

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 8: Enforcement**

#### **Chapter 2: Common Enforcement Powers**

##### **Introductory**

648. This Chapter sets out various enforcement powers that are considered to be the core set of powers necessary for officers to carry out their enforcement functions in the marine area effectively. The powers are based on those in a number of pieces of existing legislation for sea fisheries, marine licensing and marine nature conservation.

##### **Section 245: Common enforcement powers**

649. This section introduces the purpose of the chapter, which is to set out the powers available to MEOs and other enforcement officers, and defines key terms. *Subsection (3)* provides that the powers available to enforcement officers under this Chapter do not limit their ability to act under other legislation.

##### **Entry, search and seizure**

##### **Section 246: Power to board and inspect vessels and marine installations**

650. The powers in this section enable enforcement officers to board and inspect any vessels and marine installations (subject to the need for a warrant pursuant to section 249 if the vessel or installation is a dwelling) to carry out their functions. Enforcement officers may require the 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 may 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 247: Power to enter and inspect premises**

651. The powers in this section enable enforcement officers to enter and inspect any premises (subject to the need for a warrant pursuant to section 249 if the premises are a dwelling) to carry out any relevant functions. "Premises" includes land but does not include a vehicle, vessel or marine installation. Entry must be at a reasonable time unless the officer believes that, by waiting for that reasonable time, the purpose for requiring entry and inspection 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 249.

***Section 248: Power to enter and inspect vehicles***

652. This section enables enforcement officers to enter and inspect any vehicle at any time (subject to the need for a warrant pursuant to section 249 if the vehicle is a dwelling). An officer may also require the vehicle to be taken to an appropriate place to be inspected. The power also enables them to require assistance as necessary from people in the vehicle or the registered keeper.
653. The powers conferred by this section may be exercised wherever and whenever it is necessary, although subject to a warrant if it was necessary to enter a dwelling. For this section only, the term “vehicle” does not include vehicles at sea, namely vessels and marine installations (which are covered under section 245).

***Section 249: Dwellings***

654. This section provides that an enforcement officer may not enter a dwelling unless a justice has issued a warrant authorising entry. It sets out the matters that must be satisfied before a warrant may be granted. It also introduces Schedule 17 which sets out further provisions relating to warrants (how to obtain one and matters regarding the execution of the warrant).

***Section 250: Powers of search, examination, etc***

655. The powers in this section allow an enforcement officer, when exercising a power of inspection pursuant to sections 245 to 249, to search those premises and examine anything in it. They further allow the officer to stop someone and detain them to perform a search of anything in their possession or control, although *subsection (8)* means the officer cannot search a person. *Subsections (3) to (9)* enable the officer to examine anything that is in or on the relevant premises, is attached to them or is part of them, including anything that is controlled from them. Where appropriate, the officer may 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 things that have been locked. The officer could also require assistance from anyone within the premises or connected to the premises to help, or from someone who has been carrying on an activity in respect of which the officer has enforcement powers.

***Section 251: Power to require production of documents, etc***

656. This section gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records that they have. A document includes information which is recorded on paper or in an electronic format, and pictorial and related images.

***Section 252: Powers of seizure, etc***

657. This section enables an enforcement officer to seize and detain or remove anything found on premises or, where a person has been undertaking an activity in respect of which the officer has enforcement powers, any item in the person’s possession or control. The officer may also take copies of, or extracts from, any document or record found on the relevant premises. These powers are exercisable either for the purposes of determining whether an offence has been committed or where the officer believes the item is evidence that an offence has been committed. *Subsection (5)* limits the power so that it does not allow an officer to remove any document 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.
658. *Subsection (7)* prevents an officer seizing an item which is subject to legal privilege (as defined by the Police and Criminal Evidence Act 1984) or, in Scotland, for which a claim to confidentiality of communications could be made.

***Section 253: Further provision about seizure***

659. *Subsections (1) and (2)* give officers powers to seize and remove things which are kept in a container and to require evidence to be put into a container so that it may be removed, such as might be necessary for undersized fish.
660. *Subsection (3)* enables officers to require that documents or materials are kept on the premises for safekeeping pending removal and seizure.
661. *Subsections (4) and (5)* provide that the officer may require someone to assist them with regard to matters under that person's control, for instance by opening doors, assisting with moving items etc.
662. *Subsection (6)* amends the definition of premises in section 66 of the Criminal Justice and Police Act 2001 to include "marine installation" so that the powers of seizure conferred by Part 2 of that Act may be exercised in relation to marine installations. *Subsection (7)* adds the Marine and Coastal Access Act 2009 to the list of legislation to which section 50 of that Act applies. Section 50 of the 2001 Act enables officers to remove property that otherwise they would not have the power to seize so that they may sift through and determine whether it contains something which they would have the power to seize, when it is not reasonably practicable to determine this on the premises.

***Section 254: Retention of seized items***

663. 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 powers**

***Section 255: Power to record evidence of offences***

664. This section provides enforcement officers with powers to use any device to take visual images of anything connected with the relevant premises for evidence in the investigation of a suspected offence. *Subsection (2)* describes where the power may be used and *subsection (3)* enables the officer to require a person who has some control in that situation to help them.

***Section 256: Power to require name and address***

665. If the officer believes someone has committed an offence, that person may be required to give the officer their name and address.

***Section 257: Power to require production of licence, etc***

666. If the officer believes someone has been undertaking an activity which needs a licence, permit, etc., the officer may require that person to show that licence. *Subsection (2)* allows the person to produce the licence later should they be unable to produce it if they do not have it on them at the time the officer demanded it.

***Section 258: Power to require attendance of certain persons***

667. Where an officer has boarded a vessel or marine structure or entered any premises he may require the attendance of those persons listed.

***Section 259: Power to direct vessel or marine installation to port***

668. This section 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 an offence has been committed and it would not be practical to carry out their duties without first taking the

vessel or marine installation to port and detaining it there, or where the officer believes that the vessel itself is evidence of the commission of an offence and the only way to preserve the evidence is to take it into port.

669. 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, provide a berth or suitable storage facilities. The officer may take the vessel or installation there themselves, or arrange for someone else to take it, or require the person in charge of it to take it into port. For instance, arrangements may be made for a local pilot to take the vessel into port.
670. *Subsection (3)* provides that once the vessel or marine installation is in port, the officer may detain it or require the person in charge to do so.
671. *Subsections (4) to (7)* provide 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 the vessel or marine installation will be detained until such time as the notice is withdrawn. The notice served under this subsection may be withdrawn by another written notice signed by an enforcement officer of the same authority as that of the enforcement officer who originally detained the vessel.
672. The power granted in this section is different from the power granted in section 279. That section provides for the detention of fishing vessels in relation to court proceedings. Detention of a vessel under section 259 may be performed for investigation purposes only.

### ***Section 260: Assistance etc***

673. 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. Their assistants could include specialists, for example a vet if the officer is exercising his powers in order to enforce wildlife legislation. Anybody brought by the enforcement officer to assist may exercise any powers under the Act which the officer may exercise, but only under the officer's supervision or direction.

### ***Section 261: Power to use reasonable force***

674. This section allows enforcement officers and their assistants to use reasonable force wherever necessary to carry out their functions under the Act. Reasonable force might be needed to prevent documents being thrown overboard, for example.

## **Interpretation**

### ***Section 262: Interpretation of this Chapter***

675. Definitions are provided for words or expressions used in this Chapter.