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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 319 (C. 26)**

**PUBLIC HEALTH**

**The Public Health etc. (Scotland) Act 2008 (Commencement  
No. 2, Savings and Consequential Provisions) Order 2009**

*Made - - - - 17th September 2009*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 122(2) and 128(2) of the Public Health etc. (Scotland) Act 2008(1).

**Citation and interpretation**

1.—(1) This Order may be cited as the Public Health etc. (Scotland) Act 2008 (Commencement No. 2, Savings and Consequential Provisions) Order 2009.

(2) In this Order—

“the 2008 Act” means the Public Health etc. (Scotland) Act 2008; and

“the 1897 Act” means the Public Health (Scotland) Act 1897(2).

**Commencement of provisions of the 2008 Act and consequential amendments and repeals**

2. The following provisions of the 2008 Act come into force on 1st October 2009—

- (a) the provisions specified in column (1) of Schedule 1 (the subject matter of each provision being mentioned in column 2) in so far as not already in force;
- (b) the amendments of enactments specified in Schedule 2;
- (c) the consequential repeals and revocations specified in Schedule 3.

**Savings**

3. Despite the repeal of the 1897 Act by Part 1 of schedule 3 to the 2008 Act—

- (a) section 72(3) of the 1897 Act continues to have effect for the purposes of section 313(1) of the Housing (Scotland) Act 1987(4) (byelaws with respect to houses in multiple occupation);

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(1) 2008 asp 5.

(2) 1897 c.38.

(3) 1897 c.38; section 72 was extended by section 169(1) of the Housing Act 1966 (c.49) and sections 313 and 335 of the Housing (Scotland) Act 1987 (c.26).

(4) 1987 c.26.

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- (b) section 166(5) of the 1897 Act continues to have effect for the purposes of section 34(3) (b) of the Mines and Quarries (Tips) Act 1969(6) (protection of local authorities);
- (c) the definition of “owner” in section 3(1) of the 1897 Act continues to have effect for the purposes of section 18(1) of the Compensation (Defence) Act 1939(7) (application of Act to Scotland); and
- (d) Parts II and V of the 1897 Act continue to have effect for the purposes of section 159(1) (b) of the Local Government, Planning and Land Act 1980(8).

St Andrew’s House,  
Edinburgh  
17th September 2009

*SHONA ROBISON*  
Authorised to sign by the Scottish Ministers

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(5) 1897 c.38; section 166 was amended by the Schedule to the Law Reform (Limitation of Actions etc.) Act 1954 (c.36).  
(6) 1969 c.10; section 34 was amended by paragraphs 3(a) and (b) of schedule 6 to the Building (Scotland) Act 2003 (asp 8).  
(7) 1939 c.75; section 18(1) was amended by the Consumer Credit Act 1974 (c.39), s192(3)(b), Schedule 5 Pt. 1.  
(8) 1980 c.65; section 159(1)(b).

## SCHEDULE 1

Article 2(a)

## PROVISIONS OF THE 2008 ACT COMING INTO FORCE ON 1ST OCTOBER 2009

<i>Column (1)</i>	<i>Column (2)</i>
<i>Provision of the Act</i>	<i>Subject matter</i>
Part 1	Public health responsibilities
Part 3	Public health investigations
Part 4	Public health functions of health boards
Part 5	Public health functions of local authorities
Part 6	Mortuaries etc.
Section 117	Disclosure of information
Section 118	Liability of persons exercising functions
Section 119	Offences by bodies corporate etc.
Section 120	Penalties for offences
Section 123	Meaning of “premises”
Section 126 in so far as it relates to the provisions of schedule 3 to the 2008 Act mentioned below	Repeals, revocations and saving
Section 127	Crown application
Part 1 of schedule 3, except in so far as it relates to the repeals of the 1897 Act, sections 32, 73(1), 161 and 164, the Infectious Disease (Notification) Act 1889 (c.72), the Public Health (Scotland) Act 1945 (c.15), the Health Services and Public Health Act 1968 (c.46), section 71A, the National Health Service (Scotland) Act 1972 (c.58), section 53, the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 4, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 26 and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)	Repeals and revocations

## SCHEDULE 2

Article 2(b)

AMENDMENTS TO ENACTMENTS COMING INTO FORCE ON 1ST OCTOBER 2009  
AMENDMENT OF PUBLIC GENERAL ACTS**The Public Health (Scotland) Act 1945**

1.—(1) Until its repeal by Part 1 of schedule 3 to the 2008 Act, section 1 of the Public Health (Scotland) Act 1945<sup>(9)</sup> (power of Scottish Ministers to make regulations for treating persons with, and for preventing the spread of, disease) has effect as follows.

(2) In subsection (3), omit the words “or port local authorities”.

(3) In subsection (8)—

(a) in the definition of “authorised officer”—

(i) omit the words “or port local authority”; and

(ii) for “designated medical officer” substitute “health board competent person”;

(b) omit the definition of “port local authority”;

(c) after the definition of “coastal waters” insert—

“the expression “health board competent person” means a person designated by a health board under section 3(1) of the Public Health etc. (Scotland) Act 2008;”.

2. Despite the repeal of the 1897 Act by Part 3 of schedule 3 to the 2008 Act, the 1897 Act continues to have effect for the purposes of section 1(1) and (8) of the Public Health (Scotland) Act 1945.

**The Slaughter of Animals (Scotland) Act 1980**

3. In the Slaughter of Animals (Scotland) Act 1980<sup>(10)</sup>—

(a) for section 6(3) (licensing of knackers’ yards) substitute—

“(3) On receiving an application for the grant or renewal of a licence under this section, the local authority must publish notice of the application in one or more newspapers circulating in that local authority’s area specifying—

(a) the address of the premises to which the application relates;

(b) the period, being a period of not less than 21 days beginning with the day on which the notice is published, before the end of which any person may object to the grant or renewal of the licence; and

(c) that any objections are to be made in writing to the local authority and, in the case of an application for renewal of a licence, are to be served on the applicant in accordance with subsection (4).”;

(b) in section 14(4) (further powers of entry), omit paragraphs (ii) and (iii);

(c) in section 22 (interpretation), in the definition of “premises”, for the words “has the same meaning as in the Public Health (Scotland) Act 1897” substitute “extends to any facilities for moving animals and any stall, pen, covered area or field used by the knacker’s yard

(9) 1945 (c.15); section 1(3) was amended by paragraph 76 of Schedule 6 to the National Health Service (Scotland) Act 1972 (c.58), paragraph 2 of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41) and paragraph 4 of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19); the definition of “authorised officer” in section 1(8) was amended by paragraph 76 of Schedule 6 to the National Health Service (Scotland) Act 1972 (c.58).

(10) 1980 c.13.

in order to confine an animal until it is killed or to give it any necessary attention before it is killed”.

#### **The Local Government, Planning and Land Act 1980**

4. In the Local Government, Planning and Land Act 1980, section 159(1)(a)(**11**) (public health etc.) for “section 40 of the Public Health (Scotland) Act 1897 (which makes similar provision for Scotland)” substitute “Part 5 of the Public Health etc. (Scotland) Act 2008(**12**)”.

#### **The Radioactive Substances Act 1993**

5. In the Radioactive Substances Act 1993, section 30(4)(**13**) (power of the Secretary of State to dispose of radioactive waste) for “section 3 of the Public Health (Scotland) Act 1897” substitute “section 78A(9) (preliminary) of the Environmental Protection Act 1990(**14**)”.

### AMENDMENT OF STATUTORY INSTRUMENTS

#### **The Public Health (Ships) (Scotland) Regulations 1971**

6.—(1) Until its revocation by Part 2 of schedule 3 to the 2008 Act, regulation 2(1) of the Public Health (Ships) (Scotland) Regulations 1971(**15**) (interpretation) has effect as follows.

(2) Omit the definition of “designated medical officer”.

(3) After the definition of “Health Board” insert—

““health board competent person” means a person designated by a health board under section 3(1) of the Public Health etc. (Scotland) Act 2008;”.

(4) In the definition of “medical officer”, for “designated medical officer” substitute “health board competent person”.

#### **The Public Health (Aircraft) (Scotland) Regulations 1971**

7.—(1) Until its revocation by Part 2 of schedule 3 to the 2008 Act, regulation 2(1) of the Public Health (Aircraft) (Scotland) Regulations 1971(**16**) (interpretation) has effect as follows.

(2) Omit the definition of “designated medical officer”.

(3) After the definition of “Health Board” insert—

““health board competent person” means a person designated by a health board under section 3(1) of the Public Health etc. (Scotland) Act 2008;”.

(4) In the definition of “medical officer”, for “designated medical officer” substitute “health board competent person”.

#### **The Schools General (Scotland) Regulations 1975**

8.—(1) The Schools General (Scotland) Regulations 1975(**17**) are amended in accordance with this paragraph.

(2) In regulation 3 (definitions)—

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(11) 1980 c.65.

(12) 2008 asp 5.

(13) 1993 c.12; section 30(4) was amended by paragraph 217(4) of Schedule 22 to the Environment Act 1995 (c.25).

(14) 1990 c.43; section 78A(9) was inserted by section 57 of the Environment Act 1995 (c.25) and amended by regulation 2 of S.S.I. 2005/658.

(15) S.I. 1971/132; as amended by S.I. 1974/1008, S.I. 1978/369 and S.S.I. 2007/515.

(16) S.I. 1971/131; as amended by S.I. 1974/1017 and S.I. 1978/370.

(17) S.I. 1975/1135 to which there have been no relevant amendments.

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- (a) omit the definition of “designated medical officer”; and
- (b) after the definition of “health board” insert—
- ““health board competent person” means a person designated by a health board under section 3(1) of the Public Health etc. (Scotland) Act 2008;”.
- (3) In regulation 6 (closure of schools on order of medical officer) for “designated medical officer of a health board” substitute “health board competent person”.

## SCHEDULE 3

Article 2(c)

## CONSEQUENTIAL REPEALS AND REVOCATIONS

## PART 1

## CONSEQUENTIAL REPEALS

<i>Enactment</i>	<i>Extent of Repeal</i>
National Insurance Act 1913 (c.37)	The whole Act, in so far as not already repealed
Local Government (Emergency Provisions) Act 1916 (c.12)	Section 5
Church of Scotland (Property and Endowments) Act 1925 (c.33)	In section 32(5)(a)(i), the words “, or as a result of proceedings under the Public Health (Scotland) Act 1897”
Prevention of Damage by Pests Act 1949 (c.55)	In section 28(1), the definition of “owner”
Agriculture, (Safety, Health and Welfare Provisions) Act 1956 (c.49)	In section 25(10) in the definition of “owner” the words “in the Public Health (Scotland) Act, 1897, and”
Factories Act 1961 (c.34)	Section 182(8)
National Health Service (Scotland) Act 1972 (c.58)	In section 28(1), the words “port local authorities”
	Section 32
	Section 34(2)(e)

<i>Enactment</i>	<i>Extent of Repeal</i>
	Schedule 4
Civil Aviation Act 1982 (c.16)	In section 36(4)(b), the words “and any port local authority as defined in section 172 of the Public Health (Scotland) Act 1897”
Environmental Protection Act 1990 (c.43)	In section 84, subsection (1)(b); in subsection (2) (a), the words “or in section 32 of the Public Health (Scotland) Act 1897”; in subsection (2) (b), the words “or under subsection (2) of the said section 32” and the words “or the said section 32”; and subsection (4)(b)

## PART 2

### CONSEQUENTIAL REVOCATIONS

<i>Enactment</i>	<i>Extent of Repeal</i>
Poisons Rules 1982 (S.I. 1982/218)	In Schedule 12, paragraph 6(2) in the definition of “port health authority” the words “and in Scotland, a port local authority or joint port local authority as constituted in terms of section 172 of the Public Health (Scotland) Act 1897”.
Imported Food Regulations 1997 (S.I. 1997/2537)	In regulation 2(1), in the definition of “food authority”, sub-paragraph (c)(i) and in sub-paragraph (c)(ii) the words “if it is not situated in the district of a port local authority or joint port local authority”.
National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38)	Regulation 3(b)

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Public Health (etc.) Scotland Act 2008 (“the Act”) on 1st October 2009.

Article 2 and Schedule 1 of the Order bring into force the following provisions of the Act insofar as they are not already in force: Part 1 (public health responsibilities), Part 3 (public health investigations), Part 4 (public health functions of health boards), Part 5 (public health functions of local authorities) and Part 6 (mortuaries etc.). A number of general and miscellaneous provisions are also brought into force as well as related repeals and revocations in schedule 3 to the Act.

Schedules 2 and 3 to the Order contain some further consequential amendments, repeals and revocations which are also brought into force on 1st October.

Article 3 saves certain provisions of the Public Health (Scotland) Act 1897 for the purposes of section 313(1) of the Housing (Scotland) Act 1987, section 34(3)(b) of the Mines and Quarries (Tips) Act 1969, section 18(1) of the Compensation (Defence) Act 1939 and section 159(1)(b) of the Local Government Planning and Land Act 1980.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
sections 109 to 115	26th January 2009	<a href="#">2009/09</a>
section 125		
Schedule 2		
section 3 (partially)	1st April 2009	<a href="#">2009/09</a>
section 5 (partially)		
sections 87 to 89		
section 94		
section 100 (partially)		
section 101 (partially)		
section 116		
section 121		
section 124		
section 126 (partially)		
Schedule 3 (partially)		

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