restriction order or a quarantine order. It also applies where the relevant person is not subject to such an order but the relevant person has agreed to comply with a request mentioned in section 56.
114. The health board must compensate a person (a carer) who incurs a loss as a result of caring for the relevant person being subject to the order or, as the case may be, complying with the request. This is solely in a situation where the carer is required to care for the relevant person, or where the carer normally cares for the relevant person, requires to provide more care.
115. Subsection (3) defines a carer. Where the relevant person is 16 or over, a carer is a person who cares for the relevant person otherwise than by virtue of a contract of employment or other contract with any person or as a volunteer for a voluntary organisation. Where the relevant person is under 16, the carer could also be a parent of

the relevant person who has day-to-day care or control of that person. In all cases, the carer must be a person who is 16 or over.

116. Subsection (4) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.
117. Subsection (5) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

### **Recall of orders granted in absence**

#### ***Section 59 Recall of orders granted in absence of person to whom application relates***

118. This section applies where a quarantine order, a short term detention order or an exceptional detention order is made in the absence of the person to whom the order applies.
119. Subsection (2) states that a person mentioned in subsection (3) may apply to the sheriff for an order recalling the order. Subsection (4) provides that such an application must be made before the expiry of 72 hours from when the order to which the application relates was notified to the person to whom it applies. Subsection (5) provides that despite the making of an application under this section, the order to which it relates has effect as if the application was not made. Subsection (6) requires the sheriff to give the persons mentioned in subsection (7) the opportunity of making representations orally or in writing, and of leading or producing evidence, before determining an application under this section. Subsection (8) states that on an application under this section, the sheriff may confirm or revoke the order.

### **Appeals**

#### ***Section 60 Appeal against order for medical examination***

120. This section provides for a right of appeal to the sheriff principal against an order for medical examination. Subsection (3) provides that an appeal under this section must be made before the expiry of 7 days beginning with the day on which the order appealed against is made. The sheriff principal may confirm the order for medical examination; revoke the order; modify the order; make an order declaring that the order was invalid (in situations where the medical examination has been carried out prior to the appeal); or make such other order as the sheriff principal considers appropriate.
121. The decision of the sheriff principal on an appeal under this section is final.

#### ***Section 61 Appeal against exclusion orders and restriction orders***

122. This section provides for a right of appeal to the sheriff against an exclusion or restriction order. Any person who is subject to an exclusion or restriction order, or a person who has an interest in the welfare of such a person, may appeal to the sheriff against the making of the order, any modification of the order under section 48 or a decision of a health board competent person under section 52 or 53 not to revoke the order. An appeal under this section must be made within 14 days of the order being made, the modification being made or the decision of the health board competent person not to revoke the order.
123. On appeal under this section, the sheriff may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff may also confirm or quash the decision appealed against.

***Section 62 Appeal against quarantine and hospital detention orders***

124. This section provides for an appeal to the sheriff principal against a quarantine order, a short term detention order or an exceptional detention order. Any person who is subject to any of these orders, or a person who has an interest in the welfare of such a person, may appeal to the sheriff principal against the making of the order; in the case of a quarantine order, any condition imposed by the order; any steps mentioned in section 46(2) specified in the order; a decision of the sheriff under section 59 confirming the order; the making of an extension order under section 49; the making of an order under section 51 modifying the order; or a decision of the health board competent person under section 54 or 55 not to revoke the order. An appeal under this section must be made within 14 days of the order or decision being made.
125. On appeal, the sheriff principal may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff principal may also confirm or quash the decision appealed against.

***Section 63 Exclusion orders and restriction orders: further appeal to sheriff principal***

126. This section sets out that a person who appealed under section 61 may, with the leave of the sheriff, appeal against a decision of the sheriff - to confirm the exclusion or restriction order, to modify the order or to confirm the decision appealed against - to the sheriff principal. A health board aggrieved by an appeal under section 61 may also, with the leave of the sheriff, appeal against a decision of the sheriff - to revoke the exclusion or restriction order, to modify the order or to quash the decision appealed against - to the sheriff principal.
127. Subsection (5) states that an appeal under this section may be made on the ground that the sheriff erred in law, or the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.
128. On an appeal under this section, the sheriff principal may confirm the decision appealed against, modify that decision, quash that decision; or make such other order as the sheriff principal considers appropriate. The decision of the sheriff principal on an appeal under this section is final.

***Section 64 Appeal to Court of Session***

129. Those persons who were the subject of an appeal decision by the sheriff principal (in the case of a quarantine, short term detention or exceptional detention order) may, with the leave of the sheriff principal, appeal against the decision to the Court of Session. Subsection (2) sets out which decisions a person may appeal, that is a decision of the sheriff principal on an appeal under section 62(2) to confirm the order or decision appealed against or to modify the order.
130. Subsection (3) provides that a health board may, with the leave of the sheriff principal, appeal against a decision to the Court of Session. Subsection (4) sets out which decisions a health board may appeal, that is a decision of the sheriff principal on an appeal under section 62 to revoke or to modify the order, or to quash the decision appealed against.
131. Subsection (5) provides that an appeal under this section may be made only on the ground that the sheriff principal erred in law; or that the decision of the sheriff principal was not supported by the facts established by the sheriff or sheriff principal in the appeal.
132. On appeal, the Court of Session may confirm the decision appealed against; modify that decision; quash that decision; or make such other order as the Court considers appropriate. The decision of the Court on an appeal under section 64 is final.

***Section 65 Effect of appeal under section 61, 62, 63 or 64***

133. This section states that, notwithstanding the fact that an appeal under section 61, 62, 63 or 64 has been made, the order, modification or decision appealed against has effect as if the appeal had not been made.

**Breach of orders and offences**

***Section 66 Absconding from quarantine***

134. This section makes provision where someone subject to a quarantine order breaches that order by absconding, either while being removed to the place of detention or from that place. An absconder can be taken into custody and detained.
135. Subsection (2) provides that the absconder may be taken into custody by a constable, an officer of the health board, or an officer of a local authority. The quarantined person may be detained in a hospital or any other place up to the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period.
136. Subsections (6) and (7) provide that a person who may take a quarantined person into custody or who may detain that person may enter any premises at any time in which the quarantined person is present and use reasonable force in order to gain entry. A person taken into custody under this section and who absconds again may be taken into custody again and detained under this section.
137. The detention of a quarantined person under this section does not preclude a health board from applying to extend the quarantine order and, where such extension is granted, the quarantined person may be removed to the place in which the person is to be quarantined.

***Section 67 Absconding from hospital***

138. This section makes provision where a person subject to a short term detention or exceptional detention order breaches that order by absconding, either while being removed to the detention hospital or from the hospital in which the person is detained.
139. The absconder may be taken into custody by a constable, an officer of the health board or an officer of a local authority and returned to hospital for the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period. Subsection (6) provides that a person who takes a person into custody and who returns such person to hospital may enter any premises in which the quarantined person is present. Subsection (7) provides that a person who takes a person into custody may enter any premises in which the quarantined person is present at any time and use reasonable force to gain entry. A person taken into custody under this section and who absconds may be taken into custody again and detained in accordance with this section.

***Section 68 Obstruction***

140. This section states that a person commits an offence if the person, without reasonable excuse, intentionally obstructs a health care professional authorised to carry out a medical examination under section 34, or persons authorised to remove the person to the place in which the person is to be quarantined under section 40, or persons authorised to remove a person to hospital under section 42.

***Section 69 Offences arising from breaches of orders under this Part***

141. Any person who is the subject of an order under this Part of the Act and who breaches the order, without reasonable excuse, commits an offence.

### ***Section 70 Failure to ensure child's compliance with order***

142. This section provides that where an exclusion order, a restriction order or a quarantine order is made in relation to a person who is under 16 (a “child”), a parent of the child who has day-to-day care or control of the child commits an offence if the person fails, without reasonable excuse, to ensure that the child does not breach the order. Where there is no such parent, a person mentioned in subsection (5) commits an offence if the person fails, without reasonable excuse, to ensure that the child does not breach the order. A defence is available if the person can show that the person exercised all due diligence and took all reasonable steps to avoid committing the offence. The penalty for this offence is set out in section 120(2).

## **Procedure**

### ***Section 71 Applications and appeals***

143. This section refers to the Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 to make rules to regulate procedure in the sheriff court. The procedure to be used in applications and appeals under Part 4 will be provided for in rules of court and may in particular include: the manner in which, and time within which, notice of applications for orders is given; the manner in which, and time within which, notice of orders is given; where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications must be given; the circumstances in which the sheriff or sheriff principal may determine whether and where a hearing is to be held, and the place or types of place at which hearings may be held. An application may be determined by the sheriff, either in open court or in a private hearing (known as “in chambers”) and with or without the person in respect of whom the application is made being present (except in relation to appeals).

## **Part 5**

### **Public Health Functions of Local Authorities**

#### ***Facilities for disinfection etc.***

### ***Section 72 Provision of facilities for disinfection etc.***

144. This section sets out the local authority duty to provide, or ensure the provision of, facilities and equipment (which may be mobile) for its area in order to disinfect, disinfest and decontaminate things and premises, and to destroy things which are infected, infested or contaminated. This includes the means for transporting things to facilities and equipment.
145. Local authorities need not provide the facilities themselves, but can enter into an agreement with any person or organisation to ensure provision. The facilities and equipment need not be in the area of the local authority.
146. Subsection (5) defines the meaning of “contaminated”, “infected” and “infested”, as used in this Part.

### **Disinfection etc. of premises and things**

### ***Section 73 Notice on occupier or owner of infected etc. premises or things***

147. This section applies where a local authority knows or suspects that any premises in its area (or any thing in or on such premises) are infected, infested or contaminated. If it appears to the authority that in order to prevent the spread of infectious disease or contamination, it is necessary to disinfect, disinfest, or decontaminate the premises (or things in or on the premises), destroy a thing, or do other connected operations, then the authority may serve a notice on the occupier of the premises (or the owner if the

premises are unoccupied) requiring that person to carry out the necessary steps. If the occupier is not the owner of the premises, then a copy of the notice must be served on the owner of the premises. A notice may be served only where a local authority competent person certifies satisfaction as to the matters referred to above.

148. Subsection (6) sets out that the notice must specify the steps which the person on whom the notice is served must take and the period in which they must be taken. It must also advise the person on whom the notice is served that if the notice is not complied with, then the local authority may take those steps. If, during the period of the notice, the person on whom the notice is served consents, then an authorised officer of the local authority may carry out the steps.

#### ***Section 74 Inspection of premises in relation to which notice served***

149. This section applies where a notice has been served under section 73 and the period specified in the notice has expired. It provides that an authorised officer of the local authority may enter the premises to determine whether the steps specified in the notice have been taken, may take any other person authorised by the officer, and a constable (if the officer has reasonable cause to expect serious obstruction in obtaining access). The authorised officer entitled to enter premises must show authorisation, if requested. In addition, an authorised officer who enters unoccupied premises must leave the premises as effectively secured against unauthorised entry as the officer found them.

#### ***Section 75 Failure to comply with notice***

150. This section sets out the actions that an authorised officer of a local authority may take where the owner or occupier of premises on whom a notice under section 73 has been served fails to comply with the notice and the period of the notice has expired. It provides that the authorised officer may enter the premises; may take any other person authorised by the officer, and a constable (if the officer has reasonable cause to expect serious obstruction in obtaining access); may direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; may take the steps specified in the notice and any other steps considered necessary; and may remove any thing from the premises for the purpose of taking any steps (disinfection, decontamination or disinfestation) at another place.
151. Subsection (3) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

#### ***Section 76 Power of local authority to disinfect etc. premises or things***

152. This section provides that a local authority may take the steps set out in the notice served on a person under section 73 if it appears to the local authority that it is not reasonably practicable for that person to take those steps.
153. In order to do so, the authority must serve notice on the occupier of the premises or, where the premises are unoccupied, on the owner of them, requiring the person to give an authorised officer access to undertake the steps. Where a notice is served under this section on the occupier of the premises, this should be copied to the owner, if that is not the same person. The notice may be served only if the local authority competent person certifies that the relevant criteria have been met.
154. Subsection (5) sets out that the notice must specify the steps which must be taken and the period in which they must be taken. Under subsection (6), the authorised officer may enter the premises; may take any other person authorised by the officer (and a constable if the officer has reasonable cause to expect serious obstruction in obtaining access); may direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; may take the steps

specified in the notice, and may remove any thing from the premises for the purpose of taking any steps at another place.

155. Subsection (7) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

### ***Section 77 Entry to dwellinghouses***

156. This section sets out the conditions under which an authorised officer may exercise a power of entry under this Part in relation to a dwellinghouse. The first condition is that an officer must give 48 hours' notice to the occupier of the dwellinghouse. The second is that the person who appears to be the occupier of the dwellinghouse has consented or entry is effected under a warrant issued under section 78. The term 'dwellinghouse' as used in this Part is defined in section 26(4).

### ***Section 78 Warrant to enter and take steps***

157. This section provides that a local authority may apply for a warrant from a sheriff or a justice of the peace to enter and take steps where an authorised officer has been refused entry or can reasonably anticipate such refusal; the premises to which the authorised person is entitled to enter are unoccupied; the occupier of the premises is temporarily absent and there is urgency; or a person entitled to enter the premises has been prevented from taking the authorised steps, or reasonably anticipates such prevention.
158. Subsection (2) allows a sheriff or justice of the peace to authorise an officer of the authority to enter the premises, to take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; to direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for so long as the officer considers appropriate; and to take any steps mentioned in section 73.
159. Subsection (3) states that a warrant in relation to a dwellinghouse must not be granted unless the sheriff or justice is satisfied that 48 hours' notice has been given and that period has expired. Subsection (4) provides that the power of entry may be exercised at any time and includes power to use reasonable force.
160. Subsection (5) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them. A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

### ***Section 79 Use of powers in emergencies***

161. This section provides that where an officer authorised to enter premises under this Part, considers, on reasonable grounds, that there is an emergency, the officer may exercise the power of entry at any time, and may use reasonable force. If the premises are a dwellinghouse, the conditions in section 77 need not be satisfied.
162. The authorised officer may, on entering the premises, take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for as long as the officer considers appropriate; take any step mentioned in section 73(2); and remove any thing from the premises for the purpose of taking any such step at any other place.
163. Subsection (7) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

164. Subsection (8) states that the use of powers in emergencies is available even if an appeal has been made under section 83(1). Subsection (9) defines “emergency”.

## **Offences**

### ***Section 80 Obstruction***

165. Any person who, without reasonable excuse, obstructs an authorised officer, or any other person, in the exercise of powers under this Part, will be guilty of an offence and liable to a penalty, as outlined in section 120.

## **Recovery of expenses**

### ***Section 81 Recovery of expenses***

166. This section provides that a local authority may recover any reasonable expenses it incurs in doing anything it is entitled to do under this Part of the Act from the person on whom a notice is served. If no notice is served, the authority may recover the expenses from the occupier, or where the premises are unoccupied, the owner of them. The local authority may also recover any administrative expenses incurred in connection with the thing to which the expenses relate. The local authority may accept payment of sums recoverable by instalments. In the event of non payment, the local authority may recover sums due through normal civil recovery procedure.

## **Compensation**

### ***Section 82 Compensation***

167. Subsection (1) provides that a local authority must compensate any person who suffers loss or damage caused by any person doing (or failing to do) anything which that person is entitled (or required) to do under section 73, 75, 76, 78 or 79. Subsection (2) states that compensation under this section is not available where the loss or damage is attributable to the fault of the person who suffered the loss or damage. Compensation is not available for loss or damage which relates to any infected, infested or contaminated premises which are damaged as a result of disinfection, disinfestation or decontamination of the premises or anything in or on them. Nor is compensation available for the damage or destruction of any thing as a result of disinfection, disinfestation or decontamination of the thing or premises.
168. Subsection (3) provides that any dispute as to a person’s entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the authority and the person claiming loss or damage or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.

## **Appeals**

### ***Section 83 Appeals against notices under this Part***

169. This section provides that any person on whom a notice is served under section 73 or 76 may appeal to the sheriff against the notice or any requirement in it. Such an appeal must be made within 14 days of the notice being served. On an appeal, the sheriff may confirm or revoke the notice; remove or vary any requirement specified in the notice; and make such other order as the sheriff considers appropriate.

### ***Section 84 Appeal to sheriff principal***

170. This section provides that a person who appealed under section 83 may, with the leave of the sheriff, appeal to the sheriff principal against the sheriff’s decision to confirm the notice or not to remove or vary any requirement in the notice. Subsection (3) states that

a local authority may also, with the leave of the sheriff, appeal against a decision of the sheriff to revoke the notice or remove or vary any requirement specified in the notice.

171. Subsection (5) provides that on an appeal under this section, the sheriff principal may confirm the decision appealed against, modify that decision, quash the decision, or make such other order as the sheriff principal considers appropriate.

### ***Section 85 Appeal to Court of Session***

172. This section provides that a person who appealed under section 84 may, with the leave of the sheriff principal, appeal against the sheriff principal's decision to the Court of Session. Such an appeal may be made on a point of law only.
173. Subsection (3) provides that on an appeal under this section, the Court of Session may confirm the decision appealed against, modify that decision, quash the decision, or make such other order as the Court considers appropriate. The decision of the Court on an appeal under this section is final.

### **Existing functions**

#### ***Section 86 Application of this Part where other functions being exercised***

174. This section applies where a local authority or any other person has functions under any other enactment in relation to premises or things which are infected, infested or contaminated. This is referred to as an "existing function".
175. Subsection (3) provides that a local authority may not exercise a function conferred on it by virtue of this Part if the authority or any other person is exercising an existing function or the authority is aware that another person is likely imminently to exercise an existing function in relation to the infected, infested or contaminated premises or things. Section 72 (which is the duty for a local authority to provide facilities for disinfecting etc.) continues to apply despite section 86.

## **Part 6**

### **Mortuaries Etc.**

#### **Provision of mortuaries**

##### ***Section 87 Provision of mortuaries by local authorities***

176. This section requires each local authority to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the bodies of persons who die in the authority's area and the post-mortem examination of such bodies. Local authorities need not provide such premises and facilities for hospital-related deaths. Health boards are required to provide premises and facilities for such bodies under section 88. Local authorities are required to provide or ensure the provision for its area of facilities for bodies in relation to which the Crown Office Procurator Fiscal Service (COPFS) are carrying out investigations.
177. Local authorities need not provide the facilities themselves, but may enter into agreements with any person or organisation, including a health board, for the provision of such facilities. The premises and facilities referred to in this section need not be in the area of the local authority ensuring their provision.

##### ***Section 88 Provision of mortuaries by health boards***

178. This section requires each health board to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the bodies of persons who die in a hospital in the board's area or who die

elsewhere and whose bodies are brought to such a hospital and for the post-mortem examination of such bodies.

### ***Section 89 Co-operation by local authorities and health boards***

179. This section places a duty of co-operation on local authorities and health boards in complying with the duties placed on each of them by sections 87 and 88.

### **Protection of public from risks arising from bodies**

#### ***Section 90 Restriction on release of infected etc. bodies from hospital***

180. This section deals with the circumstances whereby a health board may require the retention of an infected or contaminated body in hospital. It sets out that this must be by direction specifying that the body cannot be removed (except to a mortuary or similar premises for a post-mortem examination) until written authorisation is given to a named person for the purposes of immediate disposal, which may include preparation of the body for disposal. That direction can be made only where a health board competent person certifies that a defined set of circumstances applies. These circumstances, set out in subsection (1), are that a person has died of an infectious disease, had such a disease immediately before dying (but died of another cause) or was contaminated immediately before dying (whether the contaminant caused the death or not). If any of those circumstances applies and the competent person considers that there is also a significant risk to public health and it is necessary to retain the body to avoid or minimise that risk (until the health board is satisfied regarding the arrangements for disposal), a direction may be made.
181. Subsection (4) places a duty on a health board, where it makes such a direction, to explain to persons responsible for handling the body that there is significant risk to public health, the nature of that risk, any precautions the person should take and any other appropriate information. This does not apply where an explanation has already been given under section 91 to anyone who appears to be responsible for the disposal of the body. Subsection (6) states that a person who breaches a direction given under this section without reasonable excuse commits an offence.

#### ***Section 91 Duty of health board where infected etc. person dies***

182. This section places a duty on a health board (where it knows a person in its area has died of an infectious disease, had such an infectious disease before dying, or was contaminated) to explain to any person who appears to be responsible for the disposal of the body the nature of any risk, the precautions that should be taken and any other appropriate information. This does not apply where an explanation has been given under section 90.

#### ***Section 92 Application for order in relation to bodies retained in premises***

183. This section applies where the body of a person is being retained in premises and the local authority feels that appropriate disposal arrangements have not been made. The authority may apply to the sheriff for an order under section 93 seeking authority to dispose of the body appropriately. An application may only be made where a local authority competent person certifies, among other things, that there is a significant risk to public health and that appropriate disposal is necessary to avoid or minimise that risk.

#### ***Section 93 Power of sheriff to order removal to mortuary and disposal***

184. This section allows the sheriff, if satisfied that there is a significant risk to public health, to make an order authorising the local authority to remove the body of a person mentioned in section 92 to a mortuary or other similar premises and to dispose of the body within the period set out in the order. If the sheriff is satisfied that the risk to

public health is such that the body must be disposed of immediately, disposal by the local authority may be ordered as soon as reasonably practicable.

185. Subsection (2) gives powers to local authority officers or other persons authorised by local authorities (in either case an “authorised officer”) to enter premises, to take other persons and, if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access, a constable, and take any other steps reasonably required in connection with removing and disposing of the body. In entering premises, the authorised officer may use reasonable force and enter at any time. This section of the Act does not affect any other legislation which regulates or authorises burial or cremation, and the requirements of the Cremation (Scotland) Regulations 1935 (as amended) continue to apply.
186. Any reasonable expenses incurred by the authority in carrying out a function authorised by an order under this section can be recovered from the estate of the deceased person. Any person who, without reasonable excuse, intentionally obstructs an officer of the local authority or another authorised person from carrying out any functions authorised by this section commits an offence and will be liable to a penalty, as outlined in section 120.

## **Part 7**

### **International Travel**

#### ***Section 94 International Travel***

187. The International Health Regulations 2005 (IHR 2005) are a legally binding international agreement intended to prevent, protect against, control and respond to the international spread of disease without unnecessary interference with international traffic and trade. Section 94(1) allows the Scottish Ministers to make regulations for the purposes of, or in connection with, giving effect to IHR 2005 (and recommendations under IHR 2005) as well as other international agreements relating to the spread of infectious disease and contamination, so far as they have effect in or as regards Scotland. Regulations may also be made to protect public health from risks arising from vehicles arriving in, or leaving, Scotland. This will enable the Scottish Ministers to replace the Public Health (Ships) (Scotland) Regulations 1971 (as amended) and the Public Health (Aircraft) (Scotland) Regulations 1971 (as amended), made under the powers in the Public Health (Scotland) Act 1945, which are repealed by this Act. Regulations made under section 94 will be made by affirmative procedure except where the Scottish Ministers consider that they need to be made urgently, in which case subsections (6) to (10) of section 122 apply.
188. Subsection (5) sets out the maximum penalties that may be imposed for committing an offence under the regulations. Subsection (6) defines ‘International Health Regulations’ for the purposes of the Act and regulations made under it.

## **Part 8**

### **Regulation of Provision of Sunbeds**

#### **Offences**

#### ***Section 95 Prohibition on allowing use of sunbeds by persons under 18***

189. This section bans allowing the use of sunbeds by under 18s on commercial premises. An operator who allows a person who is under 18 to use a sunbed on sunbed premises commits an offence.

190. Subsections (2) and (3) provide a defence for the operator. Subsection (4) lists the documents that may be used to demonstrate proof of age. Subsection (5) allows the operator to rely on steps taken by an employee or agent.

### ***Section 96 Prohibition on sale or hire of sunbeds to persons under 18***

191. This section bans the sale or hire of sunbeds to persons under 18.
192. Subsection (1) sets out the offence of sale and subsection (2) sets out the offence of hire. Subsection (3) provides a defence for a seller or hirer, if the seller or hirer believed a person to be 18 or over and had taken reasonable steps to establish a person's age.
193. Subsection (5) provides a list of documents that can be used to demonstrate proof of age. Subsection (6) allows the operator to rely on steps taken by an employee or agent.

### ***Section 97 Remote sale or hire of sunbeds***

194. This section concerns the situation where a sale or hire of a sunbed takes place in circumstances where the premises that receive an order are not the same as the premises from which the sunbed is despatched for sale or hire. Subject to subsection (3), the sale or hire is to be treated as taking place on the premises where the order was taken. Subsection (3) provides that, whereas the premises where the order is taken are not in Scotland but the premises from which the sunbed is despatched are in Scotland, the sale or hire is to be treated as taking place on the premises from which the sunbed is despatched.

### ***Section 98 Prohibition on allowing unsupervised use of sunbeds***

195. This section prohibits allowing the unsupervised use of sunbeds. It is an offence for an operator of a sunbed premises to allow a person to use a sunbed on those premises without supervision, unless the operator can provide a reasonable excuse.
196. Under subsection (2) sunbed premises are regarded as being supervised if the operator or an employee or agent of the operator is present on the sunbed premises at any time a person is using a sunbed on those premises.

### ***Section 99 Medical use of sunbeds***

197. This section allows the Scottish Ministers to make regulations in relation to sunbeds used for medical purposes. This future proofs the legislation against the possibility that operators may try to circumvent the provisions by offering 'medical devices', which produce tanning of the skin, rather than 'sunbeds'. Subsection (2) sets out that the regulations may make provision regarding what is to be considered a sunbed or sunbed premises as well as the circumstances in which the provisions of this Part do and do not apply. Regulations will be made by affirmative procedure.

### ***Section 100 Duty to provide information to sunbed users***

198. Under this section sunbed operators must provide sunbed users with information on the effects on health of sunbed use. It is an offence to fail to provide the information but subsection (4) provides a defence. Subsection (2) states that the information to be provided must be the information prescribed by the Scottish Ministers in regulations. This information is to be provided on each occasion a person uses a sunbed on sunbed premises. Under subsection (5), the Scottish Ministers may prescribe the information that is to be provided and the form and manner in which it is to be provided.

### ***Section 101 Duty to display information notice***

199. This section requires sunbed operators to display an information notice on sunbed use in a position which is clearly visible to anyone proposing to use a sunbed on the premises. The notice must contain the information prescribed by the Scottish Ministers

in accordance with subsection (4). It is an offence to fail to display the notice but subsection (3) provides a defence. Under subsection (4), the Scottish Ministers may prescribe the information that the notice is to contain and the form and manner in which the information is to be provided.

## **Enforcement**

### ***Section 102 Power to enter premises***

200. This section gives authorised officers of the local authority power to enter and inspect premises in order to ascertain whether or not an offence under section 95, 96, 98, 100 or 101 has been or is being committed. Subsections (2) and (3) require that entry must take place only at a reasonable time and that documentation showing the authority of the local authority officer must be produced if requested.
201. Subsection (4) enables the authorised officer to be accompanied by a police constable if there is reasonable cause to expect serious obstruction in obtaining access. Subsection (5) enables the officer to have access to, and inspect any relevant records as part of the investigation. However this does not extend to documents which carry legal privilege, which are defined in subsection (7). Subsections (8) and (9) create offences of obstructing an officer and failure to comply with a requirement made under subsection (5), and a defence to such offences.

### ***Section 103 Power to enter premises: entry to dwellinghouses***

202. This section places a further condition on the exercise of the power of entry in section 102 where the premises are a dwellinghouse. Subsection (2) requires the authorised officer to obtain a warrant from the sheriff. Entry under the warrant must take place within a month of the warrant being obtained.
203. Subsection (3) provides that the sheriff may only issue a warrant if satisfied by evidence on oath that there are reasonable grounds for suspecting that an offence under section 95, 96, 98, 100 or 101 has been, or is being, committed, and that evidence of the commission of that offence may be found in the dwellinghouse.

### ***Section 104 Power to require identification of operator***

204. In the event of a local authority officer having reason to believe an offence under section 95, 98, 100 or 101 has been, or is being committed, this section enables the local authority officer to require any person on the sunbed premises to give the name and address of the operator. Failure to do so, without reasonable excuse, is an offence.

### ***Section 105 Fixed penalties for offences under section 95, 98, 100 or 101***

205. This section enables the local authority officer to issue a fixed penalty notice to the operator of the premises where the officer has reason to believe an offence has taken place under section 95, 98, 100 or 101. The fixed penalty notice gives the operator the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.
206. Subsections (2) and (3) set out the details the fixed penalty notice must contain. The fixed penalty notice must identify the offence to which it relates, give reasonable particulars of the circumstances of the alleged offence and details in relation to payment. Subsection (4) states the amount of the fixed penalty fine: £100 for an offence under section 95 (allowing use of sunbeds by persons under 18); and £50 for an offence under section 98, 100 or 101. Subsection (5) provides the period for payment of the fixed penalty, which is 28 days beginning with the day on which the notice was given. Subsection (6) sets out that a local authority may extend the period for payment of the fixed penalty if appropriate, by giving notice to the operator. Subsection (7) prohibits

proceedings for an offence under section 95, 98, 100 or 101 from commencing before the end of the period for payment of the fixed penalty.

207. Subsection (11) gives the Scottish Ministers the power to make regulations, by affirmative procedure, to amend the fixed penalty scheme in relation to the circumstances in which FPN's may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties under this section.

### ***Section 106 Withdrawal of notices***

208. Under this section, following representations on behalf of a recipient of a fixed penalty notice a local authority may decide to withdraw a notice. In doing so it must inform the person to whom the fixed penalty notice was given and repay any amount that may have already been paid and no proceedings may be taken against that person in connection with that offence.

### ***Section 107 Penalties for offences under Part 8***

209. Any person who commits an offence under Part 8 is liable on summary conviction to a fine not exceeding level 4 on the standard scale, currently £2,500.

## **Interpretation**

### ***Section 108 Interpretation of Part 8***

210. This section sets out the interpretation of the words "authorised officer"; "operator"; "sunbed" and "sunbed premises".

## **Part 9**

## **Statutory Nuisances**

### ***Section 109 Insect nuisance***

211. This section amends section 79 of the Environmental Protection Act 1990 ("the 1990 Act"), and in particular, subsection (1) of that section, which specifies the matters which constitute "statutory nuisances" for the purposes of Part III of that Act. Subsection (2) of section 109 inserts new paragraph (faa) into section 79(1), and provides that any insects emanating from premises and being prejudicial to health or a nuisance constitute a statutory nuisance for the purposes of Part III. Subsection (3) inserts new subsections (5AA) (5AB), (5AC) and (5AD) into section 79 to specify the insects and premises which are exempt from the application of the Part III statutory nuisance regime. New section 79(5AB)(a) excludes Sites of Special Scientific Interest, and new section 79(5AB)(b) enables the Scottish Ministers to make regulations specifying places or descriptions of places in respect of which the statutory nuisance provisions in section 79(1)(faa) will similarly not apply. New section 79(5AC) provides that the Scottish Ministers must consult before making regulations under 79(5AB)(b), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate. Subsection (4) amends the definition of "premises" in section 79(7) in consequence of new section 79(5AB).

### ***Section 110 Artificial light nuisance***

212. This section amends section 79 of the 1990 Act. Subsection (2) inserts new paragraph (fba) into section 79(1), and provides that artificial light emitted from premises or any stationary object so as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III. Subsection (3) provides for

an exemption from the artificial light statutory nuisance provisions in section 79(1)(fba) in relation to those premises referred to in section 79(2) (namely, premises occupied for naval, military or air force purposes). Subsection (4) inserts new subsection (5BA) into section 79 to exclude artificial light emitted from lighthouses from the scope of the statutory nuisance regime in Part III.

***Section 111 Statutory nuisance: land covered with water***

213. This section amends section 79 of the 1990 Act. It inserts new paragraph (ea) into section 79(1), and provides that any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III of the 1990 Act. A new subsection (5ZA) is inserted into section 79, which provides a list of specific inclusions and exclusions from the meaning of “land” as it is used in new paragraph (ea). A new subsection (5ZB) is also inserted to define some of the terms used in subsection (5ZA).

***Section 112 Power to make further provision regarding statutory nuisances***

214. This section further amends the 1990 Act. Subsection (2) inserts new subsection (1ZA) into section 79 of the 1990 Act, and enables the Scottish Ministers to make regulations prescribing additional matters which constitute statutory nuisances for the purposes of Part III, and to enable the statutory nuisance regime to be more generally amended to respond to new or emerging statutory nuisances. This section also introduces new subsections (1ZB) and (1ZC) into section 79 of the 1990 Act. New section 79(1ZB) provides that Scottish Ministers must consult before making regulations under section 79(1ZA), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.

***Section 113 Enforcement of statutory nuisances: fixed penalty notice***

215. This section makes provision for the issue of fixed penalty notices (“FPN’s”). Subsection (2) inserts new subsection (4A) into section 80 of the 1990 Act. New subsection (4A) provides that where a local authority believes that a person has committed an offence under section 80(4) (failure to comply with any requirement or prohibition imposed by an abatement notice served under section 80(1)), it may give that person a FPN, thereby offering that person the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.
216. Subsection (3) inserts new section 80ZA into the 1990 Act after section 80. Section 80ZA makes supplemental provision in relation to FPN’s. Subsection (2) of new section 80ZA requires the FPN to set out the circumstances alleged to constitute the offence so as to give reasonable information about the offence. Subsection (3) of new section 80ZA requires the FPN to state the amount of the fixed penalty, the period in which it may be paid, the person to whom and the address at which the payment may be made, the method of payment and the consequences of not paying within the period for payment specified in the FPN. Subsection (4) sets the fixed penalty, in the case of nuisances relating to industrial, trade and business premises at £400, and at £150 for all other cases. Subsection (5) sets the period for payment of the fixed penalty at 14 days after the day on which the FPN is given and subsection (6) enables that period to be extended by the local authority in circumstances in which it considers it appropriate to do so. Subsection (7) prevents proceedings from being taken under section 80(4) before the end of the period for payment of the fixed penalty and subsection (9) provides that where proceedings have commenced for an offence in which a FPN was given, the FPN is to be considered withdrawn. Subsection (10) provides that any sum which is received by a local authority as a result of a FPN offered under section 80(4A) accrues to that authority.

217. Subsection (11) of new section 80ZA enables the Scottish Ministers to provide in regulations (subject to affirmative procedure) for the circumstances in which FPN's may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to provide for the amount of the fixed penalty to be different in different cases or descriptions of case, to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties. Subsection (12) of new section 80ZA provides that Scottish Ministers must consult before making regulations under section 80ZA(11), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.
218. Subsection (4) amends subsection (3) of section 81 of the 1990 Act to provide that the powers available to a local authority to abate nuisance are available whether or not a FPN has been given.

### ***Section 114 Procedure for regulations***

219. This section amends section 161 (regulations, orders and directions) of the 1990 Act by inserting a new subsection (2B). The new subsection provides for regulations made under section 79(1ZA) or 80ZA(11) to be subject to affirmative procedure.

### ***Section 115 Sewerage nuisance: local authority powers***

220. This section amends section 26 of the Water Services etc. (Scotland) Act 2005 ("the 2005 Act") to further specify the extent of a local authority's powers in relation to the monitoring and enforcement of sewerage nuisances under section 26 of the 2005 Act. Subsection (2) provides that a local authority's functions under Part III of the 1990 Act do not apply to nuisances which constitute a sewerage nuisance and in respect of which a sewerage code (contained in an order made under section 25 of the 2005 Act) applies.
221. Subsection (3) inserts a new subsection (10A) into section 26 of the 2005 Act, to apply the provisions of paragraphs 2, 3 and 5 of schedule 3 to the 1990 Act where a local authority is enforcing a sewerage code under section 26 of the 2005 Act, subject to the modifications specified in paragraphs (a) to (e). A local authority enforcing a sewerage code will acquire the powers of entry to premises set out in paragraph 2 of schedule 3 for the purpose of establishing whether a statutory nuisance exists or carrying out remedial action under Part III of the 1990 Act. Wilful obstruction of the exercise of these powers of entry will constitute a criminal offence, as will disclosure of any trade secret obtained by any person in the exercise of the powers. The local authority and those acting on its behalf will be protected from personal liability in respect of anything done in good faith in furtherance of Part III.

## **Part 10**

### **General and Miscellaneous**

#### **General and miscellaneous**

### ***Section 116 Equal opportunities***

222. This section sets out that the Scottish Ministers, health boards and local authorities, in carrying out their functions under the Act, must do so in a manner that encourages equal opportunities and the observance of equal opportunities requirements, as defined in the Scotland Act 1998. "Equal opportunities" means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious

beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

### ***Section 117 Disclosure of information***

223. This section provides for the circumstances in which a relevant authority may disclose information held by it. Subsection (1) allows disclosure to another relevant authority where this is required to facilitate either authority’s functions under this or any other Act for protection of public health. Subsection (2) allows disclosure to any other person if the authority considers this to be necessary for the protection of public health. Although information may be disclosed under these provisions, despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law, the terms of the Data Protection Act 1998 must still be met. A person who discloses information under this section will not be subject to any civil or criminal liability due to the disclosure.
224. Subsection (8) defines “relevant authority”, which includes the Scottish Ministers, health boards, local authorities, and the Common Services Agency. This meaning may, however, be amended by the Scottish Ministers, by regulations. The Scottish Ministers may also give guidance on the disclosure of information, and subsection (11) requires persons giving or receiving information to have regard to that guidance.

### ***Section 118 Liability of persons exercising functions***

225. This section provides that a person acting in good faith and on reasonable grounds will not be liable in any civil or criminal proceedings for anything done in connection with the functions being carried out under the Act (except section 117, which makes separate provision about protection from liability). Notwithstanding this exemption for individuals, subsection (2) provides that a health board or local authority would remain liable for the actions of its staff.

### ***Section 119 Offences by bodies corporate etc.***

226. Subsection (1) provides that, where an offence under the Act is committed by a body corporate, a limited liability partnership, or by a Scottish partnership, it is also considered to be committed by certain individuals if those individuals consented or connived in committing the offence, or where the offence was attributable to their neglect. Those individuals are: in the case of a body corporate (but not a limited liability partnership) any director, manager, secretary or other similar officer of the body corporate or a person who claims to act in such a capacity; in the case of a limited liability partnership, any member of that partnership or person who claims to act as a member; in the case of a Scottish partnership, any partner or a person who claims to act as a partner.
227. Subsection (2) states that where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, then the provision in subsection (1) applies to the acts and omissions of a member, as if the member were a director of the body corporate.

### ***Section 120 Penalties for offences under this Act***

228. This section sets out the maximum penalties for offences committed under the Act, with the exception of offences in Part 8, where the maximum penalties are set out in section 107. On summary conviction, the maximum penalty is imprisonment for up to 12 months or a fine of up to £10,000 (at current levels) or both; or, on conviction on indictment, imprisonment for up to 2 years or an unlimited fine or both. Subsection (2) sets out different maximum penalties for those committing offences under section 69(1) or 70(3) or (4) in relation to an exclusion or restriction order. In those cases, the maximum penalty, on summary conviction, is imprisonment for up to 12 months or a fine not exceeding level 5 on the standard scale or both.

***Section 121 Form of applications etc.***

229. This section provides that Scottish Ministers may prescribe the form of any application or order under this Act by regulations

***Section 122 Regulations and orders***

230. This section sets out the procedure under which the Scottish Ministers can exercise powers which the Act gives them to make subordinate legislation. All regulations and orders are to be made by statutory instrument. Scottish Ministers must, as far as is reasonably practicable, consult appropriate persons before making regulations under this Act.
231. Most regulations under the Act are to be subject to the Scottish Parliament's negative resolution procedure. The exceptions are regulations under section 25(3) (conferring powers on public health investigators), section 94(1) (giving effect to the International Health Regulations and other international agreements), section 99(1) (regarding the application of Part 8 to the medical use of sunbeds) and section 105(11) (in relation to fixed penalties under Part 8) which will be subject to the Scottish Parliament's affirmative resolution procedure.
232. Where regulations under section 25(3) and 94(1) need to be made urgently, they need not be subject to affirmative procedure and can come into effect immediately. However, such "emergency regulations" must be laid before the Scottish Parliament and will cease to have effect after 28 days of being made unless they have been approved by a resolution of the Parliament before the expiry of this period. The commencement order-making power in section 128 is subject to no parliamentary procedure.

***Section 123 Meaning of "premises"***

233. This section defines the meaning of "premises" as used in the Act as including any land or building; or any other place, including a mobile home and a vehicle. "Mobile home" and "vehicle" are further defined.

***Section 124 Interpretation***

234. This section defines a number of expressions as they are used in the Act.

***Section 125 Minor and consequential amendments***

235. This section gives effect to schedule 2 to this Act which contains minor and consequential amendments to other legislation.

***Section 126 Repeals, revocations and saving***

236. This section gives effect to schedule 3 to the Act which repeals and revokes other enactments.
237. Subsection (2) specifies that despite the repeal of the 1897 Act, section 166 of that Act continues to have effect for the purposes of section 101 of the National Health Service (Scotland) Act 1978. Section 101 of the 1978 Act applies section 166 of the 1897 Act (which governs the liabilities of local authorities and their officers) to health boards and their officers.

***Section 127 Crown application***

238. This section confirms that the Crown is bound by this Act and any regulations made under it. The Crown will not be held criminally liable for contravening any provision but there is an option for the Court of Session, on application by any public body or office-holder responsible for enforcing a provision of this Act, to declare a contravention by the Crown as unlawful. Whilst the Crown cannot be held criminally liable, individuals

*These notes relate to the Public Health etc. (Scotland) Act 2008 (asp 5) which received Royal Assent on 16 July 2008*

in the service of the Crown can be. Nothing stated in this section affects Her Majesty in a private capacity.

***Section 128 Short title and commencement***

239. This section provides that the Act will come into force on a day or days appointed by order by Scottish Ministers. Section 122 (regulations and orders) and section 128 come into force on Royal Assent.

***Schedule 1 Lists of notifiable diseases and notifiable organisms***

240. [Part 1](#) of schedule 1 lists the diseases to be notified by registered medical practitioners under Part 2 of the Act. Part 2 of schedule 1 lists the organisms to be notified by the directors of diagnostic laboratories under Part 2 of the Act.

***Schedule 2 Minor and consequential amendments***

241. [Schedule 2](#) sets out minor and consequential amendments to the Public Works Loans Act 1887, the Children and Young Persons (Scotland) Act 1937, the Prevention of Damage by Pests Act 1949, the Pests Act 1954, the Offices, Shops and Railway Premises Act 1963, and the Statutory Nuisance (Appeals) (Scotland) Regulations 1996.

***Schedule 3 Repeals and revocations***

242. [Part 1](#) of schedule 3 sets out various repeals relating to Acts. Part 2 of schedule 3 sets out various revocations of Regulations.