



Environment Act 1995

1995 CHAPTER 25

PART V

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

[^{F1}Powers of Entry][^{F1}Enforcement]

Textual Amendments

- F1** S. 108 cross-heading substituted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), [Sch. 2 para. 2](#)

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

- (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 [^{F2}or flood risk activity 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 [^{F3}or flood risk activity functions] of that authority;
 - (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 [^{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

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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;
 - [^{F6}(g) in the case of any article or substance found in or on any premises which the person has power to enter, being an article or substance which appears to that person to have caused or to be likely to cause—
 - (i) pollution of the environment,
 - (ii) harm to the environment,
 - (iii) flooding,
 - (iv) harm to human health, or
 - (v) a detrimental impact on drainage,
 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—

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- (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 [^{F7}or flood risk activity 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.
 - (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 [^{F8}or flood risk activity 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;
 - [^{F9}(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;]
 - (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 [^{F10}or flood risk activity

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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—

- ^{F11}(a)
- (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.

^{F12}(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.

(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.

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- (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.]
- (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.
- [^{F13}(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.]
- (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—

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“authorised person” means a person authorised under subsection (1) or (2) above;

[^{F14}“document” includes anything in which information of any description is recorded (by any means) and any part of such a thing;]

[^{F15}“domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990;]

[^{F16}“emergency” means a case in which it appears to the authorised person in question—

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

and for this purpose “serious harm” means—

- (i) serious pollution of the environment,
- (ii) serious harm to the environment,
- (iii) serious flooding,
- (iv) serious harm to human health, or
- (v) a serious detrimental impact on drainage;]

“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 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;]

[^{F20}“English waste collection authority” has the same meaning as in section 45A of the Environmental Protection Act 1990;]

[^{F21}“flood risk activity enactment”, in relation to an enforcing authority, means an enactment relating to the flood risk activity functions of that authority;

“flood risk activity functions”, in relation to the Agency or the Natural Resources Body for Wales, means the functions relating to flood risk activities conferred or imposed on it by or under regulations made under section 61 of the Water Act 2014;]

“local enforcing authority” means—

- (a) [^{F22}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;

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- (d) a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales [^{F23}or regulations under section 61 of the Water Act 2014];

“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;

“pollution control functions”, in relation to the ^{M6}Agency [^{F24}, the Natural Resources Body for Wales] or SEPA, means the ^{M7}functions conferred or imposed on it by or under—

- (a) 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;
- (g) Parts [^{F22} 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) [^{F28}EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;]

[^{F29}and, in relation to the Agency [^{F30}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 [^{F31}or regulations under section 61 of the Water Act 2014][^{F32}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;];]

[^{F33} “pollution control functions”, in relation to a waste collection authority, means [^{F34}—

- (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 [^{F35}to 46D]) 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—

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- (a) by or under Part ^{F22} I or] IIA of the ^{M13}Environmental Protection Act 1990;
- (b) by or under regulations made by virtue of Part IV of this Act; or
- (c) ^{F37}by or under EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;]

^{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 and which relate to the control of pollution;

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

^{F39} “ 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.]

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

- F2** Words in s. 108(1)(a) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(a)(i)** (with regs. 31-33)
- F3** Words in s. 108(1)(b) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(a)(ii)** (with regs. 31-33)
- 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)(g) substituted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(i)** (with regs. 31-33)
- F7** Words in s. 108(4)(h)(iii) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(ii)** (with regs. 31-33)
- F8** Words in s. 108(4)(k)(i) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(iii)** (with regs. 31-33)
- F9** S. 108(4)(ka) inserted (E.W.) (9.1.2022) by [Environment Act 2021 \(c. 30\)](#), s. 147(2)(h), **Sch. 10 para. 5(2)** (with s. 144)
- F10** Words in s. 108(5) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(c)** (with regs. 31-33)

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- F11** S. 108(6)(a) omitted (E.W.) (9.1.2022) by virtue of Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(3)** (with s. 144)
- F12** S. 108(7A)-(7F) inserted (E.W.) (9.1.2022) by Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(4)** (with s. 144)
- F13** S. 108(12A) inserted (E.W.) (9.1.2022) by Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(5)** (with s. 144)
- F14** Words in s. 108(15) inserted (E.W.) (9.1.2022) by Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(6)(a)** (with s. 144)
- F15** 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)
- F16** Words in s. 108(15) substituted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(3)(d)(i)** (with regs. 31-33)
- 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.) (9.1.2022) by Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(6)(b)** (with s. 144)
- F20** 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)
- F21** Words in s. 108(15) inserted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(3)(d)(ii)** (with regs. 31-33)
- F22** 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)
- F23** Words in s. 108(15) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(2)(a)**
- F24** 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)
- 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** Words in s. 108(15) substituted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), **3(12)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F29** 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)**
- F30** 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)
- F31** Words in s. 108(15) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(2)(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)(iii)** (with Sch. 7)
- F33** 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)
- F34** 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)
- F35** Words in s. 108(15) inserted (E.W.) (9.1.2022) by Environment Act 2021 (c. 30), s. 147(2)(h), **Sch. 10 para. 5(6)(c)** (with s. 144)

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- 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) substituted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), **3(12)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- 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 (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)
- 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 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **9(4)(5)** (with reg. 1(2))
- C13** S. 108 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **27(3)** (with reg. 1(2))
- C14** 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)**
- C15** 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)**
- C16** 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)**
- C17** S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(2)**
- C18** 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)
- C19** S. 108(6)(7) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(3)**
- C20** 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)**
- C21** 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)**
- C22** S. 108(12)(13) applied (6.3.1997) by S.I. 1997/648, **reg. 28(4)**

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- C23** 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)**
- C24** 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)**
- C25** S. 108(15) applied (E.W.) (27.6.2000) by [S.I. 2000/1460](#), reg. 3, **Sch. 1 para. 9**
- C26** 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 1990 c. 43.

108 Powers of enforcing authorities and persons authorised by them. **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; [^{F49}or]
 - (c) of determining whether and, if so, how such a function should be exercised or performed.
 - [^{F50}(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 subsection (1A) below which the authorised person reasonably believes is being or has been committed.]

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- [^{F51}(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 [^{F52}, the Natural Resources Body for Wales] or SEPA may be authorised in writing by the Agency [^{F52}, 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 [^{F52}, 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 [^{F52}, 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 [^{F53}, 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 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);

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- (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;
 - [^{F54}(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—
 - [^{F55}(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 [^{F56}; 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;]
- [^{F57}(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;
- [^{F58}(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;]
- (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

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- 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 [^{F59}, 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—
- ^{F60}(a)
- (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.
- [^{F61}(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
 - (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

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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 ^{M14}purposes of the ^{M15}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 [^{F62}, 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;
 - [^{F63}“document” includes anything in which information of any description is recorded (by any means) and any part of such a thing;]
 - “emergency” means a case in which it appears to the authorised person in question—

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- (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) [^{F64}the Natural Resources Body for Wales;]
- (c) SEPA; or
- (d) a local enforcing authority;

“local enforcing authority” means—

- (a) [^{F65}a local enforcing authority, within the meaning of Part I of the ^{M16}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) a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales [^{F66}or regulations under section 61 of the Water Act 2014];

“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 ^{M17}enactments and instruments relating to the ^{M18}pollution control functions of that authority [^{F67}(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 ^{M19}Agency [^{F68}, the Natural Resources Body for Wales] or SEPA, means the ^{M20}functions conferred or imposed on it by or under—

- (a) [^{F69}the Alkali, &c, Works Regulation Act 1906;]
- (b) ^{F70} ...
- (c) ^{F70} ...
- (d) ^{F71} ...
- (e) Parts I, IA and II of the ^{M21}Control of Pollution Act 1974;
- (f) the Control of Pollution (Amendment) Act 1989;
- (g) Parts [^{F65} I,] II and IIA of the ^{M22}Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
- (h) Chapter III of Part IV of the ^{M23}Water Industry Act 1991 (special category effluent);
- (j) Part III and sections 161 to 161D of the ^{M24}Water Resources Act 1991;
- (k) section 19 of the ^{M25}Clean Air Act 1993;
- (l) ^{F72} ...
- (m) [^{F73}EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;]

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- (n) [^{F74} in relation to SEPA , regulations under section 2 of the Pollution Prevention and Control Act 1999 [^{F75} or section 18 of the Regulatory Reform (Scotland) Act 2014];]
- (o) [^{F76} regulations made by virtue of section 78YC 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 [^{F65} I or] IIA of the ^{M26}Environmental Protection Act 1990;
- (b) by or under regulations made by virtue of Part IV of this Act; or
- (c) [^{F77} by or under EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;] [^{F78} or
- (d) by or under regulations made by virtue of section 78YC of the Environmental Protection Act 1990;]

“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 [^{F79} (including any enactment comprised in, or in an instrument 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.

[^{F80} “ 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.

Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

- F49** 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)
- F50** 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)
- F51** 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)
- F52** 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)
- F53** 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)
- F54** 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)
- F55** 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)
- F56** 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)

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- F57** 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)
- F58** 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)
- F59** 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)
- F60** 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)
- F61** 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)
- F62** 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)
- F63** 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)**
- F64** 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)
- F65** 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)
- F66** Words in s. 108(15) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(2)(a)**
- F67** 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)
- F68** 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)
- F69** 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)
- F70** Words in s. 108(15) omitted (S.) (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)**
- F71** 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)**
- F72** Words in s. 108(15) repealed (S.) (1.9.2018) by The Environmental Authorisations (Scotland) Regulations 2018 (S.S.I. 2018/219), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)
- F73** Words in s. 108(15) substituted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), **3(12)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F74** 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)**
- F75** 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)
- F76** 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)**
- F77** Words in s. 108(15) substituted (31.12.2020) by The Environment (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/458), regs. 1(1), **3(12)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F78** 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)**
- F79** 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)
- F80** 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)

- C34** S. 108 applied (with modifications) (1.4.1999) by S.I. 1999/743, **art. 20(4)**

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- C35** 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**)
- C36** 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)
- C37** 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)
- C38** 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)**
- C39** 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**)
- C40** 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))
- C41** S. 108 modified (24.3.2012) by The Bathing Water Regulations 2008 (S.I. 2008/1097), regs. 1(3)(e), **16(4)**
- C42** 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)
- C43** 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))
- C44** 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)
- C45** S. 108 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **9(4)(5)** (with reg. 1(2))
- C46** S. 108 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **27(3)** (with reg. 1(2))
- C47** 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)**
- C48** 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)**
- C49** 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)**
- C50** S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(2)**
- C51** 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)
- C52** S. 108(6)(7) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(3)**
- C53** 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)**
- C54** 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)**
- C55** S. 108(12)(13) applied (6.3.1997) by S.I. 1997/648, **reg. 28(4)**
- C56** 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)**
- C57** 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)**
- C58** S. 108(15) applied (27.6.2000) by S.I. 2000/1460, reg. 3, **Sch. 1 para. 9**
- C59** 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

- M14** 1911 c. 28.
M15 1954 c. 32.
M16 1990 c. 43.
M17 1993 c. 12.

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M18 1989 c. 14.
M19 1965 c. 13.
M20 1906 c. 14.
M21 1974 c. 40.
M22 1990 c. 43.
M23 1991 c. 56.
M24 1991 c. 57.
M25 1993 c. 11.
M26 1990 c. 43.

^{F40}108A Procedure where documents removed

- (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—

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- (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.
- (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

F40 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)

Modifications etc. (not altering text)

C27 S. 108A applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))

109 Power to deal with cause of imminent danger of serious pollution etc.

- (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.

Modifications etc. (not altering text)

C28 S. 109 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **9(4)(5)** (with reg. 1(2))

C29 S. 109 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))

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[^{F41}109A Power to issue restriction notices: England and Wales

- (1) An authorised person may issue a restriction notice in relation to premises where there is, or was, a regulated facility or an exempt facility if the person is satisfied that the conditions in subsection (2) are met.
- (2) The conditions are that—
 - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
 - (b) the notice is necessary to prevent that risk from continuing.
- (3) A restriction notice is a notice prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (4) But a restriction notice does not prohibit access to the premises, or the specified part of the premises, by the occupier or the owner.
- (5) A restriction notice has effect for a period specified in the notice, which may not exceed 72 hours.
- (6) Where a restriction notice is issued, the appropriate agency may do anything necessary to secure the premises against access in contravention of the notice.
- (7) A restriction notice may include provision for—
 - (a) persons, or a description of persons, to whom the prohibition in subsection (3) does not apply;
 - (b) times at which the prohibition in subsection (3) does not apply;
 - (c) circumstances in which the prohibition in subsection (3) does not apply.
- (8) Provision included in accordance with subsection (7) may be unconditional or subject to specified conditions.
- (9) A restriction notice must—
 - (a) identify the premises, or part of the premises, to which the notice applies;
 - (b) explain the effect of the notice;
 - (c) state that failure to comply with the notice is an offence;
 - (d) state the penalties applicable to a person guilty of an offence;
 - (e) state that a restriction order will be applied for under section 109D;
 - (f) state that notice will be given of when and where the application for a restriction order will be heard;
 - (g) explain the effect of a restriction order.
- (10) Before issuing a restriction notice, the appropriate agency must make reasonable efforts—
 - (a) to inform the occupier and the owner of the premises that the notice is going to be issued;
 - (b) to consult the occupier and the owner of the premises on the arrangements for access to the premises, or to the particular part of the premises, by persons acting on behalf of the occupier or the owner for any purpose, including—
 - (i) the purpose of maintaining machinery and apparatus;
 - (ii) the purpose of securing the premises.

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Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109B. Cancellation or variation of restriction notices

Where a restriction notice is in force and the authorised person is no longer satisfied that the conditions in section 109A(2) are met—

- (a) as regards the premises as a whole, the authorised person must issue a notice cancelling the restriction notice (a “cancellation notice”);
- (b) as regards a particular part of the premises, the authorised person must issue a notice varying the restriction notice so that it does not apply to that part of the premises (a “variation notice”).

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109C. Service of restriction notices etc.

- (1) A restriction notice, a cancellation notice or a variation notice must be served by an authorised person.
- (2) The authorised person must make reasonable efforts to—
 - (a) fix a copy of the notice to each normal means of access to the premises;
 - (b) give a copy of the notice to the occupier and the owner of the premises;
 - (c) give a copy of the notice to the occupier and the owner of any other premises to which the authorised person believes access will be impeded by the restriction notice.
- (3) In subsection (1), “cancellation notice” and “variation notice” have the meanings given by section 109B.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109D. Power of court to make restriction orders: England and Wales

- (1) An application to a magistrates’ court for a restriction order—
 - (a) must be made by the appropriate agency when it has issued a restriction notice (unless the notice has been cancelled);
 - (b) may otherwise be made by the appropriate agency at any time.
- (2) The application must be heard by the magistrates’ court—

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- (a) where subsection (1)(a) applies, not later than 72 hours after service of the restriction notice;
 - (b) where subsection (1)(b) applies, not later than 7 days after the application is made.
- (3) Where an application is made under subsection (1), the appropriate agency must serve a notice stating the date, time and place of the hearing of the application on—
 - (a) the occupier and the owner of the premises;
 - (b) the occupier and the owner of any other premises to which the appropriate agency believes access will be impeded if a restriction order is made.
- (4) The court may make a restriction order in relation to premises where there is, or was, a regulated facility or an exempt facility if the court is satisfied that the conditions in subsection (5) or (6) are met.
- (5) The conditions are that—
 - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
 - (b) the order is necessary to prevent that risk from continuing.
- (6) The conditions are that—
 - (a) in relation to the treatment, keeping, deposit or disposal of waste in or on the premises, a person has—
 - (i) contravened section 33(1) of the Environmental Protection Act 1990,
 - (ii) contravened regulation 12(1) of the Environmental Permitting Regulations or knowingly caused or knowingly permitted the contravention of regulation 12(1)(a) of those Regulations,
 - (iii) contravened or failed to comply with an environmental permit condition, or
 - (iv) failed to comply with the requirements of an enforcement notice, a landfill closure notice, a mining waste facility closure notice, a suspension notice, or a notice served under section 59, 59ZA, 59ZB or 59ZC of the Environmental Protection Act 1990,
 - (b) the conduct referred to in paragraph (a) has caused, is causing or has failed to prevent from continuing—
 - (i) pollution to the environment, or
 - (ii) harm to human health, and
 - (c) the order is necessary to prevent that pollution or harm from continuing.
- (7) A restriction order is an order prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (8) A restriction order has effect for a period specified in the order, which may not exceed 6 months.
- (9) A restriction order may include provision for—
 - (a) persons, or a description of persons, to whom the prohibition in subsection (7) does not apply;
 - (b) times at which the prohibition in subsection (7) does not apply;
 - (c) circumstances in which the prohibition in subsection (7) does not apply.

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- (10) Provision included in accordance with subsection (9) may be unconditional or subject to specified conditions.
- (11) A restriction order may include provision about access to other premises where that access could otherwise be impeded by the order.
- (12) A restriction order must—
 - (a) identify the premises, or part of the premises, to which the order applies;
 - (b) explain the effect of the order;
 - (c) state that failure to comply with the order is an offence;
 - (d) state that the removal of a copy of a restriction order fixed to a normal means of access to the premises is an offence;
 - (e) state the penalties applicable to a person guilty of an offence.
- (13) The restriction notice referred to in subsection (1)(a) ceases to have effect—
 - (a) on the making of a restriction order, or
 - (b) where the court decides not to make a restriction order, on the making of that decision, unless the court makes an order in accordance with section 109E(4).
- (14) In subsection (6)(a)(iii) and (iv), “enforcement notice”, “environmental permit condition”, “landfill closure notice”, “mining waste facility closure notice” and “suspension notice” have the meanings given in regulation 2(1) of the Environmental Permitting Regulations.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), [Sch. 2 para. 3](#) (with reg. 4(1))

109E. Temporary orders

- (1) This section applies where an application has been made to a magistrates’ court under section 109D(1)(a) for a restriction order.
- (2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable—
 - (a) the appropriate agency to show why a restriction order should be made;
 - (b) the occupier or the owner of the premises to show why a restriction order should not be made.
- (3) If the court adjourns the hearing, the restriction notice continues in force until the court has determined the application.
- (4) If the court does not make a restriction order it may nevertheless order that the restriction notice continues in force for a specified further period of not more than 72 hours if it is satisfied that—
 - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
 - (b) the notice is necessary to prevent that risk from continuing.

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Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109F. Extension of restriction orders

- (1) At any time before the expiry of a restriction order, the appropriate agency may apply to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.
- (2) Where an application is made under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.
- (3) If a summons is issued under subsection (2), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.
- (4) The court may make an order extending (or further extending) the period of the restriction order by a period not exceeding 6 months where satisfied that the conditions in section 109D(5) or (6) are met.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109G. Variation or discharge of restriction orders

- (1) At any time before the expiry of a restriction order, an application may be made to a justice of the peace, by complaint, for the order to be varied or discharged.
- (2) Those entitled to make an application under this section are—
 - (a) the appropriate agency that applied for the restriction order;
 - (b) the occupier of the premises subject to the order;
 - (c) the owner of the premises subject to the order.
- (3) Where the appropriate agency makes an application under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.
- (4) Where the occupier or the owner of the premises makes an application under this section, the justice of the peace must—
 - (a) issue a summons directed to the appropriate agency that applied for the restriction order requiring it to appear before the magistrates' court to respond to the application, or
 - (b) dismiss the application.

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- (5) If a summons is issued under subsection (3) or (4), a notice stating the date, time and place of the hearing of the application must be served on—
 - (a) the appropriate agency that applied for the restriction order (other than where the agency is the complainant);
 - (b) the occupier or the owner of the premises (other than the complainant).
- (6) The magistrates' court may make an order varying or discharging the restriction order if it is no longer satisfied that the conditions in section 109D(5) or (6) are met in respect of all or part of the premises (or the part of the premises) to which the restriction order applies.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109H. Enforcement of restriction orders

- (1) The appropriate agency must make reasonable efforts to fix a copy of the restriction order to each normal means of access to the premises.
- (2) Where a restriction order has been made, an authorised person may do anything necessary to secure the premises against access in contravention of the order.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109I. Appeals against decisions on restriction orders

- (1) The occupier or the owner of the premises may appeal against—
 - (a) a decision to make or extend a restriction order;
 - (b) a decision made under section 109G in relation to an application to vary or discharge a restriction order.
- (2) The appropriate agency may appeal against—
 - (a) a decision not to order the continuation in force of a restriction notice (under section 109E);
 - (b) a decision not to make a restriction order;
 - (c) a decision not to extend a restriction order;
 - (d) a decision made in relation to an application to vary or discharge a restriction order (under section 109G).
- (3) An appeal under this section is to the Crown Court.
- (4) An appeal under this section must be made within 21 days beginning with the date of the decision to which it relates.
- (5) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.

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- (6) Pending the determination of an appeal under this section, the decision being appealed remains in force.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109J. Access to other premises

- (1) Where—
- (a) access to premises is prohibited or restricted by an order under section 109D, 109E, 109F, 109G or 109I, and
 - (b) there are other premises to which access is impeded by that order,
- an occupier or owner of those other premises may apply to the appropriate court for an order under this section.
- (2) The appropriate court is—
- (a) the magistrates' court, in the case of an order under section 109D, 109E, 109F or 109G;
 - (b) the Crown Court, in the case of an order under section 109I.
- (3) Notice of an application under this section must be given to—
- (a) the appropriate agency that applied for the restriction order;
 - (b) the occupier and the owner of the premises subject to the order.
- (4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to the other premises, whether or not provision has been made under section 109D(11).

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109K. Recovery of costs

- (1) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction notice was issued is entitled to recover that expenditure from the occupier or the owner of the premises, except such of that expenditure as the occupier or the owner shows was incurred unnecessarily.
- (2) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction order is in force may apply to the court that made the restriction order for an order under subsection (3).
- (3) On an application under this section, the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the occupier or the owner of the premises of—
 - (a) the expenditure mentioned in subsection (2);

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- (b) any expenditure incurred by the appropriate agency for the purpose of securing the premises in respect of which a restriction notice (including a notice continued in force under section 109E) was issued, except such of that expenditure as has been recovered in accordance with subsection (1).
- (4) An application for an order under this section may not be heard unless it is made within 3 months beginning with the day on which the restriction order ceases to have effect.
- (5) An order under this section may be made only against a person who has been served with the application for the order.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109L. Exemption from liability

- (1) The appropriate agency is not liable for damages arising out of anything done or omitted to be done by the appropriate agency in the exercise or purported exercise of a power under sections 109A to 109D, 109F to 109I and 109K in proceedings for—
 - (a) judicial review, or
 - (b) the tort of negligence or misfeasance in public office.
- (2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.
- (3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109M. Compensation

- (1) Where the occupier or the owner of any premises to which access was impeded by a restriction notice or order (other than the premises which is subject to a restriction notice or order) claims to have incurred financial loss in consequence of that notice or order, that person may apply to the appropriate court for compensation.
- (2) The appropriate court is—
 - (a) the magistrates' court (except where paragraph (b) applies);
 - (b) the Crown Court, in the case of a restriction order that was made or extended by an order of that Court on an appeal under section 109I.
- (3) An application under this section may not be heard unless it is made within 3 months beginning with whichever of the following is applicable—

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- (a) the day on which the restriction notice was cancelled under section 109B;
 - (b) the day on which a restriction order was refused;
 - (c) the day on which the restriction order ceased to have effect.
- (4) For the purposes of subsection (3)(b) the day on which a restriction order was refused is—
- (a) the day on which the magistrates’ court decided not to make a restriction order (except where paragraph (b) applies);
 - (b) the day on which the Crown Court dismissed an appeal against a decision not to make a restriction order.
- (5) On an application under this section the court may order the payment of compensation by the appropriate agency if it is satisfied—
- (a) that the applicant has incurred financial loss in consequence of the notice or order, and
 - (b) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

109N. Interpretation

- (1) In sections 109A to 109M and this section—
- “appropriate agency” means the Agency or the Natural Resources Body for Wales;
 - “authorised person” means a person who is authorised by the appropriate agency under section 108;
 - “the Environmental Permitting Regulations” means the Environmental Permitting (England and Wales) Regulations 2016 ([S.I. 2016/1154](#));
 - “exempt facility” has the meaning given in regulation 5 of the Environmental Permitting Regulations;
 - “occupier”, in relation to premises, includes a person who habitually lives on the premises;
 - “owner”, in relation to premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;
 - “premises” means premises in England or Wales, and includes any land, vehicle, vessel or mobile plant;
 - “regulated facility” has the meaning given in regulation 8 of the Environmental Permitting Regulations;
 - “restriction notice” has the meaning given by section 109A(3);
 - “restriction order” has the meaning given by section 109D(7);
 - “waste” has the same meaning as in section 75 of the Environmental Protection Act 1990.

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- (2) In calculating for the purposes of sections 109A(5), 109D(2) and 109E(4) when a period of 72 hours or 7 days ends, the following days are to be disregarded—
- (a) Good Friday;
 - (b) Christmas Day;
 - (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.]

Textual Amendments

F41 Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

110 Offences.

- (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.
- [^{F42}(3A) It is an offence for a person to contravene, without reasonable excuse, a restriction notice issued under section 109A (including a notice continued in force under section 109E).
- (3B) It is an offence for a person to contravene, without reasonable excuse, a restriction order made under section 109D, 109F, 109G or 109I.
- (3C) It is an offence for a person to remove, without reasonable excuse, a copy of a restriction order fixed to a normal means of access to premises under section 109H(1).]
- (4) A person guilty of an offence under subsection (1) above shall be liable—
- (a) in the case of an offence of [^{F43}assaulting, hindering or] obstructing an authorised person in the execution of his powers under section 109 above—
 - (i) on summary conviction, to a fine not exceeding the statutory maximum [^{F44}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 [^{F45}level 5 on the standard scale][^{F45}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].

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- (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.
- [^{F46}(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.]
- [^{F47}(5D) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine or to imprisonment for a period not exceeding 51 weeks, or to both.
- (5E) A person guilty of an offence under subsection (3B) is liable—
- (a) on summary conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (5F) A person guilty of an offence under subsection (3C) is liable on summary conviction to a fine.
- (5G) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5D) to 51 weeks is to be read as a reference to 6 months.
- (5H) In relation to an offence committed before [^{F48}2 May 2022], the reference in subsection (5E)(a) to 12 months is to be read as a reference to 6 months.]
- (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** S. 110(3A)-(3C) inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 4(a)**
- F43** 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)
- F44** 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)
- F45** 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)
- F46** 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)

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- F47** S. 110(5D)-(5H) inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 4(b)**
- F48** Words in s. 110(5H) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

Modifications etc. (not altering text)

- C30** 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)
- C31** 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)
- C32** S. 110 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))
- C33** S. 110 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **9(4)(5)** (with reg. 1(2))

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