

SCHEDULE 9

Regulation 20

Powers of enforcing authorities

PART 1

Powers of entry

1. An authorised person—
 - (a) may enter any premises for the purposes of ensuring that the provisions referred to in regulation 18(1) are being complied with; and
 - (b) must produce, if so required, a document showing his authority.
2. The power may be exercised—
 - (a) at all reasonable hours; or
 - (b) in an emergency, at any time and if need be by reasonable force.
3. An authorised person may take with him—
 - (a) such other persons as he considers necessary, including a constable;
 - (b) any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) any representative of the European Commission acting for the purpose of the enforcement of a Community obligation.
4. A person entering unoccupied premises must leave them as effectively secured against unauthorised entry as he found them.
5. Admission to any premises used only as a private dwelling-house must not be demanded as of right unless—
 - (a) 24 hours notice of the intended entry has been given to the occupier; or
 - (b) the entry is in accordance with a warrant.
6. The reference to “premises” in relation to powers of entry includes any—
 - (a) place;
 - (b) caravan, vehicle or trailer;
 - (c) container;
 - (d) stall or moveable structure;
 - (e) ship or aircraft.

PART 2

Warrants

1. If a justice of the peace, on sworn information in writing, is satisfied—
 - (a) that there are reasonable grounds to enter any premises; and
 - (b) that any of the conditions in paragraph 2 are met,he may by warrant signed by him authorise an authorised person and any other person to enter the premises, if need be by reasonable force.

Status: This is the original version (as it was originally made).

2. The conditions referred to in paragraph 1—
 - (a) admission to the premises has been refused, or a refusal is expected, and in either case that notice to apply for a warrant has been given to the occupier;
 - (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
 - (c) entry is required urgently;
 - (d) the premises are unoccupied or the occupier is temporarily absent.
3. A warrant continues in force for one month.
4. Reference to a justice of the peace—
 - (a) in Scotland includes a sheriff;
 - (b) in Northern Ireland is a reference to a lay magistrate.

PART 3

Powers on entry

1. An authorised person who has entered any premises in accordance with this Schedule may, on or in the vicinity of the premises,—
 - (a) carry out any examination or investigation;
 - (b) take measurements, photographs or recordings;
 - (c) take samples;
 - (d) dismantle any thing;
 - (e) subject any thing to any process or test;
 - (f) take possession of and detain any thing for so long as may be necessary—
 - (i) in relation to the exercise of any other powers under this Schedule;
 - (ii) to ensure that it is not tampered with before its examination is complete; or
 - (iii) to ensure that it is available for use in any proceedings;
 - (g) require the production of records or extracts of records and inspect and take copies of such records or extracts;
 - (h) require any person to afford him facilities and assistance in relation to matters within the control or responsibility of that person.
2. An authorised person must avoid destruction or damage to the premises or things within it unless that is necessary in the reasonable exercise of his powers.
3. If a person claims to be entitled to compensation in respect of the exercise of the powers under paragraph 1, such a claim—
 - (a) in England and Wales, must be referred to the arbitration of a single arbitrator appointed by agreement between the enforcing authority in question and the person who makes the claim or, in default of agreement, appointed by the Secretary of State;
 - (b) in Scotland, must be referred to the arbitration of an arbiter, appointed by agreement between the enforcing authority in question and the person who makes the claim or, in default of agreement, appointed by the Scottish Ministers; or
 - (c) in Northern Ireland, must be referred to and determined by the Lands Tribunal for Northern Ireland.

PART 4

Test purchases and testing

1. An authorised person may purchase any article or substance to determine whether or not the provisions referred to in regulation 18(1) have been complied with and may carry out such tests and examinations on the article or substance in order to do so.
2. An enforcing authority must comply with paragraph 3 if—
 - (a) it has acquired any article or substance under the provisions of this Schedule; and
 - (b) it commences, or causes to be commenced, any proceedings under these Regulations by reason of tests and examinations on such article or substance.
3. Where paragraph 2 applies, an enforcing authority must if requested to do so, and if it is practicable in the circumstances, allow—
 - (a) a person who is a party to the proceedings; and
 - (b) any other person with an interest in the article or substance,to have that article or substance tested.
4. An article or substance includes a listed product or any part of it.

PART 5

Notices

1. The enforcing authority may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.
2. If the enforcing authority is of the opinion that a person has contravened, is contravening or is likely to contravene the provisions referred to in regulation 18(1), the enforcing authority may serve on him a notice (an “enforcement notice”).
3. An enforcement notice must—
 - (a) state that the enforcing authority is of that opinion;
 - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
 - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
 - (d) specify the period within which those steps must be taken.
4. An enforcement notice may require that a listed product, or elements of it, is withdrawn from the market or from service.
5. The enforcing authority may withdraw an enforcement notice at any time.
6. If a person fails to comply with an enforcement notice, the enforcing authority may do what that person was required to do and may recover from him any expenses reasonably incurred in doing so.