

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Protection of property from disproportionate enforcement action

Chapter 1: Powers of Entry

Section 51: Effect of code

207. *Subsection (1)* provides that a ‘relevant person’ must have regard to the code of practice when exercising the powers of entry or associated powers to which the code relates. *Subsection (5)* provides that a ‘relevant person’ for these purposes is a person specified, or of a description specified, in an order made by the Secretary of State (such an order is subject to the affirmative resolution procedure (*subsection (9)*)). Such an order may provide that a relevant person is only required to have regard to the powers of entry code of practice when discharging specified functions or acting in a specified capacity (*subsections (6) and (7)*). This is intended to provide for those instances where certain bodies have dual or multiple roles or, for example, exercise both public functions and private sector functions, and where the duty to have regard to the code may therefore be limited to the exercise of one, or one part of, their functions. Before making such an order the Secretary of State must consult the representatives of the persons to be affected by it and other persons he or she considers appropriate (*subsection (8)*).
208. *Subsection (2)* provides that a failure to adhere to any aspects of the code of practice would not, of itself, render a person liable to civil or criminal proceedings. However, the code of practice is admissible in criminal or civil proceedings (*subsection (3)*) and a court or tribunal may take into account any failure of a relevant authority to comply with the duty to have regard to the code (*subsection (4)*).