

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

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 This updates the requirements in a number of public health statutes which are being repealed by the Act, including the Public Health (Scotland) Act 1897 and the Public Health (Scotland) Act 1945.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

*These notes relate to the Public Health etc. (Scotland) Act
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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.