



Public Health etc. (Scotland) Act 2008

2008 asp 5

PART 3

PUBLIC HEALTH INVESTIGATIONS

Investigators' powers

23 Other investigatory powers

- (1) The powers referred to in section 21(4)(b) are—
- (a) to take such measurements and photographs and make such recordings as the investigator considers necessary for the purpose of the public health investigation;
 - (b) to obtain and to take samples (or cause samples to be taken) of—
 - (i) any articles or substances found in or on any premises which the investigator has power under section 22 to enter; and
 - (ii) the air, water or land in, on, or in the vicinity of, the premises;
 - (c) in the case of any article or substance found in or on any premises which the investigator has power to enter, being an article or substance which appears to the investigator to be the cause of the public health incident, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
 - (d) in the case of any article or substance referred to in paragraph (c), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it (or cause it to be examined) and to do (or cause to be done) to it anything which the investigator has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any enactment or rule of law;
 - (e) to—

Status: This is the original version (as it was originally enacted).

- (i) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the investigator to see for the purposes of the investigation; and
 - (ii) inspect and take copies of, or of any entry in, the records;
 - (f) to make such examination and investigation as may in the circumstances be necessary.
- (2) Where an investigator proposes to exercise the power conferred by subsection (1)(c), the investigator must, if so requested by a person who at the time is present on the premises and has responsibilities in relation to those premises, cause anything which is done by virtue of that power to be done in the presence of that person.
- (3) Before exercising the power conferred by subsection (1)(c), an investigator must consult—
 - (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test; and
 - (b) such other persons,
as appear to the investigator to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the investigator proposes to do (or cause to be done) under the power.
- (4) The information which a person may be required to provide under subsection (1)(e) includes information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the requirement.
- (5) Nothing in this section compels the production by any person of a document subject to legal privilege.
- (6) A document subject to legal privilege means a communication—
 - (a) between a professional legal adviser and the adviser's client; or
 - (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,
which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.