



Department
for Culture
Media & Sport

Department for Culture, Media and Sport (DCMS)

Powers of Entry Review, November 2014

EXECUTIVE SUMMARY

The Department carried out a review of the powers of entry for which it has responsibility in 2010 and this internal review found that there were valid reasons for retaining the majority of them. It committed to keep these powers under review so as to consider whether their retention remains justified.

For the purpose of this review, Departmental policy officials, legal advisors and colleagues at the Department's Arms Length Bodies have examined each individual power, to see if that power is still necessary or should be repealed, have further safeguards added to it or if it can be consolidated with other similar powers to reduce the overall number.

The majority of powers are still considered necessary and to have the appropriate safeguards. They include the need to:

- Enforce gambling regulations to keep crime out of gambling, and protect vulnerable people from being harmed or exploited by gambling;
- Gain access to illegal broadcast station studios and transmission sites;
- Protect the UK's heritage through the safeguarding of ancient monuments at risk of irreversible damage;
- Provide oversight and scrutiny of safety at sports grounds; and
- Prevent the supply of age-inappropriate content to children.

There are powers such as those relating to the 2012 London Olympic and Paralympic Games, which could only be triggered during Games time and are not included in this review.

There are opportunities for further safeguarding of powers, and the retention of a number of heritage and entertainment licensing powers is recommended, with the commitment to further reviewing the potential to consolidate and safeguard these powers through a wider review of the respective legislation.

REVIEW

No.	Power of Entry	Section & Purpose	Outcome & Review information
1	Ancient Monuments & Archaeological Areas Act 1979	s.6: Powers of entry for inspection of scheduled monuments etc. Contains 4 powers of entry in relation to England – breach of s.2 for purpose of scheduled monument consent/ observe execution of work/ inspect land to see if any matter of archaeological/ historical interest.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
2	Ancient Monuments & Archaeological Areas Act 1979	s.6A: Commission's powers of entry in relation to scheduled monuments. (Commission's powers only relate to land in England) 4 powers as above.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
3	Ancient Monuments & Archaeological Areas Act 1979	s.26: Power of entry on land believed to contain an ancient monument.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
4	Ancient Monuments & Archaeological Areas Act 1979	s.43: Power of entry for valuation.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
5	Ancient Monuments & Archaeological Areas Act 1979	s.38: Powers of investigating authority to enter & excavate site of operations covered by an operations notice. (Secretary of State may make such a notice under s.34).	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
6	Ancient Monuments & Archaeological Areas Act 1979	s.40: Other powers of entry on site of operations covered by an operations notice.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
7	Ancient Monuments & Archaeological Areas Act 1979	s.5: Execution of works for preservation of a scheduled monument by Secretary of State in cases of urgency (Historic Buildings & Monuments Commission).	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
8	Broadcasting Act 1990	Pt III Independent Radio Services/Regulation of Independent Radio Services s.87: Power to impose general licence conditions.	Unchanged: The power only covers licensed broadcasters. They do not apply to other businesses or members of the public nor do they cover illegal broadcasting, something that is generally covered by the powers in the Wireless Telegraphy Act. Amending the provision would require changes to be made the long-standing

			conditions in set in different types of licencees, creating burdens on Ofcom and licencees in having to make amendments to 500+ licencees. There would be significant additional costs falling to Ofcom that would need to be recovered from licencees.
9	Broadcasting Act 1990	s.196: Power of entry to establish whether offence committed/ evidence of commission of offence on premises.	Unchanged: This power has been repealed with respect to the offence contrary to section 82; offences under section 13 relate to TV and 97, Independent Radio Services. In relation to offences contrary to sections 13 and 97, the power is still needed as an evidence gathering tool, should insufficient evidence be gathered during the administrative stage. It is felt that contraventions under section 13, in particular, are more likely to occur in the future, due to changes in the economic and technological climate.
10	Broadcasting Act 1996	Part II Digital Terrestrial Sound Broadcasting. General provisions about licencees s.43:Power to impose general licence conditions - not strictly a power of entry but a licence condition which require the licence holder to permit entry of or person authorised by OFCOM to enter and inspect premises.	Unchanged: The power only covers licensed broadcasters. They do not apply to other businesses or members of the public nor do they cover illegal broadcasting, something that is generally covered by the powers in the Wireless Telegraphy Act. Amending the provision would require changes to be made the long-standing conditions in set in different types of licencees, creating burdens on Ofcom and licencees in having to make amendments to 500+ licencees. There would be significant additional costs falling to Ofcom that would need to be recovered from licencees.
11	Children and Young Persons Act 1933	Pt I Prevention of Cruelty and Exposure to Physical & Moral danger s. 12 Failing to provide for the safety of children at entertainments	Retain with wider review: As part of Red Tape Challenge, DCMS is currently implementing legislation to deregulate entertainment licensing under the Licensing Act 2003, which has as one of its objectives the protection of children from harm. Once this legislation is enacted, DCMS will commit to

			reviewing the power of entry in the Children and Young Persons Act 1933 as part of a wider piece of work to review Statutory Licensing Guidance in 2014/15.
12	Communications Act 2003	Schedule 4 Compulsory Purchase & entry for exploratory purposes. Para. 6 Entry on land for exploratory purposes: England & Wales.	Unchanged: These are not powers of entry to a premises but a right of permission to enter land related to powers in the Comms Act regarding the acquisition of land for building/extending electronic communications networks. Entry onto private land, whether for exploratory purposes, or to install communications equipment, is usually by voluntary agreement. Where the landowner and communications provider cannot reach agreement, the more usual means of gaining access is by applying to the court for a wayleave, under the provisions of section 5 of Schedule 2 to the 1984 Telecommunications Act (as amended by the Communications Act 2003).
13	Communications Act 2003	s.366: Powers to enforce TV licensing – relates to Scotland & NI only.	Unchanged: Remains necessary to enforce TV licensing.
14	Development of Tourism Act 1969	Grants given to Tourists Boards s.3, 4 & Sch. 2 para 2: Securing compliance with conditions of grant.	Unchanged: The power is used in a narrow set of circumstance that does not apply to the general public. It relates to the powers of Tourism Boards to grant financial assistance to projects, which are overseen by a power that the Department and the Tourism Boards are unaware of being exercised to date. The Secretary of State has oversight powers in respect of Tourism Boards' exercise of the power, and we would expect that <i>if</i> the power were to be exercised in the future, appropriate consideration would be given at that point as to any conditions about the exercise of that power.

15	Football Spectators Act 1989	Pt I Football Matches in England & Wales s.13: Licensing authority's powers in relation to safety at football grounds – (6) includes a power to enter any sports ground.	Unchanged. These powers are necessary to allow the Sports Ground Safety Authority to provide national oversight and scrutiny of safety at sports grounds.
16	Gambling Act 2005	Part 15 Inspections s.306: Suspected Offences s.306(1) General power of entry without warrant.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
17	Gambling Act 2005	s.306(2) Power to apply for warrant.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
18	Gambling Act 2005	s.307: Inspection of gambling.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
19	Gambling Act 2005	s.308: Operating licence holders.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
20	Gambling Act 2005	s.309: Family entertainment centres.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised

			persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
21	Gambling Act 2005	s.310: Premises licensed for alcohol.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
22	Gambling Act 2005	s.311 Prize gaming permit.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
23	Gambling Act 2005	s.312 Clubs.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
24	Gambling Act 2005	s.313 Licensed premises.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.

25	Gambling Act 2005	s.314 Lotteries: registered societies.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
26	Gambling Act 2005	s.315(1): Power of entry where temporary use notice has been given.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
27	Gambling Act 2005	s.315(2) Power of entry where temporary use notice has effect.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
28	Gambling Act 2005	s.318(2) Power to apply for warrant to enter a dwelling.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.
29	Gambling Act 2005	s.319(2) Entry for Records.	Unchanged: Gambling Act 2005 powers have been reviewed and any change would be likely to undermine the efficacy of enforcement action. Authorised persons must exercise the functions conferred on them in a proportionate fashion, and in pursuit of a legitimate aim: the licensing objectives.

30	National Heritage Act 1983	s.36: Records: powers of entry – relates to the Historic Buildings and Monuments Commission for England.	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
31	Safety of Sports Grounds Act 1975	s.11: Powers of entry & inspection Act gives local authority controls over any sports stadium designated by Secretary of State as requiring safety certificate.	Unchanged. These powers are necessary to allow the Sports Ground Safety Authority to provide national oversight and scrutiny of safety at sports grounds.
32	Telecommunications Act 1984	s. 2 The Electronic Communications Code.	Unchanged: The Electronic Communications Code governs the right of electronic communications operators to maintain infrastructure on public and private land. This is an infrastructure related power (not an enforcement power) which supports the provision of electronic communications throughout the UK and underpins the entire UK telecommunications infrastructure
33	Theatres Act 1968	s.15(1): Powers of entry & inspection.	Unchanged: This provides powers of entry in order to enforce s.20 of the Public Order Act 1986, and other sections of the Theatres Act 1968, It remains a necessary power to fulfill these duties and requires a warrant to be issued by a magistrate on production of reasonable grounds that an offence is likely to be committed.
34	Video Recordings Act 1984	s.16A: Applies s.28 Trade Descriptions Act 1968 - gives weights & measures authority enforcement responsibility.	Unchanged: The Video Recordings Act continues to be a very important part of the child protection regime as it prevents the supply of age-inappropriate content to children, including material that is suitable only for adults or furthermore contains the type of explicit pornography (classified BBFC R18) only suitable for sale in licensed sex shops. These powers ensure that the enforceability of the Video Recordings Act is maintained, including the ability to instigate entry, search and seizure procedures where there are reasonable grounds for suspecting that a criminal offence is being committed under the Act. In any

			event the powers are being updated by the Consumer Rights Bill which is compliant with the requirements of the Protection of Freedoms Act.
35	Video Recordings Act 1984	s.17: Entry, search & seizure	Unchanged: The Video Recordings Act continues to be a very important part of the child protection regime as it prevents the supply of age-inappropriate content to children, including material that is suitable only for adults or furthermore contains the type of explicit pornography (classified BBFC R18) only suitable for sale in licensed sex shops. These powers ensure that the enforceability of the Video Recordings Act is maintained, including the ability to instigate entry, search and seizure procedures where there are reasonable grounds for suspecting that a criminal offence is being committed under the Act. In any event the powers are being updated by the Consumer Rights Bill which is compliant with the requirements of the Protection of Freedoms Act.
36	Wireless Telegraphy Act 2006	Pt 3 Regulation of Apparatus s.59: Entry & search of premises etc. JP may issue 'authorisation'	Unchanged: Without this power to underpin Ofcom's work, offenders would be able to deny officers access to premises where valuable evidence may be gathered, which is relevant to investigations relating to undue interference caused by apparatus covered by SI. Even where not formally used, the existence of this power can be used to negotiate and secure agreed entry to premises.
37	Wireless Telegraphy Act 2006	Pt 6 General s.97: Powers of entry & search JP may issue search warrant	Unchanged: Without a power of entry, Ofcom officers would be unable to effectively gather evidence and investigate alleged offences. These powers are regularly used to gain access to illegal broadcast station studios and transmission sites, where access would be denied by the occupants.

38	Ancient Monuments & Archaeological Areas Act 1979	s.13(5) and 15(4) - effect of guardianship. Power of entry of the Secretary of State, English Heritage or the local authority where an ancient monument or land in the vicinity has been placed under their guardianship.	Retain with wider review: proposed consolidation and further safeguards through wider review of heritage legislation – can we commit to a date?
39	Ancient Monuments & Archaeological Areas Act 1979	s.39. Power of investigating authority to investigate in advance of operations notice any site which may be acquired compulsorily	Retain with wider review: Proposed consolidation and potential for further safeguards through wider review of heritage legislation.
40	Electromagnetic Compatibility Regulations 2006	Regulations 39 and 40 give powers of entry with and without warrants.	Unchanged: Necessary given the nature of the offences, whose investigation requires the seizure of non-compliant apparatus and administrative documents and because they are derived from EU Directives.
41	The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000	Paras 8 and 9 of Part II of Schedule 9 give powers of entry with and without warrants.	Unchanged: Necessary given the nature of the offences, whose investigation requires the seizure of non-compliant apparatus and administrative documents and because they are derived from EU Directives.
42	Enterprise Act 2002	Section 227A and 227C give Consumer Protection Cooperation enforcers power of entry with and without warrants.	Unchanged: Ofcom need these powers to comply fully with obligations as a Consumer Protection Cooperation enforcer derived from EU Directives
43	European Communities Act 1972	Advanced Television Services Regulations 2003 – Regs 5,6&7, para 4	Unchanged: Remains necessary to enforce the regulations.
44	European Communities Act 1972	Advanced Television Services Regulations 2003 – Regs 5,6&7, para 5(2)	Unchanged: Remains necessary to enforce the regulations.
45	European Communities Act 1972	Return of Cultural Objects Regulations 1994 – Reg 5(1)	Unchanged: The Return of Cultural Objects Regulations 1994 transpose EU Directive 93/7 and is necessary to avoid infringing EU law.