

# **PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

#### **Part 10**

#### **General and Miscellaneous**

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#### ***Section 116 Equal opportunities***

222. This section sets out that the Scottish Ministers, health boards and local authorities, in carrying out their functions under the Act, must do so in a manner that encourages equal opportunities and the observance of equal opportunities requirements, as defined in the Scotland Act 1998. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

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

223. This section provides for the circumstances in which a relevant authority may disclose information held by it. Subsection (1) allows disclosure to another relevant authority where this is required to facilitate either authority’s functions under this or any other Act for protection of public health. Subsection (2) allows disclosure to any other person if the authority considers this to be necessary for the protection of public health. Although information may be disclosed under these provisions, despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law, the terms of the Data Protection Act 1998 must still be met. A person who discloses information under this section will not be subject to any civil or criminal liability due to the disclosure.
224. Subsection (8) defines “relevant authority”, which includes the Scottish Ministers, health boards, local authorities, and the Common Services Agency. This meaning may, however, be amended by the Scottish Ministers, by regulations. The Scottish Ministers may also give guidance on the disclosure of information, and subsection (11) requires persons giving or receiving information to have regard to that guidance.

#### ***Section 118 Liability of persons exercising functions***

225. This section provides that a person acting in good faith and on reasonable grounds will not be liable in any civil or criminal proceedings for anything done in connection with the functions being carried out under the Act (except section 117, which makes separate provision about protection from liability). Notwithstanding this exemption for

individuals, subsection (2) provides that a health board or local authority would remain liable for the actions of its staff.

### ***Section 119 Offences by bodies corporate etc.***

226. Subsection (1) provides that, where an offence under the Act is committed by a body corporate, a limited liability partnership, or by a Scottish partnership, it is also considered to be committed by certain individuals if those individuals consented or connived in committing the offence, or where the offence was attributable to their neglect. Those individuals are: in the case of a body corporate (but not a limited liability partnership) any director, manager, secretary or other similar officer of the body corporate or a person who claims to act in such a capacity; in the case of a limited liability partnership, any member of that partnership or person who claims to act as a member; in the case of a Scottish partnership, any partner or a person who claims to act as a partner.
227. Subsection (2) states that where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, then the provision in subsection (1) applies to the acts and omissions of a member, as if the member were a director of the body corporate.

### ***Section 120 Penalties for offences under this Act***

228. This section sets out the maximum penalties for offences committed under the Act, with the exception of offences in Part 8, where the maximum penalties are set out in section 107. On summary conviction, the maximum penalty is imprisonment for up to 12 months or a fine of up to £10,000 (at current levels) or both; or, on conviction on indictment, imprisonment for up to 2 years or an unlimited fine or both. Subsection (2) sets out different maximum penalties for those committing offences under section 69(1) or 70(3) or (4) in relation to an exclusion or restriction order. In those cases, the maximum penalty, on summary conviction, is imprisonment for up to 12 months or a fine not exceeding level 5 on the standard scale or both.

### ***Section 121 Form of applications etc.***

229. This section provides that Scottish Ministers may prescribe the form of any application or order under this Act by regulations

### ***Section 122 Regulations and orders***

230. This section sets out the procedure under which the Scottish Ministers can exercise powers which the Act gives them to make subordinate legislation. All regulations and orders are to be made by statutory instrument. Scottish Ministers must, as far as is reasonably practicable, consult appropriate persons before making regulations under this Act.
231. Most regulations under the Act are to be subject to the Scottish Parliament's negative resolution procedure. The exceptions are regulations under section 25(3) (conferring powers on public health investigators), section 94(1) (giving effect to the International Health Regulations and other international agreements), section 99(1) (regarding the application of Part 8 to the medical use of sunbeds) and section 105(11) (in relation to fixed penalties under Part 8) which will be subject to the Scottish Parliament's affirmative resolution procedure.
232. Where regulations under section 25(3) and 94(1) need to be made urgently, they need not be subject to affirmative procedure and can come into effect immediately. However, such "emergency regulations" must be laid before the Scottish Parliament and will cease to have effect after 28 days of being made unless they have been approved by a resolution of the Parliament before the expiry of this period. The commencement order-making power in section 128 is subject to no parliamentary procedure.

***Section 123 Meaning of “premises”***

233. This section defines the meaning of “premises” as used in the Act as including any land or building; or any other place, including a mobile home and a vehicle. “Mobile home” and “vehicle” are further defined.

***Section 124 Interpretation***

234. This section defines a number of expressions as they are used in the Act.

***Section 125 Minor and consequential amendments***

235. This section gives effect to schedule 2 to this Act which contains minor and consequential amendments to other legislation.

***Section 126 Repeals, revocations and saving***

236. This section gives effect to schedule 3 to the Act which repeals and revokes other enactments.
237. Subsection (2) specifies that despite the repeal of the 1897 Act, section 166 of that Act continues to have effect for the purposes of section 101 of the National Health Service (Scotland) Act 1978. Section 101 of the 1978 Act applies section 166 of the 1897 Act (which governs the liabilities of local authorities and their officers) to health boards and their officers.

***Section 127 Crown application***

238. This section confirms that the Crown is bound by this Act and any regulations made under it. The Crown will not be held criminally liable for contravening any provision but there is an option for the Court of Session, on application by any public body or office-holder responsible for enforcing a provision of this Act, to declare a contravention by the Crown as unlawful. Whilst the Crown cannot be held criminally liable, individuals in the service of the Crown can be. Nothing stated in this section affects Her Majesty in a private capacity.

***Section 128 Short title and commencement***

239. This section provides that the Act will come into force on a day or days appointed by order by Scottish Ministers. Section 122 (regulations and orders) and section 128 come into force on Royal Assent.

***Schedule 1 Lists of notifiable diseases and notifiable organisms***

240. Part 1 of schedule 1 lists the diseases to be notified by registered medical practitioners under Part 2 of the Act. Part 2 of schedule 1 lists the organisms to be notified by the directors of diagnostic laboratories under Part 2 of the Act.

***Schedule 2 Minor and consequential amendments***

241. Schedule 2 sets out minor and consequential amendments to the Public Works Loans Act 1887, the Children and Young Persons (Scotland) Act 1937, the Prevention of Damage by Pests Act 1949, the Pests Act 1954, the Offices, Shops and Railway Premises Act 1963, and the Statutory Nuisance (Appeals) (Scotland) Regulations 1996.

***Schedule 3 Repeals and revocations***

242. Part 1 of schedule 3 sets out various repeals relating to Acts. Part 2 of schedule 3 sets out various revocations of Regulations.