

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 6

Mortuaries Etc.

Provision of mortuaries

Section 87 Provision of mortuaries by local authorities

176. This section requires each local authority to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the bodies of persons who die in the authority's area and the post-mortem examination of such bodies. Local authorities need not provide such premises and facilities for hospital-related deaths. Health boards are required to provide premises and facilities for such bodies under section 88. Local authorities are required to provide or ensure the provision for its area of facilities for bodies in relation to which the Crown Office Procurator Fiscal Service (COPFS) are carrying out investigations.
177. Local authorities need not provide the facilities themselves, but may enter into agreements with any person or organisation, including a health board, for the provision of such facilities. The premises and facilities referred to in this section need not be in the area of the local authority ensuring their provision.

Section 88 Provision of mortuaries by health boards

178. This section requires each health board to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the bodies of persons who die in a hospital in the board's area or who die elsewhere and whose bodies are brought to such a hospital and for the post-mortem examination of such bodies.

Section 89 Co-operation by local authorities and health boards

179. This section places a duty of co-operation on local authorities and health boards in complying with the duties placed on each of them by sections 87 and 88.

Protection of public from risks arising from bodies

Section 90 Restriction on release of infected etc. bodies from hospital

180. This section deals with the circumstances whereby a health board may require the retention of an infected or contaminated body in hospital. It sets out that this must be by direction specifying that the body cannot be removed (except to a mortuary or similar premises for a post-mortem examination) until written authorisation is given to a named person for the purposes of immediate disposal, which may include preparation of the body for disposal. That direction can be made only where a health board competent

person certifies that a defined set of circumstances applies. These circumstances, set out in subsection (1), are that a person has died of an infectious disease, had such a disease immediately before dying (but died of another cause) or was contaminated immediately before dying (whether the contaminant caused the death or not). If any of those circumstances applies and the competent person considers that there is also a significant risk to public health and it is necessary to retain the body to avoid or minimise that risk (until the health board is satisfied regarding the arrangements for disposal), a direction may be made.

181. Subsection (4) places a duty on a health board, where it makes such a direction, to explain to persons responsible for handling the body that there is significant risk to public health, the nature of that risk, any precautions the person should take and any other appropriate information. This does not apply where an explanation has already been given under section 91 to anyone who appears to be responsible for the disposal of the body. Subsection (6) states that a person who breaches a direction given under this section without reasonable excuse commits an offence.

Section 91 Duty of health board where infected etc. person dies

182. This section places a duty on a health board (where it knows a person in its area has died of an infectious disease, had such an infectious disease before dying, or was contaminated) to explain to any person who appears to be responsible for the disposal of the body the nature of any risk, the precautions that should be taken and any other appropriate information. This does not apply where an explanation has been given under section 90.

Section 92 Application for order in relation to bodies retained in premises

183. This section applies where the body of a person is being retained in premises and the local authority feels that appropriate disposal arrangements have not been made. The authority may apply to the sheriff for an order under section 93 seeking authority to dispose of the body appropriately. An application may only be made where a local authority competent person certifies, among other things, that there is a significant risk to public health and that appropriate disposal is necessary to avoid or minimise that risk.

Section 93 Power of sheriff to order removal to mortuary and disposal

184. This section allows the sheriff, if satisfied that there is a significant risk to public health, to make an order authorising the local authority to remove the body of a person mentioned in section 92 to a mortuary or other similar premises and to dispose of the body within the period set out in the order. If the sheriff is satisfied that the risk to public health is such that the body must be disposed of immediately, disposal by the local authority may be ordered as soon as reasonably practicable.
185. Subsection (2) gives powers to local authority officers or other persons authorised by local authorities (in either case an “authorised officer”) to enter premises, to take other persons and, if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access, a constable, and take any other steps reasonably required in connection with removing and disposing of the body. In entering premises, the authorised officer may use reasonable force and enter at any time. This section of the Act does not affect any other legislation which regulates or authorises burial or cremation, and the requirements of the Cremation (Scotland) Regulations 1935 (as amended) continue to apply.
186. Any reasonable expenses incurred by the authority in carrying out a function authorised by an order under this section can be recovered from the estate of the deceased person. Any person who, without reasonable excuse, intentionally obstructs an officer of the local authority or another authorised person from carrying out any functions authorised by this section commits an offence and will be liable to a penalty, as outlined in section 120.