

# **HM REVENUE & CUSTOMS REPORT ON OUR POWERS OF ENTRY**

November 2014

Presented to Parliament pursuant to Section 42 of the Protection  
of Freedoms Act 2012

© Crown Copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2> or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to [tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk).

## Contents

	Page
1. Introduction	4
2. Executive summary	4
3. Context of the review	5
4. Reporting of the review of each power of entry	6

## **1. Introduction by George Osborne MP, Chancellor of the Exchequer**

The Protection of Freedoms Act 2012 obliges each minister of the Crown who is a member of the cabinet to review relevant powers of entry for which the minister is responsible. I, as cabinet minister responsible for HM Revenue & Customs (HMRC), have therefore ordered a review of the HMRC powers.

HMRC have reviewed 39 powers; nine were found to belong to other departments or be powers to inspect rather than enter. HMRC will retain 25 of the 30 powers in their current form. All of these powers were previously reviewed after the merger of HM Customs & Excise and the Inland Revenue in 2005, with safeguards being added where necessary. This further review has reaffirmed that they are still proportionate and necessary.

There are five powers where there is a clear case for modernisation and consolidation. Such powers include a number relating to betting and debt management. These have been recommended for amendment and this will take place by the end of 2014.

## **2. Executive summary**

HMRC have examined 39 powers for this review. Several of these powers have been found to be principally concerned with search powers once in a dwelling or vehicle, rather than in respect of entry to them. In addition the Department for Communities and Local Government has taken ownership of two Valuation Office Agency powers contained within the Local Government Finance Acts 1988 and 1992, which were originally allocated to HMRC. Of the 39 powers, 30 remained for a detailed review.

Of the powers reviewed, many are key powers used extensively by HMRC and Border Force officers and contain adequate safeguards. The majority of these key powers have specific safeguards which prevent entry to solely private premises or to any premises at unreasonable hours.

The other powers reviewed are not used so extensively (in some cases very rarely), fulfil very specific tasks, and have been judged fit for purpose for those tasks.

HMRC have therefore concluded that 25 of the 30 powers need no amendment because they are necessary and proportionate in their current form.

There are five powers where there is a clear case for consolidation and modernisation. Some of these powers relate to betting and debt management. These have been recommended for amendment.

### **3. Context of the review**

HMRC is responsible for a diverse range of legislation, from taxation of small businesses to legislation relating to items that are banned from importation into the UK. Their powers of entry reflect this diversity, with powers allowing entry for a variety of purposes.

This review principally concerns powers relating to the Customs and Excise Management Act 1979. There are 15 powers contained within the Act and associated regulations. These powers cover a number of customs and excise regimes, from customs powers to enter places of importation such as approved wharves and transit sheds, to excise powers facilitating detection of illegal bookmaking and alcoholic beverage production.

Of the remaining powers, one of the most important is Schedule 36 of the Finance Act 2008. This is used to check compliance with tax legislation, and is the key power used in thousands of tax inspection visits throughout the year. It replaced more than 20 previous tax-specific information and inspection powers and the safeguards contained within the power have been made explicit.

## **4. Reporting of the review of each power of entry**

### ***4.1. Powers of entry to be replaced***

#### **4.1.1. Betting and Gaming Duties Act 1981, Sch 1 Para 6**

- Power to enter, for compliance purposes, any premises used for the purpose of a general betting or pool betting business

This power will be repealed by provisions brought forward in the Finance Act 2014 for implementation in December 2014. It will be replaced by amending existing powers in the Customs & Excise Management Act 1979, specifically to address entry to general betting and pool betting businesses.

#### **4.1.2. Betting and Gaming Duties Act 1981, Sch 1 Para 10**

- This power facilitates entry to any track or other premises when an officer has a reason to believe bookmaking on events taking place thereon is being/is to be carried on or that a totaliser is being/is to be operated in connection with those events, at a place on those premises or on any ground or premises adjacent thereto. By virtue of Betting and Gaming Duties Act Sch 1 Para 10 (2) the power is also extended to an officer who has reason to believe that any person who is not a bookmaker is holding himself out as an 'agent' of such a person.

This power will be repealed by provisions brought forward in the Finance Act 2014 for implementation in December 2014. It will be replaced by amending existing powers in the Customs & Excise Management Act 1979 specifically to address entry to tracks and other premises.

#### **4.1.3. Social Security Administration Act 1992 s121A(2)**

- Power to apply for a break-open warrant granted by a Justice of the Peace for the purposes of levying distraint.

This power previously provided for the application of a warrant to enter premises and seize goods. This power has been repealed in England and Wales with effect from 6 April 2014; instead the procedure outlined in the Tribunals and Courts Enforcement Act (TCEA) 2007 Schedule 12 applies – that contains the same safeguards as the power it is replacing.

## **4.2. Powers of entry to be amended**

### **4.2.1. Taxes Management Act 1970, Part VI, s61(2)**

- Power to apply for a break-open warrant granted by a Justice of the Peace for the purposes of levying distraint.

This power previously provided for the application of a warrant to enter premises and seize goods. This power will not be available for use in England and Wales from 6 April 2014; instead the procedure outlined in the Tribunals and Courts Enforcement Act 2007 Schedule 12 applies by virtue of the Finance Act 2008 s127. Under TCEA an enforcement agent may enter relevant premises without a warrant to search for and take control of goods. Relevant premises are defined by the enforcement agent when they have reason to believe the debtor usually lives or carries on a trade or business there. TCEA also allows the use of reasonable force to enter a property either with or without a warrant, although HMRC does not use force. Enforcement agents may enter and remain on the premises on any day of the week, but only within prescribed times of day –between 6am and 9pm.

This power continues to apply in Northern Ireland. TCEA contains the same safeguards as the power it is replacing.

### **4.2.2. Finance Act 2003 S (2) Sch 12**

- Power to apply for a break-open warrant granted by a Justice of the Peace for the purposes of levying distraint.

This power previously provided for the application of a warrant to enter premises and seize goods. This power will not be available for use in England and Wales from 6 April 2014; instead the procedure at Tribunal and Courts Enforcement Act 2007 Schedule 12 applies by virtue of Finance Act 2008 s127. This power continues to apply in Northern Ireland. TCEA contains the same safeguards as the power it is replacing.

### ***4.3. Powers of entry to be retained unchanged***

#### **4.3.1. Customs & Excise Management Act 1979, Biofuels and Other Fuel Substitutes (Payment of Excise Duties Etc) Regulations 2004, Regulation 10(1)**

- Power to enter and inspect the production premises of any biofuel or other fuel substitute, other than a private dwelling house.

This power is necessary to provide a specific right of access to biofuel production premises. This is to ensure compliance with HMRC requirements aimed at protecting the revenue. This power includes a specific safeguard against entry to premises which are wholly a residential dwelling.

#### **4.3.2. Hydrocarbon Oil Duties Act 1979, Gas (Road Fuel) Regulations 1972 [1979/846] Regulation 11**

- Power to, at any reasonable time, enter and inspect any premises (other than a private dwelling house) and examine any gas and require the occupier of such premises to give such facilities as may be necessary for that purpose.

This power is necessary to ensure the right tax is paid at the right time by authorised suppliers of gas and to identify illicit production or supply of gas as road fuel. This power includes a specific safeguard against entry to premises which are wholly a residential dwelling.

#### **4.3.3. Hydrocarbon Oil Regulations 1973 [1973/1311] Regulation 47**

- Power to enter and inspect premises; inspect, test or sample any oil on those premises. Also includes vehicles on the premises.

The power details the specific circumstances in which the power is likely to be used in the process of detection and combat of the misuse of rebated fuel. This power includes a specific safeguard against entry to premises which are wholly a residential dwelling.

#### **4.3.4. Betting and Gaming Duties Act 1981 Sch 3 Para 13**

- Power to enter and inspect premises where there is reasonable cause to believe that bingo is being, or has been, played and to require the provision of information.

This power is required to facilitate entry to any premises used for the purposes of playing bingo. Paragraph 1 of Schedule 3 provides a specific exemption from duty for bingo played in a private dwelling on a domestic occasion.



#### **4.3.5. Customs & Excise Management Act (CEMA) 1979 s118BC**

- Power to enter and inspect premises at any reasonable time, where there is reasonable cause to believe that dutiable gaming is taking place or that dutiable machine games are located, and to inspect any records, accounts or equipment on those premises.

This power is required to facilitate entry to any premises used for gaming to which section 10 of the Finance Act 1997 applies, or where machines are located in respect of which a person is, has been or is about to become liable for machine games duty under Schedule 24 of the Finance Act 2012. Section 118BC(3) provides a safeguard against entry to any part of premises that is used solely as a dwelling.

#### **4.3.6. Alcoholic Liquor Duties Act 1979 s79**

- Power to, in the daytime, enter and inspect the premises of a denatured alcohol user and to inspect, examine and take samples of any denatured alcohol, or goods containing denatured alcohol, found there.

The power is required to enable entry to the premises of a denatured alcohol user and is used by HMRC assurance officers primarily to carry out assurance checks on the use of denatured alcohol. The power can be used to enter private dwellings where denatured alcohol is kept (e.g. by small businesses operating from the home), but may only be used during the daytime. The need for assurance visits is decided by risk assessment. If required, the assurance visits are arranged during business hours by prior appointment with the denatured alcohol user.

#### **4.3.7. Customs & Excise Management Act 1979 s20A**

- Power to enter an approved wharf and inspect it and any goods for the time they are present on the wharf.

This power is required to facilitate entry to, and inspection at, an approved wharf. This power cannot be used to enter private dwellings. It can be used at any time, as wharves operate 24 hours a day.

#### **4.3.8. Customs & Excise Management Act 1979 s25A**

- Power to, at any time, enter a transit shed and inspect it and any goods for the time they are present in the transit shed.

This power is required to facilitate entry to and inspection of transit sheds. This power cannot be used to enter private dwellings. It can be used at any time, as transit sheds operate 24 hours a day.

#### **4.3.9. Customs & Excise Management Act 1979 s33**

- Power to enter an aerodrome and enter and inspect aircraft.

This power is required to facilitate entry to aerodromes and aircraft. It cannot be used to enter premises that are solely a dwelling. It can be used at any time the aerodrome is open, which can be 24 hours a day.

#### **4.3.10. Customs & Excise Management Act 1979 s100F**

- Power to enter and inspect a free zone.

This power facilitates entry to a free zone and can be used any time the free zone is open. This power would not be used to enter private dwellings.

#### **4.3.11. Customs & Excise Management Act 1979 s112**

- Power to enter and inspect premises used by a 'revenue trader' as defined by CEMA s1 and inspect and search for goods or materials connected with that trade.

This power is a routine inspection power used every day by HMRC officers. Its retention is necessary to allow access to premises to inspect goods and ensure the revenue is properly accounted for.

This legislation provides a power of entry to private dwellings where they are used for business purposes. Officers may not enter or inspect any part of the premises that is used solely as a dwelling, and must be accompanied by a police constable between the hours of 11pm and 5am. This power can only be exercised at a reasonable time, which is deemed to be the trading hours of the business. .

#### **4.3.12. Customs & Excise Management Act 1979 s113**

- Power to locate secret pipes and utensils being used by a specific class of revenue traders, namely distillers, rectifiers, compounders, registered brewers, producers of wine, producers of made wine and makers of cider.

This legislation only provides a power of entry to a private dwelling, or the land adjacent to it, if such access is necessary in order to gain access to a concealed pipeline. If access is required to a dwelling in such a circumstance, HMRC policy is to apply for a warrant.

This power is a discrete and unique power in relation to excise goods. It is imperative that robust controls in relation to secret pipes and utensils are maintained. An ability to enter premises where there are reasonable grounds

to suspect that that revenue trader is involved in illicit behaviour is crucial to the fight against alcohol and tobacco fraud.

The powers currently afforded by s113 allow officers to enter any premises that are used by a specific 'revenue trader' for the purpose of dealing with illicit goods and material. The revenue traders that this power can be exercised against are approved traders and this power would only be executed in specific circumstances to protect the revenue.

#### **4.3.13. Customs & Excise Management Act 1979 s118C (1)**

- Power to enter premises used in connection with the carrying on of a business, at a reasonable time, for the purpose of exercising any powers under the Customs and Excise acts.

This is a routine power that provides a power of entry to business premises. The legislation does not provide a power to enter purely residential dwellings. It is important to retain this power as it is the only statutory power allowing entry to premises for the purposes of exercising another power under the Customs & Excise Management Act 1979. Entry will be at a reasonable time, which is when a business is open and premises are occupied.

#### **4.3.14. Customs & Excise Management Act 1979 s162**

- Power to enter land for, or in connection with, access to pipelines, where the contents of the pipeline is chargeable with a customs or excise duty which has not been paid.

This is a routine inspection power, which does not cover Northern Ireland. The power is important as it is imperative that HMRC retain the ability to enter land quickly and unannounced to exercise powers in connection with pipes.

Those involved in smuggling illicit excise goods, including oils and alcohol, are ingenious at inventing methods of smuggling such goods. Recent years have also seen an increase in the production of illicit alcohol, which can be a dangerous substance. This discrete and bespoke power assures full protection of the revenue and ease of application/interpretation. There are no other powers that provide this discrete function. Other methods would not be effective due to the nature of the offences/offenders they are designed to regulate.

#### **4.3.15. Customs & Excise Management Act 1979 s118BB**

- Power to enter and inspect premises at a reasonable time and inspect those premises where there is reasonable cause to believe that they are used in connection with the supply, import or export of goods of a class or description chargeable with a duty of excise, and any such goods or documents relating to any such goods which are on the premises.

This is a routine inspection power, which replaced 118C(2). It is the only statutory power allowing entry and inspection of premises suspected of being occupied by a revenue trader or containing revenue goods. It provides a power of entry to dwellings where these are used for business purposes. The powers currently available to officers provide power of entry and inspection for both premises and goods. It is imperative that these robust controls are maintained. An ability to enter premises where those suspected of alcohol or tobacco fraud are operating is crucial to protecting revenue in these areas.

The powers currently afforded by s118BB allow officers to enter any premises for the purpose of inspection. If excise goods are located, the officers should switch to using CEMA s112, which allows a more robust power of inspection. Goods can be quickly and easily moved and officers must have the ability to enter and inspect the premises.

#### **4.3.16. Customs & Excise Management Act 1979 s27**

- Power enables officers to board ships, aircraft and vehicles for the purpose of conducting a rummage to identify smuggled goods, including excise goods, and prohibited and restricted goods.

This is a routine power used around the country in environments such as ports, airports and inland warehouses. It is a power of search applicable only to ships, aircraft and vehicles within specified places, including a port or airport. In specific cases, vehicles at, entering or leaving approved warehouses can also be searched. It cannot be used to search any dwelling.

The legislation provides comprehensive coverage of the specific circumstances in which the power is likely to be used in the process of rummaging ships, aircraft and vehicles to detect smuggled goods. There are other powers but they provide a separate function. There are no other powers used specifically to rummage ships, aircraft and vehicles at ports, airports and approved warehouses to locate smuggled goods.

#### **4.3.17. Finance Act 1994 s24**

- Power to enter and inspect premises and goods used by a person involved in importing and exporting goods subject to customs duty.

This is a routine inspection power. It is essential that in order to meet our European Union obligations the correct amounts of customs duties have been accounted for. There are no other powers of entry to business defined in section 20 of the Finance Act 1994. It provides a power of entry to private dwellings where they are used for business purposes. Entry will be at a reasonable time when a business is open and premises are occupied.

#### **4.3.18. European Communities Act 1972, Statistics of Trade (Customs and Excise) Regulations 1992 Regulation 5(3)**

- Power to enter and inspect, at any reasonable time, premises and records used by an intra-community operator.

This power is essential to allow the UK to meet our EU obligation to collect trade statistics which, among other things, inform the Balance of Payments and National Accounts for HM Government and others. It provides a power of entry to private premises where these are used for business purposes. Entry will be at a reasonable time when a business is open and premises are occupied.

#### **4.3.19. Customs & Excise Management Act 1979 s161**

- Power to enter any building or place without a warrant in order to search premises and seize goods liable to forfeiture under the Customs and Excise Acts.

This frequently used power is important to allow officers to seize goods liable to forfeiture where there is a risk they are removed before a judicial warrant can be obtained. The legislation specifies an officer should not exercise this power of entry at night unless accompanied by a police constable. It provides a power of entry to private premises if the conditions of the legislation are met. HMRC officers are subject to the Police and Criminal Evidence Act Code of Practice B when exercising this power.

#### **4.3.20. Customs & Excise Management Act 1979 s118C (3)**

- Allows a Justice of the Peace or, in Scotland, a Justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) to issue a search warrant. This allows officers to enter and search premises and persons for the purpose of removing documents and other items, such as goods or false stamps, if they are considered evidence of a fraud offence.

This important legislation provides a very specific search power in relation to s167 and s170 of the Customs & Excise Management Act 1979 where fraud is suspected in respect of both documents and other items. It provides a power of entry to private premises if the conditions of the legislation are met. HMRC officers are subject to the Police & Criminal Evidence Act (PACE) Code of Practice B when exercising this power.

#### **4.3.21. Customs & Excise Management Act 1979 s161A**

- Allows a Justice of the Peace or, in Scotland, a Justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) to issue a search warrant, if satisfied on information on oath. A warrant allows officers to enter any building or place in order to search premises and seize goods liable to forfeiture under the Customs and Excise Acts, as well as to search for and remove documents.

This legislation is a warranted and wider-ranging search power than the Writ of Assistance (Customs & Excise Management Act 1979 s161) but not as wide ranging as a PACE warrant. It provides a power of entry to private premises if the conditions of the legislation are met. HMRC officers are subject to the Police & Criminal Evidence Act Code of Practice B when exercising this power.

#### **4.3.22. Finance Act 2008 Schedule 36, Part 2: powers to inspect premises and other property**

- Power to enable (s10) the inspection of business premises, business assets and business documents on business premises; (s10A) the inspection of business premises/assets/documents etc of particular types of person; (s11) the inspection of business premises used in conjunction with supplies of goods subject to VAT.

This is a key inspection power, used very frequently by HMRC officers. It is used to check compliance with tax legislation, and is the key power used in thousands of tax inspection visits throughout the year. It replaces more than 20 previous tax specific information and inspection powers and the safeguards contained with the power have been made explicit. It provides a power of entry to private premises used for business purposes.

#### **4.3.23. Finance Act 2008 Schedule 36, Paragraphs 12A, 12B and 13**

- Powers to enter premises for the purposes of valuation to check a person's position regarding income tax, Corporation Tax, Capital Gains Tax, Inheritance Tax, Stamp Duty Land Tax, Stamp Duty Reserve Tax or annual tax on enveloped dwellings.

This is a routine inspection power. A power of entry, rather than just inspection, is necessary so that the Valuation Office Agency can enter and inspect property for the purpose of carrying out their statutory function supporting HMRC with the administration of national taxation. Entry is only permitted at a time agreed to by the relevant person and following written notice of that agreed time, or with the approval of a tribunal.

#### **4.3.24. Social Security Administration (Northern Ireland) Act 1992, s.115A(2)**

- Power to apply for a break-open warrant granted by a Justice of the Peace for the purpose of levying distress.

This power is necessary because it provides in Northern Ireland similar powers to those available in England and Wales under the Tribunals and Courts Enforcement Act 2007 Sch 12. The Tribunals and Courts Enforcement Act 2007 does not extend to Northern Ireland.

#### **4.3.25. Alcoholic Liquor Duties Act 1979 s25 (6)**

- Power to access and search land and premises in Northern Ireland where the unlawful production of spirits is suspected.

This is an anti-fraud measure. It provides a power to enter and search land and premises in Northern Ireland suspected to be used in the unlawful production of spirits. It allows immediate access to the land and property where unlawful production of spirits is suspected, so this can be quickly disrupted. It also gives the power to search for and seize items suspected of being used in illegal spirits production.