Powers of Entry into Domestic Premises

Advice to Petroleum Enforcement Authorities and their Inspectors

FOREWORD

This guidance supersedes and expands on all guidance given in previous PETELs on the subject, and forms part of a series of PETELs issued as part of the PELG-PETEL series from 2012 onwards by the Petroleum Enforcement Liaison Group (PELG), a health and safety advisory committee hosted by the Energy Institute. It comprises representatives of the Retail Petroleum Industry, the Petroleum Enforcing Authorities (PEAs), UKLPG and the Environment Agency, with technical support from the Health and Safety Executive. It has the aim of facilitating appropriate and consistent enforcement by PEAs through the dissemination of advice, guidance and good practice.

PETELs are a mechanism for PELG to promulgate advice, guidance and good practice with the purpose of:
- Facilitating appropriate and consistent enforcement by PEAs; and/or
- Advising duty-holders on how to comply with the law.

This PETEL has been revised following the coming into force of the Petroleum (Consolidation) Regulations 2014 and relevant devolved legislation in Northern Ireland and Scotland.

IMPORTANT DISCLAIMER

This guidance has been produced and reviewed as described in the foreword.

The Energy Institute (EI) shall have no liability arising out of or in connection with this guidance or its use or application whether in contract, tort (including but not limited to negligence), breach of statutory duty, under statute, by reason of misrepresentation or otherwise.

INTRODUCTION

1. This guidance is directed at those with a responsibility for enforcing the safe keeping of petrol on domestic property.

PETROLEUM (CONSOLIDATION) REGULATIONS 2014

2. The storage of petrol at domestic premises (and other relevant premises) is controlled by Part 3 of the Petroleum (Consolidation) Regulations 2014 (PCR). The enforcement of PCR is undertaken by petroleum enforcement authorities (PEAs), in the main these are local authorities, but in London and the metropolitan counties of England, it is the fire and rescue authority.
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Note: PCR applies to England, Scotland and Wales. The current applicable legislation in Northern Ireland is the Petroleum (Consolidation) Act (Northern Ireland) 1929.

POWERS OF PEA INSPECTORS

3. As PCR are a relevant statutory provision of the Health and Safety at Work etc. Act 1974 (HSWA), PEAs are required by section 19 HSWA to appoint suitably qualified persons as inspectors to enforce the legislation. In order for the appointed inspector to enforce PCR, the PEA needs to delegate the inspector with some or all of the powers listed in section 20 HSWA. An inspector may also be delegated to exercise the powers under S25 (power to deal with imminent danger).

Note: The ‘enforcement policy’ of PEAs, having regard to the Regulators’ Code, may restrict the extent to which any powers can be used by an individual officer and/or may include other administrative provisions.

4. Section 20(2) (a & b) gives the inspector:
   - The power to enter, at any reasonable time, premises which he has reason to believe it is necessary to enter for the purpose of enforcing any statutory provision contained within HSWA;
   - to be accompanied by a constable, if there is reasonable cause to apprehend any serious obstruction in the execution of the inspector’s duty; and
   - to take with him any other person duly authorised under section 20(2)(c) by the inspector’s enforcing authority e.g. where the PEA is a local authority a Fire Officer.

If in the inspector’s opinion the situation in the premises may be dangerous, entry may be made at any time.

SUSPECTED ILLEGAL STORAGE

5. Where illegal storage of petrol is suspected (in contravention of PCR) the initial approach of the inspector should be to seek the consent of the occupier for entry and examination of the property. If the occupier refuses the request, the inspector may then use the powers under S20(2)(a) to obtain access to the premises; without use of force.

6. PEAs should have operating procedures for carrying out inspections of premises, part of which should include the actions to be followed when invoking S20(2)(a) powers in circumstances where entry has been refused. This will usually involve the inspector discussing the situation with their line manager or a relevant senior officer in order to obtain their agreement for S20(2)(a) powers to be used. When intending to use S20(2)(a) powers where entry has been refused, the inspector should be accompanied by a police constable (S20(2)(b)) to ensure there is no obstruction by the occupier.
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7. Once entry has been gained the inspector may then exercise those S20(2)(c to m) powers conferred on the inspector as appropriate to the circumstances of the case.

8. Where petrol is found on the premises in quantities and/or storage arrangements that are in breach of PCR, the inspector will need to make an assessment of the fire and explosion risks posed by the storage before carrying out evidence gathering.

9. The fire and explosion assessment will need to take into consideration the:
   - quantity of petrol;
   - type and condition of the container(s) the petrol is kept in;
   - potential sources of ignition; and
   - place of storage (in the open air, in a detached garage/out-building or in a residential part of the premises, the latter could range from a detached house to a block of flats).

IMMINENT DANGER

10. If the inspector is of the opinion that the circumstances of the storage is a cause of imminent danger of serious personal injury, the inspector should exercise the power under S25 (if delegated with that power) to remove the petrol. The procedures detailed under S25 should be followed before and after the petrol is removed.

11. The storage of petrol in a building comprising multiple residential accommodation, such as flats, has the greatest potential for serious life risk; so where the PEA is a local authority, it is advisable for the inspector to seek the assistance of the fire and rescue service (FRS) in assessing the risk.

Notes:

i. If the inspector has not been conferred with the power to enforce S25, it will be necessary to request the assistance of a colleague or manager holding that power.

ii. PEAs should have contingency plans for the safe transportation and storage of any samples detained under S20(2)(g) powers and any petrol seized under S25 powers.

iii. In the case of domestic premises, other than premises consisting of or comprised in a house which is occupied as a single private dwelling, the fire and rescue authorities, in England and Wales, have powers under article 31 of the Regulatory Reform (Fire Safety) Order 2005 to serve an immediate prohibition notice where a (FRS) inspector is of the opinion that the risk of serious personal injury will be imminent. In Scotland, enforcement officers of the Scottish Fire & Rescue Service have equivalent powers under section 63 of the Fire (Scotland) Act 2005.
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iv. In Northern Ireland the meaning of ‘relevant premises’ in section 50 of the Northern Ireland Fire and Rescue Services (Northern Ireland) Order 2006 excludes domestic premises other than a house in multiple occupation. This means that authorised officers of the Northern Ireland Fire & Rescue Service are restricted in the use of their powers under section 36 (prohibition notices) for the various descriptions of domestic premises to those premises falling solely within the definition of ‘house in multiple occupation’.

SOCIAL HOUSING

12. If unlawful storage is suspected at premises owned or managed by a social housing provider (SHP), inspectors may be able to further their investigations in conjunction with the SHP itself, details of which can be obtained from the local housing authority. Most SHPs will prohibit the storage of petrol in their premises in any quantities.

REGULATION OF INVESTIGATORY POWERS ACT 2000

13. Inspectors are reminded that formal authorisation from a senior manager/officer will be needed under the Regulation of Investigatory Powers Act 2000 if directed surveillance is intended to be carried out to establish if private storage is taking place.

Note: There are significant restrictions that would apply to the use of surveillance on a domestic premises; applications for such authorisation and in England and Wales will now need to be authorised by a Magistrate. In Scotland such authorisations are granted under the Regulation of Investigatory Powers (Scotland) Act 2000.