

These notes refer to the Environmental Better Regulation Act (Northern Ireland) 2016 (c.13) which received Royal Assent on 11 April 2016

Environmental Better Regulation Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Powers of Entry and Associated Powers

Section 7: Repealing, etc. unnecessary or inappropriate powers of entry, etc.

Section 7 gives the Department the power, exercisable by regulations, to remove from existing legislation powers to enter land or other premises which it considers to be either unnecessary or inappropriate. Such regulations may also remove associated powers, for example, a power to search or inspect the premises entered into or to seize material found in such premises; the term is defined in section 14(1). The power to remove an associated power may be exercised independently from the power to remove a power of entry (and vice versa). Section 7 also gives the Department the power to remove from existing legislation offences (as described in section 9(1)(b)) connected with the powers of entry and associated powers.

Section 8: Adding safeguards to powers of entry

Section 8(1) gives the Department power, exercisable by regulations, to add safeguards to powers of entry or associated powers. Subsection (2) sets out a non-exhaustive list of the safeguards which may be included in such regulations. Any such safeguards would be in addition to those already contained in the legislation conferring the power of entry or associated power.

Section 9: Rewriting powers of entry

Section 9 gives the Department the power, exercisable by regulations, to rewrite powers of entry or associated powers. Such regulations might consolidate a number of powers of entry exercisable for similar purposes. The power extends to rewording related legislation and connected offences. Whilst regulations under this section may alter a power of entry or associated power and any safeguard linked to such powers, the combined effect of the changes must be to add to the level of protection afforded by the safeguards when taken together (subsection (5)).

Subsection (3) provides for the treatment of offences. In general terms, an offence that is tried summarily (usually in the Magistrates' Court) falls into one of two categories: (a) an offence that can only be tried summarily; and (b) one that can be tried either summarily or on indictment.

Subsection 3(b)(ii) makes the distinction between the different formulae for expressing the maximum fines applicable to those offences which are triable only summarily (a fine not exceeding level 5 on the standard scale) and those which are triable either summarily or on indictment (a fine which must not exceed the statutory maximum).

While level 5 on the standard scale and the statutory maximum are both currently £5,000, they are two distinct legal concepts and the monetary values may diverge in the future.

Section 10: Review of powers of entry

Section 10 places a duty on the Department to conduct a review of powers of entry and associated powers within 2 years of the coming into operation of this section. In conducting a review the Department must consider whether, in relation to each power of entry (and associated power), to exercise the regulation making powers in sections 7, 8(1) or 9(1). A report of the review is to be prepared and laid before the Assembly.

Section 11: Consultation requirements

Section 11 requires the Department, before making regulations relating to a power of entry or associated power or an offence connected with the exercise of any such power, to consult with appropriate persons representing the views of stakeholders pertinent to such powers.

Section 12: Regulations

Section 12 provides that regulations made by the Department under section 7, 8(1) or 9(1) may modify any statutory provision or include such consequential, incidental, supplementary, transitional or saving provisions as the Department considers appropriate.

Section 13: Code of practice in relation to powers of entry

Section 13 places a duty on the Department to prepare a code of practice in relation to the exercise of powers of entry and associated powers under statutory provisions under which the Department has a function related to environmental activities or protecting and improving the environment. The Department is required to publish a draft of the code, invite representations on it and consider them.

After making any necessary changes to the draft code as outlined in subsection (2)(c) the Department must then lay the code in draft before the Assembly (subsection (3)). If the Assembly does not resolve as mentioned in

subsection (4), the Department must publish the finalised code in any manner that it considers appropriate and review it from time to time.

Subsection (9) provides that a person must have regard to the code of practice when exercising the powers of entry or associated powers to which the code relates. Failure to adhere to any aspects of the code would not, of itself, render a person liable to civil or criminal proceedings (subsection (10)) however, the code is admissible in such proceedings (subsection (11)) and a court or tribunal may take into account any failure of a person to comply with the duty to have regard to the code (subsection (12)).

Section 14: Interpretation

Section 14 defines terms used in Part 2. The section includes a definition of “premises”. The definition makes it clear that “premises” includes any land, vehicle, vessel, aircraft or hovercraft, and any tent or moveable property. However, it is an inclusive definition so, in addition to the things listed, the term bears its ordinary, natural and literal meaning and would, therefore, include a wide range of houses or buildings including residential premises.