



Home Office

# First progress report on the review of Powers of Entry

January 2013

## Executive Summary

The Government introduced the Protection of Freedoms Act 2012 to roll back state intrusion and restore civil liberties

The Act contains measures to deal with powers of entry and in particular contains order making powers to:

- Repeal powers; add further safeguards to those that remain; re-write similar powers while enhancing the safeguards that apply to them (which will improve their transparency in legislation and reduce their number)

The Act also requires Ministers across Government to undertake a full review of powers of entry and examine and consider whether they are still necessary, proportionate and contain sufficient safeguards. The review will examine the current ‘stock’ of powers with a view to significantly reducing the number of powers on the grounds they are no longer justified or simply duplicate others.

The Act sets a two year deadline for formal ministerial responses by May 2014. Individual departments must, by this date, provide final reports which must contain findings and information relating to what will happen to powers. The two year period does not require changes to be made but together the identification of how and when those changes will be made. This work therefore need not be completed by May 2014. Ministers are keen that the work happens quickly and have agreed to report progress to Parliament every six months.

The Home Office has overall responsibility for powers of entry and is co-ordinating the work across Whitehall via a cross-departmental Steering Group including each department.

We have now received the first six monthly progress reports from departments. The progress made does vary due to the varying numbers of powers being reviewed by each department. The review is in its early stages and it is not possible for departments to provide a definitive view at this stage. However, good progress is being made. For example, the Environment Agency (under DEFRA), has set up a project team and emerging work carried out so far suggests there is scope to consolidate most of the powers currently within its remit.

This report comprises information that has been submitted by departments and will be placed in the Library of the House.

## Six monthly progress reports from Departments

### Home Office (HO)

The Home Office is responsible for approximately 90 powers, extending across a wide range of responsibilities such as policing, public order, anti-social behaviour, drugs and terrorism. The review will focus on the scope to reduce the current number of powers and tighten safeguards applying to them in most (if not all) areas.

The review is in the early stages and progress is being made on a number of areas and policy leads have began consulting the wide range of arms length bodies and interested parties. The early stages of the review means it is not possible to provide definitive proposals, however, as the review continues, the Home Office expect to report on areas where further amendments have

been identified and where action is necessary for repealing, adding safeguards, consolidating or rewriting powers of entry.

The report below is a brief summary of progress made by the Home Office.

## **Drugs and Alcohol**

A review and consultation process has been agreed for the Misuse of Drugs Act 1971. Initial scoping on both powers has been undertaken with police forces through the Association of Chief Police Officers (ACPO) Drug Standing Working Group.

Further consultation will be conducted with the ACPO Drug Standing Working Group and relevant enforcement partners on both powers. Policy leads will provide an initial policy analysis and consultation with legal advisers is due to begin shortly.

The Licensing Act 2003 contains seven powers of entry. These allow checks on premises prior to grant of licences or club premises certificates or to enable follow up visits once licences/certificates have been granted. They are currently divided into separate powers for 'standard' licenced premises or those pertaining to venues holding or applying for club premises certificates. In addition there is a separate power to enable temporary events to be inspected and ensure that those responsible are adhering to the agreed licence conditions in relation to that specific event whilst it is taking place. Powers of entry apply to police constables and can be conferred to local authority licensing officials.

Early scoping has taken place via umbrella organisations; the Local Government Association (LGA) which represents the local authority perspective and the Association of Chief Police Officers (ACPO) representing the police. Initial reactions from both organisations to date has been to request the current powers are maintained as they are necessary at present.

## **Future progress over the next 6 months:**

Further consultation with partners such as the ACPO Licensing group is required to give further consideration to whether powers can be repealed or consolidated. Officials will also undertake a scoping exercise to ascertain whether it is possible to determine the frequency of use of these powers as they are not held centrally.

## **Terrorism**

The Home Office is consulting with law enforcement stakeholders in relation to terrorism-related powers of entry in the Terrorism Act 2000, Terrorism Act 2006, the Anti-Terrorism, Crime and Security Act 2001, Terrorism Prevention and Investigation Measures Act 2011, and the Police Act 1997.

## **Animals in Scientific procedures**

The revised legislation relating to the Animals (Scientific Procedures) Act 1986 has gone through Parliament very recently. The wording of licences also grants officials the right to enter premises to inspect conditions and use of animals. It contains positive safeguards in that risk based inspection regime requirements by parliament will minimise the likelihood of compulsory entry to premises.

## Violent and Youth Crime Prevention

Initial consultations with police bodies have concluded powers of entry as provided under the Criminal Justice Act 1988 and the Knives Act 1997 relating to offensive weapons should be retained currently. Knife crime is a sensitive issue, in particular, young people carrying knives is seen as a problem by practitioners and the police and currently there are no alternative powers that police could use to target the criminal behaviour covered by these offences.

## Judicial Co operation (international) and extradition

Initial review findings for Powers of entry relating to international judicial co-operation, suggests there is scope for consolidating some powers currently provided under the Crime (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 with the power of entry under the Proceeds of Crime Act 2002. This is now being looked at by Home Office legal advisors and will lead to a firm proposal that will require further consultation with stakeholders.

The power of entry under section 22 of the Crime (International Co-operation) Act 2003 implements a specific mutual recognition EU Framework Decision (FD) and cannot be removed. However the FD is subject to the 2014 opt-out decision, and a new amending/repealing EU directive under negotiation (the European Investigation Order). It is therefore likely that there will be scope to amend or remove this power from 2014 onward.

Further work in this area is continuing to closely examine scope for consolidation of powers. Regarding powers for extradition purposes, initial conclusions are that repealing any of the powers in the Act would require substantial amendment to the 'equivalent' PACE provisions in order for them to apply in the extradition context. PACE powers as they stand would be operationally insufficient.

These are our initial findings. Work is ongoing in relation to each of the powers of entry and we are working with our stakeholders and lawyers.

## Immigration and Border control

Home Office policy officials in conjunction with UKBA and Border Force have conducted a preliminary review of their Powers of Entry.

Each of the powers of entry has a specific function. The use of the powers varies based on available intelligence, the likely impact of that intelligence and the level of suspicion surrounding a case they may be investigating. and the powers are exercised by Immigration Officers, officials of the Immigration Service Commissioner (OISC) and the police.

Both UKBA and Border Force work alongside other law enforcement agencies to facilitate the legal, and prevent the illegal, movement of people and goods in and out of the UK. OISC use the powers when investigating complaints about immigration advisers.

Work is continuing to consider any potential for revising the powers outlined above.

## Firearms

At the beginning of the POE (reducing bureaucracy) project, the Home Office Firearms policy team carried out a simple consultation and review to identify the POEs used for firearms matters. A selection of forces of various sizes and locations across England and Wales were chosen at random to take part.

Work to look at matters relating to firearms is also progressing and consultation with stakeholders including police forces has involved ACPO portfolio lead for firearms. Main focus has been to seek information on:

- the number and name of the POEs in place;
- whether some or all of the identified POEs are used;
- how often each POE is used;
- The benefits for keeping, amalgamating or removing any of the POEs.

Firearms matters remain complex and forces have stressed that they rely on the POEs as a last resort and will use them to ensure public safety at all times, when consent is not achievable. This had led to a conclusion that there are valid reasons for keeping them at present being:

- they contribute to overall safety and security;
- they remain are part of the raft of firearms controls in place;
- they increase public safety and the public perception of safety;
- they provide a means for entering a premises or vehicle in instances of misuse or irregularity involving a firearm.

Further consideration will be given to the need for retention of powers and to appropriate safeguards, as the review progresses.

## Organised Financial Crime

The Organised and Financial Crime Unit is reviewing the following powers available under the Proceeds of Crime Act (POCA) 2002:

- s47D – search for property
- s49 – management receiver powers
- s51 – enforcement receiver powers
- s289 – powers to seize cash
- s347 – order to grant entry in respect of a production order
- s352 – search and seizure warrants

Reviews are also looking at the following civil recovery powers within POCA:

- s246(1)(2)
- s247(1) (2), Sch.6 Para 3 and 4.

A review process has also been established to look at powers of entry matters under the proceeds of Crime Act (POCA) 2002, comprising a questionnaire developed and placed on the Financial Investigators' Support System (FISS), a secure website only accessible by Accredited Financial Investigators for completion.

Some 1,600 responses have been received from police forces, local authorities and Whitehall

departments engaged in financial investigation. We have also consulted SOCA, CPS, and other stakeholders, as well as the Devolved Administrations.

It is too early to come to any firm views on the powers however this will be subject to further consideration over the period of the review including assessing whether the current safeguards are adequate or need to be strengthened.

## **Anti Social Behaviour**

In terms of progress in relation to the hate crime legislation, initial advice following consultation reviews has suggested consolidating some powers provided under the Public Order Act maybe viable through Police and Criminal Evidence Act. Further consideration is being given on whether there are any safeguarding issues around this approach.

Consultation with police forces is currently taking place on hate crime to determine what powers officers use under this legislation.

The feedback from police forces will inform the review process whether the safeguards under the current legislation would also be met under section 8 of PACE.

Powers relating to metal theft are currently being included in the Scrap Metal Dealers Bill, a Private Members Bill tabled by Richard Ottaway MP to regulate the scrap metal industry. The Bill contains powers of entry for police officers and officers of the local authority, to enter licensed scrap metal yards with notice and without notice if notice would defeat the purpose of the visit. These entry powers do not extend to residential premises, nor do they permit the use of force.

The Bill does allow for justice of the peace to issue a warrant authorising entry to sites where there are reasonable grounds for believing entry to the premise is reasonably required for the purposes of securing compliance with the provisions of the Act, or ascertaining whether the provisions are being complied with. This power relates to non-licensed scrap metal sites and residential sites that are believed to be used in the course of the dealers business. A warrant also authorises the use of reasonable force.

## **Private Security Industry**

The Security Industry Authority has one power of entry, which is to enter the business premises of security companies. It specifically excludes domestic properties, and there are a number of sufficient safeguards.

## **Police powers under PACE**

A review has been carried out of the powers conferred on police under the Police and Criminal Evidence Act 1984 (PACE) to enter and search premises.

The conduct and recording of the exercise of each of these powers are subject to the provisions of the PACE Code of Practice B (Entry search and seizure). The Code provides additional safeguards and protections for occupiers and the police and was last revised in 2011. A further revision is planned to take account of subsequent changes in legislation. In consultation with our stakeholders and based on previous formal reviews of PACE and the Codes, we consider that it is not at present necessary to repeal or amend any current powers.

The statutory provisions of the Act, together with the provisions of Code B, provide safeguards and protections for occupiers and the police to ensure that the powers are exercised in a proportionate manner which is compatible with the Human Rights Act. This is subject to regular review and a further revision of the Code is planned to take account of subsequent changes in legislation, and to give further consideration to whether any additional safeguards may be required. As part of our remit to ensure PACE Code B is kept up to date, we will continue to take account of court judgments and comments from police and others which appear relevant to the content and exercise of these powers.

## Department for Environment, Food and Rural Affairs (DEFRA)

Activity to date has mainly focussed on confirming what powers DEFRA and its regulators own. The original estimate of 500 looks to be an under-estimate.

DEFRA are gathering internal views on potential changes to powers. It is already clear that, where powers are necessary, the greatest benefit is likely to arise from consolidating them rather than looking at them individually.

The Environment Agency has agreed to act as a pilot for our Review. It has set up a project team which is examining the powers which it exercises. The emerging conclusions suggest that there is scope to consolidate most of these. Firm proposals will then be discussed with relevant DEFRA policy teams. DEFRA intend to take a similar approach with other DEFRA sponsored regulators. This is a major, resource-intensive exercise and it is not possible to put forward any formal proposals at this stage of the review.

By the next six monthly report DEFRA aim to:

- provide a definitive list of DEFRA's powers of entry;
- make proposals in relation to those powers exercised by the Environment Agency; and
- ensure that other DEFRA regulators have made a start on reviewing powers exercised by them.

Further information in the next six months will also cover in particular about the exercise to validate the powers of entry that DEFRA and its regulators own.

## Ministry of Justice (MOJ)

MOJ have confirmed the 30 powers of entry that it is responsible for and identified policy leads responsible in each case. Information on the process has been circulated to MOJ policy leads and all specific policy teams have been requested to initiate reviews of their powers of entry.

No reviews have been concluded yet so it is not possible to say the number of powers for removal, amalgamation and retaining.

MoJ started the statutory review process in early 2012 and work is progressing on a number of areas with discussions and consultations taking place between MOJ policy teams and the relevant interested parties. MOJ expect to make further progress over the coming months and remains on track to conclude the review and present its findings in a final report by early 2014.

## Department for Business Innovation and Skills (BIS)

BIS holds 145 powers of entry (64 derived from primary legislation and 81 from secondary).

The vast majority of these powers of entry are being looked at already as part of the Consumer Law Powers review. Of the 145 powers of entry in total that are held by BIS, approximately 90 are being considered under that review. **The remaining 54 powers of entry are being reviewed as part of the two year review.**

Of these 54 powers of entry, policy leads have been contacted and have indicated if they plan to review their power of entry, when they plan to conduct the review and who they plan to consult in line with Home Office guidance.

Work will continue to identify the most essential of these powers and Policy leads are required to make initial recommendations on whether to keep or scrap the power on the outcome of the review.

## Department for Culture, Media and Sport (DCMS)

The Department has responsibility for a small number of powers of entry enshrined in nine statutes covering protection of heritage, enforcement of the terms of broadcasting and gambling licences, and the safety of sports grounds and theatres. A thorough review carried out in 2010 found valid reasons for retaining these powers, apart from a power under the Hypnotism Act 1952, which was therefore subsequently repealed via the Protection of Freedoms Act 2012. We kept the remaining powers under review during the passage of that Act.

DCMS focus on delivering the Olympic and Paralympic Games ruled out any further review during the six months covered by this report. However, the department is committed to reviewing the justification for these powers, both in terms of their underlying rationale and of up to date evidence of the extent to which they are actually used.

In reducing the overall amount of regulation for which the department is responsible for, and as part of the review process, policy leads and legal experts will consult with the relevant arm's-length bodies, to ensure a balanced, evidence-based view of the need for regulation is taken on decisions to remove or reform powers or obligations that are out of date or no longer necessary.

## HM Treasury (HMT)

Treasury has identified ten powers that will be reviewed under the Protection of Freedoms Act 2012. The review of these powers is on track to be completed in 2013 with any necessary legislation following in 2014.

## Department for Communities and Local Government (DCLG)

The Department for Communities and Local Government is reviewing 80 measures. DCLG is on track to complete these reviews in 2013.



## Department for Transport (DFT)

Powers of entry are to be found in a wide range of legislation for which the Secretary of State for Transport is responsible. Examples include powers relating to security in the Channel Tunnel, gaining access to lights which might endanger shipping and the investigation of criminal offences involving the supply of motor vehicle parts.

The Department for Transport's review is in progress. No final decisions have yet been made in relation to any powers. Officials have so far been looking at around 95 powers and have reached provisional views in over half of these cases. Consultation with those who might use the power, within or outside the Department, has already taken place in a number of cases with consultation in relation to other powers to come over the next few months.

Particular areas of scrutiny for the Department are whether there are any powers from which domestic premises can be excluded and whether an additional safeguard of requiring a court order to enter, particularly in respect of domestic premises, should be included.

The Department expects to complete its review and come to final decisions in 2013.

## Department for Education (DFE)

DFE have identified 47 powers of entry (PoE) for the review.

Access for Connexions/careers advisers to facilities and premises to enable them to provide services. S44 of the Education Act 1997 was repealed on 1 September 2012 under section 29 of the Education Act 2011. The duty now applies only to institutions in Wales.

The Children's Commissioner's Powers of Entry. The role and powers of the Children's Commissioner are set out in primary legislation (Children Act 2004: Pt 1 Children's Commissioner; s.2 General function s.2(8)). The Department has published draft provisions to clarify the role of the Children's Commissioner. These are currently subject to pre-legislative scrutiny by the Joint Committee on Human Rights. The proposed legislation would amend the 2004 Act, in line with recommendations from a review commissioned by the Secretary of State. The Children's Commissioner's powers of entry would remain largely the same as now, allowing the Children's Commissioner to interview children, but also making it clear that the power extends to observing standards of care and interviewing staff. The Commissioner will not have any enforcement powers.

The Powers of Entry, which allow local authority representatives to monitor assessment arrangements, are essential to ensure transparency in the National Curriculum Assessment system. These will be included in wider DfE consultation exercise.

**Local authority access to a maintained school in another authority or an independent school, where it is attended by a child for whom the local authority maintains a statement.** Powers under s.327 of the Education Act 1996 and the related Schedule were included in the Children and Families Bill published in September 2012. These powers give a local authority the right to access a maintained school in another authority or an independent school, where it is attended by a statemented child. Local authorities are under a statutory duty to arrange the special educational provision set out in a statement and they cannot do this unless they can monitor provision. It is important that "vulnerable" children receive the provision they need in order to progress.

Discussion is still ongoing with DCMS about who should own the Children and Young Persons Act 1933, Pt I: prevention of cruelty and exposure to physical & moral dangers, failing to provide for the safety of children at entertainments.

Reviews of **20 further powers** scheduled for autumn will cover:

- Safeguarding powers which are required to safeguard and protect children—Further consultation with the Local Government Association and the Association of Directors of Children's Services will take place from October 2012.
- Review of powers under the Adoption and Children Act 2002 is currently in progress with consultations in progress with the Local Government Association and the Association for Directors of Children's Services for their views.
- An autumn consultation will look at powers covered by the School Standards and Framework Act 1998 (s40 and paras 1(3) and 5(2) of Schedule 13) and also S.51 of the Education Act 2005.
- Powers of Entry under the Childcare Act 2006, (which relate to Ofsted inspection) need to be retained due to Ofsted's inspection role, however, DFE will consider under the review whether the current PoE are too wide or if they are necessary.

Ofsted and Ofqual - Ofsted has been introducing major reforms to its inspection remit and is also undergoing significant structural reform. DFE shall commence the review work on Ofsted's powers in Jan 2013 when the picture will be more settled.

Ofqual's powers of entry under the Apprenticeships, Skills and Learning Act 2009 need to be retained, however they will be reviewed as part of the qualifications reform programme.

## Department for Work and Pensions (DWP)

Progress has been made by DWP in the review process within the 4 areas of the business which may be affected. The powers identified are:

### a) Fraud Investigation Service (FIS)

- Section 109C Social Security Administration Act 1992

### b) Child Maintenance Group (CMG)

- Section 15 Child Support Act 1991 (CMG only became part of DWP on 1 August 2012)

### c) The Pension Regulator (TPR)

- Powers of Inspection: Section 73-75 of Pensions Act 2004
- Powers of Entry (with a Magistrate's warrant): Section 78 of Pensions Act 2004

### d) Pension Protection Fund (PPF)

- Powers of Inspection: Section 192 of Pensions Act 2004
- Powers of Entry (with a Magistrate's warrant): Section 194 of Pensions Act 2004

Fraud Investigation Service (FIS) - Those powers pertaining to FIS are principally used to follow up statutory requests for information. They are envisaged as facilitating visits by officials to relevant properties subsequent to an unsuccessful demand for information. They do not permit forced entry but there are criminal penalties for obstruction. Search and seizure is carried out in

conjunction with the police in conjunction with FIS following a warrant application. FIS is unable to seize material; this is done under the terms of the warrant and logged and passed to FIS.

The Child Maintenance Group - The Child Maintenance Group's (CMG) powers of inspection are provided for in Section 15 of the Child Support Act 1991 primarily as means of information gathering from those individuals or organisations who either fail to comply with requests for information or where there are no legal powers to secure the necessary data otherwise.

CMG powers of entry are restricted to those premises which are not used wholly as a dwelling house and are based on permissive and not forced entry. CMG is highly transparent about the powers it has available and the deterrent impact of using section 15 powers is significant, frequently generating compliance without the requirement for an actual visit.

CMG has reviewed its powers of inspection and entry and considers that these are proportionate, necessary and contain all the relevant safeguards required.

The Pensions Regulator (TPR) and The Pension Protection Fund (PPF) - TPR and PPF are NDPBs. Both have powers of inspection, which do not permit forced entry, but for which there are criminal penalties for obstruction, and powers of entry, which do permit forced entry with a warrant from a magistrate. Both NDPBs rely primarily on their powers to request information, which is effective because the recipient knows that premises could be inspected or a warrant could be sought if s/he does not comply.

DWP have considered whether the powers should be retained and concluded that the powers are still necessary. TPR is encountering an increasing number of cases where the evidence gathering methods in sections 73 – 75 and 78 are likely to be required, either due to concerns about the destruction of evidence or failure to comply with less intrusive methods of evidence gathering (such as notices requiring the provision of information issued under section 72). Occupational pension schemes can have assets measured in billions of pounds. Even smaller schemes may have assets measured in the tens and hundreds of millions, thus large amounts of money are at stake. The GP Noble case led to the theft of £52 million from the occupational pension schemes affected. In this latter instance, amongst other powers, TPR used its inspection powers to gather evidence which enabled TPR to exercise its functions and protect member benefits. There are other cases where similar sums have been safeguarded. In addition, not only are pensions unlocking and liberation cases rising, but also the new automatic enrolment scheme, for which TPR has responsibility in relation to employer compliance, is being rolled out over the next five years. Removal of the powers will seriously affect TPR's ability to exercise its functions and will seriously impact upon TPR's ability to protect member benefits, the PPF, and ensure compliance with employer duties.

Although the PPF have not yet needed to use the powers of entry under sections 192 and 194, it is crucial that the PPF retain the power to ensure that it is able to take action in the rare, but serious cases where it may be needed. In situations where a trustee or administrator fails to provide information and refuses to comply with a notice issued under section 191, PPF may be unable to fulfil its statutory duty to pay compensation, which would have an impact on both members and PPF's liabilities. In a situation where commercial information was being withheld, this could detrimentally affect PPF's investment portfolio and balance sheet.

There is not scope to group TPR's and the PPF's powers of entry together. DWP looked at whether TPR and PPF could merge their powers of entry and TPR act on PPF's behalf. However, as well as practical considerations around prioritisation, resources and information sharing, the Pensions Regulator is required to demonstrate how the use of powers is pursuant to the

Regulator's functions and meets its statutory objectives.

In respect of all DWP's powers of entry there is further work to be carried out to consider: the justification for the powers, safeguards, and simplification. Co-ordination will be needed particularly in respect of the Single Fraud Investigation Service (which will include FIS, HMRC and local authority investigators).

Although the number of powers of entry without warrant is relatively limited, they are of significant use to DWP as it is a very large multi-faceted organisation which faces significant levels of fraud and non-co-operation. The FIS and CMG powers of entry are particularly employed as further measures to support and supplement information gathering powers. They also assist in the investigation and prosecution of criminal offences.

Consideration will have to be given to the effect on DWP or other bodies e.g. the courts or the police, should warrants be required for all entry to premises.

The Health & Safety Executive (HSE), which is sponsored by DWP, is engaged in a review of its powers of entry and relevant associated powers, for completion in May 2013. At this stage it is not possible for HSE to respond in detail, but they anticipate being able to make a more substantive input to the exercise once their review is completed next year.

Work has been carried out in identifying those relevant powers of entry which do not require judicial authorisation. These are both limited in number and in the classes of premises subject to entry.

DWP is making progress in assessing its powers of entry and impacting the effect of revocation or adding further safeguards and will continue to work closely with Home Office colleagues.

## **Department for Energy and Climate Change (DECC)**

52 Powers of Entry are on DECC's list for review. Most of these are pieces of primary legislation, and relate to the safety and security of energy supply, individuals and property. Lead Policy teams within the department have been identified and engaged in the review, and Home Office guidance has been shared with them.

Some of these powers are exercised by other bodies including Ofgem and the Coal Authority. DECC will be consulting with these bodies to check whether the powers are still required.

The vast majority of powers examined so far have the safeguard of requiring a warrant. There are some circumstances where a warrant is not required, although these are circumstances in which taking no action poses an immediate risk; or where there is an EU or international requirement to inspect.

DECC will be proposing to repeal, restate and reform a number of its powers in the forthcoming Energy Bill.

## **Ministry of Defence (MOD)**

There are 20 powers of entry (POE) which have been identified in MOD primary and secondary legislation. In the last six months MOD has held its first stakeholder meeting to discuss the review of these powers, as required by provisions in the Protection of Freedoms Act 2012. A secretariat support function has also been put in place to collate progress from reviews carried out by stakeholders responsible for the appropriate POE. The review of Service police and Commanding

Officer powers is being led by Defence Policing Policy. The review of land powers is being led by the Defence Infrastructure Organisation strategy team. The first MOD POE review working group took place in early September. It analysed the existing powers of entry with the aim of informing the first six-monthly progress report. The following is the result of this analysis.

## Repealing, adding safeguards or rewriting MOD powers of entry

Following the first MOD working group meeting, it has been recommended that at present, none of the relevant MOD powers can be repealed. Likewise it has been assessed that none of the powers could be reasonably consolidated without having an adverse effect on its use since each of the powers is unique in its ability to ensure both smooth operational effectiveness of the Service justice system and the efficient and responsible maintenance of extensive Government assets and the Defence estate.

The MOD has, however, noted that the draft Energy Bill introduces provisions to allow the sale of the GPSS and that this may affect the continued requirement of some of the MOD land powers of entry in the longer term. However, at this stage it is too early to estimate and define the impact that the sale might have on the continued retention of these particular powers. In the light of this, the MOD will continue to monitor the Energy Bill and the potential sale of the GPSS, and will review these powers accordingly. At present, therefore, these powers are to be retained.

In relation to safeguards, the MOD will continue to review its powers of entry during the next progress report period, with a particular emphasis on the safeguards contained within the powers.

MOD is continuing to review its powers and will make a considered case following the review and report findings within the two year timeline requirement of POFA. In concluding the review, MOD will balance the need to keep powers with civil liberties and provide a clear rationale and justification.

## Department of Health (DOH)

- DOH is continuing its review of regulations to confirm which powers of entry can be simplified or revoked.
- Powers of Entry Review coincides with other current cross-government initiatives: Red Tape Challenge, Statement of New Regulation, Focus on Enforcement on Care Homes.
- DH planning to meet all POE objectives within the designated timeframe.
- Guidance document template and data sheet distributed to policy leads to complete.
- Some DOH Powers of Entry will be part of the Red Tape Challenge - Healthy Living and Social Care theme, scheduled for launch in November 2012.
- Establishment of DOH Official Working Group looking at the stock of Powers of Entry to review powers.
- DH to identify EU Obligations.

## Her Majesty's Customs and Excise (HMRC)

HMRC has begun the exercise to review the powers of entry for which it is responsible. The aim is to complete this exercise over the course of 2013 with any necessary legislation following in 2014. HMRC remains on track to meet this timetable.

## Food Standards Agency (FSA)

The Food Standards Agency has made significant progress in understanding the use and proportionality of the 28 Powers of Entry (PoE) that fall under its remit. FSA will be consulting with Enforcement officials to seek wider stakeholder views before compiling a detailed review document for the FSA Board to consider in 2013.

FSA expect to seek additional safeguards for most if not all our powers (subject to findings from planned consultations). Specific safeguards that FSA believe require strengthening are the requirement to show authorisation and for the exercise of powers to be recorded.

Although it is early in the review process, FSA's review will be looking to consolidate in the following areas with further reductions :-

The PoE in the GM Animal Feed Regulations 2004, secondary legislation under the primary legislation of the Agriculture Act, could be consolidated with the PoE under the Feed (Hygiene and Enforcement) (England) Regulations 2005 under the European Communities Act. This will be subject to further discussion with Defra who use this for inspecting fertilisers.

FSA will also be considering the possible consolidation of the Feed (Specified Undesirable Substances) (England) Regulations 2006 with the Feed (Hygiene and Enforcement) (England) Regulations 2005 subject to further consultation views.

Consolidation in these two areas would result in a reduction of 2 PoE. The FSA would then have 26 in total.

These are initial findings at the beginning of the review process. Subject to in depth consultations with stakeholders, the FSA expect to make further progress in strengthening PoE safeguards according to Government guidance.

