



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 3

#### PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

### CHAPTER 1

#### POWERS OF ENTRY

*Repealing, adding safeguards or rewriting powers of entry*

#### **39 Repealing etc. unnecessary or inappropriate powers of entry**

- (1) The appropriate national authority may by order repeal any power of entry or associated power which the appropriate national authority considers to be unnecessary or inappropriate.
- (2) Schedule 2 (which contains repeals etc. of certain powers of entry) has effect.

#### **40 Adding safeguards to powers of entry**

- (1) The appropriate national authority may by order provide for safeguards in relation to any power of entry or associated power.
- (2) Such safeguards may, in particular, include—
  - (a) restrictions as to the premises over which the power may be exercised,
  - (b) restrictions as to the times at which the power may be exercised,
  - (c) restrictions as to the number or description of persons who may exercise the power,
  - (d) a requirement for a judicial or other authorisation before the power may be exercised,

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- (e) a requirement to give notice within a particular period before the power may be exercised,
- (f) other conditions which must be met before the power may be exercised,
- (g) modifications of existing conditions which must be met before the power may be exercised,
- (h) other restrictions on the circumstances in which the power may be exercised,
- (i) new obligations on the person exercising the power which must be met before, during or after its exercise,
- (j) modifications of existing obligations which must be met by the person exercising the power before, during or after its exercise,
- (k) restrictions on any power to use force, or any other power, which may be exercised in connection with the power of entry or associated power.

#### **41      Rewriting powers of entry**

- (1) The appropriate national authority may by order rewrite, with or without modifications—
  - (a) powers of entry, associated powers or any aspects of any such powers, or
  - (b) enactments relating to, or connected with, any such powers or aspects.
- (2) The power under subsection (1) to rewrite a power of entry or associated power includes, in particular, the power to remove an aspect of such a power without replacing it.
- (3) But no order under this section may alter the effect of—
  - (a) a power of entry,
  - (b) any associated power connected with it, or
  - (c) any safeguard relating to, but not forming part of, the power of entry or associated power,
 unless, on and after the changes made by the order, the safeguards in relation to the power of entry and associated powers connected with it, taken together, provide a greater level of protection than any safeguards applicable immediately before the changes.

#### **42      Duty to review certain existing powers of entry**

- (1) Each Minister of the Crown who is a member of the Cabinet must, within the relevant period—
  - (a) review relevant powers of entry, and relevant associated powers, for which the Minister is responsible with a view to deciding whether to make an order under section 39(1), 40 or 41 in relation to any of them,
  - (b) prepare a report of that review, and
  - (c) lay a copy of the report before Parliament.
- (2) A failure by a Minister of the Crown to comply with a duty under subsection (1) in relation to a power of entry or associated power does not affect the validity of the power.
- (3) In this section—
 

“relevant associated power” means any associated power in a public general Act or a statutory instrument made under such an Act,

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“the relevant period” means the period of two years beginning with the day on which this Act is passed,

“relevant power of entry” means any power of entry in a public general Act or a statutory instrument made under such an Act.

#### **43 Consultation requirements before modifying powers of entry**

Before making an order under section 39(1), 40 or 41 in relation to a power of entry or associated power, the appropriate national authority must consult—

- (a) such persons appearing to the appropriate national authority to be representative of the views of persons entitled to exercise the power of entry or associated power as the appropriate national authority considers appropriate, and
- (b) such other persons as the appropriate national authority considers appropriate.

#### **44 Procedural and supplementary provisions**

- (1) An order under section 39(1), 40 or 41—
  - (a) is to be made by statutory instrument,
  - (b) may modify any enactment,
  - (c) may include such incidental, consequential, supplementary, transitory, transitional or saving provision as the appropriate national authority considers appropriate (including provision modifying any enactment).
- (2) Subject to subsection (4), no instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (3) If a draft of an instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.
- (4) An instrument containing an order of a Minister of the Crown under section 39(1), 40 or 41 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (4) “primary legislation” means—
  - (a) a public general Act,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, and
  - (d) Northern Ireland legislation.
- (6) Subject to subsection (7), no instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 is to be made unless a draft of it has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (7) An instrument containing an order of the Welsh Ministers under section 39(1), 40 or 41 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) In subsection (7) “primary legislation” means—
  - (a) a public general Act, and

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(b) a Measure or Act of the National Assembly for Wales.

#### **45 Devolution: Scotland and Northern Ireland**

- (1) An order under section 39(1), 40 or 41 may not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament.
- (2) An order under section 39(1), 40 or 41 may not make provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a transferred matter without being ancillary to other provision (whether in that Act or previously enacted) which deals with an excepted or reserved matter.
- (3) In subsection (2) “excepted matter”, “reserved matter” and “transferred matter” have the meaning given by section 4(1) of the Northern Ireland Act 1998.

#### **46 Sections 39 to 46: interpretation**

In sections 39 to 45 and this section—

“appropriate national authority” means—

- (a) in relation to the making of any provision which would be within the legislative competence of the National Assembly for Wales, the Welsh Ministers,
  - (b) in any other case, a Minister of the Crown,
- “associated power” means any power which—
- (a) is contained in an enactment,
  - (b) is connected with a power of entry, and
  - (c) is a power—
    - (i) to do anything on, or in relation to, the land or other premises entered in pursuance of the power of entry,
    - (ii) to do anything in relation to any person, or anything, found on the land or other premises entered in pursuance of the power of entry, or
    - (iii) otherwise to do anything in connection with the power of entry,
- and includes any safeguard which forms part of the associated power;

“enactment” includes—

- (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment comprised in, or in an instrument made under—
  - (i) an Act of the Scottish Parliament,
  - (ii) Northern Ireland legislation, or
  - (iii) a Measure or Act of the National Assembly for Wales,

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,

“modify” includes amend or repeal (and “modifications” is to be read accordingly),

“off-shore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971 (see section 12 of that Act),

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“power of entry” means a power (however expressed) in any enactment to enter land or other premises; and includes any safeguard which forms part of the power,

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any off-shore installation,
- (c) any renewable energy installation,
- (d) any tent or movable structure,

“renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004 (see section 104 of that Act),

“repeal” includes revoke.

### *Codes of practice in relation to powers of entry*

#### **47 Code of practice in relation to non-devolved powers of entry**

- (1) The Secretary of State must prepare a code of practice containing guidance about the exercise of powers of entry and associated powers.
- (2) Such a code may, in particular, include provision about—
  - (a) considerations before exercising, or when exercising, the powers,
  - (b) considerations after exercising the powers (such as the retention of records, or the publication of information, about the exercise of the powers).
- (3) Such a code—
  - (a) must not contain provision about devolved powers of entry and devolved associated powers,
  - (b) need not contain provision about every other type of power of entry or associated power,
  - (c) may make different provision for different purposes.
- (4) In the course of preparing such a code in relation to any powers, the Secretary of State must consult—
  - (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) In this section “devolved powers of entry and devolved associated powers” means powers of entry and associated powers—
  - (a) in relation to which the Welsh Ministers may issue a code under Schedule 3,
  - (b) which, if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament, or
  - (c) which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of that Assembly and would deal with a transferred matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998) without being ancillary to other provision (whether in the Act of the Northern Ireland Assembly or previously enacted) which deals with

an excepted or reserved matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998).

#### **48 Issuing of code**

- (1) The Secretary of State must lay before Parliament—
  - (a) a code of practice prepared under section 47, and
  - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47 if—
  - (a) the draft of the order is not so approved, and
  - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order—
  - (a) is to be a statutory instrument, and
  - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

#### **49 Alteration or replacement of code**

- (1) The Secretary of State—
  - (a) must keep the powers of entry code under review, and
  - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code in relation to any powers, the Secretary of State must consult—
  - (a) the Lord Advocate,
  - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.

- (6) The alteration or replacement code—
  - (a) comes into force when issued, and
  - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) In this section “the powers of entry code” means the code of practice issued under section 48(2) (as altered or replaced from time to time).

## **50 Publication of code**

- (1) The Secretary of State must publish the code issued under section 48(2).
- (2) The Secretary of State must publish any replacement code issued under section 49(5).
- (3) The Secretary of State must publish—
  - (a) any alteration issued under section 49(5), or
  - (b) the code or replacement code as altered by it.

## **51 Effect of code**

- (1) A relevant person must have regard to the powers of entry code when exercising any functions to which the code relates.
- (2) A failure on the part of any person to act in accordance with any provision of the powers of entry code does not of itself make that person liable to criminal or civil proceedings.
- (3) The powers of entry code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the powers of entry code in determining a question in any such proceedings.
- (5) In this section “relevant person” means any person specified or described by the Secretary of State in an order made by statutory instrument.
- (6) An order under subsection (5) may, in particular—
  - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
  - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.

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- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate.
- (9) No instrument containing the first order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Subject to this, an instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) If a draft of an instrument containing the first order under subsection (5) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

## **52 Sections 47 to 51: interpretation**

In sections 47 to 51—

“power of entry” and “associated power” have the meaning given by section 46,

“the powers of entry code” has the meaning given by section 49(10).

## **53 Corresponding code in relation to Welsh devolved powers of entry**

Schedule 3 (which confers a power on the Welsh Ministers to issue a code of practice about Welsh devolved powers of entry and associated powers) has effect.