

Status: Point in time view as at 02/12/2004.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, Part II. (See end of Document for details)

SCHEDULES

SCHEDULE 5

LANDFILL TAX

Modifications etc. (not altering text)

C1 Sch. 5 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 4(3)

PART II

POWERS

Entry and inspection

- 4 For the purpose of exercising any powers under this Part of this Act an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business.

Entry and search

- 5 (1) Where—
- (a) a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or
 - (b) in Scotland a justice, within the meaning of section 307 of the ^{M1}Criminal Procedure (Scotland) Act 1995, is satisfied by evidence on oath as mentioned in paragraph (a) above,
- he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and search them.
- (2) A person who enters the premises under the authority of the warrant may—
- (a) take with him such other persons as appear to him to be necessary;
 - (b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature;
 - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other things;
- but no woman or girl shall be searched except by a woman.

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- (3) The powers conferred by a warrant under this paragraph shall not be exercisable—
- (a) by more than such number of authorised persons as may be specified in the warrant,
 - (b) outside such times of day as may be so specified, or
 - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.
- (4) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, that one of them who is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;
 - (b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person;
 - (c) if neither paragraph (a) nor paragraph (b) above applies, the copy shall be left in a prominent place on the premises.
- (5) In this paragraph “a fraud offence” means an offence under any provision of paragraph 15(1) to (5) below.

Modifications etc. (not altering text)

C1 Sch. 5 para. 5(2) powers of seizure extended (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), ss. 50, 138(2), [Sch. 1 para. 61](#) (with ss. 52-54, 68); S.I. 2003/708, art. 2(a)

Marginal Citations

M1 1995 c. 46.

Arrest

- 6 (1) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.
- (2) In this paragraph “a fraud offence” means an offence under any provision of paragraph 15(1) to (5) below.

Order for access to recorded information etc.

- 7 (1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 307 of the ^{M2}Criminal Procedure (Scotland) Act 1995) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with tax is being, has been or is about to be committed, and
 - (b) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,
- he may make an order under this paragraph.

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- (2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—
 - (a) give an authorised person access to it, and
 - (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,not later than the end of the period of 7 days beginning with the date of the order or the end of such longer period as the order may specify.
- (3) The reference in sub-paragraph (2)(a) above to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.
- (4) Where the recorded information consists of information [^{F1}stored in any electronic form] , an order under this paragraph shall have effect as an order to produce the information in a form in which it is visible and legible [^{F2}or from which it can readily be produced in a visible and legible form] and, if the authorised person wishes to remove it, in a form in which it can be removed.
- (5) This paragraph is without prejudice to paragraphs 3 to 5 above.

Textual Amendments

- F1** Words in Sch. 5 para. 7(4) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 13\(1\)\(a\)\(2\)\(h\)](#); S.I. 2003/708, art. 2(k)
- F2** Words in Sch. 5 para. 7(4) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 13\(1\)\(b\)\(2\)\(h\)](#); S.I. 2003/708, art. 2(k)

Marginal Citations

- M2** 1995 c. 46.

Removal of documents etc.

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- (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 5 or 7 above shall, if so requested by a person showing himself—
 - (a) to be the occupier of premises from which it was removed, or
 - (b) to have had custody or control of it immediately before the removal,provide that person with a record of what he removed.
 - (2) The authorised person shall provide the record within a reasonable time from the making of the request for it.
 - (3) Subject to sub-paragraph (7) below, if a request for permission to be allowed access to anything which—
 - (a) has been removed by an authorised person, and
 - (b) is retained by the Commissioners for the purposes of investigating an offence,is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.

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- (4) Subject to sub-paragraph (7) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Subject to sub-paragraph (7) below, where anything is photographed or copied under sub-paragraph (4)(b) above the officer shall supply the photograph or copy, or cause it to be supplied, to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this paragraph to allow access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
 - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed, or
 - (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.
- 9 (1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 8 above, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.
- (2) An application under sub-paragraph (1) above shall be made—
- (a) in the case of a failure to comply with any of the requirements imposed by sub-paragraphs (1) and (2) of paragraph 8 above, by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed, and
 - (b) in any other case, by the person who had such custody or control.
- (3) In this paragraph “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates’ court;
 - (b) in Scotland, the sheriff;
 - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the ^{M3}Magistrates’ Court (Northern Ireland) Order 1981.
- (4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the ^{M4}Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

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Marginal Citations

M3 S.I. 1981/1675 (N.I.26).

M4 1954 c. 33 (N.I.).

Power to take samples

- 10 (1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is intended to be, is being, or has been disposed of as waste by way of landfill, such samples as he may require with a view to determining how the material ought to be or to have been treated for the purposes of tax.
- (2) Any sample taken under this paragraph shall be disposed of in such manner as the Commissioners may direct.

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