

# **PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

#### **Part 8**

#### **Regulation of Provision of Sunbeds**

#### **Enforcement**

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

200. This section gives authorised officers of the local authority power to enter and inspect premises in order to ascertain whether or not an offence under section 95, 96, 98, 100 or 101 has been or is being committed. Subsections (2) and (3) require that entry must take place only at a reasonable time and that documentation showing the authority of the local authority officer must be produced if requested.
201. Subsection (4) enables the authorised officer to be accompanied by a police constable if there is reasonable cause to expect serious obstruction in obtaining access. Subsection (5) enables the officer to have access to, and inspect any relevant records as part of the investigation. However this does not extend to documents which carry legal privilege, which are defined in subsection (7). Subsections (8) and (9) create offences of obstructing an officer and failure to comply with a requirement made under subsection (5), and a defence to such offences.

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

202. This section places a further condition on the exercise of the power of entry in section 102 where the premises are a dwellinghouse. Subsection (2) requires the authorised officer to obtain a warrant from the sheriff. Entry under the warrant must take place within a month of the warrant being obtained.
203. Subsection (3) provides that the sheriff may only issue a warrant if satisfied by evidence on oath that there are reasonable grounds for suspecting that an offence under section 95, 96, 98, 100 or 101 has been, or is being, committed, and that evidence of the commission of that offence may be found in the dwellinghouse.

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

204. In the event of a local authority officer having reason to believe an offence under section 95, 98, 100 or 101 has been, or is being committed, this section enables the local authority officer to require any person on the sunbed premises to give the name and address of the operator. Failure to do so, without reasonable excuse, is an offence.

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

205. This section enables the local authority officer to issue a fixed penalty notice to the operator of the premises where the officer has reason to believe an offence has taken

place under section 95, 98, 100 or 101. The fixed penalty notice gives the operator the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.

206. Subsections (2) and (3) set out the details the fixed penalty notice must contain. The fixed penalty notice must identify the offence to which it relates, give reasonable particulars of the circumstances of the alleged offence and details in relation to payment. Subsection (4) states the amount of the fixed penalty fine: £100 for an offence under section 95 (allowing use of sunbeds by persons under 18); and £50 for an offence under section 98, 100 or 101. Subsection (5) provides the period for payment of the fixed penalty, which is 28 days beginning with the day on which the notice was given. Subsection (6) sets out that a local authority may extend the period for payment of the fixed penalty if appropriate, by giving notice to the operator. Subsection (7) prohibits proceedings for an offence under section 95, 98, 100 or 101 from commencing before the end of the period for payment of the fixed penalty.
207. Subsection (11) gives the Scottish Ministers the power to make regulations, by affirmative procedure, to amend the fixed penalty scheme in relation to the circumstances in which FPN`s may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties under this section.

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

208. Under this section, following representations on behalf of a recipient of a fixed penalty notice a local authority may decide to withdraw a notice. In doing so it must inform the person to whom the fixed penalty notice was given and repay any amount that may have already been paid and no proceedings may be taken against that person in connection with that offence.

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

209. Any person who commits an offence under Part 8 is liable on summary conviction to a fine not exceeding level 4 on the standard scale, currently £2,500.