



Department
of Health

Review of Health and Care Powers of Entry

November 2014

Department of Health Review of Health and Care Powers of Entry

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Protection of Freedoms Act 2012

November 2014

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Ministerial Foreword

The Government recognises the importance of respecting Human Rights and is committed to preserving the rights of individuals in their homes and businesses from unnecessary intrusion. The Protection of Freedoms Act 2012 included reforms to rationalise the redundant powers of entry relating to domestic, commercial and other types of premises and includes a statutory duty on each Government department to review its powers of entry and report the outcome of the review to Parliament.

This report sets out the result of the most comprehensive review of the Department of Health's powers of entry in the health and social care sector. The review identified that the majority of powers of entry in health and social care are vital to ensuring the public receive safe and quality products and services. However, we have identified, through the steps we are taking to modernise the health and care sector, that many powers of entry are no longer required.

The Department of Health is committed to ensuring the powers of entry within its responsibility achieve the right balance between the need to respect the rights of individuals to be protected from undue intrusion and the need to enforce the law to protect public health by ensuring that safe and quality health and care services are provided.



Jane Ellison MP
Minister for Public Health

Executive Summary

1. The Department leads, shapes and funds health and care in England, making sure people have the support, care and treatment they need, with the compassion respect and dignity they deserve. The Department of Health has reviewed the Powers of Entry (PoE) within its responsibility to ensure they achieve the right balance between the need to respect the rights of individuals to be protected from undue intrusion and the need to enforce the law to protect public health by ensuring that safe and quality health and care services are provided.
2. The Protection of Freedoms Act 2012 set a statutory duty for Cabinet Ministers to review their Departmental powers of entry and to report to Parliament within 2 years of the Act coming into force. Each Department is required to report the outcomes of its review to Parliament by 1st May 2014. The Home Office have coordinated the review process across Government, ensuring powers of entry are reviewed consistently across Government.
3. 54 powers of entry were identified for the Department of Health set out in primary and secondary legislation. A summary of the outcome of the Department's review is provided in the table below.
4. The Government 's reforms to modernise the health and care system have enabled the Department to repeal a number of powers of entry through the reforms made through the Health and Social Care Act 2012 and those provided for through the Care Bill currently before Parliament. These legislative vehicles have facilitated the repeal of nine of the Department's powers of entry, some of which dated back to 1948.
5. For those powers of entry that remain the Department of Health has ensured, through a process of challenge, that there is a clear and compelling case for the retention of the power that protects health and care products and services. Where such a case has been made we have worked with the Home Office to ensure there are appropriate safeguards in place. Where appropriate, these have included for instance the option for bodies to seek a warrant, or where appropriate, ensuring there is a requirement to give reasonable notice.
6. This report provides further details of the powers of entry within the responsibility of the Department of Health and the outcomes of the review process.

Table One: Powers of Entry, Summary of Department's proposed actions

| Powers of Entry: Actions Following review | Total |
|---|-------|
| Revoke/Repeal (annex a) | 13 |
| To be retained (Annex B) | 41 |
| Total | 54 |

Powers of Entry for Repeal

The following table sets out the powers of entry that have been or will be repealed. The review identified 12 such powers. Tables two and three (below) provide further information on the powers of entry and the action (to be) taken.

Table two: Powers of Entry: Primary Legislation for repeal

| Statute | Section | Comments/Actions |
|---|--|---|
| Public Health (Control of Disease) Act 1984 | Pt II Control of Disease s.13: Regulations for control of certain diseases (5) power of certain persons to enter premises to enforce Regulations. | This Power has been repealed by Part 2A of Health and Social Care Act 2008 and consolidated within the updated s.61 Public Health Control of Disease Act. |
| National Assistance Act 1948 | s.26: Provision of accommodation in premises maintained by voluntary organisations (5) General power of local authority to enter & inspect. | This Power is due to be repealed in the Care Bill currently before Parliament |
| National Assistance Act 1948 | s.47 confers a power to remove someone from his or her home in certain circumstances | As part of their review of adult social care law, the Law Commission considered the compatibility of section 47 with human rights legislation as well as the overall intent of modern policy to maximise control and choice of those who may require care and support. The consultation identified the lack of use of section 47 by social workers and local authorities, indeed the aversion to it by many professionals. This power is due to be repealed in the Care Bill currently before Parliament. |
| National Assistance Act 1948 | s.48(3): Duty of councils to provide temp protection for property of persons admitted to hospitals etc. Power of council to enter and deal with any movable property, etc. | This power is due to be repealed and replicated in the Care Bill as part of the reform and consolidation of adult social care reform and recommended by the Law Commission. Following Royal Assent this power of entry will be brought into force on 1 st April 2015. |
| National Health Service Act 2006 | Pt 2 Health Service Bodies s.49: Entry & inspection of premises | This Power is repealed by S.158 (8) Health and Social Care Act 2012 |
| National Health Service Act 2006 | s.239: Entry & inspection of premises | This Power has been repealed by the Local Government and Public Involvement in Health Act 2007 |

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|---|---|---|
| National Health Service and Community Care Act 1990 | Pt III Community Care E & W s.48: Inspection of premises used for the provision of community care services | This power is due to be repealed in the Care Bill currently before Parliament (through consequential amendments) |
| National Health Service Act 2006 | s. 260 & Sch.22 Control of Maximum Prices for Medical supplies para. 10 – power of JP to issue warrant | No scheme to control the maximum prices of medical supplies has been established. Following consultation with key stakeholders, we are minded to repeal this power. If agreed we will aim to repeal the power within this Parliament. |

Table Three: Powers of Entry: Secondary legislation for repeal

| Statute | Title | Section | Comments/Actions |
|--|--|---|---|
| Health & Social Care (Community Health & Standards) Act 2003/ National Health Service Act 2006/ Local Government & Public Involvement in Health Act 2007 | Local Involvement Networks Regulations 2008 | Reg 12(1): Duty of local services- provider to allow entry to premises that it owns or controls | These powers have been repealed. 2013 regulations covering Local Healthwatch (LA (PH functions and entry to premises by Local Healthwatch representatives) Regulations) are in force. The 2013 regulations have been included with the Department's review set out in the 'Powers for Retention' chapter. |
| Local Government and Public Involvement in Health Act 2007 | Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008. | Reg 3(1): Duty of local services- provider to allow entry to premises that it owns or controls. | |
| National Health Service Act 1977 | National Health Service (Pharmaceutical Services) Regulations 2005 | Sched 1 Part 5 para 37 (for pharmacies); Schedule 2 para 10 (for dispensing appliance contractors); and Schedule 3 para 24 (for dispensing doctors): Power of entry of Primary Care | These Regulations and therefore the powers were repealed following the abolition of NHS Primary Care Trusts under the Health and Social Care Act 2012. However, the powers of entry continue in place under the current equivalent 2013 Regulations (see the powers |

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| | | Trust | outlined in annex A to this document. |
| National Assistance Act 1948 | National Assistance (Powers of Inspection) Regulations 1948 [1948/1445] | Reg 3(1): Power of entry to any premises (whether LA or voluntary organisation) providing accommodation under Pt III of the Act/ hostel provided under s.29 or 30 | This power is due to be repealed, subject to the passage of the Care Bill currently before Parliament, through consequential amendments. |
| European Communities Act 1972 | Clinical Thermometers (EEC Requirements) Regulations 1993 | Reg 15(1)(b): Power of inspector to enter any premises at which he has reasonable cause to believe there to be a clinical thermometer, not being premises used only as a private dwelling house | Project plans are being developed to be repeal this power. |

Powers of Entry for retention

Care Quality Commission

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| Health and Social Care Act 2008, s.62 | Power of Entry and inspection of regulated premises by Care Quality Commission (CQC) to carry out regulatory function. |
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The power is necessary for CQC to continue with announced and unannounced inspections of providers. It confers on CQC the power to enter premises of a provider without their approval in order to conduct full and frank inspections of services.

If CQC had no power of entry then they would not be allowed to ask to enter premises for the purposes of carrying out of an inspection. This is why section 62 is essential for CQC to carry out its inspection functions lawfully. If CQC had no power of entry, then there is a risk service providers could claim all inspections would have been unlawful. This power was used 42399 times in the last 12 months.

Without the powers of entry under the 1983 Act CQC would not be able to protect the rights of people who are detained.

Human Fertilisation and Embryology

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| Human Fertilisation and Embryology Act 1990 | Sch. 3B, para. 3 (1) power to enter and inspect any premises to which a HFEA licence applies, including relevant third party premises. |
| Human Fertilisation and Embryology Act 1990 | Sch. 3B, para. 5, power to enter and search premises under warrant issued by a justice of the peace. |

The Human Fertilisation and Embryology Authority (HFEA) is the independent regulator overseeing the use of gametes and embryos in fertility treatment and embryos in research. The HFEA licences fertility clinics carrying out in-vitro fertilisation (IVF) and other assisted reproduction treatments and services and centres carrying out human embryo research. These powers of entry provide the HFEA with powers to enter and inspect premises for compliance with the Human Fertilisation and

Embryology Act 1990, as amended, and to search premises in connection with a suspected offence (with a warrant).

The HFEA uses Schedule 3B to the Act as the primary power to enter and inspect premises and allows the HFEA to carry out an unannounced inspection.

Human Tissue Authority

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| Human Tissue Act 2004 | Sch. 5 para. 3 Entry & search in connection with suspected offences | |
| Human Tissue Act 2004 | Sch. 5 Powers of Inspection , Entry, Search & Seizure para. 2 Entry and Inspection of licensed premises | |
| European Communities Act 1972 | Human Tissue (Quality and Safety for Human Application) Regulations 2007 | Reg 22(5): Inspection of licensed premises to ensure compliance with these regulations conditions of licence/ directions given |
| European Communities Act 1972 | Human Tissue (Quality and Safety for Human Application) Regulations 2007 | Reg 23 (1): Power of JP to grant warrant where offence under these regulations is being/ has been committed |

The Human Tissue Act (schedule 5) provides the Human Tissue Authority (HTA) the power to inspect premises (domestic and business) for compliance with regulations relating to the removal, storage and use of human tissue.

The European Communities Act powers of entry implement EU directives setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissue for treatment purposes.

The HTA, where appropriate, provides notice of inspection. However, the HTA needs to retain the power to conduct unannounced inspections as a last resort when other levers have been tried and exhausted.

Local Government: Acupuncture, Tattooing Ear-Piercing and Electrolysis

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| Local Government (Misc Provisions) Act 1982 | Pt VIII Acupuncture Tattooing Ear-Piercing and Electrolysis. S.17: Power to enter premises |
|---|---|

Local Authority Environmental Health Officers undertake compliance and enforcement activities to ensure that individuals performing tattooing, acupuncture, body piercing and electrolysis are compliant with local requirements relating to hygiene and infection control. This power of entry is contingent on a warrant in all cases where entry to inspect premises is denied. If this power of entry were to be removed, premises would be free to provide facilities that allow unsafe and/or unhygienic services to continue unhindered.

Local Healthwatch

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| Local Government and Public Involvement in Health Act 2007 | .s.225: SofS shall by regulations make provision imposing a duty on services-providers to allow entry by authorised representatives of Local Healthwatch organisations. |
| National Health Service Act 2006/ Local Government and Public Involvement in Health Act 2007 | Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 [2013/351] |

The Health and Social Care Act 2012 abolished Local Involvement Networks and allowed for the establishment of local Healthwatch organisations in their place. Regulations relating to Local Involvement Networks have, therefore, been repealed.

Local Healthwatch organisations are local consumer champions for health and social care in each upper-tier local authority area in England. Local Healthwatch organisations use their powers of entry to gather the views of health and social care service users and monitor quality of health and care services. As such, being able to enter premises and view services is a key tool for local Healthwatch to carry out their activities.

The regulations place a duty on services providers to allow a representative of local Healthwatch organisations to enter certain premises and observe certain activities. There are criteria that local Healthwatch organisations must meet in order to exercise the power of entry, which include the consent of the provider.

Medicines (controlled drugs)

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| Health Act 2006 | Part 3 Drugs Medicines and Pharmacies s.20: Controlled premises power to enter & inspect |
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The Health Act provides a power of entry to various premises for the purposes of securing compliance with controlled drugs legislation. This power applies in England and Scotland. It was one of the measures the Government of the day took as part of its response to the series of Inquiries into the criminal activities of Dr Harold Shipman. The original Controlled Drugs (Supervision and Management of Use) Regulations - SI 2006/3148 derived from Part 3 of the Health Act. Its provisions and requirements were reviewed and revised with the help of a multi-disciplinary Advisory Group in anticipation of the changes to the NHS architecture in England. DH consulted on their recommendations, including retention of this power of entry, in 2012.

Out of a total of 93 responses, 65% of those responding said there was no alternative appropriate measure to justify abolition of this power. It has therefore been retained but simplified in revised Regulations (SI 2012/373) that came into force on 1st April 2013 and which cover England and Scotland. These new Regulations automatically lapse in March 2020 unless the Government of the day decides to extend them.

Mental Health

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| Mental Health Act 1983 | s.115: Powers of entry and inspection of approved mental health professional |
| Mental Health Act 1983 | Part X Miscellaneous and Supplementary s.135(1): Warrant to search for and remove patient |
| Mental Health Act 1983 | s.135(2): Warrant to enter and remove |

The Mental Health Act powers of entry are an essential and vital component in protecting the welfare of mentally ill people and others in extreme circumstances (such as preventing attempted suicide).

s.115 provides a power of entry for an AMHP to enter and inspect premises (other than a hospital) to check whether a mentally disordered patient is under proper care. No warrant is needed to exercise this power of entry, although the power of entry does not empower the AMHP to force entry onto the premises or to override the owner’s refusal to give permission to enter.

s.135 (1) and (2) Powers exercised under warrant by a constable on the basis of information given by an Approved Mental Health Professional (AMHP). These powers allow for a mentally ill person to be removed from premises specified in the warrant to a place of safety; and to take or retake a person liable to be detained under the Mental Health Act in to custody.

MHRA: Blood Safety

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| Finance Act 1973/ European Communities Act 1972 | Blood Safety and Quality Regulations 2005 | Reg 17(1)(a): Power of entry for purpose of enforcing compliance with these regulations or conducting inspections pursuant to regulation 15 |
| Finance Act 1973/ European Communities Act 1972 | Blood Safety and Quality Regulations 2005 | Reg 17(2): Power of JP to grant warrant |

The Blood Safety and Quality Regulations apply to blood establishments and to hospital blood banks and allow MHRA appointed officers to enter business premises and inspect to ensure compliance with the regulations. Warrants may be applied for where there are specific grounds and admission to the premises has been refused or likely to be refused.

Blood establishments are routinely inspected every two years because of the secondary processing of blood component that they can perform. Blood banks are required to submit an annual compliance report because they only store distribute and perform compatibility testing on, blood and blood components. However such reports can trigger an inspection.

MHRA: Laboratory Practice

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| European Communities Act 1972 | Good Laboratory Practice Regulations 1999 | Reg 9(1)(a): Power of entry to enforce compliance with these regulations |
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| European Communities Act 1972 | Good Laboratory Practice Regulations 1999 | Reg 9(2): Power of JP to grant a warrant where there is reasonable grounds for entry to enforce regulations, entry refused or likely to be refused. |
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Good Laboratory Practice (GLP) is an internationally recognised quality standard introduced by an OECD Expert Group in 1978 and formal an integral part of the Council Decision on Mutual Acceptance of Data (MAD) in the assessment of chemicals. The GLP ensure that data designed to assess the safety of chemicals is performed to a single standard accepted by all signatories to the OCED MAD agreement.

GLP inspections are used to ensure that regulatory studies are performed in compliance with the principles of GLP and verify compliance with the principles of GLP as part of the UK’s obligation to the OECD MAD agreement. Inspections are conducted by officers of the GLP Monitoring Authority within the MHRA. This group works on behalf of the Veterinary Medicines Directorate, Food Standards Agency, Chemical Regulation Directorate, Centre for Environment, fisheries and Aquaculture Science, Health and Safety Executive and the Environment Agency.

All these inspections are announced and entry to the premises is agreed with the facility prior to the start of the inspection. Routine GLP inspections are performed approximately once every two years to assess the compliance of the GLP facility and the regulatory data produced by the facility.

Over the past five years the GLPMA have performed two unannounced inspections where the power of entry was used without prior consent from the facility that was inspected. In both cases entry was required to investigate serious breaches of the GLP regulations which could have impacted on public health or the environment.

MHRA: Medicines (Safety and quality)

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| Medicines Act 1968 | Pt VIII Miscellaneous & Supplementary s.111(1) and (2): Right of entry to see if contravention or for the exercise of functions under this Act or regs. | |
| Medicines Act 1968 | s.111(3): Right of entry to verify statement in licence etc | |
| Medicines Act 1968 | s.111(5): Application for warrant where entry refused | |
| Medicines Act 1968 | The Human Medicines Regulations 2012 | s.325 (a): Right of entry to verify whether there has been a contravention of these regs. |

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| Medicines Act 1968 | The Human Medicines Regulations 2012 | s.325 (b): Right of entry to verify data used to obtain conformity certificate issued by the European Directorate for the Quality of Medicines and Healthcare |
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United Kingdom medicines legislation establishes a comprehensive regime for the authorisation of medicinal products for human use, for the manufacture, import, distribution, sale and supply of those products, for their labelling and advertising, and for pharmacovigilance. The Medicines and Healthcare Products Regulatory Agency inspects companies involved in the manufacturing and distribution of medicines intended for human use, to ensure that medicines meet the appropriate standards of safety, quality and efficacy.

Between April 2009 and August 2012, there were 769 inspections carried out under these powers, of which 115 were using warrants.

In 2012, the Medicines Act 1968 was largely consolidated into the Human Medicines Regulations, drawing in other secondary legislation and provisions from EU Directives and Regulations, though some provisions of the 1968 Act remain extant. The Human Medicines Regulations require corresponding powers of entry, which were approved through the Home Office Powers of Entry Gateway.

Monitor (NHS Economic Regulator)

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| Health and Social Care Act 2012 | s.98(1)(b) - licence condition under s.97(1)(i)(i) may allow Monitor to enter and inspect premises owned or controlled by the licence holder. |
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The Health and Social Care Act 2012 provides Monitor, the NHS economic regulator, the ability to put conditions (to allow entry to premises for the purposes of inspection) into licences. Monitor's power, so far has been limited to Foundation Trusts (ie public sector premises). Monitor's power of entry under the Health and Social Care Act 2006 provided a blanket power of entry for all Foundation Trusts. The power of entry is now limited to all licensees (including from April 1st private providers) where Monitor has grounds to believe the licensee will not be able to deliver essential NHS services.

To date Monitor's access to premises has been consensual without the need to use the power. However, Monitor would not want to be in a position where they are unable to gain entry should the power be needed, such as in cases where providers are failing.

NHS Conditions of Service ('Contract Regulations')

NHS England is, since April 2013, responsible for commissioning and contracting NHS primary care services with GPs, dentists, optometrists and pharmaceutical providers. These are set out in various NHS regulations which stipulate the range of contractual models (for example, direct contracts, regulatory contractual requirements known as "terms of service") which can be used with the relevant primary care provider and the conditions with which such a provider must comply. These ensure that services and products are provided in line with agreed national framework requirements, ensure consistency across the various contractual arrangements in place, and make clear to a range of NHS primary care providers their contractual obligations.

If a NHS contractor fails to comply with their obligations, NHS England can rely on the appropriate contractual remedies and powers (including power of entry) in place to seek redress or restitution. These powers can include the need to comply with the Care Quality Commission or local Healthwatch organisations seeking to gain entry to NHS premises, as described in this review. They also provide for adequate contractual sanctions for failure to comply with such a request.

Additionally, the various regulations allow that contractual arrangements include a power of entry to NHS premises for NHS England for the purposes of ensuring a NHS provider is complying with their contractual terms of service and that the services provided are delivering value for money. A full list of these regulations is at Annex A.

Professional regulation: General Medical Council

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| Medical Act 1983 | Sch. 4, para. 5B - Justice of the Peace may issue warrant authorising Assessment Team to enter into any building for the purpose of carrying out an assessment of the standard of a person's professional performance. |
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Paragraph 5B of Schedule 4 to the Medical Act 1983, provides a right for the General Medical Council (GMC) to apply for a warrant to enter the premises of a registrant who is subject to a professional performance assessment (as part of an investigation into their fitness to practise) where there are reasonable grounds for suspecting that such a warrant is required.

A professional performance assessment is an essential tool of the GMC in assessing the fitness to practise of practitioners and ensuring public protection. It helps the GMC to identify those doctors against whom it needs to take action such as removal or suspension from the medical register or the attachment of conditions to their registration. Without the power of entry the GMC would have no means of ensuring it can gain entry to premises of a doctor who is not co-operating in order to investigate their performance.

It is subject to the important safeguard that the warrant can only be granted by a justice of the peace, who will be able to consider all the circumstances.

The Law Commission included clauses on the GMC’s powers of entry in their draft Bill which accompanied the report of their review on regulation of healthcare professionals, and we will consider this further in developing any future Government legislation on the regulation of healthcare professionals.

Professional regulation: General Pharmaceutical Council

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| Pharmacy Order 2010 | Article 10 - Justice of the Peace may issue warrant authorising an inspector to enter the premises of a registrant |
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The General Pharmaceutical Council (GPhC) is the independent regulator for pharmacists, pharmacy technicians and pharmacy premises in Great Britain, responsible for protecting, promoting and maintaining the health, safety and wellbeing of members of the public by upholding standards and public trust in pharmacy. The right of entry powers contained in Article 10 of the Pharmacy Order 2010 provide a Power of Entry to an inspector, appointed by the GPhC, to enter the registered pharmacy or other premises of a registrant. This is in respect of the below functions:

- ensuring standards are met in connection with a retail pharmacy business at a registered pharmacy;
- an investigation into the fitness to practise of a registrant;
- investigating offences related to the register; or
- enforcing any other provisions of the Pharmacy Order 2010 and of rules made under the Order.

The inspector may apply for a warrant from a justice of the peace where: permission is refused or refusal is expected and notice has been given to the occupier; asking for permission would defeat the object; in case of urgency; or the premises are unoccupied or the occupier is temporarily absent.

The right to enter pharmacy premises is an essential tool of the GPhC in assessing the safety of pharmacy premises and public protection. It helps the GPhC to identify those registrants against whom it needs to take action to ensure public protection. Without the power of entry the GPhC would have no means of ensuring it can gain entry to such premises to ensure the protection of the public.

It is subject to the important safeguards that it can only be sought in limited circumstances and the warrant can only be granted by a justice of the peace, who will be able to consider all the circumstances.

The Law Commission included clauses on the GPhC’s powers of entry in their draft Bill which accompanied the report of their review on regulation of healthcare professionals, and we will consider this further in developing any future Government legislation on the regulation of healthcare professionals.

Professional Regulation: Nursing and Midwifery Council

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| Nursing & Midwifery Order 2001/ Health Act 1999 | Nursing and Midwifery Council (Midwives) Rules Order of Council 2012 | Para 11 (of the schedule) : Power to carry out an inspection of a midwife's place of work |
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Rule 11 of the 2012 Rules provides that a representative of the Nursing and Midwifery Council (NMC) or a Local Supervisory Authority may inspect a midwife's place of work. LSAs carry out the general supervision of midwives in accordance with the 2012 Rules. The LSAs are: in England, the National Health Service Commissioning Board; in Wales, Local Health Boards; in Scotland, Health Boards; and in Northern Ireland, the Regional Agency for Public Health and Social Well-being. The purpose of the PoE is to ensure that midwives comply with standards of practice determined by the NMC.

It requires a midwife to permit inspections (from time to time) of her place of work, but this is subject to safeguards in that it does not include the private residence of a woman and baby she is attending or, in respect of another place of work, where a midwife has taken reasonable steps to permit access and it has been denied by a third party.

The power of entry is necessary when investigations are carried out by the NMC and LSAs as to whether midwives are failing to comply with their statutory duties. It helps enable identification of those against whom it is necessary to take action to ensure public protection. Without the power of inspection it would not be possible to ensure this.

The Law Commission included clauses on the NMC's powers of entry in their draft Bill which accompanied the report of their review on regulation of healthcare professionals, and we will consider this further in developing any future Government legislation on the regulation of healthcare professionals.

Public Health (Control of diseases)

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| Public Health (Control of Disease) Act 1984 | s.61(3): Warrant power, where entry under section 61(1) refused |
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| Public Health (Control of Disease) Act 1984 | Pt IV General s.61: Power to enter premises. (Similar terms of entry as s. 287 Public Health Act 1936.) s.61(1) |
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The Public Health Act (Control of Disease) Act 1984, as amended by the Health and Social Care Act 2008 provides officers of a relevant health protection authority, in practice local authorities, port health authorities or a joint boards (comprising two or more riparian authorities) a power of entry in order to perform health protection functions set out in the Act. These functions involve taking necessary measures to protect against infection or contamination for example, with chemical or radiation which presents or could present a significant risk to human health.

Tobacco Control

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| Tobacco Advertising and Promotion Act 2002 | s.14(1): provides Powers of Entry without warrant for duly authorised officers of an enforcement authority in England , Wales and Northern Ireland |
| Tobacco Advertising and Promotion Act 2002 | S.14(4) provides powers for magistrates to issue appropriate warrants including powers of entry to enforce TAPA laws in certain circumstances where admission has been, or is likely to be, refused. |
| Health Act 2006 | S.10 and schedule 2 – provide regulation-making powers to designate enforcement authorities in England (which are exercised through The Smoke-free (Premises and Enforcement) Regulations 2006 (S.I. 2006/3368)) and provide powers of enforcement in respect of smoke free premises, places and vehicles, including powers of entry without warrant. |
| Health Act 2006 | Sch 2. Para. 6: provide powers for magistrates to issue appropriate warrants including powers of entry to enforce smokefree laws in certain circumstances where admission has been, or is likely to be, refused. |

The Tobacco Advertising and Promotion Act 2002 (TAPA) provides Powers of Entry (with and without magistrates' warrant) for duly authorised officers of local enforcement authorities (in practice trading standards officers) to monitor and enforce the prohibition of tobacco advertising and sponsorship as prescribed in TAPA and its related regulations.

The Health Act 2006 provides powers of entry (with and without magistrates' warrant) for duly authorised officers of local enforcement authorities (in practice environmental health officers) to enforce the smokefree legislation set out in the 2006 Act and related regulations, in premises, places and vehicles prescribed as smokefree.

The vast majority of businesses within the scope of these powers of entry are willingly co-operative and welcome the advice and support that local enforcement officers provide to help them avoid any risk of inadvertently committing an offence through non-compliance. It is vital for such powers to remain in place because their existence helps to ensure co-operative and reasonable access by enforcement officers to relevant business premises, without the need for recourse to court warrants, and also so that they are available for use in those few cases where businesses are deliberately obstructive.

Future Tobacco Control

The Children and Families Act 2014 s.91 provides for the creation of a new offence in England and Wales for an adult to buy, or attempt to buy, tobacco or cigarette papers on behalf of an individual aged under the legal age of sale of 18 years. This provision has yet to be commenced. Once implemented the enforcement provisions at s.91(6) will effectively provide powers of entry with and without warrant, to be exercised by a duly authorised officer of a local enforcement authority (in practice trading standards officers).

The Children and Families Act also includes provision at s.95 which, once commenced, will extend the existing smokefree law, including the relevant enforcement powers, to private vehicles carrying children.

Annex A: NHS Conditions of Service (contract regulations)

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| National Health Service Act 1977 | National Health Service (General Medical Services Contracts) Regulations 2004 | Sched 6 Pt 5 para 89: Power of entry of person authorised by Primary Care Trust |
| National Health Service Act 1977/ National Health Service & Community Care Act 1990 | National Health Service (Personal Medical Services Agreements) Regulations 2004 [2004/627] | Sched 5 Pt 5 para 83: Power of entry of persons authorised by the NHS Commissioning Board |
| National Health Service Act 2006 | General Ophthalmic Services Contracts Regulations 2008 | Schedule 1, Part 24, para 19: Power of entry and inspection by the NHS Commissioning Board |
| National Health Service Act 1977/ National Health Service & Community Care Act 1990 | National Health Service (General Dental Services Contracts) Regulations 2005 | Sched 3 Pt 5 para 44: Power of entry of NHS Commissioning Board |
| National Health Service Act 1977/ National Health Service & Community Care Act 1990 | National Health Service (Personal Dental Services Agreements) Regulations 2005 | Sched 3 Pt 5 para 44: Power of entry of persons authorised by NHS Commissioning Board |
| National Health Service Act 2006 | National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 [2013/349] | Sch. 4, para. 35(1): Obligation on NHS Pharmacist to allow persons authorised by the NHS Commissioning Board to enter and inspect pharmacy premises. |
| National Health Service Act 2006 | National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 [2013/349] | Sch. 5, para. 25(1): Obligation on NHS appliance contractor to allow persons authorised by the NHS Commissioning Board to enter and inspect premises. |

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| National Health Service Act 2006 | National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 [2013/349] | Sch. 6, para. 9(1): Obligation on dispensing doctor to allow persons authorised by the NHS Commissioning Board to enter and inspect premises. |
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