

*Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 10. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 10

Section 66

#### ENFORCEMENT POWERS

##### *Powers to search and seize vehicles in connection with waste offences*

- 1 In section 5(6) of the Control of Pollution (Amendment) Act 1989 (constable’s power to seize vehicles and contents)—
- (a) in paragraph (b) after “presence of” insert “or at the request of”;
  - (b) in paragraph (c) for “without such an officer present” substitute “in any other case”.

##### **Commencement Information**

**I1** Sch. 10 para. 1 in force at 9.1.2022, see s. 147(2)(h)

- 2 In section 34B(6) of the Environmental Protection Act 1990 (constable’s power to seize vehicles and contents)—
- (a) in paragraph (b) after “presence of” insert “or at the request of”;
  - (b) in paragraph (c) for “without such an officer present” substitute “in any other case”.

##### **Commencement Information**

**I2** Sch. 10 para. 2 in force at 9.1.2022, see s. 147(2)(h)

##### *Powers of direction in relation to waste*

- 3 (1) Section 57 of the Environmental Protection Act 1990 (power to give directions) is amended as follows.
- (2) In subsection (2) omit the words from “with a view” to the end.
- (3) After subsection (2) insert—
- “(2A) The appropriate Minister may, by notice in writing—
- (a) direct a registered waste carrier to collect waste which is being kept on specified land and deliver it to a specified person on specified terms;
  - (b) direct any person who—
    - (i) is keeping waste on any land, or
    - (ii) owns or occupies land on which waste is being kept,

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to facilitate collection of the waste by a specified registered waste carrier to whom a direction in respect of the waste is given under paragraph (a).”

- (4) In subsection (4), for “of treating or disposing of” substitute “in relation to”.
- (5) After subsection (4) insert—
- “(4A) A direction under subsection (2A)(b) may require the person to whom it is given—
- (a) to pay to the specified registered waste carrier the reasonable costs of collecting and delivering the waste;
- (b) to pay to the specified person to whom the waste is delivered (“P”) the reasonable costs incurred by P in relation to the waste (including any costs P is required by a direction under this section to pay to another person).”
- (6) In subsection (7) for the words from “, where” to the end substitute “pay any costs mentioned in subsection (4).”
- (7) After subsection (7) insert—
- “(7A) The appropriate Minister may pay any costs mentioned in subsection (4A).”
- (8) In subsection (8), before the definition of “specified” insert—
- ““appropriate Minister” means—
- (a) the Secretary of State, in relation to waste being kept on land in England, and
- (b) the Welsh Ministers, in relation to waste being kept on land in Wales;
- “registered waste carrier” means a person registered under the Control of Pollution (Amendment) Act 1989 as a carrier of controlled waste;”.

**Commencement Information**

**I3** Sch. 10 para. 3 in force at 9.1.2022, see s. 147(2)(h)

*Powers of entry in relation to pollution control etc*

4 The Environment Act 1995 is amended as follows.

**Commencement Information**

**I4** Sch. 10 para. 4 in force at 9.1.2022, see s. 147(2)(h)

- 5 (1) Section 108 (powers of enforcing authorities and their authorised officers) is amended as follows.
- (2) In subsection (4), after paragraph (k) insert—
- “(ka) as regards any premises which an English or Welsh authorised person has power to enter by virtue of paragraph (a), for the purposes of an examination or investigation under paragraph (c)—

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- (i) to search the premises;
- (ii) to seize and remove documents or anything else found on the premises (other than an article or substance within paragraph (g));
- (iii) to require any information which is stored in electronic form and is accessible from the premises to be produced in a form in which it can be removed and—
  - (a) in which it is visible and legible, or
  - (b) from which it can readily be produced in a visible and legible form;
- (iv) to operate any equipment found on the premises for the purposes of producing such information in such a form;”.

(3) In subsection (6), omit paragraph (a).

(4) After subsection (7) insert—

- “(7A) An English or Welsh authorised person may not exercise the powers in subsection (4)(ka) without—
- (a) the consent of a person entitled to grant access to material on or accessible from the premises, or
  - (b) the authority of a warrant by virtue of Schedule 18 to this Act.

This is subject to subsections (7B) and (7C).

- (7B) An English or Welsh authorised person may exercise a power in subsection (4)(ka)(ii) to (ka)(iv) in relation to a thing without consent or the authority of a warrant if the person has reasonable grounds for believing that—
- (a) it is evidence of a failure to comply with any provision of the pollution control enactments or flood risk activity enactments, and
  - (b) exercising the power is necessary to prevent it being concealed, lost, altered or destroyed.

(7C) Subsection (7A) does not require consent or the authority of a warrant for doing something within the powers in subsection (4)(ka) if, and so far as, it may be done without them in exercise of another power conferred by subsection (4).

- (7D) Where anything seized or removed from premises under subsection (4)(ka) contains protected material, that material—
- (a) may not be used for the purposes of an examination or investigation under subsection (4)(c), and
  - (b) must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after it is identified as protected material.

(7E) Subsection (7D) does not prevent any part of a thing containing protected material which is not protected material being used for the purposes of an examination or investigation, retained or copied.

(7F) “Protected material” means—

- (a) material subject to legal professional privilege,

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- (b) excluded material within the meaning of section 11 of the Police and Criminal Evidence Act 1984, or
  - (c) journalistic material, within the meaning of section 13 of that Act, which is not excluded material.”
- (5) After subsection (12) insert—
- “(12A) Subject to subsection (7D), anything seized or removed under subsection (4)(ka) may be retained for so long as is necessary in all the circumstances.”
- (6) In subsection (15)—
- (a) after the definition of “authorised person” insert—
    - ““document” includes anything in which information of any description is recorded (by any means) and any part of such a thing;”;
  - (b) after the definition of “enforcing authority” insert—
    - ““English or Welsh authorised person” means a person authorised under subsection (1) or (2) by the Secretary of State, the Welsh Ministers, the Agency, the Natural Resources Body for Wales, a waste collection authority or a local enforcing authority in England or Wales;”;
  - (c) in the definition of “pollution control functions” in relation to a waste collection authority, in paragraph (a) after “46” insert “to 46D”.

**Commencement Information**

**I5** Sch. 10 para. 5 in force at 9.1.2022, see s. 147(2)(h)

- 6 (1) Schedule 18 (supplemental provision about powers of entry) is amended as follows.
- (2) In paragraph 2—
- (a) after sub-paragraph (2) insert—
    - “(2A) A justice of the peace may by warrant authorise an English or Welsh authorised person, designated for the purpose by the person who authorised them, to exercise the powers in section 108(4)(ka) in accordance with the warrant and, if need be, by force.
    - (2B) The justice may do so only if satisfied that there are reasonable grounds for believing that—
      - (a) there is material on or accessible from the premises in question which is likely to be of substantial value (by itself or together with other material) to an examination or investigation under section 108(4)(c), and
      - (b) it is impracticable to communicate with a person entitled to grant access to it, or access to it is unlikely to be granted unless a warrant is produced.”;
  - (b) omit sub-paragraph (3).
- (3) In paragraph 3 after “shall” insert “, if so required.”.

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**Commencement Information**

**I6** Sch. 10 para. 6 in force at 9.1.2022, see **s. 147(2)(h)**

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