

SCHEDULE 9

Article 89

Powers of entry and inspection

SECTION 1

Powers of entry and inspection

1. The powers of the administrator and an authorised person acting on its behalf are—
 - (a) to enter at any reasonable time any premises which that person has reason to believe it is necessary to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other person duly authorised by the administrator and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the authorised person's duty, a constable;
 - (ii) take any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination and investigation as may in any circumstances be necessary;
 - (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, shall 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 (c);
 - (e) 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 (c);
 - (f) to take samples, or cause samples to be taken, of any thing found in or on any premises which the authorised person has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
 - (g) in the case of any thing found in or on any premises which the authorised person has power to enter and which appears to that person to be in contravention of a provision of this Order, to cause it to be dismantled or subjected to any process or test (but not so as to destroy or damage it, unless that is necessary);
 - (h) in the case of any thing mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or 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 which the authorised person has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed; and
 - (iii) to ensure that it is available for use in any proceedings for an offence under this Order;
 - (i) 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 (c) 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;
 - (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person

to see for the purposes of an examination or investigation under sub-paragraph (c) and to inspect, and take copies of, or of any entry in, the records; and

- (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within the other 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 on the authorised person by this section.

2. In any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of paragraph 1 must only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
- (b) either—
 - (i) with the consent of the person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of section 2 of this Schedule.

3. Where an authorised person proposes to enter any premises and—

- (a) entry has been refused and the authorised person apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) the authorised person apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of paragraph 1 must only be effected under the authority of a warrant by virtue of section 2 of this Schedule.

4. In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, the powers under paragraph 1 have effect subject to section 6(3) of the Atomic Energy Authority Act 1954(1) (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911(2)).

5. Where an authorised person proposes to exercise the power conferred by paragraph 1(g), that person must, if so requested by a person who at the time is present on and has responsibilities in relation to the premises, cause anything which is to be done by virtue of that power to be done in the presence of that other person.

6. Before exercising the power conferred by paragraph 1(g), an authorised person must consult—

- (a) such persons having duties on the premises where the thing is to be dismantled or subject to the process or test; and
- (b) such other persons,

as appear to the authorised person to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do or cause to be done under the power.

7. No answer given by a person in pursuance of a requirement imposed under paragraph 1(i) is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal proceedings.

8. Nothing in paragraph 1 compels the production by any person of a document of which—

(1) 1954 c. 32. Section 6(3) was amended by section 2(3)(a) of the Nuclear Safeguards and Electricity (Finance) Act 1978 (c. 25); section 11(1) of the Nuclear Safeguards Act 2000 (c. 5) and article 4 of and paragraph 29 of Schedule 2 to S.I. 1999/1820.

(2) 1911 c. 28.

- (a) in England and Wales or Northern Ireland, 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 Scotland, that person would on grounds of confidentiality of communications be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

SECTION 2

Warrants, evidence and compensation

Entry and inspection under warrant

9. Subject to paragraph 11, if it is shown to the satisfaction, in England and Wales of a justice of the peace, in Scotland of the sheriff or a justice of the peace, or in Northern Ireland of a lay magistrate, on sworn information in writing—

- (a) that there are relevant grounds for the exercise in relation to any premises of the powers under paragraph 1 (“the power”); and
- (b) that one or more of the conditions specified in paragraph 10 is fulfilled in relation to those premises,

the justice, sheriff or lay magistrate may by warrant authorise the administrator to designate a person who is authorised to exercise the power in relation to those premises, in accordance with the warrant.

10. The conditions mentioned in paragraph 9 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 and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

11. In a case where paragraph 2 applies, a justice of the peace, sheriff or lay magistrate must not issue a warrant under paragraph 9 by virtue only of being satisfied that the exercise of the power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless the justice of the peace, sheriff or lay magistrate is also satisfied that the notice required by paragraph 2 has been given and that the period of that notice has expired.

12. Every warrant under paragraph 9 continues in force until the purposes for which the warrant was issued have been fulfilled.

13. An authorised person must produce evidence of that person’s authorisation or designation and other authority before exercising the power.

14. A person who, in exercise of the power, enters on any premises which are unoccupied or whose occupier is temporarily absent must leave the premises as effectively secured against trespassers as that person found them.

Compensation in respect of entry and inspection

15. Where any person exercises any power conferred by paragraph 1(a) or (b), it is the duty of the administrator under whose authorisation that person acts to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise of a power under paragraph 1 by the authorised person; or
 - (b) the performance of, or failure of the authorised person to perform, the duty imposed under paragraph 14.
- 16.** Compensation is not payable by virtue of paragraph 15 in respect of any loss or damage if—
- (a) it is attributable to the default of the person who sustained it; or
 - (b) it is loss or damage in respect of which compensation is payable by virtue of any other enactment.
- 17.** Any dispute as to a person's entitlement to compensation under paragraph 15, or as to the amount of any such compensation—
- (a) in England and Wales, must be referred to the arbitration of a single arbitrator appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Secretary of State;
 - (b) in Scotland, must be referred to the arbitration of an arbiter, appointed by agreement between the administrator and the person who claims to have sustained the loss or damage or, in default of agreement, appointed by the Scottish Ministers; or
 - (c) in Northern Ireland, must be referred to and determined by the Lands Tribunal for Northern Ireland.
- 18.** An authorised person is not to be liable in any civil proceedings for anything done in the purported exercise of the powers under paragraph 1 if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.