



Department
for Transport

Department for Transport Powers of Entry Review: Final Report

Presented to Parliament

by the Secretary of State for Transport pursuant to section
42(1)(c) of the Protection of Freedoms Act 2012

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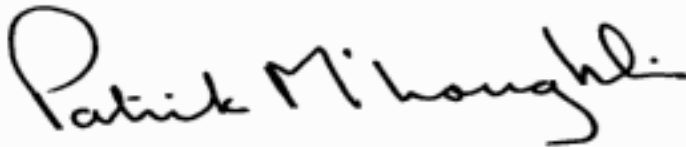
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Introduction by the Secretary of State

The Government is committed to preserving the rights of individuals in their homes and businesses from unnecessary intrusion – this is a key element of respect for human rights. Our intention is clear: powers of entry must achieve the right balance between the need to enforce the law and ensure public protection and to provide sufficient safeguards and rights to the individual. The outcome of this review is that public authorities will have less extensive powers to enter people’s homes and the privacy and rights of homeowners and businesses will be protected and strengthened.

The Protection of Freedoms Act 2012 was passed to ensure that this balanced approach is reflected in the day to day enforcement activities of public authorities. I am equally clear that the public are entitled to expect that stringent safety and security measures are in place in the sectors for which my Department is responsible, particularly for rail, aviation and maritime services.

With these aims in mind this report sets out the outcome of the Department for Transport’s review of the 99 powers of entry in its area of responsibility and what action it proposes to take to remove those that are no longer needed and add safeguards to others.



**The Rt. Hon. Patrick McLoughlin MP
Secretary of State for Transport**

November 2014

Executive Summary

Under section 42 of the Protection of Freedoms Act 2012¹, 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 must prepare a report of that review and lay a copy of the report before Parliament.

Our approach

The Department for Transport is responsible for a considerable number of powers of entry. Much of the statute law relating to transport has its origin in legislation dating from mid-19th to the mid-20th centuries. Policy officials and lawyers carried out a robust validation exercise to test the scope for removing powers of entry, consolidating them or adding safeguards. A number of themes emerged.

Many of the powers in the transport field relate to security and safety and to maintaining transport infrastructure. The review concluded that many of these were justified and should be retained. In other cases particular powers were enacted for reasons other than security or safety, such as checks on record keeping, although they are sometimes sensibly grouped together with powers that are more directly related to security or safety. Poor record keeping, for instance, can have safety or security implications. A number of these powers allow entry to dwellings when this does not seem justified, or at least not justified without judicial authority. For example following the review it is proposed that entry to a dwelling for the purposes of investigating an air, sea or rail accident that has occurred should require a judicial warrant, unless this is likely to undermine the purpose of obtaining entry.

Although the review has concluded that about two thirds of the current powers of entry will be retained, the Department does not consider that people will regard this as an intrusion into their civil liberties. Indeed the public rightly has very high expectations of government to protect them from harm in the field of transport. The risk of catastrophic failure if there are not stringent safety and security measures in place, particularly for rail, aviation and maritime services, means that the public will continue to support appropriate powers of entry to reduce that risk. They may, however, have a lower tolerance for powers of entry related to, say, issues around parking controls or minor environmental matters. The Department has reflected this level of public caution in proposing changes to security and safety measures (including accident investigation) in those sectors. Even where security and safety is not at risk, businesses generally support the effective enforcement of standards so as to prevent unscrupulous traders from undermining fair competition.

In the interests of efficiency inspectors often carry out inspections at transport-related premises using a number of different powers which are designed to aid the

¹ 2012 c.9.

enforcement of different requirements applicable to the place of inspection. It is important that there is consistency in the different powers of entry – it would not make sense for one power of entry to have certain safeguards whereas another power of entry which will be used by the same inspector at the same premises to have a different set of safeguards. This may make consolidation of powers desirable, but could lead to complexity where the need remained to differentiate between different situations.

The importance of consistency is particularly relevant to security regimes. It is relevant to the Driver and Vehicle Standards Agency, for example, who often carry out a number of checks on the same premises at the same time. For instance, a check on records relating to drivers' hours might be undermined by a requirement to seek a warrant if this resulted in the destruction of incriminating evidence, compromising road safety, but it would not be efficient to visit on a different occasion from one involving checks on other routine matters.

Outcome

This report sets out the results of the Department's review of its powers of entry and where possible sets out what action will be taken. The table below sets out the number of powers of entry owned by the Department and a breakdown of action that will be or has been taken.

Total powers of entry in scope of review	99
1. Total powers of entry to be repealed	5
2. Total powers of entry to be retained with additional safeguards	36
3. Total powers of entry to identified for consolidation	4
4. Total powers of entry to remain unchanged	54
Net Total	92

Next steps

It is our aim to publish a consultation document setting out more detail about the powers of entry which the Department is proposing to amend. This will be made available on www.gov.uk/dft, setting out more clearly a timetable detailing when we will be able to begin making the proposed changes to the powers of entry listed. Action will be taken when resources permit.

Section 1

Powers of entry which are to be repealed/revoked

Total powers of entry in scope of review	99
1. Total powers of entry to be repealed	5
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1. The Land Powers (Defences) Act 1958, section 9(3)

The Land Powers (Defences) Act 1958² terminates and substitutes certain emergency powers for the purposes of defence. The emergency powers relate to the use of land and sea for defence purposes. Section 9(3) of the Land Powers (Defences) Act 1958 gives a power of entry onto land for the purposes of survey, but it only applies in respect of orders made under section 15 of the Requisitioned Land and War Act 1945³. In order to make an order under section 15, the land must have originally been stoppped-up or diverted in exercise of emergency powers.

There are powers in the Highways Act 1980⁴ which could be used to stop-up or divert highways and the Department is not aware of the powers in section 15 having been exercised. It is therefore proposed to repeal this power of entry in due course, subject to further consultation with the Ministry of Defence.

2. International Road Haulage Permits Act 1975, section 1

The International Road Haulage Permits Act 1975⁵ allows regulations to be made to require specified documentation to be carried in respect of lorries registered in the United Kingdom, trailers drawn by such lorries and other trailers within the United Kingdom on journeys which pass through the United Kingdom or which begin or end in the United Kingdom.

Section 1(2) allows regulations to be made specifying documents which must be carried on those parts of such journeys within the United Kingdom.

² 1958 c.30.

³ 1945 c.43.

⁴ 1980 c.66.

⁵ 1975 c.46.

Examiners have power to enter certain premises at any reasonable time but have to produce their authority to do so if required. The premises which may be entered are those on which the examiner has reason to believe is kept a vehicle which is being used on a journey to which regulations under the section apply or those in which the examiner has reason to believe may be found any document specified by the regulations. If such documents are found they may be inspected and copied.

There are currently no regulations in force under this Act and in consequence the powers of entry are no longer used. The Department proposes to use the powers in the Protection of Freedoms Act 2012⁶ to repeal the powers of entry. The Department will also consider finding a suitable opportunity to repeal the 1975 Act.

3. Shipping and Trading Interests (Protection) Act 1995

Under the Shipping and Trading Interests (Protection) Act 1995⁷, if certain conditions are met, the Secretary of State's power to make secondary legislation is engaged.

The Secretary of State may exercise the powers conferred by section 1 of the Act if satisfied that -

- (a) a foreign government, or
- (b) persons exercising governing authority over any territory outside the UK, or
- (c) any agency or authority of a foreign government or of such persons,

have adopted or propose to adopt, measures or practices concerning or affecting any shipping services which -

- (i) are damaging or threaten to damage the shipping or trading interests of the UK, or
- (ii) are damaging or threaten to damage the shipping or trading interests of another State.

Two types of Order can be made: the first, under section 1(2), may require relevant persons to supply the Secretary of State with information. This does not engage a power of entry.

The second Order (a "protective Order") may be made under section 1(3). Among the various provisions that a protective Order may include are charges in respect of ships entering UK ports, and (in pursuance of any EU obligation) taxes or duties. This sub-type is 'a charging Order' and is made under section 1(3)(d) or (e). A charging Order may contain provision enabling the Commissioners of Customs and Excise to collect the charge or tax imposed. The power of entry under section 3(2) of the Act only

⁶ 2012 c.9.

⁷ 1995 c.22.

extends to officers of customs and excise acting in the enforcement of “charging orders” (in relation therefore to taxation).

The powers to make an Order have never been exercised in the 18 years since the Shipping and Trading Interests (Protection) Act 1995 was passed.

Only one Order was made under the previous incarnations of the provisions: the Merchant Shipping (Protection of Shipping and Trading Interests) (USSR) Order 1986⁸, made under the Merchant Shipping Act 1974⁹ and Merchant Shipping Act 1988¹⁰.

That Order simply required information to be supplied to the Secretary of State about trade statistics involving Soviet lines trading with the Far East and other countries. It did not impose any charges – therefore it was not a protective Order. It did not trigger a power of entry, and was revoked by the Merchant Shipping (Protection of Shipping and Trading Interests) (USSR) (Revocation) Order 1988¹¹.

The Department, having consulted with other Government Departments including HMRC, the Treasury, BIS, MOD and the FCO has concluded that the power of entry no longer serves any useful purpose and should be repealed.

4. Taximeters (EEC Requirements) Regulations 1979

The Taximeters (EEC Requirements) Regulations 1979¹², in conjunction with other legislation generally applicable to measuring instruments, apply to the approval of taximeters and the enforcement of the relevant standards. They include a power of entry for inspectors authorised by the Secretary of State in regulation 15(1)(b). That is a power to enter premises where there is reasonable cause to believe taximeters are manufactured or stored (other than premises solely used as dwelling houses).

There is a further power at regulation 15(3) for a warrant to be granted to enter any premises, if certain requirements are met. These Regulations have never been used and the Department proposes to revoke them. They apply to taximeters which do not contain an electronic device which, as far as the Department is aware, do not exist on the market anymore. Furthermore, the Regulations have been superseded by the Measuring Instruments (Taximeters) Regulations 2006¹³ which implement the

⁸ S.I. 1986/310.

⁹ 1974 c.43.

¹⁰ 1988 c.12.

¹¹ S.I. 1988/1899.

¹² S.I. 1979/1379.

¹³ S.I. 2006/2304.

provisions of Directive 2004/22/EC on measuring instruments¹⁴ applicable to taximeters.

5. The Renewable Transport Fuel Obligations Order 2007, regulation 7(4)(b)

The Renewable Transport Fuel Obligations Order 2007¹⁵ (“the RTFO Order”) makes a distinction between “obligated suppliers” (those on whom there is an obligation to produce a certain quantity of renewable transport fuel because of the quantity of fossil fuel it produces) and “non-obligated suppliers” (those that supply transport fuel, but do not have a renewable transport fuel obligation). There is a system that records the amount of transport fuel that suppliers sell and it also records the amount of renewable transport fuel they sell. It is an obligation of the RTFO Order’s Administrator to set up an account on this system for all obligated suppliers (regulation 7(1)). Non-obligated suppliers do not have to have an account, but they may apply for an account. In the event that a non-obligated supplier applies for an account it is subject to a power of entry.

Regulation 7(4)(b) provides that the Administrator (being the Secretary of State) may not establish an account for a non-obligated supplier unless it consents to allowing the Administrator “such access to premises (other than a dwelling)” in order to verify information given by the non-obligated supplier or other person.

This power is no longer required as there is no equivalent obligation on obligated suppliers and the power has never been used, nor is it envisaged that it will ever be used. The Department therefore proposes to revoke it.

¹⁴ O.J. L 135, 30.4.2004, p.1.

¹⁵ S.I. 2007/3072.

Section 2

Powers of entry to be retained with additional safeguards

Total powers of entry in scope of review	99
1. Total powers of entry to be repealed	5
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Accident and Investigation

- 1. The Merchant Shipping Act 1995¹⁶, section 259 (to the extent this power is used by the Marine Accident Investigation Branch)**
- 2. The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹⁷, regulation 9**
- 3. The Railways and Transport Safety Act 2003¹⁸, section 8**

These powers are used, respectively, by the Marine Accident Investigation Branch, the Air Accident Investigation Branch, and the Rail Accident Investigation Branch. These Branches are part of the Department for Transport. For their respective mode, each Branch's purpose is to investigate accidents and incidents to determine the cause or causes of an accident or incident so that lessons can be learnt in the interests of future passenger safety. It is not part of their role to bring prosecutions against those who might have been at fault for an accident or incident. That would be a role for others, such as the police who would conduct a separate investigation if they thought it appropriate. Nor do the branches have a role in any inspection or regulatory function. The Branches do have a power to bring a prosecution in relation to certain conduct related to the Branch investigation, for instance obstructing entry by an inspector to a premises where that entry is permitted under the powers mentioned above.

The powers allow inspectors from the Branches to enter land, buildings (including dwellings), and ships, planes and trains for the purposes of carrying out their duties to investigate the causes of an accident or incident. Most obviously they could be used to enter the scene of a crash but they go wider than that, including allowing for entry

¹⁶ 1995 c.21.

¹⁷ S.I. 1996/2798.

¹⁸ 2003 c.20.

to dwellings; an example might be that an inspector reasonably believes that documents relevant to the causes of an accident are to be found in the house of a pilot or other person responsible for the operation or maintenance of an aircraft.

Although inspectors seek to enter by consent where possible, these powers remain necessary to ensure that the Branches can properly carry out their work in the public interest where any time delays would be unacceptable to the conduct of a competent investigation. Currently, the Branches are under no requirement to obtain a warrant from a court before entry. Often entry is required very quickly to preserve the scene or evidence. There may, however, be circumstances, particularly in the follow up part of an investigation, where there would be time to obtain a warrant. In relation to circumstances where requiring a warrant would not undermine the purpose of the entry, it is appropriate to change the law to require a warrant to be obtained before entry to a dwelling.

Aviation

4. Aviation and Maritime Security Act 1990, section 48

The power of entry in section 48 of the Aviation and Maritime Security Act 1990¹⁹ is relevant to certain aircraft which have landed in the UK. Those aircraft are ones which are registered in, or owned by, any State which appears to the Secretary of State to be contravening specified international agreements by way of prohibiting UK aircraft from flying over or landing in the territory of the State.

The power enables the Secretary of State to give a direction to the manager of the aerodrome or, if the aircraft has landed on land outside an aerodrome, the occupier of the land. That direction may require the manager or occupier to take all such steps as may be reasonably practicable to prevent any person other than a constable (or other specified persons) from gaining access to the aircraft. Where such a direction has been given, a constable or any other person specified in the direction may enter any part of the aerodrome or other land concerned (including any building or works in that aerodrome or on that land), and go into or onto the aircraft. The purposes of this power can include ascertaining whether the Secretary of State's direction is being complied with and, if the direction so provides, moving the aircraft or causing it to be moved.

The power can only be used in a limited range of circumstances and in practice would only be used as a last resort (since various other measures are far more likely to be used to encourage compliance with international aviation agreements).

This power does not exclude private dwellings, although in practice it is unlikely to be relevant in a domestic context.

No warrant is currently required in order to exercise the power of entry. In the event that powers of entry were needed for urgent reasons of safety or security then this would and could be done using other powers. Hence the Department thinks that there

¹⁹ 1990 c.31.

is a case for requiring the prior approval for the use of this power and will consider the appropriate form that this should take.

5. Civil Aviation Act 1982, section 50

Section 50 of the Civil Aviation Act 1982²⁰ permits any person authorised in writing by the Secretary of State to enter on land, including occupied land, at reasonable times to undertake a relevant survey. The section provides mandatory minimum notice periods to be complied with.

The power is limited in that it is only for the purpose of making a survey. And, the notice period (though in one case only 24 hours) affords an opportunity to the occupier to seek an injunction.

However, the Department does consider that the 24 hour notice period contained in s50(4)(b) should be amended and will amend this provision to require an eight day notice period (in line with other parts of this sub-section).

6. Civil Aviation (Working Time) Regulations 2004, Schedule 2, paragraph 2(2)(a)

The Civil Aviation (Working Time) Regulations 2004²¹ contain two core elements. One dealing with working time requirements that limit the hours of working and set out required patterns of work. The second element covers the occupational health and safety requirements for the protection of crew members of UK operators while on the aircraft. The Civil Aviation Authority (“CAA”) is the body who has responsibility for enforcing the Regulations.

The power of entry in paragraph 2(2)(a) of Schedule 2 allows an inspector appointed by the CAA to enter any premises (without a warrant) where he has reason to believe it is necessary for the purpose of making these Regulations effective. The power is exercisable at any reasonable time (or at a time of danger) and could be used to examine (i) records and (ii) premises or aircraft. The power is liable to be used where an injury on an aircraft requires immediate investigation.

Where possible the CAA works with organisations to obtain access by permission, rather than using these powers of entry. However, these powers are necessary because it is sometimes organisations’ awareness of their existence which assists in gaining the necessary access. Without these reserve powers there could be increased risks to the safety of those employed within the UK aviation sector. This power does not exclude private dwellings, although in practice it is unlikely to be relevant in a domestic context. The Department proposes that in cases where CAA inspector seeks

²⁰ 1982 c. 16.

²¹ S.I. 2004/756.

to enter a place which is used wholly or mainly used as a private dwelling a warrant should be obtained.

Maritime

7. Merchant Shipping Act 1995, section 220

Section 220 of the Merchant Shipping Act 1995²² allows a General Lighthouse Authority (“GLA”) to enter a place where a false light is being exhibited. There are three GLAs: Trinity House (covering England, Wales, Channel Islands and Gibraltar), Northern Lighthouse Board (Scotland and Isle of Man) and the Commissioners of Irish Lights (Northern Ireland and in the Republic of Ireland operating under Irish Law).

The power cannot be exercised unless a prevention notice has been served on the owner of the place where the light is exhibited. That notice must direct that the light be extinguished or screened within a reasonable period. There are criminal penalties for failing to comply. If a person on whom a prevention notice is served does not comply with the notice the GLA may enter the place, which could be a dwelling, where the light is and extinguish it. The GLAs have adopted a voluntary safeguard and the power is only exercised with the written approval of a GLA Director or above with a copy of that approval to be given to the owner of the property when it is reasonably practicable to do so.

The power of entry is a last resort and may not be exercised unless a person has failed to comply with a prevention notice. It is necessary to ensure that false lights are extinguished or screened to remove any interference with navigational aids. Such interference could compromise the ability of mariners to navigate waterways safely which could in turn result in significant harm to mariners and the marine environment.

The Department proposes that in cases where a GLA seeks to enter a place which is used wholly or mainly used as a private dwelling a warrant should be obtained.

8. Aviation and Maritime Security Act 1990, section 36(3)

Section 36 of the Aviation and Maritime Security Act 1990²³ empowers authorised persons to conduct inspections and tests to enable the Secretary of State to determine whether to give a direction under any of sections 21 to 24 or to ascertain whether any such direction or an enforcement notice is being or has been complied with.

Inspections may be directed for any British ship, any ship in a harbour area and any part of the harbour area. Inspections may also be directed for any land outside a harbour area which is occupied for the purposes of a business by a person who carries on (or appears to the authorised person to be about to carry on) harbour operations in a harbour area for the purposes of that business, or is permitted (or appears to the

²² 1995 c.21.

²³ 1990 c.31.

authorised person to be about to be permitted) to have access to a restricted zone of a harbour area for the purposes of the activities of that business.

Section 36(3) provides the power of entry for the purposes of these inspections and tests. The power has not been used in the last five years, while there has been a low maritime threat environment. However, it enables timely access to areas and ships for purposes and areas not covered by other powers of entry. In particular, the area outside a harbour can be entered. The prohibition on force (section 36(4)) provides a sufficient safeguard for premises which are not private dwellings.

In practice, the Department does not expect that entry would be sought to private dwellings. But it accepts that the power does potentially cover them, especially as it covers land outside the harbour. The Department therefore proposes the introduction of a warrant requirement in section 36 for private dwellings.

The Department considers that a warrant for other areas is unnecessary. The only assets concerned are those of an industry that has an interest in its security being protected. In addition, the power will be particularly useful in urgent cases, which are precisely the kind of case where a warrant could defeat the purpose.

Railways

9. Railway Regulation Act 1842, section 14

Section 14 of the Railway Regulation Act 1842²⁴ provides a power for a railway company to enter land adjacent to the railway to undertake repairs following an accident or slippage, or to take action to prevent such an occurrence.

There are two limbs to the power. To prevent an accident or a slippage the railway company must first obtain the consent of the Secretary of State to enter the land and carry out work. But in an emergency the railway company may enter the land without prior consent. In such cases the company must within 48 hours prepare a report for the Secretary of State specifying the nature of the emergency and the works to be carried out. The power of entry onto the land would cease if the Secretary of State, after considering the report, certifies that the emergency works being undertaken are not necessary for public safety.

In either case the work must cause as little damage as possible to the land, and compensation must be paid to owners / occupiers. The purpose of the power of entry is to enable a railway company to rectify any damage to a railway as quickly as possible or carry out works that would prevent the damage occurring to the railway. This power of entry is needed to protect both public safety and the economic wellbeing of the country by ensuring the safe operation of the railway.

The railway company will try to reach agreement with the landowner to secure entry without the need to use this power. The powers are only used either where the

²⁴ 1842 c.55.

landowner cannot be found or refuses to grant consent on reasonable terms, or in an emergency. The power does not exclude dwellings. Access to dwellings may be required either as a means of access to the affected land, or where the dwelling itself is part of the critical work.

There is no provision for the use of a warrant but, where agreement cannot be reached with the landowners, the case is determined by the Secretary of State following consultation with the Office of Rail Regulation as the safety regulator. The Secretary of State takes the views of landowners into consideration. Disputes about compensation may be determined by the Upper Tribunal (Lands Chamber).

The powers need to be retained to protect public safety, both for people travelling on the railway and those who live or work on land adjoining it. They are also necessary to protect the economic well-being of the country by enabling railway infrastructure managers to repair and maintain the railway without delay. The impact of damage to railways on local economies has been clearly demonstrated following the floods and storms in 2014.

Consideration is being given to amending the legislation to clarify the powers, obligations and safeguards. Consideration is also being given to including a role for the Office of Rail Regulation as the safety regulator. The Department currently consults them but there is no requirement in the legislation to do so.

The Department is considering whether the introduction of a non-statutory guidance on the use of the powers of entry including the Department's role would assist landowners and the railway companies. In the light of experience with that guidance, consideration could then be given to whether any legislative changes would still be useful also. The guidance would assist by providing a standardised procedure for using the power that is easily understandable.

10. Railways Clauses Consolidation Act 1845, section 83

Section 83 of the Railways Clauses Consolidation Act 1845²⁵, where incorporated, enables the railway infrastructure manager (principally Network Rail) to enter property for the purposes of inspecting mine workings near a railway line. Although the power has not been used in recent years, access to properties (including domestic) is still required where mining operations are taking place or have taken place. Access may be required from time to time to mines to ensure that the railway is not being put at risk by mine workings.

Although currently rarely used, not least because of the reduction in the number of working mines in Great Britain, if a railway was potentially at risk due to mining activity it would be imperative for the railway infrastructure manager to have the power to enter a mine in order to secure the safe operation of the railway. Usage may increase if mining for shale gas becomes more commonplace.

²⁵ 1845 c.20.

The power applies to property owners and occupiers near a railway. Domestic premises are not excluded. The infrastructure manager is required to give 24 hours' notice in writing.

Hatfield Colliery, Stainforth

The spoil heap at Hatfield Colliery in Stainforth, which is a working coal mine adjacent to the Doncaster to Wrawby railway line, failed in February 2013 resulting in a slip of 1.4m tonnes of spoil material. The landslip moved all four railway tracks vertically by five metres and laterally by 15 metres, and led to the railway being closed for nearly five months. The case at Hatfield, provides an example of why the Department considers that it is important to retain these powers with the additional safeguards imposed to ensure that mine workings do not endanger the lives of persons using the railway. In this instance it was fortunate that there were no trains passing when the landslip occurred. As far as we are aware, the powers were not used at Hatfield. However, it is this type of situation where this power could be used to prevent such an incident from occurring and at Hatfield had the infrastructure manager identified that there may be a danger, they would have been able to use the powers to enter the land to prevent the incident from occurring, or if that had not been possible, to reduce its impact.

The Department proposes to retain these powers, with the additional safeguards set out below.

Where the infrastructure manager cannot gain access by consent, the inclusion of a requirement for the infrastructure manager to enter at a reasonable time which will be set out in the notice that is given at least 24 hours prior to entering the premises.

Where the infrastructure manager cannot gain access by consent a requirement for a warrant where the infrastructure manager needs to enter premises that are wholly or mainly used for domestic purposes to inspect mine workings. Where the infrastructure manager has to obtain a warrant it will not be required to give 24 hours' notice.

11. Transport Act 1968, section 118(4) and (6)

Part 8 of the Transport Act 1968²⁶ is concerned principally with apportioning responsibility for the maintenance of highway bridges spanning certain railways or inland waterways to ensure that they are not a danger to traffic using the railway or waterway and section 118 places a maintenance duty on highway bridge owners to that effect.

The relevant railways under this section are those of the Railways Board, Transport for London, network owners (transferred networks or new networks) and the Secretary of State.

The relevant inland waterways under this section are those of the Waterways Board and Canal & River Trust.

²⁶ 1968 c.73.

Bridge owners are typically local highway authorities or the Secretary of State.

Under section 118(4) a bridge owner has power to enter land occupied by those running the relevant railway or waterway for the purpose of maintaining the bridge except where the latter believe that the carrying out of works would involve danger to, interference with or restriction on, traffic using the railway or waterway.

Under section 118(6) those running the relevant railway or inland waterway have power to enter to inspect and survey bridges and themselves carry out works to bridges if they have given the bridge owner at least 7 days' notice in writing unless the need for urgency makes it impractical to do so.

Bridge owners and those running the relevant railways or inland waterways can enter into agreements and in such cases the application of section 118 is subject to those agreements.

The powers are still necessary to ensure highway bridges are properly maintained and that bridge owners comply with their statutory duty to maintain. Those running the relevant railway or inland waterway are likely to accept entry onto their land as it is in their interest to have the bridges properly maintained and they are able to decline to afford entry if they think the works would adversely affect traffic on the railway or waterway. Bridge owners (even if not in the public sector) are unlikely to object to entry on their land to allow those running the relevant railway or inland waterway to inspect bridges and have to be given prior notice unless the need to enter is urgent. The powers do not specifically exclude domestic premises but it would be extremely unlikely that either a bridge owner or those running the relevant railway or inland waterway would need to access domestic premises in order to inspect or maintain a bridge carrying a highway. Also the domestic premises would have to be on land owned by the bridge owner or land owned by those running the relevant railway or waterway. In addition, these parties are able to enter into agreements to which section 118 and its powers of entry then become subject.

The proper maintenance of bridges carrying highways are important for the safety of persons and vehicles using such a bridges and for persons using railways or waterways that are spanned by these bridges.

The Department therefore proposes to retain these powers but will include an additional safeguard to ensure that where the owner of a railway or waterway or a bridge owner cannot gain access by consent to premises that are wholly or mainly used for domestic purposes to exercise these powers a warrant will be required to enter premises that are wholly or mainly used for domestic purposes.

12. The Channel Tunnel Act 1987, section 17

The Channel Tunnel Act 1987²⁷ authorised the construction of the Channel Tunnel and makes provision for its ongoing operation. Section 17 provides for supervision of the construction and operation of the Tunnel by the Intergovernmental Commission

²⁷ 1987 c. 53.

(“IGC”) and the Channel Tunnel Safety Authority (“CTSA”), in exercise of their functions under the Treaty of Canterbury²⁸ of 1986 between the UK and France (on the construction and operation of the Channel Tunnel). Section 17(3) permits a person authorised by the IGC or CTSA to enter the Channel Tunnel system, or any vehicle, premises or vehicle in that system for the purpose of carrying out any inspection, examination or investigation with regard to the construction or operation of the tunnel.

Under the Treaty of Canterbury, the IGC’s main function is to supervise, in the name and on behalf of the British and French Governments, all matters concerning the construction and operation of the Tunnel. The CTSA’s function is to advise the IGC on safety, monitor the implementation of national and international laws on safety, and enforce them. In the exercise of their functions, the IGC and CTSA must ensure that the tunnel and the safety management of railway operations are adequate to protect and safeguard the infrastructure and the safety of both passengers and those working in the tunnel. The IGC must also ensure fair access to the tunnel by railway undertakings. Effective powers of enforcement are therefore required, including the power to conduct inspections (which may act as a deterrent even when it is not exercised). As the tunnel is cross-border infrastructure it is necessary for inspectors to be able to operate on both sides of the border, whether originally based in France or the UK. No other legislation provides for cross-border enforcement power such as this. Repeal of the power would therefore render the UK incapable of meeting its obligations under the Treaty of Canterbury.

Inspections are normally arranged in advance and the policy of the IGC and CTSA is to use compulsory powers of entry only as a last resort. Such inspections are evidence based and used routinely to ensure the safe operation of the tunnel and its infrastructure. So far, there has been no need for inspections in respect of economic regulation, but the existence of the power in itself acts as a deterrent to infringements.

The power of entry is restricted to “any reasonable time” (except in a “dangerous” situation) which, due to the nature of the operation of the tunnel, is often at night. There is also a requirement on the person exercising the power to produce evidence of their authority if requested to do so. The Department proposes to add to these to specify that, before exercising without consent a power of entry into premises which are mainly or wholly a private dwelling, a warrant must be obtained.

The Department believes that the number of dwellings to which the power might apply is very small, and is not aware of the power having being used to date in respect of a private dwelling. However, it is theoretically possible that a dwelling could form part of the Tunnel system, whether now or in the future, and that it might be necessary to exercise the power of entry in its respect for the purposes outlined above. It is therefore desirable to retain the power of entry even in the case of private dwellings, with the additional safeguard that a warrant would be required as outlined above.

²⁸ France No.1 (1986) Cmnd. 9745.

13. Railways Act 1993, section 121

The Railways Act 1993²⁹ includes provisions designed to protect the railways against acts of violence. The Secretary of State may give instructions to railway owners, operators or service providers, and issue enforcement notices to require compliance. Section 121 enables persons authorised by the Secretary of State (in practice, DfT Transport Security Inspectors) to enter property on railway assets either to enable the Secretary of State to decide whether to issue instructions, or to ensure that instructions/enforcement notices have been complied with.

The power applies to any track, station, network, light maintenance depot and rolling stock. Those affected by the power are, for the most part, members of the rail industry or retailers within station premises. Inspections are part of the day to day monitoring of counter terrorism security on the railway. Without this power of entry it would not be possible to enforce effectively the counter terrorism security regime on railways in Great Britain, including the London Underground, or to ensure that minimum levels of security are being maintained by industry.

A number of safeguards are already in place, including the requirement of producing evidence of credentials if required and the fact that the use of force is not authorised. The Department proposes to add to these to specify that, before exercising without consent a power of entry into premises which are wholly or mainly a private dwelling, a warrant must be obtained.

The number of private dwellings on the railway network to which the power might apply is small and the Department is not aware of the power having been used to date in respect of a private dwelling. However it is theoretically possible that a dwelling could form part of, for example, a station, and that it might be necessary to inspect it for the purpose of deciding whether to issue instructions or to verify compliance with security measures. It is therefore desirable to retain the power of entry, with this additional safeguard. Terrorism is ever-evolving, and the railways have been in the past, and continue to be, at risk from terrorist attack.

14. Channel Tunnel (Security) Order 1994, articles 14 and 15

The Channel Tunnel (Security) Order 1994³⁰ makes provision for the protection of the security of the Channel Tunnel, Channel Tunnel trains and property used in connection with the operation of the Tunnel. In particular, Articles 14 and 15 give a power to the Secretary of State to serve directions on industry parties connected with the Channel Tunnel to ensure that searches of persons and property are conducted. Where such directions are in force, those articles provide that, if a constable, or a person specified in the direction, has reasonable cause to suspect that a prohibited article, such as a weapon or explosive, is present on the relevant premises, that person has the power to enter those premises, if need be by force, and to stop and go on board trains and stop and detain persons and vehicles for as long as is necessary for the purposes of the searches. However, in relation to private dwellings, powers to search and enter

²⁹ 1993 c.43.

³⁰ S.I. 1994/570.

can only be used by a constable and under the authority of a warrant issued by a justice of the peace.

All passenger and freight trains and all vehicles that travel through the Tunnel are subject to searching, as well as vehicles entering the restricted zones, sites and premises themselves. There are also requirements to conduct routine and ad hoc searches. The proportion of searching is linked to the level of threat as advised by the Joint Terrorism Analysis Centre. As things stand the Government determines these proportions.

There is a fundamental requirement to ensure the protection of the Channel Tunnel and those working or using it from acts of violence (including terrorism). Any attack on the system or the Tunnel would have financial implications for the Concessionaires, Channel Tunnel operators and more broadly on the UK as a whole. Although our obligations towards France under the Treaty of Canterbury³¹ of 1986 do not expressly require us to have in place powers of entry, they do implicitly require us to put in place effective security measures to protect the Tunnel, and enforce them appropriately.

Without the power, the Channel Tunnel would be vulnerable to attack because Channel Tunnel operators would have difficulties carrying out meaningful checks in order to deter, detect and prevent the introduction of items which could cause a danger to the Tunnel. Additionally, the threat could be displaced, as terrorists could then simply leave the premises and try again at another site or at another time. Channel Tunnel operators would not be able to enter third party premises, such as shops and freight trains, in order to conduct the searches required of them by Government.

In view of the potential urgency that security threats and incidents may create, and of the fact that the operators and users of the Tunnel and of premises used in connection with it are aware that the security requirements exist, it would not be appropriate to subject the power of entry to the need to obtain a warrant in all cases. On the other hand, premises used only as a private dwelling are already subject to such a requirement. It would however be possible to expand that requirement to premises used "wholly or mainly" as a dwelling, except as far as vehicles are concerned, given the security risk that they can pose as a means of introducing prohibited items that can be used to perpetrate an act of violence, in the Tunnel system.

15. Channel Tunnel (Security) Order 1994, article 28

The Channel Tunnel (Security) Order 1994³² also allows for directions to be served on industry parties connected with the Channel Tunnel, requiring them to take certain steps to protect that security. Non-compliance with such requirements is a criminal offence. In addition, in some circumstances, it can give rise to an enforcement notice, issued by the Secretary of State, requiring the directed person to take steps in order to comply. Breach of an enforcement notice is also a criminal offence.

³¹ France No.1 (1986) Cmnd. 9745.

³² S.I. 1994/570.

Article 28 provides that a person authorised in writing by the Secretary of State may, for the purpose of determining whether a security direction or enforcement notice has been complied with, or whether to give such a direction, inspect trains and property used in connection with the Channel Tunnel, and the Tunnel itself. This includes a power to go on board trains and enter land, buildings or works. On the other hand, the power does not apply in the case of premises used only as a private dwellings.

DfT Transport Security Inspectors conduct covert and overt inspections and tests on the persons directed. These inspections and tests are both announced and unannounced. The purpose of the inspections and tests is to assess the directed person's compliance with the requirements of the direction issued. Examples of compliance activity include reviews of the directed persons' site security arrangements and tests of passenger and vehicle screening procedures through the use of prohibited items.

Without the ability to conduct inspections it would not be possible to know if the Channel Tunnel operation is secure and if directed persons are complying with their legal obligations to provide security and take enforcement action. If the security measures were not in place and properly enforced, there would be an increased risk that perpetrators could conduct acts of violence or terrorist attacks.

DfT Transport Security Inspectors are required to carry authorisation from the Secretary of State, and, if requested they have to produce it. The power does not authorise the use of force.

In view of the safeguards that exist, and the fact that the only assets concerned are those of an industry that has an interest in its businesses and customers being protected, the Department considers that the need for a warrant would not normally be suitable in urgent cases, where speed is of the essence, or for the purposes of carrying out routine inspections, as it is difficult to see on what basis a court would agree or refuse the warrant. On the other hand, as is noted above, the power already excludes premises used only as a private dwelling. The Department proposes to extend this exclusion to premises used wholly or mainly as a private dwelling.

16. The Carriage of Goods (Prohibition of Discrimination) Regulations 1977, regulation 5(3)

Regulation 5(3) of the Carriage of Goods (Prohibition of Discrimination) Regulations 1977³³ makes provisions in relation to rail and inland waterways for the enforcement in Great Britain of Council Regulation (EEC) No. 11 of 1960³⁴, which prohibits discrimination by way of charging different prices or imposing different conditions for the carriage of goods within the EU, depending on the country of origin or of destination

³³ S.I.1977/276.

³⁴ Council Regulation (EEC) No.11 of 1960 concerning the abolition of discrimination in transport rates and conditions in the implementation of Article 79(3) of the Treaty establishing the European Economic Community. OJ No. 52, 16.8.1960, p.1121.

of the goods. To avoid confusion, the UK Regulations are referred to below as “the SI” and Council Regulation (EEC) No. 11 of 1960 as “the EU Regulation”.

Among other things, the EU Regulation requires a transport document to accompany consignments. It also requires carriers to produce, if required by the European Commission, any additional information regarding tariffs and agreements regarding transport rates and conditions. Finally, it requires carriers’ forwarding agents, other agents, and some of the providers of services related to the carriage, to provide all information relevant to the services and to the rates and conditions applied, if so required by their Government or the European Commission.

Article 14 of the EU Regulation makes Member States responsible for ensuring compliance with the above. For the purpose of enforcing the above, it also empowers the European Commission to send inspectors. These have the power, in particular, to be given access to all premises, land and vehicles of the transport operators concerned. Furthermore, if any undertaking refuses to allow an inspection, the Member State must give the European Commission’s representatives such support and assistance as may be necessary.

Regulation 5(3) of the SI was not introduced in order to give powers to the European Commission’s officials, since they have them already by virtue of the EU Regulation. Rather, it was introduced for two purposes. One was to allow British authorities to carry out their general function, mentioned above, of ensuring compliance with the EU Regulation provision. The other was to ensure that the support of British officials required under the above provisions could be provided.

Regulation 5(3) of the SI applies to the transport of goods by rail and inland waterways. It applies to carriers, their forwarding and other agents and some of the providers of services related to the carriage.

This provision enables, inspectors specially appointed for that purpose, to enter premises occupied by persons carrying out the activities above to inspect and copy a variety of documents.

The fact that the waterway system of Great Britain does not cross international borders is not a reason to exempt inland waterways from the above provisions: goods on inland waterways that have come from other countries via other modes of transport must also be protected against discrimination.

No inspectors have been designated in relation to rail or inland waterway transport, and the Department has no evidence that the powers have ever been used in Great Britain. However, without the power, the powers of the British authorities to take enforcement action in relation to rail, should the need arise, would be so limited as to be ineffective. It is not impossible that such a need may arise in the future. This may be so even in the case of dwellings: the rise in recent years in the number of small independent railway undertakings has increased the potential for an operator storing relevant documentation in a dwelling. Thus, the Department considers that the power should remain in place, and continue to apply in relation to dwellings.

The Department proposes to amend the legislation so that where an authorised person seeks to enter premises that are wholly or mainly a private dwelling without consent a warrant should be obtained first.

Highways

17. Highways Act 1980, section 294

Highway authorities and councils may enter premises (and then examine or lay open those premises) in the carrying out of their functions under the Highways Act 1980³⁵ for specified purposes (including surveying and executing works) where the owner or occupier has refused to permit entry, examination or laying open and, following a complaint to a magistrates' court, it is ordered that the premises may be entered, examined or laid open for one or more of the specified purposes. Section 294 only applies to sections 101 and 154(2) and the provisions set out in Schedule 22 to the Act (being broadly functions of highway authorities in relation to works on, or in relation to, highways).

Entry, examination, or laying open may be at any reasonable time between 9am and 6pm and except in an emergency, at least 7 days' notice of the intention to, and purpose of, entering must be given to the occupier of the premises before entering or carrying out works on the premises and compensation is payable to any person with an interest in the land for damage or disturbance.

This power of entry is necessary to enable the Secretary of State, other highway authorities and councils to carry out their statutory functions with regard to the provision and maintenance of their highway networks.

This power is not normally used unless agreement to enter for the specified purpose cannot be made with the owner of the land. Such agreements usually make provision for the owner of the land to be compensated for damage or disturbance caused and the existence of a power to enter tends to ensure that compensation amounts are fair and reasonable rather than unrealistic.

Private dwellings are not specifically excluded from the power but they are unlikely to be entered under this power and a court order is necessary before time-limited entry is possible on notice except in the case of emergency.

It is proposed to retain the power but give further consideration to limiting its application to those functions in sections 101 and 154(2) and the provisions set out in Schedule 22 which could not properly be performed without the ability to enter land and the introduction of safeguards on the exercise of the power.

³⁵ 1980 c.66.

Vehicles, etc.

18. Road Traffic Act 1988, section 76

Sections 76(1) and 76(3) of the Road Traffic Act 1988³⁶ make it an offence to fit or supply vehicle parts that either (a) fail to comply with the “construction and use requirements” set out in section 41 of the Act, or (b) will cause danger of injury to anyone. Under section 76(6) an authorised examiner is granted the power to enter any premises where vehicle parts are fitted and/or supplied in the course of business and to inspect and test vehicles and vehicle parts in order to find out whether an offence has been committed under sections 76(1) or 76(3).

This power of entry is similar to that contained in section 77 of the Road Traffic Act 1988 which allows an authorised examiner, at any reasonable hour, to enter premises where used motor vehicles or trailers are supplied in the course of a business to test and inspect for compliance with roadworthiness requirements. In practice, the section 76(6) power is exercised by trading standards enforcement officers, public carriage examiners, constables authorised or appointed by police and Driver and Vehicle Standards (DVSA) examiners. The power is a component in DVSA’s ability to discharge its duty to ensure that road safety is not compromised by the use of defective or unsuitable vehicle parts.

If DVSA’s examiners enter premises under section 76(6) and discover a goods vehicle or public passenger vehicle fitted with defective parts, they may inspect and test the vehicle under sections 68(1) and 68(2) and, as a result, form the view that it is unfit for service. If so, examiners may invoke the provisions of section 69(1) in order to prohibit the use of that vehicle. The section 76(6) power of entry is therefore a useful component in a wider statutory regime designed to reduce the risk of physical injury and death caused by un-roadworthy vehicles.

Entry and inspection may only be undertaken by “authorised examiners” and may only occur during reasonable hours. However, as the power may be exercised on any premises where vehicle parts are fitted or supplied in the course of business, this could include private dwellings and associated land and outbuildings. Obvious examples are mechanics carrying out repairs on driveways and web retailers stocking vehicle parts in domestic premises, such as garages or garden sheds.

The Department proposes to add a safeguard that a warrant must be obtained to enter premises that are used wholly or mainly as a dwelling.

³⁶ 1988 c.52.

19. Road Traffic Act 1988, section 77

Section 77 of the Road Traffic Act 1988³⁷ allows an authorised examiner, at any reasonable hour, to enter premises where used motor vehicles or trailers are supplied in the course of a business to test and inspect for compliance with roadworthiness requirements. It also permits an authorised examiner to enter premises at any reasonable time where vehicles or vehicle parts are supplied in the course of a business and test and inspect them to establish whether they comply with type approval requirements. In practice, the powers are exercised by trading standards enforcement officers, public carriage examiners, constables authorised or appointed by police and DVSA examiners. (A motor vehicle is treated as used only if it has previously been sold or supplied by retail.)

The power does not specifically exclude dwellings but it can only be exercised where the supply is in the course of a business. It would not be appropriate to exclude private dwellings, but it is proposed that the power be amended so that a warrant is required where the premises are wholly or partly used as a domestic dwelling.

20. Road Traffic Act 1988, section 181

Section 181 of the Road Traffic Act 1988³⁸ makes provision for inquiries into vehicle-related road accidents.

Where such an accident has occurred a person authorised by the Secretary of State may inspect any vehicle in connection with the accident and in order to do so may enter any premises where the vehicle is and may do so at any reasonable time.

The persons authorised under this section are exclusively vehicle examiners of the DVSA and, before inspecting the vehicle, they must produce evidence of the authorisation if required to do so.

Inquiries into the causes of traffic accidents are vital for reasons of road safety and public policy generally. Inspection of vehicles that have been involved in accidents is a fundamental part of such inquiries and if the vehicle is kept at any premises then entry to those premises for the purpose of vehicle inspection (only) is essential.

It is to be noted that the power in this instance is restricted to inspection of “any vehicle in connection with which the accident arose” and does not extend e.g. to documents or records. Entry under this power does not therefore involve having to access any building used as a dwelling, save possibly for a garage attached to, or forming part of such a building. Given the circumstances of this power, the vehicle will often be located at a repair facility, which will necessarily constitute business premises.

Force cannot be used to gain entry to the premises and entry is only permitted at a reasonable time. Obstruction of persons authorised to inspect vehicles is an offence

³⁷ Ibid.

³⁸ Ibid.

and the practice of DVSA examiners is to seek the assistance of the police to gain entry to premises in such circumstances.

DVSA has guidance in place for its examiners on the exercise of powers of entry and this states that the assistance of the police must be obtained if peaceful entry to premises (by consent) is not possible. DVSA also has a complaints procedure which is publicised within the haulage and bus industries and is also available on the Government website.

Although private dwellings are not excluded from the power, in practice entry is likely to be confined to premises, or that part of any premises (e.g. a garage) where the vehicle to be inspected is situated.

DVSA estimate that its examiners have exercised this power of entry on 589 occasions over a recent 12 month period. It would therefore involve disproportionate resources and be excessively onerous to obtain a warrant in all cases. It is therefore proposed that the power be amended to provide that a warrant should be required in the event that entry to premises that are used wholly or mainly as a dwelling is refused.

21. International Carriage of Perishable Foodstuffs Act 1976, section 6

Section 6 of the International Carriage of Perishable Foodstuffs Act 1976³⁹ permits an examiner, at any time, to enter and inspect transport equipment which he reasonably believes is being used for the international carriage of perishable foodstuffs and, in the case of a goods vehicle or any container carried by it, detain that vehicle or container during such time as is required for the inspection. It also permits an examiner, at any time which is reasonable having regard to the circumstances of the case, to enter any premises on which he has reason to believe transport equipment is kept in respect of which a certificate of compliance or certification plate is in force, and to inspect that equipment and, in the case of a goods vehicle or any container carried by it, detain that vehicle or container during such time as is required for the inspection.

Without these powers, there would be no means by which commercial vehicle transport equipment used for the international carriage of perishable foodstuffs could be checked except by in-service roadside checks. This would limit the effective tools available to perform vehicle inspections. As a result, there would be a far higher likelihood that equipment used for the carriage of foodstuffs may not be properly maintained at all times.

The powers do not specifically exclude private dwellings but in general the transportation of perishable foodstuffs by road is carried out using refrigerated body vehicles. The largest of these is a 13.6m semi-trailer. DVSA examiners make visits to premises to ensure compliance with the measurement of the control systems and a vehicle test chamber that is used to make sure the perishable foodstuffs carried within remain at a constant low temperature.

³⁹ 1976 c.58.

In view of the size there are currently no domestic premises that are suitably equipped to carry out these examinations and it is unlikely that this will change in the future.

It is proposed that in the cases where a DVSA examiner seeks to enter a premise that is mainly or wholly a private dwelling without consent a warrant should be acquired first.

22. The Motor Vehicles (Replacement Catalytic Converters and Pollution Control Devices) Regulations 2009, paragraph 5 of the Schedule

23. The Motor Cycles (Replacement of Catalytic Converters) Regulations 2009, paragraph 5 of the Schedule

The Motor Vehicles (Replacement Catalytic Converters and Pollution Control Devices) Regulations 2009⁴⁰ and the Motor Cycles (Replacement of Catalytic Converters) Regulations 2009⁴¹ implement Directives 2006/120/EC⁴² (for motor cycles) 98/77/EC⁴³, 2002/80/EC⁴⁴ and Regulation 715/2007⁴⁵ (for cars), which deal with the performance obligations for replacement catalytic converters to be fitted to such road vehicles.

Effective enforcement of these Regulations requires powers of entry to business premises, and the power to examine documentation, in order for an inspector to be able to establish whether non-conformant components are being imported or produced and placed on the market. Enforcement prevents the loss, as a result of illegal activity, of improvements in vehicle emission standards which have contributed to improved air quality. It is supported by law-abiding businesses of all sizes because it prevents

⁴⁰ S.I.2009/2899.

⁴¹ S.I. 2009/1896.

⁴² Commission Directive 2006/120/EC of 27 November 2006 correcting and amending Directive 2005/30/EC amending, for the purposes of their adaptation to technical progress, Directives 97/24/EC and 2002/24/EC of the European Parliament and of the Council, relating to the type-approval of two or three-wheel motor vehicles, O.J. L330, 28.11.2006, p.16.

⁴³ Commission Directive 98/77/EC of 2 October 1998 adapting to technical progress Council Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles, OJ L 286, 23.10.98, p.34.

⁴⁴ Commission Directive 2002/80/EC of 3 October 2002 adapting to technical progress Council Directive 70/220/EEC relating to measures to be taken against air pollution by emissions from motor vehicles, OJ L291, 28.10.2002, p.20.

⁴⁵ Regulation (EC) No. 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171, 29.6.2007, p.1.

them from being undercut in the market by competitors prepared to adopt illegal practices.

The Schedules, Part 2, paragraphs 4-10 to each statutory instrument, relate to provisions as to enforcement. Paragraph 5(2)(a)(ii) permits an authorised officer to enter any premises other than premises used only as a dwelling, but paragraph 5(5) permits application to a justice of the peace (or to a sheriff in Scotland) for a warrant where there are reasonable grounds for believing that a catalytic converter etc. or records are on any premises and are likely to disclose evidence of an offence, or that an offence is or may be committed on any premises and where admission has been or is likely to be refused, or that an application for admission etc. would defeat the object of the entry.

The delay associated with obtaining a warrant would, in many cases, allow all evidence of non-compliance to be removed prior any inspection being possible.

However, the Department considers that the general powers of entry without a warrant should be restricted, so as to be limited to premises not used wholly or mainly as a dwelling.

24. Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) Regulations 2002, paragraph 8 of Schedule 2

The Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) Regulations 2002⁴⁶ implement Directive 2000/25/EC⁴⁷, which covers exhaust emissions and emission limits of air pollutants from engines installed in agricultural or forestry tractors and contributes to the protection of human health and the environment. The Regulations perform a very similar function to the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999⁴⁸, but contain their own enforcement provisions rather than using those in the Consumer Protection Act 1987⁴⁹.

Effective enforcement of these Regulations requires powers of entry to business premises, and the power to examine documentation, in order for an inspector to be able to establish whether non-conformant engines are being imported (as will usually be the case) or produced and placed on the market. Enforcement prevents improvements in air quality that have been achieved at significant cost to business in general being lost as a result of illegal activity. It is supported by law-abiding

⁴⁶ S.I. 2002/1891.

⁴⁷ Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Council Directive 74/150/EEC, OJ L 173, 12.7.2000, p.1.

⁴⁸ S.I. 1999/1053.

⁴⁹ 1987 c.43.

businesses of all sizes because it prevents them from being undercut in the market by competitors prepared to utilise illegal practices.

The delay associated with obtaining a warrant would be sufficient, in many cases, to allow all evidence of non-compliance to be removed.

The Department proposes to align the enforcement powers in these Regulations with those in the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999⁵⁰, and so to align the powers of entry and safeguards of both sets of Regulations with those in the forthcoming Consumer Rights Bill.

25. Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009, regulation 8

The purpose of the Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009⁵¹ is to enforce the requirements of Directive 2006/40/EC⁵² which requires Member States to prohibit refilling of leaking car air conditioning systems to prevent avoidable emissions of greenhouse gases. The refrigerant currently used in most car air conditioning systems has a very high global warming potential, so prevention of its unnecessary release into the atmosphere is essential. Failure to do so would undermine the strenuous efforts being made in all sectors to reduce emissions of greenhouse gases. The Regulations also provide consumers with some protection from traders who might be tempted to simply refill a leaking system whilst claiming to have repaired it.

The current powers of entry require a warrant for entry to premises used solely as a dwelling, but not for premises used mainly as a dwelling. The current safeguards are that the right of entry can only be exercised during reasonable hours, and is limited to authorised enforcement officers, who must identify themselves and produce authority in writing from the enforcement authority. Powers of seizure, in addition, are limited only to those items relevant to the suspected breach of the Regulations, an inventory of any seized items must be provided to the business owner, and there is provision for compensation to be paid for damage caused to property. Further safeguards exist in that the use of force is only permitted under warrant, and that the operators of the business are protected by non-disclosure of information/legal privilege provisions.

Powers of entry to business premises are essential to the effective enforcement of these Regulations, since an inspector will often need to find the illegal activity in progress, and this will not be possible if entry is by agreement or requires a warrant, since all evidence will be easily disposed of. In addition to protecting the environment,

⁵⁰ S.I. 1999/1053.

⁵¹ S.I. 2009/2194.

⁵² Directive 2006/40/EC of European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending Council Directive 70/156/EEC, OJ L 161, 14.6.2006, p.12.

effective enforcement benefits law-abiding businesses of all sizes because it prevents them from being undercut in the market by competitors following illegal practices.

The Department proposes to retain the existing powers of entry in these Regulations, but to align them with the provisions of the Consumer Rights Bill by extending the requirement for a warrant to include premises used mainly as a dwelling, as well as those used wholly as a dwelling.

26. Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999, regulation 16(3)

The primary purpose of the Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999⁵³ is to implement Directive 97/68/EC⁵⁴, which covers exhaust emissions of air quality pollutants and limits for them, from engines installed in non-road mobile machinery (such as hedge trimmers and generators) and contributes to the protection of human health and the environment. The Regulations currently apply the enforcement provisions in the Consumer Protection Act 1987⁵⁵, but modify their wording so that they apply to engines, rather than to goods.

Effective enforcement of these Regulations requires powers of entry to business premises, and the power to examine documentation, in order for an inspector to be able to establish whether non-conformant engines are being imported (as will usually be the case) or produced and placed on the market. Enforcement prevents improvements in air quality which have been achieved at significant cost to business in general being lost as a result of illegal activity. It is supported by law-abiding businesses of all sizes because it prevents them from being undercut in the market by competitors prepared to utilise illegal practices.

The delay associated with obtaining a warrant would be sufficient, in many cases, to allow all evidence of non-compliance to be removed.

The Consumer Protection Act will be amended by the forthcoming Consumer Rights Bill. The Department proposes to retain the existing powers of entry in these Regulations, but to align them with the provisions of the Consumer Rights Bill by extending the requirement for a warrant to include premises used mainly as a dwelling, as well as those used wholly as a dwelling.

⁵³ S.I. 1999/1053.

⁵⁴ Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-mobile machinery, OJ L 59, 27.2.98, p.1.

⁵⁵ 1987 c.43.

Roads, Traffic Signs etc.

27. Road Traffic Regulation Act 1984, section 43

Section 43 of the Road Traffic Regulation Act 1984⁵⁶ provides for local authorities to control commercially run off-street parking places within Greater London. This enables local authorities to ensure that the provision of privately run off-street parking places meets local need and does not cause road congestion or nuisance or compromise neighbourhood amenity. Once a local authority has designated an area as a “controlled area”, no-one other than the local authority is allowed to operate “public off-street parking places” within that area unless the local authority has granted it a licence to do so. Each licence granted by the local authority must specify matters such as the maximum number of parking spaces to be provided as well as the proportion of spaces allocated to long and short-term parking, and to casual and regular car park users. Local authorities may, if they wish, impose additional licence conditions specifying matters such as the applicable scale of charges, opening and closing times and the requirement for car-park operators to keep records of car-park use and sums received from customers.

Section 43(5) provides that it is a condition of every licence that persons authorised by the local authority may enter and inspect any licensed parking place subject only to the requirement that such persons produce evidence of their authority to do so if requested by the car park operator. Without this condition, it would be difficult for local authorities to check that the terms of its licences are being complied with. If the entry condition is not complied with (by entry being refused) then an offence is committed and the local authority may also revoke the licence. Public off-street parking places may be provided on land (such as driveways and gardens) or in outbuildings (such as garages and car-ports) falling within the amenity area of buildings used as private dwellings. Examples of this would include the use of residential gardens for weekday parking near an underground station or temporary parking near football grounds on match days. This means that the licence condition providing for a power of entry could apply to premises used primarily as private dwellings.

The Department proposes additional safeguards to this power of requiring reasonable grounds for suspecting non-compliance and for a notice to be served which specifies those grounds. If an adequate explanation is not received in response to that notice then a notice requesting for permission to enter and inspect will be given. If permission to enter is not received within a reasonable period then local authority has power to enter and inspect unless the licensed parking place comprises all or part of premises primarily used wholly or mainly as dwellings in which case a warrant would be required.

⁵⁶ 1984 c.27.

28. Road Traffic Regulation Act 1984, section 61 (4)

Section 61 of the Road Traffic Regulation Act 1984⁵⁷ enables a council, only with the consent of the owner and occupier, to designate land, not part of the highway and which has been set apart by the occupier of the land for use as a loading area in connection with a trade or business in the vicinity of the land, as a “loading area”. Where an Order has been made designating an area as a loading area and traffic signs are required to be placed on the loading area to which the order relates, a person authorised by the relevant council, who in practice may be a council employee or an authorised contractor, may enter the loading area for the purpose of placing, removing or maintaining any such traffic signs.

Access to premises used wholly or mainly as a dwelling may be required for the purpose of attaching traffic signs to properties (e.g. a block of flats with a loading area or erecting signs in the garden of a dwelling that is located within the perimeter of a designated loading area) or for the purpose of maintaining or removing such traffic signs.

The purpose of the loading area sign is to provide information to vehicle users of any parking prohibitions in relation to the loading area. It is an offence for a person without reasonable excuse, to park a vehicle in any part of a loading area at a time when parking is prohibited.

If the land owner and occupier decide that they no longer wish for the land to be designated as a loading area, they could by a request in writing have the order revoked. Section 61(2) of the Act provides that the council must revoke the order designating the land as a loading area if requested in writing to do so. In this situation the council, if consent was not granted, would require the power of entry provided in section 61(4) for the purpose of removing the loading area sign belonging to the council.

The likelihood is that in the majority of instances because loading areas are only designated by the council with consent of the owner and occupier of the land, the placing of traffic signs will be consensual. If the loading area is unwanted by an owner and occupier they can write to the council requesting revocation of the order and the council would be obliged to consent to this request and in the usual course of events, the loading area sign would then be removed. Consideration was given to various safeguards that could be proposed in relation to the power of entry. A warrant was considered to be disproportionately onerous burden to place on the council given the requirement that the designation of a loading area is a consensual process.

However, the Department proposes that in cases where an authority seeks to enter a loading area that is mainly or wholly a private dwelling for the purpose of placing, maintaining or removal of the relevant traffic sign without consent of the owner and occupier that seven days’ notice should be given to the owner and occupier.

⁵⁷ Ibid.

29. Road Traffic Regulation Act 1984, section 71

Traffic authorities have a duty under Section 122 of the Road Traffic Regulation Act 1984⁵⁸ to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians). Key to this is the provision of traffic signs which - as the only means of communicating with all road users - are essential to ensure that road users understand any prohibition, restriction or requirement in force. Road users have no other means of knowing what is expected of them.

The power of entry in section 71 enables local authorities (including the council of a county, metropolitan district, London borough or Common Council of the City of London), the Secretary of State and other traffic authorities to place, maintain, convert or remove signs which are located on private land, attached to a building or other private structures, or where the sign can only be accessed from private land or buildings. It is necessary to place regulatory signs, for example 'No entry' at the very point where the restriction begins; such signs cannot be placed nearby to represent an approximation. The nature of the streetscape might therefore be such that public land is not available at that location, thereby necessitating the placing on private land. There are many such situations, especially in complex urban areas. The provisions also cover signs and structures on public rights of way across public land – so local authorities will rely on these powers when installing and maintaining footpath and bridle path direction signs.

Although there is no national data on the number of traffic signs placed on private land, recent research on the total number of traffic signs shows Norfolk (for example) having almost 86,000 traffic signs in place. Even assuming 0.01% would mean 860 signs placed on private land in just one county.

These powers do not specifically exclude private dwellings. The land over which the power of entry may be exercised includes a garden associated with the dwelling. The more common scenario relates to private land on which a traffic sign has been placed in situations where it is not appropriate to place it on public land. Traffic authorities may generally have negotiated wayleaves and easements with dwelling and/or land owners to ensure access for placing new traffic signs, replacing like for like signs (perhaps when a sign has reached the end of its usable life), converting (for example when the times displayed need to be changed) and removal of traffic signs. This is more common on local roads and trunk roads than on motorways.

The Department has considered the addition of a warrant as a safeguard in relation to this power. There are many thousands of traffic signs, a number of them on pieces of land (for example, grass verges) where the owner or occupier is not immediately obvious and it may be difficult to establish the owner/occupier of the land. This would potentially involve extensive enquiries of the land registry to establish whether the land is registered and who owns it and so forth before an application for a warrant is made in relation to the land.

⁵⁸ Ibid.

In the event the land is registered and the owner and the occupier can be established, if access is refused, it would be necessary to initiate and conduct court proceedings and go through an appeals process following an unsuccessful outcome. The necessity of a warrant would place a disproportionate administrative and economic burden on local authorities when placing, maintaining, converting or removing (what might be) a single traffic sign on a verge.

In order to protect the rights of individuals, whilst enabling local authorities to meet their duty to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians), the Department proposes to make provision for additional safeguards. These are that there is a duty of care on the traffic authority when placing, maintaining, converting or removing traffic signs, to minimise any damage to land and make good any damage caused. Also that there should be notice to the owner and occupier seven days prior to entry of any dwelling and that there should be an appeal process in relation to the position of the traffic sign.

30. Road Traffic Regulation Act 1984, section 72

Section 72 of the Road Traffic Regulation Act 1984⁵⁹ allows with the permission of the highway authority and subject to any conditions imposed by that authority, for the placing of certain traffic signs on private land by parish or community councils, conditional on the consent of the land owner and occupier of the land. Section 72 also provides a parish or community council with power to remove signs for the purpose of complying with a notice under section 69(1) of the Act.

The Department proposes to add an additional safeguard and require parish or community councils to give the owner/occupier notice seven days prior to entry.

31. Transport Act 2000, section 177

Section 177 of the Transport Act 2000⁶⁰ facilitates the placing of traffic signs in connection with a charging scheme. Section 177 provides for the appropriate national authority, either the Secretary of State in England or the National Assembly for Wales or both (when acting jointly, in relation to charging schemes relating to both England and Wales), to direct the charging authority to place and maintain traffic signs in connection with the charging scheme. Where a direction is given by a national authority to place or maintain traffic signs in respect of a trunk road charging scheme, that direction may only be given to a local traffic authority.

The purpose of a charging scheme is to reduce traffic noise, congestion and air pollution in busy town or city centres by means of imposing a charge for entry to discourage unnecessary journeys. Traffic signs are critical to this as they are the primary method of communicating the conditions and times of scheme operation to

⁵⁹ Ibid.

⁶⁰ 2000 c.38.

the motorist, thereby enabling compliance, and effective enforcement where non-compliance occurs.

Where the local traffic authority is given a direction in writing by a national authority in connection with any charging scheme, it may enter any land, and exercise any other powers which may be necessary, for placing and maintaining traffic signs, or causing traffic signs to be placed and maintained, in connection with any charging scheme in respect of which a direction is or could be given. This power of entry may only be exercised when a direction has been given by the appropriate national authority.

The land over which the power of entry may be exercised may also be that of private dwellings. This more commonly occurs in situations where it is not possible to place the sign on public land. The authority exercising the power is not required to obtain the consent of the occupier or a warrant before exercising the power of entry.

In certain limited circumstances, access to premises used wholly or mainly as a dwelling may be required for the purpose of attaching traffic signs to properties or for the purpose of maintaining or removing such traffic signs where such properties are located close to the highway and there is no practical alternative.

Repealing the powers of entry granted in the Act would potentially make it excessively difficult for traffic authorities to place traffic signs in the only practical position or to maintain or change existing signs or remove unnecessary signs.

However, the Department proposes to add an additional safeguard and require a warrant in cases where an authority seeks to enter premises that are mainly or wholly a private dwelling without consent.

32. Transport Act 2000, section 190

Chapter 2 of Part 3 of the Transport Act 2000⁶¹ is concerned with workplace parking levy and section 190 provides for powers to enter premises.

A person authorised in writing by a licensing authority may enter any premises at which that person believes there are workplace parking places being provided to establish if they are all licensed parking places or if a workplace parking licence is being complied with.

A person so authorised may also enter any premises to issue notice of a licensing scheme penalty charge. A person entering for either purpose must do so only at reasonable times and show evidence of their authority if required to do so and it is an offence to intentionally obstruct such person. A person with an interest in the land entered may be compensated for damage caused to the land by entry upon it.

These powers of entry are necessary to enable licensing authorities to carry out enforcement functions to ensure the proper operation of workplace parking levy

⁶¹ Ibid.

charging schemes, e.g. to ensure that customer parking bays are not being used by employees of a business.

Licensing authorities are either non-Metropolitan local traffic authorities or London traffic authorities who have proposed a charging scheme. Currently there is only one workplace parking levy charging scheme and this is in Nottingham.

In practice entry to workplaces in Nottingham is, in the majority of cases, with the consent of the owner or occupier but there have been instances of refusal or obstruction.

Whilst it is possible that a workplace parking place may be provided within domestic premises it would be unlikely that entry to that part of the premises comprising a private dwelling would be necessary for either purpose for which there is power to enter. In Nottingham the current practice is to exempt from the charging scheme domestic premises used for commercial purposes where the owner or occupier uses the parking places at those premises. With that in mind, the power of entry in section 190 can be amended so that a warrant has to be obtained for premises that are wholly or mainly used as domestic dwellings, in the event that access to such premises has been refused.

Given the circumstances in which this particular power is used, any access to domestic premises would in practice involve only the parking facilities at such premises, rather than access to any building used as a dwelling. The method of inspection is generally through the use of a vehicle-mounted CCTV camera to enable the checking of registration plates – hence, e.g. the detection of instances where employees might regularly use bays designated for customers.

If entry was conditional on notice or warrant it may have an adverse effect on enforcement (e.g. by allowing ‘customer only’ parking places to be kept free of staff vehicles at the time of entry). The requirement for a warrant, if extending beyond domestic premises, would also be regarded as a disproportionate burden on enforcement and local authority resources.

It should be noted that the proceeds from workplace parking levy are not used as general revenue, but must be applied to various local public transport schemes, e.g. tram extension. Any new disproportionate burden might therefore have the effect of undermining such local schemes.

Accordingly it is not proposed to provide that there should be any other additional safeguards in respect of the powers.

33. The Biofuel (Labelling) Regulations 2004, paragraph 4(2)(a) of Schedule

The Biofuel (Labelling) Regulations 2004⁶² require that a label is displayed at fuel pumps supplying petrol or diesel blends containing biofuel above a certain percentage. There are two specific powers of entry.

⁶² S.I. 2004/3349.

- i. Power of entry (without warrant). Paragraph 4(2)(a) of the Schedule provides that a duly authorised officer of an enforcement authority may inspect any relevant equipment and enter any premises (other than premises used only as a dwelling) for the purpose of ascertaining whether an offence has been committed under these Regulations. As currently drafted, this power of entry may be exercised in respect of premises used mainly as a dwelling (i.e. mixed use premises) without the need for a warrant.
- ii. Power of entry (with a warrant). A warrant is currently required for premises used exclusively as a dwelling.

The power is required to enforce the requirements of Directive 98/70/EC⁶³ (as amended by 2009/30/EC⁶⁴) which requires Member States to implement measures to prohibit the sale of high blend biofuel without the provision of appropriate information to consumers.

Engines are generally not calibrated for higher blend biofuels (bioethanol or biodiesel). However the more serious break down risk relates to high blend bioethanol and the ageing fleet. Whilst this fuel is currently not supplied into the UK, there are policy reasons why the situation could change in the short to medium term, if a decision is made to raise biofuel supply targets in order to meet the 2020 obligations under the Renewable Energy Directive.

Retaining an effective enforcement regime for the labelling of these products would enable the Department to address an increase in break-down risk, following any introduction of higher blend bioethanol. Over time as the fleet is renewed, it follows that the associated risks would decrease, and the Department could review this position.

The Department's concern is primarily focussed on the requirement to enforce this regulation in respect of fuel labelling on garage forecourts. Given these are, by their nature open access during normal business hours, the Department has been challenged as to why an authorised officer may not employ a "mystery shopper" approach as opposed to powers of entry. It is doubtful whether this approach would, on scrutiny, properly be considered 'regulatory', and a sufficiently satisfactory administrative process to ensure that we have complied with our European obligations

⁶³ Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC. OJ L 350, 28.12.1998, p.58.

⁶⁴ Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC. OJ L140, 5.6.2009, p.88.

to set up a regulatory regime and ensure its compliance. As such, adopting this sort of approach would run the real risk of infraction proceedings from the Commission.

However, given the focus on garage forecourts, the Department believes that it may not need the existing power of entry without a warrant as it relates to premises used mainly as a dwelling. In the draft Powers of Entry Code of Practice issued in January 2013 a 'Dwelling' is defined as "including any building or shelter wholly or mainly used as place of residence or abode". On the basis that the inspection of fuel labelling and samples could take place on a garage forecourt without the requirement of a warrant in circumstances where a private dwelling may exist within the perimeter of the premises (but to which access to the private dwelling was not sought), then the Department accepts that the power could be amended to exclude entry to those premises without a warrant.

34. Road Vehicles (Approval) Regulations 2009, regulation 34

The Road Vehicles (Approval) Regulations 2009⁶⁵ implement Directive 2007/46/EC⁶⁶, which covers type approval of road vehicles and their components and is known as "the Framework Directive".

Effective enforcement of these regulations requires powers of entry to business premises and the power to examine documentation, in order for an inspector to be able to establish whether non-conformant vehicles and components are being imported or produced and placed on the market. Enforcement prevents the loss, as a result of illegal activity, of improvements in vehicle standards which have contributed to improved road safety. It is supported by law-abiding businesses of all sizes because it prevents them from being undercut in the market by competitors prepared to adopt illegal practices.

Regulation 34 sets out the relevant powers of entry. Regulation 34(1) currently permits an authorised person to enter any premises at all reasonable hours (including domestic purposes) for the purpose of ensuring that the regulations are being complied with. Regulation 34(2) provides that an authorised person may:

- inspect any production facility, vehicle, component etc. found on the premises,
- carry out any check or test prescribed in a regulatory act,
- remove from the premises any vehicle, system or component etc. which he/she may reasonably require to carry out the check or test,
- inspect, remove or retain and copy any record or document required to be kept or which he may reasonably require to inspect or copy,

⁶⁵ S.I. 2009/717.

⁶⁶ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailer, and of systems, components and separate technical units intended for such vehicles. OJ L 263, 9.10.2007, p.1.

- inspect and check any computer and associated material used in connection with keeping records,
- copy any data stored on a computer and retain and remove the copied data.

It should be noted that regulation 34(1) states that the power of entry relates to “any land or premises...which are being used for any purpose connected with these Regulations for the purpose of ensuring that these Regulations are being complied with”. It is therefore unlikely to apply to premises being used wholly as a dwelling. But it would apply where, for example, relevant records were kept at premises that are wholly or mainly used as a dwelling.

In such a situation the delay associated with obtaining a warrant in relation to domestic premises would, in many cases, allow all evidence of non-compliance to be removed prior to any inspection being possible.

Nevertheless the Department proposes that the scope of the general powers of entry without a warrant should be restricted, so that:

- an authorised person may enter premises that are not used wholly or mainly as a dwelling, subject to the conditions which are currently set out in regulation 34(1), but that
- an authorised person may enter premises that are used wholly or mainly as a dwelling, provided that a warrant has first been obtained to permit such a person to do so.

Section 3

Powers of entry to be retained but consolidated

Total powers of entry in scope of review	99
1. Total powers of entry repealed	5
2. Total powers of entry to be retained with additional safeguards	36
3. Total powers of entry identified for consolidation	4
4. Total powers of entry to remain unchanged	54
Net Total	92

1. Railways and Transport Safety Act 2003, sections 86 and 98

Section 86 of the Railways and Transport Safety Act 2003⁶⁷ enables a constable in uniform to board a ship, or enter any place, for the purposes of taking specimens, or making an arrest without a warrant, where it is suspected that the ability of a crew member to carry out his duties is impaired because of drink or drugs. Different offences apply in respect of professional masters, pilots and crew members whilst on duty and professional crewmen not on duty but who may be required in an emergency to take action to protect passengers. The legislation also extends to non-professional, or leisure, crews but these powers have yet to be commenced so there is currently no right of entry to leisure craft. No timetable for the implementation of these measures has been agreed. Certain powers in the Road Traffic Act 1988⁶⁸ and the Road Traffic Offenders Act 1988⁶⁹ relating to the taking of specimens apply, with modifications, to offences under this Part (see section 83). The Act has effect in respect of UK ships, foreign ships in UK waters, and un-registered ships in UK waters. The power of entry does not extend to Scotland.

Section 98 of the Act provides a similar power in the field of aviation. Separate powers also apply to the railways (see Transport and Works Act 1992⁷⁰ (“TWA”), section 30) and in relation to the driving of motor vehicles (see Road Traffic Act 1988 section 6E). The power of entry to obtain a specimen of breath in relation to the railways is restricted to the case of an accident in which the death or injury of another person is

⁶⁷ 2003 c.20.

⁶⁸ 1988 c.52.

⁶⁹ 1988 c.53.

⁷⁰ 1992 c.42.

suspected. The power is not so restricted where a constable wishes to arrest a person following a suspected positive breath test, or where a person has refused to provide a specimen under section 29 of the TWA. Under that section a person working on the railway can be required to provide a specimen if suspected of having alcohol in his body. The power of entry under the Road Traffic Act 1988, both in respect of obtaining a specimen and making an arrest, is only available following an accident in a case where injury to any person is suspected.

Section 17 of the Police and Criminal Evidence Act 1984⁷¹ (“PACE”) enables a constable to enter and search a premises for the purpose of arresting a person for an offence under (amongst other things) the Road Traffic Act 1988, sections 4 (driving etc. when under influence of drink or drugs) and 163 (failure to stop) and the TWA, section 27 (offences involving drink or drugs on transport systems). The power of entry in PACE does not extend to the taking of specimens.

The power under section 86 of the Railways and Transport Safety Act enables a constable to use reasonable force and to be accompanied by one or more persons. The power extends to “any place”, which could include private dwellings, and no additional safeguards apply to such places. As the powers extend to non-professional crew members, the power of entry also applies to privately owned leisure vessels. This is relevant both to the ship on which the person is travelling, and to other shipping in the vicinity. In certain instances it may be necessary to enter a private dwelling to exercise the powers. For example, where a person is suspected of being under the influence of drugs or alcohol quick action is required in order to obtain an accurate specimen. It may also be necessary to act quickly before a ship leaves port. The need to obtain a warrant could cause delays.

The Department proposes to retain these powers but will consider consolidating them with similar powers in other transport modes.

2. Highways Act 1980, sections 289 and 291

The Highways Act 1980⁷² consolidates earlier Highways Acts and Part 14 provides highway authorities and local authorities with various wide-ranging powers.

Sections 289 gives a power to a person authorised by a highway authority to enter any land at any reasonable time to survey that land, or any other land, in connection with the exercise of highway authority functions. Persons authorised include Highways Agency staff, Agency contractors or agents and those employed by local highway authorities.

⁷¹ 1984 c.60.

⁷² 1980 c.60.

Premises (meaning buildings) are excluded from the power. But if the land is occupied then at least 7 days' notice is required to be given before entry is by right.

There are associated powers to place and leave on or in the land, or to remove, apparatus for the survey and to search and bore to ascertain the nature or the soil presence of minerals or whether any damage is being caused to the highway by mining or other activities. At least 7 days' notice of the intention to do so must be given to the occupier, and to the owner, of the land to place and leave or remove apparatus or to carry out searching and boring on the land.

Notice of the intention to search and bore must also be given to those undertaking coal mining, or statutory undertakers, whose interests may be affected by the proposed works. If objection is made by a statutory undertaker that the proposed works would be seriously detrimental to the carrying on of their undertaking the consent of the Secretary of State is needed for the works.

Under section 291 power is given to a highway authority to maintain, alter or remove any structure or work situated on non-highway land.

Under section 292 it is an offence to obstruct a person exercising a power of entry under section 289 or section 291 or to remove or interfere with apparatus placed or left on land pursuant to the power.

Although entry to buildings is not by right, it is an offence (under section 292) for an authorised person who has entered a factory or other workplace to disclose, other than in the course of their duty, information obtained about any manufacturing process or trade secret.

These powers of entry are necessary to enable the Secretary of State and other highway authorities to carry out their statutory functions with regard to the construction, alteration, improvement and maintenance of highway networks.

However, these powers are not typically used unless agreement to enter and survey cannot be reached with the owner of the land. Such agreements usually make provision for the owner of the land to be compensated for damage caused and the existence of a power to enter tends to ensure that compensation amounts are fair and reasonable rather than unrealistic.

It is proposed to retain the powers but give further consideration to consolidating them so that there is one section dealing with power of entry into land (rather than two as at present). The Department aims to have a section which will contain the existing safeguards to the use of the power and will consider the scope for introducing further safeguards to the exercise of the power.

Section 4

Powers of entry to be retained unchanged

Total powers of entry in scope of review	99
1. Total powers of entry to be repealed	5
2. Total powers of entry to be retained with additional safeguards	36
3. Total powers of entry identified for consolidation	4
4. Total powers of entry to remain unchanged	54
Net Total	92

Aviation

1. Aviation Security Act 1982, sections 13, 20, 20B and 24B

The aim of Part 2 of the Aviation and Security Act 1982⁷³ is, essentially, to protect civil aviation against acts of unlawful interference that jeopardise the security of civil aviation. It sets out powers that enable the Secretary of State to give aviation security directions to industry for this purpose and contains compliance and enforcement mechanisms for compliance with both domestic and EU aviation security requirements.

Section 13 (power to require aerodrome managers to promote searches at aerodromes) enables the Secretary of State to give a direction in writing to the manager of any aerodrome in the UK and for that direction to specify searches to be carried out by constables or other persons specified in the direction. Where a direction given under this section is for the time being in force, then if a constable, or other person specified in the direction has reasonable cause to suspect that a dangerous article is in, or may be brought into, any part of an aerodrome, a constable, or other person specified in the direction, may search any part of the aerodrome or any aircraft, vehicle, goods or other moveable property of any description which, or any person who, is for the time being in any part of the aerodrome and for that purpose may enter any buildings or works in the aerodrome, or enter upon any land in the aerodrome.

The circumstances in which this power can be exercised are limited in that the power only applies if the Secretary of State has given a written direction under this section to the manager of an aerodrome and that direction is, for the time being, in force and the constable or other person specified in the direction has reasonable cause to suspect that a dangerous article has, or may be brought into, the aerodrome. No warrant is required in order to exercise the power under this section but that is entirely appropriate: it is important in a security sensitive area such as an aerodrome that a police constable, or other persons specified in the direction is able to act upon the exigencies of the moment. Also, this is the power under which aerodrome managers

⁷³ 1982 c.36.

conduct the searching regime for cabin and hold baggage at UK aerodromes and so is an essential component in the regulation of aviation security in the UK. Were a warrant to be required this could cause delay and any delay in such circumstances could pose a risk to aviation security. Therefore, the Department does not propose any additional safeguards on this power.

Section 20 (inspection of aircraft and aerodromes) enables authorised persons (i.e. aviation security inspectors) to conduct inspections on aircraft and at aerodromes for compliance with aviation security directions given by the Secretary of State. In order to inspect an aircraft, authorised persons are able to enter it and to take all such steps as are necessary to detain it; or, for the purpose of inspecting any part of an aerodrome, to enter any building or works in the aerodrome or enter upon any land in the aerodrome; or, for the purpose of inspecting any land outside an aerodrome which is occupied for the purposes of a business by a person who occupies land within an aerodrome for the purposes of that business or is permitted to have access to a security restricted area of an aerodrome for the purposes of that business, to enter upon the land and to enter any building or works on the land. Section 20 also makes provision for inspectors to enter aircraft, buildings or works or to enter upon land as necessary for the purpose of accompanying a Commission inspector on a Commission inspection. Such inspections are necessary to enable the Commission to monitor the UK's compliance with EU aviation security requirements.

This power is used on an almost daily basis, and is a crucial component of the aviation security compliance and enforcement regime. This power is essential to permit inspectors to carry out their functions, which in turn is essential to ensure the security of the UK aviation industry, including cargo and passengers.

No warrant is required in order to exercise the power of entry under this section but given the circumstances in which this power is used, advance notice of the use of the power would be inappropriate: it is important that inspectors are able to carry out 'no-notice' inspections to ensure they get an accurate picture of security operations, and an inspection may also have to occur at extremely short notice as a result of notification of significant security vulnerabilities that may pose a risk to aviation. Therefore, the Department is not proposing to add any additional safeguards.

Section 20B (detention direction) enables an authorised person (i.e. aviation security inspector) to enter an aircraft for the purpose of ensuring that the aircraft does not fly while a detention direction is in force. An authorised person may give a detention direction in respect of an aircraft if the authorised person is of the opinion that a person has failed, or is likely to fail, to comply with a requirement of an aviation security direction, a person has failed to comply with a requirement of an enforcement notice in respect of the aircraft, a threat has been made to commit an act of violence against the aircraft or against any person or property on board the aircraft, or an act of violence is likely to be committed against the aircraft or against any person or property on board the aircraft.

This crucial power of entry relates to the specific circumstances of a grounded aircraft and can only be used where a detention direction has been given in respect of that aircraft. (Moreover, the operator of an aircraft in respect of which a detention direction is given may object to the direction in writing to the Secretary of State). This power of

entry is necessary to ensure the security of aircraft flying from the UK, and is linked intrinsically to the power to detain aircraft. This power permits quick and effective action to be taken to an imminent security threat: there is no better method by which we can ensure that an aircraft does not fly while a detention direction is in force, so it is essential that an authorised person is able to react quickly to a fast-moving threat picture and quickly address a potential security issue. The Department does not consider it appropriate to add safeguards as this could significantly restrict the ability of inspectors to respond to an imminent threat which, in turn, could compromise aviation security.

Section 24B (power of constable to stop and search persons, vehicles etc.) enables a constable to enter any part of an aerodrome, detain a person, vehicle or aircraft or board an aircraft for the purposes of exercising the power to search any person, vehicle or aircraft in an aerodrome or anything which is in or on such a vehicle or aircraft where the constable has reasonable grounds for suspecting that he will find stolen or prohibited articles. The provision is limited in that nothing in the section authorises a constable to enter a dwelling. No warrant is required in order to exercise the power under this section but this is entirely appropriate: it is important in a security sensitive area such as an aerodrome that a police constable is able to act upon the exigencies of the moment. Were a warrant to be required this could cause delay and any delay in such circumstances could pose a risk to aviation security.

It is crucial that these powers of entry are retained in their current form in order to preserve the ability of the authorities to respond to the threat posed by those who wish to do us harm and to safeguard national security. Moreover, it is essential that such powers can be exercised without a warrant due to the nature and urgency of threats to aviation security. To require a warrant in such circumstances would cause a delay which could undermine the UK's high levels of aviation security. Therefore, the Department is not proposing to add any additional safeguards.

2. Civil Aviation Act 1982, sections 44, 46 and 47

These powers in sections 44, 46 and 47 of the Civil Aviation Act 1982⁷⁴ are primarily concerned with safety and efficiency of civil aviation. Without them, in the longer term, safety and efficiency would be at risk of being compromised. Thus they facilitate existing airports and their exercise may be necessary to enable airport development, too.

Moreover, these are not general powers, but are powers exercisable under specific orders allowing entry to specific land to undertake specific activities.

Section 44 provides the Secretary of State with a power to make an order if satisfied that it is expedient to do so in order to secure land for the safe and efficient use for civil aviation, or to secure the provision of any services required in relation to such land, or to secure that civil aircraft may be navigated with safety and efficiency. Such an order may contain a power for authorised persons to enter upon land for the

⁷⁴ 1982 c.16.

purpose of carrying out, installing, maintaining or removing any works, structures or apparatus. A minimum of 7 days' notice is required to be given to the occupier of the land, other than in a case of emergency where entry is required for the maintenance or use of any works, structures or apparatus.

There is a duty to compensate where land is damaged in consequence of the exercise of any power of entry⁷⁵.

This power is primarily exercisable for purposes related to safety and efficiency. The Secretary of State must be persuaded that it is appropriate to make an Order for these purposes under these provisions. As a matter of practice, the Secretary of State would require the airport to serve a notice and statement of reasons on persons affected by the decision and he would take account of their representations. This affords the first tier of protection.

Secondly, other than in the case of emergencies, there is a requirement to provide notice and reasons to the occupier. This affords an opportunity for legal proceedings to be taken if he believes the power has been exercised unlawfully.

These safeguards should ensure that the manner of exercise of this power is reasonable and proportionate.

Section 46 provides the Secretary of State with a power to make an order to secure the safe and efficient use for civil aviation of any land, structures, works or apparatus vested in a relevant authority by declaring that any area of land specified to be subject to control by directions. Such an order may authorise, amongst other things, directions to be given requiring the demolition of structures, restriction on height of trees and restricting installation of apparatus on, over or under the land.

Other than in Northern Ireland, an Order made under these provisions is subject to Special Parliamentary Procedure⁷⁶.

There is generally a duty to pay compensation where the value of land is diminished in consequence of the exercise of these powers: see section 46(7) and Schedule 9, paragraph 3.

The purpose for which the power is exercisable and the requirement to make an Order using Special Parliamentary Procedure before directions may be made affords adequate safeguards and should ensure the manner of exercise of the power is reasonable and proportionate.

Section 47 allows, for the purpose of ensuring that any building, structure or erection in the vicinity of a licensed aerodrome that is a hazard in conditions of darkness or poor visibility to aircraft flying has appropriate warning equipment (e.g. lighting), the Secretary of State to make an order to authorise the proprietor of a licensed aerodrome

⁷⁵ See section 44(6).

⁷⁶ See section 46(4).

and those acting under its instructions to enter on or pass over land, including occupied land, to install, maintain or alter any such works or apparatus.

An Order under this section may not be made if the Secretary of State is satisfied that satisfactory arrangements to give warning have been made and are being carried out. And there is a duty to consult before making an Order.

Fourteen days' notice must be given to the occupier of the land before works are executed on any land, other than in an emergency. A person receiving notice may object within those 14 days, in which case no further action may be taken without the specific sanction of the Secretary of State. There is also a duty to pay compensation for consequential loss or damage.

The requirements for the Secretary of State to make the Order, the notice requirements and the prohibition on further action being taken if objection is made without sanction from the Secretary of State should ensure the manner of exercise of the power is reasonable and proportionate.

3. Air Navigation Order 2009, articles 36, 232, 236 and 238

The Air Navigation Order 2009⁷⁷ is the principal legal instrument dealing with aviation safety. The aims of the Order are to give effect to the international safety standards and recommended practices established under the Chicago Convention⁷⁸ and to generally regulate civil aviation safety. The Order is also used to provide enforcement powers in respect of the EU implementing rules on aviation safety adopted under Regulation 216/2008.⁷⁹

The power of entry provided by article 36 allows a person authorised by the Civil Aviation Authority ("CAA") to enter, at any reasonable time, an aerodrome or aircraft factory to inspect:

- a) an aircraft or its parts;
- b) materials used in the manufacture of an aircraft or related parts;
- c) parts used in the manufacture of an aircraft; and
- d) related documents.

Most routine inspections of aircraft factories are carried out by arrangement with the owners. However, where there are concerns that a factory is using incorrect materials or procedures advance notice of an inspection would be inappropriate. Again many inspections of aircraft will be carried out by prior arrangement with the aircraft operator

⁷⁷ SI 2009 No. 3015, as amended.

⁷⁸ The Convention on International Civil Aviation signed in Chicago on 7 December 1944.

⁷⁹ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of aviation safety and establishing a European Aviation Safety agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. OJ L79, 19.3.2008, p.1.

but in some cases advance notice of an inspection would be inappropriate as it could allow potentially unsafe aircraft to be moved to another aerodrome or out of the UK to avoid inspection. In addition, Regulation 2042/2003⁸⁰ requires that unannounced inspections should form part of a Member State's continuing airworthiness oversight programme. These powers are therefore necessary to ensure the safety of UK registered and manufactured aircraft and (in large part) to comply with EU legislation.

The power of entry provided by article 238 allows a person authorised by the CAA to enter, at all reasonable times:

- a) an aerodrome to inspect the aerodrome or any aircraft (including any documents that are required to be carried) that has landed there;
- b) any other place where an aircraft has landed to inspect that aircraft (including any documents that are required to be carried);
- c) an aerodrome or any other place where an aircraft has landed to detain an aircraft in accordance with the relevant provisions of the Order; and
- d) any place from which an approved air traffic control service is provided for the purpose inspecting equipment and relevant records and documents which it has the power to demand.

The powers of entry provided by article 232(5) permit a person authorised by the CAA to enter and inspect any aircraft for the purposes of preventing aircraft flying in a variety of circumstances which, principally, relate to the aircraft being unfit to fly and/or creating a danger.

Inspections and audits of aircraft, aerodromes and air traffic control services are a key part of the way that the CAA exercises its statutory responsibilities. Most routine inspections and audits are carried out by arrangement with operators. However, where there are concerns that correct safety procedures are not being applied advance notice of an inspection or audit would be inappropriate. In addition, EU legislation on the safety of aircraft operations⁸¹ requires that unannounced inspections should form part of a Member State's oversight programme and that the relevant personnel of the competent authority should be empowered to conduct unannounced inspections. Similarly the EU legislation governing the safety of aerodromes⁸² requires that unannounced inspections should form part of a Member State's oversight programme.

⁸⁰ Commission Regulation (EC) No 2042/2003 of 20 October 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks. OJ L 315, 28.11.2003, p.1.

⁸¹ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. OJ L 296, 25.10.2012, p.1.

⁸² Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. OJ L 44, 14.2.2014, p.1.

The power of entry provided by 236(5) allows the Secretary of State, or any person authorised by him, to enter an aerodrome to inspect a foreign registered aircraft which is likely to undertake a commercial activity without the Secretary of State's permission or in contravention of the conditions under which such permission has been granted. While the power can be used to enforce the terms of permission granted further to international agreements in respect of traffic rights, the vast majority of the time it is used in relation to the safety conditions attached to the permission granted by the Secretary of State. Inspections of foreign aircraft are undertaken by CAA inspectors who have also been authorised by the CAA to conduct inspections of aircraft. These inspections are analogous to roadside checks on vehicles by the police or authorised officials. In the majority of cases the aircraft that are inspected will not have been identified in advance. These inspections also meet the UK's obligations under EU legislation which requires unannounced inspections should form part of a Member State's oversight programme for aircraft operators. These powers are therefore necessary to ensure the safety of foreign aircraft operations in the UK and to comply with EU legislation.

Maritime

Maritime security related powers of entry

There are five powers of entry related to the Department's maritime security work: sections 22(3) and 36(3) of the Aviation and Maritime Security Act 1990⁸³ ("AMSA"), regulation 6(3) of the Ship and Port Facility (Security) Regulations 2004⁸⁴ ("the 2004 Regulations") and regulations 22(3) and 25(5) of the Port Security Regulations 2009⁸⁵ (the "2009 Regulations"). Each of these powers provides a specific capability to support HM Government in protecting the maritime industry, and gives powers of entry for searching different geographical areas for different (though related) purposes.

This suite of powers makes up a jigsaw allowing for entry and search in gradually narrower areas. They start with land outside the harbour area (section 36), then progress to the harbour area, then within that to the port, then finally drill down to certain buildings and areas within the port and to port facilities (of which there may be several in a port). (For details of the power in section 36, see section 2 of this report.)

Key differences between AMSA and the 2004 and 2009 Regulations

There are some key differences in the powers provided by AMSA and those outlined in the 2004 and 2009 Regulations. The first key difference is regarding the physical coverage of the powers in question. The powers of entry in AMSA refer to the 'harbour area' which is different in scope from the 'port facility' referred to in the 2004 Regulations and 'port' referred to in the 2009 Regulations. The harbour area, in most

⁸³ 1990 c.31.

⁸⁴ S.I.2004/1495.

⁸⁵ S.I.2009//2048.

instances, will be broader than the boundaries of a port facility and could well differ from the boundaries of a port as outlined in the 2009 Regulations.

It is also crucial to note that not all port facilities will be covered by the requirements for ports outlined in the 2009 Regulations. The ability to draw upon three distinct geographical areas thus considerably assists in ensuring that, as far as possible, key elements of the maritime infrastructure can benefit from the protection afforded by these powers.

The Port Security Regulations 2009 and the Ship and Port Facility (Security) Regulations 2004 implement EU legislation. This is not the case for AMSA.

4. Aviation and Maritime Security Act 1990, section 22(3)

Section 22 of the Aviation and Maritime Security Act 1990 enables the Secretary of State to give a direction in writing to any harbour authority or operator in the UK requiring that person to use his best endeavours to secure that searches specified in the direction are carried out by constables or by other persons of a description specified in the direction.

Where a direction given under this section is for the time being in force, then if a constable, or other person specified in the direction has reasonable cause to suspect that a dangerous article is in, or may be brought into, any part of the harbour area, then he may search any part of the harbour area, any ship, vehicle, goods or other moveable property of any description which, or any person who, is for the time being in any part of the harbour area and for that purpose may (if need be by force) enter any buildings, or land in the harbour area. He may also for that purpose (but not by force) board any ship in the harbour area. Section 22(3) provides the power of entry for these purposes.

The exercise of this power is limited to where the Secretary of State has given a written direction under this section to the harbour authority or operator and that direction is in force and the constable or other person specified in the direction has reasonable cause to suspect that a dangerous article is in, or may be brought into, the harbour area. No warrant is required to exercise this power, except for entry to a private dwelling, but that is entirely appropriate: it is important in a security sensitive area such as a harbour area that a police constable (or other persons specified in the direction) is able to act upon the exigencies of the moment. If a warrant were required, this could cause delay which could pose a risk to maritime security.

Directions may be given under sections 21 to 26 for searches, but the powers to search arising under those directions do not carry a power of entry. So section 22 is needed to complement those powers. The section 22 power of entry for the specific purpose of checking for the presence of a dangerous article (including firearms and explosives) do not exist in other maritime security legislation (for example, the Ship and Port Facility (Security) Regulations 2004 and the Port Security Regulations 2009) and enable timely powers of entry for this purpose.

Entry into a private dwelling already needs a warrant (section 22(4)). The Department considers that a warrant requirement for other places would defeat the purpose of the

section 22 power. The need to check for presence of articles such as firearms and explosives is urgent in relation to protecting a harbour or ship. Waiting to obtain a warrant could be too late.

5. Port Security Regulations 2009, regulations 22(3) and 25

The Port Security Regulations 2009 transpose Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security⁸⁶.

Article 7 of the Directive imposes a requirement to develop and maintain port security plans and brings together the various security arrangements for different parts of a port (and “port” for this purpose has a bespoke definition). Article 7(6) imposes a monitoring requirement on Member States to ensure that the implementation of port security plans is monitored and for that monitoring to be coordinated with other control activities carried out in the port.

Regulation 22(3) empowers a DfT Transport Security Inspector to enter, without warrant, any part of a port, any land, building or works in a port to carry out inspections for the purpose of verifying that a port security plan is being implemented in accordance with the Regulations.

Force cannot be used and the power does not extend to a private dwelling.

This power is used on almost a daily basis and is a crucial component of the maritime security compliance and enforcement regime. DfT Transport Security Inspectors undertake inspections, audits and tests at ports throughout the UK, often visiting more than one port in a day. This regulation 22(3) power of entry is essential to permit inspectors to carry out these functions which in turn are essential to the security of the UK maritime industry.

The Department considers the introduction of a warrant requirement would be disproportionate to the purpose of the power and how it is used.

The maritime industry has a history of being, and continues to be, an attractive terrorist target because of its high profile and the potential for considerable economic damage and loss of life. Security regulation and associated compliance monitoring provide assurance that minimum standards of security are being maintained by industry and that there is consistency in the security applied across the mode. This activity also ensures implementation of the Directive. For these reasons, this power of entry needs to be retained.

Regulation 25(5) of the Port Security Regulations 2009 empowers relevant persons, as defined (generally Port Facility Security Officers), to enter, without warrant, any controlled building or any building or works in the restricted area or enter upon any land in the restricted area (essentially those beyond security checkpoints), if need be by force, if they have reasonable cause to believe that a prohibited article has been

⁸⁶ OJ L 310. 25.1.2005 p 28.

brought into the controlled building or restricted area. No other enforcement methods exist for this purpose and searching cannot be carried out in these areas without powers of entry.

Although these Regulations came into force in 2009 they do not apply to any particular port until port boundaries have been designated by a separate Order. The Department has identified around 43 ports in the UK at which the Regulations should apply. Separate Orders are being made designating port boundaries although some of the Orders designate boundaries for more than one "port". A total of 34 Orders will be made of which 31 have been made so far. Once all 34 Orders are made and in force, the Port Security Regulations 2009 will apply to all of the "ports" whose boundaries are designated by those Orders.

Existing safeguards are built into the power. The powers to search persons and enter controlled buildings and restricted areas can only be exercised where there is reasonable cause. The Department is not aware of any private dwellings within restricted areas.

6. Ship and Port Facility (Security) Regulations 2004, regulation 6(3)

Regulation 6(3) of the Ship and Port Facility (Security) Regulations 2004 empowers duly authorised officers to board ships and enter any buildings, works or land in a port facility for the purposes of inspection to verify that ships and port facilities are in compliance with the requirements of Regulation (EC) 725/2004⁸⁷.

This power is used on almost a daily basis by DfT Transport Security Inspectors and Maritime and Coastguard Agency ("MCA") surveyors and is a crucial component of the maritime security compliance and enforcement regime. This power is essential to permit the inspectors and surveyors to carry out their duties which in turn are essential to the security of the UK maritime industry.

The Department considers the introduction of the need for a warrant would be disproportionate to the purpose of the power and how it is used. In particular, it is a time-consuming process. In view of the safeguards that exist (in particular, force is not allowed), and the fact that the only assets concerned are those of an industry that has an interest in its security being protected, that process would be suitable neither to urgent cases, where speed is of the essence, nor for the purposes of carrying out routine inspections, as it is difficult to see on what basis a court would agree or refuse the warrant.

DfT Transport Security Inspectors and MCA surveyors enter ports and ships on a daily basis. They do so both through the consent of the operator and also under their powers of entry, where for example they are testing access control arrangements to non-public areas.

No private dwellings are currently entered by inspectors or surveyors under these powers. Existing safeguards are also built into the power, in particular that force cannot

⁸⁷ Regulation EC 725/2004 on enhancing ship and port facility security (OJ L 191. 22.7.2005. p.29.)

be used and provision for presentation of credentials. The Department does not, therefore, propose to amend this power.

Existing safeguards

A number of existing safeguards have already been highlighted above for these powers. These include the need for a warrant in some instances and the exclusion of private dwellings in other cases. Force is not always permitted.

In addition, powers of entry and powers to search are exercised within the confined parameters of the DfT's Compliance Framework⁸⁸ which is openly available to the maritime industry (and general public). This Framework includes a commitment to a transparent and consistent approach to compliance and to ensure the Department's security programmes are proportionate, responsive and practical.

7. Merchant Shipping Act 1995, section 208

Section 207 of the Merchant Shipping Act 1995⁸⁹ requires certain people to pay 'light dues', the dues to a general lighthouse authority ("GLA")⁹⁰ which are used to maintain the lighthouses, buoys or beacons which they manage. If the owner or master of a ship fails to pay such dues, section 208 enables the collector of light dues to enter a ship and seize goods or equipment and retain them until the dues are paid. If payment is not made within five days, the goods or equipment may be sold and the proceeds used to pay the dues and any expenses incurred. Any surplus is payable to the owner or master of the ship.

The power of entry only applies to ships and the owners and masters of smaller vessels, and those which do not leave harbour waters, are exempt from the payment of light dues. Such dues are therefore only owed in respect of commercial vessels and the largest of leisure craft. The power of entry acts as an effective deterrent, and is exercised only rarely. Recovering dues as a civil debt through the courts would not be practical as many ships are not based in the UK. Furthermore taking action against the owners or master of a vessel which has left port with dues owing, and which may not return for some time, would be difficult and costly. The deterrent effect of the power of entry provides an effective and efficient way of ensuring prompt payment is made.

The GLAs have introduced voluntary safeguards to ensure the power is used appropriately. The power is only exercised with the written approval of a GLA Director (or more senior officer) and a copy of the approval is served on the ship owner or master wherever practicable. Entry to the vessel is normally made at a reasonable time following a reasonable period of notice. The GLAs have also agreed to introduce

⁸⁸<http://webarchive.nationalarchives.gov.uk/20110504004554/http://dft.gov.uk/pgp/security/about/trans-ecomframe>

⁸⁹ 1995 c.21.

⁹⁰ The GLAs are Trinity House (England and Wales), the Commissioners of Northern Lighthouses (Scotland) and the Commissioners of Irish Lights (Northern Ireland).

additional measures, including keeping records of use of the power, introduction of a complaints procedure, providing an inventory of any goods taken and a requirement for any person exercising the power to produce appropriate identification. Therefore the Department is not proposing to add any additional safeguards.

8. Merchant Shipping Act 1995, sections 247 and 258

Part 9 of the Merchant Shipping Act 1995⁹¹ makes provision about salvage and wreck⁹². Under section 236 (duties of finder etc. of wreck) all wreck found in UK waters, or brought into the UK, must be declared to the Receiver of Wreck⁹³. It is the duty of the Receiver to give the legal owner the opportunity of recovering their property and to ensure that a salvage award is paid to the legal salvor.

The power of entry in section 247 (powers of entry etc.) enables the Receiver to apply for a search warrant where there is reason to believe that wreck is being concealed by, or is in the possession of, someone other than the owner, or that any wreck is being otherwise improperly dealt with. Where a search warrant is granted the Receiver can enter any house, other place, or any vessel to search for, seize and detain any wreck found there.

The power has not been used by the Receiver in the last five years because the police have applied for the warrants needed to search for wreck. However the powers are still needed to enable the Receiver to take action where it may not be appropriate for the police to do so. It is anticipated that the increase in sport diving and commercial recovery may lead to an increase in unreported wreck, meaning that more search and seizure operations may be needed in future.

The Receiver uses a number of methods to ensure wreck is properly declared, including education. However the power provides an efficient deterrent to supplement this and is only used as a last resort. The power is already subject to the requirement to obtain a warrant from the magistrates' court and the Department is not proposing to introduce any additional safeguards.

Part 10 of the Merchant Shipping Act 1995 regulates enforcement officers and their powers. Section 258⁹⁴ (power to inspect ships and their equipment, etc.) grants a power of entry to persons appointed by the Secretary of State for the purposes of ensuring compliance with the provisions of the Act (with certain exceptions). These duties are carried out by officials at the Maritime and Coastguard Agency ("MCA").

⁹¹ 1995 c.21.

⁹² "Wreck" is defined in section 255 of the Act as including "jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water".

⁹³ As appointed by the Secretary of State under section 248 of the Merchant Shipping Act 1995.

⁹⁴ The power in subsection (4) to enter a vessel and inspect provisions and water was repealed by the Protection of Freedoms Act 2012.

It is the duty of the MCA to enforce national and international safety and pollution prevention requirements designed to protect the environment, seafarers and the travelling public. To this end officials carry out unannounced inspections on board vessels on a regular basis to ensure compliance; due to unpredictability of vessel movements, the identity of vessels to be inspected is not necessarily determined in advance.

The vessels involved range from large passenger and commercial ships to small privately owned craft. These inspections are targeted, which is determined in the case of foreign registered commercial vessels by a process governed by a pan-European arrangement known as the Paris Memorandum of Understanding, which is underpinned by EU legislation.

In 2012, the MCA conducted approximately 5500 inspections of UK and foreign vessels, and between 2008 and 2012 there were approximately 27500 inspections.

A number of safeguards are already in place. All inspections are authorised by a senior member of the MCA staff. The legislation restricts the use of the power to “reasonable times” and it only extends to the inspection of the ship, its equipment, articles on board and any documents required by law to be carried. The power does not extend to private dwellings but could apply to a houseboat, although the Department is not aware of any instance of the powers being used in this way. The powers are not exercisable in relation to a qualifying foreign ship⁹⁵ exercising the right of innocent passage or the right of transit passage through straits used for international navigation. Officials exercising the power of entry carry identification which they are prepared to show and force is not used. Therefore we are not proposing to introduce any additional safeguards.

9. Merchant Shipping Act 1995, Schedule 3A

Schedule 3A of the Merchant Shipping Act 1995 sets out the powers, including powers of direction that can be exercised by SOSREP (the Secretary of State’s Representative for Maritime Salvage and Intervention). SOSREP’s role is to represent the Secretary of State for Transport (in relation to ships) and the Secretary of State for Energy and Climate Change (in relation to offshore terminals) by preventing, removing or reducing the risks to safety and property and the UK environment arising from accidents involving ships, platforms etc.

In the first instance, the Master of a ship in difficulty requests assistance from the person in charge of coastal land or premises. If this fails then SOSREP may give a direction under paragraph 2 of Schedule 3A to a person in control of land. If this is unlikely to succeed then the power in paragraph 4 can be exercised.

⁹⁵ Defined in section 313A of the Merchant Shipping Act 1995 as any ship other than a British ship or a ship which is not registered under Part 2 of the Act and which is wholly owned by British citizens, subjects or nationals etc. and not registered under the law of a country outside the UK.

The power in paragraph 4 is available where the Secretary of State is entitled to give a direction, but giving a direction would not be likely to achieve a sufficient result. It is also available where the Secretary of State has given a direction, but the direction has not achieved a sufficient result. In such cases the Secretary of State may take such action as appears necessary or expedient for the purpose for which the direction could have been given or was given. In particular, the Secretary of State may authorise a person to enter land or make use of facilities.

The power in paragraph 4 is used in exceptional circumstances, including where there is risk to safety or of pollution by a hazardous substance and would only be used if a direction issued in accordance with paragraph 2 was abandoned or had failed. When a direction is issued under paragraph 2 the owner of land or premises must be given an opportunity to make representations.

Paragraph 12 authorises a person acting on behalf of the Secretary of State to board a ship or enter land or premises to serve a direction issued under Schedule 3A. It ensures that a direction can be served immediately on relevant persons and failure to comply with a direction results in liability to criminal penalties. The power is necessary to avoid any resistance by someone to immediate compliance with a SOSREP direction and is an integral part of the maritime intervention powers necessary to remove or reduce risk to safety or a risk of pollution by a hazardous substance. The powers of direction are used in an emergency situation where there is risk to life or of pollution, which does not permit giving advance notice, the obtaining of a warrant, or restricting the power to commercial premises only.

As the powers are only exercisable in exceptional circumstances or an emergency it is not proposed to add any additional safeguards.

10. Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, regulation 8

The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999⁹⁶ impose a duty on passenger ship owners to have a system in place for recording the number of passengers on board vessels carrying more than 12 passengers. Copies of the records must be carried on board the vessel and also held by a land-based nominated person (“the passenger registrar”). The purpose of the requirement is so that, in the case of an emergency involving the vessel, the emergency services can be informed of the number of persons who might be in danger and for whom they are searching. The provisions were introduced in the light of recommendations made by the Inquiry into the Marchioness sinking, where the emergency services were hampered by not knowing how many casualties there might be.

The power permits persons appointed by the Secretary of State to board any ship to which the registration system relates and enter any premises of the passenger

⁹⁶ S.I. 1999/1869.

registrar to carry out checks on the proper functioning of the registration systems required under the Regulations.

The power is considered to be both necessary and proportionate. Given the need to carry out spot checks, a requirement to obtain a warrant or give notice would be inappropriate. Further, there is no alternative to physical inspection of the records kept. Reliance on subsequent submission of copies or of electronic data would not be sufficiently robust. The power extends to vessels and to the place where the passenger registrar holds the copy records, which will normally be the business premises of the operating company.

11. The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998, regulation 8

The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Order 1997⁹⁷ and the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 1998 implement in the UK the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.

Among other things, the Convention requires that oil pollution emergency plans are prepared for each relevant oil installation.

The regulation provides that “any person duly authorised by the Secretary of State may inspect any offshore installation or oil handling facilities which are pipelines to which these Regulations apply”.

The purpose of the power is to ensure the adequacy of oil pollution emergency plans. We cannot identify an alternative to a power of entry given the necessity to physically inspect the installations concerned in the light of the emergency plans relating to them. The power is, by definition, only exercisable in relation to business premises.

By virtue of regulation 4(7), the powers and duties in relation to pipelines are exercisable expressly by the Secretary of State for Energy and Climate Change, not by the Secretary of State at large, and Department for Transport officials will be consulting further with DECC officials when the opportunity arises.

12. Hovercraft (General) Order 1972, articles 16, 25 and 28

These provisions in the Hovercraft (General) Order 1972⁹⁸ contain powers for the Secretary of State or persons authorised by him to enter:

- premises where persons are employed in the design, construction, maintenance or storage of the hovercraft;
- any hoverport or place where a hovercraft is; or

⁹⁷ S.I. 1997/2567.

⁹⁸ S.I. 1972/674.

- any hovercraft

for the purposes of carrying out safety inspections and inspecting relevant documents in relation to the safety certificates required to be held in respect of hovercraft or to assist in the enforcement of directions issued in the case of a hovercraft which is being operated other than in accordance with the Order or is otherwise unsafe.

The power can only be exercised at “reasonable times” except where it is used to enforce a direction that an unsafe hovercraft, or one that is being operated other than in accordance with the Order, should not be operated.

The powers are considered necessary to ensure adequate inspection of the design, manufacture and maintenance of hovercraft, and the continued safe operation of certified hovercraft (which may be passenger carrying vessels).

The existing safeguards are that the power can only be exercised in relation to a specific description of premises (which by definition will be business premises), and only then in relation to a hovercraft which has applied for, holds, or has held a safety certificate, or in relation to hovercraft and hoverports. In the case of article 16 (premises etc.) and 25 (hoverports) the power is only exercisable “at all reasonable times”. Article 28 is in essence an emergency power to detain unsafe hovercraft, and it would not be appropriate for an “at all reasonable times” condition to apply.

Given the safety critical need to make spot checks on the maintenance of hovercraft and their equipment, and the clear need to be able to act swiftly to prevent unsafe operation, it is not considered that a requirement to obtain a warrant or to give notice would be appropriate.

13. Harbours, Docks and Piers Clauses Act 1847, sections 34, 44, 45, 56 to 58, 65 and 72

The Harbours, Docks and Piers Clauses Act 1847⁹⁹ provides a set of standard clauses which harbour authorities etc. may incorporate into a special or local Act relating to their harbour or port. Not all authorities incorporate some or all of the clauses, and some draft their own provisions. Where the clauses are not incorporated into local legislation, they have no application. There are more than 200 statutory harbour authorities with their own individual sets of legislation, whether local Acts or Orders.

With the exception of section 56, which applies to wreck, the powers are available in respect of any “vessel” which is defined as including a “ship, boat, lighter, and craft of every kind, and whether navigated by steam or otherwise”. This may include a vessel which is also used as a private dwelling.

Section 34 enables the collector of rates to enter a vessel to check that the Master has supplied the correct information about the dimension of the vessel and the cargo it is carrying. This enables the correct harbour dues to be charged. The collector of rates may enter the vessel either alone or with other persons.

⁹⁹ 1847 c.27.

The power is needed to enable the collection of rates to be based on accurate information about the size of a vessel and its cargo, and to tackle fraudulent or evasive behaviour. The action required is usually immediate to minimise further disruptive events. Evidence from the harbour authorities suggest that these powers are used between one and ten times a year.

Section 44 enables the collector of rates to enter a vessel where rates (based on tonnage) are unpaid and to seize the ship and anything on it, either until the debt is satisfied or, if not satisfied, for sale.

Section 45 enables the collector of rates to enter a vessel where rates in respect of goods are unpaid and to seize goods, either until the debt is satisfied or, if not satisfied, for sale. This is similar to the power in section 44 (see above).

The harbour authorities which responded to the consultation on sections 44 and 45 said that the powers were used infrequently, but were necessary both as an effective deterrent and, where necessary, as an enforcement tool against the non-payment of rates. Whilst it may be possible to take enforcement action through the civil courts this could be costly and time consuming, in particular as offenders may depart with their vessels at short notice and be difficult to track down, in particular when travelling overseas.

Section 56 enables the harbour master to remove wrecks¹⁰⁰ and other obstructions to navigation. Expenses incurred in so doing are to be repaid by the owner of the wreck. The harbour master may sell the wreck and recoup expenses from the proceeds of sale. The power does not exclude wrecks which previously were private dwellings, although these would by definition have ceased to be occupied.

Harbour authorities reported that these powers are used very occasionally but are still necessary to ensure safe operation of a port and to deal with potential obstructions. They also reported that these powers are only used in the absence of the owner or in the absence of consent. The powers are used as a last resort and usually only when the owner refuses to accept responsibility.

Section 57 enables the harbour master to remove vessels which have been left or are neglected and which are unfit for service. Expenses incurred in so doing are the responsibility of the owner of the vessel. The harbour master may sell the vessel and recoup expenses from the proceeds of sale.

The powers in sections 56 and 57 are similar to that contained in section 252 of the Merchant Shipping Act 1995¹⁰¹, which has general application throughout the United Kingdom, and the Department considered whether they could be repealed and replaced by section 252 of the Merchant Shipping Act 1995. The Department concluded that, despite the similarities, section 252 is more limited in its application and does not cover the same ground as the provisions in the 1847 Act.

¹⁰⁰ The powers apply in respect of wreck or other obstruction to the harbour, dock or pier (or its approaches) and to any floating timber which hinders navigation.

¹⁰¹ Ibid.

Section 58 applies where the Master of a vessel has failed to follow the directions of the Harbour Master in mooring a vessel, or if there is no one on board to follow the directions of the Harbour Master. This includes the power for the Harbour Master to cut the vessel free and move it himself if necessary, provided he puts enough people on board the vessel to protect it.

Section 65 enables the harbour master to move vessels where the Master of the vessel cannot be found, or if he neglects or refuses to do so as directed by the Harbour Master. The owner is liable for expenses incurred. If the move arises from any repairs to the harbour, dock or pier the Harbour Master is required to give three days' notice to 'collector and comptroller of the Customs of the district' and to put up appropriate notices.

Vessels which are private dwellings are not excluded from the application of the powers in sections 58 and 65 (although they could be so excluded in local Acts). There is no similar power which has general application.

Section 72 allows a harbour master to enter a vessel within the harbour or dock, or near the pier, to search for a suspected fire or light in a vessel and to extinguish it. It was drafted at a time when wooden sailing ships and their cargos presented a significant fire risk, and enables a harbour master to take appropriate action before a fire takes hold. With better fire prevention measures now in place and a reduction in the number of wooden vessels the power is used less frequently, but is still required in respect of small unattended vessels and to ensure general harbour safety. It is estimated to be used about three times a year.

This is an emergency power and it would not therefore be appropriate to make access to any vessel, including private dwellings, subject to obtaining owner consent or a warrant. It is also intended to be a preventative power, enabling the Harbour Master to take appropriate action to stop a fire. The harbour master may also be able to act more quickly to prevent a fire than waiting for the emergency services to arrive. Such action is of benefit both to the owner of the vessel, and to users of the harbour in general.

It is proposed that all these powers be retained as they are and that the Code of Practice to be issued under the Protection of Freedoms Act 2012¹⁰² be incorporated into Departmental guidance applying to harbour authorities. The Code of Practice will also be promoted via industry associations such as the UK Major Ports Group, British Ports Association and the UK Harbour Masters Association.

The Code of Practice incorporates every relevant safeguard that should or could be applied. Many harbour authorities already follow the spirit of the Code to varying degrees. Harbour authorities vary in size and operations, so promoting the Code would give harbour authorities a range of safeguards to apply, dependent on their individual operations and ensure there is consistency amongst harbour authorities.

The powers are not normally used on private dwellings, for example houseboats. Houseboats require a residential mooring licence and a contractual agreement with

¹⁰² 2012 c.9.

the landlord of the mooring which can vary from harbour to harbour, and will include a right of reasonable entry for the landlord. Therefore, it would be impractical to add a warrant for entry into a private dwelling as this may conflict with the provisions set out in the licence and contract. In any event, the need to obtain a warrant is opposed by stakeholders because of the delay caused and the increase in workload and costs that would be passed on to port users. Further, it is believed that the number of harbour authorities with houseboats is relatively small.

The Department proposes to retain these provisions un-amended.

Railways

14. Railways Clauses Consolidation Act 1845, sections 30 and 32

The purpose of the Railways Clauses Consolidation Act 1845¹⁰³ (“the 1845 Act”) is to set out provisions to be incorporated into Acts of Parliament or other legislation for the construction of railways, except where specifically varied or excluded. It provided consistency across the various Acts which were being drafted for the construction of new railways. It is still used today; for example, sections 30 and 32 were incorporated into the Crossrail Act 2008¹⁰⁴ (see Schedule 11, paragraph 3(2)) and section 30 is proposed for incorporation into the High Speed Rail (London-West Midlands) Bill. They may also be included in railway orders made under the Transport and Works Act 1992¹⁰⁵, although to date this has not been done. The section is not automatically included into railway acts, but the necessity for it considered on a case-by-case basis; as can be seen by the decision to only include section 30 (and not section 32) in the High Speed Rail (London-West Midlands) Bill.

The sections do not in and of themselves authorise entry; it is only when they are incorporated into another piece of legislation that the powers are active. Where this is an Act of Parliament (such as the Crossrail Act 2008), Parliament is afforded the opportunity to reconsider the necessity and extent of the powers (and potentially modify it where appropriate) as applicable to the particular development.

Section 30 enables the railway company (sometimes referred to as the nominated undertaker appointed by the Secretary of State) to enter upon and use a private road which is no more than 500 yards from the centre of the railway under construction. The power is only available during the construction stage, and applies only to a road which is “gravelled or formed with stones or other hard materials”. The power does not apply to “an avenue or a planted or ornamental road, or an approach to a mansion house”. The power does not extend to dwellings or other buildings.

¹⁰³ 1845 c.20.

¹⁰⁴ 2008 c.18.

¹⁰⁵ 1992 c.42.

The nominated undertaker must give three weeks written notice to the owners and occupiers of their intention to enter and use the road, and state the time and purpose of occupation. Compensation must be paid to the owners and, if the sum cannot be agreed, it would be determined by the Upper Tribunal (Lands Chamber).

Section 31 of the 1845 Act, where incorporated, enables owners and occupiers of such land to object to a proposal to enter and use a road, provided they do so within ten days of service of the notice. The grounds for an objection are that other roads which the company is authorised to use, or public roads, would be more suitable. The Act enables a court to determine such objections and order other lands to be used.

Section 32 enables the railway company (sometimes referred to as the nominated undertaker appointed by the Secretary of State) to enter lands not more than 200 yards from the centre of the railway (unless a different distance is stated in the Act) and to occupy the lands for as long as necessary for the construction or repair of that part of the railway (or for connected accommodation works). The specified purposes for such occupation are taking earth or soil, depositing spoil, obtaining materials or constructing roads. The power enables the company to dig up and take out of the land certain materials such as clay, stone, gravel or sand, and to erect temporary buildings.

The power is only available during the construction stage of the railway, and specifically excludes access to “a garden, orchard or plantation attached to or belonging to a house ... [or] a park, planted walk avenue, or ground ornamentally planted”. The land used must not be nearer than either the distance prescribed in the Act, or 500 yards from, the “mansion house” of the owner of the land. The power does not extend to dwellings or other buildings.

Provisions specified in section 33 of the 1845 Act require three weeks’ notice to be given to the owners and occupiers in cases where land is required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, other than in the case of an accident to the railway which requires immediate action. Where the land is required for any other purpose, 10 days’ notice must be given, other than in an emergency when notice is not required. The right of the owner or occupier to require the company to purchase the land or pay compensation must be preserved.

Section 35 of the 1845 Act allows owners to object to the taking of the land or entry with such objections, and any dispute in relation to the purchase price or value of compensation, to be judicially determined.

Crossrail Limited, the nominated undertaker with the authority to utilise this power as incorporated into the Crossrail Act 2008, has advised that it has only relied on the section 30 power on one occasion and has not used section 32 to date.

The nature of these powers is very restricted, both in duration and because they do not apply to dwellings or other buildings. Specifically, the powers can only be used for construction of new railways, and once the construction is complete the powers lapse. Safeguards are already in place in terms of notice, objection and judicial determination, and the payment of compensation. Furthermore, the application of the powers could be restricted or modified by the legislation which incorporates it, if

thought desirable, or excluded entirely. Without these sections contained in the 1845 Act, future Acts for the construction of railways would have to develop their own powers to give the desired outcomes. Retaining the current powers, which are known and understood, provides a consistent, precedent-backed formulation. The Department therefore proposes to retain the provisions un-amended.

15. Transport and Works Act 1992, section 30

Part 2 of the Transport and Works Act 1992¹⁰⁶ is concerned with the safety of railway and tramway transport systems and Chapter 1 makes provision for offences involving drink or drugs and under section 27 it is an offence to work on a transport system if unfit through drink or drugs or if the proportion of alcohol in the body exceeds the prescribed limit.

Under section 29 a police constable may require a person to take a breath test where the constable reasonably suspects that person to be or have been working on the transport system and have alcohol in their body or where a transport system accident has occurred and the constable reasonably suspects the person to have been working on that system (in a maintenance capacity or one involving control of vehicle movement) and that something they did or did not do may have caused the accident.

Section 30(2) allows a police constable to arrest a person who has failed a breath test under section 29 or who has failed to take a breath test under that section and whom the constable reasonable suspects to have alcohol in their body.

Where there has been a transport system accident which a constable reasonably suspects involves the death of another person, section 30(4) allows the constable to enter any place, using force if need be, to require a person to take a breath test under section 29. The section also allows a police constable to enter any place, again with force if necessary, to arrest a person who has failed a breath test under section 29 or who has failed to take a breath test under that section and whom the constable reasonably suspects to have alcohol in their body.

A power of entry is needed to ensure that, when there has been an accident or where a transport system worker suspected of being under the influence of drink or drugs has failed to take a breath test, the police acquire a specimen of breath as soon as possible since the test can be used to determine whether an offence under section 27 has been committed and over time the alcohol is eliminated from the body. Delays in testing can therefore compromise a potential prosecution.

A power of entry is also needed to be able to detain as soon as possible a transport system worker who has failed a blood test since it is an offence under section 27 for such person to have alcohol in their body above the prescribed limit and further evidential specimens would need to be provided.

¹⁰⁶ Ibid.

The absence of this power or the exclusion of dwellings from its ambit may make it impossible to ensure that specimens for a breath test are obtained from transport system workers within a reasonable period of time and would make it difficult to arrest workers who have failed a breath test or refused to provide a specimen. The safeguards of providing reasonable notice or obtaining a warrant before exercising the power of entry could compromise a prosecution as delay in taking a breath test will affect the result. Similar considerations apply where a person has failed a breath test as they need to be detained without delay so as to provide further evidential specimens as soon as possible. Accordingly, it is proposed to retain the power with no additional safeguards.

16. Transport and Works Act 1992, section 53

Section 53 of the Transport and Works Act 1992 provides three rights of entry for the operator of a railway or tramway which is crossed by a private road or path to enter land for the purposes of placing, inspecting or maintaining signs and barriers on or near the road or path.

Section 52(1) of the Transport and Works Act 1992 enables the operator of a railway or tramway which is crossed by a private road or path to place signs or barriers on that road or path near the crossing. The signs or barriers must be as prescribed in regulations or authorised by the Secretary of State. The Secretary of State may also direct the operator to place signs or barriers in any place (section 52(2)).

Section 53 provides that the operator must not enter private land to exercise the powers under section 52(1) unless he has the consent of every owner of the land, or entry has been authorised by the Secretary of State under section 53(4). If, after making reasonable efforts, the operator has been unable to obtain the consent of all owners of the land he must serve them with a notice containing details of the proposals and stating that the matter will be referred to the Secretary of State for a decision. A person served with such a notice may make written representations to the Secretary of State within 42 days of service of the notice. The Secretary of State may authorise the application (with or without modifications) or refuse it. Authorisation may be made subject to conditions such as the payment of compensation by the operator. Any dispute as to the payment of compensation is subject to determination by the Upper Tribunal (Lands Chamber).

Section 53(7) enables the operator of a railway or tramway to enter land without the consent of the owners to do anything necessary in order to comply with directions given by the Secretary of State under section 52(2) or to maintain a crossing or barrier which has been lawfully placed on the land.

Section 53(8) provides default powers for the Secretary of State to enter land without the consent of the owners where the operator of the railway or tramway has failed to carry out such work (see section 54(1)).

In the last 12 months these powers of entry have been used in excess of 5,000 times to inspect and maintain signs and barriers.

Network Rail is under a statutory obligation to construct and operate the railway system safely and efficiently¹⁰⁷. These powers are therefore necessary to ensure that adequate warning signs and barriers are installed and maintained in places where a railway or tramway crosses a private road or path. The powers are essential for enabling this obligation to be satisfied, and for ensuring the safety of both those who use the road and paths, and those who work or travel on the railway. Without adequate warning signs and barriers people may be unaware of the presence of the railway, or how to cross the line, potentially causing injury or death.

For the most part signs and barriers are installed with the consent of the owners of the land. But where such consent cannot be obtained, or is not forthcoming, it is necessary to use the power of entry. This power is subject to obtaining the consent of the Secretary of State, and landowners have an opportunity to make written representations. Consent is not required where the operator is complying with directions given by the Secretary of State, or to maintain barriers and signs which have been lawfully installed.

Although the powers do not exclude private dwellings, the Department cannot envisage a situation where it would be necessary for the operator to enter a private dwelling to install a sign or barrier and is not aware that this has ever been necessary.

The power to enter land to install a crossing or barrier is already subject to the operator either having to obtain the landowner's consent, or act in accordance with directions or a determination made by the Secretary of State. The Department believes this provides adequate safeguards for landowners and that it is not necessary to introduce a requirement to obtain a warrant. This could prove burdensome and costly for the operator, and may potentially lead to a delay in installing essential signs or barriers, thus causing risk to life.

The Department considered whether it would be appropriate to introduce a notice requirement before entering private land to maintain crossings or barriers but has concluded this would not be appropriate. Such a requirement would increase the administrative and financial burden on the crossing operator, particularly given how often this power is used, and could increase the risks for users of private crossings arising from delays in maintenance as well as potential implications for the safe operation of services on the network. Consent of the landowner is needed for any entry which does not relate to maintenance of a sign or barrier that has already been placed so the landowner will have originally consented to the placing of the barriers and the signs. Where the landowner has withheld consent a comprehensive process is set out in section 53 for the Secretary of State to consider whether the crossing operator should be authorised to enter the land. Also, section 55 of the Transport and Works Act 1992 makes it an offence for a person to fail to comply with any requirement, restriction or prohibition conveyed by a crossing sign and it is therefore very important that the signs that are placed on or near level crossings on private roads or paths are properly maintained. The fact that a criminal sanction has been included in the

¹⁰⁷ See section 117 of the Railways Act 1993, which applies Part 1 of the Health and Safety at Work etc. Act 1974. Obligations also arise under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599) which implement the relevant provisions of the European Railway Safety Directive (2004/49/EC).

legislation highlights the importance of such signs and barriers to warn users of the crossing of the dangers and to save lives.

The Department therefore proposes to retain these powers without any additional safeguards.

17. Channel Tunnel (Safety) Order 2007, article 4

The Channel Tunnel (Safety) Order 2007¹⁰⁸ (“the Order”) brings into effect, for the Channel Tunnel, Directive 2004/49/EC of the European Parliament and of the Council of 29th April 2004 (“the Railway Safety Directive”)¹⁰⁹, as amended. It does so by giving the force of law to a Regulation transposing that Directive made on 24th January 2007, and amended on 6th February 2013, by the Channel Tunnel Intergovernmental Commission (“IGC”), under Article 10(3) (e) of the Treaty of Canterbury of 1986). The text of the Regulation is set out in the Schedule to the Order.

Article 4 of the Order permits an inspector from the Office of Rail Regulation (“ORR”) to enter premises relating to the Channel Tunnel for the purpose of enforcing a number of provisions of the Order, by applying to the Tunnel section 20 of the Health and Safety at Work etc. Act 1974¹¹⁰.

Given the potential for loss of life and significant damage to property, effective powers of enforcement are required, including the power to conduct inspections (which may act as a deterrent even when it is not exercised). The liberalisation of international rail passenger traffic, by potentially increasing the number of operators, and increasing the competitive pressures on these, makes this even more important. The authorities responsible must be able to act quickly where necessary.

The ORR is an independent regulator.

This power is exercised approximately ten times each year (in 2012 the power was used seven times). It is used in a targeted and proportionate way in accordance with ORR’s health and safety enforcement policy statement¹¹¹ and the Health and Safety Executive’s Enforcement Management Model¹¹² (which ORR has adopted).

Inspectors often have to use their power to enter in conjunction with their other powers (order the premises to be left undisturbed, take samples, order dangerous articles and equipment to be dismantled, take possession of these, ask questions,

¹⁰⁸ S.I. 2007/3531.

¹⁰⁹ OJ L164. 30.4.2004 p.44.

¹¹⁰ 1974 c.37.

¹¹¹ See <http://webarchive.nationalarchives.gov.uk/20121217104016/http://www.rail-reg.gov.uk/upload/pdf/hswa-enforcement-policy-statement-020810.pdf>.

¹¹² See <http://www.hse.gov.uk/enforce/emm.pdf>.

take copies of documents, require assistance in connection with his or her investigation).

In practice, inspections are normally arranged in advance and the compulsory powers of entry are only used as a last resort. Inspections are evidence based and used routinely to ensure the safe operation of the Channel Tunnel and its infrastructure.

In practical terms, it is very unlikely that the power would be applied to dwellings. However, if it happened to be necessary to enter a dwelling for the purposes of carrying out any of ORR's relevant functions, it would be necessary for inspectors to have quick access to these, as much as they need quick access to other premises.

This power has been in place on the railway network since 1993, it is well understood by all duty holders (largely train operators and infrastructure managers).

The power is subject to a number of safeguards. Inspectors must produce their authority on request and the power can only be used at "reasonable times". There is also a requirement to consult before ordering the dismantling of equipment and to give notice before taking possession of items. Answers to any questions asked by an inspector cannot be used against in court against the person giving them. The power to obtain information cannot be used to obtain information subject to legal professional privilege.

The Department believes that this power is entirely appropriate and proportionate, given the potential for loss of life should failures in the railway safety regime not be identified and rectified as soon as possible, the need to maintain consistency between the provisions in place for the Channel Tunnel and the rest of the rail network in Great Britain, the existence of safeguards and the fact that it is conferred on an independent regulator.

The Department therefore proposes to retain these powers without any additional safeguards.

Vehicles, etc.

The following seven powers are used as a part of a suite of entry powers¹¹³ under different legislation. They affect business and organisations operating commercial vehicles (HGV lorries, buses and coaches) and are confined to the operation of these vehicles.

Effective enforcement of core regulation in the commercial sector is vital to maintain the UK's excellent road safety record. The purpose of the powers is to support road

¹¹³ s68 Road Traffic Act 1968, s99 and s99(ZB)Transport Act 1968, s40 Goods Vehicle (Licensing of Operators) Act 1995, Regulation 5(2)(b) of the Carriage of Goods (Prohibition of Discrimination) Regulations 1977, Regulations 6(6)(2) and 18 of the Road Transport (International Passenger Services) Regulations 1984 and Paragraph 2(2)(a) of Schedule 2 of the Road Transport (Working Time) Regulations 2005

safety in the commercial transport sector. This is achieved by ensuring enforcement officers are able to check that vehicles are roadworthy, maintenance services are fit for purpose, recording equipment/records are not tampered with and that drivers are not driving or working excessively long hours.

DVSA introduced a risk based approach to compliance and enforcement many years ago¹¹⁴, in line with the Hampton Principles. This ensures that valuable resources are used to target the most serious offenders. The powers of entry complement this system and are an important tool used during investigative checks for compliance and to validate information during the investigation. For example, tachograph charts collected by DVSA examiners will often demonstrate how long a driver has been driving, it will show his working time and rest time and the mileage on the vehicle odometer will verify the distance that corroborates the driving hours. Similarly, other entry powers, such as the Road Transport (International Passenger Services) Regulations 1984, allow DVSA examiners entry powers in order to examine documents that demonstrate commercial operation. The powers to enter premises and examine goods or passenger vehicles (s68 Road Traffic Act) and facilities (section 40 Goods Vehicle licensing Regulations 1995) are used in a similar way.

The UK has a duty to abide by European law. Article 5 (a) of Regulation (EC) 1071/2009¹¹⁵ establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC requires that an operator shall have premises in which it keeps its core documents, in particular its documents *'containing data relating to driving time and rest and any other document to which the competent authority **must have access** [our emphasis] in order to verify compliance with conditions laid down in this Regulation. Member states may require that establishments on their territory also have other documents available at their premises at any time'*.

Directive 2006/22/EC¹¹⁶ on minimum conditions for the implementation of Council Regulations (EEC) No. 3820/85 and (EEC) 3921/85 concerning social legislation relating to road transport activities and repealing Regulation 88/599/EEC requires that ... *'appropriate legal powers should be available to all enforcement units to enable them to carry out their duties effectively'*. Article 2 requires checks to take place ... *'both at the roadside and at premises of undertakings of all transport categories'*. More specifically, *'From 1 January 2008 not less than 30 % of the total number of the working days checked shall be checked at the roadside and not less than 50 % shall be checked at the premises of undertakings'*.

These powers only affect commercial vehicle operations. Operators are required to specify the address where key records and documents are kept as a condition of obtaining an operator's licence. Operators are also aware that the records and documents are subject to examination. Records are generally retained in secure and

¹¹⁴ <https://www.gov.uk/operator-compliance-risk-score>

¹¹⁵ OJ L 300, 14.11.2009, p.51.

¹¹⁶ OJ L 102, 11.4.2006, p.35.

safe locations which can be domestic premises. The loss of entry powers could seriously prejudice the gathering of evidence leading to a collapse of the prosecution of offences where paper records and tachograph charts are prime evidence. Driving commercial vehicles whilst tired as a result of exceeding duty time is a major road safety threat with approximately 40% of sleep related accidents involving commercial vehicles.

The Department is concerned that effective road safety enforcement in the commercial sector will be seriously undermined by the withdrawal of the powers of entry. The Department has not received any concerns from the haulage or passenger industry about the powers of entry. The Department would expect that there will be serious concerns raised by the road haulage sector in particular as the removal of the powers will be seen as weakening efforts in dealing with serially non-compliant operators. As operators are required to specify the address where key records and documents are kept, operators are already aware that if that address is a domestic address, the premises are subject to the powers of entry.

It should be noted that the enforcement by authorities covers major areas of noncompliance by operators, including instances of deliberate fraud and premeditated rule breaking. Requiring a warrant for these powers, because they form a package of checks, could be counter-productive since it would have alerted the business, especially the serially non compliant, being investigated who may then go on to destroy, remove or tamper with important evidence.

The cost of enforcement is borne by the industry through licence fees. Additional costs caused by the need to obtain a warrant for some premises would effectively be an additional cost burden to industry.

DVSA produce internal guidelines on powers of entry known as Operating Instructions which provide guidance to DVSA examiners in the event of confrontation as a result of a refusal of entry. This guidance seeks to ensure the safety of examiners following fatalities in exercising powers of entry in similar circumstances. Accordingly, DVSA examiners will always obtain the support of a police officer if peaceful entry is not possible.

In addition, in the event of forced entry DVSA have a comprehensive appeals and complaints procedure that applies in all cases. DVSA advertise widely within industry and on the Gov.UK web site the procedures for dealing with issues related to entry. DVSA also produce literature that advises members of the public of the limits and range of its powers, including powers of entry¹¹⁷. This provides operators of commercial vehicles with avenues for redress.

Each of the powers has been considered individually. In each case the Department would be concerned that any change to these powers that could result in examiners

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193518/Goods_Vehicle_Operator_Licensing_Guide.pdf

being refused entry, would risk the destruction of evidence. Without a power to enter, there would be a significant risk to road safety.

18. Road Traffic Act 1988 (substituted by the RTA 1991) Part II, section 68

The power in section 68 of the Road Traffic Act 1988 ¹¹⁸permits DVSA examiners entry powers in order to inspect certain classes of goods vehicles, public service vehicles and motor vehicles which are not public service vehicles but are adapted to carry more than eight passengers.

Generally, although not limited to, the powers are exercised by DVSA examiners in the course of their normal daily duties. As well as roadworthiness checks on vehicles DVSA examiners carry out visits to premises where these vehicles are located to ensure roadworthiness compliance. Some vehicles, particularly public service vehicles, are more likely to be inspected at premises as the burden of removing vehicles that are in use with passengers on board, causes some distress.

The power to enter is available at any time which is reasonable to the circumstances, which in practice means working hours of between 6 a.m. and 8 p.m. and the examiner must have reason to believe that a vehicle is operated on an international service. Should documents need to be produced then an examiner may have to produce his authority to do so. There are criminal penalties for breach of the requirements.

DVSA conduct visits on premises in order to carry out compliance roadworthiness inspections and in 2012, 4490 visits were made. For the period 5 years before 2012, 38,192 visits were made.

Primary road safety function is achieved by the examination and the removal from service of vehicles found to be unfit for service. In each year DVSA issue around 13,000 prohibitions to commercial vehicles and some of these are issued where vehicles are parked.

Private dwellings are not excluded from the powers of entry and the power of entry should be retained. Vehicles engaged in passenger transport operation (national or international) have no restrictions imposed to insist that they are parked at business premises and can be routinely parked at residential or private domestic premises (in particular minibuses), therefore the powers become critical for the safe operation of international passenger transport.

¹¹⁸ 1988 c.52.

19. Transport Act 1968, section 99

Section 99 of the Transport Act 1968¹¹⁹ contains a power for an officer to enter a vehicle at any time to inspect it, and any recording equipment in it, and to inspect and copy records subject to Part VI of the Act (Drivers' hours). It also contains a power for an officer to enter any premises, at any reasonable time, where there is reason to believe such a vehicle or records are kept.

These powers of entry enable the inspection of vehicles and records to ensure compliance with either the domestic or European Union requirements on Drivers' Hours (whichever is applicable in the case). The powers are available to examiners appointed by the Secretary of State under section 66A of the Road Traffic Act 1988 and any person authorised for these purposes by a traffic commissioner. In practice, these are examiners employed by the DVSA. The power to enter a vehicle is available at any time, whereas the power to enter premises is restricted to any reasonable time, which in practice means working hours of between 06:00 and 20:00. Identification must be produced if it is requested.

The powers were used 3,615 times in the 12 months up until late 2012, and 23,412 times in the five years up until then. The powers are fundamental in facilitating enforcement of the drivers' hours requirements. Failure to enforce these requirements could have a significant impact on road safety by increasing the number of tired drivers, leading to more accidents and potentially increasing the numbers of injuries and fatalities on the roads. The powers to enter vehicles and premises and to inspect and copy books, registers and documents are a powerful deterrent against breach of the requirements.

Private dwellings are not excluded from the powers of entry, which are available in respect of any place where an examiner has reason to believe that a vehicle to which the requirements apply is kept, or where the records are stored. Commercial vehicles are more likely to be kept at business premises rather than in private dwellings, although records are frequently retained in a person's home.

If evidence was destroyed due to a delay in entry it would compromise road safety as DVSA would fail to catch drivers who drove in excess of their permitted time requirement. Similarly, there is currently a significant deterrent factor, as drivers can lose their livelihoods if they fail to comply with the undertaking given when their licence is issued – this deterrent factor would be significantly diminished if it was easier to destroy evidence.

During 2012/13, DVSA reported 6561 drivers' hours and tachograph records offences resulting in 4205 convictions with an average fine of £197.50 thereby making a significant contribution to road safety. Road Casualties GB provides statistical evidence that fatigue was reported as a contributory factor in around 2% of all

¹¹⁹ 1968 c.73.

accidents and similarly 2% of all HGV accidents¹²⁰. Consequently, any measure that would give a driver prior knowledge of when an investigation is about to be conducted could make it easier for drivers to continue to exceed their duty hours and the threat to road safety to increase.

This power is necessary in the present circumstances where such driver records are kept as hard copies. However, overtime, changes to recording technology will reduce the need for these physical checks to be conducted and therefore, this power of entry may be modified in the future.

20. Transport Act 1968¹²¹, section 99ZB

Section 99ZB of the Transport Act 1968 contains a power to enter any vehicle to which section 97 of the Act applies (Installation and use of recording equipment) and to inspect the vehicle and any recording equipment on it (including records, data and documents). This also includes a power to enter any premises where an officer has reason to believe a vehicle, data or documentation is kept.

These powers are very similar to those in section 99 of the Act, except that they only apply to vehicles subject to the Community Recording Equipment Regulation and relate specifically to recording equipment. This is defined as Council Regulation (EEC) No 3821/85 (which has now been replaced by Regulation (EC) No 561/2006¹²²) on recording equipment in road transport, as read with the Community Drivers' Hours and Recording Equipment Regulations 2007¹²³. The power to enter a vehicle is available at any time, whereas the power to enter premises is restricted to any reasonable time, in practice between 06:00 and 20:00. Identification must be produced if it is requested.

The powers were used 3,615 times in the twelve months up until late 2012, and 23,412 times in the five years up until then¹²⁴. The powers are fundamental in facilitating enforcement of the drivers' hours requirements. Failure to enforce these requirements, aside from being a breach of EU law, could have a significant impact on road safety by potentially increasing the number of tired drivers, leading to more accidents and potentially more injuries and fatalities on the roads. The powers to enter vehicles and

¹²⁰ <https://www.gov.uk/government/statistical-data-sets/ras50-contributory-factors>

¹²¹ 1968 c.73

¹²² Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85; OJ L 102, 11/04/2006, p. 1.

¹²³ S.I. 2007/1819

¹²⁴ These figures include the use of these powers and various other powers which are checked as a package. Accordingly it is not possible to differentiate between which powers were used during visits to premises.

premises and to inspect and copy books, registers and documents are a powerful deterrent against breach of the requirements.

21. Goods Vehicle (Licensing of Operators) Act 1995, section 40

Section 40 of the Goods Vehicle (Licensing of Operators) Act 1995¹²⁵ contains a power to enter any premises of an applicant for an operator's licence or the holder of an operator's licence in order to inspect any facilities on the premises for maintaining the vehicles used under the licence in a fit and serviceable condition.

This power of entry is used in conjunction with other powers¹²⁶ when inspectors visit operator premises to assess the safety of vehicles and the maintenance system. The powers were used 4490 times in the twelve months up until late 2012, and 38,192 times in the five years up until then. Whilst the vast majority of these visits have been without objection by the operator, the underlying power allows DVSA staff to carry out inspection visits in a planned and cost efficient manner.

Visiting operators' premises to ensure that vehicles are maintained in a safe manner is a core objective for DVSA and this power of entry remains both necessary and proportionate. Without this power, the only way of checking vehicle maintenance facilities would be through road side checks however visits to premises provide a far better indication of maintenance facilities because the examiners can check the standard of facilities provided and ensure they are appropriate for the number and type of vehicles. Removing this power could result in a higher likelihood of such vehicles not being properly maintained leading to an increased risk to road safety due to higher numbers of accidents.

This power currently applies to both commercial premises and private dwellings. Whilst the power is mainly used in relation to commercial premises, sometimes it is necessary to enter private dwellings since some private dwellings are nominated by the operator as the operating centre or as the location where documents are kept. The power to enter premises is restricted to any reasonable time, in practice between 06:00 and 20:00.

Requiring a warrant for private dwellings would be problematic since this would not allow for proper enforcement activity at an address nominated by the operator as a location where documents are available for inspection.

¹²⁵ 1995 c.23.

¹²⁶ Section 68 of the Road Traffic Act 1988 relates to a power of entry to inspect **public passenger vehicles and goods vehicles**.

22. The Carriage of Goods (Prohibition of Discrimination) Regulations 1977, regulation 5(2)(b)

Regulation 5(2)(b) of the Carriage of Goods (Prohibition of Discrimination) Regulations 1977¹²⁷ makes provisions for the enforcement in Great Britain of Council Regulation (EEC) No. 11 of 1960¹²⁸, which prohibits discrimination by way of charging different prices or imposing different conditions for the carriage of goods within the EU, depending on the country of origin or of destination of the goods.

The EU Regulation requires a transport document to accompany consignments. It specifies the contents of the document and is the document used to check compliance of operators from other EU States with cabotage rules. The EU Regulation also requires carriers to produce, if required by the Commission, any additional information regarding tariffs and agreements regarding transport rates and conditions. Finally, it requires carriers' forwarding agents, other agents, and some of the providers of services related to the carriage, to provide all information relevant to the services and to the rates and conditions applied, if so required by their Government or the Commission. Article 14 of the EU Regulation makes Member States responsible for compliance with the above.

Regulation 5(2)(b) of the Carriage of Goods (Prohibition of Discrimination) Regulations 1977 applies to the transport of goods by road and meets the requirements of the EU Regulation. Those provisions enable vehicle examiners appointed under the Road Traffic Act 1972¹²⁹ to enter premises occupied by persons carrying out the activities above to inspect and copy a variety of documents.

Checks by DVSA to enforce the EU Regulation are conducted in tandem with drivers' hours enforcement activities, and are not accounted for separately. The total number of enforcement visits for drivers' hours and discrimination enforcement is around 3000.

It was considered whether other areas of legislation where DVSA exercise similar powers could be used to conduct these checks. Section 68 of the Road Traffic Act 1988 provides powers to inspect vehicles but the powers do not extend to the inspection of documents. Similarly, section 99 of the Transport Act 1968 makes provision for inspection of certain documents but makes no reference to, for example, consignment notes as detailed in regulation 5(2)(b). Accordingly, without regulation 5(2)(b) there would be no legal basis to enter premises to check these specific documents for compliance.

The Department does not propose to amend this regulation.

¹²⁷ S.I. 1977/276.

¹²⁸ EEC Council: Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79 (3) of the Treaty establishing the European Economic Community; OJ 52, 16/08/1960, p. 1121.

¹²⁹ 1988 c. 52.

23. The Road Transport (International Passenger Services) Regulations 1984, regulation 6[6](2)

Regulation 6[6](2) of the Road Transport (International Passenger Services) Regulations 1984¹³⁰ grants examiners powers of entry on any premises where vehicles used for the international carriage of passengers by road are kept. There is another power of entry contained in regulation 18(5) which grants examiners entry powers on any premises of any holder of a withdrawn authorisation. These powers permit DVSA examiners (certifying officers or public service vehicle examiners) entry powers in order to examine documents relating to international passenger services operated by public service vehicle operators. A person in breach of the requirements of regulation 6[6](2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The power to enter is available at any time which is reasonable in the circumstances, in practice between 06:00 and 20:00. In addition, the examiner must have reason to believe that there is a vehicle which is operated on an international service. Identification must be produced by examiners if requested.

DVSA conducts visits on premises for a variety of enforcement reasons, including examination of tachograph devices, examination of records and roadworthiness inspections. However DVSA does not differentiate between visits made solely to examine international passenger transport documentation. This is one of a package of checks¹³¹ made when DVSA examiners enter premises and often the examiner does not know what he will find before he enters the premises and reviews the documents. Accordingly, requiring a warrant for any one of these checks would be counter-productive since it would alert the operators being investigated who may then go on to destroy evidence when the examiner returns with the warrant. In 2012, DVSA made around 3000 visits to operators' premises and around 23,000 visits in the last 5 years before 2012.

These powers of entry are necessary. If they were removed, there would likely be an increase in the number of people who choose not to abide by the rules. The control document, waybill and technical reports are necessary documents to ensure safe transportation of passengers on international occasional passenger transport by road and these are filed in accordance with international legislation contained in Commission Regulation 1016/68¹³².

¹³⁰ S.I. 1984/748.

¹³¹ See also powers of entry for section 99 and 99ZB Transport Act 1968 and Regulation 5(2) of the Carriage of Goods (Prohibition of Discrimination) Regulations 1977. Together, these form a package of measures when the DVSA enter premises.

¹³² Regulation (EEC) No 1016/68 of the Commission of 9 July 1968 prescribing the model control documents referred to in Articles 6 and 9 of Council Regulation No 117/66/EEC; OJ L 173, 22/07/1968, p. 8.

Moreover, these powers of entry are necessary to prevent a breach of EU obligations. EC Regulation 1071/2009¹³³ requires that transport operator's records are checked at the operator's premises if appropriate (Article 6(2)(a)).

The collection of international passenger service authorisations where the Secretary of State has withdrawn the authorisation (regulation 18(5)), is an essential part of transport compliance where those engaged in this work could use these documents to fraudulently conduct transport operations. Similarly, the absence of control documents and other documents would have a negative impact on international passenger transport operations. The powers to enter premises and to inspect and copy books, registers and documents and remove the withdrawn authorisations are a powerful deterrent against breach of the requirements.

Private dwellings are not excluded from these powers of entry albeit these operations are relatively small in number. Nevertheless, the power of entry should be retained as vehicles used for passenger transport operation (national or international) have no restrictions imposed on them to ensure that they are only parked at premises used as a business and are in many cases (particularly minibuses, for example) parked at residential or private domestic premises. Accordingly, the powers are critical for the safe operation of international passenger transport and should therefore continue to apply to private dwellings.

Without a power to enter, there would be a significant risk of evidence being destroyed resulting in a compromise to road safety where drivers exceed their permitted time requirements. Accordingly, requiring a warrant for private dwellings would be problematic.

24. Road Transport (Working Time) Regulations 2005, regulation 16(2) with paragraph 2(2) of Schedule 2

Regulation 16(2) of the Road transport (Working Time) Regulations 2005¹³⁴ with paragraph 2(2) of Schedule 2 allows an inspector appointed by the Secretary of State, on production of his instrument of appointment or a duly authenticated copy, to exercise those powers conferred upon him by that instrument. Those powers may include the power, at any reasonable time (or in a situation which in his opinion may be dangerous, at any time), to enter any premises which he has reason to believe it is necessary for him to enter for the purpose of carrying into effect those regulations. The inspector may take with him a constable if he has reasonable cause to believe that there may be any serious obstruction in the execution of his duty.

¹³³ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC; OJ L 300, 14/11/2009, p. 51.

¹³⁴ S.I. 2005/639.

It is crucial that this power of entry be retained in order to preserve the ability of the DVSA to carry out its enforcement functions under these regulations. Commercial vehicle drivers are required to use tachographs to record their driving hours. Tachographs are also used to record the drivers working time and it is necessary for an inspector to enter the premises where vehicles are kept in order to inspect tachographs and other records in order to check for compliance with the working time regulations. As tachograph records are easily portable and could be removed to the haulier's dwelling to avoid inspection, it is also important that the existing power to enter dwellings remains.

Checks by DVSA to enforce these regulations are part of a package of checks made when DVSA examiners enter premises (which also includes, among other things, tachograph recording equipment condition enforcement activities).

The powers were used 3050 times in 2012, and 20,213 times in the five years up to 2012. The powers are fundamental in facilitating enforcement of the working time regulations. Failure to enforce these regulations could lead to an increase in the number of people who fail to abide by the rules. This could have a negative impact on road safety by increasing the number of tired drivers, leading to more accidents and potentially more injuries and fatalities on the roads. The powers to enter vehicles and premises and to inspect and copy books, registers and documents are a powerful deterrent against breach of the regulations.

Private dwellings are not excluded from the powers of entry, which are available in respect of any place where an examiner has reason to believe that a vehicle to which the requirements apply is kept, or where the records are stored. Commercial vehicles are more likely to be kept at a business premises rather than a private dwelling, although records may well be retained in a person's home; particularly since self-employed drivers were brought in scope of the working time regulations in 2012. In addition, private dwellings include vehicles, therefore any restriction in these powers would have an effect upon DVSA.

Without power to enter, there would be a significant risk of evidence being compromised or destroyed resulting in a compromise to road safety, as drivers could be working longer than their permitted hours.

25. Motor Vehicle (Tests) Regulations 1981, regulation 24

Regulation 24 of the Motor Vehicle (Tests) Regulations 1981¹³⁵ allows a person authorised by the Secretary of State to enter any motor vehicle testing station to inspect the station and testing equipment, watch an examination, check all records and be furnished with information. Those persons authorised are usually DVSA Vehicle Examiners. The provision is limited in that the power can only be exercised during the normal working week, (the usual opening hours of the testing station when vehicles are accepted for examination) and upon production of an examiner's authority.

¹³⁵ S.I.1981/1694.

This power allows the testing of facilities, equipment and records reducing the likelihood that vehicles are not properly tested at all times and helps prevent the issue of fraudulent test certificates, therefore reducing the risk to road safety as a result of mechanical defects.

The power does not specifically exclude private dwellings, although an inspection will usually take place in the business area of the property. Exclusion of entry to a private dwelling may prevent access to records kept in mixed use premises, as is often the case in rural or remote areas.

DVSA are constantly seeking ways to move towards a fully digital MOT system. Existing processes dictate that while in general MOT tests are conducted in a basic digital environment, thereby reducing the potential for fraudulent pass certificates issued, there is still a requirement for a 'fall back' to document issue in the event of IT malfunction. From 2017 onwards, DVSA intend to move towards a new digital platform that provides an MOT process from start to completion that is likely to not require a 'fall back' position. Given the close relationship between MOT and the collection of revenue it is imperative that any system is 100% reliable. We anticipate that we may be able to modify the powers at a later stage.

Currently, an exclusion which required a warrant for access would be over burdensome, costly and disproportionate and could require thousands of applications a year to be made.

In the event of entry DVSA have a comprehensive appeals and complaints procedure that applies in all cases. We advertise widely within Industry and Gov.UK web site our procedures in dealing with issues related to entry¹³⁶. This provides vehicle test station owners with avenues for redress.

Levels of compliance with the scheme are high due to examiners' ability to target sites using these powers. A requirement for consent of the occupier would weaken the overall compliance levels.

It is necessary for these powers of entry to remain in their current form as there is no better method of ensuring standards are maintained and the risk to road safety reduced.

¹³⁶ <https://www.gov.uk/government/organisations/vehicle-and-operator-services-agency/about/complaints-procedure>

26. The Measuring Instruments (Exhaust Gas Analysers) Regulations 2006, regulation 19

The Measuring Instruments (Exhaust Gas Analysers) Regulations 2006¹³⁷ implement Directive 2004/22/EC¹³⁸, known as the Measuring Instruments Directive, which places obligations on Member States to ensure that users of exhaust gas analysis equipment ensure the technical and performance specification is maintained to agreed standards.

Regulation 19 grants powers of entry to persons appointed by the Secretary of State as Enforcement Examiners to implement these obligations. Entry can only be made upon production of that person's credentials and at reasonable times. Reasonable in these circumstances would be in normal working hours from 6 am to 8 pm. The regulation allows the inspection, seizure and detention of any gas analysis equipment and documents and goods related to such equipment and power of entry into any premises where he has reasonable cause to believe there to be an exhaust gas analyser.

The powers of entry specifically exclude premises used only as a private dwelling house, however, if entry is required to any premises, a warrant must be obtained before entry is permitted if admission has been or is likely to be refused or if the giving of notice would defeat the object of entry into the premises.

Further safeguards are that there should be a time limit on the validity of the warrant and the officers empowered to issue the warrant.

A person is guilty of an offence if he wilfully obstructs an enforcement officer in the execution of his functions under these regulations and shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

DVSA conducts checks on sites where exhaust gas analysers are used, namely private sites used for the purposes of statutory periodic technical inspection of vehicles ("MOT Testing"). Part of the MOT testing involves a check for environmental pollution conducted using a compliant exhaust gas analyser machine.

DVSA examiners undertake checks on vehicle testing sites used for MOT testing and the power of entry is an important component in DVSA's ability to discharge its duty to ensure road safety and environmental protection. Other powers exist to ensure that powers of entry are proportionate and allow DVSA examiners to enter vehicle testing stations where measuring equipment is usually kept. In the unlikely event that entry into a private dwelling house is needed, powers already exist within this regulation that safeguard the public and specifically require a warrant.

¹³⁷ S.I.2006/2164.

¹³⁸ Directive 2004/22/EC of the European Parliament and Council of 31 March 2004 on measuring instruments (OJ L 135, 30 April 2004).

As the power of entry specifically identifies a warrant is required in the event of power of entry into a private dwelling, the Department does not propose any changes to this power.

27. Road Traffic Act 1988, section 6E

Section 6E of the Road Traffic Act 1988¹³⁹ enables a constable to enter any place (using reasonable force if necessary) in two circumstances. The first is to require a person to take a preliminary test¹⁴⁰ where a constable suspects that someone has been injured in an accident involving a motor vehicle, and the constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident. The second circumstance is to arrest a person without a warrant following an accident where a constable suspects that someone has been injured and, as the result of a preliminary breath or drug test, the constable reasonably suspects that the proportion of alcohol or of a controlled drug in that person's body exceeds the prescribed limit.

This power is crucial in the enforcement of the drink and drug driving laws. If someone drives away from the scene of an accident the power enables the police to enter any place to require the driver to take a preliminary test. Such tests must be carried out as quickly as possible as the amount of alcohol or drug in the body is reduced over time which could compromise evidence for any subsequent prosecution. Similarly, if a preliminary test is positive, it is necessary to arrest a person as quickly as possible so that further evidential specimens can be obtained, which will be used to determine whether a prosecution should take place. No figures are available on the use of this power but we are advised by the police that it is used frequently where drivers fail to stop after an accident.

Given the seriousness of driving whilst under the influence of drink or drugs, and the need to act quickly to obtain accurate samples to determine whether a prosecution should proceed, the Department is not proposing to introduce any additional safeguards.

28. Vehicles (Crime) Act 2001, section 26

Part 2 of the Vehicles (Crime) Act 2001¹⁴¹ requires businesses which supply number plates (registration plates) to register, make appropriate checks before selling registration plates and keep records in relation to plates sold.

The power of entry in section 26 is to enter the premises of a registered number plate supplier at any reasonable time and there is also power to inspect registration plates and records. The power may be exercised by the police or a person authorised by the

¹³⁹ 1988 c.52.

¹⁴⁰ See sections 6A to 6C of the Road Traffic Act 1988. The tests are used for the purpose of obtaining an indication as to whether the proportion of alcohol or a drug in a person's body is likely to exceed the prescribed limited.

¹⁴¹ 2001 c.3.

Secretary of State (DVLA and/or DVSA enforcement officers) or the relevant local authority (trading standards officers).

The power does not exclude private dwellings but in practice it is not usually used by a single enforcement officer where the registered premises appear to be domestic premises. The person exercising the power must show evidence of their identity and authority if required by, or on behalf of, the owner or occupier of the premises. Entry may not be made by force unless a warrant is obtained and then reasonable force may be used to gain entry. It is an offence punishable by a fine to obstruct an authorised person in the exercise of the power.

The power is to ensure compliance with the regulations and in particular the need to properly record those to whom the business sells registration plates. As the power is specifically to enter to ensure compliance with registration plate supplier requirements the power cannot readily be combined with other powers nor can other powers be relied upon in its place. The power is used regularly by enforcement officers as there are approximately 40,000 premises registered to supply registration plates.

The absence of a power to enter and inspect could lead to abuse and criminal behaviour involving evasion of vehicle excise duty and vehicle insurance requirements and may facilitate the use of vehicles which are not readily traceable to commit other road traffic offences or more serious offences. Accordingly, it is proposed to retain the power with no additional safeguards.

29. Vehicle Excise and Registration Act 1994, Schedule 2A, and

The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, regulations 5 and 9

The Vehicle Excise and Registration Act 1994¹⁴² provides for the registration and licensing of vehicles. Section 29 makes it an offence to keep an unlicensed (untaxed) vehicle (save at the premises of a motor trader or vehicle tester) and Schedule 2A makes provision for the enforcement of section 29 by means of the immobilisation, removal and disposal of untaxed vehicles.

Paragraphs 2(1) and 3(1) of Schedule 2A allow regulations to give authorised officers a power of entry to, respectively, immobilise (or move and immobilise) and remove to impound vehicles which are stationary and which are believed not to be taxed. The power may extend to any place other than places within the curtilage or vicinity of dwellings (houses, flats, mobile homes and house boats).

The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997¹⁴³ give authorised officers the power of entry respectively to

¹⁴² 1994 c.22.

¹⁴³ S.I.1997/2439.

immobilise or move and immobilise (regulation 5) and to remove to impound (regulation 9) untaxed vehicles.

The powers of entry are necessary to ensure the proper collection of vehicle excise duty. Dwellings and associated land are specifically excluded from the power; types of land entered under the power are typically car parks with public access, common land and unadopted roads and untaxed stationary vehicles are normally unattended by the keeper. Accordingly it is proposed to retain the power without any additional safeguards.

30. The Passenger Car (Fuel Consumption and CO₂ Emissions Information) Regulations 2001, regulation 11 and Schedule 5, paragraph 6(2)

The Passenger Car (Fuel Consumption and CO₂ Emissions Information) Regulations 2001¹⁴⁴ implement EU Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO₂ emissions in respect of the marketing of new passenger cars¹⁴⁵. Information on the fuel economy and CO₂ emissions of new passenger cars offered for sale or lease must be made available to consumers at point of sale and in promotional literature, so that consumers can make an informed choice.

The regulations set out requirements for information to be made available to consumers in various formats – labels, posters, a guide – at point of sale, and in advertising and promotional material, by suppliers of and dealers in passenger cars.

Regulation 11 and Schedule 5 contain provisions relating to offences and enforcement.

The power of entry set out in Schedule 5 Part II, paragraph 6(2) allows a duly authorised enforcement officer to enter any premises other than premises used only as a dwelling and to inspect any new passenger car, EC certificate of conformity, fuel economy guide, fuel economy label, poster or display, or any promotional literature or relevant records in order to ascertain if an offence has been committed under the regulations. These documents may be seized if there is reason to believe that they may be required as evidence in proceedings for an offence under the regulations.

Schedule 5 Part II, paragraph 6(4) permits a justice of the peace (or a sheriff in Scotland) to grant a warrant for a duly authorised enforcement officer to enter any premises under certain circumstances. The warrant remains in force for one month.

The power is subject to safeguards. The regulations comply with the requirement for a dwelling to be entered either by consent or under a warrant. In addition:

- an officer must be duly authorised,
- he must identify himself by authority in writing,
- the power is available at all reasonable hours,
- the power does not apply to any premises used only as a dwelling,

¹⁴⁴ S.I. 2001/3523.

¹⁴⁵ OJ L 12, 18.1.2000 p.16.

- the power is available only where an offence is reasonably suspected to have been committed or to ascertain whether an offence has been committed,
- a written notice must be given of any items seized and detained, and
- the notice must explain on what grounds an appeal against detention might be brought.

The Department proposes to retain this power of entry with no additional safeguards.

31. Road Traffic Act 1988, section 165A

The Road Traffic Act 1988¹⁴⁶ gives the police various powers in relation to vehicles including the power to stop them and require the production of documentation regarding them.

Section 165A gives the police a power to seize vehicles driven without the driver being licensed or insured. In order to seize a vehicle the police may enter any premises if there are reasonable grounds to believe the vehicle is there. Private dwelling houses are not within the power but it does extend to garages or other structures occupied with dwelling houses and to land attached to dwelling houses.

If necessary, reasonable force may be used to enter the premises.

The ability of the police to take direct enforcement action against unlicensed or uninsured driving is important for road safety reasons and public policy generally and, in respect of uninsured driving, complements enforcement which relies solely upon records held by the Motor Insurers' Bureau (MIB).

But enforcement in reliance on MIB records does not permit seizure of vehicles which are not on the road or in another public place. So the power under section 165A to enter premises to seize vehicles means that uninsured vehicles which evade 'from the record' enforcement may still be the subject of enforcement by the police provided that such action is taken within 24 hours of the driver of the vehicle either failing to stop when requested to do so or driving off from the place at which enforcement action is being carried out.

As the power does not extend to private dwelling houses the need for entry only by a warrant is considered unnecessary. And the need for a warrant or consent to enter premises could lead to the vehicle no longer being at those premises by the time entry is permitted.

Accordingly, it is proposed to retain the power with no additional safeguards.

32. The Measuring Instruments (Taximeters) Regulations 2006, regulation 19

The Measuring Instruments (Taximeters) Regulations 2006¹⁴⁷ implement the provisions of Directive 2004/22/EC on Measuring Instruments that are applicable to

¹⁴⁶ Ibid.

¹⁴⁷ S.I.2006/2304.

taximeters¹⁴⁸. They specify the technical standards taximeters must comply with and set out the associated regulatory and enforcement regimes. The regulations contain a number of criminal offences for persons who fail to comply with certain specified requirements. They also contain a power of entry at regulation 19(1)(c) – the power, for the purposes of the regulations, for an enforcement officer appointed by the Secretary of State to enter any premises at which he has reasonable cause to believe there to be a taximeter. The power of entry only applies at “reasonable times” and does not extend to premises used only as private dwelling houses.

The regulations also provide, at regulation 19(3), that a justice of the peace may grant an enforcement officer a warrant to enter any premises provided he is satisfied that there are reasonable grounds to believe that any taximeter or relevant document is on the premises or that an offence under the regulations has been, is being or is about to be committed on the premises. Before granting a warrant, the justice of the peace must also be satisfied that certain other criteria apply – namely, that either admission is likely to be refused following notice of intention to seek a warrant being served on the occupier; an application for admission or the giving of notice would defeat the object of entry; there is a case for urgent entry; or the premises are temporarily or permanently unoccupied. A warrant granted under these provisions will remain in force for one month. Although the powers of entry in these regulations have not been used to date, they remain necessary in order to ensure the UK can continue to fully comply with the requirements of Directive 2004/22/EC. Therefore, the Department is not proposing to add any additional safeguards.

¹⁴⁸ OJ L 135, 30.04.2004, p.1.

Annex

Powers to be repealed

Land Powers (Defence) Act 1958, section 9(3)

International Road Haulage Permits Act 1975, section 1

Shipping and Trading Interests (Protection) Act 1995, section 1(3)

Taximeters (EEC Requirements) Regulations 1979, regulation 15

Renewable Transport Fuel Obligations Order 2007, regulation 7(4)(b)

Powers to be retained with additional safeguards

Accidents and Investigation

Merchant Shipping Act 1995, section 259

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, regulation 9

Railways and Transport Safety Act 2003, section 8

Aviation

Aviation and Maritime Security Act 1990, section 48

Civil Aviation Act 1982, section 50

Civil Aviation (Working Time) Regulations 2004, Schedule 2, paragraph 2(2)(a)

Maritime

Merchant Shipping Act 1995, section 220

Aviation and Maritime Security Act 1990, section 36(3)

Railways

Railway Regulation Act 1842, section 14

Railways Clauses Consolidation Act 1845, section 83

Transport Act 1968, section 118(4)

Transport Act 1968, section 118(6)

Channel Tunnel Act 1987, section 17

Railways Act 1993, section 121

Channel Tunnel (Security) Order 1994, article 14

Channel Tunnel (Security) Order 1994, article 15

Channel Tunnel (Security) Order 1994, article 28

Carriage of Goods (Prohibition of Discrimination) Regulations 1977, regulation 5(3)(b)

Highways

Highways Act 1980, section 294

Vehicles, etc.

Road Traffic Act 1988, section 76

Road Traffic Act 1988, section 77

Road Traffic Act 1988, section 181

International Carriage of Perishable Foodstuffs Act 1976, section 6

Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009, paragraph 5 of Schedule

Motor Cycles (Replacement of Catalytic Converters) Regulations 2009, paragraph 5 of Schedule

Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) Regulations 2002, paragraph 8 of Schedule 2

Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009, regulation 8

Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999, regulation 16(3)

Road, Traffic Signs etc.

Road Traffic Regulation Act 1984, section 43

Road Traffic Regulation Act 1984, section 61(4)

Road Traffic Regulation Act 1984, section 71

Road Traffic Regulation Act 1984, section 72

Transport Act 2000, section 177

Transport Act 2000, section 190

Biofuel (Labelling) Regulations 2004, paragraph 4(2)(a) of Schedule

Road Vehicles (Approval) Regulations 2009, regulation 34

Powers identified for consolidation

Railways and Transport Safety Act 2003, section 86

Railways and Transport Safety Act 2003, section 98

Highways Act 1980, section 289

Highways Act 1980, section 291

Powers to be retained unchanged

Aviation

Aviation Security Act 1982, section 13

Aviation Security Act 1982, section 20

Aviation Security Act 1982, section 20B

Aviation Security Act 1982, section 24B

Civil Aviation Act 1982, section 44

Civil Aviation Act 1982, section 46

Civil Aviation Act 1982, section 47

Air Navigation Order 2009, article 36

Air Navigation Order 2009, article 232

Air Navigation Order 2009, article 236

Air Navigation Order 2009, article 238

Maritime

Aviation and Maritime Security Act 1990, section 22(3)

Port Security Regulations 2009, regulation 22(3)

Port Security Regulations 2009, regulation 25

Ship and Port Facility (Security) Regulations 2004, regulation 6(3)

Merchant Shipping Act 1995, section 208

Merchant Shipping Act 1995, section 247

Merchant Shipping Act 1995, section 258

Merchant Shipping Act 1995, paragraph 4 of Schedule 3A

Merchant Shipping Act 1995, paragraph 12 of Schedule 3A

Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999, regulation 8

Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, regulation 8

Hovercraft (General) Order 1972, article 16

Hovercraft (General) Order 1972, article 25

Hovercraft (General) Order 1972, article 28

Harbours, Docks and Piers Clauses Act 1847, section 34

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