

*Status: Point in time view as at 20/06/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994, SCHEDULE 1C. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 1C

#### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY: SCOTLAND

##### Textual Amendments

- F1** Sch. 1C inserted (20.6.2005) by *Water Services etc. (Scotland) Act 2005 (asp 3)*, s. 37(2), **sch. 4** (with s. 36); *S.S.I. 2005/351*, art. 2, sch. 1

##### *Exercise of powers of entry etc.*

- 1 (1) A person entitled to enter premises by virtue of the power mentioned in section 4E(3) (a) of this Act—
- (a) may take on to the premises such other persons (including, if the person reasonably believes he is likely to be obstructed, a constable) and such equipment or materials as may be necessary; but this is, where that power is exercisable under a warrant, subject to the terms of the warrant; and
  - (b) must, if required to do so, produce written evidence of that entitlement.
- (2) A person who enters premises in the exercise of a power conferred by virtue of section 4E of this Act must leave the premises as effectually secured against trespassers as the person found them.
- (3) Where a person exercises a power conferred by virtue of section 4E(3)(a) or (4) of this Act, the Authority is to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise of that power; or
  - (b) the carrying out of, or failure to carry out, the duty imposed by sub-paragraph (2) above,
- except in so far as the loss or damage is attributable to the fault of the person who sustained it.
- (4) Any dispute as to a person's entitlement to compensation under sub-paragraph (3) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbiter, appointed—
- (a) by agreement between the Authority and the person who claims to have sustained the loss or damage; or
  - (b) in default of agreement, by the Scottish Ministers.
- (5) Any person who makes use of or discloses any trade secret of which the person has gained knowledge as a result of the exercise of a power conferred by virtue of section 4E of this Act is guilty of an offence.
- (6) A person who is guilty of an offence under sub-paragraph (5) above is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or

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(b) on conviction on indictment, to a fine.

(7) In this schedule, “premises” has the meaning given by section 4E(8) of this Act.

#### *Warrants*

- 2 (1) If a sheriff or justice of the peace is satisfied, by evidence on oath, that—
- (a) there are reasonable grounds for the exercise in relation to any premises of a power mentioned in section 4E(3) or (4) of this Act; and
  - (b) at least one of the conditions mentioned in sub-paragraph (2) below is fulfilled in relation to the premises,
- the sheriff or justice may grant a warrant authorising the Authority (and any person authorised by the Authority for the purpose) to exercise the power in relation to the premises in accordance with the terms of the warrant and, if need be, by force.
- (2) The conditions are—
- (a) that the exercise of the power in relation to the premises has been refused;
  - (b) that such a refusal may reasonably be expected;
  - (c) that the premises are unoccupied;
  - (d) that the occupier is temporarily absent from the premises and the case is one of urgency.
- (3) In a case where subsections (5) and (6) of section 4E of this Act apply, a sheriff or justice shall not issue a warrant under this paragraph by virtue of being satisfied that a condition mentioned in head (a) or (b) of sub-paragraph (2) above is fulfilled unless the sheriff or justice is also satisfied that notice required by subsection (5)(a) of that section has been given and that the period of that notice has expired.
- (4) A warrant granted under this paragraph continues in force until the purposes for which the warrant is issued have been fulfilled.]

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