

SCHEDULE 1 PROTECTION OF THE INDIVIDUAL

PART 7

CARE HOMES

Emergency directions

- 16 (1) The Public Services Reform (Scotland) Act 2010 applies in accordance with the modification in this paragraph.
- (2) The Act has effect as if after section 63 (special provision for certain care services provided by local authorities) there were inserted—

“Care homes: emergency directions

63A Emergency power to direct care home service during coronavirus pandemic

- (1) A Health Board may, if the condition in subsection (2) is met, direct a person who provides a care home service registered under this Chapter at specified accommodation in the Board’s area to take such steps as may be specified within such period as may be specified.
- (2) The condition is that the Health Board considers that, for a reason relating to coronavirus, there is a material risk to the health of persons at the specified accommodation.
- (3) The specified steps must relate directly to reducing the risk to the health of persons at the specified accommodation (for example, by requiring specified cleaning to take place).
- (4) A Health Board must have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions under this section.
- (5) The Scottish Ministers must publish any guidance that they issue under this section in such manner as they consider appropriate.
- (6) The power under subsection (1) to give a direction includes the power to vary or revoke an earlier direction under that subsection.
- (7) A direction given under this section must be in writing.
- (8) For the purposes of this section and section 63B—
“coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,
“Health Board” means a Health Board constituted under section 2(1) (a) of the National Health Service (Scotland) Act 1978, and “area” in relation to a Health Board, means the area for which the Board is constituted,
“specified” means specified in a direction given under subsection (1).

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63B Power to act where section 63A direction not complied with

- (1) This section applies where a Health Board that gave a direction under section 63A is not satisfied that the person to whom the direction was given has complied with the direction.
- (2) The Health Board may—
 - (a) take the specified steps (or such of those steps as have not been taken),
 - (b) take entry to the specified accommodation (if necessary to take the steps), and
 - (c) recover from the provider of the care home service the costs incurred by the authority in relation to taking the specified steps.
- (3) A sheriff may grant a warrant under this section to authorise the Health Board—
 - (a) to enter the premises, and
 - (b) to take the specified steps.
- (4) A sheriff may grant a warrant under this section only if satisfied that—
 - (a) there are reasonable grounds for entering the specified accommodation, and
 - (b) entry to the specified accommodation has been refused.
- (5) A warrant expires—
 - (a) 28 days after the day on which it was granted, or
 - (b) if earlier, when the specified steps have been taken.
- (6) For the purposes of section 64 (cancellation of registration), failure to comply with a warrant granted under this section is a relevant offence.”.

Emergency intervention orders

- 17 (1) The Public Services Reform (Scotland) Act 2010 applies in accordance with the modification in this paragraph.
- (2) The Act has effect as if after section 65 there were inserted—

“65A Care homes: emergency intervention orders

- (1) The Scottish Ministers may apply to the court for an emergency intervention order in respect of a care home service provided at accommodation specified in the application.
- (2) An emergency intervention order is an order which—
 - (a) authorises the Scottish Ministers to nominate a person to act as a nominated officer,
 - (b) authorises the nominated officer to—
 - (i) enter and occupy the accommodation specified in the order (“the accommodation”),
 - (ii) direct and control the provision of the care home service at the accommodation, and

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- (iii) do anything that the officer considers necessary to ensure that the care home service is provided to an appropriate standard, and
- (c) requires the person who is (or, immediately prior to the granting of an order under section 65, was) registered under this Chapter as the provider of a care home service at the accommodation (“the affected provider”) to comply with any direction given by the officer in relation to the provision of care home services at the accommodation,
- for such period of up to 12 months as may be specified in the order.
- (3) On an application under subsection (1), the court may make such interim order as it thinks fit.
- (4) An order under this section has no effect on the rights or obligations of persons receiving care home services at the accommodation.
- (5) The Scottish Ministers may, where satisfied that it is essential do so for a reason relating to coronavirus, to prevent an imminent and serious risk to the life or health of persons at the accommodation, exercise the powers that would be available under an emergency intervention order prior to making an application to the court.
- (6) But, where the Scottish Ministers exercise powers under subsection (5), they must make an application under subsection (1) within 24 hours of their exercise of the powers (and may exercise the powers until the application is considered by the court).
- (7) The court must make an emergency intervention order if it appears to the court that, unless the order is made, for a reason relating to coronavirus there will be a serious risk to the life, health or wellbeing of persons at the accommodation.
- (8) The court may include such incidental provision in an order under this section as the court thinks fit (for example, prohibiting the sale of the accommodation or the disposal of any assets used in the provision of care services at the accommodation).
- (9) As soon as practicable after the Scottish Ministers have made an application under subsection (1), they must notify the appropriate authorities.
- (10) Where the court makes an order under this section, the Scottish Ministers must as soon as reasonably practicable give a copy of it to—
- (a) the affected provider, and
- (b) the appropriate authorities.
- (11) The court may grant an order under this section in the absence of the affected provider.
- (12) An order under this section has effect from—
- (a) the time at which it is made, or
- (b) such other time as the court considers appropriate.
- (13) The court may, on the application of the Scottish Ministers or the affected provider—

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- (a) vary an emergency intervention order,
 - (b) extend its duration for a further period of up to 6 months,
 - (c) revoke it (either immediately or on such date as the court may specify).
- (14) The court may, on the application of the Scottish Ministers or the affected provider, vary or recall an interim order granted under subsection (3).
- (15) An order made under this section has effect notwithstanding the making of an appeal in relation to the order.
- (16) For the purpose of this section—
- (a) the appropriate authorities are—
 - (i) SCSWIS,
 - (ii) the local authority and the health board within whose area the care home service is provided,
 - (iii) Healthcare Improvement Scotland,
 - (b) “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,
 - (c) “court” means the Court of Session or the sheriff,
 - (d) “Health Board” means a Health Board constituted under section 2(1) (a) of the National Health Service (Scotland) Act 1978,
 - (e) “nominated officer” means a person appointed by the Scottish Ministers whom they consider suitable to perform the functions conferred under an emergency intervention order.

65B Further provision in relation to emergency intervention orders

- (1) The Scottish Ministers may by regulations make further provision in connection with emergency intervention orders under section 65A.
- (2) Regulations under this section—
- (a) must be laid before the Scottish Parliament as soon as practicable after they are made, and
 - (b) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, they are approved by resolution of the Scottish Parliament.
- (3) In calculating the period of 28 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.
- (4) If regulations cease to have effect as a result of subsection (2)(b), that does not—
- (a) affect anything previously done under the regulations,
 - (b) prevent the making of new regulations.”.