



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 10

#### GENERAL AND MISCELLANEOUS

##### *General and miscellaneous*

#### **116 Equal opportunities**

- (1) The Scottish Ministers, health boards, health board competent persons, local authorities and local authority competent persons must exercise their functions conferred by virtue of this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.
- (2) In this section, “equal opportunities” and the “equal opportunities requirements” have the same meanings as those expressions have in section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).

#### **Annotations:**

#### **Commencement Information**

**II** S. 116 in force at 1.4.2009 by S.S.I. 2009/9, art. 2(b), Sch. 2

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

- (1) A relevant authority may disclose information held by it to another relevant authority for the purpose of facilitating the exercise of functions under a provision of—
  - (a) this Act; or
  - (b) any other enactment relating to the protection of public health.
- (2) A relevant authority may disclose information held by it to any other person if the authority considers that it is necessary to do so for the purposes of, or in connection with, the protection of public health.
- (3) An employee of the relevant authority authorised by it to make the disclosure or any other person so authorised may disclose information under subsection (1) or (2).

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- (4) Information may be disclosed—
- (a) in the case of disclosure under subsection (1), to any employee of the other relevant authority authorised by it to receive the information or to any other person so authorised;
  - (b) in the case of disclosure under subsection (2), to any employee of the other person authorised by that other person to receive the information or to any other person so authorised.
- (5) Information may be disclosed under subsection (1) or (2) despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law.
- (6) But subsection (5) does not affect the application of [<sup>F1</sup>the data protection legislation] to disclosure of information under subsection (1) or (2).
- (7) No person is to be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this section.

[<sup>F2</sup>(7A) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

[<sup>F3</sup>(8) In this section, “relevant authority” means—

- (a) a health board;
  - (b) a special health board;
  - (c) a local authority;
  - (d) the common services agency;
  - [<sup>F3</sup>(da) Healthcare Improvement Scotland;]
  - (e) the Scottish Ministers.
- (9) The Scottish Ministers may by regulations modify the meaning of “relevant authority” in subsection (8).
- (10) Regulations under subsection (9) may modify any enactment (including this Act).
- (11) Any person who, by virtue of this Act—
- (a) must or may provide information; or
  - (b) provides or receives information for the purposes of any provision of this Act, must have regard to any guidance given by the Scottish Ministers.

#### Annotations:

#### Amendments (Textual)

- F1** Words in s. 117(6) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 155(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F2** S. 117(7A) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 155(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F3** S. 117(8)(da) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 17 para. 37(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

#### Commencement Information

- I2** S. 117 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), **Sch. 1**

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## 118 Liability of persons exercising functions

- (1) A person is not liable in any civil or criminal proceedings for anything done in the purported exercise of any function conferred by virtue of this Act (except section 117) where the person acts—
- (a) on reasonable grounds; and
  - (b) in good faith.
- (2) Subsection (1) does not affect the liability of any other person in respect of the thing done.

### Annotations:

#### Commencement Information

**I3** S. 118 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

## 119 Offences by bodies corporate etc.

- (1) Where an offence under this Act—
- (a) by a body corporate (other than a limited liability partnership), is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any director, manager, secretary or other similar officer of the body corporate; or
    - (ii) a person who purports to act in any such capacity;
  - (b) by a limited liability partnership, is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any member of that partnership; or
    - (ii) a person who purports to act as a member;
  - (c) by a Scottish partnership (other than a limited liability partnership), is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any partner; or
    - (ii) a person who purports to act as a partner,
- that person as well as the body corporate, the limited liability partnership or the partnership (as the case may be) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with the member's functions of management as if the member were a director of the body corporate.

### Annotations:

#### Commencement Information

**I4** S. 119 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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## 120 Penalties for offences under this Act

- (1) Subject to subsection (2), any person who commits an offence under this Act (except Part 8) is liable—
- (a) on summary conviction, to imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.
- (2) Any person who commits an offence under section 69(1) or 70(3) or (4) in relation to an exclusion or restriction order is liable, on summary conviction, to imprisonment for a period not exceeding 12 months or a fine not exceeding level 5 on the standard scale or both.

### Annotations:

#### Commencement Information

**I5** [S. 120](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 121 Form of applications etc.

The Scottish Ministers may, by regulations, prescribe the form of any application or order under this Act.

### Annotations:

#### Commencement Information

**I6** [S. 121](#) in force at 1.4.2009 by [S.S.I. 2009/9](#), art. 2(b), [Sch. 2](#)

## 122 Regulations and orders

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.
- (2) Any such power—
- (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes;
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers think fit.
- (3) The Scottish Ministers must, before making regulations under this Act, consult, in so far as it is reasonably practicable to do so, such persons as they consider appropriate.
- (4) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No statutory instrument containing regulations made under section 25(3), 94(1), 99(1) or 105(11) may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) Subsection (5) does not apply to regulations made under section 25(3) or 94(1) if the Scottish Ministers consider that the regulations need to be made urgently.

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- (7) Where subsection (6) applies, the regulations (the “emergency regulations”)—
- (a) must be laid before the Scottish Parliament; and
  - (b) cease to have effect at the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the regulations have been approved by a resolution of the Parliament.
- (8) Subsection (7)(b) does not apply in relation to regulations which—
- (a) revoke (in whole or in part) emergency regulations; and
  - (b) do—
    - (i) nothing else; or
    - (ii) nothing else except make provision incidental or supplementary to the revocation.
- (9) In calculating any period of 28 days for the purposes of subsection (7)(b), no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved; or
  - (b) in recess for more than 4 days.
- (10) Where emergency regulations cease to have effect under subsection (7)(b), that does not—
- (a) affect anything previously done by reference to the regulations;
  - (b) prevent new emergency regulations being made to the same or similar effect.

### 123 Meaning of “premises”

In this Act—

“premises” includes—

- (a) any land or building; or
- (b) any other place, including—
  - (i) a mobile home; and
  - (ii) a vehicle;

“mobile home” means a caravan, houseboat or other moveable structure used as a dwelling; and

“vehicle” includes any vessel, aircraft or hovercraft.

#### Annotations:

#### Commencement Information

I7 S. 123 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 124 Interpretation

In this Act, unless the context otherwise requires—

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29);

“the 1990 Act” means the Environmental Protection Act 1990 (c. 43);

“common services agency” means the Common Services Agency for the Scottish Health Service;

“contamination” has the meaning given by section 1(5);

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“dwellinghouse” has the meaning given by section 26(4);  
 “exceptional detention order” means an order under section 45(1);  
 “exclusion order” means an order under section 37(2);  
 “health board” means a board constituted by an order under section 2(1)(a) of the 1978 Act;  
 “health board competent person” means a person designated by a health board under section 3(1);  
 “health care professional” has the meaning given by section 33(4);  
 “health risk state” has the meaning given by section 14(7);  
 “hospital” means—  
     (a) any health service hospital (as defined in section 108(1) of the 1978 Act);  
     and  
     (b) any state hospital (being a hospital provided under section 102(1) of that Act);  
 “infectious disease” has the meaning given by section 1(5);  
 “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);  
 “local authority competent person” means a person designated by a local authority under section 5(1);  
 “NHS identifier” has the meaning given by section 13(8);  
 “notifiable disease” has the meaning given by section 12(1);  
 “notifiable organism” has the meaning given by section 12(1);  
 “prescribed” means prescribed by the Scottish Ministers by regulations;  
 “protecting public health” has the meaning given by section 1(2);  
 “public health investigation” has the meaning given by section 21(1);  
 “quarantine order” means an order under section 40(1);  
 “restriction order” means an order under section 38(2);  
 “short term detention order” means an order under section 42(1) or 43(1); and  
 “special health board” means a board constituted by an order under section 2(1)(b) of the 1978 Act.

**Annotations:**

**Commencement Information**

**I8** S. 124 in force at 1.4.2009 by S.S.I. 2009/9, art. 2(b), Sch. 2

**125 Minor and consequential amendments**

Schedule 2 (which contains minor amendments and amendments consequential on this Act) has effect.

**Annotations:**

**Commencement Information**

**I9** S. 125 in force at 26.1.2009 by S.S.I. 2009/9, art. 2(a), Sch. 1

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## 126 Repeals, revocations and saving

- (1) Schedule 3 (which contains repeals and revocations) has effect.
- (2) Despite the repeal by schedule 3 of the Public Health (Scotland) Act 1897 (c. 38), section 166 of that Act continues to have effect for the purposes of section 101 of the 1978 Act (protection of health boards and common services agency).

### Annotations:

#### Commencement Information

- I10** S. 126 in force at 1.4.2009 for specified purposes by S.S.I. 2009/9, art. 2(b), **Sch. 2**
- I11** S. 126 in force at 1.1.2010 for specified purposes by S.S.I. 2009/404, art. 2(3), **Sch. 3**
- I12** S. 126(1) in force at 1.10.2009 for specified purposes by S.S.I. 2009/319, art. 2(a), **Sch. 1**

## 127 Crown application

- (1) This Act and any regulations and orders made under it bind the Crown.
- (2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (5) Nothing in this section affects Her Majesty in her private capacity.

### Annotations:

#### Commencement Information

- I13** S. 127 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), **Sch. 1**

## 128 Short title and commencement

- (1) This Act may be cited as the Public Health etc. (Scotland) Act 2008.
- (2) This Act (except this section and section 122) comes into force on such day as the Scottish Ministers may by order appoint.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 92(1)(b)(i)(ii) inserted by [2016 asp 20 Sch. 1 para. 2\(a\)](#)