

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Miscellaneous

Section 85 Power of entry: compliance with order for cleansing ditches etc.

317. **Section 85** of the Act inserts in section 29 of the LDA 1991 subsection (1A) which confers a power of entry on the Welsh Ministers or persons authorised by them.
318. Section 28 of the LDA 1991 provides that the Agricultural Land Tribunal (ALT) may grant an order to require a land owner or occupier (the respondent) to carry out work on his or her land to improve land drainage on a neighbour's land. If the respondent fails to comply with the order, the Welsh Ministers or drainage body authorised by them, may rely on the power under section 29 to enter land to carry out the work required by the order and may recover the cost of doing so.
319. Section 29(1A) confers a power on the Welsh Ministers or any person authorised by them to enter any land where it is necessary to do so to inspect whether an order has been complied with. The power may only be exercised after three months of the date of the order (or any longer period specified in the order) and where the Welsh Ministers have reasonable grounds for believing that the order has not been complied with.
320. Section 29(3), (4) and (5) of the LDA 1991 apply in relation to the power in section 29(1A). Section 29(3) makes provision about the taking of other persons and equipment on to the land and securing against trespassers; section 29(4) provides that the person entering the land must give no less than seven days' notice to the occupier; and section 29(5) makes provision for compensation if the person exercising the power causes anyone else to sustain any injury.
321. **Section 85(2)** has the effect of applying section 29(1A) to any order made under section 28, including those made before this provision comes into force.
322. The power would usually be exercised where the person who has the benefit of an ALT order complains to the Welsh Government that their land continues to suffer from poor drainage because the respondent has not complied with the order.