

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

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

#### **Part 4**

#### **Public Health Functions of Health Boards**

#### **Duty to give explanation**

##### ***Section 31 Duty of health boards to give explanation of need for action***

59. This section provides that if a health board is proposing to take any action mentioned in section 32(a) to (c) or if a health board competent person is proposing to take any action mentioned in section 32(d) or (e) (known as a “relevant action”) in respect of a person, the health board must explain such action to that person. The explanation must convey that there is a significant risk to public health, the nature of that risk and why the board finds it necessary to take the proposed action. In the event that an explanation cannot be given before the relevant action is taken, the health board must, as soon as reasonably practicable after taking action and in so far as it is reasonably practicable to do so, give the explanation. If the person is incapable of understanding the explanation, for whatever reason, explanations should be given to any person having parental responsibilities and parental rights (in respect of those under 16) and in other cases to any guardian, welfare attorney or any other person appointed or having authority to intervene in the affairs of the person.

##### ***Section 32 Relevant actions***

60. This section lists the relevant actions to which section 31 applies. These are applications for orders to do any of the following: require a person to be medically examined; require a person to be quarantined; require a person to be detained in hospital; require a person to be removed to and detained in hospital; require a person to be detained in hospital under an exceptional detention order. Relevant actions also include the making by a health board competent person of an order excluding a person from specified places (an exclusion order) or from carrying on specified activities (a restriction order).

#### **Medical examinations**

##### ***Section 33 Application to have person medically examined***

61. This section deals with applications to the sheriff for orders to have a person medically examined. A health board may make such an application where it knows or suspects that a person in its area has an infectious disease; has been exposed to an infectious organism which causes such a disease; is contaminated or has been exposed to a contaminant and it appears to the health board that as a result there is, or may be, a significant risk to public health and it is necessary, to avoid or minimise that risk, for the person to be medically examined.

62. Subsection (3) outlines the matters which need to be specified in the application to the sheriff which include the nature of the examination the health board proposes to be carried out, why the health board considers it necessary, who will carry out the examination and whether an explanation has been provided. All applications must include a certificate from a health board competent person that the criteria set out in subsection (1) have been met.

### ***Section 34 Order for medical examination***

63. This section sets out the circumstances in which a sheriff may grant an order authorising a health care professional to medically examine the person to whom the application under section 33 relates. Subsection (1) requires the sheriff to be satisfied with the matters in subsection (2). Those include the fact that an explanation under section 31 was given, or, where no such explanation was given, it was not reasonably practicable to do so. Subsection (4) states that a medical examination authorised under this section must be carried out within 7 days of the order being made. Subsection (5)(a) states that if an appeal is made (under section 60(1)) before the medical examination is carried out, the order is suspended, and no account is taken of the period during which the order is suspended in calculating the 7 days within which the medical examination must take place. The order must specify the person to whom it applies and the class or classes of health care professional who will carry out the examination. “Health care professional” is defined in section 33(4). The sheriff may also make provision in the order about such other matters as the sheriff considers appropriate (subsection (3)). The order must be notified to the person to whom it applies and be notified to any person to whom an explanation was given under section 31 and any other person the sheriff considers appropriate.

### ***Section 35 Medical examination: least invasive and least intrusive procedures***

64. Subsection (1) sets out that a health care professional authorised to undertake a medical examination under section 34 must not use invasive or intrusive procedures unless they are necessary to achieve the purpose for which the examination is being carried out. However, if that professional needs to carry out such procedures, the least invasive and least intrusive procedures practicable must be used.
65. Subsection (2) lists the medical procedures which are not considered to be invasive for this Part of the Act.

### ***Section 36 Medical examination of groups***

66. Subsection (1) states that where a health board is satisfied that the conditions relating to the need for a medical examination of a person have been met and the person is one of a group of two or more persons, the health board may apply to the sheriff for an order relating to all of the persons in the group and for each member of the group to be medically examined.
67. Under subsection (2), the competent person must certify that it is necessary, to avoid or minimise an actual or anticipated risk to public health, for all the persons in the group to be medically examined. The sheriff may grant the order in relation to the group if the conditions relating to the need for a medical examination apply in relation to at least one member of the group. The rules in sections 31(3) to (5) in relation to giving explanations for actions apply to each person in a group in the same way as they apply to individuals.

## **Exclusion orders and restriction orders**

### ***Section 37 Exclusion orders***

68. This section allows a health board competent person to make an “exclusion order” which will exclude a person from any place or type of place specified in the order, and impose such conditions (if any) on the person as the competent person considers

appropriate. Subsection (1) provides that an exclusion order may be made where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. In addition the health board must consider that there is a significant risk to public health and it is necessary to exclude that person from certain places to avoid or minimise that risk.

69. Under subsection (3), before making an exclusion order, the health board competent person must be satisfied that the criteria set out in subsection (1) have been met and have regard to imposing the least restrictive order necessary to protect public health.
70. Subsection (4) sets out what must be specified in an exclusion order: the person to whom it applies, the places from which the person is excluded, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers appropriate. In the case of an exclusion order stopping a child from attending school, for example, that might be the head teacher. An exclusion order may not specify a person's own place of residence as a place from which that person can be excluded. The exclusion order comes into effect from the time it is served on the person to whom it applies.

### ***Section 38 Restriction orders***

71. This section allows a health board competent person to make a "restriction order" which will prohibit a person from carrying on any activity specified in the order, and impose such conditions (if any) on the person as the competent person considers appropriate. The section applies only where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Restriction orders can be made only where the health board considers that there is a significant risk to public health and it is necessary for the person to be prohibited from carrying on certain activities to avoid or minimise that risk.
72. The health board competent person must be satisfied that all the required criteria are met and have regard to imposing the least restrictive order necessary to protect public health.
73. Subsection (4) sets out what must be specified in a restriction order: the person to whom it applies, the activity or type of activity which the person is prohibited from carrying on, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers is appropriate. The restriction order comes into effect from the time it is served on the person to whom it applies.

## **Quarantine**

### ***Section 39 Application to have person quarantined***

74. This section deals with applications to the sheriff for an order to require a person to be quarantined in the person's home or other setting, other than a hospital. A health board may make such an application where it knows or suspects that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Applications can only be made where there is a significant risk to public health and it is necessary to avoid or minimise that risk for that person to be quarantined.
75. Subsection (3) sets out that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to be quarantined; the place in which the person is to be quarantined; the steps (if any) in section 46(2) which

the board considers it is necessary to take in relation to the person; the conditions (if any) which are to be applied, that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by the health board competent person, indicating satisfaction that the criteria for the making of the application have been met.

#### ***Section 40 Quarantine orders***

76. This section sets out the circumstances in which a sheriff may grant a quarantine order and what information that order must contain. The sheriff must be satisfied that the criteria for a quarantine order have been met. The order will authorise the person to be quarantined in the place specified in the order and the taking of such steps (if any) in section 46(2) which the sheriff considers appropriate. The sheriff may also impose such conditions in relation to the quarantine as is considered appropriate. Where the person is not in the place specified, a constable, an officer of the health board or local authority, or any other person authorised by the sheriff may remove the person to that place.
77. Subsection (5) lists the kinds of conditions which may be imposed by a quarantine order. These include: those who may have access to the place of quarantine and for what purposes; those who may have access to the quarantined person and for what purpose; and any conditions relating to the welfare of the quarantined person. The list is not intended to be exhaustive.
78. Subsection (6) sets out what must be specified in a quarantine order: the person to whom it applies; the place where the person is to be quarantined; the period for which the person is to be quarantined, up to a maximum of three weeks; the steps (if any) under section 46(2) which may be taken; and any conditions imposed on the person. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.
79. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

#### **Removal to and detention in hospital**

#### ***Section 41 Application to have person detained in hospital***

80. This section deals with applications to the sheriff for an order to have a person detained in hospital. A health board may make such an application where it knows that a person in its area has an infectious disease or is contaminated, where there is a significant risk to public health and it is necessary, to avoid or minimise that risk, for the person to be detained in hospital. An application can be made for the person to be removed to and detained in hospital, if not in hospital already, or to be detained there, if the person is there already. Such an order is referred to as a “short term detention order”.
81. Subsection (4) sets out what must be specified in the application: the person to whom the order will apply; why the health board considers it necessary for the person to be detained in hospital; the hospital in which it is proposed to detain the person; the steps (if any) in section 46(2) that the board considers it is necessary to take in respect of the person; confirmation that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by the health board competent person, indicating satisfaction that the criteria for the making of the application have been met.

***Section 42 Order for removal to and detention in hospital***

82. This section sets out the circumstances in which a sheriff may grant an order for removal and detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a removal and detention order have been met. The order authorises a constable, an officer of the health board or local authority or any other person the sheriff considers appropriate to remove the person to the hospital specified in the order; to detain the person in hospital for a period not exceeding three weeks; and the taking of steps (if any), set out in section 46(2), as is considered appropriate.
83. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital to which the person is to be taken (and in which the person is to be detained); the period for which the person is to be detained, up to a maximum of three weeks; and the steps (if any) to be undertaken as set out in section 46. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate. Subsections (5) and (6) grant a power of entry, including the use of reasonable force, and permit the power to be exercised at any time.
84. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

***Section 43 Order for detention in hospital***

85. This section sets out the circumstances in which a sheriff may grant an order for detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a detention order have been met. The order can authorise the detention of a person in hospital for a maximum period of three weeks and the taking of steps (if any) set out in section 46(2) as the sheriff considers appropriate.
86. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to be detained; and the steps (if any) to be undertaken as set out in section 46(2). The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.
87. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

***Section 44 Application where long term detention in hospital necessary***

88. This section deals with applications by the health board to the sheriff for an “exceptional detention order”. A health board can make an application where a person is detained in hospital under an order granted under section 42 or 43 (a short term detention order) and the health board is satisfied that the criteria under which the short term detention order was granted continue to apply; it continues to be necessary for the person to be detained in hospital to avoid or minimise a significant risk to public health; and it is necessary for that person to be detained for a longer period than permitted under the short term detention order.
89. Subsection (4) states that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to continue to be detained in hospital and for a period longer than that permitted under a short term order; the hospital in which it is proposed to detain the person; the steps, if any, in section 46(2) which the health board considers it is necessary to take in respect of the person; that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by a competent person from a different health board to the one which

made the original application, indicating satisfaction that the criteria for the making of the application have been met.

#### ***Section 45 Exceptional detention order***

90. This section sets out the circumstances in which a sheriff may grant an exceptional detention order and what that order must contain. The sheriff must be satisfied that the criteria for an exceptional detention order have been met and that the health board has fulfilled the conditions set out in section 44 regarding applications. The order will authorise the continued detention of a person in hospital and the taking of steps (if any) set out in section 46(2) as the sheriff considers appropriate.
91. Subsection (4) sets out what an exceptional detention order must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to be detained, up to a maximum of 12 months; and the steps (if any) to be undertaken as set out in section 46(2). The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.

#### **Quarantine and detention: steps that may be taken**

#### ***Section 46 Authorised steps***

92. This section sets out authorised steps which may be taken under a quarantine order, a short term detention order or an exceptional detention order. These are disinfection, disinfestation and decontamination.

#### ***Section 47 Authorised steps: least invasive and least intrusive procedures***

93. This section provides that where any of the steps mentioned in section 46 have been authorised under a quarantine, short term detention or exceptional detention order, the health care professional authorised to carry out the steps must not use invasive or intrusive procedures unless it is considered that the procedures are necessary to achieve the purpose for which the step is being taken. Where there is a need to carry out such procedures the health care professional must use the least invasive and least intrusive procedures practicable.

#### **Variation and extension of orders**

#### ***Section 48 Variation of exclusion and restriction orders***

94. This section provides that, where a person is subject to an exclusion or restriction order, a competent person of the appropriate health board may, if considered appropriate, modify the order. In the case of an exclusion order, the order may be modified by varying the place or type of place from which the person is excluded. In the case of a restriction order, the order may be modified by varying the activity or type of activity which the person is prohibited from carrying on. The competent person may also impose conditions, where none had been imposed in the original orders, and modify any condition that had been imposed by adding, varying or removing a condition. If an order is varied, the competent person must notify the subject of the order and any person to whom it was notified of the changes made.

#### ***Section 49 Extension of quarantine and hospital detention orders***

95. The section provides that where a person is subject to a quarantine order, a short term detention order or an exceptional detention order, the health board may apply to the sheriff for an extension to the order. The application must be made by the health board before the period specified in the current order expires. An application must include a certificate from a health board competent person in accordance with subsection (4).



96. Before granting an extension of the order, the sheriff must be satisfied that the criteria for the order still apply. If satisfied, the sheriff may grant, in the case of a quarantine or short term detention order, an extension for a further three weeks, up to a maximum continuous period of 12 weeks; or, in the case of an exceptional detention order, an order extending the order for a further period up to a maximum continuous period of 12 months. An order may be extended on more than one occasion.

### ***Section 50 Application for variation of quarantine and hospital detention orders***

97. This section provides that a health board, if it considers it appropriate, may apply to the sheriff for an order modifying a quarantine, short term detention or exceptional detention order.
98. Subsection (3) sets out what must be specified in such an application: the order which it is proposed to modify; the person to whom it applies; and the modification which it is proposed to make. An application must include a certificate from a health board competent person in accordance with subsection (4).

### ***Section 51 Variation of quarantine and hospital detention orders***

99. Subsection (1) provides that a sheriff may, if satisfied that the conditions for making a quarantine, short term detention or exceptional detention order continue to apply, make an order modifying the order to which the application relates. In the case of a quarantine order, the place in which the person is to be quarantined may be modified, and conditions may be added, varied or removed. In the case of a short term detention order or an exceptional detention order, the hospital in which the person is detained may be varied. In both cases, steps mentioned in section 46 which are authorised by the order may be added or removed. Orders modified under this section are to have effect from the time at which the order under subsection (1) is made.
100. Subsection (4) provides that where any modification varies the place in which a person is to be quarantined or, in the case of a hospital detention order, the hospital in which the person is to be detained, the order under this section authorises the removal of the person to that place or to the hospital by a constable, an officer of the health board, an officer of a local authority or any other person the sheriff considers appropriate, and authorises the quarantine or detention there.
101. Subsection (5) sets out that an order granted by the sheriff must specify the person to whom the order applies and the modification made. It must be notified to the person to whom the order applies, to any person to whom an explanation was given under section 31, and to any other person the sheriff considers appropriate.

## **Review of orders**

### ***Section 52 Duty to review exclusion and restriction orders***

102. This section places a duty on health board competent persons to keep exclusion and restriction orders under review. Regardless of whether the subject of an order has requested a review under section 53, the health board competent person must carry out a review during the last week of each three-week period to consider whether the conditions for the order continue to apply and whether it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
103. If the health board competent person is not satisfied that these conditions continue to apply or that it continues to be necessary for the person to be subject to the order, the health board competent person must revoke it.

***Section 53 Duty to keep exclusion and restriction orders under review***

104. This section provides that if a person subject to an exclusion or restriction order requests a review of that order, a health board competent person of the appropriate health board must consider whether the conditions for the order continue to apply and whether it continues to be necessary for the person to be subject to the order. In addition, the health board competent person must from time to time carry out such a review. If the health board competent person is not satisfied that the conditions for an exclusion or restriction order continue to apply or that it continues to be necessary for the person to be subject to the order, then the health board competent person must revoke it.

***Section 54 Duty to keep quarantine orders under review***

105. If a person subject to a quarantine order requests a review of that order, a competent person of the health board which applied for the order must consider whether the conditions for the order continue to apply. In addition, the competent person must carry out such a review from time to time. If the health board competent person is not satisfied that the conditions for the quarantine order continue to apply or that it continues to be necessary for the person to be subject to the order, then the health board competent person must revoke it.

***Section 55 Duty to keep hospital detention orders under review***

106. This section makes the same provision concerning reviews for persons subject to short term or exceptional detention orders as section 54 does in respect of persons subject to quarantine orders.

**Compensation**

***Section 56 Compensation for voluntary compliance with request***

107. Subsection (1) provides that a health board must compensate any person who suffers any loss as a result of voluntarily complying with a request to be quarantined, excluded from certain places or prohibited from carrying on certain activities. Such a request must be made by a health board in writing and must specify the action required of the person.
108. Subsection (4) states that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (5) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.
109. Subsection (6) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies. Regulations will be made by negative procedure.

***Section 57 Compensation for persons subject to certain orders***

110. Subsection (1) provides that a health board may compensate any person who is subject to an exclusion order, restriction order or quarantine order and who incurs any loss caused by complying with the order.
111. Subsection (2) states that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (3) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.



112. Subsection (4) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies. Regulations will be made by negative procedure.

### ***Section 58 Compensation for carers***

113. This section applies where a person (the relevant person) is subject to an exclusion order, a restriction order or a quarantine order. It also applies where the relevant person is not subject to such an order but the relevant person has agreed to comply with a request mentioned in section 56.
114. The health board must compensate a person (a carer) who incurs a loss as a result of caring for the relevant person being subject to the order or, as the case may be, complying with the request. This is solely in a situation where the carer is required to care for the relevant person, or where the carer normally cares for the relevant person, requires to provide more care.
115. Subsection (3) defines a carer. Where the relevant person is 16 or over, a carer is a person who cares for the relevant person otherwise than by virtue of a contract of employment or other contract with any person or as a volunteer for a voluntary organisation. Where the relevant person is under 16, the carer could also be a parent of the relevant person who has day-to-day care or control of that person. In all cases, the carer must be a person who is 16 or over.
116. Subsection (4) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by an arbiter appointed by the sheriff.
117. Subsection (5) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

### **Recall of orders granted in absence**

#### ***Section 59 Recall of orders granted in absence of person to whom application relates***

118. This section applies where a quarantine order, a short term detention order or an exceptional detention order is made in the absence of the person to whom the order applies.
119. Subsection (2) states that a person mentioned in subsection (3) may apply to the sheriff for an order recalling the order. Subsection (4) provides that such an application must be made before the expiry of 72 hours from when the order to which the application relates was notified to the person to whom it applies. Subsection (5) provides that despite the making of an application under this section, the order to which it relates has effect as if the application was not made. Subsection (6) requires the sheriff to give the persons mentioned in subsection (7) the opportunity of making representations orally or in writing, and of leading or producing evidence, before determining an application under this section. Subsection (8) states that on an application under this section, the sheriff may confirm or revoke the order.

### **Appeals**

#### ***Section 60 Appeal against order for medical examination***

120. This section provides for a right of appeal to the sheriff principal against an order for medical examination. Subsection (3) provides that an appeal under this section must be made before the expiry of 7 days beginning with the day on which the order appealed against is made. The sheriff principal may confirm the order for medical examination;

revoke the order; modify the order; make an order declaring that the order was invalid (in situations where the medical examination has been carried out prior to the appeal); or make such other order as the sheriff principal considers appropriate.

121. The decision of the sheriff principal on an appeal under this section is final.

### ***Section 61 Appeal against exclusion orders and restriction orders***

122. This section provides for a right of appeal to the sheriff against an exclusion or restriction order. Any person who is subject to an exclusion or restriction order, or a person who has an interest in the welfare of such a person, may appeal to the sheriff against the making of the order, any modification of the order under section 48 or a decision of a health board competent person under section 52 or 53 not to revoke the order. An appeal under this section must be made within 14 days of the order being made, the modification being made or the decision of the health board competent person not to revoke the order.
123. On appeal under this section, the sheriff may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff may also confirm or quash the decision appealed against.

### ***Section 62 Appeal against quarantine and hospital detention orders***

124. This section provides for an appeal to the sheriff principal against a quarantine order, a short term detention order or an exceptional detention order. Any person who is subject to any of these orders, or a person who has an interest in the welfare of such a person, may appeal to the sheriff principal against the making of the order; in the case of a quarantine order, any condition imposed by the order; any steps mentioned in section 46(2) specified in the order; a decision of the sheriff under section 59 confirming the order; the making of an extension order under section 49; the making of an order under section 51 modifying the order; or a decision of the health board competent person under section 54 or 55 not to revoke the order. An appeal under this section must be made within 14 days of the order or decision being made.
125. On appeal, the sheriff principal may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff principal may also confirm or quash the decision appealed against.

### ***Section 63 Exclusion orders and restriction orders: further appeal to sheriff principal***

126. This section sets out that a person who appealed under section 61 may, with the leave of the sheriff, appeal against a decision of the sheriff - to confirm the exclusion or restriction order, to modify the order or to confirm the decision appealed against - to the sheriff principal. A health board aggrieved by an appeal under section 61 may also, with the leave of the sheriff, appeal against a decision of the sheriff - to revoke the exclusion or restriction order, to modify the order or to quash the decision appealed against - to the sheriff principal.
127. Subsection (5) states that an appeal under this section may be made on the ground that the sheriff erred in law, or the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.
128. On an appeal under this section, the sheriff principal may confirm the decision appealed against, modify that decision, quash that decision; or make such other order as the sheriff principal considers appropriate. The decision of the sheriff principal on an appeal under this section is final.

### ***Section 64 Appeal to Court of Session***

129. Those persons who were the subject of an appeal decision by the sheriff principal (in the case of a quarantine, short term detention or exceptional detention order) may, with the leave of the sheriff principal, appeal against the decision to the Court of Session. Subsection (2) sets out which decisions a person may appeal, that is a decision of the sheriff principal on an appeal under section 62(2) to confirm the order or decision appealed against or to modify the order.
130. Subsection (3) provides that a health board may, with the leave of the sheriff principal, appeal against a decision to the Court of Session. Subsection (4) sets out which decisions a health board may appeal, that is a decision of the sheriff principal on an appeal under section 62 to revoke or to modify the order, or to quash the decision appealed against.
131. Subsection (5) provides that an appeal under this section may be made only on the ground that the sheriff principal erred in law; or that the decision of the sheriff principal was not supported by the facts established by the sheriff or sheriff principal in the appeal.
132. On appeal, the Court of Session may confirm the decision appealed against; modify that decision; quash that decision; or make such other order as the Court considers appropriate. The decision of the Court on an appeal under section 64 is final.

### ***Section 65 Effect of appeal under section 61, 62, 63 or 64***

133. This section states that, notwithstanding the fact that an appeal under section 61, 62, 63 or 64 has been made, the order, modification or decision appealed against has effect as if the appeal had not been made.

## **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).

## **Procedure**

### ***Section 71 Applications and appeals***

143. This section refers to the Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 to make rules to regulate procedure in the sheriff court. The procedure to be used in applications and appeals under Part 4 will be provided for in rules of court and may in particular include: the manner in which, and time within which, notice of applications for orders is given; the manner in which, and time within which, notice of orders is given; where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications must be given; the circumstances in which the sheriff or sheriff principal may determine whether and where a hearing is to be held, and the place or types of place at which hearings may be held. An application may be determined by the sheriff, either in open court or in a private hearing (known as "in chambers") and with or without the person in respect of whom the application is made being present (except in relation to appeals).