

**Impact case study (REF3b)**

<p><b>Institution:</b> University of Lincoln</p>
<p><b>Unit of Assessment:</b> 20 – Law</p>
<p><b>Title of case study:</b> Reform of law on powers of entry</p>
<p><b>1. Summary of the impact</b></p> <p>The impact relates to research by Professor Richard Stone into the powers of entry of officials other than the police. The immediate impact of the research was in it contributing directly to law reform in this area, as contained in the Protection of Freedoms Act 2012: see <a href="http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted">www.legislation.gov.uk/ukpga/2012/9/contents/enacted</a>.</p> <p>Following the legislation, further impact will be felt at a national level, affecting the operation of the powers of officials working for a wide range of government departments, local authorities and public utilities. The legislation will make it harder for new powers to be created, and will improve the legal rights of those whose premises are subject to entry for the purposes of inspection or search.</p>
<p><b>2. Underpinning research</b></p> <p>This case study relates to Professor Stone’s continuing research into entry powers, and focuses on the work carried out following his appointment as Head of the then Law Department at the University of Lincoln in April 2003. Research carried out by Professor Stone from 2003 culminated in the publication of an updated, and significantly revised, edition of Professor Stone’s book, <i>The Law of Entry, Search and Seizure</i> (4th edition, Oxford University Press, 2005). Research in this area has continued, leading to a 5th edition of the text, published in the spring of 2013. Professor Stone is the only UK academic currently focussing on this specific area, and his work is regularly cited in both academic and practitioners’ texts relating to discussion of powers of entry.</p> <p>The particular aspect of the research which is of greatest importance in relation to this case study arose out of a lack of easily available information about, and control over, the powers of entry to private premises available to officials other than the police. Most central and local government departments have such powers, as do officials from companies running national utilities (electricity, gas, water). There was, however, a lack of awareness of the existence of such powers amongst the public, and no easy way of discovering their existence or scope.</p> <p>In addition, in contrast to powers exercised by the police, there was no code of practice governing their use. There was also a shortage of critical analysis of such powers. The research therefore aimed to identify and analyse these powers, and thus to provide a comprehensive survey of them. In particular, work for the 2005 edition sought to place the area and issues in their human rights context, following the coming into force of the Human Rights Act 1998 in October 2000. This was important, in that all public officials would now have to exercise the powers in a way that was compatible with the rights contained in the European Convention on Human Rights, and listed in the schedule to the Human Rights Act.</p> <p>The research, which took place between 2003 and 2005, therefore involved a systematic examination of all statutes and statutory instruments passed since 1997, and identification of all powers giving a right of entry to private premises (which are not always clearly signposted in the legislation). All previously existing powers also needed to be checked for repeal or amendment, using a combination of legal databases (e.g. Westlaw, Lexis) and the provisions of subsequent legislation. Once identified, the powers were classified and analysed according to their subject areas (e.g. education, environmental health), or the officials who were using them (e.g. Revenue and Customs, trading standards officers).</p> <p>The analysis needed to take particular account of the impact of the Human Rights Act, since all such powers will potentially involve a breach of Article 8 of the European Convention on Human</p>

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Rights, and will need to be both necessary and proportionate to the objective which they are intended to achieve, both in content and use. It also needed to consider issues of consistency between powers (e.g. as regards the need for a warrant, or the availability of force), and variations in the levels of intrusion allowed (e.g. inspection or search). The research in this area is, inevitably, a continuing process, since governments are continuously repealing or amending old powers, or enacting new ones, in both primary and secondary legislation.

The research revealed, and continues to reveal, the lack of any coherent policy in relation to these powers. They are enacted in different ways, to meet the specific needs of a particular department or groups of officials, without any reference to how such powers are provided in similar situations. This results in differences with no clear justification as to, for example, whether obstruction of a person exercising the power is a specific offence, or as to who has the power to authorise the use of the power. This is true both for those powers which have been on the statute book for many years, and those that are newly enacted.

The result of this lack of clarity and transparency is that individuals who are subject to these powers, and whose premises may be entered, will have great difficulty in discovering whether the official purporting to exercise the power is acting lawfully or not. Indeed, the officials themselves may not always be aware of the precise extent of or limitations on their powers, thus increasing the risk that they will be used inappropriately.

The research highlighted the need for the development of general principles applying to all entry and search powers used by those other than the police. This reform has now been achieved by means of the Protection of Freedoms Act 2012.

**3. References to the research**

Richard Stone, *The Law of Entry, Search and Seizure*, 4th Ed, Oxford University Press, 2005; 5th Ed, Oxford University Press, 2013, 486 pp.

Both 4<sup>th</sup> and 5<sup>th</sup> editions of the book have included analysis of all statutes passed in the period since the previous edition, and a critical review of the status of all powers previously discussed. This process, and the inclusion of new subject areas, added significant new material to each edition – for example, around 35,000 words in the case of the 5th edition.

**4. Details of the impact**

The research that led to this impact has been a continuing project over a number of years, and arose out of an absence of critical analysis of the lack of control of powers of entry to private premises available to officials other than the police. As noted above, the published work is the principal reference point for both academics and practitioners in relation to this issue.

As revealed by the research, the number of non-police entry powers is extensive. The powers are used by:

- Central government departments – most departments employ officials with entry powers in relating to certain of their functions. Examples include:
  - Department for Environment, Food and Rural Affairs – animal health and welfare, control of pests and diseases, fisheries, food standards, archaeological sites, sites of special scientific interest
  - Department of Health – sale of medicines, storage of embryos, care homes
  - Home Office – immigration, data protection, freedom of information
  - Department for Business, Innovation and Skills – financial services, competition
  - Department for Work and Pensions – health and safety, social security
- Local government officials – examples include:

- Environmental health – including public health, boarding kennels, building regulations, pollution, safety of sports grounds, dangerous trees
  - Food safety – slaughter of animals, fertilizers and feeding stuffs.
  - Health and safety at work
  - Highways – survey, maintenance
  - Housing – vermin, overcrowding
  - Planning – survey and evaluation, development, tree preservation, listed buildings
  - Public entertainments – cinemas, theatres, music venues, public houses
  - Rates and council tax
  - Social services
  - Trading Standards
- Public utilities – all companies supplying services involving the provision of gas, electricity, water or telecommunications have statutory powers of entry to private premises in certain circumstances.

In 2007 Professor Stone was contacted by a member of the House of Lords, Lord Selsdon, who was interested in producing a private member's Bill to regulate non-police entry powers of the above types, having come across such powers in his working life in banking and other industries, and being concerned about the potential for their abuse. He had discovered the 2005 edition of Professor Stone's book as being the only source that provided information about these powers. He had also found that many government departments were unable to list the powers which they had, until directed towards the relevant section of Professor Stone's book.

Professor Stone was then involved in the drafting of the private member's Bill, and its associated schedule of powers. Professor Stone also drafted the Code of Practice which was attached as a schedule to the Bill. The aim was to produce some standardisation into the ways in which such powers were used, and to ensure that those subject to them were given proper information about them – wherever possible before their exercise. These changes would have the effect of addressing some of the problems identified in the research as regards inconsistency and lack of clarity in the scope of such powers. The Bill was introduced in the House of Lords in the 2007-08 session, and completed all stages there in July 2008, but at that stage it lacked government support, and was not debated in the Commons.

The Home Office then (i.e. summer 2008) expressed interest in this possible reform, and Professor Stone was involved with discussions with Lord Selsdon and Home Office officials. Although still lacking government support, Lord Selsdon reintroduced his Bill in the 2009-10 session, when it again completed all stages in the House of Lords (concluding with its Third Reading in April 2010).

Following the general election, later in 2010 the Coalition Government indicated to Lord Selsdon that it intended to take over this matter, and a reform along similar lines to the proposals contained in Lord Selsdon's Bill and the Code of Practice was included in the Protection of Freedoms Bill 2011. This became the Protection of Freedoms Act 2012.

The result of the new legislation is a much clearer statutory framework of law governing the powers of entry of officials other than the police. The Act provides for a comprehensive two-year review, carried out within each government department, of the need for existing powers (which is currently ongoing), and a 'gateway' procedure, which is intended to make it harder to create new powers without establishing the necessity for them. Where such powers do continue to exist, they will be exercisable subject to a Code of Practice, which is currently in a draft form. Professor Stone has provided his expert comments on this draft to the Home Office, and expects to continue to be engaged with the implementation of the law. This work is ongoing.

As will be seen from the list of agencies exercising powers of this type given above, the impact of this reform and the underpinning research will be widespread, and will affect virtually all government departments, many aspects of local government work, and all companies involved in

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the provision of public utilities.

All of the many thousands of officials who use such powers will become subject to statutory provisions and a code of practice, which will regulate their use. This should result in improvement in their operation, not least from the point of view of the citizen who is subject to them. As noted in the 4th edition of *The Law of Entry, Search and Seizure* (p1) 'The exercise of these powers raises basic issues about the scope of individual freedom [i.e. quiet possession of one's own property], and the extent to which that freedom can legitimately be curtailed by the exercise of powers by the police or other central or local government officers'.

The reform that is the subject of this impact case study will therefore have the important effect of redressing the balance between the rights of the citizen and the powers of officialdom.

**5. Sources to corroborate the impact**

## Parliamentary Debates

1. House of Lords, Powers of Entry Bill, 2nd Reading Debate, 15 January 2010, col 717, [www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100115-0002.htm](http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100115-0002.htm).
2. House of Lords, Protections of Freedoms Bill:
  - 2nd Reading, 8 November 2011, column 195, [www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111108-0002.htm#11110878000477](http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111108-0002.htm#11110878000477).
  - Committee Stage, 15 December 2011, column GC369, [www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111215-gc0001.htm#11121597000383](http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111215-gc0001.htm#11121597000383).