

MARINE (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 7 – Common Enforcement Powers Etc.: Licensing and Marine Protection Etc.

Common enforcement powers of entry, search and seizure

Section 134 - Power to board and inspect vessels and marine installations

195. **Section 134** sets out the powers of marine enforcement officers to board and inspect vessels and marine installations. Enforcement officers may require a vessel or marine installation to stop or do anything else that would assist them in boarding or disembarking and in carrying out their enforcement duties. The power extends to things which may be under the control of someone on the vessel or installation, such as a vessel under tow. Marine installations that can move under their own power include jack-up rigs and work platforms. The powers also allow officers to require assistance from someone present who has some control over the situation.

Section 135 - Power to enter and inspect premises

196. **Section 135** sets out the powers of marine enforcement officers to enter and inspect premises. Premises include land. Entry must be at a reasonable time unless the officer believes that, by waiting for that reasonable time, the purpose of entering the premises may be thwarted. The officer also has the power to request assistance from people who have some control in the situation. This may be needed for instance in unlocking a door or opening a container. Where the premises are a dwelling, a warrant is needed before the power of entry may be exercised. Provisions regarding warrants are set out in section 137.

Section 136 - Power to enter and inspect vehicles

197. **Section 136** sets out the powers of marine enforcement officers to enter and inspect vehicles at any time. An officer can also require the vehicle to be taken to an appropriate place to be inspected and can require assistance as necessary from people in the vehicle or the registered keeper. The powers may be exercised wherever and whenever it is necessary, although a warrant is necessary to enter a dwelling. For the purposes of this section, the term “vehicle” does not include vehicles at sea (i.e. vessels and marine installations). These are covered under section 134.

Section 137 - Dwellings

198. **Section 137** provides that a marine enforcement officer may not enter a dwelling without a warrant and sets out the basis on which a justice may issue such a warrant. This section gives enforcement officers the power to seek a warrant from a justice to enter dwellings in order to exercise other enforcement powers in this Part.

Section 138 - Powers of search, examination, etc.

199. **Section 138** sets out the powers that a marine enforcement officer has with regard to search and examination etc. The powers allow an enforcement officer to search a vessel, marine installation, premises or vehicle (“relevant premises”) as part of an inspection and allow an officer to stop someone and detain them to perform a search (e.g. of their equipment). Section 138(3) to (9) enable an officer to examine anything that is in or on the relevant premises, or is attached to, or part of them, including anything that is controlled from them. Subsection (8) provides that the section does not authorise the search of a person. Where appropriate, the officer can also test or measure any object found, which includes live animals (for example, shellfish) or plants. If necessary, an enforcement officer may break open any container or other thing that has been locked. An officer could also require assistance from anyone within the premises or connected to the premises, or from someone who has been carrying an activity in relation to which the officer has enforcement powers.

Section 139 - Power to require production of documents, etc.

200. **Section 139** gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records. A document includes information which is recorded on paper, in an electronic format, and pictorial and related images.

Section 140 - Powers of seizure, etc.

201. **Section 140** sets out powers of seizure that can be exercised by marine enforcement officers. Where an officer suspects that an offence may have been committed, the officer may seize and remove (and detain) anything found on the premises. The officer can also take copies of or extracts from any document/material or record found on the relevant premises. Subsection (5) limits the power so that it does not allow an officer to remove any document/material that is required by law to be kept on the premises, such as vessel registration papers. However, subsection (6) allows such items to be seized when a vessel is in port. Subsection (7) prevents an officer seizing an item which is subject to legal privilege.

Section 141 - Further provision about seizure

202. **Section 141** provides further regarding seizure. Subsections (1) and (2) give officers powers to seize and remove things which are kept in a container. This includes the ability to require evidence to be put into a container so that it can be removed. Subsection (3) enables officers to require that documents or materials are kept on the premises for safekeeping pending removal and seizure. Subsection (4) allows a marine enforcement officer exercising a power of inspection conferred by section 134, 135 or 136 to require any person in or on the relevant premises to afford such facilities and assistance, with respect to matters under that person’s control, as the officer considers would facilitate the exercise of any power conferred by section 140 or 141. Subsection (5) provides that, where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance, with respect to matters under that person’s control, as the officer considers would facilitate the exercise of any power conferred by section 140 or 141.

Section 142 - Retention of seized items

203. **Section 142** makes provision for the retention of items seized under section 140 and sets out the conditions retaining to such retention of seized items. This section allows items seized during an investigation to be kept for as long as is necessary for the investigation and any trial proceedings, unless a photograph or copy would provide sufficient evidence.