

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 3: Protection of property from disproportionate enforcement action**

#### **Chapter 1: Powers of Entry**

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

191. *Subsection (1)* confers on the appropriate national authority a power, exercisable by order, to add safeguards to any power of entry or associated power. *Subsection (2)* sets out a non-exhaustive list of the safeguards which may be included in such an order. Any such safeguards prescribed in an order would be in addition to (with or without modifications) those already contained in the legislation conferring the power of entry or any associated power. The safeguards which may be prescribed in an order made under this section may include, amongst other things:

- restrictions as to the types of premises in respect of which the power may be exercised. For example, provision could be made to limit the operation of the power to commercial or business premises, or to exclude private dwellings;
- restrictions as to the times at which the power may be exercised. For example, provision could be made to limit the operation of the power to reasonable day time hours;
- a requirement for the power of entry to be subject to an authorisation. This could, for example, be an internal authorisation granted by an officer of a specified minimum seniority within the organisation concerned, or a warrant granted by a court (likely to be a magistrates' court or, in Scotland, a sheriffs' court), or both;
- obligations on the person exercising the power. For example, provision could be made to show the occupier of the premises some form of identification; to provide a written receipt for anything taken from the premises following a search; or to provide specified written information to the occupant (such as in respect of the procedure for making a complaint about the way the power of entry or an associated power was exercised).