



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 1

PUBLIC HEALTH RESPONSIBILITIES

The Scottish Ministers

1 Duty of Scottish Ministers to protect public health

- (1) The Scottish Ministers are to continue to make provision, or secure that provision is made, for the purpose of protecting public health in Scotland.
- (2) In subsection (1), “protecting public health”—
 - (a) means the protection of the community (or any part of the community) from—
 - (i) infectious diseases;
 - (ii) contamination; or
 - (iii) other such hazards,which constitute a danger to human health; and
 - (b) includes—
 - (i) the prevention of;
 - (ii) the control of; and
 - (iii) the provision of a public health response to,such diseases, contamination or other hazards.
- (3) The Scottish Ministers may, for the purpose of protecting public health in Scotland, provide assistance (including financial assistance) to any person who exercises functions in relation to the protection of public health.
- (4) Subsection (1) is without prejudice to sections 1 and 1A of the National Health Service (Scotland) Act 1978 (c. 29) (the “1978 Act”) (general duties of Scottish Ministers to provide a health service and to promote the improvement of the health of the people of Scotland).
- (5) In this Act—

“contamination” means contamination with or by a biological, chemical or radioactive substance; and cognate expressions are to be construed accordingly;

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“infectious disease” means an illness or medical condition caused by an infectious agent (including by an organism listed in Part 2 of schedule 1 but not by a contaminant); and
“protecting public health” has the meaning given by subsection (2); and cognate expressions are to be construed accordingly.

Health boards

2 Duty of health boards to protect public health

- (1) Each health board is to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.
- (2) Subsection (1) is without prejudice to section 2A of the 1978 Act (duty of health boards to promote improvement in the health of the people of Scotland).
- (3) Anything done by a health board in the exercise of functions under this Act is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the health board by the order under section 2(1)(a) of the 1978 Act which constituted the board.

3 Designation of competent persons by health boards

- (1) Each health board must designate a sufficient number of persons for the purpose of exercising, on behalf of the board, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “health board competent person”.
- (3) The functions referred to in subsection (1) are—
 - (a) the functions conferred on a health board competent person by virtue of this Act; and
 - (b) any functions conferred on such a competent person by virtue of any other enactment.
- (4) The Scottish Ministers may prescribe—
 - (a) the persons or classes of person who may be designated as health board competent persons;
 - (b) the qualifications which such persons must have;
 - (c) the training which such persons must have undertaken;
 - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
 - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of health board competent persons as are prescribed may be exercised only by competent persons who—
 - (a) have such qualifications;
 - (b) have undertaken such training; or
 - (c) meet such other requirements as to competency,
as the Scottish Ministers consider appropriate in relation to those functions.

Local authorities

4 Duty of local authorities to protect public health

Each local authority is to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.

5 Designation of competent persons by local authorities

- (1) Each local authority must designate a sufficient number of persons for the purpose of exercising, on behalf of the authority, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “local authority competent person”.
- (3) The functions referred to in subsection (1) are—
 - (a) the functions conferred on a local authority competent person by virtue of this Act; and
 - (b) any functions conferred on such a competent person by virtue of any other enactment.
- (4) The Scottish Ministers may prescribe—
 - (a) the persons or classes of person who may be designated as local authority competent persons;
 - (b) the qualifications which such persons must have;
 - (c) the training which such persons must have undertaken;
 - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
 - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of local authority competent persons as are prescribed may be exercised only by competent persons who—
 - (a) have such qualifications;
 - (b) have undertaken such training; or
 - (c) meet such other requirements as to competency,as the Scottish Ministers consider appropriate in relation to those functions.

Co-operation and planning

6 Duty of health boards and local authorities to co-operate

- (1) In exercising the functions conferred on them by virtue of this Act, each—
 - (a) health board; and
 - (b) local authority,must co-operate with any relevant person that appears to the board or, as the case may be, authority to have an interest in or a function relating to the protection of public health.
- (2) In subsection (1), a “relevant person” is—

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- (a) a health board;
 - (b) a special health board;
 - (c) a local authority;
 - (d) the common services agency;
 - (e) the Scottish Ministers.
- (3) Subsection (1) is without prejudice to section 13 of the 1978 Act (duty of health boards and local authorities to co-operate to secure and advance the health of the people of Scotland).

7 Joint public health protection plans

- (1) Each health board must prepare such plans relating to the protection of public health in its area as the board considers appropriate.
- (2) In preparing a plan under subsection (1), a health board must consult the relevant local authority.
- (3) A plan under subsection (1) must—
- (a) be prepared in accordance with any guidance issued by the Scottish Ministers; and
 - (b) include provision about such matters as may be specified in such guidance.
- (4) A board may comply with subsection (1) by incorporating the plan in any other plan the board is required or has power to prepare under any other enactment.
- (5) A board which prepares a plan under subsection (1) must publish the plan (whether as part of another plan in which it is incorporated or otherwise).
- (6) The board—
- (a) may from time to time vary a plan under subsection (1); and
 - (b) must publish the plan as so varied.
- (7) The board must, before varying a plan under subsection (6)(a), consult the relevant local authority.
- (8) In this section, the “relevant local authority”—
- (a) is the local authority for the area in relation to which a board is constituted; or
 - (b) where the area of the board comprises or includes the areas of two or more local authorities, is both or all of those authorities.

Power of Scottish Ministers to intervene

8 Power to direct health boards and local authorities

- (1) This section and section 9 apply where the Scottish Ministers consider that—
- (a) a health board or, as the case may be, a local authority has failed, is failing or is likely to fail—
 - (i) to exercise a function conferred on it by virtue of this Act or by any other enactment relating to the protection of public health; or
 - (ii) to exercise that function in a manner which Ministers consider acceptable; and

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- (b) it is necessary for the purpose of protecting public health that the function—
 - (i) is exercised; or
 - (ii) is exercised in such a manner as Ministers consider acceptable.
- (2) The Scottish Ministers may in writing direct the board or, as the case may be, the authority—
 - (a) to exercise the function; or
 - (b) to exercise it in such a manner,within such period and subject to such other conditions as they consider appropriate.
- (3) A direction under subsection (2) must specify—
 - (a) the function of the board or, as the case may be, of the authority to which it applies;
 - (b) the period within which the function—
 - (i) is to be exercised; or
 - (ii) is to be exercised in the manner specified; and
 - (c) any other conditions imposed on the board or authority in relation to the exercise of the function.
- (4) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (2).

9 Power to direct that functions be exercised by other persons

- (1) The Scottish Ministers may, whether or not they have given a direction under section 8(2), in writing direct that a function of a health board or, as the case may be, of a local authority be exercised instead by a person specified in the direction.
- (2) But, where a direction under section 8(2) has been given, they may not give a direction under subsection (1)—
 - (a) before the expiry of the period specified in the direction under that section; or
 - (b) where that period has not expired, without withdrawing that direction under section 8(4).
- (3) The persons who may be specified in a direction under subsection (1) are one or more of the following—
 - (a) a health board;
 - (b) the common services agency;
 - (c) a local authority;
 - (d) an employee of—
 - (i) a health board;
 - (ii) the agency; or
 - (iii) a local authority;
 - (e) a member of staff of the Scottish Administration;
 - (f) such other person Ministers consider appropriate.
- (4) A direction under subsection (1) must specify—
 - (a) the function of the board or, as the case may be, of the authority to which it applies;
 - (b) the person by whom the function is to be exercised;

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- (c) the period for which that person is to exercise that function;
- (d) the extent to which that person is to exercise that function; and
- (e) any other conditions imposed by the Scottish Ministers as they consider appropriate.

(5) The Scottish Ministers may from time to time vary or withdraw a direction under subsection (1).

10 Directions under section 9(1): supplementary

- (1) The giving of a direction under section 9(1) does not affect the responsibility of the health board or, as the case may be, the local authority for the exercise of the function which, by virtue of the direction, is exercised by another person.
- (2) Anything done or omitted by a person exercising a function by virtue of the direction is to be regarded as done or omitted by the board or authority.
- (3) A person dealing in good faith and for value with a person exercising a function by virtue of the direction need not inquire as to whether that person is acting in accordance with the direction.
- (4) Unless the direction specifies otherwise, the board or the authority must pay the person by whom its function is exercised—
 - (a) the remuneration and expenses of; and
 - (b) any other costs reasonably incurred by,
 that person in exercising that function.

11 Power to direct allocation of resources

The Scottish Ministers may, if they are satisfied that it is necessary to do so, direct—

- (a) a health board to make such payments as Ministers consider appropriate to—
 - (i) another health board; or
 - (ii) a local authority;
- (b) a local authority to make such payments as Ministers consider appropriate to—
 - (i) another local authority; or
 - (ii) a health board,

in connection with the performance by the recipient board or authority of its functions relating to the protection of public health.