

SCHEDULES

SCHEDULE 3

Article 8

POWERS OF ENTRY

Power to enter premises of a licence holder without a warrant

1.—(1) Where the SEM Committee has made a determination under Article 8 in respect of a licence holder, any member of staff of the Authority who is authorised in writing by the Authority to do so (“an investigating officer”) may enter any premises owned or occupied by that or any other licence holder for the purposes of investigating on behalf of the Authority whether any such contravention as is mentioned in that Article has occurred or is occurring.

(2) No investigating officer is to enter any premises in the exercise of his powers under this paragraph unless he has given to the occupier of the premises a written notice which—

- (a) gives at least 2 working days' notice of the intended entry;
- (b) indicates the subject matter and purpose of the investigation; and
- (c) indicates the nature of the offences created by paragraph 4.

(3) Sub-paragraph (2) does not apply—

- (a) if the SEM Committee has reasonable grounds for suspecting that the premises are, or have been, occupied by the licence holder in respect of whom the determination under Article 8 was made; or
- (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) In a case falling within sub-paragraph (3), the power of entry conferred by sub-paragraph (1) is to be exercised by the investigating officer on production of—

- (a) evidence of his authorisation; and
- (b) a document containing the information referred to in sub-paragraph (2)(b) and (c).

(6) Subject to paragraph 3, an investigating officer entering any premises under this paragraph may—

- (a) take with him—
 - (i) such equipment as appears to him to be necessary; and
 - (ii) any other relevant officer whom the Authority has authorised in writing to accompany the investigating officer;
- (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;

- (e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;
 - (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.
- (7) In this paragraph and paragraph 2—
- “premises” does not include premises used as a dwelling,
 - “relevant officer” means a member of the staff of the Authority or of CER,
 - “working day” means any day other than Saturday, Sunday or a day which is a public holiday in Northern Ireland.

Power to enter premises of a licence holder under warrant

2.—(1) Where the SEM Committee has made a determination under Article 8 in respect of a licence holder, the High Court may, on an application made by the Authority, issue a warrant if the Court is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any premises owned or occupied by a licence holder documents—
 - (i) the production of which has been required under Article 51 of the Energy Order or paragraph 1; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any premises owned or occupied by a licence holder documents which the Authority has power under Article 51 of the Energy Order to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
- (c) an investigating officer has attempted to enter premises in the exercise of his powers under paragraph 1 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that paragraph.

(2) Subject to paragraph 3, a warrant under this paragraph shall authorise a named member of the staff of the Authority (“the named officer”), and any other relevant officer whom the Authority has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under sub-paragraph (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or

- (ii) it is not reasonably practicable to take copies of the documents on the premises;
 - (d) to take any other steps which appear to be necessary for the purpose mentioned in head (c)(i);
 - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
 - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) If, in the case of a warrant under sub-paragraph (1)(b), the Court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in sub-paragraph (2) to be taken in relation to any such document.
- (4) A warrant under this paragraph may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (5) Any person entering premises by virtue of a warrant under this paragraph may take with him such equipment as appears to him to be necessary.
- (6) On leaving any premises which he has entered by virtue of a warrant under this paragraph, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (7) A warrant under this paragraph continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under sub-paragraph (2)(c) may be retained for a period of three months.
- (9) A warrant issued under this paragraph must indicate—
 - (a) the subject matter and purpose of the investigation;
 - (b) the nature of the offences created by paragraph 4.
- (10) The powers conferred by this paragraph are to be exercised on production of the warrant issued under this paragraph.
- (11) If there is no one at the premises when the named officer proposes to execute the warrant he must, before executing it—
 - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
 - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (12) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

Privileged information, etc.

3. A person is not required under paragraph 1 or 2—
 - (a) to produce any document which he could not be compelled to produce in civil proceedings in the High Court; or

- (b) to provide any information which he could not be compelled to give in evidence in any such proceedings.

Offences

4.—(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under paragraph 1 or 2.

(2) If a person is charged with an offence under sub-paragraph (1) in respect of a requirement to produce a document, it is a defence for him to prove—

- (a) that the document was not in his possession or under his control; and
- (b) that it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under sub-paragraph (1) in respect of a requirement—

- (a) to provide information,
- (b) to provide an explanation of a document, or
- (c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under paragraph 1 is not an offence if the person imposing the requirement has failed to act in accordance with that paragraph.

(5) A person is guilty of an offence if he intentionally obstructs any other person acting in the exercise of his powers under paragraph 1.

(6) A person guilty of an offence under sub-paragraph (1) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(7) A person who intentionally obstructs any other person in the exercise of his powers under a warrant issued under paragraph 2 is guilty of an offence.

(8) A person is guilty of an offence if, having been required to produce a document under paragraph 1 or 2—

- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
- (b) he causes or permits its destruction, disposal, falsification or concealment.

(9) If information is provided by a person to an investigating officer in pursuance of a requirement imposed under paragraph 1 or 2, that person is guilty of an offence if—

- (a) the information is false or misleading in a material particular, and
- (b) he knows that it is or is reckless as to whether it is.

(10) A person guilty of an offence under sub-paragraph (7), (8) or (9) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.