

PUBLIC HEALTH ETC. (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised explanatory notes are published to accompany the Public Health etc. (Scotland) Act as amended at Stage 2. The Bill was introduced in the Scottish Parliament on 25 October 2007.
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – OVERVIEW

4. The Bill is in 10 Parts. The main provisions of the Bill are as follows:

Part 1 – Public Health Responsibilities

- This sets out the duties of the Scottish Ministers, health boards and local authorities to continue to make provision to protect public health in Scotland, without prejudice to existing provision in the National Health Service (Scotland) Act 1978. It defines “protecting public health” in terms of protecting the community, or any part of the community, from infectious diseases, contamination or other hazards that constitute a danger to human health. Health boards and local authorities are required to designate “competent persons” to undertake functions assigned to them under the Bill and which require professional input at a particular level. The qualifications, training and other requirements for competent persons to be able to undertake these functions will be set out in regulations.
- A duty of co-operation is placed on health boards and local authorities in exercising the functions under the Bill, and for them to plan, together, for public health protection.
- This Part also sets out the Scottish Ministers' powers of intervention if those bodies fail to exercise functions in an acceptable manner, including power to direct other

persons (or organisations) to undertake the functions, and to direct the allocation of resources between them.

Part 2 – Notifiable Diseases, Notifiable Organisms and Health Risk States

- This Part replaces the current statutory arrangements for the notification of infectious diseases and the voluntary reporting of organisms by NHS-related laboratories with a statutory notification system of suspected or diagnosed infectious diseases and health risk states (to be notified by registered medical practitioners) and the notification of organisms by all diagnostic laboratories in Scotland that are focused on human infections. The notifiable diseases and organisms are set out in Schedule 1.
- This Part allows the Scottish Ministers to vary the list of notifiable diseases, organisms and health risk states and all other aspects of notification by regulation. It also sets out the penalties for non-reporting.

Part 3 – Public Health Investigations

- This Part defines a “public health investigation” and sets out the powers available to investigators who may be appointed by the Scottish Ministers, a health board, Health Protection Scotland (a division of the Common Services Agency for the Scottish Health Service), a local authority or two or more of these persons acting together. The powers will only be available in defined circumstances and where there are reasonable grounds to suspect that those circumstances are likely to give rise to a significant risk to public health.
- It sets out the offences for this Part of the Bill and the compensation arrangements for any loss or damage caused by an investigator or person authorised by an investigator in the course of an investigation.

Part 4 – Public Health Functions of Health Boards

- This Part replaces the powers currently available to local authorities and which relate directly to people (on the authorisation of a Designated Medical Officer of the Health Board) and assigns them to health boards. It also introduces new powers to health boards.
- Existing powers that are being transferred from local authorities to health boards include: the exclusion of persons from work and school (which will also be extended to cover wider settings); application to a sheriff for an order for a person to be medically examined; and the removal and detention in hospital of a person suffering from a serious infectious disease (which will be extended to include contamination).
- New powers for health boards include the power to restrict persons’ activities in order to reduce the spread of contamination and infection; quarantine individuals; and to require a person to be disinfected, disinfested or decontaminated, in defined circumstances, and where there is a significant risk to public health.

- With the exception of exclusion orders and restriction orders, all health board powers will be subject to an order from a sheriff, and maintain safeguards with regard to personal freedom including the right of appeal, restriction on the duration of the orders and regular review of orders. It will be an offence to breach the terms of any order.

Part 5 – Public Health Functions of Local Authorities

- This replaces existing powers of local authorities to order a range of public health measures in relation to premises and things, including disinfection, disinfestation and decontamination, in order to prevent, or prevent the spread of, infectious disease or contamination.

Part 6 – Mortuaries etc.

- This Part places a statutory duty on health boards to ensure mortuary provision, including post-mortem facilities, for hospital-related deaths; and local authorities the statutory duty to ensure the provision of mortuary and post-mortem facilities (including for Crown Office and Procurator Fiscal Service (COPFS)-instructed post-mortem examinations) for other deaths.
- It also replaces current legislation with regard to the handling of dead bodies in order to reduce the risk to public health.

Part 7 – International Health Regulations

- This Part contains a regulation-making power which will allow the Scottish Ministers to give effect to the International Health Regulations 2005, as they affect Scotland.

Part 8 – Regulation of provision of Sunbeds

- This Part regulates the provision of sunbeds. It provides for offences, penalties and enforcement.

Part 9 – Statutory Nuisances

- This Part amends the Environmental Protection Act 1990 (“the 1990 Act”) for Scotland to constitute insect infestation, artificial light pollution, and nuisance associated with water on land as statutory nuisances for the purposes of Part III of the 1990 Act. It introduces a regulation-making power to amend the statutory nuisance regime in the future, and enables local authorities to offer a fixed penalty to persons who fail to comply with the requirements of an abatement notice served under section 80(1) of the 1990 Act.

- The section also amends the Water Services etc. (Scotland) Act 2005 to remedy an unforeseen dis-application of the enforcement provisions in Schedule 3 to the 1990 Act as regards sewerage nuisance.

PART 1

PUBLIC HEALTH RESPONSIBILITIES

The Scottish Ministers

Section 1 Duty of Scottish Ministers to protect public health

5. Subsection (1) requires the Scottish Ministers to continue to make provision, or secure that provision is made, for the protection of public health in Scotland.

6. Subsection (2) defines “protecting public health” as the protection of the community or any part of it from infectious diseases, contamination or other such hazards which constitute a danger to human health and includes the prevention of, the control of and provision of a public health response to such diseases, contamination or other hazards. Contamination is defined in subsection (5) as meaning contamination with or by a biological chemical or radioactive substance; infectious disease as an illness or medical condition caused by an infectious agent (including an organism listed in Part 2 of schedule 1 to the Bill).

7. Subsection (3) provides that for the purpose of protecting public health, the Scottish Ministers may provide assistance, including financial assistance, to any person who exercises functions in relation to public health. Subsection (4) states that the duty placed on the Scottish Ministers in subsection (1) is without prejudice to the general duties of Scottish Ministers to provide a health service and promote the improvement of the health of the people of Scotland as outlined in section 1 and 1A of the National Health Service (Scotland) Act 1978.(c29).

Health boards

Section 2 Duty of health boards to protect public health

8. This section requires each health board to continue to make provision, or secure that provision is made, for protecting public health in its area, without prejudice to its general duty to promote the improvement of the health of the people of Scotland under section 2A of the National Health Service (Scotland) Act 1978 (c.29). Functions under the Act are also to be construed as functions conferred on health boards by Scottish Ministers under section 2(1) of the 1978 Act.

Section 3 Designation of competent persons by health boards

9. This section places a duty on health boards to designate a sufficient number of persons for the purpose of exercising certain functions under the Bill and other enactments, in each health board area. Persons designated under this section are to be known as “health board competent persons”. Subsection (4) provides that the Scottish Ministers may, by regulations, prescribe the persons or classes of persons who may be designated as health board competent

persons; the qualifications, training and other requirements to demonstrate competency which they must meet; and any other matters relating to the terms and conditions of such a designation as Scottish Ministers consider appropriate. The regulations may say that certain functions of health board competent persons may only be carried out by those with particular qualifications, training or other competency requirements.

Local authorities

Section 4 Duty of local authorities to protect public health

10. This section places a duty on each local authority to continue to make provision, or secure that provision is made, for the purpose of protecting public health in its area.

Section 5 Designation of competent persons by local authorities

11. Similarly to section 3, section 5 places a duty on local authorities to designate a sufficient number of persons for the purpose of exercising certain functions under the Bill and other enactments, in each local authority area. Persons designated under this section are to be known as “local authority competent persons”.

12. The Scottish Ministers may, by regulations, prescribe the persons or classes of persons who may be designated as local authority competent persons; the qualifications, training and other requirements to demonstrate competency which they must meet; and any other matters relating to the terms and conditions of such a designation as the Scottish Ministers consider appropriate. The regulations may say that certain functions of local authority competent persons may only be carried out by those with particular qualifications, training or other competency requirements.

Co-operation and planning

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

13. This section places a requirement on health boards and local authorities, in carrying out the duties placed on them by this Bill, to co-operate with any relevant person who appears to have an interest in or a function relating to the protection of public health.

14. Subsection (2) defines a “relevant person” as a health board; a special health board; a local authority; the common services agency; and the Scottish Ministers. The section is without prejudice to existing duties of co-operation set out in section 13 of the National Health Service (Scotland) Act 1978 (c.29).

Section 7 Joint public health protection plans

15. The section confers a duty on each health board to prepare plans relating to the protection of public health in its area as the board considers appropriate. Subsection (2) states that in preparing a plan, a health board must consult the relevant local authority.

16. The plan must be prepared in accordance with guidance from the Scottish Ministers, and can be incorporated within any other plan which the health board is required to prepare under any other enactment. There is a duty on the health board which prepares the plan to publish it, either as a stand alone document, or as part of any other plan in which it is incorporated. The health board is empowered to vary any plan prepared under this section and must then publish it, as varied. “Relevant local authority” is defined as the local authority for the area in relation to which the board is constituted; or where the area of that health board includes the areas of two or more local authorities, is both or all of those authorities.

Power of Scottish Ministers to intervene

Section 8 Power to direct health boards and local authorities

17. This section gives the Scottish Ministers the power to direct a health board or a local authority to exercise their public health functions where it is necessary for the purpose of protecting public health. This power applies where the Scottish Ministers consider that a health board or a local authority has failed, is failing or is likely to fail to exercise the functions conferred on it by the Bill or failed, is failing or is likely to fail to exercise them in a manner which the Scottish Ministers consider acceptable.

18. The section sets out what should be specified in any such direction, i.e. the function, the period within which the function is to be carried out, or the manner in which it is to be carried out and any other conditions imposed by the Scottish Ministers. Subsection (4) allows the Scottish Ministers to vary or withdraw any direction made from time to time.

Section 9 Power to direct that functions be exercised by other persons

19. Under this section the Scottish Ministers may direct that the functions of a health board or a local authority be performed by any other person whether or not they have made a previous direction under section 8. However, if a direction to a health board or a local authority has been given under section 8, the Scottish Ministers may not give a direction under this section unless the period specified in the first direction has expired or that direction has been withdrawn.

20. Subsection (3) sets out the persons that may be specified in a direction by the Scottish Ministers, namely a health board, the common services agency, a local authority, an employee of these bodies, a member of staff of the Scottish Administration or any other person the Scottish Ministers consider appropriate.

21. Subsection (4) specifies the information that must be contained in a direction under this section, that is the functions to which it applies, the person receiving the direction, the period for which that person is to perform the duties, the extent to which it will be performed, and any other conditions imposed by the Scottish Ministers as they consider appropriate. Subsection (5) allows the Scottish Ministers to vary or withdraw a direction.

Section 10 Directions under section 9(1): supplementary

22. Subsection (1) provides that anything done or omitted to be done by a person or body exercising a function as a result of a direction under section 9 remains the responsibility of the

health board or local authority whose function it is. A person dealing in good faith and for value with a person exercising a function under a direction does not have to check whether the person exercising the function is doing so in accordance with the terms of the direction. Unless it is specified otherwise in the direction, the health board or local authority that is the subject of the direction must remunerate and pay the expenses of, and any other costs reasonably incurred by, the person exercising the function.

Section 11 Power to direct allocation of resources

23. This section allows the Scottish Ministers, if they are satisfied that it is necessary to do so, to direct resources between health boards, between local authorities and between health boards and local authorities, in connection with the performance by the recipient board or authority of its functions relating to the protection of public health.

PART 2

NOTIFIABLE DISEASES, NOTIFIABLE ORGANISMS AND HEALTH RISK STATES

Notifiable diseases and organisms

Section 12 Lists of notifiable diseases and notifiable organisms

24. This section defines “notifiable disease” and “notifiable organism” as a disease and organism listed in Part 1 and Part 2 of schedule 1 respectively. It states that the Scottish Ministers may amend any of the lists in schedule 1 by regulation, including by adding or removing items from the list. A disease or organism may be added by regulation if the Scottish Ministers are satisfied that it is likely to give rise to a significant risk to public health and having regard to whether the disease is serious (or in the case of an organism, whether the organism would cause a serious disease) and easily transmissible through casual contact.

Duties to notify

Section 13 Notifiable diseases: duties on registered medical practitioners

25. This section places a duty on a registered medical practitioner who has reasonable grounds to suspect that a patient has a notifiable disease, to notify the health board of that area in writing not later than 3 days after forming the suspicion. The notification must include the patient’s name, address and postcode, occupation and the name, address and postcode of the patient’s place of work or education (if considered relevant by the practitioner), patient’s sex, date of birth, the disease which the patient has and the patient’s NHS identifier. The NHS identifier means the community health index number, or where that is not known, the NHS identification number. Where both are unknown, any other number or indicator used from time to time to identify a patient individually will suffice.

26. A registered medical practitioner who has reasonable grounds to suspect a notifiable disease and who considers that the case is urgent must orally notify the health board as soon as possible. The registered medical practitioner must have regard to the following factors when

considering whether a case is urgent or not: the nature of the disease, the ease of transmission of that disease, the patient's circumstances (such as the patient's age, sex and state of health), and any guidance issued by the Scottish Ministers.

27. This section allows a registered medical practitioner not to notify if there are reasonable grounds to believe that another registered medical practitioner has complied with the notification requirement under this section or section 14 in respect of the patient.

Section 14 Health risk states: duties on registered medical practitioners

28. This section places a duty on a registered medical practitioner who has reasonable grounds to suspect that a patient has been exposed to a health risk state to notify the health board of that area in writing no later than 3 days after forming the suspicion. The notification must include the patient's name, address and postcode, occupation and the name, address and postcode of the patient's place of work or education (if this is considered relevant by the practitioner), patient's sex, date of birth, the health risk state to which the person has been exposed and the patient's NHS identifier.

29. A registered medical practitioner who has reasonable grounds to suspect that a patient has been exposed to a health risk state and considers that the case is urgent must orally notify the health board as soon as possible. In determining whether the case is urgent, the practitioner must have regard to the nature of the health risk state, the nature of the exposure to that state, the patient's circumstances (such as the patient's age, sex and state of health) and any guidance issued by the Scottish Ministers. This section allows a registered medical practitioner not to notify if there are reasonable grounds to believe that another registered medical practitioner has complied with this section or section 13 in respect of the patient.

30. This section defines a health risk state as meaning a highly pathogenic infection (i.e. an infection highly likely to cause a serious disease), or exposure to any contamination, poison or other hazard that is a significant risk to public health. A patient's exposure to a health risk state means either physical contact with or contamination by a health risk state or physical contact with or contamination by a person who, or an object which, has been in physical contact with, or been contaminated by a health risk state.

Section 15 Notifiable diseases and health risk states: duties on health boards

31. This section places a duty on a health board which receives notification of a disease or health risk state (under section 13 or 14) from a registered medical practitioner either orally or in writing, relating to a patient who usually resides within that area, to send a return in writing to the Common Services Agency. The return must contain the information received or known for each patient including postcode, occupation, sex, date of birth, the suspected disease or health risk state to which the patient has been exposed, and the patient's NHS identifier. The return is to be sent no later than the end of the week in which the information is received; or, if this is not practicable, as soon as practicable thereafter.

32. Subsection (4) states that where the notification received by a health board relates to a person who does not usually reside in that area, the health board must transmit the patient's information to the health board for the area in which the person usually resides. Subsection (5)

sets out that when a health board receives information from another health board by virtue of subsection (4), it must send a return in writing to the Common Services Agency no later than the end of the week following receipt of the notification.

Section 16 Notifiable organisms: duties on directors of diagnostic laboratories

33. This section places a duty on the director of a diagnostic laboratory, as defined, where the laboratory identifies a notifiable organism, to provide written confirmation of the organism to the relevant health board and the Common Services Agency, no later than 10 days after identification. If the director of the diagnostic laboratory considers that the case is urgent, the director must orally notify the relevant health board as soon as possible. In determining whether a case is urgent, the director must have regard to the nature of the organism, the nature of the disease which that organism causes, the ease of transmission of that disease or organism, the patient's circumstances (such as the patient's age, sex and state of health, where known), and any guidance issued by the Scottish Ministers.

34. For the purposes of subsection (1), a diagnostic laboratory identifies a notifiable organism where the laboratory identifies the organism itself or the organism is identified by another laboratory under an arrangement with that diagnostic laboratory. This will include identification of organisms made by laboratories outwith Scotland. In these cases, the day of identification for the purposes of notification will be the day on which the first diagnostic laboratory becomes aware of the identification by the other laboratory.

35. The "relevant health board" in this section means the health board in whose area the diagnostic laboratory is situated. Where a health board receives notification from the director of a diagnostic laboratory and the information relates to a person who does not usually reside in that area, the information must be transmitted to the health board for the area in which the person usually resides.

36. This section defines the director of a diagnostic laboratory as a clinical microbiologist, consultant pathologist or other registered medical practitioner or other person, in charge of a diagnostic laboratory, thus providing that the role of director of a diagnostic laboratory can be fulfilled by a person with a non-medical background.

Offences

Section 17 Notifiable organisms: offences

37. This section states that it is an offence (as outlined in section 100 of the Bill) for the director of a diagnostic laboratory to fail without reasonable excuse to comply with the duty of notification. Where the director of a diagnostic laboratory commits an offence and is employed by a body corporate, the body corporate also commits the offence. In proceedings for an offence under this section, it is a defence for the accused director of a diagnostic laboratory to prove that all due diligence was exercised and all reasonable steps taken to avoid committing the offence. For the accused body corporate, it is a defence to prove that the body corporate (or its employee or agent) exercised all due diligence and took all reasonable steps to avoid committing the offence.

Supplementary provision

Section 18 Electronic notification

38. This allows a registered medical practitioner, a health board or the director of a diagnostic laboratory to use electronic means (such as e-mail) to satisfy the notification requirements. The electronic document must be capable of being reproduced in legible form and is taken to be received on the day of transmission.

Section 19 Notifiable diseases etc.: further provision

39. This section allows the Scottish Ministers to make provision, by regulations, as to the way in which notification is to be made, including the way in which the information is to be provided and the manner in which the authenticity or integrity of any electronic communication may be established. The way in which information is to be provided may include: the person by whom it is to be provided; the person to whom it is to be provided; the nature of the information to be provided; the form and manner in which it is to be provided; and the time by which the information is to be provided. Regulations made under this section may modify any enactment, including this Bill.

PART 3

PUBLIC HEALTH INVESTIGATIONS

Public health investigations

Section 20 Public health incidents

40. This defines the meaning of a public health incident as existing if a person has an infectious disease or there are reasonable grounds to suspect that a person has such a disease; or a person has been exposed to an organism that causes an infectious disease or there are reasonable grounds to suspect that a person has been so exposed; or a person is contaminated or there are reasonable grounds to suspect that a person is contaminated; or a person has been exposed to a contaminant or there are reasonable grounds to suspect that a person has been so exposed; or any premises or any thing in or on premises is infected, infested or contaminated, or there are reasonable grounds to suspect that any premises or thing is so infected, infested or contaminated; and there are reasonable grounds to suspect that the circumstance is likely to give rise to a significant risk to public health.

Section 21 Public health investigations

41. This defines a public health investigation and outlines who may carry out such an investigation. Subsection (2) provides that the Scottish Ministers, a health board competent person, the Common Services Agency, a local authority competent person, or two or more of these acting together, may appoint a person to carry out public health investigations and that person will be known as an investigator. A health board competent person or a local authority competent person may also be appointed as an investigator. Subsection (3) enables the public

health investigator to exercise the powers relating to entry to premises in section 22, other investigatory powers in section 23, and powers to ask questions in section 24.

Investigators' powers

Section 22 Powers relating to entry to premises

42. This section sets out the powers an investigator may exercise to enter premises when it is considered necessary for the purpose of a public health investigation. Subsection (1) states that the use of the powers of entry in relation to dwelling houses are subject to section 26. The section allows an investigator to enter any premises which that investigator has reason to believe is necessary to enter, to take any other authorised person with him (including a constable, if there is reasonable cause to expect any serious obstruction in obtaining access); it allows an investigator to take any equipment or materials with him which might be necessary to the investigation; to make such examination and investigation that may be necessary in the circumstances; and to direct that any premises or anything in them be left undisturbed for as long as may be necessary for the purpose of the examination.

43. Subsection (2) places an obligation on an investigator who uses these powers to enter unoccupied premises to leave the premises as effectively secured against unauthorised entry as the investigator found them.

Section 23 Other investigatory powers

44. Subsection (1) sets out, in some detail, the powers being made available to public health investigators. The investigator may take measurements and photographs, make recordings which are considered necessary for the investigation, obtain and take samples of any articles or substances found in or on the premises and of the air, water or land in or on the premises or in their vicinity.

45. The investigator also may dismantle or test any article or substance found in the premises under investigation which appears to be the cause of the public health incident, but may not damage or destroy it unless necessary. Where this power is proposed to be used, the person responsible for the premises being investigated may request that the action be taken in his or her presence. In addition, the investigator must consult appropriate persons on the premises to determine what dangers there may be in taking this action.

46. The investigator may ask for the production of any records (including electronic ones) which are necessary for the purposes of an investigation and inspect and take copies of the records. Such information includes that which may not be in the possession of the person, but which it is reasonable to require that the person obtain for this purpose. This does not compel any person to produce a document which that person would be entitled to withhold, on grounds of legal privilege, unless on an order for the production of documents in an action of the Court in Session. The investigator may make such examination and investigation as may in the circumstances be necessary.

Section 24 Power to ask questions

47. This section provides further detail on the power of investigators to require any person to answer such questions as the investigator sees fit. A person required to answer questions may nominate one other person to be present during questioning. The only persons who may be present during such questioning are the person (if any) nominated by the person being questioned and any other person authorised by the investigator to be present.

48. The section also states that no answer given by a person being questioned under these powers is admissible in evidence against that person in any criminal proceedings.

Section 25 Supplementary

49. This section provides that an investigator may also require facilities and assistance from any person in relation to any matter or thing which is under that person's control or in respect of which the person has responsibilities.

50. Subsection (3) enables the Scottish Ministers, by regulation, to give additional powers to investigators as they consider necessary. Subsection (5) states that powers outlined in this Part are without prejudice to any other powers conferred on an investigator by this Act or any other enactment, or by any rule of law.

Section 26 Entry to dwellinghouses

51. This section places conditions on the powers of entry of an investigator proposing to enter a dwellinghouse. The first is that the investigator must give 48 hours' notice of the proposed entry to the occupier of the dwellinghouse. The second is that the dwellinghouse may only be entered if the apparent occupier has consented or a warrant has been issued under section 27. However, these conditions do not apply where the investigator considers, on reasonable grounds, that there is an emergency, as defined in section 28.

Section 27 Public health investigation warrants

52. This section sets out the circumstances in which a sheriff or a justice of the peace may grant a warrant for the purposes of a public health investigation. Subsection (1) lists the conditions which must be satisfied before a warrant is granted: that the power to enter the premises has been refused or is expected to be refused; the premises are unoccupied; the occupier is temporarily absent and there is urgency; or an application for admission to the premises would defeat the object of the investigation.

53. Subsection (2) states that the sheriff or justice of the peace who receives an application by an investigator may authorise the power of entry and the conditions to which they are subject. The sheriff or justice of the peace may then authorise the investigator to exercise the power in relation to those premises according to the warrant and to take any other authorised person including a constable if serious obstruction is expected on entry to the premises as well as any equipment or material required for the purpose for which the power of entry is being exercised.

54. Subsection (3) specifies that a sheriff or justice of the peace must not issue a warrant authorising entry to a dwellinghouse unless the condition requiring 48 hours' notice has been satisfied and the period of notice has expired. A warrant under this section continues in force until the purpose for which the warrant is issued is fulfilled.

Section 28 Use of powers in emergencies

55. If an investigator, who is entitled to enter premises under section 22, considers there may be an emergency, the premises may be entered at any time, using reasonable force. The investigator need not satisfy the conditions set out in section 26 (entry to dwellinghouses) nor apply for a warrant. The investigator on entering any premises under this section may take any other authorised person including a constable if serious obstruction is expected on entry to the premises as well as any equipment or material required for the purpose for which the power of entry is being exercised. The investigator may also direct that the premises and anything in or on them may be left undisturbed for as long as the investigator considers appropriate.

56. This section defines an “emergency” as existing if there is a significant risk to public health and the nature of that risk is such that immediate action is necessary to verify the existence of the risk; to determine the cause of the risk; or to take action to prevent, or prevent the spread of, infectious diseases or contamination.

Offences

Section 29 Public health investigation offences

57. Subsection (1) lists the offences under this Part of the Bill and provides that the defence of reasonable excuse is available for these offences. Subsection (2) sets out the additional available defence in line with other parts of the Bill, whereby it is a defence if the person is able to prove that they exercised all due diligence and took all reasonable steps to avoid committing the offence. Subsection (3) states that where a person (such as a body corporate) commits an offence due to another person's act or omission, the body corporate may be prosecuted even if the other person is not (and links with section 100).

Compensation

Section 30 Public health investigations: compensation

58. Compensation will be paid for any loss or damage caused by an investigator or any other authorised person in exercising powers as part of a public health investigation, unless the loss or damage is due to the fault of the person who sustained it and unless the unoccupied premises that have been investigated have not been left secure. The person responsible for paying compensation for any damage or loss caused by investigators or those authorised by the investigator under this part of the Bill is the employer of the investigator or the authorised person as the case may be. A single arbiter appointed by agreement between the parties to the dispute, or, if agreement cannot be reached, by the President of the Lands Tribunal for Scotland will settle any dispute as to a person's entitlement to compensation and the amount of such compensation.

PART 4

PUBLIC HEALTH FUNCTIONS OF HEALTH BOARDS

Duty to give explanations

Section 31 Duty of health boards to give explanation for need for action

59. This section provides that where a health board is proposing to take any action under sections 33, 39, 41 and 44, or where a health board competent person is proposing to take any action under sections 37 and 38, known as a “relevant action” in respect of a person, the health board or health board competent person is required to explain such action to that person. The explanation should convey that there is a significant risk to public health, the nature of that risk and why the board finds it necessary to take the proposed action. In the event that an explanation cannot be given before the relevant action is taken, the health board must, as soon as reasonably practicable after taking action and in so far as it is reasonably practicable to do so, give the explanation. If the person is incapable of understanding the explanation, for whatever reason, explanations should be given to any person having parental responsibilities and parental rights (in respect of those under 16) and in other cases to any guardian, welfare attorney or any other person appointed or having authority to intervene in the affairs of the person.

Section 32 Relevant actions

60. This section defines the relevant actions to which section 31 applies. These are applications for orders to do any of the following: require a person to be medically examined; require a person to be quarantined; require a person to be detained in hospital; require a person to be removed and detained in hospital; require a person to be detained in hospital under exceptional detention order. Relevant actions also include the making by a health board competent person of an order excluding a person from specified places or from carrying on specified activities.

Medical examinations

Section 33 Application to have person medically examined

61. This section deals with applications to the sheriff for orders to have a person medically examined. In subsection (1) a health board is empowered to make such an application where it knows or suspects that a person in their area has an infectious disease; has been exposed to an infectious organism which causes such a disease; is contaminated or has been exposed to a contaminant and where it appears to the health board that as a result there is, or may be, a significant risk to public health; and it is necessary, to avoid or minimise that risk, for the person to be medically examined.

62. Subsection (3) outlines the matters which need to be specified in the application to the sheriff which include the nature of the examination the health board proposes to be carried out, why the health board considers it necessary, who will carry out the examination and whether an explanation has been provided. All applications must include a certificate from the health board competent person certifying the need for the medical examination, and that the person meets the criteria set out in subsection (1).

Section 34 Order for medical examination

63. This section sets out the circumstances in which a sheriff may grant an order authorising a health care professional to medically examine the person to whom the application under section 33 relates. Subsection (1) requires the sheriff to be satisfied with the matters under subsection (2). Those include the fact that an explanation under section 31 was given, or, where no such explanation was given, it was not reasonably practicable to do so. Subsection (4) prescribes that a medical examination authorised under this section must be carried out within 7 days of the order being made. Subsection (4A) states that if an appeal is made (under section 57B(1)) before the medical examination is carried out, the order is suspended, and no account is taken of the period during which the order is suspended in calculating the 7 days within which the medical examination must take place. The order must specify the person to whom it applies and the class or classes of health care professional who will carry out the examination. The sheriff may also make provision in the order about such other matters as is considered appropriate (subsection (3)). The order must be notified to the person to whom it applies and be notified to any person to whom an explanation was given under section 31 and any other person the sheriff considers appropriate.

Section 35 Medical examination: least invasive and least intrusive procedures

64. Subsection (1) sets out that a health care professional authorised to undertake a medical examination under section 34 must not use invasive or intrusive procedures unless they are necessary to achieve the purpose for which the examination is being carried out. However, if that professional needs to carry out such procedures, the least invasive and least intrusive procedures practicable must be used.

65. Subsection (2) lists the medical procedures which are not considered to be invasive for this part of the Bill.

Section 36 Medical examination of groups

66. Subsection (1) states that where a health board is satisfied that the conditions relating to the need for a medical examination of a person have been met and the person is one of a group of two or more persons, the health board may apply to the sheriff for an order relating to all of the persons in the group and for each member of the group to be medically examined, in order to avoid or minimise a significant risk to public health.

67. Subsection (2) sets out the duty to provide explanations and explains that the application to the sheriff applies in relation to the group as a whole. In addition, the competent person must certify that it is necessary, to avoid or minimise an actual or anticipated risk to public health, for all the persons in the group to be medically examined. The sheriff may grant the order in relation to the group if the conditions relating to the need for a medical examination apply in relation to at least one member of the group, and that explanations were given to each member of the group before the application for the order was made unless, as specified in section 31 (5) the risk to public health was such that the application had to be made urgently.

Exclusion orders and restriction orders

Section 37 Exclusion orders

68. This section allows a health board competent person to make an “exclusion order” which will exclude a person from any place or type of place specified in the order, and impose such conditions (if any) on the person as the competent person considers appropriate. Subsection (1) provides that an exclusion order may be made where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. In addition the health board must consider that there is a significant risk to public health and it is necessary to exclude that person from certain places to avoid or minimise that risk.

69. Under subsection (3), before making an exclusion order, the health board competent person must be satisfied that the criteria set out in subsection (1) have been met and have regard to imposing the least restrictive order necessary to protect public health.

70. Subsection (4) sets out what must be specified in an exclusion order: the person to whom it applies, the places from which the person is excluded, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers appropriate. In the case of an exclusion order stopping a child from attending school, for example, that might be the head teacher. An exclusion order may not specify a person’s own place of residence as a place from which that person can be excluded. The exclusion order comes into effect from the time it is served on the person to whom it applies.

Section 38 Restriction orders

71. This section allows a health board competent person to make a “restriction order” which will prohibit a person from carrying on any activity specified in the order, and impose such conditions (if any) on the person as the competent person considers appropriate. The section applies only where the health board knows that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Restriction orders can be made only where the health board considers that there is a significant risk to public health and it is necessary for the person to be prohibited from carrying on certain activities to avoid or minimise that risk.

72. The health board competent person must be satisfied that all the required criteria are met and have regard to imposing the least restrictive order necessary to protect public health.

73. Subsection (4) sets out what must be specified in a restriction order: the person to whom it applies, the activity or type of activity which the person is prohibited from carrying on, and any conditions being imposed. The subsection also specifies that the order must be served on the person to whom it applies and be notified to any person who was given an explanation under section 31, as well as to anyone else whom the competent person considers is appropriate. The restriction order comes into effect from the time it is served on the person to whom it applies.

Quarantine

Section 39 Application to have person quarantined

74. This section deals with applications to the sheriff for an order to require a person to be quarantined in their home or other setting, other than a hospital. A health board may make such an application where it knows or suspects that a person in its area has an infectious disease, has been exposed to an organism which causes such a disease, is contaminated or has been exposed to a contaminant. Applications can only be made where there is a significant risk to public health and it is necessary to avoid or minimise any risk for that person to be quarantined.

75. Subsection (3) sets out that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to be quarantined; the place in which the person is to be quarantined; the steps (if any) in section 46 which the board considers it is necessary to take in relation to the person; the conditions (if any) which are to be applied, that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by the health board competent person, indicating satisfaction that the criteria for the making of the application have been met.

Section 40 Quarantine orders

76. This section sets out the circumstances in which a sheriff may grant a quarantine order and what that order must contain. The sheriff must be satisfied that the criteria for a quarantine order have been met. The order will authorise the person to be quarantined in the place specified in the order and the taking of such steps (if any) in section 46 which the sheriff considers appropriate. The sheriff may also impose such conditions in relation to the quarantine as is considered appropriate. Where the person is not in the place specified, a constable, an officer of the health board or local authority, or any other person authorised by the sheriff may remove the person to that place.

77. Subsection (5) lists the kinds of conditions which may be imposed by a quarantine order. These include: those who may have access to the place of quarantine and for what purposes; those who may have access to the quarantined person and for what purpose; and any conditions relating to the welfare of the quarantined person. The list is not intended to be exhaustive.

78. Subsection (6) sets out what must be specified in a quarantine order: the person to whom it applies; the place where the person is to be quarantined; the period for which the person is to be quarantined, up to a maximum of three weeks; the steps (if any) under section 46 which may be taken; and any conditions imposed on the person. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.

79. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50).

Removal to and detention in hospital

Section 41 Application to have person detained in hospital

80. This section deals with applications to the sheriff for an order to have a person detained in hospital. A health board may make such an application where it knows that a person in its area has an infectious disease or is contaminated, where there is a significant risk to public health and it is necessary, to avoid or minimise that risk, for the person to be detained in hospital. An application can be made for the person to be removed and detained in hospital, if not in hospital already, or to be detained there, if the person is there already. Such an order is referred to as a “short term detention order”.

81. Subsection (4) sets out what must be specified in the application: the person to whom the order will apply; why the health board considers it necessary for the person to be detained in hospital; the hospital in which it is proposed to detain the person; the steps (if any) in section 46 that the board considers it is necessary to take in respect of the person; confirmation that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by the health board competent person, indicating satisfaction that the criteria for the making of the application have been met.

Section 42 Order for removal to and detention in hospital

82. This section provides the circumstances in which a sheriff may grant an order for removal and detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a removal and detention order have been met. The order authorises a constable, an officer of the health board or local authority or any other person the sheriff considers appropriate to remove the person to the hospital specified in the order; to detain the person in hospital for a period not exceeding three weeks; and the taking of steps (if any), set out in section 46, as is considered appropriate.

83. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital to which the person is to be taken (and in which the person is to be detained); the period for which the person is to be detained, up to a maximum of three weeks; and the steps (if any) to be undertaken as set out in section 46. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate. Subsections (5) and (6) grant a power of entry, including the use of reasonable force, and permit the power to be exercised at any time.

Section 43 Order for detention in hospital

84. This section provides the circumstances in which a sheriff may grant an order for detention in hospital and what that order must contain. The sheriff must be satisfied that the criteria for a detention order have been met. The order can authorise the detention of a person in hospital for a maximum period of three weeks and the taking of steps (if any) set out in section 46 as the sheriff considers appropriate.

85. Subsection (4) sets out what an order under this section must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to

be detained; and the steps (if any) to be undertaken as set out in section 46. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.

86. Health boards can apply to extend the duration of the order (section 49) and to vary the steps authorised or conditions imposed by the order (section 50)

Section 44 Application where long term detention in hospital necessary

87. This section sets out the procedures whereby a health board may apply to the sheriff for an “exceptional detention order”. This is where the person is detained in hospital under an order granted under section 42 or 43 and the health board is satisfied that the criteria under which the order was granted continue to apply; it continues to be necessary for the person to be detained in hospital to avoid or minimise a significant risk to public health; and it is necessary for that person to be detained for a longer period than permitted under those orders.

88. Subsection (4) states that the application must specify: the person to whom the order will apply; why the board considers it necessary for the person to continue to be detained in hospital and for a period longer than that permitted under a short term order; the hospital in which it is proposed to detain the person; the steps, if any, in section 46 which the health board considers it is necessary to take in respect of the person; that an explanation has been given under section 31 (or if no explanation was given, the reason why); and any responses made to the explanation. The application must be accompanied by a certificate, signed by a competent person from a different health board to the one which made the original application, indicating satisfaction that the criteria for the making of the application have been met.

Section 45 Exceptional detention order

89. This section provides the circumstances in which a sheriff may grant an exceptional detention order and what that order must contain. The sheriff must be satisfied that the criteria for an exceptional detention order have been met and that the health board has fulfilled the conditions set out in section 44 regarding applications. The order will authorise the continued detention of a person in hospital and the taking of steps (if any) set out in section 46 as the sheriff considers appropriate.

90. Subsection (4) sets out what an exceptional detention order must specify: the person to whom it applies; the hospital in which the person is to be detained; the period for which the person is to be detained, up to a maximum of 12 months; and the steps (if any) to be undertaken as set out in section 46. The order must be notified to the person to whom it applies, any person to whom an explanation was given under section 31, and any other person whom the sheriff considers appropriate.

Quarantine and detention: steps that may be taken

Section 46 Authorised steps

91. This section sets out authorised steps which may be taken under a quarantine order, a short term detention order or an exceptional detention order. These are disinfection, disinfestation and decontamination.

Section 47 Authorised steps: least invasive and least intrusive procedures

92. This section provides that where any of the steps mentioned in section 46 have been authorised under a quarantine, short term detention or exceptional detention order, the health care professional authorised to carry out the steps must not use invasive or intrusive procedures unless it is considered that the procedures are necessary to achieve the purpose for which the step is being taken. Where there is a need to carry out such procedures the health care professional must use the least invasive and least intrusive procedures practicable.

Variation and extension of orders

Section 48 Variation of exclusion and restriction orders

93. This section provides that, where a person is subject to an exclusion or restriction order, a competent person of the appropriate health board may, if considered appropriate, modify the orders. In the case of an exclusion order, the order may be modified by varying the place or type of place from which the person is excluded. In the case of a restriction order, the order may be modified by varying the activity or type of activity which the person is prohibited from carrying on. The competent person may also impose conditions, where none existed in the original orders, and modify the conditions by adding, varying or removing a condition, where they had been applied. If such modification is made, the competent person must notify the subject of the order and any person to whom it was notified of the changes made.

Section 49 Extension of quarantine and hospital detention orders

94. The section provides that where a person is subject to a quarantine, short term detention or exceptional detention order, the health board may apply to the sheriff for an extension to the order. The application must be made by the health board before the period specified in the current order expires. An application must include a certificate from a health board competent person in accordance with subsection (2B).

95. Before granting an extension of the order, the sheriff must be satisfied that the criteria for the order still apply. If satisfied, the sheriff may grant, in the case of a quarantine or short term detention order, an extension for a further three weeks, up to a maximum continuous period of 12 weeks; or, in the case of an exceptional detention order, an order extending the order for a further period up to a maximum continuous period of 12 months. An order may be extended on more than one occasion.

Section 50 Application for variation of quarantine and hospital detention orders

96. This section provides that a health board, if it considers it appropriate, may apply to the sheriff for an order modifying a quarantine, short term detention or exceptional detention order.

97. Subsection (3) sets out what must be specified in such an application: the order which it is proposed to modify; the person to whom it applies; and the modification which it is proposed to make. An application must include a certificate from a health board competent person in accordance with subsection (4).

Section 51 Variation of quarantine and hospital detention orders

98. Subsection (1) provides that a sheriff may, if satisfied that the conditions for making a quarantine, short term detention or exceptional detention order continue to apply, make an order modifying the order to which the application relates. In the case of a quarantine order, the place in which the person is to be quarantined may be modified, and conditions may be added, varied or removed. In the case of a short term detention order or an exceptional detention order, the hospital in which the person is detained may be varied. In both cases, steps mentioned in section 46 which are authorised by the order may be added or removed. Orders modified under this section are to have effect from the time at which the order under subsection (1) is made.

99. Subsection (3) provides that where any modification varies the place or hospital in which the person is to be quarantined or detained, the order authorises the removal of the person to that place or hospital by a constable, an officer of the health board, an officer of a local authority or any other person the sheriff considers appropriate, and authorises the person subject to the order to be quarantined or detained there.

100. Subsection (4) sets out that an order granted by the sheriff must specify the person to whom the order applies and the modification made. It must be notified to the person to whom the order applies, to any person to whom an explanation was given under section 31, and to any other person the sheriff considers appropriate.

Review of orders

Section 52 Duty to review exclusion and restriction orders

101. This section places a duty on health board competent persons to keep exclusion and restriction orders under review. Regardless of whether the subject of an order has requested a review under section 53, the health board competent person must carry out a review during the last week of each three-week period to consider whether the conditions under which the order was granted continue to apply and whether it continues to be necessary, to avoid or minimise a significant risk to public health, for the person to be subject to the order.

102. If the health board competent person is not satisfied that these conditions continue to apply or that it continues to be necessary for the person to be subject to the order, the health board competent person must revoke it.

Section 53 Duty to keep exclusion and restriction orders under review

103. This section provides that if a person subject to an exclusion or restriction order requests a review of that order, a health board competent person of the appropriate health board must consider whether the conditions that resulted in the order still continue to apply and whether it remains necessary for the person to be subject to the order. In addition, the health board competent person must from time to time consider whether the conditions that resulted in the order still continue to apply, and whether it continues to be necessary for the person to be subject to the order. If the health board competent person is not satisfied that the conditions that resulted in an exclusion or restriction order still continue to apply, then the health board competent person must revoke it.

Section 54 Duty to keep quarantine orders under review

104. If a person is subject to a quarantine order, this section provides that a duty falls upon a competent person of the health board which applied for the order to consider whether the conditions that justified the creation of the order continue to apply. This consideration requires to be made either at the request of the person subject to the order or simply from time to time. If the conditions are no longer met, the order must be revoked.

Section 55 Duty to keep hospital detention orders under review

105. This section makes the same provision concerning reviews for persons subject to short term or exceptional detention orders as section 54 does in respect of persons subject to quarantine orders.

Compensation

Section 56 Compensation for voluntary compliance with request

106. Subsection (1) provides that a health board must compensate any person who suffers any loss as a result of voluntarily complying with a request to be quarantined, excluded from certain places or prohibited from carrying on certain activities. Such a request must be made by a health board in writing and must specify the action required of the person.

107. Subsection (4) clarifies that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (5) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if agreement cannot be reached, by the President of the Lands Tribunal for Scotland.

108. Subsection (6) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

Section 57 Compensation for persons subject to certain orders

109. Subsection (1) provides that a health board may compensate any person who is subject to an exclusion order, restriction order or quarantine order and who incurs any loss caused by complying with the order.

110. Subsection (2) states that compensation is not payable where the loss is attributable to the fault of the person claiming the loss. Subsection (3) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the board and the person claiming loss or, if agreement cannot be reached, by the President of the Lands Tribunal for Scotland.

111. Subsection (4) provides that the Scottish Ministers may, by regulations, make further provision about compensation to which this section applies.

Section 57A Recall of orders granted in absence of person to whom application relates

112. This section applies where a quarantine order, a short term detention order or an exceptional detention order is made in the absence of the person to whom the order applies.

113. Subsection (2) states that a person mentioned in subsection (3) may apply to the sheriff for an order recalling the order. Subsection (4) provides that such an application must be made before the expiry of 72 hours from when the order to which the application relates was notified to the person to whom it applies. Subsection (5) explains that before determining an application under this section, the sheriff must give the persons mentioned in subsection (6) the opportunity of making representations orally or in writing, and of leading or producing evidence. Subsection (7) states that on an application under this section, the sheriff may confirm or revoke the order.

Appeals

Section 57B Appeal against order for medical examination

114. This section sets out the method by which a person may appeal to the sheriff principal against an order for medical examination. Subsection (3) provides that an appeal under this section must be made before the expiry of 7 days beginning with the day on which the order appealed against is made. The sheriff principal may confirm the order for medical examination; revoke the order; modify the order; make an order declaring that the order was invalid (in situations where the medical examination has been carried out prior to the appeal); or make such other order as the sheriff principal considers appropriate.

115. The decision of the sheriff principal on an appeal under this section is final.

Section 58 Appeal against exclusion orders and restriction orders

116. This section sets out the appeal procedures for those subject to exclusion or restriction orders. Any person who is subject to an exclusion or restriction order, or a person who has an interest in the welfare of such a person, may appeal to the sheriff against the making of the order,

any modification of the order under section 48 or a decision of a health board competent person under section 52 or 53 not to revoke the order. An appeal under this section must be made within 14 days of the order being made, the modification being made, or a decision appealed against.

117. On appeal under this section, the sheriff may confirm the order; modify the order; revoke the order or make such other order as is considered appropriate.

Section 59 Appeal against quarantine and hospital detention orders

118. This section sets out the appeal procedures for those subject to quarantine, short term detention or exceptional detention orders. Any person who is subject to any of these orders, or a person who has an interest in the welfare of such a person, may appeal to the sheriff principal against the making of the order; in the case of a quarantine order, any condition imposed by the order; any steps mentioned in section 46 specified in the order; a decision of the sheriff under section 57A confirming the order; the making of an extension order under section 49; the making of an order under section 51 modifying the order; or a decision of the health board competent person under section 54 or 55 not to revoke the order. An appeal under this section must be made within 14 days of the order being made.

119. On appeal, the sheriff principal may confirm the order; modify the order; revoke the order; or make such other order as is considered appropriate.

Section 59A Exclusion orders and restriction orders: further appeal to sheriff principal

120. This section sets out that a person who appealed under section 58 may, with the leave of the sheriff, appeal against a decision to the sheriff principal. A health board aggrieved by an appeal under section 58 may also, with the leave of the sheriff, appeal against a decision to the sheriff principal.

121. Subsection (5) states that an appeal under this section may only be made on the ground that the sheriff erred in law, or the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.

122. On an appeal under this section, the sheriff principal may confirm the order, modify the order, revoke the order, or make such other order as the sheriff principal considers appropriate. The decision of the sheriff principal on an appeal under this section is final.

Section 60 Appeal to Court of Session

123. Those persons who were the subject of an appeal decision by the sheriff principal (in the case of a quarantine, short term detention or exceptional detention order) may, with the leave of the sheriff principal, appeal against that decision to the Court of Session.

124. Subsection (3) provides that a health board may, with the leave of the sheriff principal, appeal against a decision to the Court of Session. Subsection (4) sets out which decisions a health board may appeal, that is a decision of the sheriff principal on an appeal under section 59 to revoke the order appealed against; or to modify the order.

125. Subsection (5) provides that an appeal under this section may be made only on the ground that the sheriff principal erred in law; or that the decision of the sheriff principal was not supported by the facts established by the sheriff or sheriff principal in the appeal.

126. On appeal, the Court of Session may confirm the order; modify the order; revoke the order; or make such other order as the Court considers appropriate. The decision of the Court on an appeal under section 60 is final.

Section 61 Effect of appeal under section 58, 59, 59A or 60

127. This section states that, notwithstanding an appeal under section 58, 59, 59A or 60, the order, modification or decision appealed against has effect.

Breach of orders and offences

Section 62 Absconding from quarantine

128. This section sets out the procedures to be followed where someone subject to a quarantine order breaches that order by absconding, either while being removed to the place of detention or from that place.

129. Subsection (2) provides that the absconder may be taken into custody by a constable, an officer of the health board, or an officer of a local authority. The quarantined person may be detained in a hospital or any other place up to the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period.

130. Subsections (6) and (7) provide that a person who may take a quarantined person into custody or who may detain that person may enter any premises at any time in which the quarantined person is present and use reasonable force in order to gain entry to the premises. A person taken into custody under this section and who absconds may be taken into custody again and detained under this section.

131. The detention of a quarantined person under this section does not preclude a health board from applying to extend the quarantine order and, where such extension is granted, the quarantined person may be removed to the place in which the person is to be quarantined.

Section 63 Absconding from hospital

132. This section sets out the procedures to be followed where a person subject to a short term detention or exceptional detention order breaches that order by absconding, either while being removed to the detention hospital or from the hospital in which the person is detained.

133. The absconder may be taken into custody by a constable, an officer of the health board or an officer of a local authority and returned to hospital for the period specified in the original order. Any period during which the person was in breach of the order is to be left out of account in calculating that period. Subsection (6) provides that a person who takes a person into custody and who returns such person to hospital may enter any premises in which the quarantined person

is present. Subsection (7) provides that a person who takes a person into custody may enter any premises in which the quarantined person is present at any time and use reasonable force to gain entry. A person taken into custody under this section and who absconds may be taken into custody again and detained in accordance with this section.

Section 64 Obstruction

134. This section states that a person who, without reasonable excuse, intentionally obstructs a health care professional authorised to carry out a medical examination under section 34, or persons authorised to remove the person to the place in which the person is to be quarantined, or persons authorised to remove a person to hospital under section 42, commits an offence.

Section 65 Offences arising from breaches of orders under this Part

135. Any person who is the subject of an order under this part of the Bill and who breaches the order without reasonable excuse, commits an offence.

Section 65A Failure to ensure child's compliance with order

136. This section provides that where an exclusion order, a restriction order or a quarantine order is made in relation to a person who is under 16 (a "child"), a parent of the child who has day-to-day care or control of the child and who fails, without reasonable excuse, to ensure that the child does not breach the order, commits an offence. Where there is no such parent, a person mentioned in subsection (5) who fails, without reasonable excuse, to ensure that the child does not breach the order commits an offence.

Procedures

Section 66 Applications and appeals

137. This section provides that procedure to be used in applications or appeals under Part 4 of the Bill in the sheriff court will be regulated and prescribed under section 32 of the Sheriff Courts (Scotland) Act 1971. Provision made under this power may include: the manner in which, and time within which, notice of applications for orders is given; the manner in which, and time within which, notice of orders is given; where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications must be given; the circumstances in which the sheriff or sheriff principal may determine whether and where a hearing is to be held, and the place or types of place at which hearings may be held. An application may be determined by the sheriff, either in open court or in a private hearing (known as "in chambers"), with or without the person in respect of whom the application is made being present.

PART 5

PUBLIC HEALTH FUNCTIONS OF LOCAL AUTHORITIES

Facilities for disinfection etc.

Section 67 Provision of facilities for disinfection etc.

138. This section sets out the local authority duty to provide, or ensure the provision of, facilities and equipment (which may be mobile) for its area in order to disinfect, disinfest and decontaminate things and premises, and to destroy things which are infected, infested or contaminated. This includes the means for transporting things to facilities and equipment.

139. Local authorities need not provide the facilities themselves, but can enter into an agreement with any person or organisation to ensure provision. The facilities and equipment need not be in the area of the local authority.

140. Subsection (5) defines the meaning of “contaminated”, “infected” and “infested”, as used in this Part.

Disinfection etc. of premises and things

Section 68 Notice on occupier or owner of infected etc. premises or things

141. This section applies where a local authority knows or suspects that any premises in its area or any thing in or on such premises is infected, infested or contaminated. If it appears to the authority that in order to prevent the spread of infectious disease or contamination, disinfection, disinfestation, or decontamination of the premises or things in or on the premises, destruction of a thing, or other connected operations is necessary, then the authority may serve a notice on the occupier of the premises (or the owner if the premises are unoccupied) to carry out the necessary steps. If the occupier is not the owner of the premises, then a copy of the notice must be served on the owner of the premises. A notice may be served only where a local authority competent person certifies his satisfaction as to the matters referred to above.

142. Subsection (6) sets out that the notice must specify the steps which the person on whom the notice is served must take and the period in which they must be taken. It must also advise the person on whom the notice is served that if the notice is not complied with, then the local authority may take those steps. If, during the period of the notice, the person on whom the notice is served, consents, then an authorised officer of the local authority may carry out the steps.

Section 69 Inspection of premises in relation to which notice served

143. This section applies where a notice has been served under section 68 and the period specified in the notice has expired. It provides that an authorised officer of the local authority may enter the premises to determine whether the steps specified in the notice have been taken, may take any other person authorised by the officer, and a constable, if the officer has reasonable cause to expect serious obstruction in obtaining access. The authorised officer entitled to enter premises must show his authorisation, if requested. In addition, the authorised officer who enters unoccupied premises must leave the premises as effectively secured against unauthorised entry as the officer found them.

Section 70 Failure to comply with notice

144. This section prescribes the actions that an authorised officer of a local authority may take where the owner or occupier of premises on whom a notice under section 68 has been served fails to comply with the notice and the period of the notice has expired. It provides that the authorised officer may enter the premises; may take any other person authorised by the officer, and a constable (if the officer has reasonable cause to expect serious obstruction in obtaining access); direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; that the steps specified in the notice and any other steps considered necessary may be taken; and that any thing may be removed from the premises for the purpose of taking any steps (disinfection, decontamination or disinfection) at another place.

145. Subsection (3) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

Section 71 Power of local authority to disinfect etc. premises or things

146. This section provides that a local authority may take the steps set out in the notice served on a person under section 68 if it is not reasonably practicable for that person to take those steps.

147. In order to do so, the authority must serve notice on the occupier of the premises or, where the premises are unoccupied, on the owner of them, requiring access of an authorised officer to undertake the steps. Where a notice is served under this section on the occupier of the premises, this should be copied to the owner, if that is not the same person. The notice may be served only if the local authority competent person certifies that the relevant criteria have been met.

148. Subsection (5) sets out that the notice must specify the steps which must be taken and the period in which they must be taken. Under subsection (6), the authorised officer may enter the premises; may take any other person authorised by the officer, and a constable if the officer has reasonable cause to expect serious obstruction in obtaining access; direct that the premises (or any part of them) or any thing in or on them is left undisturbed for as long as the officer considers appropriate; and that the steps specified in the notice may be taken, including the removal of any things from the premises for the purpose of taking any steps at another place.

149. Subsection (7) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

Section 72 Entry to dwellinghouses

150. This section sets out the conditions under which an authorised officer may exercise a power of entry under this Part in relation to a dwellinghouse. The first condition is that an officer must give 48 hours' notice to the occupier of the dwellinghouse. The second is that the person who appears to be the occupier of the dwellinghouse has consented or entry is effected under a warrant issued under section 73. The term 'dwellinghouse' is defined, as used in this Part.

Section 73 Warrant to enter and take steps

151. This section provides that a local authority may apply for a warrant from a sheriff or a justice of the peace to enter and take steps where an authorised officer has been refused entry or can reasonably anticipate such refusal; the premises to which the authorised person is entitled to enter are unoccupied; the occupier of the premises is temporarily absent and there is urgency; or a person entitled to enter the premises has been prevented from taking the authorised steps, or reasonably anticipates such prevention.

152. Subsection (2) allows a sheriff or justice of the peace, on the application of a local authority, to authorise an officer of the authority to enter the premises, to take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; to direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for so long as the officer considers appropriate; and to take any steps mentioned in section 68.

153. Subsection (3) states that a warrant in relation to a dwellinghouse must not be granted unless the sheriff or justice is satisfied that 48 hours' notice has been given and that period has expired. Subsection (4) provides that the power of entry may be exercised at any time and includes power to use reasonable force. A warrant under this section continues in force until the purpose for which it is issued is fulfilled.

Section 74 Use of powers in emergencies

154. This section provides that where an officer authorised to enter premises under this Part, considers, on reasonable grounds, that there is an emergency, the officer may exercise the power of entry at any time, and may use reasonable force. If the premises are a dwellinghouse, the conditions under section 72 do not apply. The authorised officer may, on entering the premises, take any other person authorised by the officer and a constable, if the officer has reasonable cause to expect any serious obstruction in obtaining access; direct that the premises (or any part of them) are, or any thing in or on them is, to be left undisturbed for as long as the officer considers appropriate; take any step mentioned in section 68(2); and remove any thing from the premises for the purpose of taking any such step at any other place.

155. Subsection (5) provides that an authorised officer who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the officer found them.

156. Subsection (6) states that the use of powers in emergencies is available even if an appeal has been made under section 78 (1).

157. Subsection (7) defines "emergency" as it is used in this Part.

Offences

Section 75 Obstruction

158. Any person who, without reasonable excuse, obstructs an authorised officer, or any other person, in the exercise of powers under this part, will be guilty of an offence and liable to a penalty, as outlined in section 101.

Recovery of expenses

Section 76 Recovery of expenses

159. This section provides that a local authority may recover any reasonable expenses it incurs in doing anything it is entitled to do under this Part of the Bill from the person on whom a notice is served. The local authority may also recover any administrative expenses incurred in connection with the thing to which the expenses relate. The local authority may accept payment of sums recoverable by instalments. In the event of non payment, the local authority may recover sums due as a civil debt.

Compensation

Section 77 Compensation

160. Subsection (1) provides that a local authority must compensate any person who suffers loss or damage caused by any person doing or failing to do anything which that person is entitled or required to do under section 68, 70, 71, 73 or 74. Subsection (2) states that compensation payable under subsection (1) is not available where the loss or damage is attributable to the fault of the person who suffered the loss or damage. Compensation is not available for loss or damage which relates to any infected, infested or contaminated premises which are damaged as a result of disinfection, disinfestation or decontamination of the premises or anything in or on them. Nor is compensation available for the damage or destruction of any thing as a result of disinfection, disinfestations or decontamination of the thing or premises.

161. Subsection (3) provides that any dispute as to a person's entitlement to compensation under this section or the amount of compensation is to be determined by a single arbiter appointed by agreement between the authority and the person claiming loss or damage or, if agreement cannot be reached, by the President of the Lands Tribunal for Scotland.

Appeals

Section 78 Appeals against notices under this Part

162. This section provides that any person on whom a notice is served under this Part of the Bill may appeal to the sheriff against the notice or any requirement in it. Such an appeal must be made within 14 days of the notice being served. On an appeal, the sheriff may revoke the notice; remove or vary any requirement specified in the notice; and make such other order as the sheriff considers appropriate.

Section 79 Appeal to sheriff principal

163. This section provides that a person who appealed under section 78 may, with the leave of the sheriff, appeal to the sheriff principal against the sheriff's decision not to revoke the notice or not to remove or vary any requirement in the notice. Subsection (3) states that a local authority may also, with the leave of the sheriff, appeal against a decision of the sheriff to revoke the notice or remove or vary any requirement specified in the notice.

164. Subsection (6) provides that on an appeal under this section, the sheriff principal may confirm the notice, remove or vary any requirement specified in the notice, revoke the notice, or make such other order as the sheriff principal considers appropriate.

Section 80 Appeal to Court of Session

165. This section provides that a person who appealed under section 79 may, with the leave of the sheriff principal, appeal against the sheriff principal's decision to the Court of Session. Such an appeal may be made on a point of law only.

166. Subsection (3) provides that on an appeal under this section, the Court of Session may confirm the notice, remove or vary any requirement specified in the notice, revoke the notice or make such other order as the Court considers appropriate.

Existing functions

Section 81 Application of this Part where other functions being exercised

167. This section applies where a local authority or any other person has functions under any other enactment in relation to premises or things which are infected, infested or contaminated, to be known as an "existing function".

168. Subsection (3) provides that a local authority may not exercise any function conferred on it by virtue of this part of the Bill, if the authority or any other person is exercising or is likely imminently to exercise a function in relation to the infected, infested or contaminated premises or things. Section 67 (which is the duty for a local authority to provide facilities for disinfecting etc.) continues to apply despite section 81.

PART 6

MORTUARIES ETC.

Provision of mortuaries

Section 82 Provision of mortuaries by local authorities

169. This section requires each local authority to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the

bodies of persons who die in the authority's area and the post-mortem examination of such bodies. Local authorities need not provide such premises and facilities for hospital-related deaths. Health boards are required to provide premises and facilities for such bodies under section 83. Local authorities are required to provide or ensure the provision for its area of facilities for bodies in relation to which the Crown Office Procurator Fiscal Service (COPFS) are carrying out investigations.

170. Local authorities need not provide the facilities themselves, but may enter into agreements with any person or organisation, including a health board, for the provision of such facilities. The premises and facilities referred to in this section need not be in the area of the local authority ensuring their provision.

Section 83 Provision of mortuaries by health boards

171. This section requires each health board to provide or ensure the provision for its area of the premises and facilities it considers appropriate for the reception and temporary storage of the bodies of persons who die in a hospital in the board's area or who die elsewhere and whose bodies are brought to such a hospital and for the post-mortem examination of such bodies.

Section 84 Co-operation by local authorities and health boards

172. This section places a duty of co-operation between relevant local authorities and health boards in complying with the duties placed on both organisations by sections 82 and 83.

Protection of public from risks arising from bodies

Section 85 Restriction on release of infected etc. bodies from hospital

173. This section deals with the circumstances whereby a health board may require the retention of an infected or contaminated body in hospital. It sets out that this must be by direction specifying that the body cannot be removed (except to a mortuary or similar premises for a post-mortem examination) until written authorisation is given to a named person for the purposes of immediate disposal, which may include preparation of the body for disposal. That direction can be made only where a health board competent person certifies that a defined set of circumstances applies. These circumstances, set out in subsection (1), are that a person dies of an infectious disease, had such a disease immediately before dying (but died of another cause) or was contaminated immediately before dying (whether the contaminant caused the death or not). If any of those circumstances applies and the competent person considers that there is also a significant risk to public health and it is necessary to retain the body to avoid or minimise that risk (until the health board is satisfied regarding the arrangements for disposal), a direction may be made.

174. Subsection (4) places a duty on a health board, where it makes such a direction, to explain to persons responsible for handling the body that there is significant risk to public health, the nature of that risk, any precautions the person should take and any other appropriate information. This does not apply where an explanation has already been given under section 86 to anyone who appears to be responsible for the disposal of the body. Subsection (6) states that a person who breaches such a direction without reasonable excuse commits an offence.

Section 86 Duty of health board where infected etc. person dies

175. This section places a duty on a health board (where it knows a person in its area has died of an infectious disease, had such an infectious disease before dying, or was contaminated) to explain to any person, who appears to be responsible for the disposal of the body, the nature of any risk, the precautions that should be taken and any other appropriate information. This does not apply where an explanation has been given under section 85.

Section 87 Application for order in relation to bodies retained in premises

176. This section applies where the body of a person is being retained in premises and the local authority feels that appropriate disposal arrangements have not been made. The authority may apply to the sheriff for an order under section 88 seeking authority to dispose of the body appropriately. An application may only be made where a local authority competent person certifies, among other things, that there is a significant risk to public health and that appropriate disposal is necessary to avoid or minimise that risk.

Section 88 Power of sheriff to order removal to mortuary and disposal

177. This section allows the sheriff, if satisfied that there is a significant risk to public health, to make an order authorising the local authority to remove the body of a person mentioned in section 87 to a mortuary or other similar premises and to dispose of the body within the period set out in the order. If the sheriff is satisfied that the risk to public health is such that the body must be disposed of immediately, disposal by the local authority may be ordered as soon as reasonably practicable.

178. Subsection (2) gives powers to local authority officers or persons authorised by local authorities (in either case an “authorised officer”) to enter premises, to take other persons and, if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access, a constable, and take any other steps reasonably required. In entering premises, the authorised officer may use reasonable force and enter at any time. This section of the Bill does not affect any other legislation which regulates or authorises burial or cremation, and the requirements of the Cremation (Scotland) Regulations 1935 (as amended) continue to apply.

179. Any reasonable expenses incurred by the authority in carrying out a function authorised by an order under this section can be recovered from the estate of the deceased person. Any person who, without reasonable excuse, intentionally obstructs an officer of the local authority or another authorised person from carrying out any functions authorised by this section commits an offence and will be liable to a penalty, as outlined in section 101.

PART 7

INTERNATIONAL HEALTH REGULATIONS

Section 89 International Health Regulations

180. The International Health Regulations 2005 (IHR 2005) are legally binding regulations adopted by most countries to contain the threats from diseases that may rapidly spread from one country to another. The purpose and scope of IHR 2005 are to prevent, protect against, control and respond to the international spread of disease while avoiding unnecessary interference with international traffic and trade. This section of the Bill allows Scottish Ministers to make regulations for the purposes of, or in connection with, giving effect to IHR 2005 (and recommendations under IHR 2005) as well as other international agreements relating to the spread of infectious disease and contamination, so far as they have effect in or as regards Scotland. It enables Scottish Ministers to update the Public Health (Ships) (Scotland) Regulations 1971 (as amended) and the Public Health (Aircraft) (Scotland) Regulations 1971 (as amended), which broadly implemented the International Health Regulations 1969 and were confined to dealing with a limited number of diseases. Regulations made under section 89 will be made by affirmative procedure except where section 102(5) to (9) apply.

181. Subsection (5) sets out the penalties for committing an offence under the regulations and subsection (6) defines ‘International Health Regulations’ for the purposes of the Bill and regulations made under it.

PART 8

REGULATION OF PROVISION OF SUNBEDS

Offences

Section 90 Prohibition on allowing use of sunbeds by persons under 18

182. This section bans allowing the use of sunbeds by under 18s. An operator who allows a person who is under 18 to use a sunbed on sunbed premises commits an offence.

183. Subsections (2) and (3) provide the defence for the operator. Subsection (4) lists the documents that may be used to demonstrate proof of age. Subsection (5) allows the operator to rely on steps taken by an employee or agent.

Section 90A Prohibition on sale or hire of sunbeds to persons under 18

184. This section bans the sale or hire of sunbeds to persons under 18.

185. Subsection (1) sets out the offence of sale and subsection (2) sets out the offence of hire. Subsection (3) provides a defence for a seller or hirer, if the seller or hirer believed a person to be 18 or over and had taken reasonable steps to establish a person’s age.

186. Subsection (5) provides a list of documents that can be used to demonstrate proof of age. Subsection (6) allows the operator to rely on steps taken by an employee or agent.

Section 90B Remote sale or hire of sunbeds

187. This section concerns the situation where a sale or hire of a sunbed takes place in circumstances where the premises that receive an order are not the same as the premises from which the sunbed is despatched for sale or hire. Under subsection (2), the sale or hire is to be treated as taking place on the premises where the order was taken, unless the premises where the order is taken are not in Scotland but the premises from which the sunbed is despatched are in Scotland, in which case, under subsection (3), the sale or hire is to be treated, for the purposes of section 90A, as taking place on the premises from which the sunbed is despatched.

Section 90C Prohibition on allowing unsupervised use of sunbeds

188. This section prohibits allowing the unsupervised use of sunbeds. It is an offence for an operator of a sunbed premises, to allow a person to use a sunbed on those premises without supervision, unless the operator can provide a reasonable excuse.

189. Under subsection (2) sunbed premises are regarded as being supervised if the operator or an employee or agent of the operator is present on the sunbed premises at any time a person is using a sunbed on those premises.

Section 90D Medical use of sunbeds

190. This section allows Scottish Ministers to make regulations in relation to sunbeds used for medical purposes. Subsection (2) sets out that the regulations may make provision regarding what is to be considered a sunbed or sunbed premises (and what is not) as well as the circumstances in which the provisions of this Part do and do not apply. Subsection (3) provides that regulations under subsection (1) may modify any enactment (including this Act).

Section 90E Duty to provide information to sunbed users

191. Under this section sunbed operators must provide sunbed users with information on the effects on health of sunbed use. It is an offence to fail to provide the information but subsection (4) provides a defence. Subsection (2) states that the information to be provided must be the information prescribed by the Scottish Ministers under subsection (5). Subsection (3) requires that the information is provided on each occasion a person uses the sunbed premises. Subsection (5) provides that the Scottish Ministers may prescribe the information that is to be provided and the form and manner in which it is to be provided.

Section 90F Duty to display information notice

192. This section requires sunbed operators to display an information notice on sunbed use in a position which is clearly visible to anyone proposing to use a sunbed on the premises. It is an offence to fail to display the notice but subsection (3) provides a defence. Subsection (4) provides that Scottish Ministers may prescribe the information that the notice is to contain and the form and manner of its display.

Section 90G Power to enter premises

193. 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 90, 90A, 90C, 90E or 90F has been or is being committed. Subsections (2) and (3) require that entry is only be taken at a reasonable time and that documentation showing the authority of the local authority officer should be produce if requested.

194. 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 90H Power to enter premises: entry to dwellinghouses

195. This section enables the local authority officer to enter dwellinghouses to find out if an offence under section 90, 90A, 90C, 90E or 90F has been committed. Before entry 2 conditions must be met: the local authority officer must give 48 hours notice to the occupier of the premises and the occupier must consent to entry.

Section 90J Power to require identification of operator

196. In the event of a local authority officer having reason to believe an offence 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.

Section 90K Fixed penalties for offences under section 90, 90C, 90E or 90F

197. 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 90, 90C, 90E or 90F. The fixed penalty notice gives the operator the option of discharging liability to conviction for that offence on payment of the fixed penalty.

198. 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 90, allowing use of sunbeds by persons under 18; and £50 for offences under sections 90C, 90E or 90F. 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 90, 90C, 90E or 90F from commencing before the end of the period for payment of the fixed penalty.

199. Subsection (11) gives the Scottish Ministers the power to make regulations, by affirmative resolution, setting out circumstances in which fixed penalty notices can not be given;

the form that a notice must take; methods of payment and an ability to modify the amount or the period of repayment.

Section 90L Withdrawal of notices

200. 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 they 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 90M Penalties for offences under Part 8

201. 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 equivalent to £2,500.

Section 90N Interpretation of Part 8

202. This section sets out the interpretation of the words “authorised officer”; “operator”; “sunbed” and “sunbed premises”.

PART 9

STATUTORY NUISANCES

Section 91 Insect nuisance

203. This section amends section 79 of the Environmental Protection Act 1990 (“the 1990 Act”), and in particular, subsection (1) of that section, which specifies the matters which constitute “statutory nuisances” for the purposes of section 79(1) and Part III of that Act. Subsection (2) of section 91 inserts new paragraph (faa) into section 79(1), and provides that any insects emanating from premises and being prejudicial to health or a nuisance constitute a statutory nuisance for the purposes of Part III. Subsection (3) inserts new subsections (5AA) (5AB), (5AC) and (5AD) into section 79 to specify the insects and premises which are exempt from the application of the Part III statutory nuisance regime. New section 79(5AB)(a) excludes Sites of Special Scientific Interest, and new section 79(5AB)(b) enables the Scottish Ministers to make regulations specifying places or descriptions of places in respect of which the statutory nuisance provisions in section 79(1)(faa) will similarly not apply. New section 79(5AC) provides that Scottish Ministers must consult before making regulations under 79(5AB)(b), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate. Subsection (4) amends the definition of “premises” in section 79(7) in consequence of new section 79(5AB).

Section 92 Artificial light nuisance

204. This section amends section 79 of the 1990 Act. Subsection (2) inserts new paragraph (fba) into section 79(1), and provides that artificial light emitted from premises or any stationary object so as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III. Subsection (3) provides for an exemption from the artificial light statutory nuisance provisions in section 79(1)(fba) in relation to those premises referred to in section 79(2) (namely, premises occupied for naval, military or air force purposes). Subsection (4) inserts new subsection (5BA) into section 79 to exclude artificial light emitted from lighthouses from the scope of the statutory nuisance regime in Part III.

Section 93 Statutory nuisance: land covered with water

205. This section amends section 79 of the 1990 Act. It inserts new paragraph (ea) into section 79(1), and provides that any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance constitutes a statutory nuisance for the purposes of Part III of the 1990 Act. A new subsection (5ZA) is inserted into section 79, which provides a list of specific inclusions and exclusions from the meaning of “land” as it is used in new paragraph (ea). A new subsection (5ZB) is also inserted and defines some of the terms used in subsection (5ZA).

Section 94 Power to make further provision regarding statutory nuisances

206. This section further amends the 1990 Act. Subsection (2) inserts new subsection (1ZA) into section 79 of the 1990 Act, and enables the Scottish Ministers to make regulations prescribing additional matters which constitute statutory nuisances for the purposes of Part III, and to enable the statutory nuisance regime to be more generally amended to respond to new or emerging statutory nuisances. This section also introduces new subsections (1ZB) and (1ZC) into section 79 of the 1990 Act. New section 79 (1ZB) provides that Scottish Ministers must consult before making regulations under section 79(1ZA), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.

Section 95 Enforcement of statutory nuisances: fixed penalty notice

207. This section makes provision for the issue of fixed penalty notices (“FPN’s”). Subsection (2) inserts new subsection (4A) into section 80 of the 1990 Act. New subsection (4A) provides that where a local authority believes that a person has committed an offence under section 80(4) (failure to comply with any requirement or prohibition imposed by an abatement notice served under section 80(1)), it may give that person a FPN, thereby offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

208. Subsection (3) inserts new section 80ZA into the 1990 Act after section 80. Section 80ZA makes supplemental provision in relation to FPN’s. Subsection (2) of new section 80ZA requires the FPN to set out the circumstances alleged to constitute the offence so as to give reasonable information about the offence. Subsection (3) of new section 80ZA requires the FPN to state the amount of the fixed penalty, the period in which it may be paid, the person to whom and the address at which the payment may be made, the method of payment and the consequences of not paying within the period for payment specified in the FPN. Subsection (4) sets the fixed penalty,

in the case of nuisances relating to industrial, trade and business premises at £400, and at £150 for all other cases. Subsection (5) sets the period for payment of the fixed penalty at 14 days after the day on which the FPN is given and subsection (6) enables that period to be extended by the local authority in circumstances in which it considers it appropriate to do so. Subsection (7) prevents proceedings from being taken under section 80(4) before the end of the period for payment of the fixed penalty and subsection (9) provides that where proceedings have commenced for an offence in which a FPN was given, the FPN is to be considered withdrawn.

209. Subsection (11) of new section 80ZA enables the Scottish Ministers to provide in regulations for 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 provide for the amount of the fixed penalty to be different in different cases or descriptions of case, 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. Subsection (12) of new section 80ZA provides that Scottish Ministers must consult before making regulations under section 80ZA(11), in so far as it is reasonably practicable to do so. They must consult such associations of local authorities and other persons as they consider appropriate.

210. Subsection (4) amends subsection (3) of section 81 of the 1990 Act to provide that the powers available to a local authority to abate nuisance are available whether or not a FPN has been given.

Section 96 Sewerage nuisance: local authority powers

211. This section amends section 26 of the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”) to further specify the extent of a local authority’s powers in relation to the monitoring and enforcement of sewerage nuisances under section 26 of the 2005 Act. Subsection (2) provides that a local authority’s functions under Part III of the 1990 Act do not apply to nuisances which constitute a sewerage nuisance and in respect of which a sewerage code (contained in an order made under section 25 of the 2005 Act) applies.

212. Subsection (3) inserts a new subsection (10A) into section 26 of the 2005 Act, to apply the provisions of paragraphs 2, 3 and 5 of Schedule 3 to the 1990 Act where a local authority is enforcing a sewerage code under section 26 of the 2005 Act, subject to the modifications specified in paragraphs (a) to (e). A local authority enforcing a sewerage code will acquire the powers of entry to premises set out in paragraph 2 of Schedule 3 for the purpose of establishing whether a statutory nuisance exists or carrying out remedial action under Part III of the 1990 Act. Wilful obstruction of the exercise of these powers of entry will constitute a criminal offence, as will disclosure of any trade secret obtained by any person in the exercise of the powers. The local authority and those acting on its behalf will be protected from personal liability in respect of anything done in good faith in furtherance of Part III.

PART 10

GENERAL AND MISCELLANEOUS

General and miscellaneous

Section 97 Equal opportunities

213. This section sets out that the Scottish Ministers, health boards and local authorities, in carrying out their functions under the Bill, must do so in a manner that encourages equal opportunities and the observance of equal opportunities requirements, as defined in the Scotland Act 1998. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Section 98 Disclosure of information

214. This section provides for the circumstances in which a relevant authority may disclose information held by it. Subsection (2) allows disclosure to another relevant authority where this is required to facilitate either authority’s functions under this or any other Act for protection of public health. Subsection (3) allows disclosure to any other person if the authority considers this to be necessary for the protection of public health. Although information may be disclosed under these provisions, despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law, subsection (3D) ensures that the Data Protection Act 1998 still fully applies to the provisions of the Bill.

215. A person who discloses this information under this section irrespective of any restrictions in statute or common law will not be subject to any civil or criminal liability due to the disclosure.

216. Subsection (7) defines “relevant authority”, which includes the Scottish Ministers, health boards, local authorities, and the Common Services Agency. This meaning may, however, be amended by the Scottish Ministers, by regulations. The Scottish Ministers may also give guidance on the disclosure of information, and subsection (9) requires this to be given due regard.

Section 99 Liability of persons exercising functions

217. This section provides that a person acting in good faith and on reasonable grounds will not be liable in any civil or criminal proceedings for anything done in connection with the functions being carried out under the Bill. Notwithstanding this exemption for individuals, subsection (2) provides that a health board or local authority would remain liable for the actions of its staff.

Section 100 Offences by bodies corporate etc.

218. Subsection (1) provides that, where an offence under the Bill is committed by a body corporate, a limited liability partnership, or by a Scottish partnership, it is also considered to be committed by relevant individuals or specified types of individuals where they consented or connived in committing the offence, or where the offence was attributable to their neglect. Those individuals are, in the case of any director, manager, secretary or other similar officer of the body corporate or a person who claims to act in such a capacity; in the case of a limited liability partnership, any member of that partnership or person who claims to act as a member; in the case of a Scottish partnership, any partner or a person who claims to act as a partner.

219. Subsection (2) states that where the affairs of a body corporate (other than a limited liability partnership) are managed by a member, then the provision in subsection (1) applies to the acts and omissions of members, as if the member were a director of the body corporate.

Section 101 Penalties for offences under this Act

220. Subsection (1) sets out the penalties for offences committed under the Bill with the exception of Part 8 on Sunbeds. This is specified as, on summary conviction, imprisonment for up to 12 months or a fine of up to £10,000 at current levels or both; or, on conviction on indictment, imprisonment for up to 2 years or an unlimited fine or both. Subsection (2) specifies penalties for those committing offences under Part 4 of the Bill as listed in section 65(1) or 65A(3) or (4) in relation to an exclusion or restriction order. This is specified as, on summary conviction, imprisonment for up to 12 months or a fine not exceeding level 5 on the standard scale or both.

Section 101A Form of applications etc.

221. This section provides that Scottish Ministers may prescribe the form of any application or order under this Bill by regulations.

Section 102 Regulations and orders

222. This section sets out the procedure under which the Scottish Ministers can exercise powers which the Bill gives them to make subordinate legislation. All regulations and orders are to be made by statutory instrument. Scottish Ministers must, as far as is reasonably practicable, consult appropriate persons before making regulations under this Bill.

223. Regulations are to be subject to the Scottish Parliament's negative resolution procedure. The exceptions are regulations under section 89(1) (giving effect to the International Health Regulations and other international agreements) and section 90K(11) (in relation to fixed penalties under Part 8) which will be subject to the Scottish Parliament's affirmative resolution procedure.

224. Where regulations under section 89(1) need to be made urgently, they need not be subject to affirmative procedure. However, such "emergency regulations" must be laid before the Scottish Parliament and will cease to have effect after 28 days of being made unless they have

been approved by a resolution of the Parliament before the expiry of this period. The commencement order-making power in section 108 is subject to no parliamentary procedure.

Section 103 Meaning of “premises”

225. This section defines the meaning of “premises” as used in the Act as including any land or building; or any other place, including a mobile home and a vehicle. “Mobile home” and “vehicle” are further defined.

Section 104 Interpretation

226. This section defines a number of expressions as they are used in the Bill.

Section 105 Minor and consequential amendments

227. This section gives effect to schedule 2 to the Bill which contains minor and consequential amendments to other legislation. In particular, it also amends the Statutory Nuisance (Appeals) (Scotland) Regulations 1996 to make provision in relation to the new statutory nuisances in section 79(1)(ea), (faa) and (fba) of the 1990 Act. The amendment extends the ground of appeal against an abatement notice in regulation 2(2) (e) of the 1996 Regulations to those statutory nuisances.

Section 106 Repeals, revocations and saving

228. This section gives effect to schedule 3 to the Bill which repeals and revokes other enactments. In particular, it repeals references to “port local authorities” and “joint port local authorities” as regards Scotland in the definition of “local authority” in section 79(7) of the 1990 Act, in consequence of the repeal of section 172 of the Public Health (Scotland) Act 1897 by this Bill.

229. Part 2 of schedule 3 sets out various revocations. Subsection (2) specifies that despite the repeal of the 1897 Act, section 166 of that Act continues to have effect for the purposes of section 101 of the National Health Service (Scotland) Act 1978. Section 101 of the 1978 Act applies section 166 of the 1897 Act (which governs the liabilities of local authorities and their officers) to health boards and their officers.

Section 107 Crown application

230. This section confirms that the Crown is bound by the Bill and any regulations made under it. The Crown will not be held criminally liable for contravening any provision but there is an option for the Court of Session, on application by any public body or anyone responsible for enforcing a provision of the Bill, to declare a contravention by the Crown as unlawful. Whilst the Crown cannot be held criminally liable, individuals in the service of the Crown can be. Nothing stated in this section affects Her Majesty in a private capacity.

Section 108 Short title and commencement

231. This section provides that the Bill will come into force on a day or days decided by order by Scottish Ministers. Section 102 (regulations and orders) and section 108 come into force on Royal Assent.

Schedule 1 Lists of Notifiable Diseases and Notifiable Organisms

232. Part 1 of schedule 1 lists the diseases to be notified by registered medical practitioners under Part 2 of the Bill. Part 2 of schedule 1 lists the organisms to be notified by the directors of diagnostic laboratories under Part 2 of the Bill.

Schedule 2 Minor and consequential amendments

233. Schedule 2 sets out minor and consequential amendments to the National Assistance Act 1948 and the Statutory Nuisance (Appeals) (Scotland) Regulations 1996.

Schedule 3 Repeals and Revocations

234. Part 1 of schedule 3 sets out various repeals. Part 2 of schedule 3 sets out various revocations.

This document relates to the Public Health etc. (Scotland) Bill as amended at Stage 2 (SP Bill 3A (revised))

PUBLIC HEALTH ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

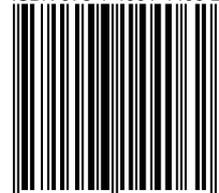
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