



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### [<sup>F1</sup>PART 5A

#### PUBLIC HEALTH PROTECTION MEASURES

#### *[<sup>F1</sup>Public health protection regulations*

#### Textual Amendments

**F1** Pt. 5A inserted (1.9.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), ss. 1(2), 59(1)

#### **86A Public health protection regulations**

- (1) The Scottish Ministers may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risks originating there or elsewhere).
- (2) In subsection (1)—
  - (a) reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health,
  - (b) reference to the spread of contamination includes a reference to the spread of any source of contamination.
- (3) The power in subsection (1) may be exercised—
  - (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
  - (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to particular circumstances.
- (4) Regulations under subsection (1) may in particular include provision directly or indirectly imposing restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health (but see sections 86D and 86E).

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*Changes to legislation: There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008, Cross Heading: Public health protection regulations. (See end of Document for details)*

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- (5) The restrictions or requirements mentioned in subsection (4) include, for example—
- (a) a requirement that a pupil (within the meaning given by section 135(1) of the Education (Scotland) Act 1980) is to be kept away from school,
  - (b) a prohibition or restriction relating to the holding of an event or gathering,
  - (c) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains, and
  - (d) a special restriction or requirement (see section 86G).

## **86B Public health protection regulations: public health declarations**

- (1) Regulations under section 86A(1) which are responding to a particular infection or contamination may be made only when a public health declaration under this section has effect.
- (2) A public health declaration means a declaration by the Scottish Ministers that they consider that—
  - (a) an infectious disease or contaminant constitutes or may constitute a danger to human health, and
  - (b) the making of regulations under section 86A(1) may be a way of protecting against that danger.
- (3) Before making a public health declaration, the Scottish Ministers must consult the Chief Medical Officer of the Scottish Administration or another person designated for the purposes of this section by the Scottish Ministers.
- (4) A public health declaration has effect if—
  - (a) it is made by the Scottish Ministers,
  - (b) either—
    - (i) it is approved in accordance with subsection (6), or
    - (ii) a statement under section 86C(1) is made, and
  - (c) it has not ceased to have effect in accordance with subsection (10).
- (5) The Scottish Ministers must publish a public health declaration in such manner as they consider appropriate.
- (6) A public health declaration is approved if—
  - (a) the Scottish Ministers lay a copy of the declaration before the Scottish Parliament,
  - (b) a member of the Scottish Government lodges a motion that the declaration be approved, and
  - (c) the Parliament agrees to the motion.
- (7) A motion under subsection (6)(b) may not be amended.
- (8) The Scottish Ministers must publish notice of the approval of a public health declaration and the time at which the declaration has effect, in such manner as they consider appropriate.
- (9) If, during the period that a public health declaration has effect, the Scottish Ministers consider that paragraphs (a) and (b) of subsection (2) no longer apply, they must—
  - (a) revoke the declaration,

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- (b) lay notice of revocation before the Scottish Parliament, and
  - (c) publish notice of revocation in such manner as the Scottish Ministers consider appropriate.
- (10) A public health declaration ceases to have effect immediately after it is revoked.
- (11) A public health declaration's ceasing to have effect neither—
- (a) affects anything done before the declaration ceased to have effect, nor
  - (b) prevents the making of regulations revoking regulations made during the period that the declaration had effect.

### **86C Public health protection regulations: further provision about public health declarations**

- (1) If the Scottish Ministers consider that it is not practicable for a public health declaration to be approved in accordance with section 86B(6), they may make a statement explaining why.
- (2) An example of when it may not be practicable for a public health declaration to be approved in accordance with section 86B(6) is if the Scottish Parliament is dissolved.
- (3) When a statement under subsection (1) is made, the Scottish Ministers must—
- (a) lay a copy of the public health declaration and the statement before the Scottish Parliament, and
  - (b) publish the statement in such manner as they consider appropriate.
- (4) If a statement under subsection (1) is made—
- (a) the public health declaration has effect immediately after the declaration is made, and
  - (b) the declaration ceases to have effect at the end of the period of 28 days beginning with the day on which it is made unless before the end of that period it is approved by the Scottish Parliament on a motion by a member of the Scottish Government (if it has not already ceased to have effect under subsection (5)).
- (5) If, on any day during that period of 28 days, the Parliament comes to a decision not to approve the public health declaration, the declaration ceases to have effect immediately after the decision is made.
- (6) In calculating the period of 28 days mentioned in subsections (4) and (5), no account is to be taken of any time during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
  - (b) dissolved.
- (7) A motion under subsection (4)(b) may not be amended.

### **86D Limits on use of power: regulations directly imposing restrictions or requirements**

- (1) Regulations under section 86A(1) may not impose a restriction or requirement by virtue of section 86A(4) unless the Scottish Ministers consider, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

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- (2) Regulations under section 86A(1) may not impose a restriction or requirement mentioned in section 86G(2)(a), (b), (c) or (d).
- (3) For the purpose of this section, the regulations “impose” a restriction or requirement if the restriction or requirement is imposed directly by the regulations.

**86E Limits on use of power: regulations indirectly imposing restrictions or requirements**

- (1) Regulations under section 86A(1) may not enable the imposition of a restriction or requirement by virtue of section 86A(4) unless the regulations provide that a decision to impose such a restriction or requirement may only be taken if the person taking it considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
- (2) Regulations under section 86A(1) may not enable the imposition of a special restriction or requirement unless—
  - (a) the regulations are made in response to a serious and imminent threat to public health, or
  - (b) the imposition of the special restriction or requirement is expressed to be contingent on there being such a threat at the time when it is imposed.
- (3) For the purpose of this section, the regulations “enable the imposition of” a restriction or requirement if the restriction or requirement is imposed by virtue of a decision taken under the regulations by the Scottish Ministers, a local authority, a health board or other person.

**86F Exclusion of requirement to undergo medical treatment**

- (1) Regulations under section 86A(1) may not include provision requiring a person to undergo medical treatment.
- (2) “Medical treatment” includes vaccination and other prophylactic treatment.

**86G Special restrictions and requirements**

- (1) In this Part, a “special restriction or requirement” means a restriction or requirement mentioned in [subsections \(2\) to \(5\)](#).
- (2) In relation to a person, the restriction or requirement referred to in subsection (1) is that the person—
  - (a) submit to medical examination,
  - (b) be removed to a hospital or other suitable establishment,
  - (c) be detained in a hospital or other suitable establishment,
  - (d) be kept in quarantine (within the meaning of section 39(4)),
  - (e) be disinfected or decontaminated,
  - (f) wear protective clothing,
  - (g) provide information or answer questions about the person’s health or other circumstances,
  - (h) has the person’s health monitored and the results reported,

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- (i) attend training or advice sessions on how to reduce the risk of infecting or contaminating others,
  - (j) be subject to restrictions as to where the person may go or with whom the person has contact,
  - (k) abstain from working or trading.
- (3) Where regulations enable the imposition of a requirement to submit to medical examination, section 35 applies to that examination in the same way as it applies to an examination authorised by virtue of an order under section 34(1).
- (4) In relation to a thing, the restriction or requirement referred to in subsection (1) is—
- (a) that the thing be seized or detained,
  - (b) that the thing be kept in quarantine,
  - (c) that the thing be disinfected or decontaminated,
  - (d) that the vector, agent or source of any infection or contamination be removed,
  - (e) in the case of a dead body, that the body be buried or cremated,
  - (f) in any other case, that the thing be destroyed or disposed of.
- (5) In relation to premises, the restriction or requirement referred to in subsection (1) is—
- (a) that the premises be closed,
  - (b) that, in the case of a vehicle or movable structure, the premises be detained,
  - (c) that the premises be disinfected or decontaminated,
  - (d) that the vector, agent or source of any infection or contamination be removed,
  - (e) that, in the case of a building, structure, mobile home or vehicle, the premises be destroyed.

## **86H Further provision on content of regulations**

- (1) This section makes further provision about regulations under section 86A(1).
- (2) The regulations may—
- (a) confer functions on local authorities, health boards and other persons,
  - (b) make different provision for different areas,
  - (c) create offences,
  - (d) modify any enactment (including this Act),
  - (e) enable a court to order a person convicted of any offence under the regulations to take or pay for remedial action in appropriate circumstances,
  - (f) provide for the carrying out and enforcement of restrictions and requirements imposed by virtue of the regulations,
  - (g) provide for appeals from and reviews of restrictions and requirements imposed by virtue of the regulations,
  - (h) permit or prohibit the levying of charges,
  - (i) permit or require the payment of incentive payments and expenses,
  - (j) permit the payment of compensation,
  - (k) provide for the resolution of disputes.
- (3) The maximum penalties that may be imposed in relation to offences created under the regulations are—
- (a) on summary conviction, imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

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- (b) on conviction on indictment, imprisonment for a period not exceeding two years or a fine (or both).
- (4) The regulations must provide for a right of appeal to the sheriff against any decision taken under the regulations by virtue of which a special restriction or requirement is imposed on or in relation to a person, thing or premises.

## **86I Review of regulations**

- (1) So long as regulations under section 86A(1) which make provision mentioned in section 86A(4) remain in effect, the Scottish Ministers must review the regulations—
  - (a) before the end of the period of 21 days beginning with the date on which the regulations came into force, and
  - (b) before the end of each subsequent period of 21 days.
- (2) Subsection (1) does not apply where the regulations make only provision of a general nature or contingent provision.
- (3) Subsection (4) applies where regulations under section 86A(1)—
  - (a) enable a special restriction or requirement to be imposed by virtue of a decision taken under the regulations, and
  - (b) the restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period.
- (4) The regulations must provide that a specified person may require the continuation of the restriction or requirement to be reviewed in accordance with the regulations at specified intervals by a person determined in accordance with the regulations.
- (5) In relation to a special restriction or requirement mentioned in section 86G(2)(c) or (d)—
  - (a) the period specified by virtue of subsection (3)(b) and the intervals specified by virtue of subsection (4) must be 21 days or less, and
  - (b) the regulations must require the continuation of the restriction or requirement to be reviewed without an application being made.
- (6) In this section, “specified” means specified in the regulations.]

**Changes to legislation:**

There are currently no known outstanding effects for the Public Health etc. (Scotland) Act 2008,  
Cross Heading: Public health protection regulations.