



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 4

#### PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

##### *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;
    - (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);

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- (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).

#### Commencement Information

**II** S. 33 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

### 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,

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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.

#### **Commencement Information**

**I2** S. 34 in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

### **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.

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**Commencement Information**

**I3** S. 35 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

**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,

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.

**Commencement Information**

**I4** S. 36 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), Sch. 1

**Changes to legislation:**

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