



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 1

#### PUBLIC HEALTH RESPONSIBILITIES

##### *The Scottish Ministers*

#### **1 Duty of Scottish Ministers to protect public health**

- (1) The Scottish Ministers are to continue to make provision, or secure that provision is made, for the purpose of protecting public health in Scotland.
- (2) In subsection (1), “protecting public health”—
  - (a) means the protection of the community (or any part of the community) from—
    - (i) infectious diseases;
    - (ii) contamination; or
    - (iii) other such hazards,which constitute a danger to human health; and
  - (b) includes—
    - (i) the prevention of;
    - (ii) the control of; and
    - (iii) the provision of a public health response to,such diseases, contamination or other hazards.
- (3) The Scottish Ministers may, for the purpose of protecting public health in Scotland, provide assistance (including financial assistance) to any person who exercises functions in relation to the protection of public health.
- (4) Subsection (1) is without prejudice to sections 1 and 1A of the National Health Service (Scotland) Act 1978 (c. 29) (the “1978 Act”) (general duties of Scottish Ministers to provide a health service and to promote the improvement of the health of the people of Scotland).
- (5) In this Act—

“contamination” means contamination with or by a biological, chemical or radioactive substance; and cognate expressions are to be construed accordingly;

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“infectious disease” means an illness or medical condition caused by an infectious agent (including by an organism listed in Part 2 of schedule 1 but not by a contaminant); and  
 “protecting public health” has the meaning given by subsection (2); and cognate expressions are to be construed accordingly.

### *Health boards*

## **2 Duty of health boards to protect public health**

- (1) Each health board is to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.
- (2) Subsection (1) is without prejudice to section 2A of the 1978 Act (duty of health boards to promote improvement in the health of the people of Scotland).
- (3) Anything done by a health board in the exercise of functions under this Act is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the health board by the order under section 2(1)(a) of the 1978 Act which constituted the board.

## **3 Designation of competent persons by health boards**

- (1) Each health board must designate a sufficient number of persons for the purpose of exercising, on behalf of the board, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “health board competent person”.
- (3) The functions referred to in subsection (1) are—
  - (a) the functions conferred on a health board competent person by virtue of this Act; and
  - (b) any functions conferred on such a competent person by virtue of any other enactment.
- (4) The Scottish Ministers may prescribe—
  - (a) the persons or classes of person who may be designated as health board competent persons;
  - (b) the qualifications which such persons must have;
  - (c) the training which such persons must have undertaken;
  - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
  - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of health board competent persons as are prescribed may be exercised only by competent persons who—
  - (a) have such qualifications;
  - (b) have undertaken such training; or
  - (c) meet such other requirements as to competency,
 as the Scottish Ministers consider appropriate in relation to those functions.

### *Local authorities*

#### **4 Duty of local authorities to protect public health**

Each local authority is to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.

#### **5 Designation of competent persons by local authorities**

- (1) Each local authority must designate a sufficient number of persons for the purpose of exercising, on behalf of the authority, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “local authority competent person”.
- (3) The functions referred to in subsection (1) are—
  - (a) the functions conferred on a local authority competent person by virtue of this Act; and
  - (b) any functions conferred on such a competent person by virtue of any other enactment.
- (4) The Scottish Ministers may prescribe—
  - (a) the persons or classes of person who may be designated as local authority competent persons;
  - (b) the qualifications which such persons must have;
  - (c) the training which such persons must have undertaken;
  - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
  - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of local authority competent persons as are prescribed may be exercised only by competent persons who—
  - (a) have such qualifications;
  - (b) have undertaken such training; or
  - (c) meet such other requirements as to competency,as the Scottish Ministers consider appropriate in relation to those functions.

### *Co-operation and planning*

#### **6 Duty of health boards and local authorities to co-operate**

- (1) In exercising the functions conferred on them by virtue of this Act, each—
  - (a) health board; and
  - (b) local authority,must co-operate with any relevant person that appears to the board or, as the case may be, authority to have an interest in or a function relating to the protection of public health.
- (2) In subsection (1), a “relevant person” is—

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- (a) a health board;
- (b) a special health board;
- (c) a local authority;
- (d) the common services agency;
- (e) the Scottish Ministers.

(3) Subsection (1) is without prejudice to section 13 of the 1978 Act (duty of health boards and local authorities to co-operate to secure and advance the health of the people of Scotland).

## **7 Joint public health protection plans**

- (1) Each health board must prepare such plans relating to the protection of public health in its area as the board considers appropriate.
- (2) In preparing a plan under subsection (1), a health board must consult the relevant local authority.
- (3) A plan under subsection (1) must—
  - (a) be prepared in accordance with any guidance issued by the Scottish Ministers; and
  - (b) include provision about such matters as may be specified in such guidance.
- (4) A board may comply with subsection (1) by incorporating the plan in any other plan the board is required or has power to prepare under any other enactment.
- (5) A board which prepares a plan under subsection (1) must publish the plan (whether as part of another plan in which it is incorporated or otherwise).
- (6) The board—
  - (a) may from time to time vary a plan under subsection (1); and
  - (b) must publish the plan as so varied.
- (7) The board must, before varying a plan under subsection (6)(a), consult the relevant local authority.
- (8) In this section, the “relevant local authority”—
  - (a) is the local authority for the area in relation to which a board is constituted; or
  - (b) where the area of the board comprises or includes the areas of two or more local authorities, is both or all of those authorities.

### *Power of Scottish Ministers to intervene*

## **8 Power to direct health boards and local authorities**

- (1) This section and section 9 apply where the Scottish Ministers consider that—
  - (a) a health board or, as the case may be, a local authority has failed, is failing or is likely to fail—
    - (i) to exercise a function conferred on it by virtue of this Act or by any other enactment relating to the protection of public health; or
    - (ii) to exercise that function in a manner which Ministers consider acceptable; and

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- (b) it is necessary for the purpose of protecting public health that the function—
  - (i) is exercised; or
  - (ii) is exercised in such a manner as Ministers consider acceptable.
- (2) The Scottish Ministers may in writing direct the board or, as the case may be, the authority—
  - (a) to exercise the function; or
  - (b) to exercise it in such a manner,within such period and subject to such other conditions as they consider appropriate.
- (3) A direction under subsection (2) must specify—
  - (a) the function of the board or, as the case may be, of the authority to which it applies;
  - (b) the period within which the function—
    - (i) is to be exercised; or
    - (ii) is to be exercised in the manner specified; and
  - (c) any other conditions imposed on the board or authority in relation to the exercise of the function.
- (4) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (2).

## **9 Power to direct that functions be exercised by other persons**

- (1) The Scottish Ministers may, whether or not they have given a direction under section 8(2), in writing direct that a function of a health board or, as the case may be, of a local authority be exercised instead by a person specified in the direction.
- (2) But, where a direction under section 8(2) has been given, they may not give a direction under subsection (1)—
  - (a) before the expiry of the period specified in the direction under that section; or
  - (b) where that period has not expired, without withdrawing that direction under section 8(4).
- (3) The persons who may be specified in a direction under subsection (1) are one or more of the following—
  - (a) a health board;
  - (b) the common services agency;
  - (c) a local authority;
  - (d) an employee of—
    - (i) a health board;
    - (ii) the agency; or
    - (iii) a local authority;
  - (e) a member of staff of the Scottish Administration;
  - (f) such other person Ministers consider appropriate.
- (4) A direction under subsection (1) must specify—
  - (a) the function of the board or, as the case may be, of the authority to which it applies;
  - (b) the person by whom the function is to be exercised;

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- (c) the period for which that person is to exercise that function;
  - (d) the extent to which that person is to exercise that function; and
  - (e) any other conditions imposed by the Scottish Ministers as they consider appropriate.
- (5) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (1).

## **10 Directions under section 9(1): supplementary**

- (1) The giving of a direction under section 9(1) does not affect the responsibility of the health board or, as the case may be, the local authority for the exercise of the function which, by virtue of the direction, is exercised by another person.
- (2) Anything done or omitted by a person exercising a function by virtue of the direction is to be regarded as done or omitted by the board or authority.
- (3) A person dealing in good faith and for value with a person exercising a function by virtue of the direction need not inquire as to whether that person is acting in accordance with the direction.
- (4) Unless the direction specifies otherwise, the board or the authority must pay the person by whom its function is exercised—
  - (a) the remuneration and expenses of; and
  - (b) any other costs reasonably incurred by, that person in exercising that function.

## **11 Power to direct allocation of resources**

The Scottish Ministers may, if they are satisfied that it is necessary to do so, direct—

- (a) a health board to make such payments as Ministers consider appropriate to—
  - (i) another health board; or
  - (ii) a local authority;
- (b) a local authority to make such payments as Ministers consider appropriate to—
  - (i) another local authority; or
  - (ii) a health board,

in connection with the performance by the recipient board or authority of its functions relating to the protection of public health.

## **PART 2**

NOTIFIABLE DISEASES, NOTIFIABLE ORGANISMS AND HEALTH RISK STATES

### *Notifiable diseases and organisms*

## **12 Lists of notifiable diseases and notifiable organisms**

- (1) In this Part—
  - “notifiable disease” means a disease listed in Part 1 of schedule 1; and

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“notifiable organism” means an organism listed in Part 2 of schedule 1.

- (2) The Scottish Ministers may by regulations amend a list in schedule 1 by—
  - (a) adding an item to the list;
  - (b) removing an item from the list;
  - (c) varying the description of an item in the list.
- (3) Regulations under subsection (2) may add a disease or organism to a list only if the Scottish Ministers are satisfied that the disease or organism is likely to give rise to a significant risk to public health.
- (4) The Scottish Ministers must, when considering whether a disease or organism is likely to give rise to such a risk, have regard—
  - (a) in the case of a disease, to—
    - (i) the seriousness of the disease; and
    - (ii) the ease of transmissibility through casual contact of the disease;
  - (b) in the case of an organism, to the seriousness and ease of transmissibility through casual contact of the disease which the organism would cause.

#### *Duties to notify*

### **13 Notifiable diseases: duties on registered medical practitioners**

- (1) This section applies where a registered medical practitioner has reasonable grounds to suspect that a patient whom the practitioner is attending has a notifiable disease.
- (2) The practitioner must, before the expiry of the period of 3 days beginning with the day on which the practitioner forms that suspicion, provide to the relevant health board, in writing, the information mentioned in subsection (6) in so far as it is known to the practitioner.
- (3) Without prejudice to subsection (2), if the practitioner considers that the case is urgent, the practitioner must, as soon as reasonably practicable, orally provide to the relevant health board—
  - (a) the information mentioned in subsection (6) in so far as it is known to the practitioner; and
  - (b) an explanation of why the practitioner considers the case is urgent.
- (4) In determining whether a case is urgent, the practitioner must have regard to—
  - (a) the nature of the suspected disease;
  - (b) the ease of transmission of that disease;
  - (c) the patient’s circumstances (including age, sex and health); and
  - (d) any guidance issued by the Scottish Ministers.
- (5) Subsections (2) and (3) do not apply if the practitioner believes on reasonable grounds that another registered medical practitioner—
  - (a) has complied with those subsections in respect of the patient; or
  - (b) has provided information in respect of the disease to the relevant health board under section 14(2) or (3).
- (6) The information referred to in subsections (2) and (3)(a) is—
  - (a) the patient’s name;

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- (b) the patient’s address and postcode;
  - (c) the patient’s occupation (if the practitioner considers that it is relevant);
  - (d) the name, address and postcode of the patient’s place of work or education (if the practitioner considers that it is relevant);
  - (e) the patient’s sex;
  - (f) the patient’s date of birth;
  - (g) the suspected disease; and
  - (h) the patient’s NHS identifier.
- (7) In this section and section 14, the “relevant health board” is the health board for the area in which the practitioner works.
- (8) In this Part, “NHS identifier” means—
- (a) the patient's—
    - (i) community health index number; or
    - (ii) where that number is not known, NHS identification number; or
  - (b) where neither of the numbers referred to in paragraph (a) is known, any other number or other indicator which from time to time may be used to identify a patient individually.

#### **14 Health risk states: duties on registered medical practitioners**

- (1) This section applies where a registered medical practitioner has reasonable grounds to suspect that a patient whom the practitioner is attending has been exposed to a health risk state.
- (2) The practitioner must, before the expiry of the period of 3 days beginning with the day on which the practitioner forms that suspicion, provide to the relevant health board, in writing, the information mentioned in subsection (6) in so far as it is known to the practitioner.
- (3) Without prejudice to subsection (2), if the practitioner considers that the case is urgent, the practitioner must, as soon as reasonably practicable, orally provide to the relevant health board—
- (a) the information mentioned in subsection (6) in so far as it is known to the practitioner; and
  - (b) an explanation of why the practitioner considers the case is urgent.
- (4) In determining whether a case is urgent, the practitioner must have regard to—
- (a) the nature of the suspected health risk state;
  - (b) the nature of the exposure to that state;
  - (c) the patient’s circumstances (including age, sex and health); and
  - (d) any guidance issued by the Scottish Ministers.
- (5) Subsections (2) and (3) do not apply if the practitioner believes on reasonable grounds that another registered medical practitioner—
- (a) has complied with those subsections in respect of the patient; or
  - (b) has provided information in respect of the health risk state to the relevant health board under section 13(2) or (3).
- (6) The information referred to in subsections (2) and (3)(a) is—
- (a) the patient’s name;



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- (b) the patient’s address and postcode;
  - (c) the patient’s occupation (if the practitioner considers that it is relevant);
  - (d) the name, address and postcode of the patient’s place of work or education (if the practitioner considers that it is relevant);
  - (e) the patient’s sex;
  - (f) the patient’s date of birth;
  - (g) the suspected health risk state; and
  - (h) the patient’s NHS identifier.
- (7) In this section and section 15, “health risk state” means—
- (a) a highly pathogenic infection; or
  - (b) any—
    - (i) contamination;
    - (ii) poison; or
    - (iii) other hazard,which is a significant risk to public health.
- (8) In this section, references to a patient having been “exposed to a health risk state” are references to the patient—
- (a) having been in physical contact with a health risk state;
  - (b) having been contaminated by a health risk state; or
  - (c) having been in physical contact with or contaminated by—
    - (i) a person who; or
    - (ii) an object which,has been in physical contact with or contaminated by a health risk state.

## **15 Notifiable diseases and health risk states: duties on health boards**

- (1) Where—
- (a) a health board receives information under—
    - (i) section 13(2) or (3); or
    - (ii) section 14(2) or (3); and
  - (b) that information relates to a patient who usually resides within the area of that health board,
- that board must send a return, in writing, to the common services agency containing, in relation to each patient, the information mentioned in subsection (3) in so far as it is known to the board.
- (2) The return under subsection (1) is to be sent—
- (a) no later than the end of the week in which the information mentioned in subsection (1)(a) is received; or
  - (b) if it is not practicable to send the return by the end of that week, as soon as practicable afterwards.
- (3) The information referred to in subsection (1) is—
- (a) the patient’s postcode;
  - (b) the patient’s occupation;
  - (c) the patient’s sex;
  - (d) the patient’s date of birth;

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- (e) the—
    - (i) suspected disease; or
    - (ii) suspected health risk state; and
  - (f) the patient’s NHS identifier.
- (4) Where—
- (a) a health board receives information as mentioned in subsection (1)(a); and
  - (b) that information relates to a person who does not usually reside in the area of that health board,
- the board must without delay transmit the information to the health board for the area in which the person usually resides.
- (5) Where a health board receives information from another health board by virtue of subsection (4)—
- (a) the board must send a return, in writing, to the common services agency containing, in relation to each patient, the information mentioned in subsection (3) in so far as it is known to the board; and
  - (b) subsection (2) applies to a return sent under this subsection as it applies to a return sent under subsection (1) with the modification that, for the reference to subsection (1)(a), there is substituted a reference to subsection (4).
- (6) In subsection (2), “week” means a period of 7 days ending on Friday at the expiry of the normal working hours of the board’s principal office.

## **16 Notifiable organisms: duties on directors of diagnostic laboratories**

- (1) This section applies where a diagnostic laboratory identifies a notifiable organism.
- (2) The director of the laboratory must, before the expiry of the period of 10 days beginning with the day of identification, provide to the persons mentioned in subsection (5), in writing, the information mentioned in subsection (6) in so far as it is known to the director.
- (3) Without prejudice to subsection (2), if the director considers that the case is urgent, the director must, as soon as reasonably practicable, orally provide to the persons mentioned in subsection (5)—
- (a) the information mentioned in subsection (6) in so far as it is known to the director; and
  - (b) an explanation of why the director considers the case is urgent.
- (4) In determining whether a case is urgent, the director must have regard to—
- (a) the nature of the organism;
  - (b) the nature of the disease which that organism causes;
  - (c) the ease of transmission of that disease or organism;
  - (d) where known, the patient’s circumstances (including age, sex and health); and
  - (e) any guidance issued by the Scottish Ministers.
- (5) The persons referred to in subsections (2) and (3) are—
- (a) the health board in whose area the diagnostic laboratory is situated; and
  - (b) the common services agency.
- (6) The information referred to in subsections (2) and (3)(a) is—

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- (a) the name of the person to whom the identification relates;
  - (b) the person's address;
  - (c) the person's sex;
  - (d) the person's date of birth;
  - (e) the organism which has been identified; and
  - (f) the person's NHS identifier.
- (7) Where—
- (a) a health board receives information under subsection (2) or (3); and
  - (b) that information relates to a person who does not usually reside in the area of that board,
- the board must without delay transmit that information to the health board for the area in which the person usually resides.
- (8) For the purposes of subsection (1), a diagnostic laboratory identifies a notifiable organism where—
- (a) the diagnostic laboratory identifies the organism; or
  - (b) the organism is identified by another laboratory under an arrangement with that diagnostic laboratory.
- (9) Where subsection (8)(b) applies, the day of identification, for the purposes of subsection (2), is the day on which the diagnostic laboratory becomes aware of the identification by the other laboratory.
- (10) In this section and section 17—
- “diagnostic laboratory” means an institution (or facility within an institution) which is equipped with apparatus and reagents for the performance of diagnostic tests for human infections; and
- “director” of a diagnostic laboratory means—
- (a) the clinical microbiologist, consultant pathologist or other registered medical practitioner or other person in charge of a diagnostic laboratory; or
  - (b) any other person working in the diagnostic laboratory to whom the function of making a notification under this section has been delegated by the person mentioned in paragraph (a).

### *Offences*

#### **17 Notifiable organisms: offences**

- (1) It is an offence for the director of a diagnostic laboratory to fail without reasonable excuse to comply with section 16(2).
- (2) In proceedings for an offence under subsection (1), it is a defence for the director to prove that the director exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (3) Where—
  - (a) the director of a diagnostic laboratory commits the offence mentioned in subsection (1); and
  - (b) the director is employed by a body corporate,

the body corporate also commits an offence.

- (4) In proceedings for an offence under subsection (3), it is a defence for the body corporate to prove that the body corporate (or an employee or agent of the body corporate) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (5) In subsection (3)(b), “employed” includes engaged under a contract for services.

*Supplementary provision*

**18 Electronic notification**

- (1) The requirement in sections 13(2), 14(2), 15(1) and (5) and 16(2) for information to be provided in writing may be satisfied by a document in electronic form—
- (a) transmitted by electronic means; and
  - (b) capable of being reproduced in legible form.
- (2) For the purposes of sections 13(2), 14(2), 15(1) and (5) and 16(2), a document transmitted in accordance with subsection (1) is to be taken to be received on the day of transmission.

**19 Notifiable diseases etc.: further provision**

- (1) The Scottish Ministers may, by regulations, make provision (or such further provision) as they consider appropriate—
- (a) as to the way in which information is to be provided under section 13, 14, 15 or 16, including—
    - (i) the person by whom it is to be provided;
    - (ii) the person to whom it is to be provided;
    - (iii) the nature of the information that is required to be provided;
    - (iv) the form and manner in which it is to be provided;
    - (v) the time by which it is to be provided;
  - (b) as to the manner in which the authenticity or integrity of any communication or data contained in an electronic communication made by virtue of section 18 may be established.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

**PART 3**

PUBLIC HEALTH INVESTIGATIONS

*Public health investigations*

**20 Public health incidents**

- (1) A public health incident exists if—
- (a) a circumstance mentioned in subsection (2), (3), (4), (5) or (6) occurs; and

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- (b) there are reasonable grounds to suspect that the circumstance is likely to give rise to a significant risk to public health.
- (2) The first circumstance is that—
  - (a) a person has an infectious disease; or
  - (b) there are reasonable grounds to suspect that a person has such a disease.
- (3) The second circumstance is that—
  - (a) a person has been exposed to an organism which causes infectious disease; or
  - (b) there are reasonable grounds to suspect that a person has been so exposed.
- (4) The third circumstance is that—
  - (a) a person is contaminated; or
  - (b) there are reasonable grounds to suspect that a person is contaminated.
- (5) The fourth circumstance is that—
  - (a) a person has been exposed to a contaminant; or
  - (b) there are reasonable grounds to suspect that a person has been so exposed.
- (6) The fifth circumstance is that—
  - (a) any premises are or any thing in or on premises is infected, infested or contaminated; or
  - (b) there are reasonable grounds to suspect that any premises are or thing is so infected, infested or contaminated.
- (7) In subsection (6), “infected”, “infested” and “contaminated” have the meanings given by section 72(5).

## **21 Public health investigations**

- (1) In this Part, a “public health investigation” means an investigation into the cause (or causes) of a public health incident.
- (2) A public health investigation may be carried out by a person appointed for the purpose by—
  - (a) the Scottish Ministers;
  - (b) a health board competent person;
  - (c) the common services agency;
  - (d) a local authority competent person;
  - (e) two or more of the persons mentioned in paragraphs (a) to (d) acting together, and, in this Part, that person is known as an “investigator”.
- (3) Despite subsection (2)(b) and (d), a health board competent person or a local authority competent person may be appointed as an investigator.
- (4) If an investigator considers it necessary for the purpose of, or in connection with, a public health investigation, the investigator may, subject to section 25(1), exercise—
  - (a) the powers relating to entry to premises mentioned in section 22;
  - (b) the other investigatory powers mentioned in section 23; and
  - (c) the power to ask questions mentioned in section 24.

*Investigators' powers***22 Powers relating to entry to premises**

- (1) The powers referred to in section 21(4)(a) are—
- (a) subject to section 26, to enter at any reasonable time any premises which the investigator has reason to believe it is necessary to enter;
  - (b) on entering any premises by virtue of paragraph (a), to take—
    - (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) as regards any premises which the investigator may enter by virtue of paragraph (a), to direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate.
- (2) An investigator who enters any unoccupied premises in the exercise of a power conferred by virtue of subsection (1)(a) must leave the premises as effectively secured against unauthorised entry as the investigator found them.

**23 Other investigatory powers**

- (1) The powers referred to in section 21(4)(b) are—
- (a) to take such measurements and photographs and make such recordings as the investigator considers necessary for the purpose of the public health investigation;
  - (b) to obtain and to take samples (or cause samples to be taken) of—
    - (i) any articles or substances found in or on any premises which the investigator has power under section 22 to enter; and
    - (ii) the air, water or land in, on, or in the vicinity of, the premises;
  - (c) in the case of any article or substance found in or on any premises which the investigator has power to enter, being an article or substance which appears to the investigator to be the cause of the public health incident, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
  - (d) in the case of any article or substance referred to in paragraph (c), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
    - (i) to examine it (or cause it to be examined) and to do (or cause to be done) to it anything which the investigator has power to do under that paragraph;
    - (ii) to ensure that it is not tampered with before examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any enactment or rule of law;
  - (e) to—

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- (i) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the investigator to see for the purposes of the investigation; and
    - (ii) inspect and take copies of, or of any entry in, the records;
  - (f) to make such examination and investigation as may in the circumstances be necessary.
- (2) Where an investigator proposes to exercise the power conferred by subsection (1)(c), the investigator must, if so requested by a person who at the time is present on the premises and has responsibilities in relation to those premises, cause anything which is done by virtue of that power to be done in the presence of that person.
- (3) Before exercising the power conferred by subsection (1)(c), an investigator must consult—
  - (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
  - (b) such other persons,  
as appear to the investigator to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the investigator proposes to do (or cause to be done) under the power.
- (4) The information which a person may be required to provide under subsection (1)(e) includes information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the requirement.
- (5) Nothing in this section compels the production by any person of a document subject to legal privilege.
- (6) A document subject to legal privilege means a communication—
  - (a) between a professional legal adviser and the adviser's client; or
  - (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,  
which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

## **24 Power to ask questions**

- (1) The power referred to in section 21(4)(c) is to require any person whom the investigator has reasonable cause to believe has any information relevant to the public health investigation to answer such questions as the investigator considers it appropriate to ask.
- (2) A person required to answer questions under subsection (1) may nominate one other person to be present during questioning.
- (3) When a person answers questions under subsection (1), the only other persons who may be present (apart from the investigator) are—
  - (a) the person (if any) nominated under subsection (2); and
  - (b) any person authorised by the investigator to be present.

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- (4) No answer given by a person in pursuance of a requirement imposed under subsection (1) is admissible in evidence against the person in any criminal proceedings.

## **25 Supplementary**

- (1) An investigator entitled to exercise a power under section 22, 23 or 24 must, if requested to do so, produce a document showing that investigator's authority.
- (2) An investigator may require any person to provide the investigator with such facilities and assistance with respect to any matters or things—
- (a) within that person's control; or
  - (b) in relation to which that person has responsibilities,
- as are necessary to enable the investigator to exercise any of the powers conferred by sections 22, 23 and 24.
- (3) The Scottish Ministers may, by regulations, confer on investigators such powers as Ministers consider necessary for the purposes of public health investigations.
- (4) Regulations under subsection (3) may modify any enactment (including this Act).
- (5) This section and sections 22 to 24 are without prejudice to any other powers conferred on an investigator by—
- (a) this Act or any other enactment; or
  - (b) any rule of law.

## **26 Entry to dwellinghouses**

- (1) Where an investigator proposes, in the exercise of a power conferred by section 22, to enter a dwellinghouse, the conditions set out in subsections (2) and (3) must be satisfied.
- (2) The first condition is that the investigator has given 48 hours' notice of the proposed entry to a person who appears to be the occupier of the dwellinghouse.
- (3) The second condition is that—
- (a) the person who appears to be the occupier of the dwellinghouse has consented; or
  - (b) entry is effected under the authority of a warrant issued in accordance with section 27.
- (4) In this Part, "dwellinghouse" means any premises or part of premises which are wholly or mainly occupied as a person's dwelling.

## **27 Public health investigation warrants**

- (1) This section applies where—
- (a) an investigator entitled to enter premises under section 22—
    - (i) has been refused entry; or
    - (ii) reasonably anticipates entry being refused;
  - (b) premises which an investigator is entitled to enter are unoccupied;
  - (c) the occupier of such premises is temporarily absent and there is urgency;



- (d) an investigator entitled to exercise a power under section 23 or 24—
    - (i) has been prevented from exercising that power; or
    - (ii) reasonably anticipates being prevented from doing so; or
  - (e) an application for admission to the premises would defeat the object of the public health investigation.
- (2) The sheriff or a justice of the peace may, on the application of the investigator, by warrant authorise the investigator—
- (a) to enter the premises;
  - (b) on entering premises by virtue of paragraph (a), to take—
    - (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) to direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate;
  - (d) to exercise any power mentioned in sections 23 to 25.
- (3) The sheriff or justice of the peace must not, under subsection (2), grant a warrant in relation to a dwellinghouse unless the sheriff or justice is satisfied that—
- (a) the notice required by section 26(2) has been given; and
  - (b) the period of notice has expired.
- (4) The power of entry in this section—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (5) Where the investigator enters premises by virtue of this section, section 22(2) applies.
- (6) A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

## **28 Use of powers in emergencies**

- (1) This section applies where an investigator who is entitled to enter premises by virtue of the power conferred by section 22 considers, on reasonable grounds, that there is an emergency.
- (2) The power of entry which the investigator has—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (3) Where the premises in relation to which the investigator proposes to exercise the power are a dwellinghouse, section 26 does not apply.
- (4) The investigator may, on entering premises by virtue of this section—
- (a) take—

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- (i) any other person authorised by the investigator and, if the investigator has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (b) direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the investigator considers appropriate;
  - (c) exercise any power mentioned in sections 23 to 25.
- (5) Where the investigator enters premises by virtue of this section, section 22(2) applies.
- (6) In this section, there is an “emergency” if—
- (a) there is a significant risk to public health; and
  - (b) the nature of that risk is such that immediate action is necessary—
    - (i) to verify the existence of the risk;
    - (ii) to ascertain the cause of the risk; or
    - (iii) to take action to prevent, or prevent the spread of, infectious disease or contamination.

### *Offences*

## **29 Public health investigation offences**

- (1) A person commits an offence if the person, without reasonable excuse—
- (a) fails to comply with a requirement imposed under section 22, 23, 24 or 25;
  - (b) intentionally obstructs an investigator in the exercise of powers under those sections;
  - (c) fails or refuses to—
    - (i) provide facilities or assistance;
    - (ii) provide information; or
    - (iii) permit inspection,
 where it is reasonably required by an investigator exercising powers under those sections;
  - (d) prevents any other person from—
    - (i) appearing before an investigator; or
    - (ii) answering a question to which an investigator may require an answer pursuant to section 24(1);
  - (e) in purported compliance with a requirement imposed under section 24(1)—
    - (i) makes a statement which the person knows to be false or misleading in a material particular;
    - (ii) recklessly makes a statement which is false or misleading in a material particular; or
    - (iii) intentionally fails to disclose any material particular;
  - (f) causes or permits another person to commit an offence under paragraphs (a) to (e).

- (2) In proceedings for an offence under subsection (1), it is a defence for a person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (3) Where the commission by a person of an offence under subsection (1) is due to the act or omission of another person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first person.

### *Compensation*

## **30 Public health investigations: compensation**

- (1) Where subsection (2) or (3) applies, compensation is payable for loss or damage caused by—
  - (a) the investigator; or
  - (b) a person authorised by the investigator under section 22(1)(b)(i), 27(2)(b)(i) or 28(4)(a)(i).
- (2) This subsection applies where a person has suffered loss or damage by reason of—
  - (a) the exercise by an investigator of the powers in section 22(1)(a) or (b); or
  - (b) the failure by an investigator to comply with the duty in section 22(2),unless the loss or damage is attributable to the fault of the person who sustained it.
- (3) This subsection applies in the case of damage to or destruction of an article or substance in exercise of powers under section 23(1)(c) where the article or substance is found not to be the cause of the public health incident.
- (4) The person responsible for paying compensation under this section is—
  - (a) in the case of an investigator, the person by whom the investigator is employed;
  - (b) in the case of a person authorised by the investigator under section 22(1)(b)(i), 27(2)(b)(i) or 28(4)(a)(i), the person by whom the authorised person is employed.
- (5) For the purposes of subsection (4), “employed” includes engaged under a contract for services.
- (6) Any dispute as to—
  - (a) a person’s entitlement to compensation under subsection (1); or
  - (b) the amount of such compensation,is to be determined by a single arbiter appointed by agreement between the parties to the dispute or, if such agreement cannot be reached, by the sheriff.

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## PART 4

### PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

#### *Duty to give explanation*

#### **31 Duty of health boards to give explanation of need for action**

- (1) This section applies where—
  - (a) a health board proposes to take any action mentioned in section 32(a) to (c); or
  - (b) a health board competent person proposes to take any action mentioned in section 32(d) or (e).
- (2) An action referred to in subsection (1) is, in this section, a “relevant action”.
- (3) The appropriate health board must, in so far as it is reasonably practicable to do so, explain to the person in relation to whom the relevant action is proposed—
  - (a) that there is a significant risk to public health;
  - (b) the nature of that risk; and
  - (c) why the board considers it necessary for the proposed action to be taken in relation to the person.
- (4) Where, before the proposed relevant action is taken, no explanation is given under subsection (3), the health board must, as soon as reasonably practicable after taking the proposed action and in so far as it is reasonably practicable to do so, explain—
  - (a) the matters mentioned in subsection (3)(a) and (b); and
  - (b) why the board considered it necessary to take the action, to the person in relation to whom the action was taken.
- (5) Where the person is incapable of understanding the explanation (whether because of youth, illness or otherwise), the board must, before taking the proposed action or as soon as reasonably practicable after doing so and, in either case, in so far as it is reasonably practicable to do so, give the explanation required by subsection (3) or, as the case may be, (4)—
  - (a) where the person is under 16, to any person having parental responsibilities and parental rights in relation to the person;
  - (b) in any other case, to—
    - (i) any guardian of the person;
    - (ii) any welfare attorney of the person; or
    - (iii) any other person appointed or having authority to intervene in the affairs of the person.
- (6) In this section—

“appropriate health board” means—

  - (a) in the case of a relevant action referred to in subsection (1)(a), the health board which proposes to take that action;
  - (b) in the case of a relevant action referred to in subsection (1)(b), the health board which designated the competent person who proposes to take that action;

“guardian”—

- (a) means a guardian who has powers relating to the proposed intervention in the person’s affairs; and
  - (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, a person during that person’s incapacity, if the guardianship is recognised in Scotland;
- “parental responsibilities and parental rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36); and
- “welfare attorney” has the meaning given by section 16(2) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

### **32 Relevant actions**

The actions referred to in section 31(1) are—

- (a) applying under section 33(2) for an order under section 34(1);
- (b) applying under section 39(2) for an order under section 40(1);
- (c) applying under section 41(2) or, as the case may be, 44(3) for an order under—
  - (i) section 42(1);
  - (ii) section 43(1); or
  - (iii) section 45(1);
- (d) making an order under section 37(2);
- (e) making an order under section 38(2).

#### *Medical examinations*

### **33 Application to have person medically examined**

- (1) This section applies where—
  - (a) a health board knows or suspects that a person who is present in that board’s area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be medically examined.
- (2) The board may apply to any sheriff for the board’s area for an order under section 34(1) in relation to the person.
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the person in relation to whom the order is sought;
    - (ii) the reason why the board considers it necessary for the person to be medically examined;
    - (iii) the class or classes of health care professional by whom it is proposed that the examination is to be carried out;

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- (iv) the nature of the examination the board proposes be carried out;
- (v) whether an explanation has been given under section 31(3) or (5);
- (vi) 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;
- (vii) 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 the competent person.
- (4) In this Part, “health care professional” means—
  - (a) a registered medical practitioner;
  - (b) a registered nurse; or
  - (c) any other member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

### **34 Order for medical examination**

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make an order authorising the medical examination of the person to whom the application under section 33(2) relates.
- (2) The matters referred to in subsection (1) are—
  - (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant;
  - (b) that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be medically examined; and
  - (c) that—
    - (i) before the application under section 33(2) 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) may make provision about such other matters in connection with the examination as the sheriff considers appropriate.
- (4) Subject to subsection (5), an order under subsection (1) has effect from the time at which it is made until—
  - (a) the expiry of the period of 7 days beginning with that time; or
  - (b) the carrying out of a medical examination authorised by the order,
 whichever occurs first.

- (5) Where, before the medical examination is carried out, an appeal under section 60(1) is made—
- (a) the order appealed against is suspended; and
  - (b) in calculating the period of 7 days mentioned in subsection (4)(a), no account is to be taken of the period during which the order is suspended.
- (6) An order under subsection (1) must—
- (a) specify—
    - (i) the person to whom it applies; and
    - (ii) the class or classes of health care professional by whom the medical examination is to be carried out; 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.

### **35 Medical examination: least invasive and least intrusive procedures**

- (1) A health care professional authorised by virtue of an order under section 34(1) to medically examine a person—
- (a) must not use invasive or intrusive procedures unless that professional considers such procedures are necessary to achieve the purpose for which the examination is being carried out; and
  - (b) must, where the professional considers such procedures are necessary for that purpose, use the least invasive and least intrusive procedures practicable.
- (2) In this section, “invasive procedures” do not include—
- (a) examination of the ear, nose or mouth;
  - (b) temperature assessment using—
    - (i) an ear, oral or cutaneous thermometer; or
    - (ii) thermal imaging;
  - (c) physical examination of skin and hair;
  - (d) auscultation;
  - (e) external palpation;
  - (f) retinoscopy;
  - (g) external collection of urine, faeces or saliva samples;
  - (h) external measurement of blood pressure;
  - (i) electrocardiography.

### **36 Medical examination of groups**

- (1) Where—
- (a) a person in relation to whom a health board is satisfied as to the matters mentioned in section 33(1) is one of a group of two or more persons; and
  - (b) the board is satisfied that it is necessary, to avoid or minimise a significant risk to public health, for each member of the group to be medically examined,

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the board may apply under section 33(2) for an order in relation to all of the persons in that group.

- (2) Where subsection (1) applies—
- (a) sections 31(3) to (5) and 33(3) apply in relation to the persons in the group as they apply in relation to a person;
  - (b) the certificate mentioned in section 33(3)(b) must state, in addition to the matters mentioned in section 33(3)(b)(i), that the competent person is satisfied that it is necessary, to avoid or minimise an actual or anticipated significant risk to public health, for all the persons in the group to be medically examined;
  - (c) the sheriff may, if satisfied—
    - (i) as to the matters mentioned in section 34(2)(a) and (b) in relation to at least one member of the group; and
    - (ii) as to the matter mentioned in section 34(2)(c) in relation to each member of the group,
 make an order under section 34(1) in relation to each member of the group; and
  - (d) section 34(6) applies in relation to the persons in the group as it applies to a person.

*Exclusion orders and restriction orders*

**37 Exclusion orders**

- (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;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; 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 excluded from certain places.
- (2) A health board competent person may make an order (an “exclusion order”)—
- (a) prohibiting the person from entering or remaining in any place; and
  - (b) imposing such conditions (if any) on the person as the competent person considers appropriate.
- (3) A competent person—
- (a) may not make an exclusion order unless that person is satisfied as to the matters mentioned in subsection (1);
  - (b) must, when making such an order, have regard to the desirability of imposing the least restrictive order necessary to protect public health.
- (4) The exclusion order must—
- (a) specify—
    - (i) the person to whom it applies;



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- (ii) subject to subsection (5), the place, or type of place, from which the person is excluded; and
    - (iii) any conditions imposed on the person;
  - (b) be served on the person to whom it applies; and
  - (c) be notified to—
    - (i) any person who was given an explanation under section 31(5); and
    - (ii) any other person the competent person considers appropriate.
- (5) An exclusion order may not specify, as a place from which a person is excluded, that person's place of residence.
- (6) An exclusion order has effect only from the time it is served on the person to whom it applies.

### **38 Restriction orders**

- (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;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; 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 restricted from carrying on certain activities.
- (2) A health board competent person may make an order (a "restriction order")—
  - (a) prohibiting the person from carrying on any activity; and
  - (b) imposing such conditions (if any) on the person as the competent person considers appropriate.
- (3) A competent person—
  - (a) may not make a restriction order unless that person is satisfied as to the matters mentioned in subsection (1);
  - (b) must, when making a restriction order, have regard to the desirability of imposing the least restrictive order necessary to protect public health.
- (4) The restriction order must—
  - (a) specify—
    - (i) the person to whom it applies;
    - (ii) the activity, or type of activity, which the person is prohibited from carrying on; and
    - (iii) any conditions imposed on the person;
  - (b) be served on the person to whom it applies; and
  - (c) be notified to—
    - (i) any person who was given an explanation under section 31(5); and
    - (ii) any other person the competent person considers appropriate.

- (5) A restriction order has effect only from the time it is served on the person to whom it applies.

### *Quarantine*

## **39 Application to have person quarantined**

- (1) This section applies where—
- (a) a health board knows or suspects that a person who is present in that board's area—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) it appears to the board that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be quarantined.
- (2) The board may apply to any sheriff for the board's area for an order under section 40(1) (a "quarantine order").
- (3) An application under subsection (2) must—
- (a) specify—
    - (i) the person in relation to whom the quarantine order is sought;
    - (ii) why the board considers it necessary for the person to be quarantined;
    - (iii) the place in which it is proposed to quarantine the person;
    - (iv) the period for which it is proposed to quarantine 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) the conditions (if any) which the board considers it is necessary to include in the order;
    - (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 is satisfied as to the matters mentioned in subsection (1); and
    - (ii) signed by that person.
- (4) In this Part, references to a person being "quarantined" are references to the person being detained in that person's residence or in another place (not being a hospital); and cognate expressions are to be construed accordingly.

## 40 Quarantine orders

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2), make a quarantine order—
  - (a) authorising—
    - (i) the quarantining of the person;
    - (ii) where the person is not in the place in which that person is to be quarantined, the removal of the person to that place; and
    - (iii) the taking in relation to the person of such of the steps mentioned in section 46(2) (if any) as the sheriff considers appropriate; and
  - (b) imposing such conditions (if any) in relation to the quarantine as the sheriff considers appropriate.
- (2) The matters referred to in subsection (1) are—
  - (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant;
  - (b) that as a result—
    - (i) there is or may be a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for the person to be quarantined; and
  - (c) that—
    - (i) before the application under section 39(2) 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) A quarantine order 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) A person may be removed to a place in which the person is to be quarantined by—
  - (a) a constable;
  - (b) an officer of the health board;
  - (c) an officer of a local authority; or
  - (d) any other person the sheriff considers appropriate.
- (5) Conditions imposed by a quarantine order may include—
  - (a) conditions relating to—
    - (i) the persons who may have access to the place in which a person is quarantined; and
    - (ii) the purposes for which such persons may have access;
  - (b) conditions relating to—
    - (i) the persons who may have access to the quarantined person; and
    - (ii) the purposes for which such persons may have access;
  - (c) conditions relating to the welfare of the quarantined person.

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- (6) A quarantine order must—
- (a) specify—
    - (i) the person to whom the order applies;
    - (ii) the place in which the person is to be quarantined;
    - (iii) the period for which the person is to be quarantined;
    - (iv) the steps mentioned in section 46(2) (if any) which may be taken in relation to the quarantined person; and
    - (v) any conditions imposed; 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.

*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);
    - (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—

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- (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
  - (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.

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- (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;
    - (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.

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#### **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.

*Quarantine and detention: steps that may be taken*

#### **46 Authorised steps**

- (1) Where—
  - (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,
 is made, the steps which the order may authorise are the steps mentioned in subsection (2).
- (2) Those steps are—



- (a) disinfection;
- (b) disinfestation; and
- (c) decontamination.

#### **47 Authorised steps: least invasive and least intrusive procedures**

- (1) A health care professional taking any step mentioned in section 46(2) which is authorised by virtue of—
- (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,
- must not, in taking that step, use invasive or intrusive procedures unless that professional considers such procedures are necessary to achieve the purpose for which the step is being taken.
- (2) Where the health care professional considers such procedures are so necessary, the professional must use the least invasive and least intrusive procedures practicable.

#### *Variation and extension of orders*

#### **48 Variation of exclusion and restriction orders**

- (1) This section applies where a person is subject to—
- (a) an exclusion order; or
  - (b) a restriction order.
- (2) A health board competent person of the appropriate health board may, if that person considers it appropriate, modify the order—
- (a) in the case of an exclusion order, by varying the place, or type of place, from which the person is excluded;
  - (b) in the case of a restriction order, by varying the activity, or type of activity, which the person is prohibited from carrying on; and
  - (c) in either case—
    - (i) where the order imposed no conditions on the person, by imposing such conditions; or
    - (ii) in any other case, by modifying any conditions imposed on the person.
- (3) In subsection (2)(c)(ii), modifying conditions means—
- (a) adding;
  - (b) varying; or
  - (c) removing,
- a condition.
- (4) The competent person must give notice of the modification made to—
- (a) the person to whom the order applies; and
  - (b) any other person to whom the order was notified under section 37(4)(c) or, as the case may be, 38(4)(c).
- (5) In subsection (2), “appropriate health board” means the board which designated the health board competent person who made the order.

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#### **49 Extension of 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 health board may, before the period specified in the order expires, apply to the sheriff for an extension of the order.
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the order which it is proposed to extend; and
    - (ii) the person to whom that order applies; and
  - (b) include a certificate such as is mentioned in subsection (4).
- (4) That certificate is one—
  - (a) stating that a health board competent person is satisfied—
    - (i) as to the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
    - (ii) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital; and
  - (b) signed by that person.
- (5) The sheriff may, if satisfied as to the matters mentioned in subsection (6)—
  - (a) in the case of a quarantine order or a short term detention order, make an order extending the order, subject to subsection (8), for a further period not exceeding 3 weeks beginning with the day on which the period specified in the order would have expired;
  - (b) in the case of an exceptional detention order, make an order extending the order, subject to subsection (9), for a further period beginning with the day on which the period specified in the order would have expired.
- (6) The matters referred to in subsection (5) are—
  - (a) the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
  - (b) that it is necessary, to avoid or minimise the risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital.
- (7) An order may be extended on more than one occasion.
- (8) A quarantine order or a short term detention order may not be extended if doing so would result in the person to whom it applies being quarantined or, as the case may be, detained in hospital for a continuous period exceeding 12 weeks.
- (9) An exceptional detention order may not be extended if doing so would result in the person to whom it applies being detained in hospital by virtue of that order for a continuous period exceeding 12 months.
- (10) An order under subsection (5)(a) or (b) must—
  - (a) specify—

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- (i) the person to whom the order extended by virtue of that subsection applies; and
  - (ii) the period for which that order is extended; and
- (b) be notified to—
  - (i) the person to whom the order applies;
  - (ii) any person to whom an explanation was given under section 31(5); and
  - (iii) any other person the sheriff considers appropriate.

## **50 Application for variation of 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 health board may, if it considers it appropriate, apply to the sheriff for an order under section 51(1) modifying the order.
- (3) An application under subsection (2) must—
  - (a) specify—
    - (i) the order which it is proposed to modify;
    - (ii) the person to whom that order applies; and
    - (iii) the modification which it is proposed to make; and
  - (b) include a certificate such as is mentioned in subsection (4).
- (4) That certificate is one—
  - (a) stating that a health board competent person is satisfied—
    - (i) as to the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
    - (ii) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital; and
  - (b) signed by that person.

## **51 Variation of quarantine and hospital detention orders**

- (1) The sheriff may, if satisfied as to the matters mentioned in subsection (2) and that it is appropriate to do so, make an order modifying the order to which the application relates—
  - (a) in the case of a quarantine order, by—
    - (i) varying the place in which the person is to be quarantined;
    - (ii) adding, varying or removing conditions;
  - (b) in the case of a short term detention order or an exceptional detention order, by varying the hospital in which the person is detained;
  - (c) in either case, by adding or removing any step such as is mentioned in section 46(2).
- (2) The matters referred to in subsection (1) are—

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- (a) the matters mentioned in section 40(2)(a) and (b)(i), 42(2)(a) and (b)(i), 43(2)(a) and (b)(i) or, as the case may be, 45(2)(a); and
  - (b) that it is necessary, to avoid or minimise a risk to public health, for the person to continue to be quarantined or, as the case may be, detained in hospital.
- (3) An order modified by virtue of subsection (1) has effect as so modified from the time at which the order under that subsection is made.
- (4) Where the modification under subsection (1) varies the place in which a person is to be quarantined or, as the case may be, the hospital in which a person is to be detained, the order as so modified authorises—
- (a) the removal of the person to that place or, as the case may be, 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; and
  - (b) the quarantining of the person in that place or, as the case may be, the detention of that person in that hospital.
- (5) An order under subsection (1) must—
- (a) specify—
    - (i) the person to whom the order modified by virtue of that subsection applies; and
    - (ii) the modification made by virtue of that subsection; and
  - (b) be notified to—
    - (i) the person to whom the order applies;
    - (ii) any person to whom an explanation was given under section 31(5); and
    - (iii) any other person the sheriff considers appropriate.

#### *Review of orders*

## **52 Duty to review exclusion and restriction orders**

- (1) This section applies where a person is subject to—
- (a) an exclusion order; or
  - (b) a restriction order.
- (2) Without prejudice to section 53(2), a health board competent person of the appropriate health board must, during the period of 1 week ending with the relevant day, consider whether—
- (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) The conditions referred to in subsection (2)(a) are—
- (a) that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or

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- (iv) has been exposed to a contaminant; and
  - (b) that as a result there is a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
- (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,
- the competent person must revoke it.
- (5) In subsection (2)—
- “appropriate health board” has the same meaning as in section 48(5);
  - “relevant day” means—
- (a) the last day of the period of 3 weeks beginning with the day on which the order is made; and
  - (b) where that 3-week period has expired, the last day of each subsequent 3-week period.

### **53 Duty to keep exclusion and restriction orders under review**

- (1) This section applies where a person is subject to—
- (a) an exclusion order; or
  - (b) a restriction order.
- (2) Without prejudice to section 52(2), a health board competent person of the appropriate health board must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
- (a) the conditions mentioned in section 52(3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
- (a) that the conditions mentioned in section 52(3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,
- the competent person must revoke it.
- (4) In subsection (2), the “appropriate health board” has the same meaning as in section 48(5).

### **54 Duty to keep quarantine orders under review**

- (1) This section applies where a person is subject to a quarantine order.
- (2) A health board competent person of the health board which applied for the order must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
- (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.
- (3) The conditions referred to in subsection (2)(a) are—

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- (a) that it is known, or there are reasonable grounds to suspect, that the person—
    - (i) has an infectious disease;
    - (ii) has been exposed to an organism which causes such a disease;
    - (iii) is contaminated; or
    - (iv) has been exposed to a contaminant; and
  - (b) that as a result there is or may be a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
- (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be subject to the order,
- the competent person must revoke the order.

## **55 Duty to keep hospital detention orders under review**

- (1) This section applies where a person is subject to—
- (a) a short term detention order; or
  - (b) an exceptional detention order.
- (2) A health board competent person of the health board which applied for the order must, if requested to do so by the person to whom the order applies, and from time to time, consider whether—
- (a) the conditions mentioned in subsection (3)(a) and (b) continue to apply; and
  - (b) it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be detained in hospital.
- (3) The conditions referred to in subsection (2)(a) are—
- (a) that the person—
    - (i) has an infectious disease; or
    - (ii) is contaminated;
  - (b) that as a result there is a significant risk to public health.
- (4) If, having considered the matters mentioned in subsection (2)(a) and (b), the competent person is not satisfied—
- (a) that the conditions mentioned in subsection (3)(a) and (b) continue to apply; or
  - (b) that it continues to be necessary for the person to be detained in hospital,
- the competent person must revoke the order.

### *Compensation*

## **56 Compensation for voluntary compliance with request**

- (1) A health board must compensate any person who, although not subject to an order mentioned in subsection (2), suffers any loss caused by complying with a request by the board to the person to—
- (a) be quarantined in a place specified by the board;
  - (b) be excluded from entering or remaining in a place, or type of place, so specified; or
  - (c) refrain from carrying on any activity, or type of activity, so specified.

- (2) The orders referred to in subsection (1) are—
  - (a) an exclusion order;
  - (b) a restriction order;
  - (c) a quarantine order.
- (3) A request by a health board under subsection (1)—
  - (a) is to be made by notice in writing given to the person; and
  - (b) must specify the matter mentioned in subsection (1)(a), (b) or, as the case may be, (c).
- (4) Subsection (1) does not apply where the loss is attributable to the fault of the person claiming the loss.
- (5) Any dispute as to—
  - (a) a person’s entitlement to compensation under this section; or
  - (b) the amount of such compensation,is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by the sheriff.
- (6) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

## **57 Compensation for persons subject to certain orders**

- (1) A health board may compensate any person—
  - (a) who is subject to—
    - (i) an exclusion order;
    - (ii) a restriction order; or
    - (iii) a quarantine order; and
  - (b) who incurs any loss caused by complying with the order.
- (2) Subsection (1) does not apply where the loss is attributable to the fault of the person claiming the loss.
- (3) Any dispute as to—
  - (a) a person’s entitlement to compensation under this section; or
  - (b) the amount of such compensation,is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if such agreement cannot be reached, by the sheriff.
- (4) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

## **58 Compensation for carers**

- (1) This section applies where a person (the “relevant person”)—
  - (a) is subject to—
    - (i) an exclusion order;
    - (ii) a restriction order; or
    - (iii) a quarantine order; or

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- (b) although not subject to such an order, complies with a request mentioned in section 56.
- (2) The health board must compensate a person (a “carer”) mentioned in subsection (3) who, as a result of the relevant person being subject to the order or, as the case may be, complying with the request—
- (a) requires to care for the relevant person or, where the carer normally cares for the relevant person, requires to provide more care; and
  - (b) incurs loss as a result of so doing.
- (3) A carer is—
- (a) where the relevant person is 16 or over, a person who is 16 or over and who cares for the relevant person otherwise than—
    - (i) by virtue of a contract of employment or other contract with any person; or
    - (ii) as a volunteer for a voluntary organisation;
  - (b) where the relevant person is under 16, such a person or a parent of the relevant person who has day-to-day care or control of the relevant person.
- (4) Any dispute as to—
- (a) a carer’s entitlement to compensation under this section; or
  - (b) the amount of such compensation,
- is to be determined by a single arbiter appointed by agreement between the board and the carer or, if such agreement cannot be reached, by the sheriff.
- (5) The Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

*Recall of orders granted in absence*

**59 Recall of orders granted in absence of person to whom application relates**

- (1) This section applies where—
- (a) a quarantine order;
  - (b) a short term detention order; or
  - (c) an exceptional detention order,
- is made in the absence of the person to whom the order applies.
- (2) A person mentioned in subsection (3) may apply to the sheriff for an order recalling the order.
- (3) The person referred to in subsection (2) is—
- (a) the person to whom the order applies; or
  - (b) any person having an interest in the welfare of such a person.
- (4) An application under this section must be made before the expiry of the period of 72 hours beginning with the time at which the order to which the application relates is notified to the person to whom it applies.
- (5) Despite the making of an application under this section, the order to which it relates has effect as if the application were not made.



- (6) The sheriff must, before determining an application under this section, give the persons mentioned in subsection (7) the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.
- (7) Those persons are—
  - (a) the applicant;
  - (b) where the applicant is not the person to whom the order applies, that person;
  - (c) the health board which applied for the order; and
  - (d) any other person the sheriff considers appropriate.
- (8) On an application under this section, the sheriff may—
  - (a) confirm the order;
  - (b) revoke the order.

### *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.

#### **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

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- (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.

## **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
  - (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).

### **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—
- (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.

### **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—

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- (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.

**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.

*Breach of orders and offences*

**66 Absconding from quarantine**

- (1) Where a person who is subject to a quarantine order breaches that order by absconding—
- (a) while being removed to the place at which that person is to be quarantined; or
  - (b) from that place,
- that person is liable to be taken into custody by a person mentioned in subsection (2) and detained in accordance with subsections (3) and (4).
- (2) The persons who may take a quarantined person into custody are—
- (a) a constable;
  - (b) an officer of a health board;
  - (c) an officer of a local authority.
- (3) The quarantined person may be detained in—
- (a) a hospital; or
  - (b) any other place.
- (4) The period for which the quarantined person may be detained by virtue of subsection (1) is the period or, as the case may be, the remainder of the period for which the quarantine of that person is authorised.
- (5) In calculating the period mentioned in subsection (4), the period beginning when the quarantined person absconded and ending when that person is detained in accordance with subsection (1) is to be left out of account.

- (6) A person who may take a quarantined person into custody may enter any premises in which the quarantined person is present.
- (7) The power of entry in subsection (6)—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (8) A person who is taken into custody under this section and who absconds remains liable to be taken into custody under and detained in accordance with this section.
- (9) Notwithstanding the detention of a quarantined person in accordance with subsections (3) and (4), the health board may apply under section 49(2) for an extension of the quarantine order; and, where such an extension is granted, the quarantined person may be removed by a person mentioned in section 40(4) to the place in which the person is to be quarantined.

## **67 Absconding from hospital**

- (1) This section applies where a person is subject to—
  - (a) a short term detention order; or
  - (b) an exceptional detention order.
- (2) A person who absconds—
  - (a) while being removed to the hospital in which that person is to be detained; or
  - (b) from the hospital in which the person is detained,is liable to be taken into custody by a person mentioned in subsection (3) and returned to hospital in accordance with subsection (4).
- (3) The persons who may take a person who has absconded into custody are—
  - (a) a constable;
  - (b) an officer of a health board;
  - (c) an officer of a local authority.
- (4) The absconding person may—
  - (a) be returned to the hospital in which the person's detention is authorised; and
  - (b) be detained there for the period or, as the case may be, the remainder of the period for which detention of that person is authorised.
- (5) In calculating the period mentioned in subsection (4)(b), the period beginning when the person absconded and ending when that person is returned to hospital by virtue of subsection (2) is to be left out of account.
- (6) A person who may take an absconding person into custody may enter any premises in which the person is present.
- (7) The power of entry in subsection (6)—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (8) A person who is taken into custody under this section and who absconds remains liable to be taken into custody under and dealt with in accordance with this section.

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## **68      Obstruction**

A person commits an offence if that person, without reasonable excuse, intentionally obstructs—

- (a) a health care professional authorised by virtue of an order under section 34(1) to medically examine a person;
- (b) a person authorised by virtue of section 40(1) to remove a person to the place in which the person is to be quarantined; or
- (c) a person authorised by virtue of section 42(1) to remove a person to hospital.

## **69      Offences arising from breach of orders under this Part**

- (1) A person subject to an order mentioned in subsection (2) who, without reasonable excuse, breaches that order commits an offence.
- (2) The order referred to in subsection (1) is—
  - (a) an order under section 34(1) authorising medical examination;
  - (b) an exclusion order;
  - (c) a restriction order;
  - (d) a quarantine order (including any condition imposed by the order);
  - (e) a short term detention order;
  - (f) an exceptional detention order.

## **70      Failure to ensure child’s compliance with order**

- (1) This section applies where an order mentioned in subsection (2) is made in relation to a person who is under 16 (a “child”).
- (2) The order referred to in subsection (1) is—
  - (a) an exclusion order;
  - (b) a restriction order; or
  - (c) a quarantine order.
- (3) A parent of the child who—
  - (a) has day-to-day care or control of the child; and
  - (b) fails, without reasonable excuse, to ensure that the child does not breach the order,commits an offence.
- (4) Where there is no such parent, a person mentioned in subsection (5) who fails, without reasonable excuse, to ensure that the child does not breach the order commits an offence.
- (5) The person referred to in subsection (4) is a person who—
  - (a) is 16 or over; and
  - (b) has day-to-day care or control of the child otherwise than—
    - (i) by virtue of a contract of employment or other contract with any person; or
    - (ii) as a volunteer for a voluntary organisation.

- (6) In proceedings for an offence under subsection (3) or (4), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.

### *Procedure*

## **71 Applications and appeals**

- (1) Nothing in this Part affects the Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) to regulate and prescribe the procedure and practice to be followed in any application or appeal under this Part.
- (2) Without prejudice to the generality of section 32 of that Act, provision may, in particular, be made under that section about—
- (a) the manner in which, and time within which, notice of applications for orders is given;
  - (b) the manner in which, and time within which, notice of orders is given;
  - (c) where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications and orders must be given;
  - (d) the circumstances in which the sheriff or, as the case may be, the sheriff principal, may determine whether and, if so, where, a hearing is to be held; and
  - (e) the place, or types of place, at which hearings may be held.
- (3) The sheriff may determine an application under this Part (other than an appeal)—
- (a) in chambers;
  - (b) in the absence of the person to whom the application relates.

## **PART 5**

### **PUBLIC HEALTH FUNCTIONS OF LOCAL AUTHORITIES**

#### *Facilities for disinfection etc.*

## **72 Provision of facilities for disinfection etc.**

- (1) Each local authority must provide or ensure the provision, for its area, of—
- (a) facilities and equipment for—
    - (i) the disinfection of;
    - (ii) the disinfestation of;
    - (iii) the decontamination of; and
    - (iv) other connected operations in relation to, things and premises which are infected, infested or contaminated;
  - (b) facilities and equipment for the destruction of such things; and
  - (c) means for transporting such things to such facilities and equipment.
- (2) An authority may comply with subsection (1)(a) and (b) by providing or ensuring the provision of mobile facilities and equipment only; and, where it does so, subsection (1)(c) does not apply.

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- (3) An authority may enter into an agreement with any person for the provision by that person of the facilities, equipment and means of transport referred to in subsection (1).
- (4) Facilities and equipment provided under subsection (1) need not be in the area of the local authority.
- (5) In this Part—
- “contaminated” includes having been exposed to—
- (a) a person who is contaminated;
- (b) a contaminant; or
- (c) an animal or insect which is contaminated;
- “infected” includes having been exposed to—
- (a) a person who has an infectious disease;
- (b) an organism which causes any such disease; or
- (c) an animal or insect which—
- (i) has or carries an organism which causes an infectious disease; or
- (ii) has or carries an infectious disease,
- which is a risk to human health; and
- “infested” means infested with an animal or insect which—
- (a) has or carries an organism which causes an infectious disease; or
- (b) has or carries an infectious disease,
- which is a risk to human health.
- (6) In subsection (5), “animal” means a vertebrate other than a human.

*Disinfection etc. of premises and things*

**73 Notice on occupier or owner of infected etc. premises or things**

- (1) This section applies where—
- (a) a local authority knows or suspects that—
- (i) any premises in its area are; or
- (ii) any thing in or on such premises is, infected, infested or contaminated; and
- (b) it appears to the authority that as a result it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in subsection (2) to be taken.
- (2) Those steps are—
- (a) the—
- (i) disinfection;
- (ii) disinfestation; or
- (iii) decontamination,
- of the premises or of a thing in or on the premises;
- (b) the destruction of such a thing;
- (c) other connected operations in relation to such a thing or such premises.
- (3) The authority may serve notice on the person who is—



- (a) the occupier of the premises; or
  - (b) where the premises are unoccupied, the owner of them,
- requiring that person to take one or more of the steps mentioned in subsection (2).
- (4) Where—
- (a) a notice is served under subsection (3)(a) on the occupier of premises; and
  - (b) that occupier is not the owner of those premises,
- the authority must serve a copy of the notice on the owner.
- (5) The authority may serve notice under subsection (3) only where a local authority competent person certifies that the person is satisfied as to the matters mentioned in subsection (1).
- (6) A notice under subsection (3) must—
- (a) specify the steps which the person on whom the notice is served must take;
  - (b) specify the period before the expiry of which those steps must be taken; and
  - (c) advise the person on whom the notice is served that, where that person fails to comply with the notice, the local authority may take those steps.
- (7) Where, before the expiry of the period mentioned in subsection (6)(b), the person on whom the notice is served consents, an authorised officer may do anything that officer would, under section 75(2), be entitled to do.
- (8) In this Part, “authorised officer” means an officer of the local authority authorised by it for the purposes of this section, section 74, 75, 76, 77, 78 or, as the case may be, 79.

#### **74 Inspection of premises in relation to which notice served**

- (1) This section applies where—
- (a) a local authority serves notice under section 73(3); and
  - (b) the period mentioned in section 73(6)(b) expires.
- (2) An authorised officer may—
- (a) enter the premises for the purpose of ascertaining whether the steps specified in the notice have been taken;
  - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable.
- (3) An authorised officer entitled to enter premises under subsection (2) must, if requested to do so, produce a document showing that officer’s authority.
- (4) An authorised officer who enters any unoccupied premises by virtue of subsection (2) must leave the premises as effectively secured against unauthorised entry as the officer found them.

#### **75 Failure to comply with notice**

- (1) This section applies where—
- (a) a local authority serves notice under section 73(3);
  - (b) the period mentioned in section 73(6)(b) expires; and

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- (c) the person on whom the notice is served fails to take the steps specified in the notice.
- (2) An authorised officer may—
- (a) enter the premises;
  - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
  - (c) direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
  - (d) take—
    - (i) any step specified in the notice; and
    - (ii) any other step mentioned in section 73(2) as that officer considers appropriate;
  - (e) remove any thing from the premises for the purpose of taking any such step at any other place.
- (3) An authorised officer who enters any unoccupied premises by virtue of subsection (2) (a) must leave the premises as effectively secured against unauthorised entry as the officer found them.

## 76 **Power of local authority to disinfect etc. premises or things**

- (1) This section applies where—
- (a) a local authority knows or suspects that—
    - (i) any premises in its area are; or
    - (ii) any thing in or on such premises is, infected, infested or contaminated; and
  - (b) it appears to the authority that as a result—
    - (i) it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in section 73(2) to be taken; and
    - (ii) it is not reasonably practicable for any person on whom a notice under section 73(3) might be served to take those steps.
- (2) The authority may serve notice on the person who is—
- (a) the occupier of the premises; or
  - (b) where the premises are unoccupied, the owner of them,
- requiring that person to give an authorised officer access to the premises or thing in order for any of the steps mentioned in section 73(2) to be taken.
- (3) Where—
- (a) a notice is served under subsection (2) on the occupier of premises; and
  - (b) the occupier is not the owner of those premises,
- the authority must serve a copy of the notice on the owner.

- (4) The local authority may serve notice under subsection (2) only where a local authority competent person certifies that the person is satisfied as to the matters in subsection (1).
- (5) A notice under subsection (2) must—
  - (a) specify the steps which the authority proposes to take; and
  - (b) specify the period before the expiry of which those steps are to be taken.
- (6) An authorised officer may—
  - (a) enter the premises;
  - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
  - (c) direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
  - (d) take—
    - (i) any step specified in the notice; and
    - (ii) any other step mentioned in section 73(2) as that officer considers appropriate; and
  - (e) remove any thing from the premises for the purpose of taking any such step at any other place.
- (7) An authorised officer who enters any unoccupied premises by virtue of subsection (6) (a) must leave the premises as effectively secured against unauthorised entry as the officer found them.

## **77 Entry to dwellinghouses**

- (1) Where an authorised officer proposes, in exercise of any power conferred by—
  - (a) section 74(2);
  - (b) section 75(2); or
  - (c) section 76(6),to enter a dwellinghouse, the conditions set out in subsections (2) and (3) must be satisfied.
- (2) The first condition is that the officer has given 48 hours' notice of the proposed entry to a person who appears to be the occupier of the dwellinghouse.
- (3) The second condition is that—
  - (a) the person who appears to be the occupier of the dwellinghouse has consented; or
  - (b) entry is effected under the authority of a warrant issued under section 78(2).
- (4) In this Part, “dwellinghouse” has the meaning given by section 26.

## **78 Warrant to enter and take steps**

- (1) This section applies where—

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- (a) a person entitled to enter premises under this Part—
    - (i) has been refused entry; or
    - (ii) reasonably anticipates entry being refused;
  - (b) premises which such a person is entitled to enter are unoccupied;
  - (c) the occupier of such premises is temporarily absent and there is urgency; or
  - (d) a person entitled to enter premises under this Part—
    - (i) has been prevented from taking any step which that person is entitled under this Part to take; or
    - (ii) reasonably anticipates being prevented from doing so.
- (2) The sheriff or a justice of the peace may, on the application of a local authority, by warrant authorise an officer of the authority—
- (a) to enter the premises;
  - (b) on entering premises by virtue of paragraph (a), to take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
  - (c) to direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,
 to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
  - (d) to take any step mentioned in section 73(2);
  - (e) to remove any thing from the premises for the purpose of taking any such step at any other place.
- (3) The sheriff or justice of the peace must not, under subsection (2), grant a warrant in relation to a dwellinghouse unless the sheriff or justice is satisfied that—
- (a) notice has been given under section 77(2); and
  - (b) the period of notice has expired
- (4) The power of entry in this section—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (5) An authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.
- (6) A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

## **79 Use of powers in emergencies**

- (1) This section applies where—
- (a) a local authority knows or suspects that—
    - (i) any premises in its area are; or
    - (ii) any thing in or on such premises is,
 infected, infested or contaminated;

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- (b) it appears to the authority that as a result it is necessary, to prevent, or prevent the spread of, infectious disease or contamination, for one or more of the steps mentioned in section 73(2) to be taken; and
  - (c) the authority considers, on reasonable grounds, that there is an emergency.
- (2) An authorised officer may enter the premises—
  - (a) whether or not a notice under section 73(3) or 76(2) has been served;
  - (b) where a notice under section 73(3) has been served, whether or not the period specified in the notice has expired.
- (3) The authorised officer may enter premises by virtue of this section only where a local authority competent person certifies that the person is satisfied as to the matters in subsection (1).
- (4) The power of entry which the officer has—
  - (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (5) Where the premises in relation to which the officer proposes to exercise the power are a dwellinghouse, section 77 does not apply.
- (6) The authorised officer may, on entering premises by virtue of this section—
  - (a) take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
  - (b) direct that—
    - (i) those premises (or any part of them) are; or
    - (ii) any thing in or on them is,to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;
  - (c) take any step mentioned in section 73(2);
  - (d) remove any thing from the premises for the purpose of taking any such step at any other place.
- (7) An authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.
- (8) This section applies despite the making of an appeal under section 83(1).
- (9) In this section, there is an “emergency” if—
  - (a) there is a significant risk to public health; and
  - (b) the nature of that risk is such that immediate action is necessary to prevent, or prevent the spread of, infectious disease or contamination.

### *Offences*

#### **80 Obstruction**

A person commits an offence if the person, without reasonable excuse, intentionally obstructs an authorised officer or any other person doing anything that officer or person is authorised to do by virtue of—

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- (a) section 74(2);
- (b) section 75(2);
- (c) section 76(6);
- (d) section 78(2); or
- (e) section 79(2) or (6).

### *Recovery of expenses*

## **81 Recovery of expenses**

- (1) A local authority may recover any reasonable expenses it incurs in doing anything it is entitled to do under—
- (a) section 73(7);
  - (b) section 75(2);
  - (c) section 76(6);
  - (d) section 78(2); or
  - (e) section 79(2) or (6),
- from the person on whom the notice under section 73(3) or, as the case may be, 76(2) was served.
- (2) Where the authority incurs expenses in doing anything it is entitled to do under section 79(2) or (6) without a notice under section 73(3) or 76(2) having been served, the authority may recover the expenses from—
- (a) the occupier of the premises; or
  - (b) where the premises are unoccupied, the owner of them.
- (3) The local authority may also recover any administrative expenses incurred by it in connection with the thing to which the expenses relate.
- (4) The local authority may accept payment of sums recoverable under this section by instalments.
- (5) Sums due by a person under this section are recoverable by the local authority as a civil debt.

### *Compensation*

## **82 Compensation**

- (1) A local authority must compensate any person who suffers loss or damage caused by any person doing or failing to do anything which that person is entitled or, as the case may be, required to do under—
- (a) section 73(7);
  - (b) section 75(2);
  - (c) section 76(6);
  - (d) section 78(2); or
  - (e) section 79(2) or (6).
- (2) Subsection (1) does not apply where the loss or damage—
- (a) is attributable to the fault of the person who suffered the loss or damage; or

- (b) is loss or damage which relates to—
  - (i) any infected, infested or contaminated premises which are damaged as a result of the disinfection, disinfestation or decontamination of the premises or any thing in or on them; or
  - (ii) any infected, infested or contaminated thing, in or on premises, which is damaged or destroyed as a result of the disinfection, disinfestation or decontamination of the thing or premises.
- (3) Any dispute as to—
  - (a) a person’s entitlement to compensation under subsection (1); or
  - (b) the amount of such compensation,is to be determined by a single arbiter appointed by agreement between the authority and the person claiming loss or damage, or, if such agreement cannot be reached, by the sheriff.

### *Appeals*

## **83 Appeals against notices under this Part**

- (1) Any person on whom a notice under—
  - (a) section 73(3); or
  - (b) section 76(2),is served may appeal to the sheriff.
- (2) An appeal under this section may be made against—
  - (a) the notice;
  - (b) any requirement specified in it.
- (3) An appeal under this section must be made before the expiry of the period of 14 days beginning with the day after the day on which the notice is served.
- (4) On an appeal under this section, the sheriff may—
  - (a) confirm the notice;
  - (b) revoke the notice;
  - (c) remove or vary any requirement specified in the notice;
  - (d) make such other order as the sheriff considers appropriate.

## **84 Appeal to sheriff principal**

- (1) A person who appealed under section 83(1) 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 notice appealed against;
  - (b) not to remove or vary any requirement specified in the notice.
- (3) A local authority 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 notice appealed against;

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- (b) to remove or vary any requirement specified in the notice.
- (5) On an appeal under this section, the sheriff principal may—
  - (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.

## **85 Appeal to Court of Session**

- (1) A person who appealed under section 84(1) or (3) may, with the leave of the sheriff principal, appeal against the sheriff principal’s decision to the Court of Session.
- (2) An appeal under this section may be made on a point of law only.
- (3) 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.
- (4) The decision of the Court on an appeal under this section is final.

### *Existing functions*

## **86 Application of this Part where other functions being exercised**

- (1) This section applies where—
  - (a) a local authority; or
  - (b) any other person,has functions under any other enactment in relation to premises or things which are infected, infested or contaminated.
- (2) A function to which subsection (1) applies is an “existing function”.
- (3) A local authority may not exercise any function conferred on it by virtue of this Part if and to the extent that—
  - (a) the authority or any other person is exercising an existing function; or
  - (b) the authority is aware that another person is likely imminently to exercise an existing function,in relation to the infected, infested or contaminated premises or thing.
- (4) Subsection (3) does not affect the functions conferred on a local authority by virtue of section 72(1).



## PART 6

### MORTUARIES ETC.

#### *Provision of mortuaries*

#### **87 Provision of mortuaries by local authorities**

- (1) Each local authority must provide or ensure the provision for its area of such—
  - (a) premises and facilities for the reception and temporary storage of the bodies of persons who die in the authority’s area; and
  - (b) premises and facilities for the post-mortem examination of such bodies, as it considers appropriate.
- (2) Subsection (1) does not apply in relation to the bodies of persons mentioned in section 88(2).
- (3) An authority may enter into an agreement with any person for the provision by that person of the premises and facilities referred to in subsection (1).
- (4) Premises and facilities provided under subsection (1) need not be in the area of the local authority providing them or ensuring their provision.

#### **88 Provision of mortuaries by health boards**

- (1) Each health board must provide or ensure the provision for its area of such—
  - (a) premises and facilities for the reception and temporary storage of the bodies of persons mentioned in subsection (2); and
  - (b) premises and facilities for the post-mortem examination of such bodies, as it considers appropriate.
- (2) Those persons are persons—
  - (a) who die in a hospital in the board’s area; or
  - (b) who die elsewhere and whose bodies are brought to such a hospital.
- (3) Subsection (2) does not apply in relation to bodies of persons the reception, storage or post-mortem examination of which is required for the purposes of the functions or under the authority of the procurator fiscal.
- (4) In this Part, “mortuary” means premises and facilities provided by virtue of this section or section 87.

#### **89 Co-operation by local authorities and health boards**

Local authorities and health boards must co-operate with one another in complying with their respective duties under section 87(1) or, as the case may be, 88(1).

#### *Protection of public from risks arising from bodies*

#### **90 Restriction on release of infected etc. bodies from hospital**

- (1) This section applies where—

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- (a) the body of a person—
    - (i) who has died of an infectious disease;
    - (ii) who had, immediately before dying, such a disease but who died of another cause; or
    - (iii) who was, immediately before dying, contaminated (whether the contamination caused the death or not),
 is in a hospital; and
  - (b) the health board responsible for that hospital considers that, as a result of that disease or contamination—
    - (i) there is a significant risk to public health; and
    - (ii) it is necessary, to avoid or minimise that risk, for that body to be retained in hospital until the board is satisfied as to the arrangements for its disposal.
- (2) The board may in writing direct that the body—
- (a) must not be removed from the hospital without the board’s written authorisation; and
  - (b) may be removed only—
    - (i) by a person specified in the authorisation; and
    - (ii) for the purpose of immediate disposal.
- (3) The board may give a direction under subsection (2) only where a health board competent person certifies in writing that the person is satisfied as to the matters mentioned in subsection (1).
- (4) Where a board gives a direction under subsection (2) it must explain to any person who appears to the board to be responsible for the removal and disposal of the body—
- (a) that there is a significant risk to public health;
  - (b) the nature of that risk;
  - (c) any precautions which the board considers should be taken; and
  - (d) any other matter which the board considers appropriate.
- (5) Subsection (4) does not apply in any case where the board has given an explanation under section 91(2) to the person to whom an explanation under subsection (4) would be given.
- (6) Any person who, without reasonable excuse, breaches a direction under subsection (2) commits an offence.
- (7) A direction under subsection (2) does not prevent the removal of the body in relation to which the direction is made to a mortuary or other similar premises for the purposes of the post-mortem examination of that body.
- (8) In this Part, “disposal”, in relation to a body—
- (a) means burial or cremation; and
  - (b) includes preparation of the body for burial or cremation;
- and cognate expressions are to be construed accordingly.

## **91 Duty of health board where infected etc. person dies**

- (1) This section applies where a health board knows that a person in its area—

- (a) has died of an infectious disease;
  - (b) had, immediately before dying, such a disease but died of another cause; or
  - (c) was, immediately before dying, contaminated (whether the contamination caused the death or not).
- (2) The board must explain to any person who appears to the board to be responsible for the disposal of the person's body—
- (a) the nature of any risk to public health which results from the disease or contamination;
  - (b) any precautions which the board considers should be taken; and
  - (c) any other matter which the board considers appropriate.
- (3) Subsection (2) does not apply in any case where the board has given an explanation under section 90(4) to the person to whom an explanation under subsection (2) would be given.

## **92 Application for order in relation to bodies retained in premises**

- (1) This section applies where—
- (a) the body of a person is being retained in premises;
  - (b) the local authority in whose area the premises are considers that appropriate arrangements have not been made for the disposal of the body; and
  - (c) that authority is satisfied 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 body to be appropriately disposed of.
- (2) The authority may apply to the sheriff for its area for an order under section 93(1).
- (3) An application under subsection (2) must be accompanied by a certificate—
- (a) stating that a local authority competent person is satisfied as to the matters mentioned in subsection (1); and
  - (b) signed by that person.
- (4) In this section, “premises” does not include—
- (a) a mortuary or other similar premises; or
  - (b) a hospital.

## **93 Power of sheriff to order removal to mortuary and disposal**

- (1) The sheriff may—
- (a) if satisfied that there is a significant risk to public health, make an order authorising the local authority to—
    - (i) remove the body of a person mentioned in section 92(1)(a) to a mortuary or other similar premises; and
    - (ii) dispose of that body before the expiry of the period specified in the order;
  - (b) if satisfied that the risk to public health is such that it is necessary for the body to be disposed of immediately, make an order authorising the authority to dispose of that body as soon as reasonably practicable.

- (2) Where an authority is authorised by virtue of this section to remove or dispose of a body, an officer of the authority or any other person authorised by the authority (in either case, an “authorised officer”) may—
- (a) enter any premises for the purposes of removing that body;
  - (b) on entering premises by virtue of paragraph (a), take any other person authorised by the authorised officer and, if that officer has reasonable cause to expect any serious obstruction in obtaining access, a constable; and
  - (c) take such other steps as are reasonably required in connection with that removal or disposal.
- (3) The power of entry in subsection (2)(a)—
- (a) may be exercised at any time; and
  - (b) includes power to use reasonable force.
- (4) Nothing in this section affects any enactment regulating or authorising the burial or cremation of a deceased person.
- (5) Any reasonable expenses incurred by the authority by virtue of an order under subsection (1) are recoverable from the estate of the deceased person.
- (6) A person commits an offence if that person, without reasonable excuse, intentionally obstructs any person exercising any function which that person is authorised by virtue of this section to exercise.

## PART 7

### INTERNATIONAL TRAVEL

#### 94 International travel

- (1) The Scottish Ministers may by regulations make provision for the purposes of or in connection with—
- (a) giving effect to—
    - (i) the International Health Regulations;
    - (ii) any other international agreements relating to the spread of infectious disease or contamination,
 so far as they have effect in or as regards Scotland;
  - (b) protecting public health from risks arising from vehicles—
    - (i) arriving in Scotland;
    - (ii) leaving Scotland.
- (2) Regulations under subsection (1) may, in particular make provision—
- (a) for persons to be—
    - (i) medically examined;
    - (ii) quarantined;
    - (iii) detained;
  - (b) for persons to be required to provide information or answer questions (including information or questions relating to health);
  - (c) for vehicles to be detained;

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- (d) for prohibitions or restrictions on—
    - (i) the entry and departure of persons or things;
    - (ii) the arrival and leaving of vehicles;
  - (e) for things to be—
    - (i) inspected;
    - (ii) tested;
    - (iii) detained;
    - (iv) destroyed;
  - (f) for persons, vehicles or things to be—
    - (i) disinfected;
    - (ii) disinfested;
    - (iii) decontaminated;
  - (g) for the imposition of obligations on—
    - (i) masters of ships;
    - (ii) pilots of aircraft;
    - (iii) other persons on board vehicles;
    - (iv) owners and managers of ports and airports;
  - (h) conferring functions—
    - (i) on the Scottish Ministers;
    - (ii) on other persons;
  - (i) creating offences;
  - (j) permitting any person to charge in respect of functions carried out under the regulations.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).
- (4) A person who commits an offence under regulations made under subsection (1) is liable to such penalties, not exceeding those mentioned in subsection (5), as are provided for in the regulations.
- (5) Those penalties are—
- (a) on summary conviction, imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, imprisonment for a period not exceeding 2 years or a fine or both.
- (6) In this section, “the International Health Regulations” means the International Health Regulations (2005) adopted by the 58th World Health Assembly of the World Health Organisation on 23 May 2005 (as they may be amended from time to time) and includes a recommendation issued under those Regulations.

**PART 8**

## REGULATION OF PROVISION OF SUNBEDS

*Offences***95 Prohibition on allowing use of sunbeds by persons under 18**

- (1) An operator of sunbed premises who, without reasonable excuse, allows a person who is under 18 to use a sunbed on those premises commits an offence.
- (2) In proceedings for an offence under subsection (1), it is a defence for the operator to show that—
  - (a) the operator believed the person to be 18 or over; and
  - (b) the operator had taken reasonable steps to establish the person's age.
- (3) For the purposes of subsection (2)(b), the operator is to be treated as having taken reasonable steps to establish the person's age if (and only if)—
  - (a) the operator was shown any of the documents mentioned in subsection (4); and
  - (b) that document would have convinced a reasonable person.
- (4) The documents referred to in subsection (3)(a) are any document appearing to be—
  - (a) a passport;
  - (b) a European Union photocard driving licence; or
  - (c) such other document (or description of document) as may be prescribed.
- (5) In subsections (2)(a) and (b) and (3), references to the operator include an employee or agent of the operator.

**96 Prohibition on sale or hire of sunbeds to persons under 18**

- (1) A person (the "seller") who, without reasonable excuse, sells a sunbed to a person who is under 18 commits an offence.
- (2) A person (the "hirer") who, without reasonable excuse, hires a sunbed to a person who is under 18 commits an offence.
- (3) In proceedings for an offence under subsection (1) or (2), it is a defence for the seller or hirer to show that—
  - (a) the seller or hirer believed the person to be 18 or over; and
  - (b) the seller or hirer had taken reasonable steps to establish the person's age.
- (4) For the purposes of subsection (3)(b), the seller or hirer is to be treated as having taken reasonable steps to establish the person's age if (and only if)—
  - (a) the seller or hirer was shown any of the documents mentioned in subsection (5); and
  - (b) that document would have convinced a reasonable person.
- (5) The documents referred to in subsection (4)(a) are any document appearing to be—
  - (a) a passport;
  - (b) a European Union photocard driving licence; or

(c) such other document (or description of document) as may be prescribed.

(6) In subsections (3)(a) and (b) and (4), references to the seller or hirer include an employee or agent of the seller or hirer.

#### **97 Remote sale or hire of sunbeds**

(1) This section applies where, in connection with the sale or hire of a sunbed, the premises where the order for the sunbed is taken are not the same as the premises from which the sunbed is despatched for delivery in pursuance of the sale or hire.

(2) Subject to subsection (3), the sale or hire is to be treated, for the purposes of section 96, as taking place on the premises where the order was taken.

(3) Where—

(a) the premises where the order for the sunbed is taken are not in Scotland; and

(b) the premises from which the sunbed is despatched are in Scotland,

the sale or hire is to be treated, for the purposes of section 96, as taking place on the premises from which the sunbed is despatched.

#### **98 Prohibition on allowing unsupervised use of sunbeds**

(1) An operator of sunbed premises who, without reasonable excuse, allows a person to use a sunbed on those premises without supervision commits an offence.

(2) In subsection (1), the requirement for supervision is met if the operator (or an employee or agent of the operator) is present on the sunbed premises at any time a person is using a sunbed on those premises.

(3) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.

#### **99 Medical use of sunbeds**

(1) The Scottish Ministers may, by regulations, make provision regarding the application of this Part to sunbeds used for medical purposes.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) as to what is (and is not) a sunbed;

(b) as to what are (and are not) sunbed premises;

(c) as to circumstances in which the provisions of this Part do (and do not) apply.

(3) Regulations under subsection (1) may modify any enactment (including this Act).

#### **100 Duty to provide information to sunbed users**

(1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsections (2) and (3) commits an offence.

(2) The operator must provide a person who proposes to use a sunbed on sunbed premises with such information regarding the effects on health of sunbed use as may be prescribed in accordance with subsection (5).

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- (3) That information is to be provided each time the person proposes to use a sunbed on those premises.
- (4) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (5) The Scottish Ministers may prescribe—
  - (a) the information which is to be provided;
  - (b) the form and manner in which that information is to be provided.

### **101 Duty to display information notice**

- (1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsection (2) commits an offence.
- (2) That requirement is to display a notice—
  - (a) containing such information as may be prescribed in accordance with subsection (4);
  - (b) in a position where it is readily visible to persons proposing to use a sunbed on the premises.
- (3) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (4) The Scottish Ministers may prescribe—
  - (a) the information which the notice is to contain;
  - (b) the form and manner of display of the notice.

### *Enforcement*

### **102 Power to enter premises**

- (1) An authorised officer of a local authority may enter and inspect any premises in the area of that authority in order to ascertain whether an offence under section 95, 96, 98, 100 or 101 has been or is being committed there.
- (2) The power in subsection (1) may be exercised only at a reasonable time.
- (3) The authorised officer must, if requested to do so, produce a document showing that officer's authority.
- (4) When exercising the power in subsection (1), an authorised officer may take a constable if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access.
- (5) An authorised officer may—
  - (a) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the authorised officer to see for the purposes of this Part; and
  - (b) inspect and take copies of, or of any entry in, the records.



- (6) Nothing in subsection (5) compels the production by any person of a document subject to legal privilege.
- (7) A document subject to legal privilege means a communication—
- (a) between a professional legal adviser and the adviser’s client; or
  - (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,
- which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.
- (8) A person commits an offence if the person, without reasonable excuse—
- (a) intentionally obstructs an authorised officer in the exercise of powers under subsection (1);
  - (b) fails to comply with a requirement made under subsection (5).
- (9) In proceedings for an offence under subsection (8), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.

### **103 Power to enter premises: entry to dwellinghouses**

- (1) Where an authorised officer proposes, in the exercise of the power conferred by section 102(1), to enter a dwellinghouse, the condition set out in subsection (2) must be satisfied.
- (2) The condition is that the authorised officer has obtained a warrant from the sheriff in the month preceding the date of entry.
- (3) The sheriff may issue a warrant only if satisfied by evidence on oath that there are reasonable grounds for suspecting that—
- (a) an offence mentioned in section 102(1) has been, or is being, committed; and
  - (b) evidence of the commission of that offence may be found in the dwellinghouse.
- (4) In this section, “dwellinghouse” means any premises or part of premises which are wholly or mainly occupied as a person’s dwelling.

### **104 Power to require identification of operator**

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that local authority is committing or has committed an offence under section 95, 98, 100 or 101, the authorised officer may require any person on those premises to give the name and address of the operator.
- (2) When making a requirement under subsection (1), the authorised officer must inform the person—
- (a) that the officer has reason to believe that the operator is committing or has committed an offence under section 95, 98, 100 or 101; and
  - (b) that failure to comply with the requirement may be an offence.
- (3) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement made under subsection (1).

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- (4) In proceedings for an offence under subsection (3), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.

### **105 Fixed penalties for offences under section 95, 98, 100 or 101**

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that authority has committed an offence under section 95, 98, 100 or 101, the authorised officer may give the operator a notice (a “fixed penalty notice”) offering the operator the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) A fixed penalty notice must—
- (a) identify the offence to which it relates; and
  - (b) give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state—
- (a) the amount of the fixed penalty;
  - (b) the period within which it may be paid;
  - (c) the—
    - (i) person to whom; and
    - (ii) address at which, payment may be made;
  - (d) the method or methods by which payment may be made;
  - (e) the consequences of not making payment before the end of the period for payment of the fixed penalty.
- (4) The amount of the fixed penalty is—
- (a) in the case of an offence under section 95, £100;
  - (b) in the case of an offence under section 98, 100 or 101, £50.
- (5) The period for payment of the fixed penalty is 28 days beginning with the day on which the notice was given.
- (6) The local authority may extend the period for payment of the fixed penalty in any particular case if they consider it appropriate to do so, by giving notice to the operator.
- (7) No proceedings for an offence under section 95, 98, 100 or 101 may be commenced before the end of the period for payment of the fixed penalty.
- (8) No such proceedings may be commenced or continued if payment of the penalty is made before the end of the period for payment or is accepted by the local authority after the end of that period.
- (9) In proceedings for an offence under section 95, 98, 100 or 101, a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
  - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,
- is sufficient evidence of the facts stated.

- (10) Any sum received by a local authority under this section accrues to that authority.
- (11) The Scottish Ministers may by regulations—
- (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
  - (b) provide for the form of a fixed penalty notice;
  - (c) provide for the method or methods by which fixed penalties may be paid;
  - (d) modify subsection (4) so as to substitute a different amount (not exceeding level 2 on the standard scale) for an amount for the time being specified there;
  - (e) modify subsection (5) so as to substitute a different period for the period for the time being specified there;
  - (f) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under this section.

#### **106      Withdrawal of notices**

- (1) The local authority must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.
- (2) Where a fixed penalty notice is withdrawn in accordance with subsection (1)—
- (a) the local authority must give notice of the withdrawal to the person to whom the fixed penalty notice was given;
  - (b) the local authority must repay any amount which has been paid under the fixed penalty notice; and
  - (c) no proceedings are to be commenced or continued against that person for the offence in question.

#### **107      Penalties for offences under Part 8**

Any person who commits an offence under this Part is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### *Interpretation*

#### **108      Interpretation of Part 8**

In this Part—

- “authorised officer” means an officer of a local authority authorised for the purposes of this Part;
- “operator” means the person having management or control of sunbed premises;
- “sunbed” means an electrically-powered device designed to produce tanning of the skin by the emission of artificial ultraviolet radiation; and
- “sunbed premises” means premises in which persons are permitted to use a sunbed for payment.

**PART 9**

## STATUTORY NUISANCES

**109 Insect nuisance**

- (1) Section 79 (statutory nuisances and inspections) of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”) is amended as follows.
- (2) In subsection (1), after paragraph (fa), insert—  
 “(faa) any insects emanating from premises and being prejudicial to health or a nuisance;”.
- (3) After subsection (5A), insert—  
 “(5AA) Subsection (1)(faa) above does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (c. 69).  
 (5AB) For the purposes of subsection (1)(faa) above, “premises” does not include—  
 (a) a site of special scientific interest (within the meaning of section 3(6) of the Nature Conservation (Scotland) Act 2004 (asp 6));  
 (b) such other place (or type of place) as may be prescribed in regulations made by the Scottish Ministers.  
 (5AC) Before making regulations under subsection (5AB)(b) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (5AD) below.  
 (5AD) Those persons are—  
 (a) such associations of local authorities; and  
 (b) such other persons,  
 as the Scottish Ministers consider appropriate.”.
- (4) In subsection (7), in the definition of “premises”, after “land” insert “(subject to subsection (5AB) above)”.

**110 Artificial light nuisance**

- (1) Section 79 of the 1990 Act is further amended as follows.
- (2) In subsection (1), after paragraph (fb), insert—  
 “(fba) artificial light emitted from—  
 (i) premises;  
 (ii) any stationary object,  
 so as to be prejudicial to health or a nuisance;”.
- (3) In subsection (2)—  
 (a) after “(1)(b)” insert “, (fba)”;  
 (b) after “premises” insert “(or, in respect of paragraph (fba)(ii) above, a stationary object located on premises)”.
- (4) After subsection (5B), insert—

“(5BA) Subsection (1)(fba) above does not apply to artificial light emitted from a lighthouse (within the meaning of Part 8 of the Merchant Shipping Act 1995 (c. 21)).”.

## **111 Statutory nuisance: land covered with water**

(1) Section 79 of the 1990 Act is further amended as follows.

(2) In subsection (1), after paragraph (e), insert—

“(ea) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;”.

(3) After subsection (5), insert—

“(5ZA) For the purposes of subsection (1)(ea) above, “land”—

- (a) includes structures (other than buildings) in, on or over land;
- (b) does not include—
  - (i) mains or other pipes used for carrying a water supply;
  - (ii) any part of the public sewerage system;
  - (iii) any other sewers, drains or other pipes used for carrying sewage;
  - (iv) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;
  - (v) the seabed.

(5ZB) In subsection (5ZA) above—

“drain”, “sewage” and “sewer” have the meanings given by section 59 of the Sewerage (Scotland) Act 1968 (c. 47);

“main” has the meaning given by section 109(1) of the Water (Scotland) Act 1980 (c. 45);

“pipe” includes a service pipe within the meaning of that section of that Act;

“public sewerage system” has the meaning given by section 29 of the Water Services etc. (Scotland) Act 2005 (asp 3).”.

## **112 Power to make further provision regarding statutory nuisances**

(1) The 1990 Act is further amended as follows.

(2) In section 79—

- (a) in subsection (1), for “(1A)” substitute “(1ZA)”; and
- (b) after subsection (1), insert—

“(1ZA) The Scottish Ministers may by regulations—

- (a) amend this section so as to—
  - (i) prescribe additional matters which constitute statutory nuisances for the purposes of this Part;
  - (ii) vary the description of any matter which constitutes a statutory nuisance;
- (b) in relation to an amendment under paragraph (a), amend this Act and any other enactment to make such incidental,

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supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(1ZB) Before making regulations under subsection (1ZA) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (1ZC) below.

(1ZC) Those persons are—

- (a) such associations of local authorities; and
- (b) such other persons,

as the Scottish Ministers consider appropriate.”.

### **113 Enforcement of statutory nuisances: fixed penalty notice**

(1) The 1990 Act is further amended as follows.

(2) In section 80 (summary proceedings for statutory nuisances), after subsection (4), insert—

“(4A) Where a local authority have reason to believe that a person has committed an offence under subsection (4) above, the local authority may give that person a notice (a “fixed penalty notice”) in accordance with section 80ZA offering the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.”.

(3) After that section, insert—

#### **“80ZA Fixed penalty notice: supplemental**

(1) This section applies to a fixed penalty notice given under section 80(4A).

(2) A fixed penalty notice must give reasonable particulars of the circumstances alleged to constitute the offence.

(3) A fixed penalty notice must also state—

- (a) the amount of the fixed penalty;
- (b) the period within which it may be paid;
- (c) the—

- (i) person to whom; and
- (ii) address at which,

payment may be made;

(d) the method or methods by which payment may be made;

(e) the consequences of not making a payment within the period for payment.

(4) The amount of the fixed penalty under section 80(4A) is—

- (a) in the case of a nuisance relating to industrial, trade or business premises, £400;
- (b) in any other case, £150.

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- (5) The period for payment of the fixed penalty is 14 days beginning with the day after the day on which the notice is given.
  - (6) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.
  - (7) No proceedings for an offence under section 80(4) may be commenced before the end of the period for payment of the fixed penalty.
  - (8) In proceedings for an offence under section 80(4), a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
    - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,is sufficient evidence of the facts stated.
  - (9) Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.
  - (10) Any sum received by a local authority under section 80(4A) accrues to that authority.
  - (11) The Scottish Ministers may, by regulations—
    - (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
    - (b) provide for the form of a fixed penalty notice;
    - (c) provide for the method or methods by which fixed penalties may be paid;
    - (d) modify subsection (4)(a) or (b) above so as to substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified there;
    - (e) provide for the amount of the fixed penalty to be different in different cases or descriptions of case;
    - (f) modify subsection (5) above so as to substitute a different period for the period for the time being specified there;
    - (g) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under section 80(4A).
  - (12) Before making regulations under subsection (11) above, the Scottish Ministers must consult, in so far as it is reasonably practicable to do so, the persons mentioned in subsection (13) below.
  - (13) Those persons are—
    - (a) such associations of local authorities; and
    - (b) such other persons,as the Scottish Ministers consider appropriate.?”
- (4) In section 81 (supplementary provisions), for subsection (3), substitute—

- “(3) Where an abatement notice has not been complied with, the local authority may, whether or not—
- (a) proceedings have been taken for an offence under section 80(4); or
  - (b) a fixed penalty notice has been given under section 80(4A) in respect of that offence (regardless of whether the fixed penalty notice is accepted),
- abate the nuisance and do whatever may be necessary in execution of the abatement notice.”.

#### 114 Procedure for regulations

- (1) Section 161 (regulations, orders and directions) of the 1990 Act is amended as follows.
- (2) In subsection (2), at the beginning insert “Subject to subsection (2B) below,”.
- (3) After subsection (2A), insert—
 

“(2B) No statutory instrument containing regulations made under section 79(1ZA) or 80ZA(11) above may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.”.

#### 115 Sewerage nuisance: local authority powers

- (1) Section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3) is amended as follows.
- (2) In subsection (10), for the words from “nuisance” in the second place where it appears to the end, substitute “nuisance—
  - (a) which constitutes a sewerage nuisance; and
  - (b) in respect of which a sewerage code applies.”.
- (3) After that subsection, insert—
 

“(10A) Paragraphs 2, 3 and 5 of Schedule 3 to the Environmental Protection Act 1990 (c. 43) apply to the exercise of functions by a local authority under this section as they apply to the exercise of functions under Part III of that Act, with the following modifications—

  - (a) in paragraph 2(1)(a), for “statutory nuisance” substitute “sewerage nuisance”;
  - (b) in paragraph 2(1)(b) and (4)(b), for “Part III” substitute “section 26 of the Water Services etc. (Scotland) Act 2005 (asp 3)”;
  - (c) in paragraph 3(1), for the words from “, on summary conviction” to the end substitute—
    - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to a fine.”;
  - (d) in paragraph 3(2), for the words from “, on summary conviction” to the end substitute—
    - “(a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to a fine.”;



- (e) in paragraph 5—
  - (i) for the words “executing Part III” substitute “exercising functions under section 26 of the Water Services etc. (Scotland) Act 2005”;
  - (ii) the words from “(other” to the end are to be disregarded.”.

## PART 10

### GENERAL AND MISCELLANEOUS

#### *General and miscellaneous*

#### **116 Equal opportunities**

- (1) The Scottish Ministers, health boards, health board competent persons, local authorities and local authority competent persons must exercise their functions conferred by virtue of this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.
- (2) In this section, “equal opportunities” and the “equal opportunities requirements” have the same meanings as those expressions have in section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).

#### **117 Disclosure of information**

- (1) A relevant authority may disclose information held by it to another relevant authority for the purpose of facilitating the exercise of functions under a provision of—
  - (a) this Act; or
  - (b) any other enactment relating to the protection of public health.
- (2) A relevant authority may disclose information held by it to any other person if the authority considers that it is necessary to do so for the purposes of, or in connection with, the protection of public health.
- (3) An employee of the relevant authority authorised by it to make the disclosure or any other person so authorised may disclose information under subsection (1) or (2).
- (4) Information may be disclosed—
  - (a) in the case of disclosure under subsection (1), to any employee of the other relevant authority authorised by it to receive the information or to any other person so authorised;
  - (b) in the case of disclosure under subsection (2), to any employee of the other person authorised by that other person to receive the information or to any other person so authorised.
- (5) Information may be disclosed under subsection (1) or (2) despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law.
- (6) But subsection (5) does not affect the application of the Data Protection Act 1998 (c. 29) to disclosure of information under subsection (1) or (2).

- (7) No person is to be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this section.
- (8) In this section, “relevant authority” means—
- (a) a health board;
  - (b) a special health board;
  - (c) a local authority;
  - (d) the common services agency;
  - (e) the Scottish Ministers.
- (9) The Scottish Ministers may by regulations modify the meaning of “relevant authority” in subsection (8).
- (10) Regulations under subsection (9) may modify any enactment (including this Act).
- (11) Any person who, by virtue of this Act—
- (a) must or may provide information; or
  - (b) provides or receives information for the purposes of any provision of this Act, must have regard to any guidance given by the Scottish Ministers.

### **118 Liability of persons exercising functions**

- (1) A person is not liable in any civil or criminal proceedings for anything done in the purported exercise of any function conferred by virtue of this Act (except section 117) where the person acts—
- (a) on reasonable grounds; and
  - (b) in good faith.
- (2) Subsection (1) does not affect the liability of any other person in respect of the thing done.

### **119 Offences by bodies corporate etc.**

- (1) Where an offence under this Act—
- (a) by a body corporate (other than a limited liability partnership), is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any director, manager, secretary or other similar officer of the body corporate; or
    - (ii) a person who purports to act in any such capacity;
  - (b) by a limited liability partnership, is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any member of that partnership; or
    - (ii) a person who purports to act as a member;
  - (c) by a Scottish partnership (other than a limited liability partnership), is committed with the consent or connivance of, or is attributable to neglect on the part of—
    - (i) any partner; or
    - (ii) a person who purports to act as a partner,

that person as well as the body corporate, the limited liability partnership or the partnership (as the case may be) is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate (other than a limited liability partnership) are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with the member's functions of management as if the member were a director of the body corporate.

## **120 Penalties for offences under this Act**

- (1) Subject to subsection (2), any person who commits an offence under this Act (except Part 8) is liable—
- (a) on summary conviction, to imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.
- (2) Any person who commits an offence under section 69(1) or 70(3) or (4) in relation to an exclusion or restriction order is liable, on summary conviction, to imprisonment for a period not exceeding 12 months or a fine not exceeding level 5 on the standard scale or both.

## **121 Form of applications etc.**

The Scottish Ministers may, by regulations, prescribe the form of any application or order under this Act.

## **122 Regulations and orders**

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.
- (2) Any such power—
- (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes;
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers think fit.
- (3) The Scottish Ministers must, before making regulations under this Act, consult, in so far as it is reasonably practicable to do so, such persons as they consider appropriate.
- (4) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No statutory instrument containing regulations made under section 25(3), 94(1), 99(1) or 105(11) may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) Subsection (5) does not apply to regulations made under section 25(3) or 94(1) if the Scottish Ministers consider that the regulations need to be made urgently.
- (7) Where subsection (6) applies, the regulations (the “emergency regulations”)—
- (a) must be laid before the Scottish Parliament; and

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- (b) cease to have effect at the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the regulations have been approved by a resolution of the Parliament.
- (8) Subsection (7)(b) does not apply in relation to regulations which—
  - (a) revoke (in whole or in part) emergency regulations; and
  - (b) do—
    - (i) nothing else; or
    - (ii) nothing else except make provision incidental or supplementary to the revocation.
- (9) In calculating any period of 28 days for the purposes of subsection (7)(b), no account is to be taken of any period during which the Scottish Parliament is—
  - (a) dissolved; or
  - (b) in recess for more than 4 days.
- (10) Where emergency regulations cease to have effect under subsection (7)(b), that does not—
  - (a) affect anything previously done by reference to the regulations;
  - (b) prevent new emergency regulations being made to the same or similar effect.

### 123 Meaning of “premises”

In this Act—

“premises” includes—

- (a) any land or building; or
- (b) any other place, including—
  - (i) a mobile home; and
  - (ii) a vehicle;

“mobile home” means a caravan, houseboat or other moveable structure used as a dwelling; and

“vehicle” includes any vessel, aircraft or hovercraft.

### 124 Interpretation

In this Act, unless the context otherwise requires—

“the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29);

“the 1990 Act” means the Environmental Protection Act 1990 (c. 43);

“common services agency” means the Common Services Agency for the Scottish Health Service;

“contamination” has the meaning given by section 1(5);

“dwellinghouse” has the meaning given by section 26(4);

“exceptional detention order” means an order under section 45(1);

“exclusion order” means an order under section 37(2);

“health board” means a board constituted by an order under section 2(1)(a) of the 1978 Act;

“health board competent person” means a person designated by a health board under section 3(1);

“health care professional” has the meaning given by section 33(4);

“health risk state” has the meaning given by section 14(7);  
“hospital” means—  
    (a) any health service hospital (as defined in section 108(1) of the 1978 Act);  
    and  
    (b) any state hospital (being a hospital provided under section 102(1) of that Act);  
“infectious disease” has the meaning given by section 1(5);  
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);  
“local authority competent person” means a person designated by a local authority under section 5(1);  
“NHS identifier” has the meaning given by section 13(8);  
“notifiable disease” has the meaning given by section 12(1);  
“notifiable organism” has the meaning given by section 12(1);  
“prescribed” means prescribed by the Scottish Ministers by regulations;  
“protecting public health” has the meaning given by section 1(2);  
“public health investigation” has the meaning given by section 21(1);  
“quarantine order” means an order under section 40(1);  
“restriction order” means an order under section 38(2);  
“short term detention order” means an order under section 42(1) or 43(1); and  
“special health board” means a board constituted by an order under section 2(1) (b) of the 1978 Act.

## **125 Minor and consequential amendments**

Schedule 2 (which contains minor amendments and amendments consequential on this Act) has effect.

## **126 Repeals, revocations and saving**

- (1) Schedule 3 (which contains repeals and revocations) has effect.
- (2) Despite the repeal by schedule 3 of the Public Health (Scotland) Act 1897 (c. 38), section 166 of that Act continues to have effect for the purposes of section 101 of the 1978 Act (protection of health boards and common services agency).

## **127 Crown application**

- (1) This Act and any regulations and orders made under it bind the Crown.
- (2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.
- (5) Nothing in this section affects Her Majesty in her private capacity.

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**128 Short title and commencement**

- (1) This Act may be cited as the Public Health etc. (Scotland) Act 2008.
- (2) This Act (except this section and section 122) comes into force on such day as the Scottish Ministers may by order appoint.