



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 1

PUBLIC HEALTH RESPONSIBILITIES

Power of Scottish Ministers to intervene

8 Power to direct health boards and local authorities

- (1) This section and section 9 apply where the Scottish Ministers consider that—
- (a) a health board or, as the case may be, a local authority has failed, is failing or is likely to fail—
 - (i) to exercise a function conferred on it by virtue of this Act or by any other enactment relating to the protection of public health; or
 - (ii) to exercise that function in a manner which Ministers consider acceptable; and
 - (b) it is necessary for the purpose of protecting public health that the function—
 - (i) is exercised; or
 - (ii) is exercised in such a manner as Ministers consider acceptable.
- (2) The Scottish Ministers may in writing direct the board or, as the case may be, the authority—
- (a) to exercise the function; or
 - (b) to exercise it in such a manner,
- within such period and subject to such other conditions as they consider appropriate.
- (3) A direction under subsection (2) must specify—
- (a) the function of the board or, as the case may be, of the authority to which it applies;
 - (b) the period within which the function—
 - (i) is to be exercised; or
 - (ii) is to be exercised in the manner specified; and
 - (c) any other conditions imposed on the board or authority in relation to the exercise of the function.

Status: This is the original version (as it was originally enacted).

- (4) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (2).

9 Power to direct that functions be exercised by other persons

- (1) The Scottish Ministers may, whether or not they have given a direction under section 8(2), in writing direct that a function of a health board or, as the case may be, of a local authority be exercised instead by a person specified in the direction.
- (2) But, where a direction under section 8(2) has been given, they may not give a direction under subsection (1)—
- (a) before the expiry of the period specified in the direction under that section; or
 - (b) where that period has not expired, without withdrawing that direction under section 8(4).
- (3) The persons who may be specified in a direction under subsection (1) are one or more of the following—
- (a) a health board;
 - (b) the common services agency;
 - (c) a local authority;
 - (d) an employee of—
 - (i) a health board;
 - (ii) the agency; or
 - (iii) a local authority;
 - (e) a member of staff of the Scottish Administration;
 - (f) such other person Ministers consider appropriate.
- (4) A direction under subsection (1) must specify—
- (a) the function of the board or, as the case may be, of the authority to which it applies;
 - (b) the person by whom the function is to be exercised;
 - (c) the period for which that person is to exercise that function;
 - (d) the extent to which that person is to exercise that function; and
 - (e) any other conditions imposed by the Scottish Ministers as they consider appropriate.
- (5) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (1).

10 Directions under section 9(1): supplementary

- (1) The giving of a direction under section 9(1) does not affect the responsibility of the health board or, as the case may be, the local authority for the exercise of the function which, by virtue of the direction, is exercised by another person.
- (2) Anything done or omitted by a person exercising a function by virtue of the direction is to be regarded as done or omitted by the board or authority.
- (3) A person dealing in good faith and for value with a person exercising a function by virtue of the direction need not inquire as to whether that person is acting in accordance with the direction.

- (4) Unless the direction specifies otherwise, the board or the authority must pay the person by whom its function is exercised—
- (a) the remuneration and expenses of; and
 - (b) any other costs reasonably incurred by,
- that person in exercising that function.

11 Power to direct allocation of resources

The Scottish Ministers may, if they are satisfied that it is necessary to do so, direct—

- (a) a health board to make such payments as Ministers consider appropriate to—
 - (i) another health board; or
 - (ii) a local authority;
- (b) a local authority to make such payments as Ministers consider appropriate to—
 - (i) another local authority; or
 - (ii) a health board,

in connection with the performance by the recipient board or authority of its functions relating to the protection of public health.