



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 3

PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

CHAPTER 1

POWERS OF ENTRY

Codes of practice in relation to powers of entry

47 Code of practice in relation to non-devolved powers of entry

- (1) The Secretary of State must prepare a code of practice containing guidance about the exercise of powers of entry and associated powers.
- (2) Such a code may, in particular, include provision about—
 - (a) considerations before exercising, or when exercising, the powers,
 - (b) considerations after exercising the powers (such as the retention of records, or the publication of information, about the exercise of the powers).
- (3) Such a code—
 - (a) must not contain provision about devolved powers of entry and devolved associated powers,
 - (b) need not contain provision about every other type of power of entry or associated power,
 - (c) may make different provision for different purposes.
- (4) In the course of preparing such a code in relation to any powers, the Secretary of State must consult—
 - (a) the Lord Advocate,

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- (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (5) In this section “devolved powers of entry and devolved associated powers” means powers of entry and associated powers—
- (a) in relation to which the Welsh Ministers may issue a code under Schedule 3,
 - (b) which, if it were contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament, or
 - (c) which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of that Assembly and would deal with a transferred matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998) without being ancillary to other provision (whether in the Act of the Northern Ireland Assembly or previously enacted) which deals with an excepted or reserved matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998).

48 Issuing of code

- (1) The Secretary of State must lay before Parliament—
 - (a) a code of practice prepared under section 47, and
 - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 47 if—
 - (a) the draft of the order is not so approved, and
 - (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order—
 - (a) is to be a statutory instrument, and
 - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

49 Alteration or replacement of code

- (1) The Secretary of State—
 - (a) must keep the powers of entry code under review, and
 - (b) may prepare an alteration to the code or a replacement code.

- (2) Before preparing an alteration or a replacement code in relation to any powers, the Secretary of State must consult—
 - (a) the Lord Advocate,
 - (b) such persons appearing to the Secretary of State to be representative of the views of persons entitled to exercise the powers concerned as the Secretary of State considers appropriate, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.
- (6) The alteration or replacement code—
 - (a) comes into force when issued, and
 - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) In this section “the powers of entry code” means the code of practice issued under section 48(2) (as altered or replaced from time to time).

50 Publication of code

- (1) The Secretary of State must publish the code issued under section 48(2).
- (2) The Secretary of State must publish any replacement code issued under section 49(5).
- (3) The Secretary of State must publish—
 - (a) any alteration issued under section 49(5), or
 - (b) the code or replacement code as altered by it.

51 Effect of code

- (1) A relevant person must have regard to the powers of entry code when exercising any functions to which the code relates.

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- (2) A failure on the part of any person to act in accordance with any provision of the powers of entry code does not of itself make that person liable to criminal or civil proceedings.
- (3) The powers of entry code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant person to have regard to the powers of entry code in determining a question in any such proceedings.
- (5) In this section “relevant person” means any person specified or described by the Secretary of State in an order made by statutory instrument.
- (6) An order under subsection (5) may, in particular—
 - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
 - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate.
- (9) No instrument containing the first order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Subject to this, an instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) If a draft of an instrument containing the first order under subsection (5) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

52 Sections 47 to 51: interpretation

In sections 47 to 51—

“power of entry” and “associated power” have the meaning given by section 46,

“the powers of entry code” has the meaning given by section 49(10).

53 Corresponding code in relation to Welsh devolved powers of entry

Schedule 3 (which confers a power on the Welsh Ministers to issue a code of practice about Welsh devolved powers of entry and associated powers) has effect.