



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 6 **S**

#### MORTUARIES ETC.

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

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

- (1) This section applies where—
- (a) the body of a person—
    - (i) who has died of an infectious disease;
    - (ii) who had, immediately before dying, such a disease but who died of another cause; or
    - (iii) who was, immediately before dying, contaminated (whether the contamination caused the death or not),is in a hospital; and
  - (b) the health board responsible for that hospital considers that, as a result of that disease or contamination—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for that body to be retained in hospital until the board is satisfied as to the arrangements for its disposal.
- (2) The board may in writing direct that the body—
- (a) must not be removed from the hospital without the board's written authorisation; and
  - (b) may be removed only—
    - (i) by a person specified in the authorisation; and
    - (ii) for the purpose of immediate disposal.
- (3) The board may give a direction under subsection (2) only where a health board competent person certifies in writing that the person is satisfied as to the matters mentioned in subsection (1).

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Cross Heading: Protection of public from risks arising from bodies. (See end of Document for details)*

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- (4) Where a board gives a direction under subsection (2) it must explain to any person who appears to the board to be responsible for the removal and disposal of the body—
- (a) that there is a significant risk to public health;
  - (b) the nature of that risk;
  - (c) any precautions which the board considers should be taken; and
  - (d) any other matter which the board considers appropriate.
- (5) Subsection (4) does not apply in any case where the board has given an explanation under section 91(2) to the person to whom an explanation under subsection (4) would be given.
- (6) Any person who, without reasonable excuse, breaches a direction under subsection (2) commits an offence.
- (7) A direction under subsection (2) does not prevent the removal of the body in relation to which the direction is made to a mortuary or other similar premises for the purposes of the post-mortem examination of that body.
- (8) In this Part, “disposal”, in relation to a body—
- (a) means burial or cremation; and
  - (b) includes preparation of the body for burial or cremation;
- and cognate expressions are to be construed accordingly.

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**Commencement Information**

**II** S. 90 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) This section applies where a health board knows that a person in its area—
- (a) has died of an infectious disease;
  - (b) had, immediately before dying, such a disease but died of another cause; or
  - (c) was, immediately before dying, contaminated (whether the contamination caused the death or not).
- (2) The board must explain to any person who appears to the board to be responsible for the disposal of the person's body—
- (a) the nature of any risk to public health which results from the disease or contamination;
  - (b) any precautions which the board considers should be taken; and
  - (c) any other matter which the board considers appropriate.
- (3) Subsection (2) does not apply in any case where the board has given an explanation under section 90(4) to the person to whom an explanation under subsection (2) would be given.

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**Commencement Information**

**I2** S. 91 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) This section applies where—
- (a) the body of a person is being retained in premises;
  - (b) the local authority in whose area the premises are<sup>F1</sup>—
    - (i) is satisfied that no arrangements have been or are being made under section 65(2) or 66(2) of the Burial and Cremation (Scotland) Act 2016 for disposal of the body; or
    - (ii) considers that appropriate arrangements have not [<sup>F2</sup>otherwise] been made for the disposal of the body; and
  - (c) that authority is satisfied that, as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the body to be appropriately disposed of.
- (2) The authority may apply to the sheriff for its area for an order under section 93(1).
- (3) An application under subsection (2) must be accompanied by a certificate—
- (a) stating that a local authority competent person is satisfied as to the matters mentioned in subsection (1); and
  - (b) signed by that person.
- (4) In this section, “premises” does not include—
- (a) a mortuary or other similar premises; or
  - (b) a hospital.

### Textual Amendments

- F1** S. 92(1)(b)(i) and sub-para reference (ii) inserted (4.4.2019) by [Burial and Cremation \(Scotland\) Act 2016 \(asp 20\)](#), s. 112(2), [sch. 1 para. 2\(a\)](#) (with s. 111); S.S.I. 2018/380, reg. 2, sch. (with reg. 8)
- F2** Word in s. 92(1)(b) inserted (4.4.2019) by [Burial and Cremation \(Scotland\) Act 2016 \(asp 20\)](#), s. 112(2), [sch. 1 para. 2\(b\)](#) (with s. 111); S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

### Commencement Information

- I3** S. 92 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

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

- (1) The sheriff may—
- (a) if satisfied that there is a significant risk to public health, make an order authorising the local authority to—
    - (i) remove the body of a person mentioned in section 92(1)(a) to a mortuary or other similar premises; and
    - (ii) dispose of that body before the expiry of the period specified in the order;
  - (b) if satisfied that the risk to public health is such that it is necessary for the body to be disposed of immediately, make an order authorising the authority to dispose of that body as soon as reasonably practicable.

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- (2) Where an authority is authorised by virtue of this section to remove or dispose of a body, an officer of the authority or any other person authorised by the authority (in either case, an “authorised officer”) may—
- (a) enter any premises for the purposes of removing that body;
  - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the authorised officer and, if that officer has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
  - (c) take such other steps as are reasonably required in connection with that removal or disposal.
- (3) The power of entry in subsection (2)(a)—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- <sup>F3</sup>(4) .....
- (5) Any reasonable expenses incurred by the authority by virtue of an order under subsection (1) are recoverable from the estate of the deceased person.
- (6) A person commits an offence if that person, without reasonable excuse, intentionally obstructs any person exercising any function which that person is authorised by virtue of this section to exercise.

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#### Textual Amendments

- F3** S. 93(4) repealed (4.4.2019) by [Burial and Cremation \(Scotland\) Act 2016 \(asp 20\)](#), s. 112(2), [sch. 2](#) (with s. 111); [S.S.I. 2018/380](#), [reg. 2](#), [sch.](#) (with [reg. 8](#))
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#### Commencement Information

- I4** S. 93 in force at 1.10.2009 by [S.S.I. 2009/319](#), [art. 2\(a\)](#), [Sch. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008,  
Cross Heading: Protection of public from risks arising from bodies.