

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 4

Public Health Functions of Health Boards

Appeals

Section 60 Appeal against order for medical examination

120. This section provides for a right of appeal to the sheriff principal against an order for medical examination. Subsection (3) provides that an appeal under this section must be made before the expiry of 7 days beginning with the day on which the order appealed against is made. The sheriff principal may confirm the order for medical examination; revoke the order; modify the order; make an order declaring that the order was invalid (in situations where the medical examination has been carried out prior to the appeal); or make such other order as the sheriff principal considers appropriate.
121. The decision of the sheriff principal on an appeal under this section is final.

Section 61 Appeal against exclusion orders and restriction orders

122. This section provides for a right of appeal to the sheriff against an exclusion or restriction order. Any person who is subject to an exclusion or restriction order, or a person who has an interest in the welfare of such a person, may appeal to the sheriff against the making of the order, any modification of the order under section 48 or a decision of a health board competent person under section 52 or 53 not to revoke the order. An appeal under this section must be made within 14 days of the order being made, the modification being made or the decision of the health board competent person not to revoke the order.
123. On appeal under this section, the sheriff may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff may also confirm or quash the decision appealed against.

Section 62 Appeal against quarantine and hospital detention orders

124. This section provides for an appeal to the sheriff principal against a quarantine order, a short term detention order or an exceptional detention order. Any person who is subject to any of these orders, or a person who has an interest in the welfare of such a person, may appeal to the sheriff principal against the making of the order; in the case of a quarantine order, any condition imposed by the order; any steps mentioned in section 46(2) specified in the order; a decision of the sheriff under section 59 confirming the order; the making of an extension order under section 49; the making of an order under section 51 modifying the order; or a decision of the health board competent person under section 54 or 55 not to revoke the order. An appeal under this section must be made within 14 days of the order or decision being made.

125. On appeal, the sheriff principal may confirm the order appealed against; modify the order; revoke the order or make such other order as is considered appropriate. The sheriff principal may also confirm or quash the decision appealed against.

Section 63 Exclusion orders and restriction orders: further appeal to sheriff principal

126. This section sets out that a person who appealed under section 61 may, with the leave of the sheriff, appeal against a decision of the sheriff - to confirm the exclusion or restriction order, to modify the order or to confirm the decision appealed against - to the sheriff principal. A health board aggrieved by an appeal under section 61 may also, with the leave of the sheriff, appeal against a decision of the sheriff - to revoke the exclusion or restriction order, to modify the order or to quash the decision appealed against - to the sheriff principal.
127. Subsection (5) states that an appeal under this section may be made on the ground that the sheriff erred in law, or the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.
128. On an appeal under this section, the sheriff principal may confirm the decision appealed against, modify that decision, quash that decision; or make such other order as the sheriff principal considers appropriate. The decision of the sheriff principal on an appeal under this section is final.

Section 64 Appeal to Court of Session

129. Those persons who were the subject of an appeal decision by the sheriff principal (in the case of a quarantine, short term detention or exceptional detention order) may, with the leave of the sheriff principal, appeal against the decision to the Court of Session. Subsection (2) sets out which decisions a person may appeal, that is a decision of the sheriff principal on an appeal under section 62(2) to confirm the order or decision appealed against or to modify the order.
130. Subsection (3) provides that a health board may, with the leave of the sheriff principal, appeal against a decision to the Court of Session. Subsection (4) sets out which decisions a health board may appeal, that is a decision of the sheriff principal on an appeal under section 62 to revoke or to modify the order, or to quash the decision appealed against.
131. Subsection (5) provides that an appeal under this section may be made only on the ground that the sheriff principal erred in law; or that the decision of the sheriff principal was not supported by the facts established by the sheriff or sheriff principal in the appeal.
132. On appeal, the Court of Session may confirm the decision appealed against; modify that decision; quash that decision; or make such other order as the Court considers appropriate. The decision of the Court on an appeal under section 64 is final.

Section 65 Effect of appeal under section 61, 62, 63 or 64

133. This section states that, notwithstanding the fact that an appeal under section 61, 62, 63 or 64 has been made, the order, modification or decision appealed against has effect as if the appeal had not been made.