



# 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.

**Annotations:**

**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.

**Annotations:**

**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;

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- (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.

**Annotations:**

**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;

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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.

**Annotations:**

**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.

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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.

**Annotations:**

**Commencement Information**

**I5** S. 45 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. 92(1)(b)(i)(ii) inserted by [2016 asp 20 Sch. 1 para. 2\(a\)](#)