



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 4

#### PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

##### *Duty to give explanation*

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

- (1) This section applies where—
  - (a) a health board proposes to take any action mentioned in section 32(a) to (c); or
  - (b) a health board competent person proposes to take any action mentioned in section 32(d) or (e).
- (2) An action referred to in subsection (1) is, in this section, a “relevant action”.
- (3) The appropriate health board must, in so far as it is reasonably practicable to do so, explain to the person in relation to whom the relevant action is proposed—
  - (a) that there is a significant risk to public health;
  - (b) the nature of that risk; and
  - (c) why the board considers it necessary for the proposed action to be taken in relation to the person.
- (4) Where, before the proposed relevant action is taken, no explanation is given under subsection (3), the health board must, as soon as reasonably practicable after taking the proposed action and in so far as it is reasonably practicable to do so, explain—
  - (a) the matters mentioned in subsection (3)(a) and (b); and
  - (b) why the board considered it necessary to take the action,to the person in relation to whom the action was taken.
- (5) Where the person is incapable of understanding the explanation (whether because of youth, illness or otherwise), the board must, before taking the proposed action or as soon as reasonably practicable after doing so and, in either case, in so far as it is reasonably practicable to do so, give the explanation required by subsection (3) or, as the case may be, (4)—

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- (a) where the person is under 16, to any person having parental responsibilities and parental rights in relation to the person;
  - (b) in any other case, to—
    - (i) any guardian of the person;
    - (ii) any welfare attorney of the person; or
    - (iii) any other person appointed or having authority to intervene in the affairs of the person.
- (6) In this section—
- “appropriate health board” means—
- (a) in the case of a relevant action referred to in subsection (1)(a), the health board which proposes to take that action;
  - (b) in the case of a relevant action referred to in subsection (1)(b), the health board which designated the competent person who proposes to take that action;
- “guardian”—
- (a) means a guardian who has powers relating to the proposed intervention in the person's affairs; and
  - (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, a person during that person's incapacity, if the guardianship is recognised in Scotland;
- “parental responsibilities and parental rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36); and
- “welfare attorney” has the meaning given by section 16(2) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

#### Commencement Information

**II** [S. 31](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 32 Relevant actions

The actions referred to in section 31(1) are—

- (a) applying under section 33(2) for an order under section 34(1);
- (b) applying under section 39(2) for an order under section 40(1);
- (c) applying under section 41(2) or, as the case may be, 44(3) for an order under—
  - (i) section 42(1);
  - (ii) section 43(1); or
  - (iii) section 45(1);
- (d) making an order under section 37(2);
- (e) making an order under section 38(2).

#### Commencement Information

**I2** [S. 32](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

### *Medical examinations*

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

- (1) This section applies where—
- (a) a health board knows or suspects that a person who is present in that board's area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be medically examined.
- (2) The board may apply to any sheriff for the board's area for an order under section 34(1) in relation to the person.
- (3) An application under subsection (2) must—
- (a) specify—
    - (i) the person in relation to whom the order is sought;
    - (ii) the reason why the board considers it necessary for the person to be medically examined;
    - (iii) the class or classes of health care professional by whom it is proposed that the examination is to be carried out;
    - (iv) the nature of the examination the board proposes be carried out;
    - (v) whether an explanation has been given under section 31(3) or (5);
    - (vi) where such an explanation has been given, any response made by or representations made on behalf of the person in relation to whom the order is sought;
    - (vii) where no such explanation has been given, the reason why; and
  - (b) include a certificate—
    - (i) stating that a health board competent person is satisfied as to the matters mentioned in subsection (1); and
    - (ii) signed by the competent person.
- (4) In this Part, “health care professional” means—
- (a) a registered medical practitioner;
  - (b) a registered nurse; or
  - (c) any other member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

#### **Commencement Information**

**I3** S. 33 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

### 34 Order for medical examination

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make an order authorising the medical examination of the person to whom the application under section 33(2) relates.
- (2) The matters referred to in subsection (1) are—
  - (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant;
  - (b) that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be medically examined; and
  - (c) that—
    - (i) before the application under section 33(2) was made, the health board gave an explanation under section 31(3) or (5); or
    - (ii) where no such explanation was given, it was not reasonably practicable to do so.
- (3) An order under subsection (1) may make provision about such other matters in connection with the examination as the sheriff considers appropriate.
- (4) Subject to subsection (5), an order under subsection (1) has effect from the time at which it is made until—
  - (a) the expiry of the period of 7 days beginning with that time; or
  - (b) the carrying out of a medical examination authorised by the order,
 whichever occurs first.
- (5) Where, before the medical examination is carried out, an appeal under section 60(1) is made—
  - (a) the order appealed against is suspended; and
  - (b) in calculating the period of 7 days mentioned in subsection (4)(a), no account is to be taken of the period during which the order is suspended.
- (6) An order under subsection (1) must—
  - (a) specify—
    - (i) the person to whom it applies; and
    - (ii) the class or classes of health care professional by whom the medical examination is to be carried out; and
  - (b) be notified to—
    - (i) the person to whom it applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

#### Commencement Information

**I4** [S. 34](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

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

- (1) A health care professional authorised by virtue of an order under section 34(1) to medically examine a person—
  - (a) must not use invasive or intrusive procedures unless that professional considers such procedures are necessary to achieve the purpose for which the examination is being carried out; and
  - (b) must, where the professional considers such procedures are necessary for that purpose, use the least invasive and least intrusive procedures practicable.
- (2) In this section, “invasive procedures” do not include—
  - (a) examination of the ear, nose or mouth;
  - (b) temperature assessment using—
    - (i) an ear, oral or cutaneous thermometer; or
    - (ii) thermal imaging;
  - (c) physical examination of skin and hair;
  - (d) auscultation;
  - (e) external palpation;
  - (f) retinoscopy;
  - (g) external collection of urine, faeces or saliva samples;
  - (h) external measurement of blood pressure;
  - (i) electrocardiography.

#### Commencement Information

**I5** [S. 35](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### 36 Medical examination of groups

- (1) Where—
  - (a) a person in relation to whom a health board is satisfied as to the matters mentioned in section 33(1) is one of a group of two or more persons; and
  - (b) the board is satisfied that it is necessary, to avoid or minimise a significant risk to public health, for each member of the group to be medically examined,the board may apply under section 33(2) for an order in relation to all of the persons in that group.
- (2) Where subsection (1) applies—
  - (a) sections 31(3) to (5) and 33(3) apply in relation to the persons in the group as they apply in relation to a person;
  - (b) the certificate mentioned in section 33(3)(b) must state, in addition to the matters mentioned in section 33(3)(b)(i), that the competent person is satisfied that it is necessary, to avoid or minimise an actual or anticipated significant risk to public health, for all the persons in the group to be medically examined;

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- (c) the sheriff may, if satisfied—
  - (i) as to the matters mentioned in section 34(2)(a) and (b) in relation to at least one member of the group; and
  - (ii) as to the matter mentioned in section 34(2)(c) in relation to each member of the group,
 make an order under section 34(1) in relation to each member of the group; and
- (d) section 34(6) applies in relation to the persons in the group as it applies to a person.

#### Commencement Information

**I6** S. 36 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### *Exclusion orders and restriction orders*

## **37 Exclusion orders**

- (1) This section applies where—
  - (a) a health board knows that a person who is present in that board's area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be excluded from certain places.
- (2) A health board competent person may make an order (an “exclusion order”)—
  - (a) prohibiting the person from entering or remaining in any place; and
  - (b) imposing such conditions (if any) on the person as the competent person considers appropriate.
- (3) A competent person—
  - (a) may not make an exclusion order unless that person is satisfied as to the matters mentioned in subsection (1);
  - (b) must, when making such an order, have regard to the desirability of imposing the least restrictive order necessary to protect public health.
- (4) The exclusion order must—
  - (a) specify—
    - (i) the person to whom it applies;
    - (ii) subject to subsection (5), the place, or type of place, from which the person is excluded; and
    - (iii) any conditions imposed on the person;
  - (b) be served on the person to whom it applies; and
  - (c) be notified to—

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- (i) any person who was given an explanation under section 31(5); and
  - (ii) any other person the competent person considers appropriate.
- (5) An exclusion order may not specify, as a place from which a person is excluded, that person's place of residence.
- (6) An exclusion order has effect only from the time it is served on the person to whom it applies.

#### Commencement Information

I7 S. 37 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 38 Restriction orders

- (1) This section applies where—
  - (a) a health board knows that a person who is present in that board's area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be restricted from carrying on certain activities.
- (2) A health board competent person may make an order (a “restriction order”)—
  - (a) prohibiting the person from carrying on any activity; and
  - (b) imposing such conditions (if any) on the person as the competent person considers appropriate.
- (3) A competent person—
  - (a) may not make a restriction order unless that person is satisfied as to the matters mentioned in subsection (1);
  - (b) must, when making a restriction order, have regard to the desirability of imposing the least restrictive order necessary to protect public health.
- (4) The restriction order must—
  - (a) specify—
    - (i) the person to whom it applies;
    - (ii) the activity, or type of activity, which the person is prohibited from carrying on; and
    - (iii) any conditions imposed on the person;
  - (b) be served on the person to whom it applies; and
  - (c) be notified to—
    - (i) any person who was given an explanation under section 31(5); and
    - (ii) any other person the competent person considers appropriate.
- (5) A restriction order has effect only from the time it is served on the person to whom it applies.

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

#### Commencement Information

**18** S. 38 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### Quarantine

#### 39 Application to have person quarantined

- (1) This section applies where—
  - (a) a health board knows or suspects that a person who is present in that board's area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be quarantined.
- (2) The board may apply to any sheriff for the board's area for an order under section 40(1) (a “quarantine order”).
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the person in relation to whom the quarantine order is sought;
    - (ii) why the board considers it necessary for the person to be quarantined;
    - (iii) the place in which it is proposed to quarantine the person;
    - (iv) the period for which it is proposed to quarantine the person;
    - (v) the steps (if any) mentioned in section 46(2) which the board considers it necessary to take in relation to the person;
    - (vi) the conditions (if any) which the board considers it is necessary to include in the order;
    - (vii) whether an explanation has been given under section 31(3) or (5);
    - (viii) where such an explanation has been given, any response made by or representations made on behalf of the person in relation to whom the order is sought;
    - (ix) where no such explanation has been given, the reason why; and
  - (b) include a certificate—
    - (i) stating that a health board competent person is satisfied as to the matters mentioned in subsection (1); and
    - (ii) signed by that person.
- (4) In this Part, references to a person being “quarantined” are references to the person being detained in that person's residence or in another place (not being a hospital); and cognate expressions are to be construed accordingly.



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#### Commencement Information

**19** S. 39 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

## 40 Quarantine orders

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make a quarantine order—
  - (a) authorising—
    - (i) the quarantining of the person;
    - (ii) where the person is not in the place in which that person is to be quarantined, the removal of the person to that place; and
    - (iii) the taking in relation to the person of such of the steps mentioned in section 46(2) (if any) as the sheriff considers appropriate; and
  - (b) imposing such conditions (if any) in relation to the quarantine as the sheriff considers appropriate.
- (2) The matters referred to in subsection (1) are—
  - (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant;
  - (b) that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be quarantined; and
  - (c) that—
    - (i) before the application under section 39(2) was made, the health board gave an explanation under section 31(3) or (5); or
    - (ii) where no such explanation was given, it was not reasonably practicable to do so.
- (3) A quarantine order has effect—
  - (a) from the time at which it is made;
  - (b) for such period, not exceeding 3 weeks beginning with the day on which the order is made, as the sheriff considers appropriate.
- (4) A person may be removed to a place in which the person is to be quarantined by—
  - (a) a constable;
  - (b) an officer of the health board;
  - (c) an officer of a local authority; or
  - (d) any other person the sheriff considers appropriate.
- (5) Conditions imposed by a quarantine order may include—
  - (a) conditions relating to—
    - (i) the persons who may have access to the place in which a person is quarantined; and
    - (ii) the purposes for which such persons may have access;

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- (b) conditions relating to—
    - (i) the persons who may have access to the quarantined person; and
    - (ii) the purposes for which such persons may have access;
  - (c) conditions relating to the welfare of the quarantined person.
- (6) A quarantine order must—
- (a) specify—
    - (i) the person to whom the order applies;
    - (ii) the place in which the person is to be quarantined;
    - (iii) the period for which the person is to be quarantined;
    - (iv) the steps mentioned in section 46(2) (if any) which may be taken in relation to the quarantined person; and
    - (v) any conditions imposed; and
  - (b) be notified to—
    - (i) the person to whom it applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.

#### Commencement Information

**I10** S. 40 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### *Removal to and detention in hospital*

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

- (1) This section applies where—
  - (a) a health board knows that a person who is present in that board's area—
    - (i) has an infectious disease; or
    - (ii) is contaminated; and
  - (b) it appears to the board that as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be detained in hospital.
- (2) The board may apply to any sheriff for the board's area—
  - (a) where the person is not in hospital, for an order under section 42(1);
  - (b) where the person is in hospital, for an order under section 43(1).
- (3) An order referred to in subsection (2) is a “short term detention order”.
- (4) An application under subsection (2) must—
  - (a) specify—
    - (i) the person in relation to whom the order is sought;
    - (ii) why the board considers it necessary for the person to be detained in hospital;
    - (iii) the hospital in which it is proposed to detain the person;

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- (iv) the period for which it is proposed to detain the person;
- (v) the steps (if any) mentioned in section 46(2) which the board considers it necessary to take in relation to the person;
- (vi) whether an explanation has been given under section 31(3) or (5);
- (vii) where such an explanation has been given, any response made by or representations made on behalf of the person in relation to whom the order is sought;
- (viii) where no such explanation has been given, the reason why; and
- (b) include a certificate—
  - (i) stating that a health board competent person is satisfied as to the matters mentioned in subsection (1); and
  - (ii) signed by that person.

#### Commencement Information

**III** S. 41 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

## 42 Order for removal to and detention in hospital

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make an order authorising—
  - (a) the removal of a person to hospital by—
    - (i) a constable;
    - (ii) an officer of the health board;
    - (iii) an officer of a local authority; or
    - (iv) any other person the sheriff considers appropriate;
  - (b) the detention of the person in hospital; and
  - (c) the taking in relation to the person of such of the steps mentioned in section 46(2) (if any) as the sheriff considers appropriate.
- (2) The matters referred to in subsection (1) are—
  - (a) that the person—
    - (i) has an infectious disease; or
    - (ii) is contaminated;
  - (b) that as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be admitted to and detained in hospital; and
  - (c) that—
    - (i) before the application under section 41(2)(a) was made, the health board gave an explanation under section 31(3) or (5); or
    - (ii) where no such explanation was given, it was not reasonably practicable to do so.
- (3) An order under subsection (1) has effect—
  - (a) from the time at which it is made;
  - (b) for such period, not exceeding 3 weeks beginning with the day on which the order is made, as the sheriff considers appropriate.

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- (4) An order under subsection (1) must—
- (a) specify—
    - (i) the person to whom it applies;
    - (ii) the hospital to which the person is to be taken (and in which the person is to be detained);
    - (iii) the period for which the person is to be detained in hospital; and
    - (iv) the steps mentioned in section 46(2) (if any) which may be taken in relation to the person; and
  - (b) be notified to—
    - (i) the person to whom it applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.
- (5) A person authorised under subsection (1)(a) to remove to hospital a person to whom an order under subsection (1) applies may enter any premises in which that person is present in order to execute the order.
- (6) The power of entry in subsection (5)—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.

#### Commencement Information

**I12** S. 42 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 43 Order for detention in hospital

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make an order authorising—
- (a) the detention of a person in hospital; and
  - (b) the taking in relation to the person of such of the steps mentioned in section 46(2) (if any) as the sheriff considers appropriate.
- (2) The matters referred to in subsection (1) are—
- (a) that the person—
    - (i) has an infectious disease; or
    - (ii) is contaminated;
  - (b) that as a result—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be detained in hospital; and
  - (c) that—
    - (i) before the application under section 41(2)(b) was made, the health board gave an explanation under section 31(3) or (5); or
    - (ii) where no such explanation was given, it was not reasonably practicable to do so.
- (3) An order under subsection (1) has effect—

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- (a) from the time at which it is made;
  - (b) for such period, not exceeding 3 weeks beginning with the day on which the order is made, as the sheriff considers appropriate.
- (4) An order under subsection (1) must—
- (a) specify—
    - (i) the person to whom the order applies;
    - (ii) the hospital in which the person is to be detained;
    - (iii) the period for which the person is to be detained in hospital; and
    - (iv) the steps mentioned in section 46(2) (if any) which may be taken in relation to the person; and
  - (b) be notified to—
    - (i) the person to whom it applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.

#### Commencement Information

**I13** S. 43 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 44 Application where long term detention in hospital necessary

- (1) This section applies where—
- (a) a person is detained in hospital by virtue of a short term detention order; and
  - (b) the health board which applied for the short term detention order is satisfied that—
    - (i) the conditions mentioned in subsection (2)(a) and (b) continue to apply;
    - (ii) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be detained in hospital; and
    - (iii) it is necessary, to avoid or minimise that risk, for the person to be so detained for a period exceeding the maximum period for which a person could be detained by virtue of the short term detention order were that order to be extended under section 49(5)(a) (the “short term maximum period”).
- (2) The conditions referred to in subsection (1)(b)(i) are—
- (a) that the person to whom the order applies—
    - (i) has an infectious disease; or
    - (ii) is contaminated; and
  - (b) that as a result there is a significant risk to public health.
- (3) The board may apply to any sheriff for the board's area for an order under section 45(1) (an “exceptional detention order”).
- (4) An application under subsection (3) must—
- (a) specify—
    - (i) the person in relation to whom the order is sought;

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- (ii) why the board considers it necessary for the person to continue to be detained in hospital;
- (iii) why the board considers it necessary for the person to be so detained for a period exceeding the short term maximum period;
- (iv) the hospital in which it is proposed to detain the person;
- (v) the period for which it is proposed to detain the person;
- (vi) the steps (if any) mentioned in section 46(2) which the board considers it necessary to take in relation to the person;
- (vii) whether an explanation has been given under section 31(3) or (5);
- (viii) where such an explanation has been given, any response made by or representations made on behalf of the person in relation to whom the order is sought;
- (ix) where no such explanation has been given, the reason why; and
- (b) include a certificate—
  - (i) stating that a health board competent person from another health board's area is satisfied as to the matters mentioned in subsection (1); and
  - (ii) signed by that person.

#### Commencement Information

**I14** S. 44 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 45 Exceptional detention order

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make an exceptional detention order authorising—
  - (a) the continued detention of a person in hospital; and
  - (b) the taking in relation to the person of such of the steps mentioned in section 46(2) (if any) as the sheriff considers appropriate.
- (2) The matters referred to in subsection (1) are—
  - (a) that the conditions mentioned in section 44(2)(a) and (b) continue to apply;
  - (b) that it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be detained in hospital;
  - (c) that it is necessary for the person to be so detained for a period exceeding the short term maximum period; and
  - (d) that—
    - (i) before the application under section 44(3) was made, the health board gave an explanation under section 31(3) or (5); or
    - (ii) where no such explanation was given, it was not reasonably practicable to do so.
- (3) An exceptional detention order has effect—
  - (a) from the time at which it is made;
  - (b) for such period, not exceeding 12 months beginning with the day on which the order is made, as the sheriff considers appropriate.
- (4) An order under subsection (1) must—

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- (a) specify—
  - (i) the person to whom the order applies;
  - (ii) the hospital in which the person is to be detained;
  - (iii) the period for which the person is to be detained in hospital; and
  - (iv) the steps mentioned in section 46(2) (if any) which may be taken in relation to the person; and
- (b) be notified to—
  - (i) the person to whom it applies;
  - (ii) any person to whom an explanation was given under section 31(5); and
  - (iii) any other person the sheriff considers appropriate.

**Commencement Information**

**I15** [S. 45](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

*Quarantine and detention: steps that may be taken*

**46 Authorised steps**

- (1) Where—
  - (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,is made, the steps which the order may authorise are the steps mentioned in subsection (2).
- (2) Those steps are—
  - (a) disinfection;
  - (b) disinfestation; and
  - (c) decontamination.

**Commencement Information**

**I16** [S. 46](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

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

- (1) A health care professional taking any step mentioned in section 46(2) which is authorised by virtue of—
  - (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,must not, in taking that step, use invasive or intrusive procedures unless that professional considers such procedures are necessary to achieve the purpose for which the step is being taken.

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- (2) Where the health care professional considers such procedures are so necessary, the professional must use the least invasive and least intrusive procedures practicable.

#### Commencement Information

**I17** S. 47 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### *Variation and extension of orders*

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

- (1) This section applies where a person is subject to—
- (a) an exclusion order; or
  - (b) a restriction order.
- (2) A health board competent person of the appropriate health board may, if that person considers it appropriate, modify the order—
- (a) in the case of an exclusion order, by varying the place, or type of place, from which the person is excluded;
  - (b) in the case of a restriction order, by varying the activity, or type of activity, which the person is prohibited from carrying on; and
  - (c) in either case—
    - (i) where the order imposed no conditions on the person, by imposing such conditions; or
    - (ii) in any other case, by modifying any conditions imposed on the person.
- (3) In subsection (2)(c)(ii), modifying conditions means—
- (a) adding;
  - (b) varying; or
  - (c) removing,
- a condition.
- (4) The competent person must give notice of the modification made to—
- (a) the person to whom the order applies; and
  - (b) any other person to whom the order was notified under section 37(4)(c) or, as the case may be, 38(4)(c).
- (5) In subsection (2), “appropriate health board” means the board which designated the health board competent person who made the order.

#### Commencement Information

**I18** S. 48 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) This section applies where a person is subject to—
- (a) a quarantine order;



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- (b) a short term detention order; or
  - (c) an exceptional detention order.
- (2) A health board may, before the period specified in the order expires, apply to the sheriff for an extension of the order.
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the order which it is proposed to extend; and
    - (ii) the person to whom that order applies; and
  - (b) include a certificate such as is mentioned in subsection (4).
- (4) That certificate is one—
  - (a) stating that a health board competent person is satisfied—
    - (i) as to the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
    - (ii) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital; and
  - (b) signed by that person.
- (5) The sheriff may, if satisfied as to the matters mentioned in subsection (6)—
  - (a) in the case of a quarantine order or a short term detention order, make an order extending the order, subject to subsection (8), for a further period not exceeding 3 weeks beginning with the day on which the period specified in the order would have expired;
  - (b) in the case of an exceptional detention order, make an order extending the order, subject to subsection (9), for a further period beginning with the day on which the period specified in the order would have expired.
- (6) The matters referred to in subsection (5) are—
  - (a) the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
  - (b) that it is necessary, to avoid or minimise the risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital.
- (7) An order may be extended on more than one occasion.
- (8) A quarantine order or a short term detention order may not be extended if doing so would result in the person to whom it applies being quarantined or, as the case may be, detained in hospital for a continuous period exceeding 12 weeks.
- (9) An exceptional detention order may not be extended if doing so would result in the person to whom it applies being detained in hospital by virtue of that order for a continuous period exceeding 12 months.
- (10) An order under subsection (5)(a) or (b) must—
  - (a) specify—
    - (i) the person to whom the order extended by virtue of that subsection applies; and
    - (ii) the period for which that order is extended; and
  - (b) be notified to—
    - (i) the person to whom the order applies;

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (ii) any person to whom an explanation was given under section 31(5);  
and
- (iii) any other person the sheriff considers appropriate.

#### Commencement Information

**I19** S. 49 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) This section applies where a person is subject to—
  - (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order.
- (2) A health board may, if it considers it appropriate, apply to the sheriff for an order under section 51(1) modifying the order.
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the order which it is proposed to modify;
    - (ii) the person to whom that order applies; and
    - (iii) the modification which it is proposed to make; and
  - (b) include a certificate such as is mentioned in subsection (4).
- (4) That certificate is one—
  - (a) stating that a health board competent person is satisfied—
    - (i) as to the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
    - (ii) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital; and
  - (b) signed by that person.

#### Commencement Information

**I20** S. 50 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 51 Variation of quarantine and hospital detention orders

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2) and that it is appropriate to do so, make an order modifying the order to which the application relates—
  - (a) in the case of a quarantine order, by—
    - (i) varying the place in which the person is to be quarantined;
    - (ii) adding, varying or removing conditions;
  - (b) in the case of a short term detention order or an exceptional detention order, by varying the hospital in which the person is detained;

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (c) in either case, by adding or removing any step such as is mentioned in section 46(2).
- (2) The matters referred to in subsection (1) are—
  - (a) the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
  - (b) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital.
- (3) An order modified by virtue of subsection (1) has effect as so modified from the time at which the order under that subsection is made.
- (4) Where the modification under subsection (1) varies the place in which a person is to be quarantined or, as the case may be, the hospital in which a person is to be detained, the order as so modified authorises—
  - (a) the removal of the person to that place or, as the case may be, hospital, by—
    - (i) a constable;
    - (ii) an officer of the health board;
    - (iii) an officer of a local authority; or
    - (iv) any other person the sheriff considers appropriate; and
  - (b) the quarantining of the person in that place or, as the case may be, the detention of that person in that hospital.
- (5) An order under subsection (1) must—
  - (a) specify—
    - (i) the person to whom the order modified by virtue of that subsection applies; and
    - (ii) the modification made by virtue of that subsection; and
  - (b) be notified to—
    - (i) the person to whom the order applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.

#### Commencement Information

**I21** S. 51 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### *Review of orders*

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

- (1) This section applies where a person is subject to—
  - (a) an exclusion order; or
  - (b) a restriction order.
- (2) Without prejudice to section 53(2), a health board competent person of the appropriate health board must, during the period of 1 week ending with the relevant day, consider whether—
  - (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and

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- (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) The conditions referred to in subsection (2)(a) are—
  - (a) that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) that as a result there is a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
  - (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,
 the competent person must revoke it.
- (5) In subsection (2)—
  - “appropriate health board” has the same meaning as in section 48(5);
  - “relevant day” means—
    - (a) the last day of the period of 3 weeks beginning with the day on which the order is made; and
    - (b) where that 3-week period has expired, the last day of each subsequent 3-week period.

**Commencement Information****I22** S. 52 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1**53 Duty to keep exclusion and restriction orders under review**

- (1) This section applies where a person is subject to—
  - (a) an exclusion order; or
  - (b) a restriction order.
- (2) Without prejudice to section 52(2), a health board competent person of the appropriate health board must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
  - (a) the conditions mentioned in section 52(3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
  - (a) that the conditions mentioned in section 52(3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,
 the competent person must revoke it.
- (4) In subsection (2), the “appropriate health board” has the same meaning as in section 48(5).

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

#### Commencement Information

**I23** [S. 53](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### 54 Duty to keep quarantine orders under review

- (1) This section applies where a person is subject to a quarantine order.
- (2) A health board competent person of the health board which applied for the order must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
  - (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) The conditions referred to in subsection (2)(a) are—
  - (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) that as a result there is or may be a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
  - (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,the competent person must revoke the order.

#### Commencement Information

**I24** [S. 54](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### 55 Duty to keep hospital detention orders under review

- (1) This section applies where a person is subject to—
  - (a) a short term detention order; or
  - (b) an exceptional detention order.
- (2) A health board competent person of the health board which applied for the order must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
  - (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be detained in hospital.
- (3) The conditions referred to in subsection (2)(a) are—
  - (a) that the person—
    - (i) has an infectious disease; or

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (ii) is contaminated;
  - (b) that as a result there is a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
- (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be detained in hospital,
- the competent person must revoke the order.

#### Commencement Information

**I25** S. 55 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### Compensation

#### 56 Compensation for voluntary compliance with request

- (1) A health board must compensate any person who, although not subject to an order mentioned in subsection (2), suffers any loss caused by complying with a request by the board to the person to—
- (a) be quarantined in a place specified by the board;
  - (b) be excluded from entering or remaining in a place, or type of place, so specified; or
  - (c) refrain from carrying on any activity, or type of activity, so specified.
- (2) The orders referred to in subsection (1) are—
- (a) an exclusion order;
  - (b) a restriction order;
  - (c) a quarantine order.
- (3) A request by a health board under subsection (1)—
- (a) is to be made by notice in writing given to the person; and
  - (b) must specify the matter mentioned in subsection (1)(a), (b) or, as the case may be, (c).
- (4) Subsection (1) does not apply where the loss is attributable to the fault of the person claiming the loss.
- (5) Any dispute as to—
- (a) a person's entitlement to compensation under this section; or
  - (b) the amount of such 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 the sheriff.
- (6) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

#### Commencement Information

**I26** S. 56 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

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

- (1) A health board may compensate any person—
  - (a) who is subject to—
    - (i) an exclusion order;
    - (ii) a restriction order; or
    - (iii) a quarantine order; and
  - (b) who incurs any loss caused by complying with the order.
- (2) Subsection (1) does not apply where the loss is attributable to the fault of the person claiming the loss.
- (3) Any dispute as to—
  - (a) a person's entitlement to compensation under this section; or
  - (b) the amount of such 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 the sheriff.
- (4) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

### **Commencement Information**

**I27** S. 57 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## **58 Compensation for carers**

- (1) This section applies where a person (the “relevant person”)—
  - (a) is subject to—
    - (i) an exclusion order;
    - (ii) a restriction order; or
    - (iii) a quarantine order; or
  - (b) although not subject to such an order, complies with a request mentioned in section 56.
- (2) The health board must compensate a person (a “carer”) mentioned in subsection (3) who, as a result of the relevant person being subject to the order or, as the case may be, complying with the request—
  - (a) requires to care for the relevant person or, where the carer normally cares for the relevant person, requires to provide more care; and
  - (b) incurs loss as a result of so doing.
- (3) A carer is—
  - (a) where the relevant person is 16 or over, a person who is 16 or over and who cares for the relevant person otherwise than—
    - (i) by virtue of a contract of employment or other contract with any person; or
    - (ii) as a volunteer for a voluntary organisation;
  - (b) where the relevant person is under 16, such a person or a parent of the relevant person who has day-to-day care or control of the relevant person.

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (4) Any dispute as to—
- (a) a carer's entitlement to compensation under this section; or
  - (b) the amount of such compensation,
- is to be determined by a single arbiter appointed by agreement between the board and the carer or, if such agreement cannot be reached, by the sheriff.
- (5) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

#### Commencement Information

**I28** S. 58 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### *Recall of orders granted in absence*

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

- (1) This section applies where—
- (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,
- is made in the absence of the person to whom the order applies.
- (2) A person mentioned in subsection (3) may apply to the sheriff for an order recalling the order.
- (3) The person referred to in subsection (2) is—
- (a) the person to whom the order applies; or
  - (b) any person having an interest in the welfare of such a person.
- (4) An application under this section must be made before the expiry of the period of 72 hours beginning with the time at which the order to which the application relates is notified to the person to whom it applies.
- (5) Despite the making of an application under this section, the order to which it relates has effect as if the application were not made.
- (6) The sheriff must, before determining an application under this section, give the persons mentioned in subsection (7) the opportunity—
- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (7) Those persons are—
- (a) the applicant;
  - (b) where the applicant is not the person to whom the order applies, that person;
  - (c) the health board which applied for the order; and
  - (d) any other person the sheriff considers appropriate.
- (8) On an application under this section, the sheriff may—
- (a) confirm the order;



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- (b) revoke the order.

**Commencement Information**

**I29** S. 59 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

*Appeals*

**60 Appeal against orders for medical examination**

- (1) A person mentioned in subsection (2) may appeal to the sheriff principal against the making of an order under section 34(1) authorising the medical examination of a person.
- (2) The person referred to in subsection (1) is—
  - (a) the person in relation to whom the order applies; or
  - (b) any person having an interest in the welfare of such a person.
- (3) An appeal under this section must be made before the expiry of the period of 7 days beginning with the day on which the order appealed against is made.
- (4) On an appeal under this section, the sheriff principal may—
  - (a) confirm the order;
  - (b) revoke the order;
  - (c) modify the order;
  - (d) where, before the appeal was made, the medical examination authorised by the order had been carried out, make an order declaring that the order was invalid;
  - (e) make such other order as the sheriff principal considers appropriate.
- (5) The decision of the sheriff principal on an appeal under this section is final.

**Commencement Information**

**I30** S. 60 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) This section applies where a person is subject to—
  - (a) an exclusion order; or
  - (b) a restriction order.
- (2) A person mentioned in subsection (3) may appeal to the sheriff against—
  - (a) the making of the order;
  - (b) any conditions imposed by the order;
  - (c) any modification of the order under section 48(2); or
  - (d) a decision of a health board competent person under section 52(4) or 53(3) not to revoke the order.
- (3) The person referred to in subsection (2) is—
  - (a) the person in relation to whom the order applies; or

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (b) any person who has an interest in the welfare of such a person.
- (4) An appeal under this section must be made before the expiry of the period of 14 days beginning with the day on which the order, modification or, as the case may be, decision appealed against is made.
- (5) On an appeal under this section, the sheriff may—
  - (a) confirm the order appealed against;
  - (b) modify the order;
  - (c) revoke the order;
  - (d) confirm the decision appealed against;
  - (e) quash that decision;
  - (f) make such other order as the sheriff considers appropriate.
- (6) In subsection (5)(b), “modify” is to be construed in accordance with section 48.

#### Commencement Information

**I31** [S. 61](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), [art. 2\(a\)](#), [Sch. 1](#)

## 62 Appeal against quarantine and hospital detention orders

- (1) This section applies where a person is subject to—
  - (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order.
- (2) A person mentioned in subsection (3) may appeal to the sheriff principal against—
  - (a) the making of the order;
  - (b) in the case of a quarantine order, any conditions imposed by the order;
  - (c) any steps mentioned in section 46(2) specified in the order;
  - (d) a decision of the sheriff under section 59(8) confirming the order;
  - (e) the making of an order extending the order under section 49(5);
  - (f) the making of an order under section 51(1) modifying the order; or
  - (g) a decision of a health board competent person under section 54(4) or, as the case may be, 55(4) not to revoke the order.
- (3) The person referred to in subsection (2) is—
  - (a) the person in relation to whom the order applies; or
  - (b) any person who has an interest in the welfare of such a person.
- (4) An appeal under this section must be made before the expiry of the period of 14 days beginning with the day on which the order or, as the case may be, decision appealed against is made.
- (5) On an appeal under this section, the sheriff principal may—
  - (a) confirm the order appealed against;
  - (b) modify the order;
  - (c) revoke the order;
  - (d) confirm the decision appealed against;

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- (e) quash that decision;
  - (f) make such other order as the sheriff principal considers appropriate.
- (6) In subsection (5)(b), “modify” is to be construed in accordance with section 51(1).

#### Commencement Information

**I32** S. 62 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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

- (1) A person who appealed under section 61(2) may, with the leave of the sheriff, appeal against a decision mentioned in subsection (2) to the sheriff principal.
- (2) A decision referred to in subsection (1) is a decision of the sheriff—
  - (a) to confirm the exclusion order appealed against;
  - (b) to confirm the restriction order appealed against;
  - (c) to modify the order; or
  - (d) to confirm the decision appealed against.
- (3) A health board aggrieved by an appeal under section 61(2) may, with the leave of the sheriff, appeal against a decision mentioned in subsection (4) to the sheriff principal.
- (4) A decision referred to in subsection (3) is a decision of the sheriff—
  - (a) to revoke the exclusion order appealed against;
  - (b) to revoke the restriction order appealed against;
  - (c) to modify the order; or
  - (d) to quash the decision appealed against.
- (5) An appeal under this section may be made only on the ground that—
  - (a) the sheriff erred in law;
  - (b) the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.
- (6) On an appeal under this section, the sheriff principal may—
  - (a) confirm the decision appealed against;
  - (b) modify that decision;
  - (c) quash that decision;
  - (d) make such other order as the sheriff principal considers appropriate.
- (7) The decision of the sheriff principal on an appeal under this section is final.

#### Commencement Information

**I33** S. 63 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 64 Appeal to Court of Session

- (1) A person who appealed under section 62(2) may, with the leave of the sheriff principal, appeal against a decision mentioned in subsection (2) to the Court of Session.

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- (2) A decision referred to in subsection (1) is a decision of the sheriff principal—
  - (a) to confirm the order appealed against;
  - (b) to modify the order; or
  - (c) to confirm the decision appealed against.
- (3) A health board aggrieved by an appeal under section 62(2) may, with the leave of the sheriff principal, appeal against a decision mentioned in subsection (4) to the Court of Session.
- (4) A decision referred to in subsection (3) is a decision of the sheriff principal—
  - (a) to revoke the order appealed against;
  - (b) to modify the order; or
  - (c) to quash the decision appealed against.
- (5) An appeal under this section may be made only on the ground that—
  - (a) the sheriff principal erred in law;
  - (b) the decision of the sheriff principal was not supported by the facts established by the sheriff principal in the appeal.
- (6) On an appeal under this section, the Court of Session may—
  - (a) confirm the decision appealed against;
  - (b) modify that decision;
  - (c) quash that decision;
  - (d) make such other order as the Court considers appropriate.
- (7) The decision of the Court on an appeal under this section is final.

#### **Commencement Information**

**I34** [S. 64](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

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

Despite the making of an appeal under section 61(2), 62(2), 63(1) or (3) or 64(1) or (3), the exclusion order, restriction order, quarantine order, short term detention order or, as the case may be, exceptional detention order to which the appeal relates has effect as if the appeal were not made.

#### **Commencement Information**

**I35** [S. 65](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### *Breach of orders and offences*

## **66 Absconding from quarantine**

- (1) Where a person who is subject to a quarantine order breaches that order by absconding—
  - (a) while being removed to the place at which that person is to be quarantined; or

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (b) from that place,  
that person is liable to be taken into custody by a person mentioned in subsection (2) and detained in accordance with subsections (3) and (4).
- (2) The persons who may take a quarantined person into custody are—
  - (a) a constable;
  - (b) an officer of a health board;
  - (c) an officer of a local authority.
- (3) The quarantined person may be detained in—
  - (a) a hospital; or
  - (b) any other place.
- (4) The period for which the quarantined person may be detained by virtue of subsection (1) is the period or, as the case may be, the remainder of the period for which the quarantine of that person is authorised.
- (5) In calculating the period mentioned in subsection (4), the period beginning when the quarantined person absconded and ending when that person is detained in accordance with subsection (1) is to be left out of account.
- (6) A person who may take a quarantined person into custody may enter any premises in which the quarantined person is present.
- (7) The power of entry in subsection (6)—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (8) A person who is taken into custody under this section and who absconds remains liable to be taken into custody under and detained in accordance with this section.
- (9) Notwithstanding the detention of a quarantined person in accordance with subsections (3) and (4), the health board may apply under section 49(2) for an extension of the quarantine order; and, where such an extension is granted, the quarantined person may be removed by a person mentioned in section 40(4) to the place in which the person is to be quarantined.

#### Commencement Information

**I36** S. 66 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

## 67 Absconding from hospital

- (1) This section applies where a person is subject to—
  - (a) a short term detention order; or
  - (b) an exceptional detention order.
- (2) A person who absconds—
  - (a) while being removed to the hospital in which that person is to be detained; or
  - (b) from the hospital in which the person is detained,is liable to be taken into custody by a person mentioned in subsection (3) and returned to hospital in accordance with subsection (4).

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (3) The persons who may take a person who has absconded into custody are—
  - (a) a constable;
  - (b) an officer of a health board;
  - (c) an officer of a local authority.
- (4) The absconding person may—
  - (a) be returned to the hospital in which the person's detention is authorised; and
  - (b) be detained there for the period or, as the case may be, the remainder of the period for which detention of that person is authorised.
- (5) In calculating the period mentioned in subsection (4)(b), the period beginning when the person absconded and ending when that person is returned to hospital by virtue of subsection (2) is to be left out of account.
- (6) A person who may take an absconding person into custody may enter any premises in which the person is present.
- (7) The power of entry in subsection (6)—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (8) A person who is taken into custody under this section and who absconds remains liable to be taken into custody under and dealt with in accordance with this section.

#### Commencement Information

**I37** S. 67 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 68 Obstruction

A person commits an offence if that person, without reasonable excuse, intentionally obstructs—

- (a) a health care professional authorised by virtue of an order under section 34(1) to medically examine a person;
- (b) a person authorised by virtue of section 40(1) to remove a person to the place in which the person is to be quarantined; or
- (c) a person authorised by virtue of section 42(1) to remove a person to hospital.

#### Commencement Information

**I38** S. 68 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

## 69 Offences arising from breach of orders under this Part

- (1) A person subject to an order mentioned in subsection (2) who, without reasonable excuse, breaches that order commits an offence.
- (2) The order referred to in subsection (1) is—
  - (a) an order under section 34(1) authorising medical examination;
  - (b) an exclusion order;

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

- (c) a restriction order;
- (d) a quarantine order (including any condition imposed by the order);
- (e) a short term detention order;
- (f) an exceptional detention order.

#### Commencement Information

**I39** S. 69 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 70 Failure to ensure child's compliance with order

- (1) This section applies where an order mentioned in subsection (2) is made in relation to a person who is under 16 (a “child”).
- (2) The order referred to in subsection (1) is—
  - (a) an exclusion order;
  - (b) a restriction order; or
  - (c) a quarantine order.
- (3) A parent of the child who—
  - (a) has day-to-day care or control of the child; and
  - (b) fails, without reasonable excuse, to ensure that the child does not breach the order,commits an offence.
- (4) Where there is no such parent, a person mentioned in subsection (5) who fails, without reasonable excuse, to ensure that the child does not breach the order commits an offence.
- (5) The person referred to in subsection (4) is a person who—
  - (a) is 16 or over; and
  - (b) has day-to-day care or control of the child otherwise than—
    - (i) by virtue of a contract of employment or other contract with any person; or
    - (ii) as a volunteer for a voluntary organisation.
- (6) In proceedings for an offence under subsection (3) or (4), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.

#### Commencement Information

**I40** S. 70 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4. (See end of Document for details)*

## Procedure

### 71 Applications and appeals

- (1) Nothing in this Part affects the Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) to regulate and prescribe the procedure and practice to be followed in any application or appeal under this Part.
- (2) Without prejudice to the generality of section 32 of that Act, provision may, in particular, be made under that section about—
  - (a) the manner in which, and time within which, notice of applications for orders is given;
  - (b) the manner in which, and time within which, notice of orders is given;
  - (c) where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications and orders must be given;
  - (d) the circumstances in which the sheriff or, as the case may be, the sheriff principal, may determine whether and, if so, where, a hearing is to be held; and
  - (e) the place, or types of place, at which hearings may be held.
- (3) The sheriff may determine an application under this Part (other than an appeal)—
  - (a) in chambers;
  - (b) in the absence of the person to whom the application relates.

#### Commencement Information

**I41** [S. 71](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)



**Status:**

Point in time view as at 01/10/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Part 4.