



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.

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;
 - (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

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- (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.

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.
- (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;

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(ii) any person to whom an explanation was given under section 31(5);
 and

(iii) any other person the sheriff considers appropriate.

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;
 - (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.

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;
 - (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.