

SCHEDULE 2

Amendment of the Environment Act 1995

3. After section 109 insert—

“Power to issue restriction notices: England and Wales

109A.—(1) An authorised person may issue a restriction notice in relation to premises where there is, or was, a regulated facility or an exempt facility if the person is satisfied that the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
- (b) the notice is necessary to prevent that risk from continuing.

(3) A restriction notice is a notice prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.

(4) But a restriction notice does not prohibit access to the premises, or the specified part of the premises, by the occupier or the owner.

(5) A restriction notice has effect for a period specified in the notice, which may not exceed 72 hours.

(6) Where a restriction notice is issued, the appropriate agency may do anything necessary to secure the premises against access in contravention of the notice.

(7) A restriction notice may include provision for—

- (a) persons, or a description of persons, to whom the prohibition in subsection (3) does not apply;
- (b) times at which the prohibition in subsection (3) does not apply;
- (c) circumstances in which the prohibition in subsection (3) does not apply.

(8) Provision included in accordance with subsection (7) may be unconditional or subject to specified conditions.

(9) A restriction notice must—

- (a) identify the premises, or part of the premises, to which the notice applies;
- (b) explain the effect of the notice;
- (c) state that failure to comply with the notice is an offence;
- (d) state the penalties applicable to a person guilty of an offence;
- (e) state that a restriction order will be applied for under section 109D;
- (f) state that notice will be given of when and where the application for a restriction order will be heard;
- (g) explain the effect of a restriction order.

(10) Before issuing a restriction notice, the appropriate agency must make reasonable efforts—

- (a) to inform the occupier and the owner of the premises that the notice is going to be issued;

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- (b) to consult the occupier and the owner of the premises on the arrangements for access to the premises, or to the particular part of the premises, by persons acting on behalf of the occupier or the owner for any purpose, including—
 - (i) the purpose of maintaining machinery and apparatus;
 - (ii) the purpose of securing the premises.

Cancellation or variation of restriction notices

109B. Where a restriction notice is in force and the authorised person is no longer satisfied that the conditions in section 109A(2) are met—

- (a) as regards the premises as a whole, the authorised person must issue a notice cancelling the restriction notice (a “cancellation notice”);
- (b) as regards a particular part of the premises, the authorised person must issue a notice varying the restriction notice so that it does not apply to that part of the premises (a “variation notice”).

Service of restriction notices etc.

109C.—(1) A restriction notice, a cancellation notice or a variation notice must be served by an authorised person.

- (2) The authorised person must make reasonable efforts to—
 - (a) fix a copy of the notice to each normal means of access to the premises;
 - (b) give a copy of the notice to the occupier and the owner of the premises;
 - (c) give a copy of the notice to the occupier and the owner of any other premises to which the authorised person believes access will be impeded by the restriction notice.

(3) In subsection (1), “cancellation notice” and “variation notice” have the meanings given by section 109B.

Power of court to make restriction orders: England and Wales

109D.—(1) An application to a magistrates’ court for a restriction order—

- (a) must be made by the appropriate agency when it has issued a restriction notice (unless the notice has been cancelled);
- (b) may otherwise be made by the appropriate agency at any time.

(2) The application must be heard by the magistrates’ court—

- (a) where subsection (1)(a) applies, not later than 72 hours after service of the restriction notice;
- (b) where subsection (1)(b) applies, not later than 7 days after the application is made.

(3) Where an application is made under subsection (1), the appropriate agency must serve a notice stating the date, time and place of the hearing of the application on—

- (a) the occupier and the owner of the premises;
- (b) the occupier and the owner of any other premises to which the appropriate agency believes access will be impeded if a restriction order is made.

(4) The court may make a restriction order in relation to premises where there is, or was, a regulated facility or an exempt facility if the court is satisfied that the conditions in subsection (5) or (6) are met.

- (5) The conditions are that—
 - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
 - (b) the order is necessary to prevent that risk from continuing.
- (6) The conditions are that—
 - (a) in relation to the treatment, keeping, deposit or disposal of waste in or on the premises, a person has—
 - (i) contravened section 33(1) of the Environmental Protection Act 1990,
 - (ii) contravened regulation 12(1) of the Environmental Permitting Regulations or knowingly caused or knowingly permitted the contravention of regulation 12(1)(a) of those Regulations,
 - (iii) contravened or failed to comply with an environmental permit condition, or
 - (iv) failed to comply with the requirements of an enforcement notice, a landfill closure notice, a mining waste facility closure notice, a suspension notice, or a notice served under section 59, 59ZA, 59ZB or 59ZC of the Environmental Protection Act 1990,
 - (b) the conduct referred to in paragraph (a) has caused, is causing or has failed to prevent from continuing—
 - (i) pollution to the environment, or
 - (ii) harm to human health, and
 - (c) the order is necessary to prevent that pollution or harm from continuing.
- (7) A restriction order is an order prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (8) A restriction order has effect for a period specified in the order, which may not exceed 6 months.
- (9) A restriction order may include provision for—
 - (a) persons, or a description of persons, to whom the prohibition in subsection (7) does not apply;
 - (b) times at which the prohibition in subsection (7) does not apply;
 - (c) circumstances in which the prohibition in subsection (7) does not apply.
- (10) Provision included in accordance with subsection (9) may be unconditional or subject to specified conditions.
- (11) A restriction order may include provision about access to other premises where that access could otherwise be impeded by the order.
- (12) A restriction order must—
 - (a) identify the premises, or part of the premises, to which the order applies;
 - (b) explain the effect of the order;
 - (c) state that failure to comply with the order is an offence;
 - (d) state that the removal of a copy of a restriction order fixed to a normal means of access to the premises is an offence;
 - (e) state the penalties applicable to a person guilty of an offence.
- (13) The restriction notice referred to in subsection (1)(a) ceases to have effect—

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- (a) on the making of a restriction order, or
- (b) where the court decides not to make a restriction order, on the making of that decision, unless the court makes an order in accordance with section 109E(4).

(14) In subsection (6)(a)(iii) and (iv), “enforcement notice”, “environmental permit condition”, “landfill closure notice”, “mining waste facility closure notice” and “suspension notice” have the meanings given in regulation 2(1) of the Environmental Permitting Regulations.

Temporary orders

109E.—(1) This section applies where an application has been made to a magistrates’ court under section 109D(1)(a) for a restriction order.

(2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable—

- (a) the appropriate agency to show why a restriction order should be made;
- (b) the occupier or the owner of the premises to show why a restriction order should not be made.

(3) If the court adjourns the hearing, the restriction notice continues in force until the court has determined the application.

(4) If the court does not make a restriction order it may nevertheless order that the restriction notice continues in force for a specified further period of not more than 72 hours if it is satisfied that—

- (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
- (b) the notice is necessary to prevent that risk from continuing.

Extension of restriction orders

109F.—(1) At any time before the expiry of a restriction order, the appropriate agency may apply to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.

(2) Where an application is made under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates’ court to respond to the application.

(3) If a summons is issued under subsection (2), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.

(4) The court may make an order extending (or further extending) the period of the restriction order by a period not exceeding 6 months where satisfied that the conditions in section 109D(5) or (6) are met.

Variation or discharge of restriction orders

109G.—(1) At any time before the expiry of a restriction order, an application may be made to a justice of the peace, by complaint, for the order to be varied or discharged.

(2) Those entitled to make an application under this section are—

- (a) the appropriate agency that applied for the restriction order;

- (b) the occupier of the premises subject to the order;
- (c) the owner of the premises subject to the order.

(3) Where the appropriate agency makes an application under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.

(4) Where the occupier or the owner of the premises makes an application under this section, the justice of the peace must—

- (a) issue a summons directed to the appropriate agency that applied for the restriction order requiring it to appear before the magistrates' court to respond to the application, or
- (b) dismiss the application.

(5) If a summons is issued under subsection (3) or (4), a notice stating the date, time and place of the hearing of the application must be served on—

- (a) the appropriate agency that applied for the restriction order (other than where the agency is the complainant);
- (b) the occupier or the owner of the premises (other than the complainant).

(6) The magistrates' court may make an order varying or discharging the restriction order if it is no longer satisfied that the conditions in section 109D(5) or (6) are met in respect of all or part of the premises (or the part of the premises) to which the restriction order applies.

Enforcement of restriction orders

109H.—(1) The appropriate agency must make reasonable efforts to fix a copy of the restriction order to each normal means of access to the premises.

(2) Where a restriction order has been made, an authorised person may do anything necessary to secure the premises against access in contravention of the order.

Appeals against decisions on restriction orders

109I.—(1) The occupier or the owner of the premises may appeal against—

- (a) a decision to make or extend a restriction order;
- (b) a decision made under section 109G in relation to an application to vary or discharge a restriction order.

(2) The appropriate agency may appeal against—

- (a) a decision not to order the continuation in force of a restriction notice (under section 109E);
- (b) a decision not to make a restriction order;
- (c) a decision not to extend a restriction order;
- (d) a decision made in relation to an application to vary or discharge a restriction order (under section 109G).

(3) An appeal under this section is to the Crown Court.

(4) An appeal under this section must be made within 21 days beginning with the date of the decision to which it relates.

(5) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.

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(6) Pending the determination of an appeal under this section, the decision being appealed remains in force.

Access to other premises

109J.—(1) Where—

- (a) access to premises is prohibited or restricted by an order under section 109D, 109E, 109F, 109G or 109I, and
- (b) there are other premises to which access is impeded by that order,

an occupier or owner of those other premises may apply to the appropriate court for an order under this section.

(2) The appropriate court is—

- (a) the magistrates' court, in the case of an order under section 109D, 109E, 109F or 109G;
- (b) the Crown Court, in the case of an order under section 109I.

(3) Notice of an application under this section must be given to—

- (a) the appropriate agency that applied for the restriction order;
- (b) the occupier and the owner of the premises subject to the order.

(4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to the other premises, whether or not provision has been made under section 109D(11).

Recovery of costs

109K.—(1) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction notice was issued is entitled to recover that expenditure from the occupier or the owner of the premises, except such of that expenditure as the occupier or the owner shows was incurred unnecessarily.

(2) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction order is in force may apply to the court that made the restriction order for an order under subsection (3).

(3) On an application under this section, the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the occupier or the owner of the premises of—

- (a) the expenditure mentioned in subsection (2);
- (b) any expenditure incurred by the appropriate agency for the purpose of securing the premises in respect of which a restriction notice (including a notice continued in force under section 109E) was issued, except such of that expenditure as has been recovered in accordance with subsection (1).

(4) An application for an order under this section may not be heard unless it is made within 3 months beginning with the day on which the restriction order ceases to have effect.

(5) An order under this section may be made only against a person who has been served with the application for the order.

Exemption from liability

109L.—(1) The appropriate agency is not liable for damages arising out of anything done or omitted to be done by the appropriate agency in the exercise or purported exercise of a power under sections 109A to 109D, 109F to 109I and 109K in proceedings for—

- (a) judicial review, or
- (b) the tort of negligence or misfeasance in public office.

(2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.

(3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998⁽¹⁾.

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

Compensation

109M.—(1) Where the occupier or the owner of any premises to which access was impeded by a restriction notice or order (other than the premises which is subject to a restriction notice or order) claims to have incurred financial loss in consequence of that notice or order, that person may apply to the appropriate court for compensation.

(2) The appropriate court is—

- (a) the magistrates' court (except where paragraph (b) applies);
- (b) the Crown Court, in the case of a restriction order that was made or extended by an order of that Court on an appeal under section 109I.

(3) An application under this section may not be heard unless it is made within 3 months beginning with whichever of the following is applicable—

- (a) the day on which the restriction notice was cancelled under section 109B;
- (b) the day on which a restriction order was refused;
- (c) the day on which the restriction order ceased to have effect.

(4) For the purposes of subsection (3)(b) the day on which a restriction order was refused is—

- (a) the day on which the magistrates' court decided not to make a restriction order (except where paragraph (b) applies);
- (b) the day on which the Crown Court dismissed an appeal against a decision not to make a restriction order.

(5) On an application under this section the court may order the payment of compensation by the appropriate agency if it is satisfied—

- (a) that the applicant has incurred financial loss in consequence of the notice or order, and
- (b) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

Interpretation

109N.—(1) In sections 109A to 109M and this section—

(1) 1998 c. 42.

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- “appropriate agency” means the Agency or the Natural Resources Body for Wales;
- “authorised person” means a person who is authorised by the appropriate agency under section 108;
- “the Environmental Permitting Regulations” means the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154);
- “exempt facility” has the meaning given in regulation 5 of the Environmental Permitting Regulations;
- “occupier”, in relation to premises, includes a person who habitually lives on the premises;
- “owner”, in relation to premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;
- “premises” means premises in England or Wales, and includes any land, vehicle, vessel or mobile plant;
- “regulated facility” has the meaning given in regulation 8 of the Environmental Permitting Regulations;
- “restriction notice” has the meaning given by section 109A(3);
- “restriction order” has the meaning given by section 109D(7);
- “waste” has the same meaning as in section 75 of the Environmental Protection Act 1990(2).

(2) In calculating for the purposes of sections 109A(5), 109D(2) and 109E(4) when a period of 72 hours or 7 days ends, the following days are to be disregarded—

- (a) Good Friday;
- (b) Christmas Day;
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(3).”.

(2) Section 75(2) was substituted by S.I. 2011/988.

(3) 1971 c. 80.