

SCHEDULE 6

Regulation 31(4) and (6)

Enforcement and other powers

PART 1

Powers

1. To enter at any reasonable time (or, in an emergency, at any time) any premises which that person has reason to believe it is necessary to enter.
2. On entering any premises by virtue of paragraph 1, to take—
 - (a) any other person duly authorised by SEPA and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of that person's duty, a constable; and
 - (b) any equipment or materials required for any purpose for which the power of entry is being exercised.
3. To examine and investigate as may in the circumstances be necessary.
4. As regards any premises which that person has power to enter, to direct that those premises or any part of them, or anything in them, must 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 3.
5. To take such measurements and photographs and make such recordings as that person considers necessary for the purpose of any examination or investigation under paragraph 3.
6. To obtain and to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which that person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises.
7. To monitor—
 - (a) the water environment or any part of it; or
 - (b) the carrying on of controlled activities.
8. To take steps for the measurement and recording of precipitation.
9. To install and maintain gauges, or other apparatus and works connected therewith, for any of the purposes mentioned in paragraphs 7 and 8.
10. To take such steps as may be necessary in order to obtain any information required for any of the purposes mentioned in paragraphs 7 or 8.
11. In the case of any article or substance found in or on any premises which that person has power to enter, being an article or substance which appears to that person to have, or be likely to have, a significant adverse impact on the water environment, 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).
12. In the case of any such article or substance as is mentioned in paragraph 11, to take possession of it and detain it for so long as is necessary for all or any of the following purposes namely:
 - (a) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which that person has power to do under that paragraph;
 - (b) to ensure that it is not tampered with before examination of it is completed;

Changes to legislation: *There are currently no known outstanding effects for the The Water Environment (Controlled Activities) (Scotland) Regulations 2011, SCHEDULE 6. (See end of Document for details)*

- (c) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or in any other proceedings relating to a variation notice, revocation or suspension notice or enforcement notice under these Regulations.

13.—(1) Subject to sub paragraph (2), to require any person whom he has reasonable cause to believe has any information relevant to any examination or investigation under paragraph 3 to answer such questions as the authorised person thinks fit to ask.

(2) The person referred to in sub paragraph (1) may only be required to answer such questions in the absence of persons other than—

- (a) a person nominated by that person to be present; and
- (b) any person whom the authorised person may allow to be present.

14. To require the production of, or if the information is recorded electronically, the furnishing of extracts from, any records which are—

- (a) required to be kept under these Regulations ; or
- (b) necessary for that person to see for the purposes of an examination or investigation under paragraph 3,

and to inspect and take copies of, or of any entry in, the records.

15. To require any person to afford 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 by this regulation.

16. To carry out borings or other works on any premises and to install, keep or maintain monitoring or other apparatus there.

PART 2

Procedures etc.

17. Any person authorised by SEPA under regulation 31(4) must produce evidence of that person's authorisation before that person exercises any powers conferred by that authorisation.

18. 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 paragraph shall only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
 - (i) with the consent of a person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of Part 3 to this Schedule.

19. Except in an emergency, if an authorised person proposes to enter any premises and—

- (a) entry has been refused and that person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) that person 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 regulation may only be effected under the authority of a warrant issued in accordance with Part 3 of this Schedule.

20. If an authorised person proposes to exercise the power conferred by paragraph 11 in the case of an article or substance found on any premises, that person must, 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.

21. Before exercising the power conferred by paragraph 11 in the case of any article or substance, an authorised person must 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 that authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which that person proposes to do or cause to be done under the power.

22. No answer given by a person in pursuance of a requirement imposed under paragraph 13 will be admissible in evidence against that person in any criminal proceedings.

23. Nothing in this schedule will be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

24. A person who enters any premises in the exercise of any power conferred by these Regulations must leave the premises as effectually secured against unauthorised entry as that person found them.

PART 3

Issue of warrants

25. If a sheriff or justice of the peace is satisfied that—

- (a) there are reasonable grounds for the exercise in relation to any premises of a power under Part 1 of this Schedule; and
- (b) one or more of the conditions specified in paragraph 26 is fulfilled in relation to those premises,

the sheriff or justice of the peace may by warrant authorise SEPA to designate a person to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

26. The conditions mentioned in paragraph 25 are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises, and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

27. In a case where paragraph 25 applies, a justice of the peace or sheriff must not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless that person is also satisfied that the notice required by paragraph 18 has been given and that the period of that notice has expired.

28. Every warrant under this Schedule will continue in force until the purposes for which the warrant was issued have been fulfilled.

PART 4

Evidence

29. In any legal proceedings it will be presumed until the contrary is shown, that any sample—

- (a) taken by virtue of the powers under this Schedule at a gauge, measuring station or other place provided in compliance with a condition imposed in an authorisation, is a sample, taken in accordance with those powers, of what was passing to the water environment at the place and the time recorded;
- (b) taken in exercise of the powers under this Schedule in circumstances that an authorised person has agreed with the operator or responsible person the time when, and the points at which, samples are to be taken, is a sample taken under that agreement and in accordance with those powers, of what was passing to the water environment at the place and time recorded.

30. Subject to paragraph 22, information obtained in consequence of the exercise of a power under this Schedule, with or without the consent of any person, will be admissible in evidence against that or any other person.

31. Without prejudice to the generality of paragraph 30, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a power under this Schedule with or without the consent of any person in occupation of the premises, is admissible in evidence in any proceedings against that or any other person.

PART 5

Compensation

32.—(1) SEPA must compensate any person who has sustained loss or damage by reason of—

- (a) the exercise by an authorised person of the powers in paragraphs 1, 2 or 16; or
- (b) the failure of an authorised person to perform the duty imposed by paragraph 24,

unless the damage is attributable to the fault of the person who sustained it.

(2) SEPA must compensate any person for damage or destruction of an article or substance in exercise of powers under paragraph 11 if that article or substance was found not to have a significant adverse impact on the water environment.

(3) Any dispute as to a person's entitlement to compensation under paragraph (1) or (2), or as to the amount of such compensation, is to be determined by a single arbiter appointed by agreement between SEPA and the person claiming damage, or in default of agreement, by the President of the Lands Tribunal for Scotland.

(4) An authorised person is not liable in any civil or criminal proceedings for anything done in purported exercise of any of the powers conferred on that person in accordance with regulation 31(4) if the court is satisfied that it was done in good faith and that there were reasonable grounds for doing it.

Changes to legislation:

There are currently no known outstanding effects for the The Water Environment (Controlled Activities) (Scotland) Regulations 2011, SCHEDULE 6.