



## 2016 CHAPTER 13

### PART 2

#### POWERS OF ENTRY AND ASSOCIATED POWERS

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

7 The Department, by regulations, may amend, repeal or revoke any statutory provision under which it has any function to the extent necessary to remove from it any of the following that it considers to be unnecessary or inappropriate—

- (a) a power of entry or associated power;
- (b) an offence connected with the exercise of such a power of a kind mentioned in section 9(1)(b).

##### **Commencement Information**

II S. 7 in operation at 1.5.2016 by S.R. 2016/212, art. 2

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

8.—(1) The Department, by regulations, may provide for safeguards in relation to any power of entry or associated power contained in any statutory provision under which it has any function.

- (2) Such safeguards may include, in particular—
  - (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;

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- (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;
- (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 on the person exercising the power which must be met before, during or after its exercise; and
- (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.

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**Commencement Information**

**I2** S. 8 in operation at 1.5.2016 by S.R. 2016/212, art. 2

**Rewriting powers of entry**

**9.—(1)** The Department, by regulations, may rewrite (with or without modifications)—

- (a) powers of entry or associated powers contained in any statutory provision under which it has any function or any aspects of any such powers;
- (b) offences connected with the exercise of any such powers, including (but not limited to) offences of—
  - (i) obstructing a person in the exercise of a power of entry or associated power;
  - (ii) failing or refusing to provide facilities, assistance or information to a person exercising a power of entry or associated power; and
  - (iii) falsely pretending to be a person authorised to exercise a power of entry or associated power; or
- (c) statutory provisions 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—

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- (a) the power to remove an aspect of such a power without replacing it; and
- (b) the power to attach an offence of a kind mentioned in subsection (1)(b) to the exercise of such a power even if such an offence did not exist in relation to that power immediately before the changes made by the regulations.

(3) The power under subsection (1) to rewrite an offence connected with the exercise of a power of entry or associated power includes the power to provide for the offence to be—

- (a) triable only summarily or either summarily or on indictment;
- (b) punishable on summary conviction by—
  - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 3 months);
  - (ii) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale for an offence that is triable only summarily or the statutory maximum for an offence that is triable summarily or on indictment); or
  - (iii) both; or
- (c) punishable on conviction on indictment by—
  - (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years); or
  - (ii) a fine; or
  - (iii) both.

(4) Subsection (3) applies irrespective of whether the mode of trial provided for the offence is different to the mode of trial, or the penalty provided for the offence is greater or lesser than the penalty, applicable to the offence immediately before the changes made by the regulations.

(5) But regulations under this section may not alter the effect of—

- (a) a power of entry or associated power; or
- (b) any safeguard relating to, but not forming part of, such a power—

unless, on or after the changes made by the regulations, the safeguards in relation to the power, taken together, provide a greater level of protection than any safeguards applicable immediately before the changes.

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**Commencement Information**

**I3** S. 9 in operation at 1.5.2016 by S.R. 2016/212, art. 2

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### Review of powers of entry

**10.—**(1) The Department must, within the period of two years beginning with the day on which this section comes into operation—

- (a) review powers of entry and associated powers contained in any statutory provision under which it has any function with a view to deciding whether to make regulations under section 7, 8(1) or 9(1) in relation to any of them;
- (b) prepare a report of that review; and
- (c) lay a copy of the report before the Assembly.

(2) A failure by the Department 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.

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#### Commencement Information

**I4** [S. 10](#) in operation at 1.5.2016 by [S.R. 2016/212](#), [art. 2](#)

### Consultation requirements

**11** Before making any regulations under section 7, 8(1) or 9(1) in relation to a power of entry or associated power or an offence connected with the exercise of any such power, the Department must consult—

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

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#### Commencement Information

**I5** [S. 11](#) in operation at 1.5.2016 by [S.R. 2016/212](#), [art. 2](#)

### Regulations

**12** Regulations under section 7, 8(1) or 9(1) may—

- (a) modify any statutory provision; or
- (b) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions modifying statutory provisions) as the Department considers necessary or expedient.

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#### Commencement Information

**I6** [S. 12](#) in operation at 1.5.2016 by [S.R. 2016/212](#), [art. 2](#)

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

**13.—**(1) The Department must prepare a code of practice in connection with the exercise by the Department, a district council or any other person of a power of entry or associated power contained in any statutory provision under which the Department has any function.

(2) After preparing a draft of the code the Department—

- (a) must publish the draft in any manner that it considers appropriate and invite representations regarding the draft;
- (b) must consider any representations made to it regarding the draft; and
- (c) may amend the draft accordingly.

(3) After the Department has proceeded under subsection (2) it must cause a draft of the code to be laid before the Assembly.

(4) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further steps may be taken in relation to the draft.

(5) Nothing in subsection (4) prevents a new draft being prepared and dealt with in accordance with this section, including subsection (3).

(6) If the Assembly does not resolve as mentioned in subsection (4), the Department must publish the code in any manner that it considers appropriate.

(7) The Department must from time to time review the code and, if it considers it appropriate to do so, revise the code.

(8) Subsections (1) to (7) apply to a revision of the code in the same way as they apply to its preparation.

(9) A person who exercises a power of entry or associated power of a kind mentioned in subsection (1) must have regard to a code of practice published and in force under this section that relates to the exercise of that power.

(10) A failure on the part of any person to have regard to a code of practice in exercising a power of entry or associated power of a kind mentioned in subsection (1) does not of itself make that person liable to criminal or civil proceedings.

(11) A code of practice is admissible in evidence in any such proceedings.

(12) A court or tribunal may, in particular, take into account a failure by a person to have regard to a code of practice in determining a question in any such proceedings.

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#### **Commencement Information**

**I7** S. 13 in operation at 1.5.2016 by S.R. 2016/212, art. 2

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*Changes to legislation: There are currently no known outstanding effects for the Environmental Better Regulation Act (Northern Ireland) 2016, PART 2. (See end of Document for details)*

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## Interpretation

### 14.—(1) In this Part—

“associated power” means any power which—

- (a) is contained in a statutory provision;
- (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 under the power of entry;
  - (ii) to do anything in relation to any person, or anything, found on the land or other premises entered under the power of entry; or
  - (iii) otherwise to do anything in connection with the power of entry—and includes any safeguard that forms part of the associated power;

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

“premises” includes—

- (a) any land;
- (b) any vehicle, vessel, aircraft or hovercraft; and
- (c) any tent or movable property.

(2) A reference in this Part to a function of the Department under a statutory provision is a reference to a function that is related to environmental activities, or to protecting and improving the environment, within the meaning of Part 1 and includes—

- (a) a function of the Department of such a kind that is exercisable by a district council or any other person; and
- (b) a function of such a kind that a district council or any other person has under any statutory provision.

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### Commencement Information

**I8** S. 14 in operation at 1.5.2016 by S.R. 2016/212, art. 2

**Changes to legislation:**

There are currently no known outstanding effects for the Environmental Better Regulation Act (Northern Ireland) 2016, PART 2.