



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 12th June 2008 and received Royal Assent on 16th July 2008**

An Act of the Scottish Parliament to restate and amend the law on public health; to make provision about mortuaries and the disposal of bodies; to enable the Scottish Ministers to implement their obligations under the International Health Regulations; to make provision relating to the use, sale or hire of sunbeds; to amend the law on statutory nuisances; and for connected purposes.

### PART 1

#### PUBLIC HEALTH RESPONSIBILITIES

##### *The Scottish Ministers*

#### **1 Duty of Scottish Ministers to protect public health**

- (1) The Scottish Ministers are to continue to make provision, or secure that provision is made, for the purpose of protecting public health in Scotland.
- (2) In subsection (1), “protecting public health”—
  - (a) means the protection of the community (or any part of the community) from—
    - (i) infectious diseases;
    - (ii) contamination; or
    - (iii) other such hazards,which constitute a danger to human health; and
  - (b) includes—
    - (i) the prevention of;
    - (ii) the control of; and
    - (iii) the provision of a public health response to,such diseases, contamination or other hazards.
- (3) The Scottish Ministers may, for the purpose of protecting public health in Scotland, provide assistance (including financial assistance) to any person who exercises functions in relation to the protection of public health.

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*Changes to legislation:* There are outstanding changes not yet made by the [legislation.gov.uk](https://legislation.gov.uk) editorial team to Public Health etc. (Scotland) Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (4) Subsection (1) is without prejudice to sections 1 and 1A of the National Health Service (Scotland) Act 1978 (c. 29) (the “1978 Act”) (general duties of Scottish Ministers to provide a health service and to promote the improvement of the health of the people of Scotland).
- (5) In this Act—
- “contamination” means contamination with or by a biological, chemical or radioactive substance; and cognate expressions are to be construed accordingly;
- “infectious disease” means an illness or medical condition caused by an infectious agent (including by an organism listed in Part 2 of schedule 1 but not by a contaminant); and
- “protecting public health” has the meaning given by subsection (2); and cognate expressions are to be construed accordingly.

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**Commencement Information**

**I1** [S. 1](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

*Health boards*

**2 Duty of health boards to protect public health**

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

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**Commencement Information**

**I2** [S. 2](#) in force at 1.10.2009 by [S.S.I. 2009/319](#), art. 2(a), [Sch. 1](#)

**3 Designation of competent persons by health boards**

- (1) Each health board must designate a sufficient number of persons for the purpose of exercising, on behalf of the board, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “health board competent person”.
- (3) The functions referred to in subsection (1) are—
- (a) the functions conferred on a health board competent person by virtue of this Act; and
  - (b) any functions conferred on such a competent person by virtue of any other enactment.

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- (4) The Scottish Ministers may prescribe—
- (a) the persons or classes of person who may be designated as health board competent persons;
  - (b) the qualifications which such persons must have;
  - (c) the training which such persons must have undertaken;
  - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
  - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of health board competent persons as are prescribed may be exercised only by competent persons who—
- (a) have such qualifications;
  - (b) have undertaken such training; or
  - (c) meet such other requirements as to competency,
- as the Scottish Ministers consider appropriate in relation to those functions.

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**Commencement Information**

**I3** S. 3 in force at 1.4.2009 for specified purposes by S.S.I. 2009/9, art. 2(b), **Sch. 2**

**I4** S. 3 in force at 1.10.2009 in so far as not already in force by S.S.I. 2009/319, art. 2(a), **Sch. 1**

*Local authorities*

**4 Duty of local authorities to protect public health**

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

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**Commencement Information**

**I5** S. 4 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), **Sch. 1**

**5 Designation of competent persons by local authorities**

- (1) Each local authority must designate a sufficient number of persons for the purpose of exercising, on behalf of the authority, the functions relating to protection of public health mentioned in subsection (3).
- (2) A person designated under subsection (1) is a “local authority competent person”.
- (3) The functions referred to in subsection (1) are—
- (a) the functions conferred on a local authority competent person by virtue of this Act; and
  - (b) any functions conferred on such a competent person by virtue of any other enactment.
- (4) The Scottish Ministers may prescribe—

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- (a) the persons or classes of person who may be designated as local authority competent persons;
  - (b) the qualifications which such persons must have;
  - (c) the training which such persons must have undertaken;
  - (d) such other requirements as to competency which such persons must meet as Ministers consider appropriate; and
  - (e) such other matters relating to the terms and conditions of the designation of persons as competent persons as Ministers consider appropriate.
- (5) Regulations under subsection (4) may provide that such functions of local authority competent persons as are prescribed may be exercised only by competent persons who—
- (a) have such qualifications;
  - (b) have undertaken such training; or
  - (c) meet such other requirements as to competency,
- as the Scottish Ministers consider appropriate in relation to those functions.

#### Commencement Information

**I6** S. 5 in force at 1.4.2009 for specified purposes by S.S.I. 2009/9, art. 2(b), Sch. 2

**I7** S. 5 in force at 1.10.2009 in so far as not already in force by S.S.I. 2009/319, art. 2(a), Sch. 1

### *Co-operation and planning*

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

- (1) In exercising the functions conferred on them by virtue of this Act, each—
- (a) health board; and
  - (b) local authority,
- must co-operate with any relevant person that appears to the board or, as the case may be, authority to have an interest in or a function relating to the protection of public health.
- <sup>F1</sup>(2) In subsection (1), a “relevant person” is—
- (a) a health board;
  - (b) a special health board;
  - (c) a local authority;
  - <sup>F2</sup>(ca) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014;]
  - (d) the common services agency;
  - <sup>F1</sup>(da) Healthcare Improvement Scotland;]
  - (e) the Scottish Ministers.
- (3) Subsection (1) is without prejudice to section 13 of the 1978 Act (duty of health boards and local authorities to co-operate to secure and advance the health of the people of Scotland).

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#### Textual Amendments

- F1** S. 6(2)(da) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 17 para. 37(a)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F2** S. 6(2)(ca) inserted (1.4.2015) by The Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), art. 1(1), **Sch. para. 8(2)**

#### Commencement Information

- I8** S. 6 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), **Sch. 1**

## 7 Joint public health protection plans

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

#### Commencement Information

- I9** S. 7 in force at 1.10.2009 by S.S.I. 2009/319, art. 2(a), **Sch. 1**

### *Power of Scottish Ministers to intervene*

## 8 Power to direct health boards and local authorities

- (1) This section and section 9 apply where the Scottish Ministers consider that—