

Changes to legislation: Freedom of Information (Scotland) Act 2002, SCHEDULE 3 is up to date with all changes known to be in force on or before 22 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 3

(introduced by section 54)

POWERS OF ENTRY AND INSPECTION

Modifications etc. (not altering text)

- C1** Sch. 3 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), [reg 17\(1\)\(2\)](#) (with [reg. 3](#))

Grant of warrants

- 1 (1) If a sheriff is satisfied by evidence on oath supplied by the Commissioner that there are reasonable grounds for suspecting—
- (a) that a Scottish public authority has failed or is failing to comply with—
 - (i) any of the requirements of Part 1 of this Act;
 - (ii) so much of a notice given to it by the Commissioner under subsection (5) of section 49 as, by virtue of subsection (6)(b) of that section, requires steps to be taken; or
 - (iii) an information notice or an enforcement notice; or
 - (b) that an offence under section 65(1) has been or is being committed,
- and that evidence of such a failure to comply or of the commission of the offence is to be found on any premises specified as part of that evidence, the sheriff, subject to paragraph 2, may grant to the Commissioner such warrant as is mentioned in subparagraph (2).
- (2) The warrant is one which authorises the Commissioner, or any member of the Commissioner's staff, at any time within seven days after the date of the warrant—
- (a) to enter and search the premises;
 - (b) to inspect and seize any documents or other material found there which may constitute the evidence in question; and
 - (c) to inspect, examine, operate and test any equipment found there in which information held by the authority may be recorded.
- 2 (1) A sheriff must not grant the warrant unless satisfied—
- (a) that the Commissioner has given seven days' notice in writing to the occupier of the premises demanding access to them; and
 - (b) that either—
 - (i) access was demanded at a reasonable hour and was unreasonably refused; or
 - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Commissioner, or any member of the Commissioner's staff, to permit the Commissioner or any such member of staff to do any of the things referred to in paragraph 1(2); and
 - (c) that the occupier has, after the refusal, been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by the sheriff on the question of whether or not it should be granted.

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- (2) Sub-paragraph (1) does not apply if the sheriff is satisfied that the case is one of urgency or that compliance with the provisions of that sub-paragraph would defeat the object of the entry.

Execution of warrants

- 3 A person executing the warrant may use such reasonable force as may be necessary.
- 4 The warrant must be executed at a reasonable hour, unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.
- 5 (1) If the premises in respect of which the warrant is granted are occupied by a Scottish public authority and any officer or employee of the authority is present when the warrant is executed, that officer or employee must be shown the warrant and supplied with a copy of it; and if no such officer or employee is present a copy of the warrant must be left in a prominent place on the premises.
- (2) If the premises in respect of which the warrant is granted are occupied by a person other than a Scottish public authority and that person is present when the warrant is executed, the person must be shown the warrant and supplied with a copy of it; and if the person is not present a copy of the warrant must be left in a prominent place on the premises.
- 6 (1) A person seizing anything in pursuance of the warrant must give a receipt for it if asked to do so.
- (2) Anything so seized may be retained for so long as is necessary in all the circumstances; but the person in occupation of the premises must be given a copy of anything that is seized if that person so requests and the person executing the warrant considers that it can be done without undue delay.

Matters exempt from inspection and seizure

- 7 The powers of inspection and seizure conferred by the warrant are not exercisable in respect of information which is exempt information by virtue of section 31(1).
- 8 (1) Subject to the provisions of this paragraph, the powers of inspection and seizure conferred by the warrant are not exercisable in respect of—
- (a) a communication between professional legal adviser and client in connection with the giving of legal advice to the client with respect to the client's obligations, liabilities or rights under this Act; or
 - (b) a communication between professional legal adviser and client, or between such adviser or client and another person, made in connection with or in contemplation of proceedings under or arising out of this Act and for the purpose of such proceedings.
- (2) Sub-paragraph (1) applies also to—
- (a) a copy or other record of such communication as is there mentioned; and
 - (b) a document or article enclosed with or referred to in such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purpose of such proceedings as are there mentioned.

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- (3) This paragraph does not apply to anything in the possession of a person other than the professional legal adviser or client or to anything held with the intention of furthering a criminal purpose.
- (4) In this paragraph references to the client of a professional legal adviser include references to a person representing such a client.
- 9 If the person in occupation of premises in respect of which the warrant is granted objects to the inspection or seizure under it of any material on the grounds that the material consists partly of matters in respect of which those powers are not exercisable, that person must, if requested, provide in response to the warrant a copy of so much of the material as is material in relation to which the powers are exercisable.

Offences

- 10 (1) A person who—
- (a) intentionally obstructs a person who is executing the warrant; or
 - (b) fails, without reasonable excuse, to give the person who is executing the warrant such assistance as that person may reasonably require for executing it,
- is guilty of an offence.
- (2) A person guilty of an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Vessels, vehicles etc.

- 11 In this schedule, “premises” includes vessel, vehicle, aircraft or hovercraft, and references to the occupier of premises include references to the person in charge of a vessel, vehicle, aircraft or hovercraft.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. 1 para. 74A inserted by [2023 asp 6 sch. 2 para. 2\(2\)](#)