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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**The Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018**

**Powers of inspectors**

**3.—(1)** An inspector may exercise the powers set out in this regulation for the purpose of assisting in carrying out the functions of the Secretary of State under Part 4A of the Energy Act 2008 (including, in particular, monitoring, investigating and enforcing compliance with a requirement imposed by or under that Part).

(2) An inspector may—

- (a) at any reasonable time (or, if the inspector has reason to believe that a danger to navigation has arisen, at any time) access or board any installation or vessel in the regulated zone<sup>(1)</sup> that the inspector thinks it is necessary to board or access; and
- (b) on accessing or boarding an installation or vessel, take with the inspector—
  - (i) any other person authorised by the Secretary of State; and
  - (ii) any equipment or materials required for any purpose for which the power to access or board is exercised.

(3) An inspector may—

- (a) make any examination or investigation that the inspector thinks necessary;
- (b) install or maintain monitoring or other apparatus on an installation or vessel in the regulated zone for the purpose of the examination or investigation;
- (c) direct that any part of an installation or vessel in the regulated zone, or anything in it, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of the examination or investigation;
- (d) take such measurements and photographs and record such information as the inspector thinks necessary for the purpose of the examination or investigation;
- (e) cause anything found during the examination or investigation to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
- (f) take possession of anything found during the examination or investigation and detain or remove it for so long as is necessary for any of the following purposes—
  - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything that the inspector has the power to do under sub-paragraph (e);
  - (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 Part 4A of the Energy Act 2008 or an offence under regulation 6;
- (g) require any person whom the inspector has reason to believe to be able to give information relevant to the examination or investigation—

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(1) “Regulated zone” is defined in section 82Q of the Energy Act 2008.

- (i) to attend at a place and reasonable time specified by the inspector;
  - (ii) to answer (in the absence of persons other than a person nominated by that person to be present and persons whom the inspector allows to be present) such questions as the inspector thinks appropriate to ask;
  - (iii) to sign a declaration of the truth of that person's answers;
- (h) require the production of, or where information is recorded in electronic form, the furnishing of extracts from, any documents or records that the inspector thinks it is necessary for the inspector to inspect for the purposes of the examination or investigation and—
- (i) take possession of the documents, records or extracts and detain or remove them for so long as is necessary for any of the purposes referred to in sub-paragraph (f);
  - (ii) take copies of, or of any entry in, the documents or records.
- (4) An inspector may 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 that are necessary to enable the inspector to exercise the powers conferred on the inspector by this regulation.
- (5) An inspector may not, when exercising the power set out in paragraph (3)(h)(i)—
- (a) detain or remove a document or record for any of the purposes referred to in paragraph (3)(f) if a copy would be sufficient for that purpose; or
  - (b) remove from any place a document or record that is required by law to be kept at the place.
- (6) A person is not required under this regulation to disclose information or produce a document or record that the person would be entitled to refuse to disclose or produce—
- (a) on grounds of legal professional privilege in proceedings in the High Court; or
  - (b) on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.