

## SCHEDULE 6

### Powers of enforcement

#### Part 2

The Health and Safety Executive, the Health and Safety Executive for Northern Ireland [<sup>F1</sup> [<sup>F2</sup>, the Office of Rail Regulation]] [<sup>F1</sup> the Office of Rail and Road] [<sup>F3</sup>, the Office for Nuclear Regulation] and local (health and safety) authorities

#### Extent Information

- E1** This version of this provision extends to E+W+S+NI+ only. A new version of this provision has been created for

#### Textual Amendments

- F1** Words in Sch. 6 Pt. 2 heading substituted (E.W.S.) (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 8**
- F2** Words in Sch. 6 Pt. 2 heading inserted (16.12.2013) by [The REACH Enforcement \(Amendment\) Regulations 2013 \(S.I. 2013/2919\)](#), regs. 1(b), **12(a)**
- F3** Words in Sch. 6 Pt. 2 heading inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 3 para. 140(2)** (with Sch. 4)

#### SECTION 1

##### *Powers of entry*

1. The powers of an authorised person are—
- at any reasonable time (or, in a situation which the authorised person believes is or may be dangerous, at any time) to enter any premises which that person has reason to believe it is necessary to enter;
  - to be accompanied by a constable if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of that person's duty;
  - without prejudice to the preceding sub-paragraph, on entering any premises by virtue of sub-paragraph (a) to—
    - be accompanied by any other person duly authorised by the authorised person's enforcing authority; and
    - take any equipment or materials required for any purpose for which the power of entry is being exercised.
  - to make such examination and investigation as may in any circumstances be necessary for the purpose for which the power is being exercised;
  - as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything therein, 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 sub-paragraph (d);

- (f) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (d);
- (g) to take samples of any thing found in any premises which the authorised person has power to enter and of the atmosphere in or in the vicinity of any such premises;
- (h) in the case of any thing found in any premises which the authorised person has power to enter and which appears to be in contravention of a listed REACH provision, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary);
- (i) in the case of any such thing as is mentioned in sub-paragraph (h), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it and do to it anything which the authorised person has power to do under that sub-paragraph;
  - (ii) to ensure that it is not tampered with before the authorised person's examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 11 or 13.
- (j) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (d) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of that person's answers;
- (k) to require the production of, inspect, and take copies of or of any entry in—
  - (i) any books or documents which by virtue of any of the listed REACH provisions are required to be kept; and
  - (ii) any other books or documents which it is necessary for the authorised person to see for the purposes of any examination or investigation under sub-paragraph (d);
- (l) to require any person to afford the authorised person 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 upon the authorised person by this Part;
- (m) to seize and cause to be rendered harmless (whether by destruction or otherwise) any thing which is found by the authorised person in any premises and which the authorised person has reasonable cause to believe that, in the circumstances in which it is found is a cause of imminent danger of serious personal injury.
- (n) any other power which is necessary for the purpose of carrying out the enforcement duty.

**2.** Where an authorised person proposes to exercise the power conferred by paragraph 1(h) and if requested by a person who at the time is present in and has responsibilities in relation to those premises, the authorised person must cause anything which is to be done by virtue of that power to be done in the presence of that other person unless the authorised person considers that would be prejudicial to the safety of any person.

**3.** Before exercising the power conferred by paragraph 1(h), an authorised person must consult such persons as appear to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do under that power.

**4.** Where under the power conferred by paragraph 1(i) an authorised person takes possession of any thing found in any premises, the authorised person must leave there, either with a responsible

person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that thing sufficient to identify it and stating that the authorised person has taken possession of it under that power; and before taking possession of any such thing under that power an authorised person must, if it is practicable to do so, take a sample and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

5. No answer given by a person in pursuance of a requirement imposed under paragraph 1(j) is admissible in evidence against that person or the spouse or civil partner of that person in any proceedings.

6. Before the power in paragraph 1(m) to render harmless any thing is exercised, an authorised person must, if it is practicable to do so, take a sample of it and give it to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

7. As soon as may be after any thing has been seized and rendered harmless under paragraph 1(m), the authorised person must prepare and sign a written report giving particulars of the circumstances in which it was seized and so dealt with by the authorised person, and must—

(a) give a signed copy of the report to a responsible person at the premises where the thing was found; and

(b) unless that person is the owner of it, also serve a signed copy of the report on the owner, and if, where sub-paragraph (b) applies, the authorised person cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on the owner by giving it to the person to whom a copy was given under paragraph 4.

8. Nothing in this Part compels the production by any person of a document which—

(a) except in relation to Scotland, that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the County Court or High Court; or

(b) in relation to Scotland, contains confidential information made by or to an advocate or solicitor in that capacity and which that person would be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

9. Where—

(a) an action has been brought against an authorised person in respect of an act done in the execution or purported enforcement of a listed REACH provision;

(b) the circumstances are such that the authorised person is not legally entitled to require an indemnity from the<sup>F4</sup>appropriate authority]; and

(c) the <sup>F4</sup>appropriate authority]; is satisfied that the authorised person honestly believed that the act complained of was within that person's powers and that the duty of an authorised person required or entitled that act,

the <sup>F4</sup>appropriate authority]; may indemnify the authorised person against the whole or part of any damages and costs which that person may be ordered to pay or may have incurred.

#### Textual Amendments

**F4** Words in Sch. 6 Pt. 2 para. 9 substituted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), [Sch. 3 para. 140 \(3\)](#) (with Sch. 4)

<sup>F5</sup>9A. The powers of an authorised person acting on behalf of <sup>F6</sup>the Office of Rail Regulation][<sup>F6</sup>the Office of Rail and Road] —

**Changes to legislation:** There are currently no known outstanding effects for the The REACH Enforcement Regulations 2008, Part 2. (See end of Document for details)

- (a) do not include the powers in paragraph 1(m) or (n);
- (b) only apply in relation to non-domestic premises.]

**Textual Amendments**

**F5** Sch. 6 Pt. 2 para. 9A inserted (16.12.2013) by [The REACH Enforcement \(Amendment\) Regulations 2013 \(S.I. 2013/2919\)](#), regs. 1(b), **12(b)(i)**

**F6** Words in Sch. 6 Pt. 2 substituted (E.W.S.) (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 8(g)**

[<sup>F7</sup>**9B.** For the purposes of this section of this Schedule “the appropriate authority” means—

- (a) in Great Britain—
  - (i) in relation to a relevant nuclear site, the Office for Nuclear Regulation;
  - (ii) otherwise, the Health and Safety Executive;
- (b) in Northern Ireland, the Health and Safety Executive for Northern Ireland.]

**Textual Amendments**

**F7** Sch. 6 Pt. 2 para. 9B inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 3 para. 140(4)** (with Sch. 4)

<sup>F8</sup>**10.** . . . . .

**Textual Amendments**

**F8** Sch. 6 Pt. 2 para. 10 omitted (16.12.2013) by [The REACH Enforcement \(Amendment\) Regulations 2013 \(S.I. 2013/2919\)](#), regs. 1(b), **12(b)(ii)**

*SECTION 2*

*Notices*

**11.** If an authorised person is of the opinion that—

- (a) activities are being carried on or are likely to be carried on by or under the control of a person; and
- (b) the activity involves or as the case may be, will involve a risk of serious personal injury,

the authorised person may serve on that person a prohibition notice.

**12.** A prohibition notice must—

- (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
- (b) specify the matters which in the authorised person’s opinion give or, as the case may be, will give rise to the said risk;
- (c) where in the opinion of the authorised person any of those matters involves or, as the case may be, will involve a contravention of a listed REACH provision, the authorised person must—
  - (i) state that opinion;

- (ii) specify the provision or provisions which relate to that opinion; and
  - (iii) give particulars of the reasons supporting that opinion;
  - (d) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of sub-paragraph (b) and any associated contraventions of provisions so specified in pursuance of sub-paragraph (c) above have been remedied.
- 13.** A direction contained in a prohibition notice in pursuance of paragraph 12(d) takes effect—
- (a) at the end of the period specified in the notice; or
  - (b) if the notice so declares, immediately.
- 14.** If an authorised person is of the opinion that a person—
- (a) is contravening one or more of the listed REACH provisions; or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,
- the authorised person may serve on that person an improvement notice.
- 15.** An improvement notice must—
- (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
  - (b) specify the provision or provisions as to which the authorised person is of that opinion, giving particulars of the reasons supporting that opinion;
  - (c) require that the person to whom the improvement notice is addressed remedies the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought as provided by regulation 21) as may be specified in the notice.
- 16.** If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene a listed REACH provision, the authorised person may serve on that person an enforcement notice.
- 17.** An enforcement notice must—
- (a) state that the authorised person is of the opinion referred to in the preceding paragraph;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
  - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
  - (d) specify the period within which those steps must be taken.
- 18.** Where a prohibition notice, an improvement notice or an enforcement notice has been served but is not to take immediate effect—
- (a) the notice may be withdrawn by an authorised person at any time before the end of the period specified therein;
  - (b) the period so specified may be extended or further extended by an authorised person at any time when an appeal against the notice is not pending.
- 19.** References in this Part to a “prohibition notice”, an “improvement notice” or an “enforcement notice” have effect only for the purposes of this Part and Part 2 of Schedule 8.
- [<sup>F9</sup>20.** This section does not apply to an authorised person acting on behalf of [<sup>F6</sup>the Office of Rail Regulation][<sup>F6</sup>the Office of Rail and Road].]

**Changes to legislation:** There are currently no known outstanding effects for the The REACH Enforcement Regulations 2008, Part 2. (See end of Document for details)

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**Textual Amendments**

- F6** Words in Sch. 6 Pt. 2 substituted (E.W.S.) (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 8(g)**
- F9** Sch. 6 Pt. 2 para. 20 inserted (16.12.2013) by [The REACH Enforcement \(Amendment\) Regulations 2013 \(S.I. 2013/2919\)](#), regs. 1(b), **12(c)**

**Changes to legislation:**

There are currently no known outstanding effects for the The REACH Enforcement Regulations 2008, Part 2.