



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 4

PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

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

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

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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
 - (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

I2 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

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- (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;
 - (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

I3 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—

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- (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

I4 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.
- (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

I5 S. 64 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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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

I6 [S. 65](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 95(4)(aa) inserted by [S.S.I. 2019/142 reg. 2\(2\)](#)
- s. 96(5)(aa) inserted by [S.S.I. 2019/142 reg. 2\(3\)](#)