

Powers of Entry etc. Bill [HL]

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TO

Regulate powers of entry and powers in relation to documents; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Interpretation

In this Act—

“authorised person” means a person authorised by the Minister responsible for the enforcement of an Act or instrument containing powers, and

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“powers” means the powers listed in section 2.

2 Powers regulated by this Act

This Act regulates the exercise of powers of—

(a) entry to any land or premises, for the purposes of—

(i) ascertaining whether an offence has been committed,

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(ii) ascertaining whether the provisions of an Act of Parliament, or of an item of secondary legislation, have been complied with,

(iii) inspecting the land or premises or any activity taking place thereon, or

(iv) surveying or carrying out works on the land or premises,

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(b) examination, production and seizure of objects, documents and electronic records,

(c) compulsion in relation to the production of documents.

3 Exercise of existing powers

The powers contained in or authorised by regulations made under the Acts listed in Schedule 1 to this Act shall be exercised subject to sections 5 to 9 of this Act.

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4 Powers: general limitations

Any powers contained in any Act or instrument passed after the coming into force of this Act shall be exercised subject to sections 5 to 9 of this Act, unless the Act or instrument provides to the contrary.

5 Limitations on powers of entry

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No power of entry to which this Act applies shall be exercised unless –

- (a) the procedures set out in the Code of Practice contained in Schedule 2 to this Act have been followed, or
- (b) the entry is necessary to avert danger to life or property.

6 Times when entry may take place

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Unless otherwise specified in a warrant or other order of a court or a magistrate –

- (a) no power of entry shall be exercised on a bank holiday or other nationally recognised public holiday, and
- (b) no entry shall take place except –
 - (i) between 8am and 6pm on Mondays to Fridays,
 - (ii) in relation to business premises, at any other time when the premises are open for business.

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7 Number of persons permitted to enter premises

The maximum number of persons who may enter premises shall be four, including the authorised person, unless a warrant or other order of a court or magistrate provides otherwise.

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8 Production of documents etc.

(1) No power compelling the production of documents or electronic records (“documents etc.”) shall be exercised unless the requirements of subsection (2) have been satisfied.

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(2) The requirements are that –

- (a) the power is exercised subject to an order of a judge or magistrate issued following an application in accordance with subsection (3),
- (b) the order shall fix a deadline for the production of the documents etc. which shall be no earlier than 5pm on the seventh working day following the making of the order,
- (c) the documents etc. shall be produced at the place of business or residence of the person on whom the order is served,
- (d) the order shall state the period of time for which the documents etc. will be held.

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(3) An order under subsection (2)(a) may only be made following an application by an authorised person.

(4) An application under subsection (3) shall be supported by evidence, on oath, that the authorised person reasonably believes that the production of the documents etc. is necessary pursuant to the provisions of the relevant Act or instrument.

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9 Seizure of documents

- (1) No seizure of documents etc. shall take place without an order under subsection (6).
- (2) Before applying for an order under subsection (6), the authorised person shall notify the person having charge of the documents etc. that the documents etc. are required. 5
- (3) The notification under subsection (2) shall state the reason why the documents etc. are required, and shall specify the relevant Act or instrument.
- (4) The notification shall inform the person having charge of the documents etc. that he may provide electronic or paper copies of them to the authorised person; and shall specify – 10
 - (a) the latest date and time for the provision of such copies, and
 - (b) the place where the copies shall be provided.
- (5) If the copies of the documents etc. are provided in accordance with subsection (4), no order for seizure may be made. 15
- (6) If copies of the documents etc. are not provided in accordance with subsection (4), an authorised person may apply to a judge or magistrate for an order permitting seizure of documents etc.
- (7) The application shall be supported by evidence from the authorised person, on oath, that the seizure is necessary pursuant to the provisions of the relevant Act or instrument. 20

10 Saving

Nothing in this Act shall apply to powers exercised by police officers, members of the security or intelligence services or officers of HM Revenue and Customs.

11 Short title, commencement and extent 25

- (1) This Act shall be cited as the Powers of Entry etc. Act 2007.
- (2) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.
- (3) This Act extends to – 30
 - (a) England and Wales,
 - (b) Scotland, and
 - (c) Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 3

ACTS CONTAINING POWERS OF ENTRY, OR AUTHORISING THE MAKING OF REGULATIONS
CONTAINING SUCH POWERS

| | |
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| Adoption and Children Act 2002 | 5 |
| Agriculture Act 1947 | |
| Agriculture Act 1967 | |
| Agriculture Act 1970 | |
| Agriculture and Horticulture Act 1964 | |
| Agriculture Marketing Act 1958 | 10 |
| Agriculture Wages Act 1948 | |
| Anatomy Act 1984 | |
| Animal Boarding Establishments Act 1963 | |
| Animal Health Act 1981 | |
| Animal Health Act 2002 | 15 |
| Anti-social Behaviour Act 2003 | |
| Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 | |
| Asylum and Immigration Act 1996 | |
| Aviation Security Act 1982 | |
| Bees Act 1980 | 20 |
| Breeding of Dogs Act 1991 | |
| British Fishing Boats Act 1983 | |
| Broadcasting Act 1990 | |
| Building Act 1984 | |
| Caravan Sites and Control of Development Act 1960 | 25 |
| Care Standards Act 2000 | |
| Child Support Act 1991 | |
| Childcare Act 2006 | |
| Children Act 1989 | |
| Children and Adoption Act 2002 | 30 |
| Children and Young Persons Act 1933 | |
| Children and Young Persons Act 1963 | |
| Children and Young Persons Act 1969 | |
| Cinemas Act 1985 | |
| Civil Aviation Act 1982 | 35 |
| Clean Air Act 1993 | |
| Coast Protection Act 1949 | |
| Communications Act 2003 | |
| Companies Act 1985 | |

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| Companies Act 2006 | |
| Competition Act 1998 | |
| Compulsory Purchase Act 1965 | |
| Conservation of Seals Act 1970 | |
| Consumer Credit Act 1974 | 5 |
| Consumer Protection Act 1987 | |
| Control of Pollution Act 1974 | |
| Countryside Act 1968 | |
| Countryside and Rights of Way Act 2000 | |
| Courts Act 2003 | 10 |
| Dangerous Wild Animals Act 1976 | |
| Data Protection Act 1998 | |
| Dentists Act 1984 | |
| Diseases of Fish Act 1937 | |
| Education Act 1997 | 15 |
| Education Act 2005 | |
| Electricity Act 1989 | |
| Energy Act 1976 | |
| Energy Conservation Act 1981 | |
| Enterprise Act 2002 | 20 |
| Environment Act 1995 | |
| European Communities Act 1972 | |
| Financial Services and Markets Act 2000 | |
| Fire Precautions Act 1971 | |
| Fire Services Act 1947 | 25 |
| Food and Environment Protection Act 1985 | |
| Food Safety Act 1990 | |
| Food Standards Act 1999 | |
| Freedom of Information Act 2000 | |
| Gambling Act 2005 | 30 |
| Gangmasters (Licensing) Act 2004 | |
| Gas Act 1965 | |
| Gas Act 1986 | |
| Gas Act 1995 | |
| Goods Vehicles (Licensing of Operators) Act 1995 | 35 |
| Health and Safety at Work etc. Act 1974 | |
| Highways Act 1980 | |
| Hill Farming Act 1946 | |
| Housing Act 1985 | |
| Housing Act 2004 | 40 |
| Human Fertilisation and Embryology Act 1990 | |
| Hypnotism Act 1952 | |
| Immigration Act 1971 | |
| International Carriage of Perishable Foodstuffs Act 1976 | |
| Land Drainage Act 1991 | 45 |
| Landmines Act 1998 | |
| Law of Distress Amendment Act 1888 | |

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| Law of Distress Amendment Act 1908 | |
| Learning and Skills Act 2000 | |
| Licensing Act 2003 | |
| Local Government Finance Act 1988 | |
| Local Government Finance Act 1992 | 5 |
| Local Government and Housing Act 1989 | |
| Local Government (Miscellaneous Provisions) Act 1976 | |
| Local Government (Miscellaneous Provisions) Act 1982 | |
| Local Government, Planning and Land Act 1980 | |
| Medicines Act 1968 | 10 |
| Merchant Shipping Act 1995 | |
| Milk (Cessation of Production) Act 1985 | |
| Mineral Workings Act 1985 | |
| National Minimum Wage Act 1998 | |
| National Parks and Access to the Countryside Act 1949 | 15 |
| Noise Act 1996 | |
| Nuclear Safeguards Act 2000 | |
| Ordnance Survey Act 1841 | |
| Performing Animals (Regulation) Act 1925 | |
| Pests Act 1954 | 20 |
| Pet Animals Act 1951 | |
| Petroleum (Consolidation) Act 1928 | |
| Planning and Compensation Act 1991 | |
| Planning (Hazardous Substances) Act 1990 | |
| Planning (Listed Buildings and Conservation Areas) Act 1990 | 25 |
| Plant Health Act 1967 | |
| Plant Varieties and Seeds Act 1964 | |
| Poisons Act 1972 | |
| Prevention of Damage by Pests Act 1949 | |
| Private Security Industry Act 2001 | 30 |
| Property Misdescriptions Act 1991 | |
| Public Health (Control of Disease) Act 1984 | |
| Public Health Act 1936 | |
| Radioactive Material (Road Transport) Act 1991 | |
| Railways Act 1993 | 35 |
| Railways and Transport Safety Act 2003 | |
| Refuse Disposal (Amenity) Act 1978 | |
| Regional Development Agencies Act 1998 | |
| Reservoirs Act 1975 | |
| Riding Establishments Act 1964 | 40 |
| Rights of Entry (Gas and Electricity Boards) Act 1954 | |
| Rights of Way Act 1990 | |
| Road Traffic Act 1988 | |
| Road Traffic Regulation Act 1984 | |
| Safety of Sports Grounds Act 1975 | 45 |
| Schools Inspection Act 1996 | |
| Scrap Metal Dealers Act 1964 | |

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|---|----|
| Sea Fish (Conservation) Act 1967 | |
| Sea Fisheries (Shellfish) Act 1967 | |
| Slaughter of Poultry Act 1967 | |
| Slaughterhouses Act 1974 | |
| Social Security Administration Act 1992 | 5 |
| Social Security Contributions and Benefits Act 1992 | |
| Solicitors Act 1974 | |
| Stamp Act 1891 | |
| Sunday Trading Act 1994 | |
| Telecommunications Act 1984 | 10 |
| Tobacco Advertising and Promotions Act 2002 | |
| Town and Country Planning Act 1990 | |
| Trade Descriptions Act 1968 | |
| Trade Marks Act 1994 | |
| Transport Act 1981 | 15 |
| Transport and Works Act 1992 | |
| Utilities Act 2000 | |
| Video Recordings Act 1984 | |
| Water Industry Act 1991 | |
| Water Resources Act 1991 | 20 |
| Weeds Act 1959 | |
| Weights and Measures Act 1985 | |
| Welfare Reform and Pensions Act 1999 | |
| Wildlife and Countryside Act 1981 | |
| Wireless Telegraphy Act 1949 | 25 |
| Zoo Licensing Act 1981 | |

SCHEDULE 2

Section 5

CODE OF PRACTICE FOR THE REGULATION OF POWERS OF ENTRY

Introduction

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| 1 | This Code of Practice (“the Code”) applies to the exercise of powers of entry contained in the statutes, or regulations made under them, listed in Schedule 1 to this Act. | 30 |
| 2 | The Code does not apply to the exercise of such powers by police officers, members of the security or intelligence services, or officers of HM Revenue and Customs. | 35 |
| 3 | The Code applies to entry to business premises as well as dwellings, and to entry to land, whether or not there are buildings on the land. | |
| 4 | (1) Any exercise of a power of entry to private property is likely to involve a conflict with the right to private life guaranteed by Article 8 of the European Convention on Human Rights. | 40 |
| | (2) This right extends to business premises. | |

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| | (3) A power of entry without consent should only be used where it is necessary to achieve its purpose. | |
| | (4) The way in which the power is used must be proportionate to that purpose. | |
| | (5) Before a power is used, consideration must be given to whether the purpose could be achieved by less intrusive means. | 5 |
| 5 | In all cases those exercising powers should do so courteously and with respect for persons and property, and where a power authorises the use of force, only the minimum force necessary to achieve the purposes of the power may be used. | |
| | <i>General</i> | 10 |
| 6 | A copy of the Code must be carried by all those exercising the powers to which it applies, and made available to the occupier of any premises entered. | |
| 7 | All those exercising a power to which the Code applies must carry with them an official form of identification issued by their employer, containing— | 15 |
| | (a) their name, photograph and job title; and | |
| | (b) the address, telephone number and (if available) facsimile number and email address of their place of work. | |
| 8 | In the Code “working day” excludes Saturdays, Sundays, bank holidays and other public holidays. | 20 |
| 9 | Where a provision of the Code requires notice to be given in writing, a notice sent by email will satisfy this requirement. | |
| | <i>Entry with consent</i> | |
| 10 | Where it is proposed to exercise the power of entry on the basis of the consent of the owner or occupier, at least two working days’ notice, or such longer period as may be specified in the relevant statutory provision, should be given. | 25 |
| 11 | The notice should be in writing and addressed to the owner, occupier or other person appearing to be in charge of the premises. | 30 |
| 12 | The notice should— | |
| | (a) state the statutory provision under which the power is to be exercised; | |
| | (b) state the purpose of the proposed entry; | |
| | (c) state the date and time when it is proposed that the power should be exercised; | 35 |
| | (d) give the names of all those who are proposing to enter the premises; and | |
| | (e) provide details of who should be contacted if the person to whom the notice is addressed objects to the exercise of the power, or to its exercise at the proposed time. | 40 |

Entry without consent

- 13 Where it is proposed to exercise a power of entry without consent, and without a warrant, at least two working days' notice, or such longer period as may be specified in the relevant statutory provision, should be given, unless to do so would defeat the purpose of the entry. 5
- 14 The notice should be in writing and addressed to the owner, occupier or other person appearing to be in charge of the premises.
- 15 The notice should contain the same information as set out in paragraph 12 above.

Entry under warrant 10

- 16 Where it is proposed to exercise a power of entry under warrant, the procedures set out in the legislation providing the power must be followed.

Time of entry

- 17 Entry to land or premises must always take place at a reasonable time.
- 18 For premises used as a dwelling a "reasonable" time means between 8am and 6pm on any working day, or a time agreed in advance with the occupier. 15
- 19 For other land or premises a "reasonable" time means between 8am and 6pm on any working day, or any time at which the land or premises are open for business, or a time agreed in advance with the occupier.
- 20 Land or premises are to be regarded as open for business at any time when they are open to receive visitors, customers or other members of the public. 20

Procedures on entry

- 21 These procedures apply to entry with or without consent, or under warrant.
- 22 On arrival at the premises, the person in charge of the exercise of the power should attempt to make contact with the occupier of the premises, or the person appearing to be in charge of them. 25
- 23 If this is impossible (for example, because the premises are unoccupied), or would frustrate the purposes of an entry without consent or under warrant, the procedures set out in paragraphs 25 and 26 below must be followed.
- 24 The person in charge of the exercise of the power must show to the occupier, if present, or any person appearing to be in charge of the premises, the form of identification required by paragraph 7 above, and he must explain in straightforward language— 30
- (a) the statutory authority under which the power of entry is being exercised; 35
 - (b) the purpose of the entry;
 - (c) the number of people who will be entering the premises, and their roles;
 - (d) the likely duration of the entry; and
 - (e) the consequences of obstructing the entry (where there is power to enter without consent). 40

- 25 Where the procedures set out in paragraph 24 above are not followed prior to the entry, they must be followed as soon as possible thereafter.
- 26 If the premises are unoccupied, or no person is present, a written notice giving the information as set out in paragraph 24 above and specifying the outcome of the entry must be left in a prominent place on the premises. 5

Conduct of inspection, search, etc.

- 27 The extent of any inspection, search, etc. must be strictly limited to the purposes for which entry is authorised.
- 28 When only one person is present on the premises at the time when a power is to be exercised, a friend, neighbour or other person should be allowed to witness the exercise of the power, unless the person in charge of the entry has reasonable grounds to believe that this would seriously disrupt the purposes of the entry, or would lead to an unreasonable delay in its exercise. 10
- 29 As soon as the purpose, or purposes, for which the entry is authorised have been achieved, all those taking part in the entry must leave the premises. 15
- 30 If any property is damaged in the course of the exercise of a power of entry, the authority authorising the entry will be responsible for its repair, or the payment of compensation to the owner of the property.
- 31 Premises must be left as secure as they were found.

Register of exercise of powers 20

- 32 Any authority which has responsibility for the exercise of a power of entry to which the Code applies, shall keep a record of all uses of the power.
- 33 The record shall include—
- (a) the statutory provision under which the power was exercised;
 - (b) the date and time of the exercise of the power; 25
 - (c) the address of the premises or land entered;
 - (d) the name of the person in charge of the exercise of the power; and
 - (e) the outcome of the exercise of the power (for example, whether it led to any further action).
- 34 Any authority which has responsibility for the exercise of powers of entry to which the Code applies shall publish annually statistics detailing— 30
- (a) the number of occasions on which an entry power has been used; and
 - (b) the number of uses of the power which led to further action being taken.

Powers of Entry etc. Bill [HL]

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To regulate powers of entry and powers in relation to documents; and for connected purposes.

Lord Selsdon

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