
Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, Paragraph 5. (See end of Document for details)

SCHEDULES

SCHEDULE 10

ENFORCEMENT POWERS

- 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)—
- (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.

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- (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,
 - (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

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

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