



Environment Act 1995

1995 CHAPTER 25

PART V

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

Powers of entry

108 Powers of enforcing authorities and persons authorised by them.

- (1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose—
 - (a) of determining whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with;
 - (b) of exercising or performing one or more of the pollution control functions of that authority; or
 - (c) of determining whether and, if so, how such a function should be exercised or performed.
- (2) A person who appears suitable to the Agency or SEPA may be authorised in writing by the Agency or, as the case may be, SEPA to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose of enabling the Agency or, as the case may be, SEPA to carry out any assessment or prepare any report which the Agency or, as the case may be, SEPA is required to carry out or prepare under section 5(3) or 33(3) above.
- (3) Subsection (2) above only applies where the Minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the requirement or at any later time, notified the Agency or, as the case may be, SEPA that the assessment or report appears to him to relate to an incident or possible incident involving or having the potential to involve—
 - (a) serious pollution of the environment,
 - (b) serious harm to human health, or

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- (c) danger to life or health.
- (4) The powers which a person may be authorised to exercise under subsection (1) or (2) above are—
- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
 - (b) on entering any premises by virtue of paragraph (a) above, to take with him—
 - (i) 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 his duty, a constable; and
 - (ii) 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 he 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 paragraph (c) above;
 - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
 - (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he 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 article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
 - (h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;
 - (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated by that 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 his answers;

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- (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
 - (i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or
 - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,and to inspect and take copies of, or of any entry in, the records;
 - (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that 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 him by this section;
 - (m) any other power for—
 - (i) a purpose falling within any paragraph of subsection (1) above, or
 - (ii) any such purpose as is mentioned in subsection (2) above,which is conferred by regulations made by the Secretary of State.
- (5) The powers which by virtue of subsections (1) and (4) above are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made,—
- (a) to carry out experimental borings or other works on those premises; and
 - (b) to install, keep or maintain monitoring and other apparatus there.
- (6) 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 this section shall 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 a person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of Schedule 18 to this Act.
- (7) Except in an emergency, where an authorised person proposes to enter any premises and—
- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
 - (b) he 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 this section shall only be effected under the authority of a warrant by virtue of Schedule 18 to this Act.
- (8) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (4) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the ^{M1}purposes of the ^{M2}Official Secrets Act 1911).

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- (9) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (4)(f) above.
- (10) Where an authorised person proposes to exercise the power conferred by subsection (4)(g) above in the case of an article or substance found on any premises, he shall, 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 person.
- (11) Before exercising the power conferred by subsection (4)(g) above in the case of any article or substance, an authorised person shall consult—
- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
 - (b) such other persons,
- as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.
- (12) No answer given by a person in pursuance of a requirement imposed under subsection (4)(j) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings.
- (13) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.
- (14) Schedule 18 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.
- (15) In this section—
- “authorised person” means a person authorised under subsection (1) or (2) above;
- “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;
- “enforcing authority” means—
- (a) the Secretary of State;
 - (b) the Agency;
 - (ba) [F1a waste collection authority;]
 - (c) SEPA; or
 - (d) a local enforcing authority;
- “local enforcing authority” means—

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- (a) a local enforcing authority, within the meaning of Part I of the ^{M3}Environmental Protection Act 1990;
- (b) a local authority, within the meaning of Part IIA of that Act, in its capacity as an enforcing authority for the purposes of that Part;
- (c) a local authority for the purposes of Part IV of this Act or regulations under that Part;
- (d) [^{F2}a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales;]

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise;

“pollution control enactments”, in relation to an enforcing authority, means the enactments and instruments relating to the pollution control functions of that authority;

“pollution control functions”, in relation to the Agency or SEPA, means the functions conferred or imposed on it by or under—

- (a) the Alkali, &c, Works Regulation Act 1906;
- (b) Part III of the ^{M4}Rivers (Prevention of Pollution) (Scotland) Act 1951;
- (c) the Rivers (Prevention of Pollution) (Scotland) Act 1965;
- (d) Part I of the ^{M5}Health and Safety at Work etc. Act 1974;
- (e) Parts I, IA and II of the ^{M6}Control of Pollution Act 1974;
- (f) the Control of Pollution (Amendment) Act 1989;
- (g) Parts I, II and IIA of the ^{M7}Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
- (h) Chapter III of Part IV of the ^{M8}Water Industry Act 1991 (special category effluent);
- (j) Part III and sections 161 to 161D of the ^{M9}Water Resources Act 1991;
- (k) section 19 of the ^{M10}Clean Air Act 1993;
- (l) the Radioactive Substances Act 1993;
- (m) regulations made by virtue of section 2(2) of the ^{M11}European Communities Act 1972, to the extent that the regulations relate to pollution;
- (n) [^{F3}in relation to SEPA, regulations under section 2 of the Pollution Prevention and Control Act 1999;]

[^{F4}and, in relation to the Agency, includes the functions conferred or imposed on, or transferred to, it under section 2 of the Pollution Prevention and Control Act 1999;]

[^{F5}“pollution control functions”, in relation to a waste collection authority, means the functions conferred on it by section 59 of the Environmental Protection Act 1990;]

“pollution control functions”, in relation to a local enforcing authority, means the functions conferred or imposed on, or transferred to, that authority—

- (a) by or under Part I or IIA of the ^{M12}Environmental Protection Act 1990;
- (b) by or under regulations made by virtue of Part IV of this Act; or
- (c) by or under regulations made by virtue of section 2(2) of the ^{M13}European Communities Act 1972, to the extent that the regulations relate to pollution;

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[^{F6}and, in relation to an authority in England or Wales, includes the functions conferred or imposed on, or transferred to, that authority under section 2 of the Pollution Prevention and Control Act 1999;]

“pollution control functions”, in relation to the Secretary of State, means any functions which are conferred or imposed upon him by or under any enactment or instrument and which relate to the control of pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

[^{F7}“waste collection authority” shall be construed in accordance with section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990.]

- (16) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

Textual Amendments

- F1** Words in s. 108(15) inserted (E.W.) (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(7\)](#), 93; [S.I. 2004/690](#), [art. 3\(h\)](#); [S.I. 2004/999](#), [art. 2\(m\)](#)
- F2** S. 108(15): para. (d) in definition of “local enforcing authority” inserted (E.W.) inserted (1.8.2000) by [S.I. 2000/1973](#), [reg. 39](#), [Sch. 10 para. 16\(a\)](#)
- F3** S. 108(15): para. (n) in the definition of “pollution control functions” inserted (S.) (28.9.2000) by [S.S.I. 2000/323](#), [regs. 1\(1\)](#), 36, [Sch. 10 para. 5\(3\)](#)
- F4** S. 108(15): words in definition of “pollution control functions” in relation to the Environment Agency inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), [reg. 39](#), [Sch. 10 para. 16\(b\)](#)
- F5** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(8\)](#), 93; [S.I. 2004/690](#), [art. 3\(h\)](#); [S.I. 2004/999](#), [art. 2\(m\)](#)
- F6** S. 108(15): words in definition of “pollution control functions” in relation to a local enforcing authority inserted (E.W.) (1.8.2000) by [S.I. 2000/1973](#), [reg. 39](#), [Sch. 10 para. 16\(c\)](#)
- F7** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by [Anti-social Behaviour Act 2003 \(c. 38\)](#), [ss. 55\(9\)](#), 93; [S.I. 2004/690](#), [art. 3\(h\)](#); [S.I. 2004/999](#), [art. 2\(m\)](#)

Modifications etc. (not altering text)

- C1** S. 108 applied (with modifications) (1.4.1999) by [S.I. 1999/743](#), [art. 20\(4\)](#)
- C2** S. 108 excluded by [1991 c. 57, s. 172\(3A\)](#) (as added (1.4.1996) by [1995 c. 25, Sch. 22 para. 166](#); [S.I. 1996/186](#), [art. 3](#))
- C3** S. 108(4): power to appoint person to exercise powers conferred (27.7.1999) by [1999 c. 24, ss. 1, 2, Sch. 1 Pt. I para. 14\(2\)](#)
- C4** S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by [S.I. 1997/648](#), [reg. 28\(2\)](#)
- C5** S. 108(4)(a)-(l) applied (with modifications) (2.8.2004) by [The Justification of Practices Involving Ionising Radiation Regulations 2004 \(S.I. 2004/1769\)](#), [reg. 1](#), [Sch. 1 paras. 1, 2](#) (with [reg. 2](#))
- C6** S. 108(6)(7) applied (with modifications) (6.3.1997) by [S.I. 1997/648](#), [reg. 28\(3\)](#)
- C7** S. 108(12)(13) applied (6.3.1997) by [S.I. 1997/648](#), [reg. 28\(4\)](#)
- C8** S. 108(15) applied (E.W.) (27.6.2000) by [S.I. 2000/1460](#), [reg. 3](#), [Sch. 1 para. 9](#)

Marginal Citations

- M1** 1911 c. 28.
M2 1954 c. 32.
M3 1990 c. 43.
M4 1951 c. 66.
M5 1974 c. 37.
M6 1974 c. 40.
M7 1990 c. 43.

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M8 1991 c. 56.

M9 1991 c. 57.

M10 1993 c. 11.

M11 1972 c. 68.

M12 1990 c. 43.

M13 1972 c. 68.

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