



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 5

PUBLIC HEALTH FUNCTIONS OF LOCAL AUTHORITIES

Facilities for disinfection etc.

72 Provision of facilities for disinfection etc.

- (1) Each local authority must provide or ensure the provision, for its area, of—
 - (a) facilities and equipment for—
 - (i) the disinfection of;
 - (ii) the disinfection of;
 - (iii) the decontamination of; and
 - (iv) other connected operations in relation to, things and premises which are infected, infested or contaminated;
 - (b) facilities and equipment for the destruction of such things; and
 - (c) means for transporting such things to such facilities and equipment.
- (2) An authority may comply with subsection (1)(a) and (b) by providing or ensuring the provision of mobile facilities and equipment only; and, where it does so, subsection (1)(c) does not apply.
- (3) An authority may enter into an agreement with any person for the provision by that person of the facilities, equipment and means of transport referred to in subsection (1).
- (4) Facilities and equipment provided under subsection (1) need not be in the area of the local authority.
- (5) In this Part—
 - “contaminated” includes having been exposed to—
 - (a) a person who is contaminated;
 - (b) a contaminant; or
 - (c) an animal or insect which is contaminated;
 - “infected” includes having been exposed to—

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- (a) a person who has an infectious disease;
 - (b) an organism which causes any such disease; or
 - (c) an animal or insect which—
 - (i) has or carries an organism which causes an infectious disease; or
 - (ii) has or carries an infectious disease,
 which is a risk to human health; and
- “infested” means infested with an animal or insect which—
- (a) has or carries an organism which causes an infectious disease; or
 - (b) has or carries an infectious disease,
- which is a risk to human health.

- (6) In subsection (5), “animal” means a vertebrate other than a human.

Disinfection etc. of premises and things

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

- (1) This section applies where—
- (a) a local authority knows or suspects that—
 - (i) any premises in its area are; or
 - (ii) any thing in or on such premises is,
 infected, infested or contaminated; and
 - (b) it appears to the authority that as a result it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in subsection (2) to be taken.
- (2) Those steps are—
- (a) the—
 - (i) disinfection;
 - (ii) disinfestation; or
 - (iii) decontamination,
 of the premises or of a thing in or on the premises;
 - (b) the destruction of such a thing;
 - (c) other connected operations in relation to such a thing or such premises.
- (3) The authority may serve notice on the person who is—
- (a) the occupier of the premises; or
 - (b) where the premises are unoccupied, the owner of them,
- requiring that person to take one or more of the steps mentioned in subsection (2).
- (4) Where—
- (a) a notice is served under subsection (3)(a) on the occupier of premises; and
 - (b) that occupier is not the owner of those premises,
- the authority must serve a copy of the notice on the owner.
- (5) The authority may serve notice under subsection (3) only where a local authority competent person certifies that the person is satisfied as to the matters mentioned in subsection (1).

- (6) A notice under subsection (3) must—
 - (a) specify the steps which the person on whom the notice is served must take;
 - (b) specify the period before the expiry of which those steps must be taken; and
 - (c) advise the person on whom the notice is served that, where that person fails to comply with the notice, the local authority may take those steps.
- (7) Where, before the expiry of the period mentioned in subsection (6)(b), the person on whom the notice is served consents, an authorised officer may do anything that officer would, under section 75(2), be entitled to do.
- (8) In this Part, “authorised officer” means an officer of the local authority authorised by it for the purposes of this section, section 74, 75, 76, 77, 78 or, as the case may be, 79.

74 Inspection of premises in relation to which notice served

- (1) This section applies where—
 - (a) a local authority serves notice under section 73(3); and
 - (b) the period mentioned in section 73(6)(b) expires.
- (2) An authorised officer may—
 - (a) enter the premises for the purpose of ascertaining whether the steps specified in the notice have been taken;
 - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable.
- (3) An authorised officer entitled to enter premises under subsection (2) must, if requested to do so, produce a document showing that officer’s authority.
- (4) An authorised officer who enters any unoccupied premises by virtue of subsection (2) must leave the premises as effectively secured against unauthorised entry as the officer found them.

75 Failure to comply with notice

- (1) This section applies where—
 - (a) a local authority serves notice under section 73(3);
 - (b) the period mentioned in section 73(6)(b) expires; and
 - (c) the person on whom the notice is served fails to take the steps specified in the notice.
- (2) An authorised officer may—
 - (a) enter the premises;
 - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
 - (c) direct that—
 - (i) those premises (or any part of them) are; or
 - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;

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- (d) take—
 - (i) any step specified in the notice; and
 - (ii) any other step mentioned in section 73(2) as that officer considers appropriate;
 - (e) remove any thing from the premises for the purpose of taking any such step at any other place.
- (3) An authorised officer who enters any unoccupied premises by virtue of subsection (2) (a) must leave the premises as effectively secured against unauthorised entry as the officer found them.

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

- (1) This section applies where—
- (a) a local authority knows or suspects that—
 - (i) any premises in its area are; or
 - (ii) any thing in or on such premises is, infected, infested or contaminated; and
 - (b) it appears to the authority that as a result—
 - (i) it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in section 73(2) to be taken; and
 - (ii) it is not reasonably practicable for any person on whom a notice under section 73(3) might be served to take those steps.
- (2) The authority may serve notice on the person who is—
- (a) the occupier of the premises; or
 - (b) where the premises are unoccupied, the owner of them,
- requiring that person to give an authorised officer access to the premises or thing in order for any of the steps mentioned in section 73(2) to be taken.
- (3) Where—
- (a) a notice is served under subsection (2) on the occupier of premises; and
 - (b) the occupier is not the owner of those premises,
- the authority must serve a copy of the notice on the owner.
- (4) The local authority may serve notice under subsection (2) only where a local authority competent person certifies that the person is satisfied as to the matters in subsection (1).
- (5) A notice under subsection (2) must—
- (a) specify the steps which the authority proposes to take; and
 - (b) specify the period before the expiry of which those steps are to be taken.
- (6) An authorised officer may—
- (a) enter the premises;
 - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
 - (c) direct that—
 - (i) those premises (or any part of them) are; or

- (ii) any thing in or on them is,
to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
 - (d) take—
 - (i) any step specified in the notice; and
 - (ii) any other step mentioned in section 73(2) as that officer considers appropriate; and
 - (e) remove any thing from the premises for the purpose of taking any such step at any other place.
- (7) An authorised officer who enters any unoccupied premises by virtue of subsection (6) (a) must leave the premises as effectively secured against unauthorised entry as the officer found them.

77 Entry to dwellinghouses

- (1) Where an authorised officer proposes, in exercise of any power conferred by—
 - (a) section 74(2);
 - (b) section 75(2); or
 - (c) section 76(6),to enter a dwellinghouse, the conditions set out in subsections (2) and (3) must be satisfied.
- (2) The first condition is that the officer has given 48 hours' notice of the proposed entry to a person who appears to be the occupier of the dwellinghouse.
- (3) The second condition is that—
 - (a) the person who appears to be the occupier of the dwellinghouse has consented;
or
 - (b) entry is effected under the authority of a warrant issued under section 78(2).
- (4) In this Part, “dwellinghouse” has the meaning given by section 26.

78 Warrant to enter and take steps

- (1) This section applies where—
 - (a) a person entitled to enter premises under this Part—
 - (i) has been refused entry; or
 - (ii) reasonably anticipates entry being refused;
 - (b) premises which such a person is entitled to enter are unoccupied;
 - (c) the occupier of such premises is temporarily absent and there is urgency; or
 - (d) a person entitled to enter premises under this Part—
 - (i) has been prevented from taking any step which that person is entitled under this Part to take; or
 - (ii) reasonably anticipates being prevented from doing so.
- (2) The sheriff or a justice of the peace may, on the application of a local authority, by warrant authorise an officer of the authority—
 - (a) to enter the premises;

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- (b) on entering premises by virtue of paragraph (a), to take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
 - (c) to direct that—
 - (i) those premises (or any part of them) are; or
 - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
 - (d) to take any step mentioned in section 73(2);
 - (e) to remove any thing from the premises for the purpose of taking any such step at any other place.
- (3) The sheriff or justice of the peace must not, under subsection (2), grant a warrant in relation to a dwellinghouse unless the sheriff or justice is satisfied that—
- (a) notice has been given under section 77(2); and
 - (b) the period of notice has expired
- (4) The power of entry in this section—
- (a) may be exercised at any time; and
 - (b) includes power to use reasonable force.
- (5) 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.
- (6) A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

79 Use of powers in emergencies

- (1) This section applies where—
- (a) a local authority knows or suspects that—
 - (i) any premises in its area are; or
 - (ii) any thing in or on such premises is,
 infected, infested or contaminated;
 - (b) it appears to the authority that as a result it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in section 73(2) to be taken; and
 - (c) the authority considers, on reasonable grounds, that there is an emergency.
- (2) An authorised officer may enter the premises—
- (a) whether or not a notice under section 73(3) or 76(2) has been served;
 - (b) where a notice under section 73(3) has been served, whether or not the period specified in the notice has expired.
- (3) The authorised officer may enter premises by virtue of this section only where a local authority competent person certifies that the person is satisfied as to the matters in subsection (1).
- (4) The power of entry which the officer has—
- (a) may be exercised at any time; and

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- (b) includes power to use reasonable force.
- (5) Where the premises in relation to which the officer proposes to exercise the power are a dwellinghouse, section 77 does not apply.
- (6) The authorised officer may, on entering premises by virtue of this section—
 - (a) take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
 - (b) direct that—
 - (i) those premises (or any part of them) are; or
 - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
 - (c) take any step mentioned in section 73(2);
 - (d) remove any thing from the premises for the purpose of taking any such step at any other place.
- (7) 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.
- (8) This section applies despite the making of an appeal under section 83(1).
- (9) In this section, there is an “emergency” if—
 - (a) there is a significant risk to public health; and
 - (b) the nature of that risk is such that immediate action is necessary to prevent, or prevent the spread of, infectious disease or contamination.

Offences

80 Obstruction

A person commits an offence if the person, without reasonable excuse, intentionally obstructs an authorised officer or any other person doing anything that officer or person is authorised to do by virtue of—

- (a) section 74(2);
- (b) section 75(2);
- (c) section 76(6);
- (d) section 78(2); or
- (e) section 79(2) or (6).

Recovery of expenses

81 Recovery of expenses

- (1) A local authority may recover any reasonable expenses it incurs in doing anything it is entitled to do under—
 - (a) section 73(7);
 - (b) section 75(2);

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- (c) section 76(6);
 - (d) section 78(2); or
 - (e) section 79(2) or (6),
- from the person on whom the notice under section 73(3) or, as the case may be, 76(2) was served.
- (2) Where the authority incurs expenses in doing anything it is entitled to do under section 79(2) or (6) without a notice under section 73(3) or 76(2) having been served, the authority may recover the expenses from—
 - (a) the occupier of the premises; or
 - (b) where the premises are unoccupied, the owner of them.
 - (3) The local authority may also recover any administrative expenses incurred by it in connection with the thing to which the expenses relate.
 - (4) The local authority may accept payment of sums recoverable under this section by instalments.
 - (5) Sums due by a person under this section are recoverable by the local authority as a civil debt.

Compensation

82 Compensation

- (1) 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, as the case may be, required to do under—
 - (a) section 73(7);
 - (b) section 75(2);
 - (c) section 76(6);
 - (d) section 78(2); or
 - (e) section 79(2) or (6).
- (2) Subsection (1) does not apply where the loss or damage—
 - (a) is attributable to the fault of the person who suffered the loss or damage; or
 - (b) is loss or damage which relates to—
 - (i) any infected, infested or contaminated premises which are damaged as a result of the disinfection, disinfestation or decontamination of the premises or any thing in or on them; or
 - (ii) any infected, infested or contaminated thing, in or on premises, which is damaged or destroyed as a result of the disinfection, disinfestation or decontamination of the thing or premises.
- (3) Any dispute as to—
 - (a) a person's entitlement to compensation under subsection (1); or
 - (b) the amount of such 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 the sheriff.

Appeals

83 Appeals against notices under this Part

- (1) Any person on whom a notice under—
 - (a) section 73(3); or
 - (b) section 76(2),is served may appeal to the sheriff.
- (2) An appeal under this section may be made against—
 - (a) the notice;
 - (b) any requirement specified in it.
- (3) An appeal under this section must be made before the expiry of the period of 14 days beginning with the day after the day on which the notice is served.
- (4) On an appeal under this section, the sheriff may—
 - (a) confirm the notice;
 - (b) revoke the notice;
 - (c) remove or vary any requirement specified in the notice;
 - (d) make such other order as the sheriff considers appropriate.

84 Appeal to sheriff principal

- (1) A person who appealed under section 83(1) may, with the leave of the sheriff, appeal against a decision mentioned in subsection (2) to the sheriff principal.
- (2) A decision referred to in subsection (1) is a decision of the sheriff—
 - (a) to confirm the notice appealed against;
 - (b) not to remove or vary any requirement specified in the notice.
- (3) A local authority may, with the leave of the sheriff, appeal against a decision mentioned in subsection (4) to the sheriff principal.
- (4) A decision referred to in subsection (3) is a decision of the sheriff—
 - (a) to revoke the notice appealed against;
 - (b) to remove or vary any requirement specified in the notice.
- (5) On an appeal under this section, the sheriff principal may—
 - (a) confirm the decision appealed against;
 - (b) modify that decision;
 - (c) quash that decision;
 - (d) make such other order as the sheriff principal considers appropriate.

85 Appeal to Court of Session

- (1) A person who appealed under section 84(1) or (3) may, with the leave of the sheriff principal, appeal against the sheriff principal's decision to the Court of Session.
- (2) An appeal under this section may be made on a point of law only.
- (3) On an appeal under this section, the Court of Session may—

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- (a) confirm the decision appealed against;
 - (b) modify that decision;
 - (c) quash that decision;
 - (d) make such other order as the Court considers appropriate.
- (4) The decision of the Court on an appeal under this section is final.

Existing functions

86 Application of this Part where other functions being exercised

- (1) This section applies where—
- (a) a local authority; or
 - (b) any other person,
- has functions under any other enactment in relation to premises or things which are infected, infested or contaminated.
- (2) A function to which subsection (1) applies is an “existing function”.
- (3) A local authority may not exercise any function conferred on it by virtue of this Part if and to the extent that—
- (a) the authority or any other person is exercising an existing function; or
 - (b) 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 thing.
- (4) Subsection (3) does not affect the functions conferred on a local authority by virtue of section 72(1).