



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 4

#### PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

##### *Duty to give explanation*

#### **31 Duty of health boards to give explanation of need for action**

- (1) This section applies where—
  - (a) a health board proposes to take any action mentioned in section 32(a) to (c); or
  - (b) a health board competent person proposes to take any action mentioned in section 32(d) or (e).
- (2) An action referred to in subsection (1) is, in this section, a “relevant action”.
- (3) The appropriate health board must, in so far as it is reasonably practicable to do so, explain to the person in relation to whom the relevant action is proposed—
  - (a) that there is a significant risk to public health;
  - (b) the nature of that risk; and
  - (c) why the board considers it necessary for the proposed action to be taken in relation to the person.
- (4) Where, before the proposed relevant action is taken, no explanation is given under subsection (3), the health board must, as soon as reasonably practicable after taking the proposed action and in so far as it is reasonably practicable to do so, explain—
  - (a) the matters mentioned in subsection (3)(a) and (b); and
  - (b) why the board considered it necessary to take the action,to the person in relation to whom the action was taken.
- (5) Where the person is incapable of understanding the explanation (whether because of youth, illness or otherwise), the board must, before taking the proposed action or as soon as reasonably practicable after doing so and, in either case, in so far as it is reasonably practicable to do so, give the explanation required by subsection (3) or, as the case may be, (4)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) where the person is under 16, to any person having parental responsibilities and parental rights in relation to the person;
- (b) in any other case, to—
  - (i) any guardian of the person;
  - (ii) any welfare attorney of the person; or
  - (iii) any other person appointed or having authority to intervene in the affairs of the person.

(6) In this section—

“appropriate health board” means—

- (a) in the case of a relevant action referred to in subsection (1)(a), the health board which proposes to take that action;
- (b) in the case of a relevant action referred to in subsection (1)(b), the health board which designated the competent person who proposes to take that action;

“guardian”—

- (a) means a guardian who has powers relating to the proposed intervention in the person’s affairs; and
- (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, a person during that person’s incapacity, if the guardianship is recognised in Scotland;

“parental responsibilities and parental rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36); and

“welfare attorney” has the meaning given by section 16(2) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

## 32 Relevant actions

The actions referred to in section 31(1) are—

- (a) applying under section 33(2) for an order under section 34(1);
- (b) applying under section 39(2) for an order under section 40(1);
- (c) applying under section 41(2) or, as the case may be, 44(3) for an order under—
  - (i) section 42(1);
  - (ii) section 43(1); or
  - (iii) section 45(1);
- (d) making an order under section 37(2);
- (e) making an order under section 38(2).