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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1182**

**The Sustainable Drainage (Enforcement) (Wales) Order 2018**

**PART 2**

Exercise of enforcement functions

**Agreement to exercise enforcement function**

3.—(1) An approving body<sup>M1</sup> may agree with the local planning authority (“the Authority”) that the Authority may exercise an enforcement function under this Order as if it were the approving body.

(2) The agreement—

- (a) may relate to any breach of the requirement for approval, and
- (b) may contain arrangements to reimburse the costs incurred by the Authority in exercising the enforcement function.

(3) In this article, “enforcement function” means any function exercisable by the approving body in relation to—

- (a) powers of entry;
- (b) a temporary stop notice, enforcement notice or stop notice.

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**Marginal Citations**

**M1** “Approving body” is defined in paragraph 6 of Schedule 3.

**Powers of entry**

4.—(1) An authorised person may at any reasonable time enter a construction area (except any premises in the construction area used wholly or mainly as a private dwelling house) to determine if—

- (a) there has been a breach of the requirement for approval, or
- (b) a temporary stop notice, stop notice or enforcement notice has been complied with.

(2) Paragraph (1) is subject to paragraph (4).

(3) The authorised person must on request produce evidence of authorisation.

(4) In an emergency, powers of entry may be exercised at any time.

(5) An authorised person may not exercise powers of entry to determine if there has been a breach of the requirement for approval if a drainage system for the construction work has been adopted.

(6) A justice of the peace may, by signed warrant, permit an authorised person to enter any premises in a construction area, if necessary by reasonable force, if the justice on sworn information in writing is satisfied—

- (a) that there are reasonable grounds to enter the premises for the purposes of paragraph (1) of this article, and
  - (b) that any of the conditions in paragraph (7) are met.
- (7) The conditions are—
- (a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently;
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (8) A warrant is valid for 3 months.
- (9) An authorised person entering premises which are unoccupied or from which the occupier is temporarily absent must leave the premises as effectively secured against unauthorised entry as they were before entry.

#### **Compensation for loss resulting from exercise of powers of entry**

- 5.—(1) A developer or other person is entitled to compensation if—
- (a) an authorised person enters a construction area or any premises in a construction area in exercise of powers of entry but finds no evidence of a breach of the requirement for approval, and
  - (b) as a result of the exercise of those powers the developer or other person incurs loss.
- (2) If an authorised person enters a construction area or any premises in a construction area in exercise of powers of entry and a breach of the requirement for approval is found, compensation is payable—
- (a) to the developer for any loss resulting only from an unreasonable exercise of those powers;
  - (b) to any other person as if no evidence of a breach were found.
- (3) Any claim for compensation must be made to the approving body within 12 months after the exercise of those powers.
- (4) Disputes about compensation are to be determined by the Upper Tribunal.

**Changes to legislation:**

There are currently no known outstanding effects for the The Sustainable Drainage (Enforcement) (Wales) Order 2018, PART 2.