

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 4

Public Health Functions of Health Boards

Breach of orders and offences

Section 66 Absconding from quarantine

134. This section makes provision where someone subject to a quarantine order breaches that order by absconding, either while being removed to the place of detention or from that place. An absconder can be taken into custody and detained.
135. Subsection (2) provides that the absconder may be taken into custody by a constable, an officer of the health board, or an officer of a local authority. The quarantined person may be detained in a hospital or any other place up to the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period.
136. Subsections (6) and (7) provide that a person who may take a quarantined person into custody or who may detain that person may enter any premises at any time in which the quarantined person is present and use reasonable force in order to gain entry. A person taken into custody under this section and who absconds again may be taken into custody again and detained under this section.
137. The detention of a quarantined person under this section does not preclude a health board from applying to extend the quarantine order and, where such extension is granted, the quarantined person may be removed to the place in which the person is to be quarantined.

Section 67 Absconding from hospital

138. This section makes provision where a person subject to a short term detention or exceptional detention order breaches that order by absconding, either while being removed to the detention hospital or from the hospital in which the person is detained.
139. The absconder may be taken into custody by a constable, an officer of the health board or an officer of a local authority and returned to hospital for the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period. Subsection (6) provides that a person who takes a person into custody and who returns such person to hospital may enter any premises in which the quarantined person is present. Subsection (7) provides that a person who takes a person into custody may enter any premises in which the quarantined person is present at any time and use reasonable force to gain entry. A person taken into custody under this section and who absconds may be taken into custody again and detained in accordance with this section.

Section 68 Obstruction

140. This section states that a person commits an offence if the person, without reasonable excuse, intentionally obstructs a health care professional authorised to carry out a medical examination under section 34, or persons authorised to remove the person to the place in which the person is to be quarantined under section 40, or persons authorised to remove a person to hospital under section 42.

Section 69 Offences arising from breaches of orders under this Part

141. Any person who is the subject of an order under this Part of the Act and who breaches the order, without reasonable excuse, commits an offence.

Section 70 Failure to ensure child's compliance with order

142. This section provides that where an exclusion order, a restriction order or a quarantine order is made in relation to a person who is under 16 (a "child"), a parent of the child who has day-to-day care or control of the child commits an offence if the person fails, without reasonable excuse, to ensure that the child does not breach the order. Where there is no such parent, a person mentioned in subsection (5) commits an offence if the person fails, without reasonable excuse, to ensure that the child does not breach the order. A defence is available if the person can show that the person exercised all due diligence and took all reasonable steps to avoid committing the offence. The penalty for this offence is set out in section 120(2).