

CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 1: Protection of the individual

Care Homes

48. Section 63 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) adds provisions on improvements notices for local authority services to cover cases where the local authority considers that a withdrawal of registration would place it in breach of a statutory duty.
49. Paragraphs 16 and 17 of schedule 1 add temporary modifications to Part 5 of the 2010 Act. These modifications will have effect for a limited period of time.
50. Paragraph 16 adds sections 63A and 63B to the 2010 Act.
51. Section 63A requires that where the Health Board considers that, for a reason relating to coronavirus, there is a material risk to the health of persons at the specified accommodation, the Health Board may issue a direction to the service provider to take specific steps. Subsection (3) requires that the steps must relate directly to reducing the risk to the health of persons at the care home. Subsection (7) requires the direction to be in writing.
52. Subsections (4) and (5) of section 63A provide that when making a direction, the health board must have regard to any guidance issued by Scottish Ministers which must be published by the Scottish Ministers in an appropriate manner.
53. Subsection (6) of section 63A gives the health board power to vary or revoke a direction.
54. Section 63B gives Health Boards the power to act where a section 63A direction has not been complied with. Subsection (2) of section 63B allows the Health Board to enter the care home, carry out the steps themselves and recover the costs incurred of doing so from the provider.
55. Subsections (3) and (4) of section 63B allow a Sheriff to grant a warrant to allow the Health Board to carry out these actions if entry to the care home is refused and if there are reasonable grounds for entering the care home. Subsection (5) provides that the warrant will expire either within 28 days of when it was granted or once the specified steps have been taken.
56. Subsection (6) of section 63B provides that a failure to comply with a warrant granted under section 63B is a relevant offence for the purposes of section 64 of the 2010 Act. This means that the Care Inspectorate¹ may cancel the registration of a provider if they fail to comply with a warrant.
57. Paragraph 17 inserts sections 65A and 65B into the 2010 Act.

¹ The statutory name of the Care Inspectorate is Social Care and Social Work Improvement Scotland and in the 2010 Act it is referred to as SCSWIS.

58. Section 65A(1) provides that Scottish Ministers may apply to a Sheriff Court or Court of Session for an emergency intervention order in respect of a care home service provided at a care home which is stated in the application. Subsection (7) provides that the court must make an emergency intervention order if it appears there is, due to coronavirus, a serious risk to the life, health and wellbeing of people at the care home. Subsection (8) provides for any necessary incidental provisions to be included in the order (such as prohibiting the provider of a care home service from selling the care home, if the court considers such a provision should be contained in an order)
59. Subsection (2) provides that, when granted by a court, an emergency intervention order authorises the Scottish Ministers to nominate an officer who can enter the care home, direct and control the provision of the care home service and do anything that the officer considers necessary to ensure the service is provided to an appropriate standard for an initial period of up to 12 months. The provider of the care home service is required to comply with any direction given by the nominated officer.
60. Subsection (3) provides the court may make an interim order on application.
61. Subsection (5) provides that Scottish Ministers can exercise these powers prior to making an application to the Sheriff Court or Court of Session where the Scottish Ministers are satisfied that intervening in a care home is essential to prevent imminent or serious risk to the life or health of any person in the care home. Subsection (6) provides that where this power has been exercised, the Scottish Ministers must make an application to the court within 24 hours.
62. Subsections (13) and (14) provide that the court may vary, extend or revoke an order on application of the Scottish Ministers or the affected providers. This also applies to interim orders. An emergency intervention order can be extended for a further period of up to 6 months. This means that the maximum amount of time that an emergency intervention order can be in place for is 18 months.
63. Where an application for an emergency intervention order (or an interim order) is granted or refused, the usual rights of appeal from decisions of a sheriff as set out in the Court Reform (Scotland) Act 2014. Similarly, where an application for an emergency intervention order (or an interim order) is determined by the Court of Session, the usual rights of appeal against decisions made by a court of session judge, as set out in the Court of Session Act 1988, will apply. Section 65B provides that Scottish Ministers may make further provisions to the emergency intervention orders in Section 65A by laying regulations before the Scottish Parliament. Those regulations are subject to the 'made affirmative' procedure. This means that the regulations will take effect when they are made (signed) and will cease to have effect if they are not approved by the Scottish Parliament within 28 days of day on which they were made.