

SCHEDULE 6

Powers of enforcement

PART 1

The Environment Agency, the Scottish Environment Protection Agency and the Department of the Environment

SECTION 1

Powers of entry and warrants

1. The powers of any authorised person are—
 - (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which that person has reason to believe it is necessary to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person's duty, a constable;
 - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation as may in any circumstances be necessary;
 - (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples, or cause samples to be taken, of any thing found in or on any premises which the authorised person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
 - (g) in the case of any thing found in or on any premises which the authorised person has power to enter and which appears to that person to be in contravention of a listed REACH provision, to cause it to be dismantled or subjected to any process or test (but not so as to destroy or damage it, unless that is necessary);
 - (h) in the case of any thing mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which the authorised person has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed; and
 - (iii) to ensure that it is available for use in any proceedings for an offence under regulation 11 or 13;
 - (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that

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person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of that person's answers;

- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect, and take copies of, or of any entry in, the records; and
- (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within the other person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by Part 1 of this Schedule.

2. Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of paragraph 1 must only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
 - (i) with the consent of the person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of section 2 of Part 1 of this Schedule.

3. Except in an emergency, where an authorised person proposes to enter any premises and—

- (a) entry has been refused and the authorised person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) the authorised person apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of paragraph 1 must only be effected under the authority of a warrant by virtue of section 2 of Part 1 of this Schedule.

4. In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, the powers under paragraph 1 have effect subject to section 6(3) of the Atomic Energy Authority Act 1954(1) (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911(2)).

5. Where an authorised person proposes to exercise the power conferred by paragraph 1(g), that person must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that other person.

6. Before exercising the power conferred by paragraph 1(g), an authorised person must consult—

- (a) such persons having duties on the premises where the thing is to be dismantled or subject to the process or test; and
- (b) such other persons,

as appear to the authorised person to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do or cause to be done under the power.

(1) 1954 c.32.

(2) 1911 c.28.

7. No answer given by a person in pursuance of a requirement imposed under paragraph 1(i) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

8. Nothing in paragraph 1 compels the production by any person of a document which—

- (a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or
- (b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

9. Section 2 of Part 1 of this Schedule has effect with respect to the powers of entry and related powers conferred by paragraph 1.

10. In this section—

“emergency” means a case in which it appears to the authorised person in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health; or
- (b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“premises” means any land, vehicle, vessel or plant which is designed to move or be moved whether on roads or otherwise.

SECTION 2

Warrants, evidence and compensation

11. If it is shown to the satisfaction, in England and Wales of a justice of the peace, in Scotland of the sheriff or a justice of the peace, or in Northern Ireland of a lay magistrate, on sworn information in writing—

- (a) that there are relevant grounds for the exercise in relation to any premises of the powers under paragraph 1; and
- (b) that one or more of the conditions specified in paragraph 12 is fulfilled in relation to those premises,

the justice, sheriff or lay magistrate may by warrant authorise an enforcing authority to designate a person who is authorised to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

12. The conditions mentioned in paragraph 11 are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

13. In a case where paragraph 12 applies, a justice of the peace, sheriff or lay magistrate must not issue a warrant under paragraph 11 by virtue only of being satisfied that the exercise of the power

in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless the justice of the peace, sheriff or lay magistrate is also satisfied that the notice required by that paragraph has been given and that the period of that notice has expired.

14. Every warrant under paragraph 11 continues in force until the purposes for which the warrant was issued have been fulfilled.

15. An authorised person must produce evidence of that person's authorisation or designation and other authority before exercising the power.

16. Information obtained in consequence of the exercise of the powers in paragraph 1, with or without the consent of any person is admissible in evidence against that or any other person.

17. Without prejudice to the generality of paragraph 16, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of the powers in paragraph 1, with or without the consent of any person in occupation of the premises, is admissible in evidence in any proceedings against that or any other person.

18. A person who, in exercise of the powers in paragraph 1, enters on any premises which are unoccupied or whose occupier is temporarily absent must leave the premises as effectively secured against trespassers as that person found them.

19. Where any person exercises any power conferred by paragraph 1(a) or (b), it is the duty of the enforcing authority under whose authorisation that person acts to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise of a power under paragraph 1 by the authorised person; or
- (b) the performance of, or failure of the authorised person to perform, the duty imposed under paragraph 18.

20. Compensation is not payable by virtue of paragraph 19 in respect of any loss or damage if—

- (a) it is attributable to the default of the person who sustained it; or
- (b) it is loss or damage in respect of which compensation is payable by virtue of any other enactment.

21. Any dispute as to a person's entitlement to compensation under paragraph 19, or as to the amount of any such compensation—

- (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 claims to have sustained the loss or damage 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 claims to have sustained the loss or damage 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.

22. An authorised person is not to be liable in any civil proceedings for anything done in the purported exercise of the powers under paragraph 1 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

SECTION 3

Seizure in cases of imminent danger of serious pollution

23. If an authorised person has entered any premises and has reasonable cause to believe that any thing there is a cause of imminent danger of serious pollution of the environment, the authorised person may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

24. An authorised person who exercises the power in paragraph 23 must as soon as possible prepare and sign a written report giving particulars of the circumstances in which the thing was seized and so dealt with and must—

- (a) give a signed copy of the report to a responsible person at the premises where the thing was found; and
- (b) unless the person is the owner of the thing, also serve a signed copy of the report on the owner.

25. If the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on the owner by giving it to the person to whom a copy was given under paragraph 24(a).

26. Where the powers under paragraph 23 are exercised, the enforcing authority is entitled to recover the costs it reasonably incurs from the person who knowingly caused or permitted the thing to become a cause of imminent danger of serious pollution of the environment.

SECTION 4

Notices

27. An authorised person may, by a 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.

28. If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene a listed REACH provision, the authorised person may serve on that person an enforcement notice.

29. An enforcement notice must—

- (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
- (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.

30. An enforcement notice may be withdrawn at any time.

31. If an authorised person is of the opinion that the activities of a person, in relation to a contravention or likely contravention of a listed REACH provision, are such that they involve an imminent danger of serious pollution of the environment, the authorised person may serve on that person a prohibition notice.

32. A prohibition notice must—

- (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
- (b) specify the danger involved in the activity; and

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(c) specify the steps that must be taken to remove it and the period within which they must be taken.

33. A prohibition notice may be withdrawn at any time.

34. If a person fails to comply with an enforcement notice or prohibition notice, the enforcing authority may do what that person was required to do and may recover from that person any expenses reasonably incurred in doing so.

35. References in this Part to an “enforcement notice” or a “prohibition notice” have effect only for the purposes of this Part.