

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 5

Public Health Functions of Local Authorities

Disinfection etc. of premises and things

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

147. This section applies where a local authority knows or suspects that any premises in its area (or any thing in or on such premises) are infected, infested or contaminated. If it appears to the authority that in order to prevent the spread of infectious disease or contamination, it is necessary to disinfect, disinfest, or decontaminate the premises (or things in or on the premises), destroy a thing, or do other connected operations, then the authority may serve a notice on the occupier of the premises (or the owner if the premises are unoccupied) requiring that person to carry out the necessary steps. If the occupier is not the owner of the premises, then a copy of the notice must be served on the owner of the premises. A notice may be served only where a local authority competent person certifies satisfaction as to the matters referred to above.
148. Subsection (6) sets out that the notice must specify the steps which the person on whom the notice is served must take and the period in which they must be taken. It must also advise the person on whom the notice is served that if the notice is not complied with, then the local authority may take those steps. If, during the period of the notice, the person on whom the notice is served consents, then an authorised officer of the local authority may carry out the steps.

Section 74 Inspection of premises in relation to which notice served

149. This section applies where a notice has been served under section 73 and the period specified in the notice has expired. It provides that an authorised officer of the local authority may enter the premises to determine whether the steps specified in the notice have been taken, may take any other person authorised by the officer, and a constable (if the officer has reasonable cause to expect serious obstruction in obtaining access). The authorised officer entitled to enter premises must show authorisation, if requested. In addition, an authorised officer who enters unoccupied premises must leave the premises as effectively secured against unauthorised entry as the officer found them.

Section 75 Failure to comply with notice

150. This section sets out the actions that an authorised officer of a local authority may take where the owner or occupier of premises on whom a notice under section 73 has been served fails to comply with the notice and the period of the notice has expired. It provides that the authorised officer may enter the premises; may take any other person authorised by the officer, and a constable (if the officer has reasonable cause to expect

serious obstruction in obtaining access); may direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; may take the steps specified in the notice and any other steps considered necessary; and may remove any thing from the premises for the purpose of taking any steps (disinfection, decontamination or disinfestation) at another place.

151. Subsection (3) provides that 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.

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

152. This section provides that a local authority may take the steps set out in the notice served on a person under section 73 if it appears to the local authority that it is not reasonably practicable for that person to take those steps.

153. In order to do so, the authority must serve notice on the occupier of the premises or, where the premises are unoccupied, on the owner of them, requiring the person to give an authorised officer access to undertake the steps. Where a notice is served under this section on the occupier of the premises, this should be copied to the owner, if that is not the same person. The notice may be served only if the local authority competent person certifies that the relevant criteria have been met.

154. Subsection (5) sets out that the notice must specify the steps which must be taken and the period in which they must be taken. Under subsection (6), the authorised officer may enter the premises; may take any other person authorised by the officer (and a constable if the officer has reasonable cause to expect serious obstruction in obtaining access); may direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; may take the steps specified in the notice, and may remove any thing from the premises for the purpose of taking any steps at another place.

155. Subsection (7) provides that 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.

Section 77 Entry to dwellinghouses

156. This section sets out the conditions under which an authorised officer may exercise a power of entry under this Part in relation to a dwellinghouse. The first condition is that an officer must give 48 hours' notice to the occupier of the dwellinghouse. The second is that the person who appears to be the occupier of the dwellinghouse has consented or entry is effected under a warrant issued under section 78. The term 'dwellinghouse' as used in this Part is defined in section 26(4).

Section 78 Warrant to enter and take steps

157. This section provides that a local authority may apply for a warrant from a sheriff or a justice of the peace to enter and take steps where an authorised officer has been refused entry or can reasonably anticipate such refusal; the premises to which the authorised person is entitled to enter are unoccupied; the occupier of the premises is temporarily absent and there is urgency; or a person entitled to enter the premises has been prevented from taking the authorised steps, or reasonably anticipates such prevention.

158. Subsection (2) allows a sheriff or justice of the peace to authorise an officer of the authority to enter the premises, to take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; to direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for so long as the officer considers appropriate; and to take any steps mentioned in section 73.

159. Subsection (3) states that a warrant in relation to a dwellinghouse must not be granted unless the sheriff or justice is satisfied that 48 hours' notice has been given and that period has expired. Subsection (4) provides that the power of entry may be exercised at any time and includes power to use reasonable force.
160. Subsection (5) provides that 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. A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

Section 79 Use of powers in emergencies

161. This section provides that where an officer authorised to enter premises under this Part, considers, on reasonable grounds, that there is an emergency, the officer may exercise the power of entry at any time, and may use reasonable force. If the premises are a dwellinghouse, the conditions in section 77 need not be satisfied.
162. The authorised officer may, on entering the premises, take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for as long as the officer considers appropriate; take any step mentioned in section 73(2); and remove any thing from the premises for the purpose of taking any such step at any other place.
163. Subsection (7) provides that 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.
164. Subsection (8) states that the use of powers in emergencies is available even if an appeal has been made under section 83(1). Subsection (9) defines "emergency".