

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

APPEALS UNDER PUBLIC HEALTH (SCOTLAND) ACT 1897

Section 36 – Amendment of Public Health (Scotland) Act 1897 : appeal against certain orders etc.

169. This section inserts new sections 156A-156D into the Public Health (Scotland) Act 1897 to allow a right of appeal against detention under sections 54, 55 and 96 of that Act. The new sections make provision for appeals against an order (of a sheriff or justice under section 54), a direction (of a sheriff or justice under section 55), or a decision (of a local authority under section 96), to remove to hospital, detain in hospital, or transfer to another hospital, persons suffering from an infectious disease.
170. Section 157 of the Act currently excludes any right of appeal against orders, directions or decisions taken under sections 54, 55, or 96. The provision of a right of appeal in respect of these provisions is necessary to ensure that they are compatible with Article 5(4) of the European Convention on Human Rights.
171. New Section 156A provides for appeals to the sheriff or sheriff principal against an order under section 54, a direction under section 55, or a decision under section 96. It sets out who may appeal, to whom the appeal should be made, the grounds for appeal, the timescales within which the appeal should be made, and the means by which it should be made. It also sets out the three options available to the sheriff or sheriff principal in dealing with the appeal.
172. New section 156B deals with further appeal to the sheriff principal, specifically against a section 96 decision. It again sets out who may appeal, the grounds, timescales for appeal, and the options available to the sheriff principal.
173. New section 156C enables further appeal to the Court of Session, again setting out the grounds for appeal.
174. New section 156D enables the provisions of sections 54, 55, and 96 to operate if an appeal is in progress. A person can therefore be removed to hospital, and/or detained in hospital while an appeal against, or in relation to, the order, direction or decision is underway.