

SCHEDULE 8

Regulation 34

POWERS OF ENTRY ETC.: FURTHER PROVISION

Notice of entry

1.—(1) Sub-paragraphs (2) to (4) apply to the powers conferred on an enforcing authority by virtue of—

- (a) regulation 29(1);
- (b) paragraph 3(2)(a) of schedule 6;
- (c) paragraph 3(2)(a) of schedule 7; and
- (d) regulation 32(3)(a),

(in this schedule referred to as “the relevant provisions”).

(2) An enforcing authority is entitled to demand entry into any premises as of right by virtue of the relevant provisions only at a reasonable time, except in an emergency.

(3) Unless the premises are premises (other than a dwelling) of a water supplier, the enforcing authority must give 24 hours’ notice of the intended entry to the occupier of the premises.

(4) The powers are exercisable on behalf of an enforcing authority by any person designated in writing by the enforcing authority as a person who may exercise the powers on its behalf.

Warrant to exercise right or power

2.—(1) If a sheriff or a 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 conferred by the relevant provisions; and
- (b) one or more of the conditions specified in sub-paragraph (2) is fulfilled in relation to those premises,

the sheriff or justice may by warrant authorise the enforcing authority to exercise the power in relation to those premises in accordance with the warrant and, if need be, by force.

(2) The conditions mentioned in sub-paragraph (1) are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises;
- (e) that the case is one of urgency;
- (f) that an application for admission to the premises would defeat the object of the proposed entry.

(3) A sheriff or justice must not issue a warrant under this schedule by virtue only of being satisfied that a condition specified in sub-paragraph (2)(a) or (b) is fulfilled unless the sheriff or justice is also satisfied—

- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises, or
- (b) that the giving of such notice would defeat the object of the proposed entry.

(4) A warrant under this schedule continues in force until the purposes for which the warrant was issued have been fulfilled.

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Evidence of authority

3. A person entitled to exercise any power conferred by the relevant provisions must, if required to do so, produce written evidence of that entitlement.

Supplementary powers

4. A person entitled to enter any premises by virtue of any power conferred by the relevant provisions is entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take on to the premises such other persons and such equipment as may be necessary.

Duty to secure premises

5. A person who enters any premises in the exercise of any power conferred by the relevant provisions must leave the premises as effectually secured against trespassers as that person found them.

Compensation

6.—(1) Where any person (“the person”) exercises, on behalf of an enforcing authority, any power conferred by the relevant provisions, the enforcing authority must make full compensation to any other person who has sustained loss or damage by reason of—

- (a) the exercise by the person of that power or of any power to take any person or equipment on to the premises in relation to which the power is exercised; or
- (b) the performance of, or failure of the person to perform, the duty imposed by paragraph 5.

(2) Compensation is not payable by virtue of sub-paragraph (1) in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other enactment.

(3) Any dispute as to a person’s entitlement to compensation under this paragraph, or as to the amount of any such compensation, is to be referred to the arbitration of a single arbiter appointed by agreement between the Scottish Ministers and the person who claims to have sustained the loss or damage or, in default of agreement, by the President of the Lands Tribunal for Scotland.

Commercially confidential information

7.—(1) A person who enters any premises in the exercise of a power conferred by these Regulations commits an offence if the person makes use of or discloses any information obtained by the person on those premises with regard to any manufacturing process or trade secret.

(2) A person who commits an offence under sub-paragraph (1) is liable—

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

Interpretation

8. For the purposes of paragraphs 5 and 6 a person enters any premises in the exercise of a power conferred by the relevant provisions despite a failure (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with—

- (a) any requirement to enter those premises at a reasonable time or after giving notice of intended entry; or

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- (b) the requirement imposed by paragraph 3.