

Public Health etc. (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 12	Schedule 1
Sections 13 to 105	Schedule 2
Section 106	Schedule 3
Sections 107 and 108	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 54

Shona Robison

- 124** In section 54, page 38, line 8, leave out <The health board> and insert <A health board competent person of the health board which applied for the order>

Shona Robison

- 125** In section 54, page 38, line 20, leave out <health board> and insert <competent person>

Shona Robison

- 126** In section 54, page 38, line 24, leave out <health board> and insert <competent person>

Section 55

Shona Robison

- 127** In section 55, page 38, line 29, leave out <The health board> and insert <A health board competent person of the health board which applied for the order>

Shona Robison

- 128** In section 55, page 39, line 2, leave out <health board> and insert <competent person>

Shona Robison

- 129** In section 55, page 39, line 6, leave out <health board> and insert <competent person>

After section 57

Shona Robison

- 130** After section 57, insert—

<Recall of orders granted in absence

Recall of orders granted in absence of person to whom application relates

- (1) This section applies where—
 - (a) a quarantine order;
 - (b) a short term detention order; or
 - (c) an exceptional detention order,is made in the absence of the person to whom the order applies.
- (2) A person mentioned in subsection (3) may apply to the sheriff for an order recalling the order.
- (3) The person referred to in subsection (2) is—
 - (a) the person to whom the order applies; or
 - (b) any person having an interest in the welfare of such a person.
- (4) An application under this section must be made before the expiry of the period of 72 hours beginning with the time at which the order to which the application relates is notified to the person to whom it applies.
- (5) The sheriff must, before determining an application under this section, give the persons mentioned in subsection (6) the opportunity—
 - (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.
- (6) Those persons are—
 - (a) the applicant;
 - (b) where the applicant is not the person to whom the order applies, that person;
 - (c) the health board which applied for the order; and
 - (d) any other person the sheriff considers appropriate.
- (7) On an application under this section, the sheriff may—
 - (a) confirm the order;
 - (b) revoke the order.>

Shona Robison

131 After section 57, insert—

<Appeals

Appeal against orders for medical examination

- (1) A person mentioned in subsection (2) may appeal to the sheriff principal against the making of an order under section 34(1) authorising the medical examination of a person.
- (2) The person referred to in subsection (1) is—
 - (a) the person in relation to whom the order applies; or
 - (b) any person having an interest in the welfare of such a person.

- (3) An appeal under this section must be made before the expiry of the period of 7 days beginning with the day on which the order appealed against is made.
- (4) On an appeal under this section, the sheriff principal may—
 - (a) confirm the order;
 - (b) revoke the order;
 - (c) modify the order;
 - (d) where, before the appeal was made, the medical examination authorised by the order had been carried out, make an order declaring that the order was invalid;
 - (e) make such other order as the sheriff principal considers appropriate.
- (5) The decision of the sheriff principal on an appeal under this section is final.>

Section 58

Shona Robison

- 132** In section 58, page 40, line 22, leave out <the health board> insert <a health board competent person>

Shona Robison

- 133** In section 58, page 40, line 22, leave out <direct the revocation of> and insert <revoke>

Section 59

Shona Robison

- 134** In section 59, page 41, line 7, at end insert—
<() a decision of the sheriff under section (*Recall of orders granted in absence of person to whom application relates*)(7) confirming the order;>

Shona Robison

- 135** In section 59, page 41, line 10, leave out <the health board> and insert <a health board competent person>

Shona Robison

- 136** In section 59, page 41, line 15, leave out <21> and insert <14>

After section 59

Shona Robison

- 137** After section 59, insert—
<Exclusion orders and restriction orders: further appeal to sheriff principal
(1) A person who appealed under section 58(2) may, with the leave of the sheriff, appeal against a decision mentioned in subsection (2) to the sheriff principal.

- (2) A decision referred to in subsection (1) is a decision of the sheriff—
 - (a) to confirm the exclusion order appealed against;
 - (b) to confirm the restriction order appealed against; or
 - (c) to modify the order.
- (3) A health board aggrieved by an appeal under section 58(2) may, with the leave of the sheriff, appeal against a decision mentioned in subsection (4) to the sheriff principal.
- (4) A decision referred to in subsection (3) is a decision of the sheriff—
 - (a) to revoke the exclusion order appealed against;
 - (b) to revoke the restriction order appealed against; or
 - (c) to modify the order.
- (5) An appeal under this section may be made only on the ground that—
 - (a) the sheriff erred in law;
 - (b) the decision of the sheriff was not supported by the facts established by the sheriff in the appeal.
- (6) On an appeal under this section, the sheriff principal may—
 - (a) confirm the order;
 - (b) modify the order;
 - (c) revoke the order;
 - (d) make such other order as the sheriff principal considers appropriate.
- (7) In subsection (6)(b), “modify” is to be construed in accordance with section 48.
- (8) The decision of the sheriff principal on an appeal under this section is final.>

Section 60

Shona Robison

138 In section 60, page 41, line 25, leave out <58(2) or, as the case may be,>

Shona Robison

139 In section 60, page 41, line 26, leave out <sheriff or, as the case may be, the>

Shona Robison

140 In section 60, page 41, leave out lines 29 to 32

Shona Robison

141 In section 60, page 41, line 33, leave out <, on an appeal under section 59(2)>

Shona Robison

142 In section 60, page 41, line 36, after <board> insert <aggrieved by an appeal under section 59(2)>

Shona Robison

- 143 In section 60, page 41, line 36, leave out <sheriff or, as the case may be, the>

Shona Robison

- 144 In section 60, page 42, leave out lines 2 to 5

Shona Robison

- 145 In section 60, page 42, line 6, leave out <, on an appeal under section 59(2)>

Shona Robison

- 146 In section 60, page 42, line 10, leave out <sheriff or>

Shona Robison

- 147 In section 60, page 42, line 11, leave out <sheriff or>

Shona Robison

- 148 In section 60, page 42, line 12, leave out <sheriff or>

Shona Robison

- 149 In section 60, page 42, line 17, at end insert—
<() The decision of the Court on an appeal under this section is final.>

Section 61

Shona Robison

- 150 In section 61, page 42, line 19, after <59(2)> insert <, (*Exclusion orders and restriction orders: further appeal to sheriff principal*)(1) or (3)>

Shona Robison

- 151 In section 61, page 42, line 20, leave out <pending determination of the appeal>

Section 64

Shona Robison

- 152 In section 64, page 44, line 7, after second <person> insert <, without reasonable excuse,>

Shona Robison

- 153 In section 64, page 44, line 9, after <person;> insert—
<() a person authorised by virtue of section 40(1) to remove a person to the place in which the person is to be quarantined;>

Section 65

Shona Robison

- 154 In section 65, page 44, line 12, after <who> insert <, without reasonable excuse,>

Shona Robison

- 155 In section 65, page 44, line 18, at end insert <(including any condition imposed in the order)>

After section 65

Shona Robison

- 156 After section 65, insert—

<Failure to ensure child's compliance with order

- (1) This section applies where an order mentioned in subsection (2) is made in relation to a person who is under 16 (a “child”).
- (2) The order referred to in subsection (1) is—
 - (a) an exclusion order;
 - (b) a restriction order; or
 - (c) a quarantine order.
- (3) A parent of the child who—
 - (a) has day-to-day care or control of the child; and
 - (b) fails, without reasonable excuse, to ensure that the child does not breach the order, commits an offence.
- (4) 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.
- (5) The person referred to in subsection (4) is a person who—
 - (a) is 16 or over; and
 - (b) has (otherwise than—
 - (i) by virtue of a contract of employment or other contract with any person; or
 - (ii) as a volunteer for a voluntary organisation), day-to-day care or control of the child.
- (6) In proceedings for an offence under subsection (3) or (4), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.>

Section 66

Shona Robison

- 157 In section 66, page 44, line 23, leave out subsection (1) and insert—

- <() Nothing in this Part affects the Court of Session’s power under section 32 of the Sheriff Courts (Scotland) Act 1971 (c.58) to regulate and prescribe the procedure and practice to be followed in any application or appeal under this Part.
- () Without prejudice to the generality of section 32 of that Act, provision may, in particular, be made under that section about—
 - (a) the manner in which, and time within which, notice of applications for orders is given;
 - (b) the manner in which, and time within which, notice of orders is given;
 - (c) where applications and orders are made in relation to persons who are under 16, the persons to whom notice of such applications and orders must be given;
 - (d) the circumstances in which the sheriff or, as the case may be, the sheriff principal, may determine whether and, if so, where, a hearing is to be held; and
 - (e) the place or types of place at which hearings may be held.>

Section 67

Shona Robison

- 226** In section 67, page 45, line 29, leave out from <has> to <health;> in line 30 and insert—
- <() has or carries an organism which causes an infectious disease; or
 - () has or carries an infectious disease,
- which is a risk to human health;>

Shona Robison

- 227** In section 67, page 45, line 31, leave out from <has> to end of line 32 and insert—
- <() has or carries an organism which causes an infectious disease; or
 - () has or carries an infectious disease,
- which is a risk to human health.>

Section 68

Shona Robison

- 228** In section 68, page 46, line 14, leave out <things or> and insert <a thing or such>

Shona Robison

- 229** In section 68, page 46, leave out line 27

Section 69

Shona Robison

- 230** In section 69, page 47, line 3, leave out <, and any other person authorised by the officer, may> and insert <may—

(a)>

Shona Robison

231 In section 69, page 47, line 5, at end insert <;

(b) on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect serious obstruction in obtaining access, a constable.>

Shona Robison

177 In section 69, page 47, line 7, at end insert—

<() An authorised officer who enters any unoccupied premises by virtue of subsection (2) must leave the premises as effectively secured against unauthorised entry as the officer found them.>

Section 70

Shona Robison

232 In section 70, page 47, line 14, leave out <, and any other person authorised by the officer,>

Shona Robison

233 In section 70, page 47, line 15, at end insert—

<() on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect serious obstruction in obtaining access, a constable;>

Section 71

Shona Robison

234 In section 71, page 47, line 35, after <infected> insert <, infested>

Shona Robison

235 In section 71, page 48, leave out line 18

Shona Robison

236 In section 71, page 48, line 21, leave out <, and any other person authorised by the officer,>

Shona Robison

237 In section 71, page 48, line 22, at end insert—

<() on entering premises by virtue of paragraph (a), take any other person authorised by the officer and, if the officer has reasonable cause to expect serious obstruction in obtaining access, a constable;>

Section 73

Shona Robison

- 178 In section 73, page 49, line 23, leave out <summary>

Shona Robison

- 179 In section 73, page 49, line 24, leave out from <(and> to <officer)> in line 25

Shona Robison

- 180 In section 73, page 49, line 26, at end insert—
- <() on entering premises by virtue of paragraph (a), to take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;>

Shona Robison

- 181 In section 73, page 49, line 32, at end insert <:
- () to remove any thing from the premises for the purpose of taking any such step at any other place.>

Shona Robison

- 182 In section 73, page 49, line 33, leave out from <authorise> to <(c)> in line 34 and insert <grant a warrant in relation to a dwellinghouse>

Shona Robison

- 183 In section 73, page 49, line 38, leave out <subsection (2)(a)> and insert <this section>

Shona Robison

- 184 In section 73, page 50, line 2, at end insert—
- <() 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 74

Shona Robison

- 185 In section 74, page 50, line 13, leave out from <do> to end of line 14 and insert—
- <() take any other person authorised by the officer and, if the officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;
- () direct that—
- (i) those premises (or any part of them) are; or
 - (ii) any thing in or on them is,

to be left undisturbed (whether generally or in particular respects) for so long as the officer considers appropriate;

- () take any step mentioned in section 68(2);
- () remove any thing from the premises for the purpose of taking any such step at any other place.>

Shona Robison

186 In section 74, page 50, line 15, leave out <subsection (2)> and insert <this section>

Section 75

Shona Robison

238 In section 75, page 50, line 25, after second <person> insert <, without reasonable excuse,>

Section 76

Shona Robison

239 In section 76, page 51, line 2, at end insert <; or
() section 74(4),>

Shona Robison

240 In section 76, page 51, line 7, leave out from <declare> to end of line 8 and insert <accept payment of sums recoverable under this section by instalments.>

Shona Robison

241 In section 76, page 51, line 9, leave out subsection (4) and insert—
<() Sums due by a person under this section are recoverable by the local authority as a civil debt.>

Section 77

Shona Robison

187 In section 77, page 51, line 19, at end insert <; or
() section 74(4).>

Section 78

Shona Robison

188 In section 78, page 52, line 8, leave out subsection (4)

Section 79

Shona Robison

- 189 In section 79, page 52, line 24, leave out subsection (5)

Section 80

Shona Robison

- 242 In section 80, page 53, line 2, at end insert—
<() The decision of the Court on an appeal under this section is final.>

Section 85

Shona Robison

- 243 In section 85, page 55, line 13, after <who> insert <, without reasonable excuse,>

Section 88

Shona Robison

- 244 In section 88, page 56, line 26, after second <authority> insert <(in either case, an “authorised officer”)>

Shona Robison

- 245 In section 88, page 56, line 27, after <body;> insert—
<() on entering premises by virtue of paragraph (a), take any other person authorised by the authorised officer and, if that officer has reasonable cause to expect any serious obstruction in obtaining access, a constable;>

Shona Robison

- 246 In section 88, page 56, line 37, after second <person> insert <, without reasonable excuse,>

Section 89

Shona Robison

- 205 In section 89, page 57, line 5, leave out from <implementing> to end of line 7 and insert—
<() giving effect to—
(i) the International Health Regulations;
(ii) any other international agreements relating to the spread of infectious disease or contamination,
so far as they have effect in or as regards Scotland;
() protecting public health from risks arising from vehicles—

- (i) arriving in Scotland;
- (ii) leaving Scotland.>

Shona Robison

206 In section 89, page 57, line 8, leave out <Provision> and insert <Regulations>

Shona Robison

207 In section 89, page 57, line 8, at end insert <make provision>

Shona Robison

208 In section 89, page 57, line 8, at end insert—

<() for persons to be—

- (i) medically examined;
- (ii) quarantined;
- (iii) detained;

() for persons to be required to provide information or answer questions (including information or questions relating to health);

() for vehicles to be detained;

() for prohibitions or restrictions on—

- (i) the entry and departure of persons or things;
- (ii) the arrival and leaving of vehicles;

() for things to be—

- (i) inspected;
- (ii) tested;
- (iii) detained;
- (iv) destroyed;

() for persons, vehicles or things to be—

- (i) disinfected;
- (ii) disinfested;
- (iii) decontaminated;

() for the imposition of obligations on—

- (i) masters of ships;
- (ii) pilots of aircraft;
- (iii) other persons on board vehicles;
- (iv) owners and managers of ports and airports;>

Shona Robison

209 In section 89, page 57, line 9, leave out <confer> and insert <conferring>

Shona Robison

210 In section 89, page 57, line 10, after <on> insert <the>

Shona Robison

211 In section 89, page 57, line 12, leave out <create> and insert <creating>

Shona Robison

212 In section 89, page 57, line 13, leave out <permit> and insert <permitting>

Shona Robison

213 In section 89, page 57, line 22, leave out <5> and insert <2>

Shona Robison

214 In section 89, page 57, line 26, at end insert <and includes a recommendation issued under those Regulations>

Before section 90

Helen Eadie

202 Before section 90, insert—

<Licensing of sunbed premises

(1) The Civic Government (Scotland) Act 1982 (c.45) is amended as follows.

(2) In section 7(2), after paragraph (a) insert—

“(aa) in a case where the licence is a sunbed premises licence and the condition is attached under section 41B(4) of this Act, to a fine not exceeding level 4 on the standard scale;”.

(3) In section 9(1), for the words “section 41A” substitute “sections 41A and 41B”.

(4) After section 41A, insert—

“41B Sunbed premises licences

(1) A licence, to be known as a “sunbed premises licence”, is required for the use of premises as sunbed premises.

(2) In this section—

“operator” means the person having management or control of the sunbed premises;

“sunbed” means an electrically-powered device designed to produce tanning of the skin by the emission of artificial ultraviolet radiation; and

“sunbed premises” means premises in which persons are permitted to use a sunbed for payment.

- (3) For the purposes of this section, sub-paragraphs (1) and (2) of paragraph 5 of Schedule 1 to this Act do not apply; instead, where an application for the grant or renewal of a sunbed premises licence has been made to a licensing authority, they shall, in accordance with subsections (4) and (5) below and the remaining provisions of that paragraph—
- (a) grant or renew the licence subject to conditions; or
 - (b) refuse to grant or renew the licence.
- (4) Every sunbed premises licence is subject to the following conditions—
- (a) persons under 18 are prohibited from using a sunbed on the sunbed premises to which the licence relates;
 - (b) persons are prohibited from using a sunbed without supervision on the sunbed premises to which the licence relates;
 - (c) the operator of the sunbed premises to which the licence relates shall—
 - (i) provide to any person who proposes to use a sunbed on those premises, on each occasion on which that person proposes to use a sunbed on those premises, such information regarding the effects on health of sunbed use as may be prescribed in accordance with subsection (6); and
 - (ii) display a notice containing such information as may be prescribed in accordance with subsection (6) in a position where it is readily visible to persons proposing to use a sunbed on those premises.
- (5) The Scottish Ministers may by regulations prescribe further conditions as conditions which a licensing authority may, at the authority's discretion, impose on the granting or renewal of a sunbed premises licence.
- (6) The Scottish Ministers may by regulations prescribe—
- (a) the information which is to be—
 - (i) provided under subsection (4)(c)(i);
 - (ii) contained in the notice mentioned in subsection (4)(c)(ii);
 - (b) the form and manner in which—
 - (i) the information mentioned in subsection (4)(c)(i) is to be provided,
 - (ii) the notice mentioned in subsection (4)(c)(ii) is to be displayed.
- (7) Regulations under subsection (5) or (6) are to be made by statutory instrument; and a statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.>

Section 90

Ken Macintosh

- 1** Leave out section 90 and insert—

<REGULATION OF PROVISION OF SUNBEDS

Offences

Prohibition on allowing use of sunbeds by persons under 18

- (1) An operator of sunbed premises who, without reasonable excuse, allows a person who is under 18 to use a sunbed on those premises commits an offence.
- (2) In proceedings for an offence under subsection (1), it is a defence for the operator to show that—
 - (a) the operator believed the person to be 18 or over; and
 - (b) the operator had taken reasonable steps to establish the person's age.
- (3) For the purposes of subsection (2)(b), the operator is to be treated as having taken reasonable steps to establish the person's age if (and only if)—
 - (a) the operator was shown any of the documents mentioned in subsection (4); and
 - (b) that document would have convinced a reasonable person.
- (4) The documents referred to in subsection (3)(a) are any document appearing to be—
 - (a) a passport;
 - (b) a European Union photocard driving licence; or
 - (c) such other document (or description of document) as may be prescribed.
- (5) In subsections (2)(a) and (b) and (3), references to the operator include an employee or agent of the operator.>

Helen Eadie

203 Leave out section 90

After section 90

Ken Macintosh

2 After section 90, insert—

<Prohibition on sale or hire of sunbeds to persons under 18

- (1) A person (the “seller”) who, without reasonable excuse, sells a sunbed to a person who is under 18 commits an offence.
- (2) A person (the “hirer”) who, without reasonable excuse, hires a sunbed to a person who is under 18 commits an offence.
- (3) In proceedings for an offence under subsection (1) or (2), it is a defence for the seller or hirer to show that—
 - (a) the seller or hirer believed the person to be 18 or over; and
 - (b) the seller or hirer had taken reasonable steps to establish the person's age.
- (4) For the purposes of subsection (3)(b), the seller or hirer is to be treated as having taken reasonable steps to establish the person's age if (and only if)—
 - (a) the seller or hirer was shown any of the documents mentioned in subsection (5); and

- (b) that document would have convinced a reasonable person.
- (5) The documents referred to in subsection (4)(a) are any document appearing to be—
 - (a) a passport;
 - (b) a European Union photocard driving licence; or
 - (c) such other document (or description of document) as may be prescribed.
- (6) In subsections (3)(a) and (b) and (4), references to the seller or hirer include an employee or agent of the seller or hirer.>

Ken Macintosh

3 After section 90, insert—

<Remote sale or hire of sunbeds

- (1) This section applies where, in connection with the sale or hire of a sunbed, the premises where the order for the sunbed is taken are not the same as the premises from which the sunbed is despatched for delivery in pursuance of the sale or hire.
- (2) Subject to subsection (3), the sale or hire is to be treated, for the purposes of section (*Prohibition on sale or hire of sunbeds to persons under 18*), as taking place on the premises where the order was taken.
- (3) Where—
 - (a) the premises where the order for the sunbed is taken are not in Scotland; and
 - (b) the premises from which the sunbed is despatched are in Scotland,
 the sale or hire is to be treated, for the purposes of section (*Prohibition on sale or hire of sunbeds to persons under 18*), as taking place on the premises from which the sunbed is despatched.>

Ken Macintosh

4 After section 90, insert—

<Prohibition on allowing unsupervised use of sunbeds

- (1) An operator of sunbed premises who, without reasonable excuse, allows a person to use a sunbed on those premises without supervision commits an offence.
- (2) In subsection (1), the requirement for supervision is met 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.
- (3) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.>

Ken Macintosh

5 After section 90, insert—

<Medical use of sunbeds

- (1) The Scottish Ministers may, by regulations, make provision regarding the application of this Part to sunbeds used for medical purposes.

- (2) Regulations under subsection (1) may, in particular, make provision—
 - (a) as to what is (and is not) a sunbed;
 - (b) as to what are (and are not) sunbed premises;
 - (c) as to circumstances in which the provisions of this Part do (and do not) apply.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).>

Ken Macintosh

6 After section 90, insert—

<Duty to provide information to sunbed users

- (1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsections (2) and (3) commits an offence.
- 5 (2) The operator must provide a person who proposes to use a sunbed on sunbed premises with such information regarding the effects on health of sunbed use as may be prescribed in accordance with subsection (5).
- (3) That information is to be provided each time the person proposes to use a sunbed on those premises.
- 10 (4) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (5) The Scottish Ministers may prescribe—
 - (a) the information which is to be provided;
 - 15 (b) the form and manner in which that information is to be provided.>

Ken Macintosh

6A As an amendment to amendment 6, line 14, at end insert <(which must not include reference to any beneficial effect on health of sunbed use)>

Ken Macintosh

7 After section 90, insert—

<Duty to display information notice

- (1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsection (2) commits an offence.
- 5 (2) That requirement is to display a notice—
 - (a) containing such information as may be prescribed in accordance with subsection (4);
 - (b) in a position where it is readily visible to persons proposing to use a sunbed on the premises.
- 10 (3) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (4) The Scottish Ministers may prescribe—

- (a) the information which the notice is to contain;
- (b) the form and manner of display of the notice.>

Ken Macintosh

- 7A** As an amendment to amendment 7, line 14, at end insert <(which must not include reference to any beneficial effect on health of sunbed use)>

Ken Macintosh

- 8** After section 90, insert—

<Enforcement

Power to enter premises

- (1) An authorised officer of a local authority may enter and inspect any premises in the area of that authority in order to ascertain whether an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on sale or hire of sunbeds to persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*) has been or is being committed there.
- (2) The power in subsection (1) may be exercised only at a reasonable time.
- (3) The authorised officer must, if requested to do so, produce a document showing that officer's authority.
- (4) When exercising the power in subsection (1), an authorised officer may take a constable if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access.
- (5) An authorised officer may—
 - (a) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the authorised officer to see for the purposes of this Part; and
 - (b) inspect and take copies of, or of any entry in, the records.
- (6) Nothing in subsection (5) compels the production by any person of a document subject to legal privilege.
- (7) A document subject to legal privilege means a communication—
 - (a) between a professional legal adviser and the adviser's client; or
 - (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,
 which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.
- (8) A person commits an offence if the person, without reasonable excuse—
 - (a) intentionally obstructs an authorised officer in the exercise of powers under subsection (1);
 - (b) fails to comply with a requirement made under subsection (5).

- (9) In proceedings for an offence under subsection (8), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.>

Ken Macintosh

9 After section 90, insert—

<Power to enter premises: entry to dwellinghouses

- (1) Where an authorised officer proposes, in the exercise of the power conferred by section (*Power to enter premises*)(1), to enter a dwellinghouse, the conditions set out in subsections (2) and (3) must be satisfied.
- (2) The first condition is that the authorised officer has given 48 hours’ notice of the proposed entry to a person who appears to the authorised officer to be the occupier of the premises.
- (3) The second condition is that the person who appears to be the occupier has consented.
- (4) In this section, “dwellinghouse” means any premises or part of premises which are wholly or mainly occupied as a person’s dwelling.>

Ken Macintosh

10 After section 90, insert—

<Power to require identification of operator

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that local authority is committing or has committed an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*), the authorised officer may require any person on those premises to give the name and address of the operator.
- (2) When making a requirement under subsection (1), the authorised officer must inform the person—
- (a) that the officer has reason to believe that the operator is committing or has committed an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*); and
- (b) that failure to comply with the requirement may be an offence.
- (3) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement made under subsection (1).
- (4) In proceedings for an offence under subsection (3), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.>

Ken Macintosh

11 After section 90, insert—

<**Fixed penalties for offences under section** (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*)

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that authority has committed an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*), the authorised officer may give the operator a notice (a “fixed penalty notice”) offering the operator the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) A fixed penalty notice must—
 - (a) identify the offence to which it relates; and
 - (b) give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state—
 - (a) the amount of the fixed penalty;
 - (b) the period within which it may be paid;
 - (c) the—
 - (i) person to whom; and
 - (ii) address at which, payment may be made;
 - (d) the method or methods by which payment may be made;
 - (e) the consequences of not making payment before the end of the period for payment of the fixed penalty.
- (4) The amount of the fixed penalty is—
 - (a) in the case of an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), £100;
 - (b) in the case of an offence under section (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*), £50.
- (5) The period for payment of the fixed penalty is 28 days beginning with the day on which the notice was given.
- (6) The local authority may extend the period for payment of the fixed penalty in any particular case if they consider it appropriate to do so, by giving notice to the operator.
- (7) No proceedings for an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*) may be commenced before the end of the period for payment of the fixed penalty.
- (8) No such proceedings may be commenced or continued if payment of the penalty is made before the end of the period for payment or is accepted by the local authority after the end of that period.

- (9) In proceedings for an offence under section (*Prohibition on allowing use of sunbeds by persons under 18*), (*Prohibition on allowing unsupervised use of sunbeds*), (*Duty to provide information to sunbed users*) or (*Duty to display information notice*), a certificate which—
- (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; and
 - (b) states that payment of the amount specified in the fixed penalty notice was or was not received by the expiry of the period within which that fixed penalty may be paid,
- is sufficient evidence of the facts stated.
- (10) Any sum received by a local authority under this section accrues to that authority.
- (11) The Scottish Ministers may by regulations—
- (a) provide that fixed penalty notices may not be given in such circumstances as may be prescribed;
 - (b) provide for the form of a fixed penalty notice;
 - (c) provide for the method or methods by which fixed penalties may be paid;
 - (d) modify subsection (4) so as to substitute a different amount (not exceeding level 2 on the standard scale) for an amount for the time being specified there;
 - (e) modify subsection (5) so as to substitute a different period for the period for the time being specified there;
 - (f) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under this section.>

Ken Macintosh

12 After section 90, insert—

<Withdrawal of notices

- (1) The local authority must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.
- (2) Where a fixed penalty notice is withdrawn in accordance with subsection (1)—
 - (a) the local authority must give notice of the withdrawal to the person to whom the fixed penalty notice was given;
 - (b) the local authority must repay any amount which has been paid under the fixed penalty notice; and
 - (c) no proceedings are to be commenced or continued against that person for the offence in question.>

Ken Macintosh

13 After section 90, insert—

<Penalties for offences under Part 8

Any person who commits an offence under this Part is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.>

Ken Macintosh

- 14 After section 90, insert—

<Interpretation

Interpretation of Part 8

In this Part—

“authorised officer” means an officer of a local authority authorised for the purposes of this Part;

“operator” means the person having management or control of sunbed premises;

“sunbed” means an electrically-powered device designed to produce tanning of the skin by the emission of artificial ultraviolet radiation; and

“sunbed premises” means premises in which persons are permitted to use a sunbed for payment.>

Section 98

Shona Robison

- 215 In section 98, page 62, line 16, leave out subsection (1)

Shona Robison

- 216 In section 98, page 62, line 19, leave out <under subsection (1)> and insert <held by it>

Shona Robison

- 217 In section 98, page 62, line 23, leave out <under subsection (1)> and insert <held by it>

Shona Robison

- 218 In section 98, page 62, line 25, at end insert—

<(3A) An employee of the relevant authority authorised by it to make the disclosure or any other person so authorised may disclose information under subsection (2) or (3).

(3B) Information may be disclosed—

(a) in the case of disclosure under subsection (2), to any employee of the other relevant authority authorised by it to receive the information or to any other person so authorised;

(b) in the case of disclosure under subsection (3), to any employee of the other person authorised by that other person to receive the information or to any other person so authorised.

(3C) Information may be disclosed under subsection (2) or (3) despite any prohibition or restriction on such disclosure imposed by or under any enactment or rule of law.

(3D) But subsection (3C) does not affect the application of the Data Protection Act 1998 (c.29) to disclosure of information under subsection (2) or (3).>

Shona Robison

219 In section 98, page 62, line 27, leave out <subsection (1)> and insert <this section>

Shona Robison

220 In section 98, page 62, line 28, leave out subsections (5) and (6)

Shona Robison

221 In section 98, page 63, line 2, at end insert—

<() Regulations under subsection (8) may modify any enactment (including this Act).>

Section 101

Shona Robison

158 In section 101, page 63, line 38, at beginning insert—

<() Subject to subsection (2),>

Ken Macintosh

15 In section 101, page 63, line 38, after <Act> insert <(except Part 8)>

Shona Robison

222 In section 101, page 64, line 3, leave out <5> and insert <2>

Shona Robison

159 In section 101, page 64, line 4, at end insert—

<(2) Any person who commits an offence under section 65(1) or (*Failure to ensure child's compliance with order*)(3) or (4) in relation to an exclusion or restriction order is liable, on summary conviction, to imprisonment for a period not exceeding 12 months or a fine not exceeding level 5 on the standard scale or both.>

After section 101

Shona Robison

190 After section 101, insert—

<Form of applications etc.

The Scottish Ministers may, by regulations, prescribe the form of any application or order under this Act.>

Section 102

Shona Robison

223 In section 102, page 64, line 12, at end insert—

<() The Scottish Ministers must, before making regulations under this Act, consult, in so far as it is reasonably practicable to do so, such persons as they consider appropriate.>

Jamie Stone

204 In section 102, page 64, line 15, after <under> insert—

<() section 25(3) which modify an Act of Parliament or Act of the Scottish Parliament; or

()>

Helen Eadie

191 In section 102, page 64, line 15, after <section> insert <3(4) or>

Ken Macintosh

16 In section 102, page 64, line 15, after <89(1)> insert <or section (*Fixed penalties for offences under section (Prohibition on allowing use of sunbeds by persons under 18), (Prohibition on allowing unsupervised use of sunbeds), (Duty to provide information to sunbed users) or (Duty to display information notice)*)(11)>

Shona Robison

224 In section 102, page 64, line 17, at end insert—

<(5) Subsection (4) does not apply to regulations made under section 89(1) if the Scottish Ministers consider that the regulations need to be made urgently.

(6) Where subsection (5) applies, the regulations (the “emergency regulations”)—

(a) must be laid before the Scottish Parliament; and

(b) cease to have effect at the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the regulations have been approved by a resolution of the Parliament.

(7) Subsection (6)(b) does not apply in relation to regulations which—

(a) revoke (in whole or in part) emergency regulations; and

(b) do—

(i) nothing else; or

(ii) nothing else except make provision incidental or supplementary to the revocation.

(8) In calculating any period of 28 days for the purposes of subsection (6)(b), no account is to be taken of any period during which the Scottish Parliament is—

(a) dissolved; or

(b) in recess for more than 4 days.

(9) Where emergency regulations cease to have effect under subsection (6)(b), that does not—

(a) affect anything previously done by reference to the regulations;

(b) prevent new emergency regulations being made to the same or similar effect.>

Section 107

Shona Robison

- 225** In section 107, page 66, line 8, leave out subsections (5) and (6)

Long Title

Ken Macintosh

- 17** In the long title, page 1, line 3, leave out from <enable> to <sunbeds> in line 4 and insert <make provision relating to the regulation of provision of sunbeds>

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