

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 5

Public Health Functions of Local Authorities

Facilities for disinfection etc.

Section 72 Provision of facilities for disinfection etc.

144. This section sets out the local authority duty to provide, or ensure the provision of, facilities and equipment (which may be mobile) for its area in order to disinfect, disinfest and decontaminate things and premises, and to destroy things which are infected, infested or contaminated. This includes the means for transporting things to facilities and equipment.
145. Local authorities need not provide the facilities themselves, but can enter into an agreement with any person or organisation to ensure provision. The facilities and equipment need not be in the area of the local authority.
146. Subsection (5) defines the meaning of “contaminated”, “infected” and “infested”, as used in this Part.

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”.

Offences

Section 80 Obstruction

- 165. Any person who, without reasonable excuse, obstructs an authorised officer, or any other person, in the exercise of powers under this Part, will be guilty of an offence and liable to a penalty, as outlined in section 120.

Recovery of expenses

Section 81 Recovery of expenses

166. This section provides that a local authority may recover any reasonable expenses it incurs in doing anything it is entitled to do under this Part of the Act from the person on whom a notice is served. If no notice is served, the authority may recover the expenses from the occupier, or where the premises are unoccupied, the owner of them. The local authority may also recover any administrative expenses incurred in connection with the thing to which the expenses relate. The local authority may accept payment of sums recoverable by instalments. In the event of non payment, the local authority may recover sums due through normal civil recovery procedure.

Compensation

Section 82 Compensation

167. Subsection (1) provides that 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 required) to do under section 73, 75, 76, 78 or 79. Subsection (2) states that compensation under this section is not available where the loss or damage is attributable to the fault of the person who suffered the loss or damage. Compensation is not available for loss or damage which relates to any infected, infested or contaminated premises which are damaged as a result of disinfection, disinfestation or decontamination of the premises or anything in or on them. Nor is compensation available for the damage or destruction of any thing as a result of disinfection, disinfestation or decontamination of the thing or premises.
168. Subsection (3) provides that any dispute as to a person's entitlement to compensation under this section or the amount of 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 an arbiter appointed by the sheriff.

Appeals

Section 83 Appeals against notices under this Part

169. This section provides that any person on whom a notice is served under section 73 or 76 may appeal to the sheriff against the notice or any requirement in it. Such an appeal must be made within 14 days of the notice being served. On an appeal, the sheriff may confirm or revoke the notice; remove or vary any requirement specified in the notice; and make such other order as the sheriff considers appropriate.

Section 84 Appeal to sheriff principal

170. This section provides that a person who appealed under section 83 may, with the leave of the sheriff, appeal to the sheriff principal against the sheriff's decision to confirm the notice or not to remove or vary any requirement in the notice. Subsection (3) states that a local authority may also, with the leave of the sheriff, appeal against a decision of the sheriff to revoke the notice or remove or vary any requirement specified in the notice.
171. Subsection (5) provides that on an appeal under this section, the sheriff principal may confirm the decision appealed against, modify that decision, quash the decision, or make such other order as the sheriff principal considers appropriate.

Section 85 Appeal to Court of Session

172. This section provides that a person who appealed under section 84 may, with the leave of the sheriff principal, appeal against the sheriff principal's decision to the Court of Session. Such an appeal may be made on a point of law only.

173. Subsection (3) provides that on an appeal under this section, the Court of Session may confirm the decision appealed against, modify that decision, quash the decision, or make such other order as the Court considers appropriate. The decision of the Court on an appeal under this section is final.

Existing functions

Section 86 Application of this Part where other functions being exercised

174. This section applies where a local authority or any other person has functions under any other enactment in relation to premises or things which are infected, infested or contaminated. This is referred to as an “existing function”.
175. Subsection (3) provides that a local authority may not exercise a function conferred on it by virtue of this Part if the authority or any other person is exercising an existing function or 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 things. Section 72 (which is the duty for a local authority to provide facilities for disinfecting etc.) continues to apply despite section 86.