



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Powers of Entry Review: Final Report

**Presented to Parliament
pursuant to section 42(1)(c) of the Protection of
Freedoms Act 2012**

November 2014



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Ministerial Foreword



Defra is working hard to reduce regulatory burdens on business. Food and farming alone are worth £100bn to the British economy, employing one in eight workers. As a Department with interests crucial to so many businesses and jobs, I am determined to ensure that our regulations are necessary, well-designed, and proportionate.

This report makes an important contribution to that effort by setting out proposals to recast a whole series of powers that are unnecessary and excessive. Defra has by far the largest portfolio of powers of entry on the statute book. I aim to reduce the 393 powers of entry for which Defra is responsible by about a third through repeals, revocations, consolidations or other legislative changes and to add further safeguards to around 76 to protect homeowners and businesses from unnecessary state intrusion.

At the same time, Defra and its agencies will continue to have access to the powers they need to maintain environmental protection, public health and animal welfare and disease standards. The proposals here mean that we will achieve the same high standards as before while curtailing the risk of excessive and disruptive intervention.

ELIZABETH TRUSS

Secretary of State for Environment, Food and Rural Affairs

Executive Summary

Under section 42 of the Protection of Freedoms Act 2012 each Minister of the Crown who is a member of the Cabinet must review relevant powers of entry and relevant associated powers for which the Minister is responsible with a view to deciding whether to make an order under section 39(1), 40 or 41 in relation to any of them. Each Minister is required to prepare a report of that review and lay a copy of the report before Parliament.

Our approach

At the start of the review Defra was responsible for around one third of the total number of powers of entry on the statute book in England. Much of this is due to a complex regulatory landscape relating to farming, fisheries and the environment which has evolved over the years, with a significant proportion of the regulations originating in Europe.

Effective enforcement of Defra's regulations is important to maintain environmental protection, food safety, and animal welfare and disease standards. This review has enabled us to ensure that, in delivering these protections, we are not unnecessarily or inadvertently impacting on individual freedom or legitimate business operations.

The review was carried out by Better Regulation, policy and legal experts in Defra in conjunction with counterparts in other government departments, in particular the Home Office, regulators and local authorities. The first stage was a robust validation exercise to confirm the powers for which Defra is responsible and those which fall within scope of the review. Each power was then considered individually and in themes to confirm if the power was still necessary or could be repealed. For those that are still required, consideration was then given as to whether they could be consolidated with other similar powers and/or have safeguards added.

All of the powers for which Defra is responsible have been considered. However, there are some powers which are subject to other reviews or legislative changes such as legislation covered by the EU Review of Food and Feed Controls and the new Common Agricultural Policy regime where implementation plans are being finalised in the EU. A more limited review of these powers has been carried out at this time but, when implementing legislation is being prepared, Defra will take the opportunity to consider repealing or amending powers. Any amended powers will be cleared through the Home Office Gateway.

Outcome

This report sets out the results of Defra’s review of its powers of entry and what action will be taken. Where Defra is unable to be clear about the potential for change, e.g. those subject to EU review, the nature of the possible change has been indicated but categorised as “awaiting outcome of legislative changes”.

There were **531** powers attributed to Defra on the original published list of government powers. Following a validation exercise **393** powers were identified as being in scope of the review. Once the identified changes have been made, the number of powers for which Defra is responsible (pertaining to England and England and Wales but not Wales only) will be reduced to **260**. This does not include changes from those subject to further review which is estimated could reduce the number by a further 20 – 65.

The table below sets out the number of powers of entry owned by the department and a breakdown of action to be undertaken.

Total powers of entry in scope of review	393
1. Total powers of entry identified for repeal / revocation	83
2. Total powers of entry identified for additional safeguards	76
3. Total powers of entry identified for consolidation	55 (5 powers to remain)
4. Total powers of entry awaiting outcome of legislative changes	82
5. Total powers of entry to remain unchanged	97
Net Total	260

Next Steps

Defra will be developing an implementation plan setting out more clearly the timetable for making the proposed changes to the powers of entry listed.

1. Powers of entry identified for repeal or revocation

Powers of entry repealed or revoked since launch of review	9
Powers of entry identified for repeal or revocation	83
Replacement powers (will clear/have cleared PoE gateway)	2
Net Reduction	81

In carrying out this review of powers of entry and in similar exercises such as Red Tape Challenge, we have identified **83** powers entry for repeal or revocation. **2** of these will be replaced by powers which have been or will be cleared through the Home Office gateway.

Some of these repeals/revocations have already taken place. Subject to Parliament, the rest will be taken forward within this Parliament wherever possible and will be subject to consultation with interested parties.

1.1. Powers of entry which have been repealed or revoked since this review started

a) Powers of entry repealed or revoked by the Protection of Freedoms Act 2012¹

- Milk (Cessation of Production) Act 1985 (c. 4) – section 2
- Dairy Herd Conversion Premium Regulations 1973 (1973/1642) – regulation 5(1)
- Cereals Co-responsibility Levy Regulations 1988 (1988/1001) – regulation 8(1) and 8(2)
- Oilseeds Producers (Support Systems) Regulations 1992 (1992/695) – regulation 5(2)

¹ Section 39(2) of, and Schedule 2, Part 2 to the Protection of Freedoms Act 2012 provide for the powers of entry listed to be omitted.

- Older Cattle (Disposal) (England) Regulations 2005 (2005/3522) – regulation 5(1)
- Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (2006/2821) – regulation 6

b) Power of entry repealed by the Enterprise and Regulatory Reform Act 2013

- Agricultural Wages Act 1948 (c. 47) – section 12 (in relation to England)

c) Power of entry revoked by replacement legislation which contains no power of entry

- Scallop Fishing Order 2004 (2004/12) – this Order has been revoked in its entirety

1.2. Powers to be repealed where legislation is already underway

a) Powers in the Deregulation Bill

The following powers are no longer required and will be repealed in the Deregulation Bill. The Bill is currently going through Parliament and is expected to receive Royal Assent in early 2015.

- British Fishing Boats Act 1983 (c. 8) – section 3 – This Act will be repealed in its entirety
- Agricultural Produce (Grading and Marking) Act 1928 (c. 19) – This Act will be repealed in its entirety
- Non-Marketing of Milk and Milk Products and the Dairy Herd Conversion Premiums Regulations 1997 (1997/1304) – regulation 4(1)
- Animal Health Act 1981 (c. 22) – sections 36(H) and 36(G)

b) Powers of entry to be repealed by the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12)

The Act received Royal Assent on 13 March 2014, (Schedule 11, paragraph 21 of which contains the relevant repeal but has yet to be commenced.)

- Environmental Protection Act 1990 (c. 43) – sections 92, 92(A) and 92(C)

1.3. Powers of Entry relating to Covent Garden Market

A Bill is currently being planned for introduction in the 2016/17 parliamentary session that will provide for the abolition of the Covent Garden Market Authority and will repeal the Covent Garden Market Acts.

- Covent Garden Market Act 1961 (9 & 10 Eliz. 2 Ch. 49) – section 30
- Covent Garden Market Act 1966 (c. i) – sections 11, 12 and 43

1.4. Powers of entry which are not used and which will now be repealed or revoked

Defra will make an order under powers in the Protection of Freedoms Act to repeal/revoke the following powers which are no longer necessary.

- Agriculture Act 1967 (c. 22) – section 55
- Agriculture Act 1970 (c. 40) – section 106(8)
- British Wool Marketing Scheme (Approval) Order 1950 (1950/1326) – paragraph 78 of the Schedule.
- Control of Pollution Act 1974 (c. 40) – section 16
- Forestry Act 1967 (c.10) – section 24(3)
- Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (2007/1842) – regulations 53(1), 53(3) - 53(5)
- Whaling Industry (Regulation) Act 1934 (c. 49) – section 8

1.5 Powers of entry in legislation which is now redundant and which will be repealed or revoked

Defra is investigating the legislative vehicle or vehicles for the repeal or revocation of the following pieces of legislation.

- Slaughter of Poultry Act 1967 (c. 24) – section 4
- Slaughterhouses Act 1974 (c. 3) – section 42
- Surplus Food Regulations 1995 (1995/184) – regulation 3(2)
- Inclosure Act 1845 (c. 118) – section 123
- Potatoes (Protection of Guarantees) Order 1985 (1985/64) – article 6
- Agricultural, Fishery and Aquaculture Products (Improvement Grant) Regulations 1991 (1991/777) – regulation 6(1)
- Agriculture and Horticulture Development Regulations 1980 (1980/1298) – regulation 17
- Agriculture Improvement Regulations 1985 (1985/1266) – regulation 18
- Farm and Conservation Grant Regulations 1989 (1989/219) – regulation 18
- Farm and Conservation Grant Regulations 1991 (1991/1630) – regulation 18
- Farm and Horticulture Development Regulations 1981 (1981/1707) – regulation 19
- Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001 (2001/1117) – regulation 13(2)
- Fisheries and Aquaculture Structures (Grants) Regulations 1995 (1995/1576) – regulation 12(2)
- Fishing Vessels (Safety Improvements) (Grants) Scheme 1995 (1995/1609) – paragraph 16
- Rural Development Grants (Agriculture and Forestry) Regulations 2000 (2000/2907) – regulation 9(1)
- Bovine Hides Regulations 1997 (1997/813) – regulation 8(1)
- Apple and Pear Orchard Grubbing Up Regulations 1998 (1998/1131) – regulation 10(1)
- Watermark Disease (Local Authorities) Order 1974 (1974/768) – article 5(4)
- Fishing Vessels (Decommissioning) Scheme 1997 (1997/1924) – article 15
- Fishing Vessels (Decommissioning) Scheme 2003 (2003/2669) – article 14

- Undersized Lobsters Order 2000 (2000/1503) – article 6
- Sandeels Licensing Order 1989 (1989/1066) – article 2(1)
- Imported Livestock Order 1958 (1958/558) – article 17(2), 17(3)
- Sheep Variable Premium (Protection of Payments) (No.2) Order 1980 (1980/1811) – article 11(1)
- Beef (Marketing Payment)(No2) Regulations 1996 (1996/2999) – regulation 6(2)
- Beef (Marketing Payment) Regulations 1996 (1996/2005) – regulation 6(2)
- Beef Special Premium Regulations 2001 (2001/2503) – regulation 15(2)
- Sheep Annual Premium and Sucker Cow Premium Quotas (Re-assessment of Eligibility) Regulations 1996 (1996/48) – regulation 9(1)
- Veal (Marketing Payment) Regulations 1997 (1997/1986) – regulation 6(2)
- Sucker Cow Premium Regulations 1991 (1991/2632) – regulation 6(2)
- Cattle Plague Order 1928 (1928/206) – article 4(2)
- Importation of Hay and Straw Order 1979 (1979/1703) – article 5(2)

1.6. Powers of entry which Defra believe can be repealed but may still be used by other Departments

- Public Health Act 1875 (c. 55) – section 305

This provision has been repealed by the Public Health Act 1936, s 346, Schedule 3, Part I, except in so far as it is material for the purposes of the un-repealed provisions of the Act or of any Act directed to be construed with it.

Insofar as the un-repealed provisions of the Act are within Defra's remit (sewers), there is no longer a need for this power of entry. Nor does there appear to be any other Act within Defra's remit that needs to be construed with this provision. The provision may therefore be repealed. However, before this is done, it will be necessary to check that no other Department has an interest in maintaining the power.

- London County Council (General Powers) Act 1959 (c. lii) – sections 12 and 17

Sections 12 and 17 contain provisions relating to the storage of, and the acquisition of land for the storage of, containers for horticultural produce, in the geographical area of the original Covent Garden Market.

Since Covent Garden Market is no longer situated in the geographical area defined, these powers are no longer of interest to Defra and insofar as they are within Defra's remit can be repealed, however, before this is done, it will be necessary to check that no other Department has an interest in maintaining the power.

1.7. The following powers of entry duplicate powers of entry in the Animal Health Act 1981 and will be repealed

The following Orders all pre-date the Animal Health Act 1981, but are now treated as having been made under the Animal Health Act.

The powers of entry now derive from section 63 of the Animal Health Act so the powers of entry in the separate Orders may be revoked.

- Importation of Animal Products and Poultry Products Order 1980 (1980/14) – article 7(4)
- Importation of Animals Order 1977 (1977/944) – articles 12(5), 14(3), 18(1)(b), 18(2) and 18(3).
- Importation of Embryos, Ova and Semen Order 1980 (1980/12) – article 6(4)
- Importation of Processed Animal Protein Order 1981 (1981/677) – article 7(4)
- Importation of Animal Pathogens Order 1980 (1980/1212) – article 6(5)

1.8. Fisheries Orders identified for improvement under Red Tape Challenge.

These Orders have all been identified for improvement under Red Tape Challenge. When these Orders are revoked and replaced, the new Orders will rely on powers of entry contained in the enabling Act (Sea Fish (Conservation) Act 1967).

- The Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000 (2000/874) - article 5
- The Razor Shells, Trough Shells and Carpet Shells (Specified Sea Area) (Prohibition of Fishing) Order 1998 (1998/1276) - article 3

- The Undersized Spider Crabs Order 2000 (2000/1502) - article 4
- The Undersized Velvet Crabs Order 1989 (1989/919) - article 5
- The Undersized Edible Crabs Order 2000 (2000/2029) - article 5

1.9. Legislation which will be revoked and replaced

The following powers will be repealed and replaced by powers that will need to clear the Home Office gateway.

- Sea Fish (Marketing Standards) Regulations 1986 (1986/1272) – regulation 4(1)
- Welfare of Animals (Slaughter or Killing) Regulations 1995 (1995/731) – regulation 23(1)
- Swine Vesicular Disease Regulations 2009 (2009/1299) – regulation 34

2. Powers of entry to be retained with additional safeguards

Powers of entry identified for additional safeguards	76
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Spirit Drinks Regulations 2008 (2008/3206)

- Regulation 10: Power for authorised officer to enter premises for the purpose of ensuring that the 2008 Regulations are being complied with. Entry must be at a reasonable time and may only be made to a dwelling house with a warrant or by giving 24 hours' notice. A justice of the peace may grant a warrant for entry if satisfied that there are reasonable grounds to enter the premises and that; consent is refused; the giving of notice would defeat the object of the entry; the matter is urgent; or the premises are unoccupied. Reasonable force may only be used under a judicial warrant.

The 2008 Regulations implement Regulation (EC) No 2008/110. A power of entry provision is necessary to ensure that spirit drinks produced and/or marketed in the UK are compliant with the Regulation which requires Member States to take '*the measures necessary to ensure compliance with the provisions of the Regulation*' (Article 24). The power of entry is a necessary enforcement mechanism in order to ensure that our obligations under EU law are met. However, the power of entry can be amended in order to ensure that the requisite safeguards are contained within the provision.

Proposal: Safeguards will be added providing that premises used wholly or mainly as a dwelling will only be entered by warrant or with consent. Also, notice of intention to make a visit will be required except where to provide such notice would breach the requirements of EU law or undermine the purpose of the visit.

Scotch Whisky Regulations 2009 (2009/2890)

- Regulation 19: Power for authorised officer to enter premises for the purpose of ensuring that the 2009 Regulations are being complied with. Entry must be at a reasonable time and may only be made to a dwelling house with a warrant or by giving 24 hours' notice. A justice of the peace may grant a warrant for entry if satisfied that there are reasonable grounds to enter the premises and that; consent is refused; the giving of notice would defeat the object of the entry; the matter is

urgent; or the premises are unoccupied. Reasonable force may only be used under a judicial warrant.

The 2009 Regulations implement Regulation (EC) No 2008/110. A power of entry provision is necessary to ensure that Scotch Whisky produced and/or marketed in the UK is compliant with the Regulation which requires Member States to take '*the measures necessary to ensure compliance with the provisions of the Regulation*' (Article 24). The power of entry is a necessary enforcement mechanism in order to ensure that our obligations under EU law are met. However, the power of entry can be amended in order to ensure that the requisite safeguards are contained within the provision.

Proposal: Safeguards will be added providing that premises used wholly or mainly as a dwelling will only be entered by warrant or with consent. Also notice of intention to make a visit will be required except where to provide such notice would breach the requirements of EU law or undermine the purpose of the visit.

Hedgerows Regulations 1997 (1997/1160)

- Regulation 12: Power to enter any land to survey it or to ascertain whether an offence has been committed under Regulation 7 and whether a "replacement of hedgerow" notice should be given. Entry must be made at a reasonable hour and no entry may be made onto adjoining (third-party) land unless twenty four hours' notice has been given.
- Regulation 13: Power to enter under a warrant if it is shown there are reasonable grounds for entry (as in Regulation 12) and that (i) admission has been refused, or is reasonably apprehended or (ii) the case is one of urgency. Unless the matter is urgent, entry must be at a reasonable hour.

Proposal: Safeguards to be applied are that there should be a limit to the number of authorised persons able to enter the land and that reasonable notice of the entry must be given in all cases save where the case is urgent. It is not considered necessary for a safeguard to be implemented to protect dwellings as Regulation 3 states that "these Regulations do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling-house".

Zoo Licensing Act 1981 (c. 37)

- Section 16G: Power to enter the premises of a zoo in order to inspect, care for or remove any animal to which Section 16E arrangements relate or to inspect the accommodation of any such animal. Entry may not be made into any part of the premises of the zoo which are used as a private dwelling. A warrant may be granted if it is necessary for a person to enter premises and (i) any part of the premises to which admission is sought is used as a private dwelling or (ii) admission to the

premises has been refused. Entry under the warrant may be made with or without constables and any other necessary persons, and if need be by reasonable force.

This power ensures that authorities can fulfil responsibilities under *Directive 1999/22/EC relating to the keeping of wild animals in zoos*. It provides authorities reserve powers when making arrangements for the welfare or disposal of animals when the zoo operator cannot be found, or when his own arrangements are problematic.

Proposal: Safeguards to be implemented are for a warrant to be required to enter premises used mainly or wholly as a dwelling (as opposed to the current position of merely being required for the “private dwelling” parts of premises) and for entry to be at a reasonable time unless the matter is urgent or entry at a reasonable time would frustrate the purpose of the entry. It is not necessary to provide for notice of entry – under Section 16E a zoo operator will have been given an opportunity to make representations before arrangements are made for the care of the animals and so will be aware of the authority’s intentions. Furthermore, as entry may have to be made urgently, the provision of reasonable notice beyond this would not be practical.

Bees Act 1980 (c. 12)

- Section 2: Power to enter any premises, vessel or vehicle in which there are reasonable grounds for supposing there are things subject to control under Section 1 (bees, combs – in essence bee paraphernalia – or items exposed to infection) in order to prevent the introduction into, or spread within, the UK of pests and diseases affecting bees. The *Bee Diseases and Pests Control (England) Order 2006* necessitates the inspection of bee colonies where diseases or pests are suspected or confirmed – and, in the latter circumstance, action including treatment or destruction to prevent spread. Force cannot be utilised.

As beekeepers normally keep bees at their private dwellings, to introduce a safeguard excluding private dwellings wholesale would compromise use of the power.

Proposal: The safeguards that will be introduced are to require a judicial warrant before entry; entry to be made only during reasonable hours; the number of persons who may utilise the power to be capped (possibly two persons); and reasonable notice of the exercise of the power to be given save in emergencies or where such notice would defeat the purpose of the entry.

Fur Farming (Prohibition) Act 2000 (c. 33)

- Section 4: Power to enter premises on which there are reasonable grounds for suspecting 1) that an offence of keeping animals primarily a) for slaughter for their fur or b) for breeding for such slaughter and may inspect the premises or 2) that animals to which a Court-made forfeiture order applies are being kept and carry out

that order. Entry must be at a reasonable time and may not be into any private dwelling. Only persons authorised by the appropriate authority or by the Court may enter. There is no provision for force to be used.

Proposal: A safeguard will be added providing that reasonable notice of entry be given of the entry unless, in an emergency, where the giving of the notice would defeat the object of the entry, where reasonable efforts to agree an appointment have failed or where the requirement of notice has been waived.

Agriculture Act 1970 (c. 40)

- Section 76: Power to enter premises where there is a reasonable belief that a) fertiliser or feeding stuff is being kept there ready for sale or b) that fertiliser or feeding stuff is being kept there that the occupier has purchased, in order to take samples of that material. Entry may not be made to premises used only as a dwelling with regard to sampling “purchased” material. Entry must be made at a reasonable time and force may not be used.

The sampling and testing of fertilisers and feeding stuff are important functions to ensure that standards and compliance are maintained and that there is adequate consumer protection, particularly regarding fertiliser quality.

Proposal: A safeguard will be added providing that premises used wholly or mainly as a dwelling will be entered only by warrant or with consent. Although entry to dwelling premises is already excluded with regard to obtaining samples of purchased fertiliser, entry to dwelling premises more generally cannot be excluded altogether as outbuildings of dwelling premises may need to be accessed to exercise this power. As the number of persons needing to utilise this power will be variable, it would adversely impact on the power if a maximum number was prescribed. It is not proposed to introduce a safeguard regarding notice as the power is concerned with obtaining samples to ensure quality. The giving notice of an inspection could allow for the removal or substitution of sub-standard goods.

EC Fertilisers (England and Wales) Regulations 2006 (2006/2486)

- Regulation 12: Power to enter premises for the purpose of ensuring that the 2006 Regulations are being complied with. Entry must be at a reasonable time and may only be made to a dwelling house with a warrant or by giving 24 hours’ notice. A justice of the peace may grant a warrant for entry if satisfied that there are reasonable grounds to enter the premises and that; consent is refused; the giving of notice would defeat the object of the entry; the matter is urgent; or the premises are unoccupied. Reasonable force may only be used under a judicial warrant.

The 2006 Regulations implement Regulation (EC) No 2003/2003 relating to fertilisers (“the EC Regulation”) creating offences for breaching requirements regarding the designation, compositional tolerances, identification, marking, labelling and packaging of fertilisers. It is important that the power of entry can be used to ensure that the Regulations are being complied with and to meet EU obligations on checking and compliance. There can be issues around the safe and secure storage of oxidising fertilisers, particularly ammonium nitrate, and particularly on farms. Stores of ammonium nitrate present a major fire risk and in certain circumstances may explode. Significant amounts of fertiliser may be stored on farm premises. Larger businesses can store in excess of 100 tonnes.

Proposal: A safeguard will be added providing that premises used wholly or mainly as a dwelling will be entered only by warrant or with consent. Entry to dwelling premises cannot be excluded altogether as, particularly with regard to farm premises owned under one legal title, it may not be possible to establish whether an outbuilding or the farmyard which needs to be accessed is part of the farmhouse dwelling premises. Further, as the number of persons needing to utilise this power will be variable, it would adversely impact on the power if a maximum number were prescribed. It is not proposed to introduce a safeguard regarding notice. As the power is used for detecting breaches of the EC Regulation, giving notice of an inspection could allow for the removal or substitution of offending goods.

Registration of Establishments (Laying Hens)(England) Regulations 2003 (2003/3100)

- Regulation 6(1): Power for an officer authorised by the Secretary of State or local authority to enter land or premises in order to ascertain if there has been a contravention of the Regulations. Power may be exercised at reasonable times, but there is no provision for the use of force. Entry to premises used solely as a dwelling not permitted.

The Regulations implement EU Directives relating to the welfare of laying hens (Council Directive 1999/74/EC which lays down specific requirements for the protection of laying hens including the 2012 ban on conventional (battery) cages). Also, Commission Directive 2002/4/EC which refers to a range of egg marketing regulations (and 1237/2007 which consolidates some of them) that set out requirements for quality and grading of eggs for human consumption, indications of eggs for hatching and registration of establishments producing them or marketing them. Each permitted production system for laying hens is shown by a production mark on the egg and packaging.

The Food Standards Agency and Health Protection Agency have an interest in these Regulations and need to have access to the register should they need to trace eggs – e.g. in the event of a public health issue.

Proposal: Safeguards to be added are that entry to premises used wholly or mainly as a dwelling are to be only by consent or with a warrant and a requirement to give notice of a visit unless to do so would undermine the purpose or effect of a visit.

Agriculture and Horticulture Development Board Order 2008 (2008/576)

- Schedule 3 Part 2 Para 8: Power to enter any slaughterhouse to check records to ensure correct levy has been paid. Entry must be at a reasonable hour.

This power is important as it allows uncooperative slaughterhouse operator's records to be accessed to establish liability to pay statutory levy.

Proposal: Safeguards to be implemented are a requirement that a warrant be obtained in order to gain access to a slaughterhouse; specific exclusion of premises wholly or mainly used as dwellings (already implicitly excluded); and a requirement that notice of the entry be given unless it is urgent or to do so would undermine the purpose or effect of the visit. The power is aimed at checking records, and giving notice may lead to destruction, alteration or concealment of the information sought.

Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004 (2004/2412)

- Regulation 5: Power to enter premises as necessary to enforce and execute the 2004 Regulations and Community provisions. Entry must be made at a reasonable time and premises used wholly or mainly for domestic purposes may not be entered.

The Regulations provide for the administration and enforcement of Council Regulation (EC) No. 1830/2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms. The Council Regulation is binding in its entirety and directly applicable in all Member States.

The objective of the Council Regulation is to create a harmonised EU framework for the traceability and labelling of products consisting of or containing GMOs, and for the traceability of food and feed produced from GMOs, at all stages of the production and distribution chain in order to facilitate consumer choice and risk management in relation to these products.

Article 11 of the Council Regulation requires Member States to lay down rules on penalties applicable to infringements of the Council Regulation and to take all measures necessary to ensure that the provisions of the Council Regulation are adequately enforced

It would not be appropriate to limit the number of persons who may accompany an inspector in the exercise of this power. Ordinarily, inspections are undertaken by a single person. However, where there is a confirmed safety risk, it would be necessary to have more persons to resolve the matter as quickly as possible.

Proposal: The safeguard to be added is to require reasonable notice of an inspection unless certain circumstances apply such as an emergency and where the giving of notice would defeat the point of the entry.

In addition, a safeguard will be included requiring a warrant to be obtained for entry to premises where an occupier refuses entry or where there is reasonable belief that entry will be refused and that asking for admission to the premises would defeat the object of the entry.

Genetically Modified Organisms (Transboundary Movements) (England) Regulations 2004 (2004/2692)

- Regulation 6: Power to enter premises as necessary to enforce and execute the 2004 Regulations and Community provisions. Entry must be made at a reasonable time and premises used wholly or mainly for domestic purposes may not be entered.

The Regulations provide for the administration and enforcement of Council Regulation (EC) No. 1946/2003 on transboundary movements of genetically modified organisms. The Council Regulation is binding in its entirety and directly applicable in all Member States.

Article 18 of the Council Regulation requires Member States to lay down rules on penalties applicable to infringements of the Council Regulation and to take all measures necessary to ensure that the provisions of the Council Regulation are adequately enforced.

The objective of the Council Regulation is to establish a common system of notification and information for transboundary movements of genetically modified organisms (GMOs) and to ensure coherent implementation of the provisions of the Cartagena Protocol on Biosafety². The common system ensures appropriate protection for the safe transfer, handling and use of GMOs that may have adverse effects on the conservation and sustainability of biological diversity, taking into account also risks to human health.

It would not be appropriate to limit the number of persons who may accompany an inspector in the exercise of this power. Ordinarily inspections are undertaken by a single person. However, where there is a confirmed environmental risk, it would be necessary to have more persons to resolve the matter as quickly as possible.

Proposal: The safeguard to be added is to require reasonable notice of an inspection unless certain circumstances such as an emergency and where the giving of notice would defeat the point of the entry.

² The Cartagena Protocol on Biosafety is a UN Multilateral Environment Agreement that creates an enabling environment for the environmentally sound application of biotechnology, especially in those countries without an existing developed domestic framework, by establishing minimum standards for the safe transfer, handling, and use of GMOs, with specific focus on transboundary movements of GMOs.

In addition, a safeguard requiring a warrant be obtained for entry to premises where an occupier refuses entry or where there is reasonable belief that entry will be refused and that asking for admission to the premises would defeat the object of the entry.

Environmental Protection Act 1990 (c. 43)

- Section 115: Power to enter 1) premises on which there is reason to believe a person is keeping any genetically modified organisms (“GMO”) or from which any such GMO has been released and 2) premises on which there is reason to believe that there may be harmful GMO or evidence of damage to the environment caused by GMO in order to exercise a power under Section 115. Entry must be made at a reasonable hour (unless there is an immediate risk of damage to the environment) and entry may not be made in relation to premises used wholly or mainly for domestic purposes.

The power of entry is required so that the UK can meet its obligations under Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and to ensure that any releases of GMOs to the environment have been authorised and properly assessed as safe. Retaining the power of entry reassures the public that GM releases are properly regulated.

The powers are used for standard inspections of GM crop trials, trials of vaccines, or visits to audit procedures of GMO release consent holders. The powers are occasionally used for visits to premises to investigate reports of unauthorised releases. For example FERA has had to investigate incidents of unauthorised imports of GM fish.

It would not be appropriate to limit the number of persons who may accompany an inspector in the exercise of this power. Ordinarily, inspections are undertaken by a single person. However, where there is a confirmed environmental risk and it was necessary to carry out, for example, large scale field- sampling, it would be necessary to have more persons to resolve the matter as quickly as possible.

Proposal: A safeguard will be implemented requiring reasonable notice of an inspection to be given unless certain circumstances apply such an emergency, where the giving of notice would defeat the point of the entry, there is an immediate risk of damage to the environment or where there are GM products placed on the market without prior consent.

In addition, a safeguard will be included requiring a warrant to be obtained for entry to premises where an occupier refuses entry or where there is reasonable belief that entry will be refused and that asking for admission to the premises would defeat the object of the entry.

Coast Protection Act 1949 (c. 74)

- Section 25 (1): Power at a reasonable hour to enter; a) land on which a power to carry out works has been conferred; b) land in order to access such land; c) land to survey it in order to determine whether any functions of the authority should be exercised or whether any provision is being complied with; and d) land to estimate the amount of any compensation payable or the value of the land. If the land is used for “residential purposes” entry shall not be demanded unless twenty-four hours’ notice has been given.
- Section 25 (4): Warrant provisions for such entry. It must be shown that there are reasonable grounds for entry and that admission has been refused, such refusal is apprehended, that land is unoccupied, the occupier absent, or that the case is urgent. Notice of an intention to apply for the warrant must have been given if the admission has been refused or such refusal is apprehended. Force can only be used under a judicial warrant.

These two Sections work together to form, in effect, a single power of entry. The power is used to ensure coastal risk management measures can be developed through work on the land, access to the land for work elsewhere or surveying the land in advance of work occurring.

Proposal: Safeguards will be added requiring a judicial warrant to be obtained in order to enter dwelling premises and that reasonable notice of the exercise of the power is given save where it is an emergency or to give notice would defeat the point of the entry.

Twenty-four hours’ notice is considered to be a reasonable period of notice as, even if the situation cannot be classed as an emergency, entry must frequently be made within a very short time-frame. For example, a longer notice period could delay the demolition of unsecure property resulting in non-secure disruption to the property, potential loss of life and damage to the environment. It is not appropriate or proportionate for a warrant be required for entry to all land. The UK coastline can undergo very sudden and dramatic changes and it is essential that entry can be made without notice or delay in emergencies to protect life, property and the environment. The nature of coastal risk management requires that a variety of people need to access the land, including planners, construction workers, authority officials and Environment Agency staff. As such it would not be possible to define who could utilise the power without interfering with its use.

Land Drainage Act 1991 (c. 59)

- Section 29 (2): Power to enter land to carry out work that has not been carried out under a Section 28 Order. Seven days’ notice of the entry must be given to the occupier and force cannot be used.

In the first instance the First-tier Tribunal's Section 28 Order requires an individual to meet their duties in maintaining watercourses on their land. At the end of three months, where any work specified in the Section 28 Order has not been carried out, the Minister or authorised drainage body may carry out the work and have the power to enter any land for that purpose.

As the Section 28 Order requiring that the works be carried out on the land is made by the First-tier Tribunal (in the knowledge of the Section 29 provisions), it is unnecessary and disproportionate to require a further judicial warrant to enter that land. Furthermore, it would be inappropriate to restrict the numbers or types of person who may enter the land. In most cases, five people will be sufficient though there could be instances where a significantly larger work force will be required to undertake work. As Section 29 concerns civil engineering works, a variety of people would require entry such as engineers, construction workers in addition to supervisors and officers.

- Section 64: Power to enter land for the purpose of surveying, taking levels, inspecting the conditions of drainage and exercising any functions of an internal land drainage board or local authority under the 1991 Act. Entry must be at a reasonable time and, unless an emergency, notice must be given before entry can be demanded as of right. In the case of access to residential premises or where admission will be made with heavy equipment then that notice must not be less than seven days. Force may not be used.

This power is utilised for the routine inspection and maintenance of, and improvement to, land drainage and flood risk management structures. Many landowners will consent to access onto their land for such works. However, where consent is refused, the authority must be able to access the land to ensure that the inspection and maintenance can be carried out in order to protect individuals and communities from flooding that could be devastating to property and injurious to public health.

It is not proposed that any further safeguards be added in relation to section 64. Authorities are under a duty to maintain watercourses lined by dwelling premises. When undertaking such maintenance, it will need access to the land adjoining the watercourse, although an authority would ordinarily gain access along the watercourse itself. Such land may be gardens or pieces of land attached to dwellings. Were a warrant required to access such premises, it would not only be disproportionate as this is a power used for routine inspection and maintenance but disproportionate as a significant and burdensome number of warrants would need to be obtained to cover the routine inspection of even a short stretch of the watercourse. As this power is concerned with inspection and maintenance of watercourses a diverse group of persons will need access including drainage board and local authority officers, engineers and contractors – a safeguard limiting the nature or number of persons who may enter would be restrictive.

Proposal: In relation to section 29(2) of the Land Drainage Act 1990, a safeguard will be implemented requiring entry to be made only at reasonable hours.

Organic Products Regulations 2009 (2009/842)

- Regulation 23: Power to enter premises to enforce the 2009 Regulations or specified Community provisions. Entry may only be made at a reasonable time and may not be made into any premises, or part of any premises, used only as a dwelling.

A warrant may be granted if there are reasonable grounds for believing that an offence under the 2009 Regulations is being, or has been, committed and either; entry has been, or is likely to be refused and notice of the intention to apply for a warrant has been given; the case is urgent and the premises are unoccupied; or the application for admission to the premises or the giving of notice of intention to apply for a warrant would defeat the object of the entry.

The 2009 Regulations enforce a number of EC Regulations relating to organic production, the labelling of organic products and the importation of organic products from third countries. Entry may need to be made to dwelling premises in order to access records and papers held in a “business” section (rather than “dwelling” section) of dwelling premises. Furthermore, entry often needs to be made unannounced in order to detect fraud and other offences under the 2009 Regulations.

Proposal: Safeguards will be added providing that dwelling premises may be entered only with consent or a warrant and that notice of the entry need be given unless the requirement has been waived, reasonable efforts to agree an appointment have failed, an inspector has reasonable suspicion of a failure to comply with the 2009 Regulations or specified Community provisions or in an emergency.

Clean Air Act 1993 (c. 11)

- Section 56: Power to enter any land or vessel in order to ascertain compliance with the 1993 Act, to perform any function conferred by the 1993 Act or to determine whether, and in what manner, such a function should be performed. The authorised person may carry out inspections, measurements and tests on the land or vessel. Entry may not be made to a private dwelling except in relation to work regarding adapting dwellings in a smoke control area. Entry to land or vessel used for residential purposes – and with heavy equipment to any other land or vessel – shall not, except in an emergency or where the land or vessel is unoccupied – be demanded as of right unless seven days’ notice has been given.

A warrant may be granted for entry if there is a reasonable ground for entry and admission has been refused or refusal is apprehended, the land or vessel is unoccupied, the case is one of emergency or an application for admission would defeat the purpose of the entry. A warrant will not be issued unless the Court is satisfied that; admission to the land or vessel was sought after not less than seven days’ notice of the entry was served; that admission was sought in an emergency and was refused; that the land or vessel is unoccupied; or

that the application for admission would defeat the object of the entry. Entry under a warrant may be by force.

Proposal: Safeguards to be implemented are to require a warrant for entry to premises used wholly or mainly as dwellings; reasonable notice of entry shall be given save where the case is an emergency. To require a warrant for entry into all premises would present a disproportionate burden on officers in conducting inspections to ensure compliance with the 1993 Act. It is not appropriate to define the persons able to use the power as each case may require different experts or officers to accompany the local authority officers depending upon the nature of the premises – size, situation etc.

Forest Reproductive Material (Great Britain) Regulations 2002 (2002/3026)

- Regulation 27: Power to enter and inspect premises believed to be used for collection, production, storage, trade, transportation, importation or marketing of forest reproductive material in order to observe and monitor practices, check conditions of licences, examine records, examine material, take photographs and to check that various requirements of the 2002 Regulations are met. Entry must take place during reasonable hours and premises used wholly or mainly for domestic purposes may not be entered.

The Regulations implement [Council Directive 1999/105/EC](#) on the marketing of forest reproductive material. Forests cover a large area of the Community and are considered to be important for their social, economic, environmental, ecological and cultural functions. To increase the value of forests, it is necessary to use reproductive material which is genetically and phenotypically suited to the site and of high quality. Forestry seeds should meet certain quality standards.

Article 16 of the Directive sets out the enforcement provisions that Member States are required to have in place. Article 16(1) requires official inspections of registered suppliers to be carried out regularly. Article 16(6) provides that Commission experts, may, in co-operation with the official bodies of the Member States, make on-the-spot checks in order to ensure uniform application of the Directive. The Member State must give assistance to the experts in carrying out their duties.

Proposal: A safeguard will be added specifying numbers and descriptions of persons able to enter the premises. It is not proposed that notice should be given of the intention to exercise a power of entry. Routine inspections will usually be made to business premises during office hours in order to gain access to the material and any records and to observe working practices. Giving notice of the visit could interfere with the officer receiving an authentic impression of the operation which would undermine its effectiveness. When responding to a specific concern, for example where it is considered the supplier has been producing false documentation, giving notice would enable any evidence to be removed from the premises.

Kingston upon Hull Act 1984 (c. xxvi)

- Section 39: Power to enter land to undertake works specified in a notice as necessary to prevent flooding that the landowner has failed to carry out. This power is read with the provisions of Section 287 of the *Public Health Act 1936*. Entry must be at a reasonable time and 24 hours' notice must be given (unless the premises are a factory or workplace). There are provisions for the obtaining of a warrant – and force is only permitted under a warrant.

This power allows Hull City Council (HCC) access to land to ensure that flood risk is managed and the defences maintained. These defences protect some of the most densely populated areas in the country.

Proposal: A safeguard can be added requiring a warrant to be obtained before entry can be made to dwelling premises. However, to require a warrant to access all land generally would be disproportionate and overly burdensome to the operation of flood risk management. A safeguard will be added that notice should be given regarding all premises (i.e. no longer excluding factories or workplaces). As the power is making provision for works, contractors may be used in addition to HCC staff and the numbers will vary. As such, it is not possible to limit the numbers or types of persons. A possible safeguard may be that only “persons under the control of HCC” may enter and that those numbers must be “reasonable”.

National Parks and Access to the Countryside Act 1949 (c. 97)

- Section 108: Power to enter land for the purpose of surveying the land in connection with the acquisition of the land or the making of an access order. Fourteen days' notice of the entry shall be given to the occupier and force cannot be used.

Proposal: The following safeguards will be implemented: dwelling premises should only be entered with consent; entry should be only at reasonable hours; and the number and description of persons who may utilise the power will be defined – it is suggested that the limit should be “officers authorised in writing accompanied by no more than two other persons”. The obtaining of a warrant for entry to any land would be too onerous a safeguard and would interfere with the operation of the power.

Environmental Protection (Restriction on Use of Lead Shot) (England) Regulations 1999 (1999/2170)

- Regulation 4 (2): Power to enter premises he believes necessary to enter in order to determine whether the 1999 Regulations are being, or have been, complied with.

Entry must be at a reasonable time. Where entry is refused, or there are reasonable grounds for believing that it will be refused, and it appears that reasonable force will need to be used to enter premises then entry to those premises may only be with a warrant. Under Regulation 4 (3) a warrant may be granted where it is shown that there are reasonable grounds for the exercise of a power and either; the exercise of that power has been refused; such refusal is reasonably apprehended; the premises are unoccupied; the occupier is temporarily absent and the case is urgent; or an application for admission to the premises would defeat the object of the entry. Force may only be used under a warrant.

Proposal: Safeguards will be added limiting the number of persons who may accompany an authorised person on a visit and requiring a warrant or consent to enter premises used wholly or mainly as a dwelling.

It would not be appropriate to require that reasonable notice be given as the purpose of a search under this power would be to search for something that is disposable – essentially carcasses of certain birds shot with lead shot – and so prior notice would give the offender the opportunity to dispose of it.

Conservation of Habitats and Species Regulations 2010 (2010/490)

- Section 111: Powers of entry other authorised persons.
- Regulation 111 (1): Power to enter land to ascertain whether a special nature conservation order (“SNCO”) should be made, whether a stop notice should be served, whether an offence is being committed, the amount of compensation payable or to affix a notice. Dwellings premises are excluded from entry and entry must be made at a reasonable time, and may not be demanded as of right to any occupied land unless 24 hours’ notice has been given to the occupier or the purpose of the entry is to ascertain whether an offence is being or has been committed.
- Regulation 111 (2) and (3): Power to enter land to survey or estimate its value. Entry may not be demanded as of right unless at least 14 days’ notice has been given.

The Regulation 111 power is used to allow persons with the requisite skills to ascertain whether damage to European Site features is, or has, occurred in order to determine whether an SNCO should be made – or, where a SNCO is in force, whether a stop notice should be served. These provisions may also be used to gain entry to assess compensation for the effect of a stop notice, to affix copies of a stop notice and, in regard to byelaws, to value and to survey land. The SNCO provisions apply as a last resort where other provisions have failed, and this power of entry would be used only for the purposes of site condition assessments or to carry out enforcement actions where consent to enter the land has been refused.

Proposal: Safeguards will be added to regulation 111(1) providing; entry may be made only where there are reasonable grounds to access the land and where occupiers' consent to enter the land has been refused or consent cannot be given as the occupier is absent or the land unoccupied and there will be a limit on the number of persons who may utilise the power at any given time.

Safeguards will be added to Regulation 111 paragraphs (2) and (3) providing: entry may be made to dwellings only with consent or a warrant and there will be a limit on the number of persons who may utilise the power at any given time.

Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 (2006/2695)

- Article 9: Power to enter premises believed to be used for the manufacture, collection, storage, trade, transportation or importation of wood packaging material in order to check that "ISPM No 15 mark"* compliance requirements have been met, or for any other purpose of the 2006 Order – including checking compliance with it. Entry must be at reasonable hours, only an inspector may enter and entry may not be made into premises used wholly or mainly as a dwelling.

ISPM 15³ affects all wood packaging material (pallets, crates, dunnages, etc.), requiring to be debarked and then heat treated or fumigated with methyl bromide and stamped or branded with a mark of compliance. This is to prevent the international transport and spread of disease and insects that could negatively affect plants or ecosystems.

Proposal: A safeguard will be implemented requiring reasonable notice of the entry to be given save where the requirement has been waived, reasonable efforts to agree an appointment have failed, an inspector has reasonable suspicion of a failure to comply with the 2006 Order or there is an emergency. There have been instances where authorities have been alerted to manufacturers operating in breach of the 2006 Order. In such circumstances, it is necessary to perform unannounced visits to ascertain if the manufacturer is complying with the legislation.

In addition, a safeguard will be included requiring a warrant be obtained for entry to premises where an occupier refuses entry or where there is reasonable belief that entry will be refused and that asking for admission to the premises would defeat the object of the entry.

³ "ISPM No. 15 mark" means a mark which contains the information specified in Annex II of the International Standard for Phytosanitary Measures No. 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention (IPPC) established by the Food and Agriculture Organisation of the United Nations.

Hemp (Third Country Imports) Regulations 2002 (2002/787)

- Regulation 13(2): Power for an authorised person to enter land (other than land used only as a dwelling) which he has reasonable cause to believe is occupied by an applicant, a licensed importer or a subsequent user in order to ascertain whether
 - the use of hemp seeds other than for sowing is in accordance with the attestation made in respect of them;
 - an offence under regulation 16 has been or is being committed;
 - any obligation relating to the import of hemp from a third country imposed by Council Regulation 1251/1999, Council Regulation 1673/2000, or Commission Regulation 245/2001 is not being fulfilled.

At present the power of entry does not allow for access to premises that are used wholly as dwellings.

An authorised person may take with him such persons as he considers necessary.

The power of entry is required in order to ensure that the UK meets its obligations under EU legislation to make sure that hemp (which has recreational drug uses) is imported and used in accordance with the requirements of the legislation.

Proposal: Safeguards to be added: access to premises used mainly as dwellings to be permitted only with consent or a warrant; a limit to the number and types of people who may accompany an authorised person and provision of reasonable notice unless such provision would undermine the purposes of the visit.

Countryside and Rights of Way Act 2000 (c. 37)*

- Section 18: Power to enter “access land” in order to secure compliance with regard to byelaws, restrictions and exclusions made under the Act, to advise and assist the public regarding the access land and to perform such other duties in relation to the access land as the authority may determine.

Only wardens may make use of this power of entry. Part 1 of Schedule 1 of the Countryside and Rights of Way Act 2000 (“CROW”) provides that excepted land (being land “excepted” from being considered access land) includes land covered by buildings and the curtilage of such land, land within 20 metres of a dwelling and land used as a park or garden.

Proposal: A safeguard will be added to this power providing that entry can be made only at a reasonable time.

It is possible that there could be a safeguard requiring reasonable notice to be given subject to exceptions (for example, in the case of emergencies or where the giving of notice would defeat the object of the entry).

Section 40: contains four powers of entry:

- Section 40(1): Power (of appropriate countryside body) to enter land to map, determine whether powers should be exercised, ascertain whether members of the public are being permitted access, to determine whether to apply for a path creation order or in connection with an appeal.
- Section 40(2): Power (of a local highway authority) to enter land to determine whether an agreement should be made regarding access, give notice of a comply with an agreement, carry out works, erect or maintain notices or to ascertain whether an offence of failing to comply with an order to remove obstruction or of deterring public use of access land is being committed.
- Section 40(3) Power (of a National Park authority) to enter land to determine whether powers should be exercised, ascertain whether members of the public are being permitted access, in connection with an appeal, to determine whether an agreement should be made regarding access, give notice relating to a failure to comply with an agreement, carry out works, erect or maintain notices or to ascertain whether an offence of failing to comply with an order to remove obstruction or of deterring public use of access land is being committed.
- Section 40(4) Power (of the Forestry Commissioners) to enter land to determine whether powers should be exercised or in connection with an appeal.

These four powers all operate in an identical manner although can be used by different bodies for different purposes. It is convenient to address all of the powers together.

Entry may not be made to dwelling premises under these powers. The powers may be utilised only by an authorised person although, if that person believes that he is likely to be obstructed, he may take a constable with him. Force may not be used under the power. There is a general rule that twenty-four hours' notice must be given subject to exceptions relating to the detection of offences or where the giving of notice is not reasonably practicable. Furthermore, notice need not be given regarding entry onto "access land".

Proposal: The safeguards that will be introduced into all four powers are that: the power be only usable during reasonable hours; reasonable notice must be given for entry onto all land subject to an exception where giving such notice would defeat the object of an unannounced check; and that the notice given should be extended from twenty-four hours.

* see also item below relating to the Marine and Coastal Access Act 2009

Marine and Coastal Access Act 2009 (c. 23)*

- s.304 and Schedule 20 paragraph 9:

9(1) Power for a person authorised by Natural England (“NE”) to enter any land for the purpose of

- surveying that or any other land for purposes of a report or representations under section 51 or 55 of the National Parks and Access to the Countryside Act 1949;
- allowing NE to determine whether to exercise certain powers and to advise the Secretary of State.

9(2) Power for person authorised by NE or appropriate access authority to enter any land to determine whether certain works are required; to carry out certain works; to check whether the public is permitted to exercise its rights; in connection with appeals; and to erect, maintain or remove notices.

Safeguards: Authorised persons may only demand admission as of right to occupied land without giving notice when it is not reasonably practicable to give notice.

When the power of entry is required to carry out certain works, entry as of right can be demanded provided either notice under the Countryside and Rights of Way Act 2000 (“CROW”), or 7 days notice has been given to the occupier. Otherwise, 24 hours notice is required before entry can be demanded as of right.

Also subsections (5) to (7), (9) and (10) of section 40 of CROW (powers of entry for the purposes of Part 1 of that Act) apply.

Subsection (9) provides that the power of entry is not exercisable in relation to a dwelling. The powers may only be utilised by an authorised person, although if that person believes he is likely to be obstructed he may take a constable with him. Force may not be used under the power.

Compensation is payable if damage results from the exercise of the power of entry or failure to secure unoccupied or temporarily unoccupied property against unauthorised entry (section 41 CROW).

Proposals: Safeguards to be added: the power be only usable during reasonable hours; that reasonable notice must be given for entry onto all land subject to an exception where giving such notice would defeat the object of an unannounced check; and that the notice given should be extended from twenty-four hours.

*see also item above relating to the Countryside and Rights of Way Act 2000

Dangerous Wild Animals Act 1976 (c. 38)

- Section 3: Power to enter premises on which any animal is, or is proposed to be, held in pursuance of a licence under the Act for the purpose of carrying out an inspection to ascertain whether or not a licence should be granted or varied or whether an offence has been committed.

The ability for the local authority to inspect premises is fundamental to the implementation of the Act in respect of the licensing regime. The power may be exercised by an authorised veterinarian “or other competent person” and the entry must be at a reasonable time. Inspections are carried out of enclosures on land or inside private premises – very often in dwelling premises themselves.

Proposal: A safeguard will be added providing that dwelling premises may be entered only with consent or with a warrant. However, given the nature of such inspections (particularly that the majority of cases concern licence applicants i.e. will be consenting), a requirement to obtain a warrant for all circumstances would be disproportionate and unduly burdensome. Further, although generally the inspection team will consist of two officials and a vet, limitation of those who can attend would be problematic as public health officials or other persons may be required to attend. A safeguard will be added requiring reasonable notice to be given save in the case of an emergency or where the giving of notice would defeat the object of the entry.

Food and Environment Protection Act 1985 (c. 48)

- Section 4: Power to enter land, vehicle or marine structure for a variety of reasons concerning contamination of foods. The nature of the power is for an emergency response. The power enables officials to effectively and quickly carry out their duties to ensure that public health is protected.

Entry must be at a reasonable hour unless that would frustrate the purpose of the entry. Entry may only be made to a dwelling with a judicial warrant.

It would not be appropriate for a warrant to be required to enter all land. This would significantly impact upon officials’ ability to respond rapidly to an incident and such delay could mean that contaminated food leaves the designated area. Being inflexible about the number of officials allowed to enter may also hamper the response to an incident, particularly if the premises in question are large and require a number of officials in attendance. For some of the high threat nuclear scenarios, it may be that a substantial amount of officers are required. As the power relates to emergency situations provisions, requiring reasonable notice would not be appropriate.

Proposal: A safeguard will be added providing that force may be used only under warrant.

Highways Act 1980 (c. 66)

The Department for Transport have responsibility for this Act. However, Defra has an interest in relation to public paths.

- Section 293: Power to enter land for the purpose of (1) surveying it in connection with an order for the creation, extinguishment or diversion of a path or rail crossing, or a site of special scientific interest or (2) surveying it or estimating its value in connection with a claim for compensation for loss caused by such an order. Seven days' notice must be given of entry.

Proposal: Safeguards to be added: the power may only be used in respect of dwelling premises where there is consent or a warrant; and the power may only be utilised at reasonable hours.

As it would be difficult to describe the numbers and types of persons who would need entry with sufficient clarity – such restrictions would restrict the use of this power. Further provisions requiring a warrant to enter all land are disproportionate given the nature and purpose of the entry.

- Schedule 12A Paragraph 7: Power to enter land which contains a footpath or highway which falls to be repaired by the authority, or any other land the authority believes to be in the same occupation, for any purpose connected with the carrying out of those works. Not less than twenty-four hours' notice must be given of entry, although there are exceptions.

Proposal: Safeguards to be added: the power may only be used in respect of dwelling premises where there is consent or a warrant; the power may only be utilised at reasonable hours; and reasonable notice should be given in all cases.

It is not necessary or appropriate to require that a longer period of notice be given as the entry is to remedy the occupier's own failure to carry out his duty to repair the highway. Similarly a requirement for a warrant to be obtained for entry onto all land would be disproportionate given the nature of the entry. Further, it would be difficult to describe with sufficient clarity the types of persons who would need entry and doing so could present an unnecessary handicap on flexibility and deployment of local authority staff.

Bovine Semen (England) Regulations 2007 (2007/1319)

- Regulation 37: Where a Regulation 37 notice (prohibiting the use or trade of bovine semen or requiring its destruction or identification) has not been complied with an inspector may enter premises on which he knows or suspects the semen the subject of the notice is being kept in order to seize the semen and arrange for the requirements of the notice to be met.

A Regulation 37 notice will be given if the inspector “thinks it necessary to prevent the spread of disease”. It is crucial that such notices can be enforced. Bovine semen can be stored in cryogenic flasks that could be kept in any premises – including dwelling premises.

Proposal: Safeguards to be added: entry may be made only by warrant or with consent; entry may only be made at a reasonable time; reasonable notice will be given save where such notice would defeat the purpose of the entry.

- Regulation 38: Where a Regulation 38 notice (detaining the semen, requiring its destruction or taking such other action) has not been complied with, an inspector may enter premises on which he knows or suspects that the semen the subject of the notice is being kept in order to seize the semen and arrange for the requirements of the notice to be met.

A notice under Regulation 38 will be given if an inspector knows or suspects that semen has been imported from another member state in contravention of the Council Directive on intra-Community trade in, and imports of, bovine semen.

Proposal: Safeguards to be added: entry may be made only by warrant or with consent; entry may only be made at a reasonable time; and reasonable notice will be given save where such notice would defeat the purpose of the entry.

Eggs and Chicks (England) Regulations 2009 (2009/2163)

- Regulation 19: Power of entry for authorised officer to any premises at any reasonable hour to ensure requirements of Regulations are being complied with. Although 24 hours’ notice required for entry to a dwelling. The authorised officer may take with him or her such other persons as he or she considers necessary. Any representative of the European Commission. Provision for a warrant to be obtained in specified circumstances.

The Regulations make provision for the enforcement and execution of directly applicable EC marketing standards relating to eggs for hatching and farmyard poultry chicks and directly applicable EC marketing standards relating to eggs in shell for consumption. They also make provision for the enforcement of directly applicable EC controls for *Salmonella* serotypes with public health significance in relation to the marketing and use of eggs in shell for human consumption. The powers of entry are necessary to make sure these consumer and public health requirements are complied with.

Proposal: Safeguards to be added: provision to be made that notice of visit must be given unless to do so would undermine the purpose of the visit. Entry to premises used as a dwelling to be limited by requirement to obtain a warrant. Limits will be imposed on the number and type of persons who may accompany an authorised officer.

Forestry Act 1967 (c. 10)

- Section 48: (1) Power for officer of/person authorised by Forestry Commissioners to enter and survey land to see if it is suitable for afforestation, to inspect timber thereon, or for any other purpose in connection with exercise of powers performance of duties under Forestry Act or Plant Health Act 1967.
- (2) Power for authorised officer/servant to perform powers/duties necessary for enforcement of byelaws under section 46 of the Forestry Act. May remove/exclude person who commits/is suspected of committing offence under section 46 or Vagrancy Act 1824.
- (3) Obstruction of officer/servant acting under sub-section (2) is an offence.

The power in subsection (2) does not give rise to the exercise of a power of entry. Exercise of a power of entry would only arise in circumstances where the Forestry Commission leases land to a third party in which case enforcement of the byelaws would be achieved through the provisions in the tenancy agreement (and/or prosecution) rather than through power of entry.

The power in sub-section (1) is required. It is used to investigate allegations of unlicensed tree felling and to monitor compliance with restocking conditions. In both cases it is necessary to inspect sites either to ascertain whether offences have been committed or that restocking conditions have been complied with.

The Forestry Commission has never used the power for afforestation purposes (this takes place at the land owner's invitation when considering grant scheme applications but not as a regulatory function).

Forestry Commission powers of entry for plant health purposes, e.g., the "Chalara rapid survey", and the diagnosis of *P ramorum* where it has not been possible to trace the land owner are under more recent legislation: the Plant Health (Forestry) Order 2005 (article 30).

- Safeguards: Although the power could be used to gain access to gardens the requirement to obtain a warrant could also compromise investigations into alleged illegal felling providing the land owner opportunity to dispose of the timber and remove tree stumps. This does happen from time to time already if the Forestry commission is not made aware of tree felling promptly and makes the task of demonstrating a breach of the regulations more problematic, even in obvious cases of tree felling and deforestation.
- The time when entry may take place is not specified, but the powers of entry relate to the land and are only used during normal working times and daylight hours.
- There is no limit on the number of people who may exercise the power of entry, but this should not be adjusted:

- FC investigations into alleged illegal felling are undertaken with a minimum of two people to provide a witness (this is not necessarily always another member of FC staff, for example a local tree officer may accompany the FC to serve as a witness. Large-scale tree felling without a license is usually rare but may require more than only two officers to attend the site in order to collect timber measurements.
- On other occasions we may arrange for a Police escort to ensure the safety of FC staff (Police would be authorised under the Forestry Act).
- At times FC are reliant on contractor resource to inspect sites for compliance with restocking conditions. Therefore the ability for FC to authorise individuals is useful.

Proposal: Safeguards to be applied: notice should be given of the exercise of a power of entry except in those cases where to give notice would undermine the reason for the exercise of the power.

Animal Boarding Establishments Act 1963 (c. 43)

- Section 2: Power to enter premises which is licensed under the 1963 Act to inspect the premises and any animals or anything in order to determine whether an offence has been or is being committed against the 1963 Act. Entry must be a reasonable time, only local authority officers and veterinary surgeons and practitioners may enter and force may not be used.

This power is used to ensure that animal welfare is being properly protected in the area of animal boarding. In practice entry utilising this power will be made in three instances; when the licence is first granted; when the licence is renewed; and when there has been a complaint or there is some other reason to inspect. In the former cases such an inspection, if considered necessary by the local authority, would need to occur in order for the establishment to retain its licence. As such those visits will, by definition, be with consent. In the latter case it may be important to gain entry to the boarding establishment urgently or without notice in order to avoid offences being concealed. Boarding establishments can be situated in dwelling premises – frequently such smaller establishments are agents of a larger business.

Proposal: Safeguards to be added include: if entry is not made by consent, a warrant will be required to enter dwelling premises; a maximum of four persons may make use of this power of entry; and reasonable notice will be given of the entry unless such notice would defeat the object of the entry.

Breeding of Dogs Act 1973 (c. 60)

- Section 2: Power to enter premises which is licensed under the 1973 Act to inspect the premises and any animals or anything in order to determine whether an offence has been or is being committed against the 1973 Act. Entry must be at a reasonable time, only local authority officers and veterinary surgeons and practitioners may enter and force may not be used.

This power is used by local authorities to ensure that dog breeders comply with the provisions of the 1973 Act. It is important that animal welfare standards are adhered to in dog breeding and that poor treatment which amounts to an offence in breeding establishments – which, where standards are poor, can be informally known as “puppy farms” – is detected. As with the 1963 Act, entry utilising this power will be made in three instances; when the licence is first granted; when the licence is renewed; and when there has been a complaint. Breeding establishments can be in dwelling premises.

Proposal: Safeguards to be added will be that, if consent is not given, a warrant will be required to enter dwelling premises and that reasonable notice should be given unless it would defeat the object of the entry.

Riding Establishments Act 1964 (c. 70)

- Section 2: Power to enter premises a) which there is reason to believe are a riding establishment, b) which are under licence of the 1964 Act or c) as respects which a licence has been applied for in order to inspect them and any horses, ascertain whether an offence is being committed and for the purposes of making a report. Entry must be at a reasonable time and force may not be used.

This power is used to ensure that riding establishments comply with the licensing and animal welfare provisions of the 1964 Act. Riding establishments may form part of dwelling premises.

Proposal: Safeguards to be added: in the absence of consent, a warrant should be obtained to enter domestic premises; reasonable notice will be given unless to do so would defeat the purpose of the entry; and no more than four persons may enter.

Pet Animals Act 1951 (c. 35)

- Section 4: Power to enter premises licensed under the 1951 Act as a pet shop to inspect them and any animal or anything found therein for the purpose of ascertaining whether an offence has been committed against the 1951 Act. Entry must be at a reasonable time and force may not be used.

This power is used to detect offences committed under the 1951 Act including selling pets to children and failing to comply with the conditions of the licence. The conditions of a licence will vary although they aim to secure any or all of the following animal welfare objectives; that the animals are kept in suitable accommodation, the animals are fed, the animals are not sold at too early an age and that sufficient precautions have been taken to prevent the spread of disease and in case of an emergency. These provisions assist with ensuring that breaches of such conditions are detected. Licensed premises can form part of dwelling premises.

Proposal: Safeguards to be added: in the absence of consent, a warrant will be obtained to enter domestic premises; reasonable notice will be given unless to do so would defeat the purpose of the entry; and no more than four persons may enter.

Animal Welfare Act 2006 (c. 45)

- Section 26: Inspection in connection with licences.
- Power for inspector to enter premises specified in a licence or premises on which he reasonably believes activity to which licence relates is carried on for purpose of inspection under subsection (1)(subsection(2)).
- Entry to any part of a premises used as a private dwelling not authorised unless 24 hours' notice of intended entry given to occupier (3).
- Provision in Schedule 2 AWA paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 apply.

Proposal: Safeguards to be added include: in the absence of consent, a warrant will be obtained to enter domestic premises; reasonable notice will be given unless to do so would defeat the purpose of the entry; and no more than four persons may enter.

- Section 27: Inspection in connection with registration
- Power for inspector to enter premises on which he reasonably believes a person registered for purpose in section 13 is carrying on an activity to which registration relates for purpose of inspection under subsection (1) (subsection (2)).
- Entry to any part of premises used as a private dwelling not authorised unless 24 hours' notice of intended entry given to occupier (3).
- The provisions in Schedule S AWA paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 apply).

Proposal: Safeguards to be added: Safeguards to be added include: in the absence of consent, a warrant will be obtained to enter domestic premises; reasonable notice will be given unless to do so would defeat the purpose of the entry; and no more than four persons may enter.

- Section 28: Inspection of farm premises.

Power for inspector to enter premises which he reasonable believes to be premises on which animals are bred or kept for purpose of inspection under subsection (1) (subsection(2)). But not any part of a premises used as a private dwelling (3).

Power to grant warrant (4) but only if JP satisfied (5) that it is reasonable to carry out an inspection on the premises and that section 52 is satisfied in relation to the premises.

Section 52: section satisfied if any of the following conditions is met:

- Whole premises used as a dwelling and occupier has been informed of any decision to apply for warrant;
- Any part of premises is not used as a private dwelling and each of the following applies:
 - Occupier has been informed of decision to apply for warrant
 - Occupier has failed to allow entry to premises on request
 - Occupier has been informed of decision to apply for warrant
- Premises are unoccupied or the occupier is absent and notice of intention to apply for warrant has been left in a conspicuous place
- Inappropriate to inform occupier of decision to apply for warrant because defeat object of entry or because entry is required as a matter of urgency.

Safeguards include a requirement to obtain a warrant to a premises which is a dwelling, when consent to enter a premises that are not wholly a dwelling have been refused and when a premises is unoccupied. Force may only be used after a warrant has been obtained.

The provisions in Schedule 2 AWA paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 apply to the exercise of the power of entry in subsection (2).

The safeguards in Schedule 2 AWA paragraph 2, 7, 8, 9, 10, 11, 12, 13, 14, 16 apply to the exercise of the power in subsection (4).

Proposal: Safeguard to be added: that reasonable notice will be given of a visit unless to do so would undermine its purpose.

- Section 29: Inspection relating to EU obligations.

Power for inspector to enter premises to carry out inspection to check compliance with regulators under section 12 which implement an EU obligation (2). But not any part of a premises used as a private dwelling (3).

The provisions in Schedule 2 AWA paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 apply.

Proposal: Safeguards to be added: reasonable notice will be given of the entry unless to do so would breach EU law or would defeat the object of the entry.

Performing Animals (Regulation) Act 1925 (c. 38)

- Section 3: Power to enter premises.

Power for officer of local authority or constable to enter and inspect any premises in which performing animals are being trained or exhibited or kept for training or exhibition and any animals therein.

This power is used to ensure that people who train and exhibit performing animals (for example circus performers) are registered in accordance with section 1 of the Act.

Performing animals might be kept in premises that are used as a dwelling.

There is no provision to obtain a warrant and no provision for the use of force.

Proposal: Safeguards to be added: in the absence of consent, a warrant will be obtained to enter domestic premises; reasonable notice will be given unless to do so would defeat the purpose of the entry; and no more than four persons may enter.

Refuse Disposal (Amenity) Act 1978 (c. 3)

- Section 8: Power to enter land to ascertain whether an abandoned vehicle or other refuse should be removed or to remove an abandoned vehicle or other refuse. Entry must be at a reasonable time, 24 hours' notice must be given of entry to occupied land and force may not be used.

Under Section 3 of the 1978 Act, Local Authorities ("LAs") have a statutory duty to remove abandoned vehicles. The Section 8 power of entry enables a LA to enter land in order to carry out this function. Further, under Section 6 LAs are empowered to remove "other refuse" from land as they think fit. As well as notice of the entry, notice needs to be given to the occupier where it is proposed that a vehicle or refuse be removed. If the occupier objects then the LA may not carry out the removal.

Proposal: Safeguards to be added: a warrant will be required in order to enter dwelling premises and there will be a limit placed on the amount of persons who can utilise the power of entry. As the power is used routinely and under a statutory duty, it would be disproportionate to require that a warrant be obtained for entry onto all land. Before implementation, the costs and burdens to local authorities would need to be considered.

Importation of Birds, Poultry and Hatching Eggs Order 1979 (1979/1702)

- Article 9(5) provides a veterinary inspector appointed by the Secretary of State under the Animal Health Act 1981 the power to enter any land, premises, vessel, aircraft, vehicle, pen or container, taking with him such persons as he considers requisite in order to seize poultry or eggs that have been imported in contravention of this Order for the purpose of preventing the introduction or spreading of disease into or within Great Britain. If required by the owner, or the person in charge of the land, premises, vehicle, pen or container, the veterinary inspector must state his reasons for entering

This power is important as there is a very real risk of disease being brought into the country where there have not been proper checks carried out and licences to show that they have come from disease-free premises.

Proposal: Safeguards to be implemented: a warrant be obtained; specific exclusion of premises wholly or mainly used as dwellings; and notice of entry to be given unless it is an emergency or to do so would undermine the purpose or effect of the visit (as there is a prospect that the person who has imported the poultry or eggs in contravention of the Order might attempt to hide or mix the imported poultry or eggs to avoid detection, and thereby create a real disease hazard for many other poultry producers).

Grants for Fishing and Aquaculture Industries Regulations 2007 (2007/3284)

- Regulation 13(1): Power for officer of Secretary of State to enter any premises (other than a domestic premises not being used for the purposes of the Regulations). Entry is for the purposes of ensuring the regulations are being complied with and must be made at a reasonable hour. Premises includes a fishing or other vessel, place, vehicle, trailer or container. The officer may take with him such other persons as he deems necessary and any representative of the European Commission acting for the purposes of enforcing the Regulations.

The Regulations provide the domestic framework for payments under Council Regulation (EC) 1198/2006. The Council Regulation provides for the reimbursement of money given in grants and requires member States to have adequate management and control measures in place. The powers of entry are a necessary part of the measures we need to ensure we meet our EU obligations so as to make sure we receive full reimbursement of the sums we are entitled to claim back.

Proposal: Safeguards to be added: entry to premises used wholly or mainly as a dwelling is to be by consent or under a warrant and notice of intention to carry out an inspection is to be given unless to do so would undermine the purpose or effect of an inspection.

Bluetongue Regulations 2008 (2008/962)

- Regulation 20: Power to enter any premises, vehicle or vessel for the purpose of ensuring the 2008 Regulations are being complied with or for the purpose of monitoring or surveillance for the bluetongue virus, antibodies to the bluetongue virus or midges. Entry must be at a reasonable time.

The 2008 Regulations implement a Council Directive on provisions for the control and eradication of Bluetongue disease. Bluetongue is a disease that affects all ruminants – most severely affecting sheep, although cattle are a reservoir of the disease. Although the UK is Bluetongue free it remains necessary to actively check for the disease – in particular closely scrutinising the import of animals into the UK and ensuring they meet stringent import conditions. It may be necessary to enter into dwelling premises as animals which need to be investigated may be raised – hand-reared – in such premises.

Proposal: Safeguards will be added requiring reasonable notice of entry to be given save where to do so would defeat the purpose of the entry and that premises used wholly or mainly as a dwelling may only be entered with a warrant or by consent. It would not be appropriate to limit the amount of persons able to utilise this power of entry – the identity and number of persons who require entry under this power will vary depending on the situation. As the power is used for routine inspection for disease control, it would be disproportionate to require that a warrant be obtained to enter premises other than dwelling premises.

Products of Animal Origin (Disease Control) (England) Regulations 2008 (2008/465)

- Regulation 17: Power to enter any premises, establishment or vehicle for the purpose of ensuring the 2008 Regulations are being complied with. Entry must be made during reasonable hours.

Concerned with disease control, the 2008 Regulations transpose a number of EC Directives and create obligations in respect of animals and meat from premises infected with diseases including swine fever, rinderpest, sheep and goat plague and Newcastle disease – and from the areas around such premises. The power of entry is vital in enforcing the 2008 Regulations; empowering officers to ensure that such meat be inspected, detained, disposed of, treated, sampled, marked or traced, that such an animal be isolated or marked and that the premises or anything be disinfected.

Proposal: Safeguards will be added providing that reasonable notice of entry be given unless to do so would defeat the purpose of the entry and that premises used wholly or mainly as a dwelling may only be entered with a warrant or by consent. As the power is used for routine inspection for disease control, it would be disproportionate to require that a warrant be obtained to enter premises other than dwelling premises. It would not be appropriate to seek to limit the amount of persons able to utilise this power of entry – the

identity and number of persons who require entry under this power will vary depending on the situation.

Fisheries Act 1981 (c. 29)

- Section 5: Power to enter premises occupied for business purposes by any person liable to pay a levy under the 1981 Act, and board any vessel owned by any such person, in order to require the production of records which a person is required to keep by virtue of the levy regulations. Entry must be made at a reasonable time and only an authorised officer may enter the premises. Force may not be used.

A levy may be imposed by the Sea Fish Industry Authority on persons engaged in the sea fish industry in order to finance the Authority's activities. It is important that the payment of such a levy can be actively monitored and records inspected. Entry to a dwelling cannot be excluded altogether as an office where such records will be kept may form part of dwelling premises.

Proposal: Safeguards will be added providing: entry to premises used wholly or mainly as a dwelling may only be with consent or a warrant and reasonable notice of the entry must be given save where to do so would defeat the point of the entry.

London County Council (General Powers) Act 1957 (c. xxxv)

- Section 55: Power to enter premises where work has not been carried out by a person liable to execute flood works in accordance with a notice.

A notice under Section 55 is served where works are necessary to a damaged bank in order to protect any premises in the country from flooding. It is important that, where such a notice is not complied with by the person liable to execute flood works, the council are able to enter onto the land and execute the works themselves. As the power concerns flood defence works a diverse and large group of people may be needed to enter.

Safeguards will be added providing; entry may not be made to premises used wholly or mainly as a dwelling without either consent or a warrant; entry may only be made at reasonable hours; and reasonable notice of the entry will be given.

- Section 58: Power to enter premises by persons authorised by the London County Council for the purpose of executing any work. A warrant may be obtained if there are reasonable grounds for the entry and that entry has been refused, such refusal is apprehended, the premises are unoccupied or the matter is urgent. Reasonable notice of an intention to apply for a warrant must be given save where the giving of that notice would defeat the object of the entry, the premises are unoccupied or the case is urgent. Force may be used under a warrant.

Proposal: Safeguards will be added: premises used wholly or mainly as a dwelling may be entered only with consent or a warrant; entry will be made at a reasonable hour; there will be a limit placed on the persons who may enter under this power and reasonable notice of the entry must be given save where doing so would defeat the purpose of the entry.

Flood and Water Management Act 2010 (c. 29)

- Schedule 1 Paragraph 13: Power to enter land in order to ascertain compliance with, or the applicability of, various provisions in Schedule 1. Entry must be at a reasonable time and, if the land is occupied, at least 7 days' notice must be given unless exercising an emergency power. Force may not be used.

Proposal: A safeguard will be added providing that consent or a warrant must be obtained before entering premises used wholly or mainly as a dwelling. It would not be realistic to specify numbers of people who may attend at any one time – this would depend on what actions are being undertaken.

Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

- Section 35: Power to enter premises in order to remove an obstruction from a private sewer where the owner has failed to do so in accordance with a Section 35 notice. The power may be used to ascertain whether there has been a contravention of the provisions, whether the circumstances exist that require the council to carry out works and for the carrying out of the works themselves. Entry must be at a reasonable time and 24 hours' notice must be given – although not to premises that are a factory or workplace.

A warrant can be obtained for entry where there are reasonable grounds for entry and either admission has been refused, that refusal is apprehended, the premises are unoccupied, the case is urgent or application for admission would defeat the purpose of the entry. Notice of an intention to apply for a warrant must be given save where the premises are unoccupied, the matter is urgent or the giving of such notice would defeat the object of the entry.

Proposal: Safeguards to be added: premises used wholly or mainly as a dwelling may only be entered with a warrant or by consent; there will be a limit placed on the number of persons who may utilise this power; reasonable notice will be given of the use of the power save where doing so would defeat the object of the entry.

Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (1999/2228)

- Regulation 23: Power for a person authorised by the Forestry Commissioners to enter land on which he/she or they reasonably suspect work in relation to a project that requires consent has been carried out without consent or has been carried out in breach of a condition subject to which consent has been granted.

Power for a person authorised by the Forestry Commissioners to enter land to carry out work specified in an enforcement notice where that work has not been carried out.

The powers are mainly used where reports of possible breaches are received by the Forestry Commission, or where the Forestry Commission is required to take enforcement action following the failure of an owner to meet the conditions of a consent. The power of entry is only used where absolutely essential – when it is not possible to reach agreement with a land owner to undertake an investigation or inspection. In all instances FC typically attempt to enter land with the land owner's consent.

The Regulations only allow entry to land which is subject to a project requiring consent. The projects to which the Regulations apply are afforestation, deforestation, forest road works and forest quarry works. By definition these are projects that do not take place on dwelling premises.

Proposal: A safeguard is to be added requiring notice of a visit unless to do so is unduly burdensome or undermines the purpose of the visit.

Dutch Elm Disease (Local Authorities) Order 1984 (1984/687)

- Article 5(4): Power for appointed officer to enter land to carry out works specified in a notice served on the occupier when the occupier has failed to carry out the specified works within the time set out in the notice. Requirement to give at least 7 days notice of intention to exercise power.

Local authorities have indicated that this is a very important default power which needs to be retained in order to allow them to carry out work to prevent the spread of disease in cases where the occupier of the land fails to do so.

Proposal: Safeguards to be added: a requirement to obtain a warrant to gain access to dwellings in the absence of consent; a requirement that the power is exercised at a reasonable time.

Sea Fisheries (Shellfish) Act 1967 (c. 83)

- Section 5(4): Power for person authorised by the appropriate minister to enter any land within the limits of a several or regulated fishery to take samples of shellfish. Power may only be exercised at reasonable times.

The power is required so the appropriate minister may make enquiries and examinations in order to determine whether the grantees of the fishery are properly cultivating the ground for shellfish, properly carrying into effect and enforcing restrictions and regulations contained in the order and levying any toll or royalties imposed thereby. If these functions are not being carried out properly, the minister may make a certificate that will determine the power of several or regulated fishery. Twenty four hours notice of an intention to enter is required.

Proposal: A safeguard will be added to require the authorised person to obtain a warrant to gain entry to dwelling premises in the absence of consent.

Wildlife and Countryside Act 1981 (c. 69)

- Section 28K: Power to enter land to carry out work or other things required by a management notice which have not been done by the person so required within the period or by the date specified. Force may not be used to enter

A management notice is served where the landowner is not giving effect to the provisions of the management scheme in place regarding a site of special scientific interest (“SSSI”) and so flora, fauna or geological or physiological features – by reason of which the land is of special interest – are being inadequately conserved. Should this notice not be complied with it is important that Natural England are able to enter onto the land and carry out the works to preserve the SSSI.

Proposal: Safeguards will be added providing: entry may not be made onto dwelling premises; entry to premises shall only be made where there is a warrant or consent; entry shall only be made during reasonable hours – save where the works or other things required by the notice cannot be carried out at reasonable hours; a limit will be placed on the number and type of person who may enter the premises; and reasonable notice will be given of the use of this power.

- Section 31: Power to enter land in order to carry out work specified in a restoration order that has not been complied with.

A Court which convicts an offender of certain offences under the 1991 Act has discretion to order the offender to carry out, within such period as may be specified, works purposed with restoring the SSSI to its former condition. Under Section 31 Natural England are empowered to enter that land in the event that this order is not complied with and carry out the operations ordered by the Court.

Proposal: Safeguards will be added providing; entry may not be made onto dwelling premises; entry to premises shall only be made where there is a warrant or consent; entry shall only be made during reasonable hours – save where the works or other things required by the notice cannot be carried out at reasonable hours; a limit will be placed on the number and type of person who may enter the premises; and reasonable notice will be given of the use of this power.

- Section 51: Power to enter land to carry out functions under Section 51 (1). Entry may not be made into a dwelling, may only be made at a reasonable time and, unless the entry is in order to ascertain whether an offence has been committed, 24 hours' notice must be given.

This power allows entry for a variety of purposes concerned with the management of land as a site of special scientific interest.

Proposal: Safeguards will be added providing; entry may not be made onto dwelling premises (extending the current protection from merely a “dwelling”); entry to premises shall only be made where there is a warrant or consent; entry shall only be made during reasonable hours – save where the works or other things required by the notice cannot be carried out at reasonable hours; a limit will be placed on the number and type of person who may enter the premises; and reasonable notice will be given of the use of this power save where to do so would defeat the purpose of the entry.

Protection of Badgers Act 1992 (c. 51)

- Section 11: Power for a constable to stop and search a person and any vehicle or article the person may have with him where the constable has reasonable grounds for suspecting that a person is committing, or has committed, an offence under the Act, or the Badgers Act 1973 and that evidence of the commission of the offence is to be found on that person or any vehicle or article he may have with him.

The power is intended primarily for use when a constable is in hot pursuit and the addition of safeguards in those circumstances would defeat the object of the power.

Proposal: A safeguard will be added providing that a warrant will be obtained in order to search a person or vehicle providing that to do so would not undermine the purpose of the investigation.

3. Powers of entry to be retained but consolidated

Powers of entry identified for consolidation 26+4+28+1	55
Number of powers after consolidation 0+1+3+1	5
Net Total	50

3.1. Legislation to be revoked by the Sea Fishing (EU Enforcement) (Miscellaneous Provisions, Amendments and Revocations) Order 2013

Defra is revoking **26** powers as these are no longer needed in separate legislation. The activities will still be carried out under existing powers.

Section 293 of the Marine and Coastal Access Act 2009 amended section 30 of the Fisheries Act 1981 to provide that, in addition to a person who fishes in contravention of an enforceable Community restriction, a person who fails to comply with an enforceable EU obligation is guilty of an offence.

Previously it had been necessary to make separate SIs to give effect to EU obligations. These SIs each contained powers of entry. With the amendment to section 30 of the 1981 Act it is no longer necessary for separate SIs to be made to give effect to enforceable EU obligations and therefore the SIs which have been made to do this can now be revoked. The revoking Order is due to be laid before the summer 2014.

The powers of British sea fishery officers in section 8 of the Sea Fisheries Act 1968 (as set out in section 5 of this report) have effect by virtue of section 30(1)(c) of the 1981 Act.

- Sea Fishing (Days in Port) Regulations 1992 (1992/130) – regulation 9(5)
- Sea Fishing (Landing and Weighing of Herring, Mackerel and Horse Mackerel) Order 2009 (2009/1850) – articles 11, 12 and 13

- Sea Fishing (Recovery Measures) Order 2008 (2008/2347) – articles 13, 14 and 15
- Incidental Catches of Cetaceans in Fisheries (England) Order 2005 (2005/17) – articles 8(1)(a), 8(2) and 8(3) (this has been counted as 2 powers of entry)
- Sea Fishing (Enforcement of Community Conservation Measures) Order 2000 (2000/1081) – articles 7(1)(a), 7(2), 7(3) and 9 (this has been counted as 3 powers of entry)
- Sea Fishing (Enforcement of Community Control Measures) Order 2000 (2000/51) – articles 7(1), 7(2) and 7(3) (this has been counted as 2 powers of entry)
- Sea Fishing (Prohibition of the Removal of Shark Fins) Order 2007 (2007/2554) – articles 8(1)(a), 8(2) and 9 (this has been counted as 2 powers of entry)
- Sea Fishing (Restriction on Days at Sea) Order 2007 (2007/927) – articles 19(2), 20(1)(a) and 20(2), and 21 (this has been counted as 3 powers of entry)
- Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006 (2006/1549) – article 7
- Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004 (2004/3226) – article 17
- Sea Fishing (Specified Western Waters) ((Restrictions on Landing) Order 1990 (1990/2052) – article 5
- Sea Fishing (Enforcement of Community Measures for Spanish and Portuguese Vessels) Order 1986 (1986/110) – article 5
- Fishing Boats (Marking and Documentation) (Enforcement) Order 1993 (1993/2015) – article 7
- Sea Fishing (North-East Atlantic Control Measures) Order 2000 (2000/1843) – articles 7(4), 7(5), 7(6) and 16

3.2. Powers of entry being consolidated in section 108 of the Environment Act by the Environment Agency

The Environment Agency has carried out a review of their powers of entry and concluded that **28** powers can be consolidated into section 108 of the Environment Act. This will result in the same activities being carried out under **3** powers which will be cleared through the Home Office gateway. In addition, there are **3** powers which are enforced by the Environment Agency but owned by other government departments. These do not form part of Defra's review but will be discussed with the relevant departments.

There is no general right to enter premises to carry out statutory functions. The right of entry must be expressly made by legislation. The Environment Agency's powers of entry, in respect of pollution control functions only, are contained in Sections 108, 109 and Schedule 18 of the Environment Act 1995 (EA 1995). Powers of entry may be exercised to determine whether any pollution control enactment, for which they are responsible, has been or is being complied with.

Section 108(4) of the Environment Act 1995 sets out the powers which an Agency officer may be authorised to exercise, including powers to conduct an investigation into an offence and its commission.

Whilst fairly comprehensive, the powers in Section 108 of the Environment Act 1995 are nevertheless a product of their time and would benefit from modernisation, for instance to make specific provisions for electronic record keeping. This has recently taken place in Scotland under the Regulatory Reform (Scotland) Act 2014 and this consolidation exercise provides a good opportunity to similarly modernise these powers for use in England.

- Environment Act 1995 (c. 25) – sections 108 & 108(15) and schedule 18, paragraph 2
- Water Resources Act 1991 (c. 57) – sections 169, 170, 171 and 172
- Environmental Damage (Prevention and Remediation) Regulations 2009 (2009/153) - regulation 31
- Control of Pollution (Amendment) Act 1989 (c. 14) - sections 5(1) and 6(2)
- Water Industry Act 1991 (c. 56) - section 71
- Reservoirs Act 1975 (c. 23) - section 17
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (2007/871) - regulation 35
- Reach Enforcement Regulations 2008 (2008/2852) - regulation 9 and Schedule 6 Part 1
- Environmental Permitting (England and Wales) Regulations 2010 (2010/675) - Schedule 23
- Salmon and Freshwater Fisheries Act 1975 (c. 51) – sections 9, 31, 32 and 33
- Eels (England and Wales) Regulations 2009 (2009/3844) – regulation 26
- Fluorinated Greenhouse Gases Regulations 2009 (2009/261) – regulation 45

The three powers listed below do not belong to Defra however they will also form part of the overall consolidation of powers into section 108 of the Environment Act and will be reflected in the final reports for the respective departments e.g. BIS and DECC.

- Waste Electrical and Electronic Equipment Regulations 2013 – regulation 72
- Waste Batteries and Accumulators Regulations 2009 – regulation 72
- CRC Energy Efficiency Scheme Order 2013

3.3. Other consolidations

- Transmissible Spongiform Encephalopathies (England) Regulations 2010 (2010/801) – regulation 13(1)

Following a consultation exercise in 2014 Defra intends to introduce the Transmissible Spongiform Encephalopathies (England) Regulations 2015 which will revoke, consolidate and replace the Transmissible Spongiform Encephalopathies (England) Regulations 2010.

There will be no net reduction in powers but a replacement power will be cleared through the Home Office gateway.

4. Powers of entry pending outcome of legislative changes

Powers of entry pending outcome of legislative changes	82
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There are a number of Defra's powers of entry where the legislation within which they are contained, or to which they relate, is subject to change. It is not possible to review these powers and recommend repeal, consolidation, or the inclusion of safeguards, until the impact of the changes is known. Where new legislation is introduced and the powers of entry are to remain they will be subject to clearance through the Home Office Gateway and any necessary safeguards will be included. If the relevant review does not lead to any changes in legislation, Defra will complete a thorough review of the existing powers in line with Home Office guidance.

4.1. Powers of entry to be reviewed as part of EU Common Agricultural Policy (CAP) Reform

The CAP has recently been re-negotiated and a number of new European Regulations were adopted in December 2013. These have direct effect in UK law so we are not required to amend the S.I.s listed immediately, either because the European Regulations are subject to a transitional period and will not be completely in force until at least 2015 or because the substance of the changes will be made by delegated or implementing acts to be drafted under the European Regulations. Defra will review and amend our domestic legislation in response to legislation produced by Europe.

- Beef and Pig Carcase Classification (England) Regulations 2010 (2010/1090) – regulation 17(1) and 17(3)
- Beef and Veal Labelling Regulations 2010 (2010/983) – regulation 6(1) and 6(3)
- Common Agricultural Policy (Protection of Community Arrangements) Regulations 1992 (1992/314) – regulation 5(2)
- Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (2009/3263) – regulation 9(2)

- Dairy Produce Quotas (General Provisions) Regulations 2002 (2002/458) – regulation 5(2)
- Hops Certification Regulations 1979 (1979/1095) – regulation 5(2)
- Rural Development (Enforcement) (England) Regulations 2007 (2007/75) – regulation 3(1)
- Agriculture (Cross compliance) (No. 2) Regulations 2009 (2009/3365) – regulation 6 and Schedule 1
- Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006 (2006/2522) – regulation 30(1), 30(2), 30(3)

4.2. Plant Health powers to be reviewed as wider project including EU official controls review

- Plant Health (Phytophthora kernovii Management Zone) (England) Order 2004 (2004/3367) – articles 5(1) and 5(4)
- Plant Health (England) Order 2005 (2005/2530) – articles 31(1), 33(1), 37 and 38
- Plant Health (Phytophthora ramorum) (England) Order 2004 (2004/2590) – article 13(1) and 13(2)
- Plant Health (Forestry) (Phytophthora ramorum) (Great Britain) Order 2004 (2004/3213) – article 11(1) and 11(2)
- Plant Health (Forestry) Order 2005 (2005/2517) – article 30(1), 33(1), 36 and 37
- Plant Varieties and Seeds Act 1964 (c. 14) - section 33(8) confers a power of entry if an order under section 33 is made.
- Plant Varieties and Seeds Act 1964 (c. 14)* - section 25
- Marketing of Fruit Plant Material Regulations 2010 (2010/2079)* – regulation 19 and Schedule 4 paragraph 1
- Marketing of Ornamental Plant Propagating Material Regulations 1999 (1999/1801)* - regulation 13
- Marketing of Vegetable Plant Material Regulations 1995 (1995/2652)* - regulation 11

*There may also be scope for consolidation following the re-negotiation of the European legislation.

4.3. Animal Food and Feed law to be reviewed as part of wider EU official controls review

- Official Controls (Animals, Feed and Food) (England) Regulations 2006 (2006/3472) – regulations 7(2), 10 and 16 (1)

4.4. Animal Health Act 1981 to be reviewed as part of the wider EU review on animal health legislation

The Animal Health Act has been amended on a number of occasions and there is scope for the consolidation of the Act, and in particular the powers of entry. At present, it seems that the existing 21 powers could be consolidated into 9 or fewer powers.

- Animal Health Act 1981 (c. 22) – sections 3, 14, 16, 22(2), 22(3), 22(4), 30, 49, 62, 62(a), 62(b), 62(d), 62(e), 63(2), 63(3), 63(5), 63(6), 63(9), 64(2), 64(1) and 64(a)

There is at the moment, however, a detailed EU review of animal health legislation taking place and it would not be appropriate to embark on complicated amendments to the Animal Health Act until the outcome of the review and the changes that would stem from it are known.

- Zoonoses (Monitoring) (England) Regulations 2007 (2007/2399) – regulation 4 and 4(3)

As this legislation is made under the European Communities Act 1972, it is necessary for the powers of entry to be set out in full or by cross reference to the powers in the Animal Health Act if they were sufficient.

There is at the moment, however, a detailed EU review of animal health legislation taking place which is likely to require changes to be made to the Animal Health Act. It would not be appropriate to make changes to this legislation until the outcome of that review and the changes that would stem from it are known.

4.5. Legislation/Powers of Entry being revoked and replaced as part of Control of Trade in Endangered Species (COTES) Review

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) aims to ensure that no species of wild fauna or flora becomes or remains subject to unsustainable exploitation because of international trade.

Effective domestic regulations are necessary to support the efficient operation of CITES in the UK and a full and comprehensive review is underway to update and improve the relevant regulations. The intention is to rationalise current domestic regulations into one piece of legislation, a “one-stop shop” for traders and enforcement agencies alike, which will reflect changes to EU regulations, trade practices and enforcement techniques.

- Endangered Species (Import and Export) Act 1976 (c.72) – sections 1 and 7(3)
- The Control of Trade in Endangered Species (Enforcement) Regulations 1997 (1997/1372) – regulation 9(1) and 9(4)

Defra’s intention is to conduct a full public consultation in March/April. Subject to Parliament, it is proposed that the SI should come into force at the April 2015 Common Commencement date.

4.6. Powers of Entry to be replaced by Law Commission Wildlife Bill

The Law Commission has been considering these powers of entry as part of its review and will be producing a draft bill for Defra which will aim to modernise and consolidate these powers; however these powers will remain in their present state until a future wildlife bill is passed.

- Agriculture Act 1947 (c.48) – sections 100 and 106
- Conservation of Habitats and Species Regulations 2010 (2010/490) – sections 109 and 110
- Conservation of Seals Act 1970 (c. 30) – section 11
- Deer Act 1991 (c. 54) – section 122
- Destructive Imported Animals Act 1932 (c. 12) – sections 5 and 6
- Game Laws (Amendment) Act 1960 (c. 36) – section 2

- Pests Act 1954 (c. 68) – section 1
- Prevention of Damage by Pests Act 1949 (c. 55) – section 22
- Wildlife and Countryside Act 1981 (c. 69) – sections 18B, 18D, 19 and 19(3)
- Import of Live Fish (England and Wales) Act 1980 (c. 27) – section 2

4.7. Other powers to be reviewed

- Weeds Act 1959 (c. 54) – section 4

The Weeds Act 1959 is to remain unchanged pending the outcome of the current project regarding enforcement of the Act.

A review of the enforcement of the Act is currently underway to see if it can be made more effective. Changes to the powers of entry cannot be considered before that review is complete.

- Ozone-Depleting Substances (Qualifications) Regulations 2009 (2009/216) – regulation 8(2)

Defra have made a commitment under the Red Tape Challenge to consolidate these Regulations and the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011. New Fluorinated Greenhouse Gases legislation (see item 3.2 above) is currently being negotiated at EU level and, once adopted, will need to be implemented in 2014. Reviewing the powers of entry in the 2009 Regulations will be part of this work.

- Horse Passports Regulations 2009 (2009/1611) – regulation 20
- Cattle Identification Regulations 2007 (2007/529) – regulation 10(2)

Negotiations are nearing completion on European Commission's proposals to repeal and replace the equine identification legislation and on proposals to amend the bovine identification legislation. New domestic regulation will be required to implement these proposals and we will review existing powers of entry as part of the regulatory clearance process.

- Marketing of Fresh Horticultural Produce Regulations 2009 (2009/1361) – regulation 7(1) and 7(4)

The European Commission is currently reviewing the fruit and vegetable regime and producing delegated and implementing acts under the Single Common Market Organisation Regulation. Defra will review, and amend if necessary, our domestic legislation in response.

5. Powers of entry to be retained unchanged

Powers of entry to remain unchanged	94
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5.1. Powers retained unchanged

An analysis of the following four powers relating to noise and nuisance leads Defra to believe that it would not be desirable to bring them together under a single power.

Noise Act 1996 (c. 37)

- Sections 10(2) and 10(4): Power to seize equipment from dwellings that have exceeded a permitted level of noise between 11pm and 7am, in breach of a notice. Local authorities with a night service find this power extremely useful allowing annoyance from this source to be minimised.

The power allows environmental health practitioners to enter premises and seize noise-making equipment between the hours of 11pm and 7am. However, not all local authorities have a night service for noise, so not all local authorities use this power. Those that do, have a night service. Mainly urban local authorities (including the major cities) use this power fairly frequently.

Rationale for remaining unchanged: Under the statutory nuisance regime, practitioners have a *duty* to act where they find a nuisance or receive a complaint. It is believed that, for this reason, the night powers were not incorporated under the Environmental Protection Act (EPA) 1990 as they might have obliged local authorities to have a night service to deal with complaints. The Noise Act therefore created an entirely separate regime. There are other reasons for this separation. The Noise Act power is engaged following the breach of a specific noise level laid down in statute. There is no such absolute noise level in the EPA as statutory nuisance is identified by the subjective judgment of the practitioner (a statutory nuisance depends on a multitude of factors, not simply volume). Finally, the power to seize noise-making equipment is a crucial part of the Noise Act power – a power that doesn't currently apply under the EPA. Bringing the Noise Act power under the EPA, then, combines two very different regimes and could have unintended wider consequences.

Environmental Protection Act 1990 (c. 43)

- Section 81(7): Power of entry to ascertain if statutory nuisance exists

The Environmental Protection Act 1990 sets out factors that can constitute statutory nuisances. These include things as diverse as noise, light, smoke, fumes, dust, insects, premises in such a state as to be prejudicial to health or a nuisance, and unsecured mine entrances. Local authorities have a duty to investigate complaints of potential statutory nuisance from private dwellings, business and licensed premises; this power is necessary to ascertain if a statutory nuisance exists or to carry out any required works. This is necessary for individuals suffering from statutory nuisance to find recourse through the regime.

Rationale for remaining unchanged: The Environmental Protection Act regime is designed to protect public safety and is both reactive (after a complaint) and proactive (local authorities must inspect their areas from time to time). Without these powers the protective nature of the regime would be severely curtailed.

Clean Neighbourhoods and Environment Act 2005 (c. 16)

- Sections 77 and 78: Power of entry to silence audible intruder alarms.

Rationale for remaining unchanged: The power under the Clean Neighbourhoods and Environment Act (CNEA) relates to the specific case of audible intruder alarms. This, again, is a very specific noise problem addressed in the legislation, deliberately outside of the statutory nuisance regime under the EPA. Under the EPA a warrant is needed to enter premises when empty (which they would be in case of an intruder alarm). This process meant that an alarm would take around four hours to silence. The CNEA power reduces this to around 20 minutes for simple cases where the alarm is external to the building and can be silenced without entry to the house (but still requiring entry to the 'premises'). As such, the CNEA power has a lower threshold for a warrant, needed only where force is required (i.e. the house must be entered). Bringing this CNEA power under the EPA would therefore require special attention to the warrant element of the power, as the requirement for a warrant is a key safeguard that would not be appropriate in the case of audible intruder alarms.

Control of Pollution Act 1974 (c. 40)

- Sections 91 (rights of entry and inspection etc.) and 92 (provisions supplementary to s.91): Power of entry to perform environmental health functions such as examination of construction sites and entry to vehicles to silence alarms.

Rationale for remaining unchanged: The power under the Control of Pollution Act (CoPA) relates to construction sites and noise in the street. This is separate from the

statutory nuisance regime under the EPA, which very specifically does not cover noise in the street (only noise from premises). The reason for this is that nuisance, in common law, derives from damage done to and from 'premises'. As such, extending the EPA power to noise in the street could have important consequences for the enforcement of noise under statutory nuisance and for the overall legal concept of 'nuisance' in this context.

Additionally, this power relates to car alarms, which are very similar to the audible intruder alarms dealt with under the CNEA power (see above). Moreover, the power under CoPA covers more than just noise and nuisance issues. Accordingly the full range of areas covered by this power would need to be assessed before it would be possible to make a final decision as to consolidation.

Rabies (Control) Order 1974 (1974/2212)

- Articles 6 and 10 – power of entry to:
 - any part of any premises where a veterinary inspector suspects rabies has existed (Article 6(2)).
 - any land other than a dwelling house (Article 10(1)).

Rationale for remaining unchanged: This power is to be retained unchanged. Rabies is a serious zoonosis and the powers of entry are necessary and proportionate to the risks posed by the disease.

Consideration has been given to the addition of safeguards to the powers, but these could render the powers ineffective.

In practice, the exercise of the powers is effectively by consent because, in the event of a rabies outbreak, people would want the disease to be contained effectively as quickly as possible.

Water Industry Act 1991 (c. 56)

- Schedule 6 Part I: Rather than being a power of entry in itself, Schedule 6 Part I sets out a number of safeguards which apply to the powers of entry in Sections 84 (1), 170 (2) and (4) and 171 (1) – identified below.
- Part I provides that 24 hours' notice must be given of entry to non-business premises. A warrant may be obtained if there are reasonable grounds for entry and that admission is refused, refusal is apprehended, the premises are unoccupied, the case is one of urgency or the giving of notice would defeat the object of entry. Notice of an intention to apply for a warrant must have been given to the occupier – although there are exceptions.

- Schedule 6 Part II: As with Part I, Schedule 6 Part II is not a power of entry in itself but contains safeguards to be applied to various powers. Part II applies to the powers of entry found in Sections 74 (4), 84 (2) and (3), 86 (4), 168, 169, 170 (excluding (2) and (4)), 172 (1) and Schedule 14 (5).
- Part II provides that entry must be made – except in an emergency – at a reasonable time after “the required notice” of entry has been given to the occupier. As regards Sections 74 (4), 84 (2) and (3), 86 (4) and 170 (1) (c) and (3) that is 24 hours’ notice, the remaining requiring seven days’ notice. Again a warrant may be obtained if there are reasonable grounds for entry to the premises and admission is refused, refusal is apprehended, the premises are unoccupied, the case is one of urgency or the giving of notice would defeat the object of entry. Notice of an intention to apply for a warrant must be given to the occupier, unless such notice would defeat the object of the entry.
- Section 74 (4): Power to enter premises to ascertain whether there has been a breach of provisions on water fittings, waste or misuse of water or to carry out inspections and tests.
- Section 84 (1): Power to enter premises at a reasonable time to ascertain if there has been a breach of Section 72 (concerning contamination of water sources).
- Section 84 (2): Power to enter premises to ascertain whether there has been a breach of provisions on water fittings, waste or misuse of water and whether a power under Section 74 should be used, or to carry out inspections and tests.
- Section 84 (3): Power to enter premises in relation to a private supply to determine whether a power should be exercised and, if so, doing so, or to carry out inspections and tests for the purposes of such a power.
- Section 86 (4): Power to enter premises to investigate whether there has been a breach of a requirement in the Act, to carry out inspections and tests as appropriate for such an investigation and, at any reasonable time, require copies of records kept for the purposes of complying with those requirements.
- Section 168 (1): Power to enter premises to carry out a survey or tests to determine whether it is appropriate for a water undertaker to exercise a works power and how such a power should be exercised or to exercise that power.
- Section 169 (1): Power to enter premises to determine whether it is appropriate for the water undertaker to acquire land for the purposes of carrying out its functions or apply for a compulsory works order.
- Section 170 (1): Power to enter premises to determine whether it is appropriate for the undertaker to disconnect a pipe, cut off a supply or carry out other work, or to exercise such a power, or to monitor, record and test whether water supplied for domestic or food preparation is wholesome.

- Section 170 (2): Power to enter premises to ascertain whether there is a breach of Section 72 (concerning contamination of water sources) in relation to those waterworks.
- Section 170 (3): Power to enter premises to ascertain whether there has been a breach of provisions on water fittings, waste or misuse of water or determining a power under Section 74 should be exercised or to carry out inspections and tests.
- Section 170 (4): Power to enter premises at a reasonable hour to which a Section 76 prohibition applies (ban on particular uses of water – colloquially a “hosepipe ban”) to ascertain whether there has been a contravention of the prohibition.
- Section 171 (1): Power to enter premises at a reasonable hour to ascertain whether there has been a contravention of sewerage provisions and whether the sewerage undertaker can take action or carry out works or to carry out the undertaker’s functions under the sewerage provisions.
- Section 172 (1): Power to enter premises to which Section 162 (1) applies (where there is a service pipe or a drain) to determine whether works are practicable, whether it is necessary for any other works to be carried out or how any works should be carried out, or to carry out such works, inspect or test any meter which is on those premises or any pipes or apparatus or ascertain from any meter the volume of water supplied to those premises.
- Schedule 14 Paragraph 5: Power to enter land in which mines are worked and enter mines near the land where the undertaker’s undertaking is situated to carry out an inspection, ascertain whether the mines have been worked so as to damage the undertaking, or carry out any works.

Rationale for remaining unchanged: The powers of entry found in the Water Industry Act provide for a wide variety of situations and the issues covered by these provisions relate to (and thus would require entry to) both domestic and non-domestic premises and require a potentially diverse array of persons to be given access those premises. Parts 1 and 2 of Schedule 6 make provisions for the giving of notice and the obtaining of warrants for the use of the powers. The fact that the powers relate to, for example, water contamination and waste of water mean that time delays in reacting to situations or utilising a power of entry could mean the situation worsens.

Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 (2008/2570)

- Section 8 and Schedule 1: Power to enter premises (including any vehicle) for the purposes of ensuring that the 2008 Regulations are being complied with. Entry must be made at a reasonable hour and admission to premises used only as a private dwelling may not be demanded as of right unless 24 hours’ notice has been given

or the entry is in accordance with a warrant. Force may not be used save under a warrant. Entry may be warranted if there are reasonable grounds for entry and either; admission has been refused, or is expected, and notice to apply for a warrant has been given; asking for entry or giving notice would defeat the object of the entry; the case is urgent; or the premises are unoccupied.

The 2008 Regulations provide for enforcement of provisions of the European Regulation on maximum residue levels of pesticides in food and feed of plant and animal origin. The 2008 Regulations prohibit suppliers from circulating produce containing more than a specified amount of pesticide residue to ensure that the risks from pesticide residues in food and feed are acceptable. The power of entry in the 2008 Regulations is a vital tool in ensuring compliance and dealing with immediate risks.

Rationale for remaining unchanged: It is not proposed that further safeguards be added. As pesticides can be kept in stores attached to or in dwelling premises, to exclude such premises altogether from being entered would severely hamper the power's effectiveness. Further, limiting the number of persons who can utilise this power would hamper its usage as situations may require different numbers and expertise to attend to deal with problems which may give rise to risks to both people and animals. As regards notice, it is important that the ability to enter without notice in this area to tackle immediate risks, or secure compliance with the 2008 Regulations through effective inspection, is maintained.

Detergents Regulations 2010 (2010/740)

Regulations 13 and 14 work together to form, in effect, a single power of entry in order to investigate offences under, and contraventions of, the Regulations concerning detergents. Entry using this power must be made at a reasonable time, only the authorised officer may enter and that entry may not be into a dwelling. In certain circumstances a warrant can be obtained for entry.

- Regulation 13: Power to enter any premises (excluding dwellings) at all reasonable hours in order to ascertain whether there is or has been any contravention or evidence of contravention of certain regulations in the Detergents Regulations 2010 and of directly applicable provisions of Regulation (EC) No. 648/2004.
- Regulation 14 (1): A Justice of the Peace may issue warrant for any purpose mentioned in Regulation 13 if he is satisfied there is a reasonable ground for entry into any premises (excluding dwellings) and either
 - admission has been refused (or refusal has been anticipated) and notice of application for a warrant has been given to the occupier; or
 - an application for admission (or the giving of such notice) would defeat the point of the entry, or it is urgent, or the premises are unoccupied, or the occupier is absent. Force may be permitted under this judicial warrant.

Rationale for remaining unchanged: Enforcement of these Regulations – and so use of this power of entry – is carried out by Trading Standards Officers and / or Environmental Health Officers. The Chemicals Regulation Directorate (a directorate of the Health & Safety Executive) expressed concerns that a requirement that there be a warrant for all inspections would limit the ability of those Officers to identify offences and enforce the Regulations – constraining those Officers, who may be enforcing a number of distinct pieces of legislation, in what they can – or cannot – look for, or inspect, in a premises.

Natural Environment and Rural Communities Act 2006 (c. 16)

- Section 44: Power to enter premises if reasonable grounds to suspect that there may be evidence that an offence is being committed under Section 43 (i.e. a person has in his possession a pesticide containing an ingredient that is harmful to wildlife). Supplementary powers and safeguards set out in Schedule 2 of the *Food & Environment Protection Act 1985* (FEPA) (excluding Paragraph 2A(1)(b)) apply to this power. Schedule 2 provides that dwellings may only be entered under a warrant and that entry must be made at a reasonable time unless there are grounds for suspecting that the purpose may be frustrated if entry is made at a reasonable time. A warrant may be obtained where there are reasonable grounds for believing that there is such a pesticide in the premises and that either; it is not practicable to communicate with a person entitled to grant entry; the grant of entry has been unreasonably refused; entry is unlikely to be granted without a warrant; or the purpose of the entry may be frustrated or prejudiced unless an officer can secure immediate entry. Sections 15 and 16 of the Police and Criminal Evidence Act 1984 have effect in relation to warrants. Reasonable force may be used.

Rationale for remaining unchanged: As the power at Section 44 is concerned with the detection of offences, several safeguards are unsuitable and would have an adverse impact on the effectiveness of the power as officers need flexibility and to react as the situation unfolds.

It would not be appropriate to exclude entry to dwelling premises altogether as pesticides may be stored on such premises. Furthermore, it would not be appropriate to require that a warrant be obtained for entry to all premises. Often, when investigating wildlife poisonings, the decision to enter a property is made on the same day as having spoken with witnesses in the field. To require warrants for such an entry would seriously hamper investigations and present too onerous a requirement. Further, to limit the nature and size of the investigation could hinder investigations.

There is provision that entry need be at a reasonable hour unless there are grounds for suspecting that the purpose may be frustrated if carried out at a reasonable hour. As the section concerns the investigation of offences, this often means looking for evidence during early or late hours in order to avoid detection. This is similarly true for notice. There is no provision for notice as such notice would defeat the purposes of the power. Under the *Food & Environment Protection Act 1985* officers may use reasonable force in the

exercise of this power. This is a provision that is useful and necessary for the investigation of these offences for example to gain access to locked areas containing such pesticides where the owner is not cooperative.

Food and Environment Protection Act 1985 (c. 48)

- Section 19: Power to enter; any land, vehicle or vessel on which there are reasonable grounds to believe that a pesticide is being applied or stored; or any land, vehicle or vessel that it is necessary to enter for the general purposes of the 1985 Act. Entry must be at a reasonable hour unless to do so would frustrate the purpose of the entry and force may be used. Entry may only be made to a dwelling with a warrant. A warrant may only be issued where it is not practicable to communicate with any person entitled to grant entry to the dwelling; the person so entitled has unreasonably refused entry; entry to a dwelling is unlikely to be granted unless a warrant is produced; or the purpose of the entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can immediately secure entry.

The 1985 Act regulates pesticides by prohibiting the advertisement, sale, supply, storage and use of pesticides unless approved. The 1985 Act provides a range of powers to enable enforcement – including the Section 19 power of entry. This power needs to be retained to ensure effective, proportionate and dissuasive enforcement of pesticides, enabling authorities to deal with immediate risks, ensure compliance and hold to account those who have caused harm to others or the environment.

Rationale for remaining unchanged: It is not proposed that any further safeguards are adopted. It would not be appropriate to exclude entry to dwelling premises entirely as, for example, stores attached to, or inside, farmhouses could contain hazardous materials. The authorised person's role may require that a number of persons accompany them. There could be a need to collect evidence from different locations on the premises, or to deal with complex or hazardous situations which may require a range of expertise. Therefore, limiting the number would undermine the ability to respond to matters which could give rise to significant risks to people and the environment.

The exercise of the power without notice is important. This allows authorities to deal with immediate risks and to conduct effective inspections. Giving notice or delay in entry may allow the movement of material to confound the investigation, lead to uncontrolled and inappropriate disposal of dangerous substances and the destruction of evidence.

Force may be used only if a warrant has been granted. With regard to other premises the ability to use reasonable force is required to gain access to premises and storage to deal with pesticides which give rise to significant risks, for example, to gain access to locked stored containing banned pesticides where the owner is not cooperative.

Dogs (Protection of Livestock) Act 1953 (c. 28)

- Section 2A: Contains a power for constable to enter and search premises after the grant of a warrant by a JP. A warrant may only be granted if the JP is satisfied there are reasonable grounds for believing that an offence under the Act has been committed (owner of a dog commits an offence if that dog worries livestock on agricultural land) and that the dog in question is on the premises specified in the application.

The power of entry is required because it is unlikely that the dog would remain 'at the scene of the crime' while the police were called.

Rationale for remaining unchanged: This power already contains adequate safeguards. There needs to be strong evidence in order to pursue cases of this kind and the police must establish reasonable grounds for their belief before they can obtain a warrant.

The provisions of section 15 and 16 of the Police and Criminal Evidence Act 1984 apply.

Breeding of Dogs Act 1991 (c. 64)

- Section 1: Provisions to apply for a warrant to authorise entry to premises to inspect them or any animal there. The warrant may only be granted if the Court is satisfied by information from an officer or a veterinary surgeon or practitioner that there are reasonable grounds for suspecting that an offence against the Breeding of Dogs Act 1973 is being committed. Entry may be made by reasonable force if need be. Entry must be at a reasonable time and may not be into a private dwelling – although may be into any garage, outhouse or other structure which belongs to those premises.

Rationale for remaining unchanged: This power is used to investigate offences under the 1973 Act and to react to information that an offence of keeping an unlicensed breeding establishment is being committed. It is important that mistreatment in breeding establishments – which, where standards are poor, can be informally known as “puppy farms” – is investigated. Entry using this power is only made where there are reasonable grounds to think that an offence is being committed.

As the power is reacting to suspicion of an offence and is based solely in a judicial warrant any further safeguards would be unnecessary and prohibitive. It is important that entry can be made without notice being given. Were this not the case there would not only be delay to what is commonly an urgent entry, but the giving notice could defeat the purpose of the entry.

Dangerous Dogs Act 1991 (c. 65)

- Section 5: Provisions to apply for a warrant to enter premises where there are reasonable grounds for believing an offence is being committed or evidence of such an offence is to be found at those premises. The warrant may only be granted if the Court is satisfied by information on oath that there are such reasonable grounds. Force may be used to enter.

This power underpins the 1991 Act which prohibits the possession of certain kinds of dogs belonging to types “bred for fighting” and deals with restrictions on other dogs that are a “serious danger to the public”. It is vital that entry can be made to premises in order to investigate and tackle offences under the 1991 Act and, if necessary, seize such animals and items that are evidence of offences. As this power is exercised by constables Sections 15 and 16 of the *Police and Criminal Evidence Act 1984* apply.

Rationale for remaining unchanged: It is not proposed that further safeguards be added as entry may not be made to any premises without obtaining a warrant and as such there will always be judicial oversight of the entry, particularly that there are reasonable grounds for the entry. As the entry is concerned with offences under the 1991 Act, the ability to enter urgently and without notice and, if need be, into dwelling premises is vital.

Environmental Protection Act 1990 (c. 43)

- Section 34B: Power to enter any premises for the purpose of searching or seizing a vehicle that an officer or constable reasonably believe was, is, or is about to be used in the commission of a relevant offence. Only authorised officers or constables may enter and force may not be used to enter.

This power allows entry to combat fly tipping and illegal waste sites. In 2012-13 there were over 700,000 incidents of fly-tipping in England and over 800 illegal waste sites in operation. The Environment Agency and local authorities have called for such powers to help enforce against persistent offenders who use their vehicles in the commission of such waste crime. Entry onto private premises, including dwelling premises, may be necessary to search and seize such vehicles.

Rationale for remaining unchanged: It is not proposed that any further safeguards be added to this power. Section 34B is intended to address problems arising from the mobile nature of vehicle-based offences. If this power of entry was to be fettered in any way this would reduce the efficacy of Section 34B for use in tackling waste crime. Many small illegal waste operators do not have separate business premises and therefore keep the vehicles used to commit offences at their dwelling premises. As such a provision that such premises may not be entered would be prohibitive. As regards warrant provisions, the aim of Section 34B is to allow the Environment Agency or local authorities to seize vehicles if they are considered to have been used or are about to be used to commit waste crime – the delays inherent in obtaining a warrant would provide waste criminals with more of an

opportunity to move their vehicles to avoid detection. Similarly, making provisions requiring notice would mean that illegal operators would be given the opportunity to move their vehicles or the contents of their vehicles and therefore avoid enforcement action. Entry under this power may be required at any hour, for example to gain access to vehicles if imminent use for criminal purposes is suspected or if there is a danger of the vehicles being hidden or removed. Finally, restricting the number of persons would not be possible as exact numbers cannot be specified – it would depend upon the situation which can include large scale enforcement operations.

Animal Welfare Act 2006 (c. 45)

- Section 19: Power of entry for the purposes of section 18 (Animals in distress).

Power for inspector or constable to enter premises to search for a protected animal if he/she reasonably believes there is a protected animal on the premises and that the animal is suffering or is likely to suffer (1). But not any part of a premises used as a private dwelling (2).

In exercising power in subsection (1) may use reasonable force but only if urgent (3).

Power to grant warrant (4) but only if JP satisfied (5) there are reasonable grounds for believing protected animal on premises and that the animal is suffering or likely to suffer and that section 52 is satisfied in relation to the premises.

Section 52: Section satisfied if any of the following conditions is met:

- whole premises used as a dwelling and occupier has been informed of decision to apply for warrant
- any part of premises is not used as a private dwelling and each of the following applies:
 - occupier has been informed of decision to apply for warrant
 - occupier has failed to allow entry to premises on request
 - occupier has been informed of decision to apply for warrant
- premises are unoccupied or the occupier is absent and notice of intention to apply for warrant has been left in a conspicuous place
- inappropriate to inform occupier of decision to apply for warrant because defeat object of entry or because entry is required as matter of urgency.

Section 19 is a provision which is relied on to rescue protected animals where they are suffering, or are likely to suffer if circumstances do not change and in cases of urgency when attempts to obtain owner's permission to remove the animal have failed.

Safeguards include a requirement to obtain a warrant to enter a premises which is a dwelling, when consent to enter a premises that are not wholly a dwelling have been refused and when a premises is unoccupied. Force may generally only be used after a warrant has been obtained, but can be used without one in cases of urgency.

The safeguards in Schedule 2 AWA paragraphs 4, 5, 6, 7, 8, 9, 15, 16 apply to the exercise of the power of entry in subsection (1).

The safeguards in Schedule 2 AWA paragraphs 1, 7, 8, 9, 15, 16 and sections 15, 16 Police and Criminal Evidence Act apply to the exercise of the power in subsection (4).

Rationale for remaining unchanged: The safeguards provided by the provision are adequate: any further safeguards would undermine the purpose of the provision.

- Section 22: Seizure of animals involved in fighting offences.

Power for constable to enter and search premises if he reasonably believes there is an animal on the premises and it is an animal he has power to seize under subsection (1) (subsection (2)). But not any part of a premises used as a private dwelling (3).

Power to grant warrant (4) but only if JP satisfied (5) there are reasonable grounds for believing that there is on the premises an animal a constable is empowered to seize under subsection (1) and that section 52 is satisfied in relation to the premises.

Section 52: Section satisfied if any of the following conditions is met:

- whole premises used as a dwelling and occupier has been informed of decision to apply for warrant
- any part of premises is not used as a private dwelling and each of the following applies:
 - occupier has been informed of decision to apply for warrant
 - occupier has failed to allow entry to premises on request
 - occupier has been informed of decision to apply for warrant
- premises are unoccupied or the occupier is absent and notice of intention to apply for warrant has been left in a conspicuous place
- inappropriate to inform occupier of decision to apply for warrant because defeat object of entry or because entry is required as matter of urgency.

Section 22 is a provision which is relied on to gain entry to a premises to seize animals that have been used in animal fights.

Safeguards include a requirement to obtain a warrant to enter a premises which is a dwelling, when consent to enter a premises that are not wholly a dwelling have been

refused and when a premises is unoccupied. Force may only be used after a warrant has been obtained.

The safeguards in Schedule 2 AWA paragraphs 4, 5, 6, 7, 8, 9 apply to the exercise of the power of entry in subsection (2).

The safeguards in Schedule 2 AWA paragraphs 7, 8, 9 and sections 15, 16 Police and Criminal Evidence Act apply to the exercise of the power in subsection (4).

Rationale for remaining unchanged: The safeguards provided by the provision are adequate: any further safeguards would undermine the purpose of the provision.

- Section 23: Entry and search under warrant in connection with offences.

Power to grant warrant for inspector/constable to enter/search for evidence of commission of relevant offence (1) but only if JP satisfied (2) there are reasonable grounds for believing that relevant offence has been committed on premises or there is evidence on the premises of commission of a relevant offence and that section 52 is satisfied in relation to the premises.

Section 52: Section satisfied if any of the following conditions is met:

- whole premises used as a dwelling and occupier has been informed of decision to apply for warrant
- any part of premises is not used as a private dwelling and each of the following applies:
 - occupier has been informed of decision to apply for warrant
 - occupier has failed to allow entry to premises on request
 - occupier has been informed of decision to apply for warrant
- premises are unoccupied or the occupier is absent and notice of intention to apply for warrant has been left in a conspicuous place
- inappropriate to inform occupier of decision to apply for warrant because defeat object of entry or because entry is required as matter of urgency.

Section 23 is a provision which is relied on to gain entry to a premises to search for evidence of offences under:

- section 4 (Unnecessary suffering)
- section 5 (Mutilation)
- section 6 (Docking of dog's tails)

- section 7 (Administration of poisons etc.)
 - section 8 (Fighting etc.)
 - section 9 (Duty of person responsible for animal to ensure welfare)
 - section 13(6) (Licensing or registration of activities involving animals)
 - 34(9) (Disqualification)
- This is a power of entry that requires a warrant.

The safeguards in Schedule 2 AWA paragraphs 1, 7, 8, 9, 10, 11, 12, 13, 14, 16 and sections 15 and 16 of the Police and Criminal Evidence Act 1984 apply.

Rationale for remaining unchanged: The safeguards provided by the provision are adequate: any further safeguards would undermine the purpose of the provision.

London County Council (General Powers) Act 1957 (c. xxxv)

- Section 54: Power to enter premises in order to immediately carry out work to protect any premises from flooding. Entry may only be made if it is “urgently necessary” and force may not be used.

Rationale for remaining unchanged: The Section 54 power, entitled “emergency flood protection works”, is used exclusively in emergencies where work needs to be undertaken immediately to protect premises from flooding. As such the addition of safeguards would not be appropriate. To require notice be given or that entry only be made at reasonable hours would be plainly inappropriate. Further, provisions requiring that a warrant be obtained before entry would mean that there would be a delay to the works – given that the situation must be one requiring urgent and immediate flood protection works such a delay would be unacceptable. As the power concerns flood defence works a diverse and large group of people may be needed to enter.

Aquatic Animal Health (England and Wales) Regulations 2009 (2009/463)

- Regulation 32: Power to enter premises at a reasonable time for the purpose of “administering and enforcing” the 2009 Regulations (and, by extension, *EU Directive 2006/88 on animal health requirements for aquaculture animals and on the prevention and control of disease in aquatic animals*). Dwellings may only be entered with a warrant, and then only with good reason. Force cannot be used.

Rationale for remaining unchanged: The power is used to enforce EU and UK law, including the carrying out of routine inspections and disease control functions such as oversight of and assisting in draining of waters and the disinfecting and cleansing of

premises. It would be disproportionate to require a warrant each time any premises needed to be inspected in order to comply with EU requirements on monitoring and inspection. Further, giving notice would be inconsistent with this duty as the inspections need be carried out without prior warning. Due to the variety of tasks to be carried out, there will be situations that an inspector alone cannot deal with and so would need to be accompanied by other, more specialised, colleagues. It would therefore not be feasible to set a limit on the number or type of persons that might need to accompany an inspector.

Gangmasters (Licensing) Act 2004 (c. 11)

- Section 16: Power for enforcement officer to require production of records, inspect, examine and remove records. Power to require person to explain records and provide information needed to establish if Act and any licence being complied with.
- Power to enter premises to exercise these powers.
- Power on reasonable notice to require attendance to produce records, to provide explanation of records and additional information.
- Section 17: Provision for grant of a warrant to allow entry to premises where reasonable grounds to do so to ascertain if contravention of section 6 (prohibition of unlicensed activities). Provided JP satisfied that admission to premises has been refused or is likely to be refused (and notice of intention to apply for a warrant has been given to the occupier), or application for admission or notice would defeat object of admission, or the case is one of urgency, or premises are unoccupied, or occupier temporarily absent.
- Reasonable force may be used.
- An enforcement officer may
 - take with him other persons and such other equipment as he considers necessary,
 - carry out inspections and examinations,
 - take possession of any book, document, data, record or product and retain it (leaving a statement of particulars)
- On leaving any premises which are unoccupied leave the premises as effectively secured against trespassers as he found them.

The powers combine to provide what is in essence a single power of entry for inspection purposes with a default power to enter by means of a warrant where entry as of right is refused or there is a suspicion it will be refused.

Rationale for remaining unchanged: The powers remain necessary to ensure proper regulation of an industry where exploitation of vulnerable workers and health and safety concerns can be real issues.

The powers contain appropriate safeguards. They permit entry to premises that are dwellings which is necessary both because gangmasters may run their businesses from dwellings and entry is required in order to gain access to records, but also because gangmasters may provide premises that are used as dwellings by their workers.

Responsibility for the Gangmasters Licensing Authority (GLA) moved with immediate effect from Defra to the Home Office on 9th April 2014. As such, any future changes to GLA legislation will now rest with the Home Office.

Hill Farming Act 1946 (c. 73)

- Section 34: Power for authorised officer to enter and inspect at all reasonable times land that he believes is used, or is capable of being used, for livestock rearing purposes, or land he believes is used in connection with the use of land for livestock rearing purposes.

Admission to any land may not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

This power of entry is required to allow for the enforcement of the Heather and Grass etc. Burning Regulations 2007 (HGB Regulations) which are made under the Act.

The HGB Regulations are important in allowing the control of heather and grass burning which when out of control can cause enormous environmental damage (peat can ignite and fire can spread underground). The cost of dealing with out of control fires is high in both financial and fire service resource terms.

Private gardens and allotments are specifically excluded from the application of the HGB Regulations by Regulation 3.

Rationale for remaining unchanged: The power of entry is to be retained as it is. There are minimal safeguards, but the power is limited in its application and impact by virtue of the scope of the legislation.

5.2. Powers of entry in the Marine and Coastal Access Act and other fisheries legislation

In 2010 responsibility for the regulation of:

- a new marine planning system;
- a new marine licensing regime;
- the UK fishing fleet capacity and UK fisheries quotas
- a network of marine protected areas (marine conservation zones and European marine sites) designed to preserve vulnerable habitats and species in UK marine waters

Vested in the Marine Management Organisation (“the MMO”).

The MMO was established by the Marine and Coastal Access Act 2009. That Act contains common enforcement powers (sections 246-261) that enable the Organisation to regulate these activities.

Marine and Coastal Access Act 2009 (c. 23)

- Section 246: Power to board and inspect vessels and marine installations.
- Section 247: Power to enter and inspect premises. Entry may only be made at a reasonable time unless there are grounds for suspecting that the purpose for entry may be frustrated if the officer entered at a reasonable time. “Premises” does not include any vehicle, vessel or marine installation.
- Section 248: Power to enter and inspect vehicles.

The powers in Sections 246, 247 and 248 are all qualified by a provision that an officer may not by virtue of those sections enter a dwelling unless a warrant has been issued under Section 249. Under Section 249 a warrant may be issued if there are reasonable grounds for believing there is material in the dwelling which the officer wishes to inspect, examine or seize – and either it is not practicable to communicate with a person entitled to grant entry to the dwelling or to the material, entry is not likely to be granted without a warrant or the purpose of the entry would be frustrated unless an officer can immediately secure entry upon his arrival. A warrant under Section 249 must be executed at a reasonable time unless there are grounds for suspecting that the purpose of the entry may be frustrated if entry was made at a reasonable time.

Rationale for remaining unchanged: It is not proposed that any further safeguards be added to these powers of entry. The powers in Sections 246, 247 and 248 relate to day-to-day activities of marine enforcement officers. In the course of acting under the 2009 Act,

decisions as to which vessel, premises or vehicle to enter are not pre-planned – such entry depends upon what officers encounter as they carry out their duties. It is vital that the power can be exercised in “real-time” to prevent the purpose of the inspection being frustrated and evidence of an offence being hidden or removed. Use of the powers includes boarding vessels at sea to ensure the vessel is using correctly-sized nets or is not retaining on board fish that it should not. An officer may need to inspect a vessel upon its arrival into port (before the fish is transported away), or a vehicle transporting such fish from a port. In all these instances officers have to make instant and time-sensitive decisions as to which vessels, premises or vehicles need to be inspected – it is not practicable or proportionate to require warrants be obtained for, or notice to be given of, such entries.

As regards the regulation of fisheries, in addition to the common enforcement powers of Marine Enforcement Officers of the MMO under the Marine and Coastal Access Act, there are powers of British sea-fisheries officers under various pieces of fisheries legislation.

Sea Fish (Conservation) Act 1967 (c. 84)

- Section 15: Power for British sea fisheries officer (“BSFO”) to enter premises (other than dwelling houses) used for carrying on business in connection with the running of fishing boats or activities connected to the treatment, storage or sale of fish.

Power to board vessels onto which fish are or are about to be transhipped. Power to require production of, search for and copy documents. Power to inspect fish and equipment. Power to require assistance. Offence of obstruction.

- Section 16: Power, at any reasonable time, to go on board any fishing boat or enter any premises used for business in connection with the treatment, storage or sale of sea fish. Power to search for, examine any sea fish. Power to seize any sea fish which have been landed, sold or exposed or offered for sale by any person in contravention of the said section 1, or which any person has in his possession in contravention of the said section 1 or 2.

Sea Fisheries Act 1968 (c. 77)

- Section 8: Power for British sea fishery officer (“BSFO”) to board a boat. Power to take persons with him to assist. Power to require boat to stop and facilitate his or her boarding.

Sea Fish Licensing Order 1992 (1992/2633)

- Article 4: Power for British sea fishery officer (“BSFO”) to board a boat. Power to take persons with him to assist. Power to require boat to stop and facilitate his or her boarding.

Tope (Prohibition of Fishing) Order 2008 (2008/691)

- Article 6: Power for British sea fishery officer (“BSFO”) to board a boat. Power to take persons with him to assist. Power to require boat to stop and facilitate his or her boarding.

Article 3 of this Order prohibits the fishing for tope by any method other than by rod and line. The retention on board of tope up to a maximum liveweight of 45 kilogrammes per day is permitted.

This is active legislation to protect a vulnerable shark species not covered by European Total Allowable Catchess and Quotas. An informal review and consultation undertaken in 2010 indicated strong stakeholder support and effectiveness of this Order.

Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005 (2005/1605)

- Regulation 13: Power for BSFO to board boats (may take persons to assist him) power to require assistance;
- Regulation 14(1) and (2): Power for BSFO to enter and inspect at all reasonable times premises used for carrying on business in connection with operation of fishing boats or activities connected with the treatment, storage, purchase or sale of fish; (may take with him persons equipment and materials as necessary);

Extends to land used in connection with activities also vehicles/containers reasonable suspected of being used to transport fisheries products.

- Regulation 14(3): Power for BSFO to obtain warrant if reasonable grounds to suspect items a BSFO can inspect are present; and admission has been or is likely to be refused; and notice of intention to apply for a warrant has been given (or to do so would defeat the object of the entry); or premises unoccupied or temporarily unoccupied and the matter is urgent.

BSFO may use force.

The Regulations provide for the administration and enforcement of Article 9 of the EU Control Regulation, Council Regulation (EC) No 2847/1993, and Article 22(2) of the CFP

Framework Regulation, Council Regulation (EC) No 2371/2002, relating to the designation of auction centres and registration of buyers and sellers (i.e. auction traders) of first sale fish and the provision of sales notes. Cross checking these sales notes with landings data allows for the monitoring and control of landings of fish taken from EU and other waters and ensures that such landings are properly recorded and capable of verification. The measures also assist consumers and those involved in secondary processing or distribution of fish to be satisfied about the provenance of fish and that it has been legitimately caught.

Scientific evidence shows many of the main fish stocks found in the waters of the EU are near or at low levels caused mainly by overfishing. Without improved fisheries control, conservation and other measures designed to safeguard fish stocks and ensure their long-term sustainable exploitation will not be fully effective and certain stocks risk collapse with significant impact on the fishing industry.

Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (2009/3391)

- Article 12 of the 2009 Order: Power for BSFO to board boats (may take persons to assist him) power to require assistance;
- Article 13: Power for BSFO to enter and inspect at all reasonable times premises used for carrying on business in connection with operation of fishing boats or activities connected with the treatment, storage, purchase or sale of fish; (may take with him persons equipment and materials as necessary);

Extends to land used in connection with activities also vehicles/containers reasonable suspected of being used to transport fisheries products.

- Article 14: Power to obtain warrant if reasonable grounds to suspect items a BSFO can inspect are present; and admission has been or is likely to be refused; and notice of intention to apply for a warrant has been given (or to do so would defeat the object of the entry); or premises unoccupied or temporarily unoccupied and the matter is urgent.

BSFO may use force.

The Order provides for the enforcement of Council Regulation (EC) No 1005/2008 and Commission Regulation (EC) No. 1010/2009 establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.

Illegal, unreported and unregulated (IUU) fishing is one of the most serious global threats to the sustainability of fish stocks and to marine biodiversity. There is a large consensus within the international community on the seriousness of this problem and the need to adopt appropriate measures to prevent, deter and eliminate it.

The impacts from IUU fishing and associated activity can have negative ramifications environmentally, economically and socially. IUU fishing firstly results in disastrous environmental damage to marine biodiversity. It greatly damages the sustainability of fisheries, especially where catches are unreported or misreported and contributes to over fishing. The effects of poor management from IUU fishing can distort the assessment of stocks and thereby undermine their future management. The use of un-seaworthy vessels and effectively indentured crews as well as connections with known criminal activity, add to the problem. Poor practices by illegal fishing vessels lead to deaths of seabirds, turtles and mammals. There are also additional health risks that can arise as IUU operators tend to circumvent applicable community rules on health and hygiene standards. More generally where national or international authorities have set fisheries harvesting at levels to ensure the continuation of the stock into the future, IUU fishing will undermine this. Thus illegal fishing can lead to the decline of once-profitable and sustainable fisheries

Rationale for remaining unchanged: The nature of the fishing industry (i.e. the difficulty in regulating much of the activity as it takes place) means there is a requirement for a lot of regulatory/enforcement activity in order to deter wrongdoing.

The complex relationship between the domestic and European legislative regimes, the issues of geographical and devolved administrations (including the need to maintain cross-border enforcement powers under potentially different pieces of legislation for each devolved administration) make it very difficult to identify figures for separate pieces of legislation, but for fisheries as a whole, Marine Management Organisation (“MMO”) figures for 2011 for inspections carried out in 2011 are as follows:

- Vessel inspections carried out at sea by Royal Naval Fishery Protection Vessels – **1413** vessels
- Vessel inspections carried out by MMO coastal officers – **1660** vessels
- Landed catch assessments, including market inspections and quayside inspections of vessels which were not boarded – **3734** vessels
- Vehicle inspections - **200**
- Total number of vessel inspections carried out by RN and MMO officers = **7007**

The legislation is required to ensure protection of vulnerable fish stocks where over fishing could lead to the destruction of a resource such as that of the cod stocks off the Newfoundland coast.

The industry is generally keen on the retention of strong enforcement powers as it is the only way to ensure that law abiding fishermen and businesses can compete.

The powers of entry in the various pieces of fisheries legislation are essentially the same as the common-enforcement-powers power of entry in the recently enacted Marine and

Coastal Access Act 2009 (ss 245-261). Those powers were examined by Parliament during the passage of the Bill and deemed appropriate and necessary and for the purposes of enforcement of fisheries legislation and therefore by extension the powers in the fisheries legislation are too.

The majority of fisheries legislation is EU based and failure to have proper enforcement mechanisms in place in respect of that legislation would be a breach by the UK of its EU obligations and could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission takes a close interest in implementation of fisheries requirements by Member States.

5.3. Post 2010 legislation

The following powers have all been introduced since 2010 and have cleared the Home Office Gateway, being deemed both a necessary power and containing the appropriate safeguards.

- African Horse Sickness (England) Regulations 2012 (2012/2629)
- Non Commercial Movement of Pet Animals Order 2011 (2011/2883)
- Poultrymeat (England) Regulations 2011 (2011/452)
- Animal By-Products (Enforcement) (England) Regulations 2011 (2011/881)
- Forest Law Enforcement Governance and Trade Regulations 2012 (2012/178)
- Trade in Animals and Related Products Regulations 2011 (2011/1197)
- Ecodesign for Energy-Related Products Regulations 2010 (2010/2617)
- Energy Information Regulations 2011 (2011/1524)
- Energy Information Regulations 2011 (2011/1524)
- Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 (2011/2292)
- Quality Standards for Green Bananas (England and Wales) Regulations 2012 (2012/947)
- Plant Protection Products Regulations 2011 (2011/2131)
- Environmental Civil Sanctions (England) Order 2010 (2010/1157)*

*Informal pre-formal-gateway clearance

5.4. Legislation which has been revoked and replaced by legislation that has been through the HO PoE gateway

The following 3 powers have recently been revoked by legislation containing powers which have been through the Home Office gateway and therefore meet the principles of this review.

- The Wine Regulations 2009 (2009/386)

These Regulations were revoked and replaced by The Wine Regulations 2011 ([2011/2936](#))

- The Veterinary Medicines Regulations 2011 (2011/2159)

These Regulations were revoked and replaced by The Veterinary Medicines Regulations 2013 ([2013/2033](#))

- The Olive Oil (Marketing Standards) Regulations 2003 (2003/2577)

These Regulations were revoked and replaced by The Olive Oil (Marketing Standards) Regulations 2014 ([2014/195](#))

5.5. Items considered by Parliament during the making of the British Waterways Board (Transfer of Functions) Order (2012)

These powers have already undergone review during the transfer of functions from the British Waterways Board to the Canal and River Trust (CRT).

British Transport Commission Act 1959 (Ch. xliv)

- Section 26(2): To ensure that canal basins directly/indirectly connected to CRT's network are watertight
- Section 26(3): To ensure there is no unnecessary leakage of water from the network through pre-existing neighbouring basins where these are being filled in.

British Waterways Act 1971 (Chapter xviii)

- Section 13: Power for CRT to board any vessel on its waterway to leave or serve a notice where such vessel is in breach of its houseboat certificate or where there is no houseboat certificate in force for that vessel. Power for CRT to board the vessel to remove and destroy the vessel after the expiry of the period specified in the notice.

British Waterways Act 1983 (c. ii)

- Section 7: Power for a CRT officer to enter upon any vessel on any inland waterway or on any reservoir owned or managed by CRT (s7(2)(a)).
- CRT may also at any time move a vessel found unsafe or take such other steps as may be necessary (s7(5)) or (after a notice period of at least 3 months) remove the vessel altogether (see s7(6) and s8).
- Section 8(1)-(4): Power to remove any vessel which is sunk, stranded or abandoned in any inland waterway or reservoir owned or managed by the Trust or which is left or moored therein without lawful authority and includes any part of such vessel.

British Waterways Act 1995 (c. i)

- Section 4: Power for the purpose of entering land in cases of emergency to carry out relevant operations.
- Section 5 and 6: Power for the purpose of carrying out necessary relevant operations (other than emergency operations) where access is needed over land and where CRT does not have such rights of access.
- Section 8 (5): Power to remove, without notice, any sunk, stranded, abandoned or unlawfully moored relevant craft (vessel) which is either causing an obstruction or is a source of danger
- Section 19: Power of entry is implicit upon a power to remove vessels that are moored or lying in such a position as to be likely to interfere with any dredging, repairs, maintenance works, or any other works or operations proposed to be carried out by any other authority or body in pursuance of any statutory functions.

5.6. Third party powers

Avian Influenza (H5N1 in Poultry)(England) Order 2006 (2006/3247)

- Article 19: applies if the keeper of any poultry, other captive bird or mammal is unable to move it from premises on termination of his right of occupation because of a movement restriction is imposed under the Order.

The person entitled to occupation of the premises following that termination must provide such facilities for feeding, tending or otherwise using the poultry, other captive bird or mammal (including selling it) as the keeper may reasonably require; and allow entry to the premises to that keeper and any person authorised by him at reasonable times for feeding, tending or otherwise using the poultry, other captive bird or mammal.

Rationale for remaining unchanged: This power applies in very limited circumstances when a movement restriction has been imposed under the order.

It is necessary to ensure the welfare of animals to which the keeper might otherwise not have access, as such; the power is to remain unchanged.

Foot and Mouth Disease (England) Order 2006 (2006/182)

- Article 48: applies if the keeper of any poultry, other captive bird or mammal is unable to move it from premises on termination of his right of occupation because of a movement restriction is imposed under the Order.

The person entitled to occupation of the premises following that termination must provide such facilities for feeding, tending or otherwise using the poultry, other captive bird or mammal (including selling it) as the keeper may reasonably require; and allow entry to the premises to that keeper and any person authorised by him at reasonable times for feeding, tending or otherwise using the poultry, other captive bird or mammal.

Rationale for remaining unchanged: This power applies in very limited circumstances when a movement restriction has been imposed under the order.

It is necessary to ensure the welfare of animals to which the keeper might otherwise not have access, as such; the power is to remain unchanged.

Foot and Mouth Disease (Control of Vaccination) (England) Regulations 2006 (2006/183)

- Regulation 31: applies if the keeper of any animal or poultry is unable to move it from premises on termination of his right of occupation because of a restriction under the Regulations.

The person entitled to occupation of the premises following that termination must provide such facilities for feeding, tending or otherwise using the animal or poultry (including selling it) as the keeper may reasonably require; and allow entry to the premises to that keeper and any person authorised by him at reasonable times for feeding, tending or otherwise using the animal or poultry.

Rationale for remaining unchanged: This power applies in very limited circumstances when a movement restriction has been imposed under the Regulations.

It is necessary to ensure the welfare of animals to which the keeper might otherwise not have access, as such; the power is to remain unchanged.

Land Drainage Act 1991 (c. 59)

- Section 29(1): provides that a person named in an order under section 28 may carry out any work specified in the order and may enter on any land specified in the order in order to do so.
- Section 28: Where a ditch is in such a state that it is causing damage to land or preventing the improvement of the drainage of land the First-tier tribunal, on the application of the owner of the land may make an order requiring the person or persons named in the order to carry out such remedial work as specified in the order. The order may specify the person who owns or occupies the land through which the ditch passes or which abuts on the ditch or any person who although not the owner or occupier, has the right to carry out the work.

This is a power which provides for a third party to enter land in order to carry out remedial work specified in an order of the First-tier tribunal.

Rationale for remaining unchanged: As the power derives from a specific order this power is to remain unchanged.

- Section 30: Power to enter premises to carry out works specified in a Section 30 Order – relating to drainage of any land, including the carrying out of any work in connection with a ditch passing through other land, the replacement or construction of such a ditch or the alteration or removal of any drainage work in connection with such a ditch. The First-tier Tribunal, on application of the first-mentioned landowner, may make a Section 30 Order if they think fit – such an order carries with it an authorisation to enter any land specified.

Section 30 applies the safeguard from Section 29 that not less than seven days' notice of the entry must be given to the occupier.

Rationale for remaining unchanged: It is not proposed that any further safeguards be added to this power on the basis that the power may only ever be exercised under the

direct order of the First-tier Tribunal and so already possesses a high level of judicial oversight and scrutiny.

Environmental Protection Act 1990 (c. 43)

- Section 78G: requirement for any person whose consent is required before anything required by a remediation notice may be done to grant, or join in granting, such rights in relation to any of the relevant land or water environment as will enable the appropriate person to comply with any requirements imposed by the remediation notice.

Requirement for enforcing authority to consult persons who will be required to grant rights before remediation notice is served.

This is a power to require persons to grant access to land in order that remediation of contaminated land may be carried out.

Contaminated land is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that significant harm is being caused or there is a significant possibility of such harm being caused; or significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused.

Rationale for remaining unchanged: This provision is to remain unchanged. This power is required in order to ensure that contamination that is causing harm to the environment can be removed. The person who has to grant access should be consulted before the remediation notice is served and is entitled to compensation for granting rights of access.