

MARINE (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

Powers of marine enforcement officers

Section 131 - Enforcement of marine licensing regime

192. **Section 131** sets out the powers that marine enforcement officers have for the purpose of enforcing the marine licensing regime. These are the common enforcement powers conferred by the Bill and the power conferred by section 150 (which pertains to requiring information relating to certain substances and objects). Such powers may be exercised in the Scottish marine area and in any other part of Scotland. The powers may not be exercised in relation to any British warship.

Section 132 - Enforcement of marine protection and nature conservation legislation

193. **Section 132** outlines the powers that marine enforcement officers have for the purpose of enforcing nature conservation legislation. For the purpose of this section, “nature conservation legislation” means the specific pieces of legislation listed in subsection (2). That subsection lists marine conservation orders, sections 95, 96, 107 112(5) and 117 of the Bill, certain sections of the Wildlife and Countryside Act 1981, certain regulations in the Conservation (Natural Habitats, &c) Regulations 1994 and byelaws made under regulation 36 of those Regulations. Powers may be exercised in the Scottish marine area and in any other part of Scotland. The powers may not be exercised in relation to any British warship. Additionally, the powers may not be exercised in relation to a third country vessel, a non-UK warship or any other vessel that is being used by a country other than the UK for any non-commercial purpose. The exception to this is where in the case of a third country vessel (other than a warship or a vessel being used by a third country for any non-commercial purpose) the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state. The term “vessel” in this context does not include aircraft.

The common enforcement powers

Section 133 - The “common enforcement powers”

194. **Section 133** defines the “common enforcement powers” as the powers under sections 134 to 149.

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.

Miscellaneous and ancillary common enforcement powers

Section 143 - Power to record evidence of offences

204. **Section 143** sets out the power to record evidence of offences. It provides enforcement officers with power to use any device to take visual images of anything connected with the relevant premises which the officer believes is evidence in the investigation of a suspected offence. Section 143(2) describes what the power can be used in relation to and section 143(3) enables the officer to require a person who has some control in that situation to give assistance.

Section 144 - Power to require name and address

205. **Section 144** provides a power for marine enforcement officers to require names and addresses where they have reason to believe that a person has committed a relevant offence.

Section 145 - Power to require production of licence, etc.

206. **Section 145** provides a power to require the production of a licence. If the officer believes that someone has been undertaking an activity which needs a licence, permit, etc., the officer can require that person to produce that licence. Subsection (2) allows the person to produce the licence later if unable to do so at the time the officer demanded it.

Section 146 - Power to require attendance of certain persons

207. **Section 146** provides a power to require attendance of certain persons for the purpose of a marine enforcement officer carrying out functions where vessels or marine installations are boarded or premises are entered. This section applies when an officer has boarded a vessel or marine installation or entered any premises and needs to assemble those on the premises (for instance so that the officer can check identities of people present).

Section 147 - Power to direct vessel or marine installation to port

208. **Section 147** provides a power to direct a vessel or marine installation to port. It gives enforcement officers the power to direct a vessel or marine installation to the port they consider to be the nearest convenient port and detain it there. The section only applies in situations where an officer believes that it would not be practical to exercise a power without first taking the vessel or marine installation to port and detaining it there. Section 147(2) sets out powers which enable an officer to get the vessel or movable marine installation (such as a jack-up rig) to the nearest convenient port. A convenient port may not be the nearest in terms just of distance, but may be, for example, the nearest one able to take the size of vessel or to provide a berth or suitable storage facilities. The officer may take the vessel or installation there, arrange for someone else to take it, or require the person in charge of it to take it into port. For instance, the officer might arrange for a local pilot to take the vessel into port. Section 147(3) says that, once the vessel or marine installation is in port, the officer may detain it or require the person in charge to do so. Subsections (4) to (6) explain that enforcement officers are obliged to issue a written notice of detention to the person in charge of the vessel or marine installation. The notice must state that that the vessel or marine installation will be detained until such time as the notice is withdrawn. A notice may be withdrawn by another written notice signed by any marine enforcement officer.

Section 148 - Assistance, etc.

209. **Section 148** sets out the circumstances in which a marine enforcement officer may bring along other persons when carrying out any relevant functions. This section enables enforcement officers to take other people and anything necessary (including equipment and materials) to assist them in their duties. These powers apply wherever the enforcement officer may be. Assistants could include specialists (for example, a vet if the officer was inspecting wildlife legislation). Anybody brought by the enforcement officer to assist will be supervised or directed by the officer.

Section 149 - Power to use reasonable force

210. **Section 149** enables marine enforcement officers (and their assistants) to use reasonable force if necessary in the exercise of their powers. Reasonable force might be needed to prevent documents being thrown overboard, for example.

Licensing: further enforcement powers

Section 150 - Power to require information relating to certain substances and objects

211. **Section 150** provides a power to require information relating to certain substances and objects. It enables enforcement officers to require a person to give details of any

substance or objects on board their vehicle, vessel, aircraft or marine structure. People on board can also be required to give information about substances or objects lost from their vehicle, vessel, aircraft or marine structure. The section generally re-enacts powers in the Food and Environment Protection Act 1985. Subsections (2) and (3) prevent information obtained under this section from being used as evidence in a criminal prosecution (save for a prosecution for the offence of making a false statement, if the information given is found to be false).

Duties of marine enforcement officers

Section 151 - Duty to provide evidence of authority where a person is present

212. **Section 151** sets out that, where one or more persons are present at the time a marine enforcement officer intends to exercise a power conferred by Part 7, the officer may exercise the power only after complying with certain conditions.
213. These conditions are that, where one person is present at that time, the officer must produce evidence of his authorisation to that person. Where more than one person is present at that time, the officer must produce evidence to the person who appears to the officer to have the greatest interest in the exercise of the power, and is not required to produce it to any other person present.

Section 152 - Duty to state name and purpose, etc.

214. **Section 152** deals with the duty on a marine enforcement officer to state name and purpose. Enforcement officers are obliged on request to state their name, the power they are intending to use and reason for its use. A person assisting an enforcement officer need not give their name, but would need (on request) to say what power was being used and why.

Section 153 - Disapplication of sections 151 and 152 in relation to dwellings

215. This section provides that sections 151 and 152 do not apply as regards the exercise by a marine enforcement officer of any power conferred by Part 7 in relation to entry to a dwelling. This is because schedule 3 makes specific provision in relation to the exercise of warrants under section 137 authorising a marine enforcement officer to enter a dwelling.

Liability of marine enforcement officers

Section 154 - Liability of marine enforcement officers

216. **Section 154** provides as to the liability of marine enforcement officers. Enforcement officers and their assistants are protected from being liable in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions. This exemption from liability does not apply when an enforcement officer acts in bad faith, if the act was carried out without reasonable skill or care, if there were no reasonable grounds for him or her to act in such manner, or if an act was unlawful under the Human Rights Act 1998.

Offences in relation to marine enforcement officers

Section 155 - Offences in relation to marine enforcement officers

217. **Section 155** sets out the circumstances in which persons may be guilty of offences in relation to preventing a marine enforcement officer from properly carrying out duties. This section provides sanctions and penalties for anyone who fails to comply with a requirement made by an enforcement officer, or who assaults or intentionally obstructs an enforcement officer, when the officer is carrying out their duties. It is an offence for anyone knowingly to provide false or misleading information in any particular form or

*These notes relate to the Marine (Scotland) Act 2010
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material to an enforcement officer. This includes intentionally failing to disclose any information or materials requested for by the enforcement officer. Anyone who pretends to be an enforcement officer is also guilty of an offence. Offences against enforcement officers also apply similarly to acts in relation to their assistants. Subsection (2) provides that someone who was required to produce a licence under section 145 and did not do so at the time but complied with a requirement to produce it later, is not guilty of an offence.

General

Section 156 - General

218. [Section 156](#) provides that the powers conferred on a marine enforcement officer in Part 7 are without prejudice to any powers exercisable by the officer apart from Part 7.

Interpretation of Part 6

Section 157 - Interpretation of Part 7

219. [Section 157](#) provides as to the interpretation of terms used in Part 7.