



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 4

PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

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;
 - (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);

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- (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

II 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.
- (4) An order under subsection (1) must—
 - (a) specify—
 - (i) the person to whom it applies;

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- (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

I2 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—
 - (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 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

I3 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;
 - (ii) why the board considers it necessary for the person to continue to be detained in hospital;

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- (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

I4 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—
- (a) specify—
 - (i) the person to whom the order applies;

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- (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

I5 S. 45 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

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