



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 3

#### PUBLIC HEALTH INVESTIGATIONS

##### *Public health investigations*

#### **20 Public health incidents**

- (1) A public health incident exists if—
  - (a) a circumstance mentioned in subsection (2), (3), (4), (5) or (6) occurs; and
  - (b) there are reasonable grounds to suspect that the circumstance is likely to give rise to a significant risk to public health.
- (2) The first circumstance is that—
  - (a) a person has an infectious disease; or
  - (b) there are reasonable grounds to suspect that a person has such a disease.
- (3) The second circumstance is that—
  - (a) a person has been exposed to an organism which causes infectious disease; or
  - (b) there are reasonable grounds to suspect that a person has been so exposed.
- (4) The third circumstance is that—
  - (a) a person is contaminated; or
  - (b) there are reasonable grounds to suspect that a person is contaminated.
- (5) The fourth circumstance is that—
  - (a) a person has been exposed to a contaminant; or
  - (b) there are reasonable grounds to suspect that a person has been so exposed.
- (6) The fifth circumstance is that—
  - (a) any premises are or any thing in or on premises is infected, infested or contaminated; or
  - (b) there are reasonable grounds to suspect that any premises are or thing is so infected, infested or contaminated.

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- (7) In subsection (6), “infected”, “infested” and “contaminated” have the meanings given by section 72(5).

## **21 Public health investigations**

- (1) In this Part, a “public health investigation” means an investigation into the cause (or causes) of a public health incident.
- (2) A public health investigation may be carried out by a person appointed for the purpose by—
- (a) the Scottish Ministers;
  - (b) a health board competent person;
  - (c) the common services agency;
  - (d) a local authority competent person;
  - (e) two or more of the persons mentioned in paragraphs (a) to (d) acting together, and, in this Part, that person is known as an “investigator”.
- (3) Despite subsection (2)(b) and (d), a health board competent person or a local authority competent person may be appointed as an investigator.
- (4) If an investigator considers it necessary for the purpose of, or in connection with, a public health investigation, the investigator may, subject to section 25(1), exercise—
- (a) the powers relating to entry to premises mentioned in section 22;
  - (b) the other investigatory powers mentioned in section 23; and
  - (c) the power to ask questions mentioned in section 24.

### *Investigators' powers*

## **22 Powers relating to entry to premises**

- (1) The powers referred to in section 21(4)(a) are—
- (a) subject to section 26, to enter at any reasonable time any premises which the investigator has reason to believe it is necessary to enter;
  - (b) on entering any premises by virtue of paragraph (a), to take—
    - (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) as regards any premises which the investigator may enter by virtue of paragraph (a), to direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate.
- (2) An investigator who enters any unoccupied premises in the exercise of a power conferred by virtue of subsection (1)(a) must leave the premises as effectively secured against unauthorised entry as the investigator found them.

## 23 Other investigatory powers

- (1) The powers referred to in section 21(4)(b) are—
- (a) to take such measurements and photographs and make such recordings as the investigator considers necessary for the purpose of the public health investigation;
  - (b) to obtain and to take samples (or cause samples to be taken) of—
    - (i) any articles or substances found in or on any premises which the investigator has power under section 22 to enter; and
    - (ii) the air, water or land in, on, or in the vicinity of, the premises;
  - (c) in the case of any article or substance found in or on any premises which the investigator has power to enter, being an article or substance which appears to the investigator to be the cause of the public health incident, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
  - (d) in the case of any article or substance referred to in paragraph (c), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
    - (i) to examine it (or cause it to be examined) and to do (or cause to be done) to it anything which the investigator has power to do under that paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any enactment or rule of law;
  - (e) to—
    - (i) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the investigator to see for the purposes of the investigation; and
    - (ii) inspect and take copies of, or of any entry in, the records;
  - (f) to make such examination and investigation as may in the circumstances be necessary.
- (2) Where an investigator proposes to exercise the power conferred by subsection (1)(c), the investigator must, if so requested by a person who at the time is present on the premises and has responsibilities in relation to those premises, cause anything which is done by virtue of that power to be done in the presence of that person.
- (3) Before exercising the power conferred by subsection (1)(c), an investigator must consult—
- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
  - (b) such other persons,
- as appear to the investigator to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the investigator proposes to do (or cause to be done) under the power.
- (4) The information which a person may be required to provide under subsection (1)(e) includes information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it

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is reasonable to require that person to obtain for the purposes of complying with the requirement.

(5) Nothing in this section compels the production by any person of a document subject to legal privilege.

(6) A document subject to legal privilege means a communication—  
 (a) between a professional legal adviser and the adviser’s client; or  
 (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

## **24 Power to ask questions**

(1) The power referred to in section 21(4)(c) is to require any person whom the investigator has reasonable cause to believe has any information relevant to the public health investigation to answer such questions as the investigator considers it appropriate to ask.

(2) A person required to answer questions under subsection (1) may nominate one other person to be present during questioning.

(3) When a person answers questions under subsection (1), the only other persons who may be present (apart from the investigator) are—

- (a) the person (if any) nominated under subsection (2); and
- (b) any person authorised by the investigator to be present.

(4) No answer given by a person in pursuance of a requirement imposed under subsection (1) is admissible in evidence against the person in any criminal proceedings.

## **25 Supplementary**

(1) An investigator entitled to exercise a power under section 22, 23 or 24 must, if requested to do so, produce a document showing that investigator’s authority.

(2) An investigator may require any person to provide the investigator with such facilities and assistance with respect to any matters or things—

- (a) within that person’s control; or
- (b) in relation to which that person has responsibilities,

as are necessary to enable the investigator to exercise any of the powers conferred by sections 22, 23 and 24.

(3) The Scottish Ministers may, by regulations, confer on investigators such powers as Ministers consider necessary for the purposes of public health investigations.

(4) Regulations under subsection (3) may modify any enactment (including this Act).

(5) This section and sections 22 to 24 are without prejudice to any other powers conferred on an investigator by—

- (a) this Act or any other enactment; or
- (b) any rule of law.

## **26 Entry to dwellinghouses**

- (1) Where an investigator proposes, in the exercise of a power conferred by section 22, to enter a dwellinghouse, the conditions set out in subsections (2) and (3) must be satisfied.
- (2) The first condition is that the investigator has given 48 hours' notice of the proposed entry to a person who appears to be the occupier of the dwellinghouse.
- (3) The second condition is that—
  - (a) the person who appears to be the occupier of the dwellinghouse has consented; or
  - (b) entry is effected under the authority of a warrant issued in accordance with section 27.
- (4) In this Part, “dwellinghouse” means any premises or part of premises which are wholly or mainly occupied as a person’s dwelling.

## **27 Public health investigation warrants**

- (1) This section applies where—
  - (a) an investigator entitled to enter premises under section 22—
    - (i) has been refused entry; or
    - (ii) reasonably anticipates entry being refused;
  - (b) premises which an investigator is entitled to enter are unoccupied;
  - (c) the occupier of such premises is temporarily absent and there is urgency;
  - (d) an investigator entitled to exercise a power under section 23 or 24—
    - (i) has been prevented from exercising that power; or
    - (ii) reasonably anticipates being prevented from doing so; or
  - (e) an application for admission to the premises would defeat the object of the public health investigation.
- (2) The sheriff or a justice of the peace may, on the application of the investigator, by warrant authorise the investigator—
  - (a) to enter the premises;
  - (b) on entering premises by virtue of paragraph (a), to take—
    - (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate;
  - (d) to exercise any power mentioned in sections 23 to 25.
- (3) The sheriff or justice of the peace must not, under subsection (2), grant a warrant in relation to a dwellinghouse unless the sheriff or justice is satisfied that—
  - (a) the notice required by section 26(2) has been given; and

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- (b) the period of notice has expired.
- (4) The power of entry in this section—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (5) Where the investigator enters premises by virtue of this section, section 22(2) applies.
- (6) A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

## **28 Use of powers in emergencies**

- (1) This section applies where an investigator who is entitled to enter premises by virtue of the power conferred by section 22 considers, on reasonable grounds, that there is an emergency.
- (2) The power of entry which the investigator has—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (3) Where the premises in relation to which the investigator proposes to exercise the power are a dwellinghouse, section 26 does not apply.
- (4) The investigator may, on entering premises by virtue of this section—
  - (a) take—
    - (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (b) direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate;
  - (c) exercise any power mentioned in sections 23 to 25.
- (5) Where the investigator enters premises by virtue of this section, section 22(2) applies.
- (6) In this section, there is an “emergency” if—
  - (a) there is a significant risk to public health; and
  - (b) the nature of that risk is such that immediate action is necessary—
    - (i) to verify the existence of the risk;
    - (ii) to ascertain the cause of the risk; or
    - (iii) to take action to prevent, or prevent the spread of, infectious disease or contamination.

## *Offences*

### **29 Public health investigation offences**

- (1) A person commits an offence if the person, without reasonable excuse—
- (a) fails to comply with a requirement imposed under section 22, 23, 24 or 25;
  - (b) intentionally obstructs an investigator in the exercise of powers under those sections;
  - (c) fails or refuses to—
    - (i) provide facilities or assistance;
    - (ii) provide information; or
    - (iii) permit inspection,where it is reasonably required by an investigator exercising powers under those sections;
  - (d) prevents any other person from—
    - (i) appearing before an investigator; or
    - (ii) answering a question to which an investigator may require an answer pursuant to section 24(1);
  - (e) in purported compliance with a requirement imposed under section 24(1)—
    - (i) makes a statement which the person knows to be false or misleading in a material particular;
    - (ii) recklessly makes a statement which is false or misleading in a material particular; or
    - (iii) intentionally fails to disclose any material particular;
  - (f) causes or permits another person to commit an offence under paragraphs (a) to (e).
- (2) In proceedings for an offence under subsection (1), it is a defence for a person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (3) Where the commission by a person of an offence under subsection (1) is due to the act or omission of another person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first person.

## *Compensation*

### **30 Public health investigations: compensation**

- (1) Where subsection (2) or (3) applies, compensation is payable for loss or damage caused by—
- (a) the investigator; or
  - (b) a person authorised by the investigator under section 22(1)(b)(i), 27(2)(b)(i) or 28(4)(a)(i).
- (2) This subsection applies where a person has suffered loss or damage by reason of—
- (a) the exercise by an investigator of the powers in section 22(1)(a) or (b); or
  - (b) the failure by an investigator to comply with the duty in section 22(2),

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unless the loss or damage is attributable to the fault of the person who sustained it.

- (3) This subsection applies in the case of damage to or destruction of an article or substance in exercise of powers under section 23(1)(c) where the article or substance is found not to be the cause of the public health incident.
- (4) The person responsible for paying compensation under this section is—
- (a) in the case of an investigator, the person by whom the investigator is employed;
  - (b) in the case of a person authorised by the investigator under section 22(1)(b)(i), 27(2)(b)(i) or 28(4)(a)(i), the person by whom the authorised person is employed.
- (5) For the purposes of subsection (4), “employed” includes engaged under a contract for services.
- (6) Any dispute as to—
- (a) a person’s entitlement to compensation under subsection (1); or
  - (b) the amount of such compensation,
- is to be determined by a single arbiter appointed by agreement between the parties to the dispute or, if such agreement cannot be reached, by the sheriff.