



Environment Act 1995

1995 CHAPTER 25

PART V **U.K.**

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

Powers of entry

108 Powers of enforcing authorities and persons authorised by them. **E+W+S**

- (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; ^[F1]or
 - (c) of determining whether and, if so, how such a function should be exercised or performed.
 - ^[F2](d) of determining whether any of the following offences are being or have been committed—
 - (i) an offence under section 110 of this Act;
 - (ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);
 - (iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;
 - (iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or
 - (e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in

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subsection (1A) below which the authorised person reasonably believes is being or has been committed.]

[^{F3}(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act).]

(2) A person who appears suitable to the Agency [^{F4}, the Natural Resources Body for Wales] or SEPA may be authorised in writing by the Agency [^{F4}, the Natural Resources Body for Wales] 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 [^{F4}, the Natural Resources Body for Wales] or, as the case may be, SEPA to carry out any assessment or prepare any report which the Agency [^{F4}, the Natural Resources Body for Wales] 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 [^{F5}, the Natural Resources Body for Wales] 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
- (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

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- 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;
 - [^{F6}(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;]
- (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—
- [^{F7}(i)] 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[^{F8}; and
 - (ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;]
- [^{F9}(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person's name, address and date of birth;]
- (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;
- [^{F10}(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—
- (i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he reasonably believes is being or has been committed; or
 - (ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;]

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- (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 [^{F11}, or whether an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 is being, or has been, committed,] 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) [^{F12}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.
- [^{F13}(7A) An authorised person may not exercise the power in subsection (4)(ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.
- (7B) Section 108A applies where documents are removed under that power.
- (7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
- (7D) The information may not be used—
- (a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or

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- (b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.
- (7E) The document 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 the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).]
- (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).
- (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^{F14}, except in a case where the proceedings relate to—
- (a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
 - (b) another offence where in giving evidence the person makes a statement inconsistent with the answer.]
- (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;

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[^{F15}“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing;]

[^{F16}“domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990;]

“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;
- (bza) [^{F17}the Natural Resources Body for Wales;]
- (ba) [^{F18}a waste collection authority;]
- (c) SEPA; or
- (d) a local enforcing authority;

[^{F19}“English waste collection authority” has the same meaning as in section 45A of the Environmental Protection Act 1990;]

“local enforcing authority” means—

- (a) [^{F20}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) [^{F21}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 ^{M4}enactments and instruments relating to the ^{M5}pollution control functions of that authority [^{F22}(including any enactments comprised in, or in instruments made under, an Act of the Scottish Parliament relating to those functions).]

“pollution control functions”, in relation to the ^{M6}Agency [^{F23}, the Natural Resources Body for Wales] or SEPA, means the ^{M7}functions conferred or imposed on it by or under—

- (a) [^{F24}the Alkali, &c, Works Regulation Act 1906;]
- (b) ^{F25} ...
- (c) ^{F25} ...
- (d) ^{F26} ...
- (e) Parts I, IA and II of the ^{M8}Control of Pollution Act 1974;
- (f) the Control of Pollution (Amendment) Act 1989;

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- (g) Parts^{F20} I, II and IIA of the ^{M9}Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
- (h) Chapter III of Part IV of the ^{M10}Water Industry Act 1991 (special category effluent);
- (j) Part III and sections 161 to 161D of the ^{M11}Water Resources Act 1991;
- (k) section 19 of the ^{M12}Clean Air Act 1993;
- (l) ^{F27} ...
- (m) regulations made by virtue of section 2(2) of the ^{M13}European Communities Act 1972, to the extent that the regulations relate to pollution;
- (n) [^{F28} in relation to SEPA, regulations under section 2 of the Pollution Prevention and Control Act 1999 [^{F29} or section 18 of the Regulatory Reform (Scotland) Act 2014];]
- (o) [^{F30} regulations made by virtue of section 78YC of the Environmental Protection Act 1990;]

[^{F31} and, in relation to the Agency [^{F32} or the Natural Resources Body for Wales], includes the functions conferred or imposed on, or transferred to, it under section 2 of the Pollution Prevention and Control Act 1999 [^{F33} but, in relation to the Natural Resources Body for Wales, does not include any functions which were exercisable by the Countryside Council for Wales or the Forestry Commissioners immediately before 1 April 2013 and are functions of that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013;];]

[^{F34} “pollution control functions”, in relation to a waste collection authority, means [^{F35}—

((a)) in relation to an English waste collection authority, the functions conferred or imposed on it by or under Part 2 of the Environmental Protection Act 1990 (other than sections 45, 45A and 46 of that Act so far as relating to the collection of household waste from domestic property); and

((b)) in relation to any other waste collection authority,]

the functions [^{F36} conferred on it by section 59][^{F36} conferred or imposed on it by or under Part 2] 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^{F20} I or] IIA of the ^{M14}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 ^{M15}European Communities Act 1972, to the extent that the regulations relate to pollution; [^{F37} or

(d) by or under regulations made by virtue of section 78YC of the Environmental Protection Act 1990;]

[^{F38} 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 [^{F39} (including any enactment comprised in, or in an instrument

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made under, an Act of the Scottish Parliament)] and which relate to the control of pollution;

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

[^{F40} “ 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** Word in s. 108(1) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(a)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F2** S. 108(1)(d)(e) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(a)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F3** S. 108(1A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(b)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F4** Words in s. 108(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 382(2)** (with Sch. 7)
- F5** Words in s. 108(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 382(2)** (with Sch. 7)
- F6** S. 108(4)(h)(iv) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F7** S. 108(4)(j) renumbered as s. 108(4)(j)(i) (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F8** S. 108(4)(j)(ii) and word inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F9** S. 108(4)(ja) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(iii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F10** S. 108(4)(ka) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(iv)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F11** Words in s. 108(5) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(d)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F12** S. 108(6)(a) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(e)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F13** S. 108(7A)-(7E) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(f)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F14** Words in s. 108(12) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(g)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F15** Words in s. 108(15) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(h)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F16** Words in s. 108(15) inserted (E.W.) (1.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 2 para. 3(2)** (with s. 97)
- F17** Words in s. 108(15) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 382(3)(a)** (with Sch. 7)
- F18** 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)
- F19** Words in s. 108(15) inserted (E.W.) (1.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 2 para. 3(3)** (with s. 97)
- F20** Words in s. 108(15) repealed (1.4.2015 for S.) by [Pollution Prevention and Control Act 1999 \(c. 24\)](#), s. 7(3), **Sch. 3**; S.S.I. 2015/74, art. 2(2)(g)

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- F21** 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)**
- F22** Words in s. 108(15) added (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 43(10)(a)**; S.S.I. 2014/160, art. 2(1)(2)
- F23** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(i)** (with Sch. 7)
- F24** Words in s. 108(15) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(h)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F25** Words in s. 108(15) omitted (1.4.2006) by virtue of The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), **sch. Pt. 4 para. 8(4)**
- F26** Words in s. 108(15) repealed (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **6(3)**
- F27** Words in s. 108(15) repealed (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 13(5), **Sch. 28** (with reg. 1(2), Sch. 4)
- F28** 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)**
- F29** Words in s. 108(15) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 5(3)**; S.S.I. 2014/160, art. 2(1)(2)
- F30** Words in s. 108(15) inserted (S.) (1.4.2007 for specified purposes, 30.10.2007 in so far as not already in force) by The Radioactive Contaminated Land (Scotland) Regulations 2007 (S.S.I. 2007/179), reg. 1(1)(2), **16(a)**
- F31** 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)**
- F32** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(ii)** (with Sch. 7)
- F33** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(iii)** (with Sch. 7)
- F34** 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)
- F35** Words in s. 108(15) inserted (E.W.) (1.7.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 2 para. 3(4)** (with s. 97)
- F36** Words in s. 108(15) substituted (E.W.) (18.10.2005 for E., 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 53**, 108(1)(2); S.I. 2005/2896, art. 3(h); S.I. 2006/768, art. 2(b)
- F37** Words in s. 108(15) inserted (S.) (1.4.2007 for specified purposes, 30.10.2007 in so far as not already in force) by The Radioactive Contaminated Land (Scotland) Regulations 2007 (S.S.I. 2007/179), reg. 1(1)(2), **16(b)**
- F38** 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)**
- F39** Words in s. 108(15) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 43(10)(b)**; S.S.I. 2014/160, art. 2(1)(2)
- F40** 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 restricted (21.4.2005) by The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925), **reg. 3(4)** (with reg. 3)
- C4** S. 108 extended (12.7.2007) by The Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711), reg. 1, **Sch. 5 para. 1** (with reg. 3)

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- C5 S. 108 applied (E.) (1.3.2009) by The Environmental Damage (Prevention and Remediation) Regulations 2009 (S.I. 2009/153), regs. 1(1), **31(2)**
- C6 S. 108 applied by SI 2005/2773, reg. 7(4A) (as inserted (E.) (23.12.2009) by The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) (England) Regulations 2009 (S.I. 2009/3145), regs. 1, **2**)
- C7 S. 108 extended (20.7.2011) by The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (S.I. 2011/1543), regs. 1(2), **8(3)** (with reg. 1(3))
- C8 S. 108 modified (24.3.2012) by The Bathing Water Regulations 2008 (S.I. 2008/1097), regs. 1(3)(e), **16(4)**
- C9 S. 108 applied (27.7.2012) by The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 (S.I. 2012/1715), regs. 1, **6(2)** (with reg. 3)
- C10 S. 108 extended (7.3.2015) by The Ozone-Depleting Substances Regulations 2015 (S.I. 2015/168), regs. 1(2), **13(3)** (with reg. 12(7))
- C11 S. 108 applied (E.) (19.7.2015) by The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810), regs. 1(1), **31(2)** (with regs. 4-8)
- C12 S. 108(4): power to appoint person to exercise powers conferred (27.7.1999) by 1999 c. 24, ss. 1, 2, **Sch. 1 Pt. 1 para. 14(2)**
- C13 S. 108(4) modified (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(2)**
- C14 S. 108(4) modified (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(2)**
- C15 S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(2)**
- C16 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)
- C17 S. 108(6)(7) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(3)**
- C18 S. 108(6)(7) applied (with modifications) (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(3)**
- C19 S. 108(6)(7) applied (with modifications) (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(3)**
- C20 S. 108(12)(13) applied (6.3.1997) by S.I. 1997/648, **reg. 28(4)**
- C21 S. 108(12)(13) applied (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(4)**
- C22 S. 108(12)(13) applied (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(4)**
- C23 S. 108(15) applied (E.W.) (27.6.2000) by S.I. 2000/1460, reg. 3, **Sch. 1 para. 9**
- C24 S. 108(15) modified (W.) (10.12.2006) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988), regs. 1(2), **18**

Marginal Citations

- M1 1911 c. 28.
- M2 1954 c. 32.
- M3 1990 c. 43.
- M4 1993 c. 12.
- M5 1989 c. 14.
- M6 1965 c. 13.
- M7 1906 c. 14.
- M8 1974 c. 40.
- M9 1990 c. 43.
- M10 1991 c. 56.
- M11 1991 c. 57.
- M12 1993 c. 11.
- M13 1972 c. 68.
- M14 1990 c. 43.

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M15 1972 c. 68.

[^{F41}108A Procedure where documents removed S

- (1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4)(ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.
- (2) The persons are—
 - (a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;
 - (b) a person who had possession or control of the documents immediately before they were removed.
- (3) The authorised person shall provide the record within a reasonable time of the request for it.
- (4) A person who had possession or control of documents immediately before they were removed may apply to SEPA—
 - (a) for access to the documents; or
 - (b) for a copy of them.
- (5) SEPA shall—
 - (a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or
 - (b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.
- (6) But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—
 - (a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or
 - (b) any criminal proceedings which may be brought as a result of any such investigation.
- (7) In subsection (5) above, “supervised access” means access under the supervision of a person approved by SEPA.
- (8) A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.
- (9) An application under subsection (8) above—
 - (a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;
 - (b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.

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- (10) The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.]

Textual Amendments

F41 S. 108A inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), ss. **46(3)**, 61(2); [S.S.I. 2014/160](#), art. 2(1)(2)

109 Power to deal with cause of imminent danger of serious pollution etc. **E+W+S**

- (1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) As soon as may be after any article or substance has been seized and rendered harmless under this section, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—
- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
 - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;
- and if, where paragraph (b) above applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.
- (3) In this section, “authorised person” has the same meaning as in section 108 above.

110 Offences. **E+W+S**

- (1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.
- (2) It is an offence for a person, without reasonable excuse,—
- (a) to fail to comply with any requirement imposed under section 108 above;
 - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or
 - (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section.
- (3) It is an offence for a person falsely to pretend to be an authorised person.
- (4) A person guilty of an offence under subsection (1) above shall be liable—
- (a) in the case of an offence of [^{F42}assaulting, hindering or] obstructing an authorised person in the execution of his powers under section 109 above—

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- (i) on summary conviction, to a fine not exceeding the statutory maximum [^{F43} or to imprisonment for a term not exceeding 12 months, or to both];
 - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
 - (b) in any other case, on summary conviction, to a fine not exceeding [^{F44} level 5 on the standard scale] [^{F44} the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to imprisonment for a term not exceeding 12 months, or to both].
- (5) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [^{F45}(5A) A person may be convicted of the offence under subsection (1) above of hindering or obstructing even though it is—
- (a) effected by means other than physical means, or
 - (b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by an authorised person.
- (5B) Subsection (5C) applies where, in the trial of a person (“the accused”) charged in summary proceedings with an offence under subsection (1) above, the court—
- (a) is not satisfied that the accused committed the offence, but
 - (b) is satisfied that the accused committed an offence under subsection (2) above.
- (5C) The court may acquit the accused of the charge and, instead, find the accused guilty of an offence under subsection (2) above.]
- (6) In this section—
- “authorised person” means a person authorised under section 108 above and includes a person designated under paragraph 2 of Schedule 18 to this Act;
 - “powers and duties” includes powers or duties exercisable by virtue of a warrant under Schedule 18 to this Act.

Textual Amendments

- F42** Words in s. 110(4)(a) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 29\(6\)\(b\)\(i\)](#) (with [sch. 3 para. 30](#)); S.S.I. 2014/160, art. 2(1)(2)
- F43** Words in s. 110(4)(a)(i) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 29\(6\)\(b\)\(ii\)](#) (with [sch. 3 para. 30](#)); S.S.I. 2014/160, art. 2(1)(2)
- F44** Words in s. 110(4)(b) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 29\(6\)\(b\)\(iii\)](#) (with [sch. 3 para. 30](#)); S.S.I. 2014/160, art. 2(1)(2)
- F45** S. 110(5A)-(5C) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 29\(6\)\(c\)](#); S.S.I. 2014/160, art. 2(1)(2)

Modifications etc. (not altering text)

- C25** S. 110 applied by [S.I. 2005/2773](#), [reg. 7\(4A\)](#) (as inserted (E.) (23.12.2009) by [The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products \(Amendment\) \(England\) Regulations 2009 \(S.I. 2009/3145\)](#), regs. 1, 2)
- C26** S. 110 applied (27.7.2012) by [The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 \(S.I. 2012/1715\)](#), regs. 1, [6\(2\)](#) (with reg. 3)

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