Marine (Scotland) Act 2010

2010 asp 5

PART 7 S

COMMON ENFORCEMENT POWERS ETC.: LICENSING AND MARINE PROTECTION ETC.

Common enforcement powers of entry, search and seizure

134 Power to board and inspect vessels and marine installations S

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may at any time board and inspect a vessel or marine installation. This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) For the purposes of exercising the power conferred by subsection (1), the officer may require a vessel or marine installation—

(a) to stop,

(b) to do anything else that will facilitate the boarding of that or any other vessel or marine installation.

(3) A marine enforcement officer who has boarded a vessel or marine installation may, for the purposes of disembarking from the vessel or installation, require that or any other vessel or marine installation—

(a) to stop,

(b) to do anything else that will enable the officer, and any person accompanying the officer, to disembark from the vessel or installation.

(4) A marine enforcement officer may require any person on board a vessel or marine installation 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 this section.

Commencement Information

I1 S. 134 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

135 Power to enter and inspect premises S

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may enter and inspect any premises. This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) The officer may exercise the power conferred by this section only at a reasonable time, unless it appears to the officer that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time.

(3) A marine enforcement officer may require any person in or on the 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 the power conferred by this section.

Commencement Information

I2 S. 135 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

136 Power to enter and inspect vehicles S

(1) For the purposes of carrying out any relevant functions, a marine enforcement officer may at any time—

(a) enter and inspect any vehicle,

(b) stop and detain any vehicle for the purposes of entering and inspecting it.

This is subject to section 137 (which provides that a warrant is necessary to enter a dwelling).

(2) Where a marine enforcement officer—

(a) has stopped a vehicle under this section, and

(b) considers that it would be impracticable to inspect the vehicle in the place where it has stopped,

the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be inspected.

(3) A marine enforcement officer may require—

(a) any person travelling in a vehicle,

(b) the registered keeper of a vehicle,

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 this section.

(4) The powers conferred by this section may be exercised in any place (whether or not it is a place to which the public has access).

(5) In this section “vehicle” does not include a vessel.

Commencement Information

I3 S. 136 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

137 Dwellings S

(1) A marine enforcement officer may not by virtue of section 134, 135 or 136 enter a dwelling unless a justice has issued a warrant authorising the officer to enter it.

(2) A justice may issue such a warrant only if, on an application by the officer, the justice is satisfied—

(a) that the officer has reasonable grounds for believing that there is material in the dwelling which for the purposes of carrying out any relevant functions the officer wishes to inspect, examine or seize, and

(b) that any of the following conditions is satisfied—

(i) that it is not practicable to communicate with any person entitled to grant entry to the dwelling,

(ii) that it is not practicable to communicate with any person entitled to grant access to the material,

(iii) that entry to the dwelling is unlikely to be granted unless a warrant is produced,

(iv) the purposes of entry may be frustrated or seriously prejudiced unless a marine enforcement officer arriving at the dwelling can secure immediate entry to it.

(3) Schedule 3 contains further provision about warrants issued under this section.

Commencement Information

I4 S. 137 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

138 Powers of search, examination, etc. S

(1) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may—

(a) search the relevant premises for any item,

(b) examine anything that is in or on the relevant premises.

(2) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may—

(a) search or examine anything which appears to be in the person's possession or control,

(b) stop and detain the person for the purposes of such search or examination.

(3) A marine enforcement officer may carry out any measurement or test of anything which the officer has power under this section to examine.

(4) The power conferred by subsection (3) includes power to take a sample from any live animal or plant.

(5) For the purposes of exercising any power conferred by this section, a marine enforcement officer may, so far as is reasonably necessary for the purpose, break open any container or other locked thing.

(6) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under the

person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(7) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require the person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.

(8) Nothing in this section confers any power to search a person.

(9) The reference in subsection (1) to anything that is in or on the relevant premises includes a reference to—
  (a) anything that is attached to or otherwise forms part of the relevant premises,
  (b) anything that is controlled from the relevant premises.

(10) In this section—
  "animal" includes any eggs, larvae, pupae or other immature stage of an animal,
  "item" includes—
    (a) any document or record (in whatever form it is held),
    (b) any animal or plant,
  "sample" means a sample of blood, tissue or other biological material.

Commencement Information
I5 S. 138 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

139 Power to require production of documents, etc. S

(1) This section applies where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136.

(2) The officer may require any person in or on the relevant premises to produce any document or record that is in the person's possession or control.

(3) A reference in this section to the production of a document includes a reference to the production of—
  (a) a hard copy of information recorded otherwise than in hard copy form,
  (b) information in a form from which a hard copy can readily be obtained.

(4) For the purposes of this section—
  (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning),
  (b) information can be read only if—
    (i) it can be read with the naked eye,
    (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

Commencement Information
I6 S. 139 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

140 Powers of seizure, etc. S

(1) A marine enforcement officer who is exercising a power of inspection conferred by section 134, 135 or 136 may—
  (a) seize and detain or remove any item found on the relevant premises,
  (b) take copies of or extracts from any document or record found on the relevant premises.

(2) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may seize and detain or remove any item which appears to be in the person's possession or control.

(3) A marine enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 139(2) may—
  (a) seize and detain or remove the document or record,
  (b) take copies or extracts from the document or record.

  In this subsection, "document" includes anything falling within paragraph (a) or (b) of section 139(3).

(4) The powers conferred by this section may be exercised only—
  (a) for the purposes of determining whether a relevant offence has been committed, or
  (b) in relation to an item which a marine enforcement officer reasonably believes to be evidence of the commission of a relevant offence.

(5) Subject to subsection (6), a marine enforcement officer who is exercising a power of inspection conferred by section 134, 135 or 136 may not remove from the relevant premises any item which is required by law to be kept on the relevant premises.

(6) A marine enforcement officer may remove such an item from a vessel while it is being detained in a port.

(7) Nothing in this section confers power on a marine enforcement officer to seize an item which the officer has reasonable grounds to believe would in legal proceedings be protected from disclosure on grounds of confidentiality of communications.

Commencement Information
I7 S. 140 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

141 Further provision about seizure S

(1) Where—
  (a) any items which a marine enforcement officer wishes to seize and remove are in a container, and
  (b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose,

any power to seize and remove the items conferred by section 140 includes power to seize and remove the container.

(2) Where—

(a) any items which a marine enforcement officer wishes to seize and remove are not in a container, and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they were placed in a container suitable for that purpose,

the officer may require the items to be placed into such a container.

(3) If, in the opinion of a marine enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require—

(a) the person from whom the item is being seized, or

(b) where the officer is exercising a power of inspection conferred by section 134, 135 or 136, any person in or on the relevant premises,

to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

(4) Where a marine enforcement officer is exercising a power of inspection conferred by section 134, 135 or 136, the officer may 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 this section.

(5) 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 in relation to that person of any power conferred by section 140 or this section.

(6) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c.16) (powers of seizure to which section 50 applies), after paragraph 73L (inserted by section 253(7) of the 2009 Act) insert—

"**Marine (Scotland) Act 2010 (asp 5)**

73M Each of the powers of seizure conferred by section 140(1) and (3) of the Marine (Scotland) Act 2010.".

Commencement Information

I8 S. 141 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

142 Retention of seized items S

(1) This section applies to any item seized in the exercise of a power conferred by section 140.

(2) The item may be retained so long as is necessary in all the circumstances and in particular—

(a) for use as evidence at a trial for a relevant offence,

(b) for forensic examination or for investigation in connection with a relevant offence.

(3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose.

Commencement Information

I9 S. 142 in force at 1.7.2010 by S.S.I. 2010/230, **art. 2(e)**

Changes to legislation:
There are currently no known outstanding effects for the Marine (Scotland) Act 2010, Cross Heading: Common enforcement powers of entry, search and seizure.