



Marine (Scotland) Act 2010

2010 asp 5

PART 7

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

Powers of marine enforcement officers

131 Enforcement of marine licensing regime

- (1) For the purposes of enforcing Part 4 a marine enforcement officer has—
 - (a) the common enforcement powers conferred by this Act,
 - (b) the power conferred by section 150 (to require information relating to certain substances and objects).
- (2) Subject to subsection (3), the powers which a marine enforcement officer has for the purposes of enforcing Part 4 may be exercised in the Scottish marine area and in any other part of Scotland.
- (3) Those powers may not be exercised in relation to any British warship.
- (4) In this section and section 132, “British warship” means a ship belonging to Her Majesty and forming part of Her Majesty’s armed forces.

132 Enforcement of marine protection and nature conservation legislation

- (1) For the purposes of enforcing the marine protection and nature conservation legislation, a marine enforcement officer has the common enforcement powers conferred by this Act.
- (2) In this section, “the marine protection and nature conservation legislation” means—
 - (a) marine conservation orders,
 - (b) sections 95, 96, 107, 112(5) and 117,
 - (c) sections 1, 5 to 7, 9, 11, 13, 14 and 14A of the Wildlife and the Countryside Act 1981 (c.69),
 - (d) regulations 39, 41 and 43 of the Conservation (Natural Habitats, &c.) Regulations,

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- (e) any byelaws made by virtue of regulation 36 of those Regulations.
- (3) Subject to subsections (4) and (5), the powers which a marine enforcement officer has for the purposes of enforcing the marine protection and nature conservation legislation may be exercised in the Scottish marine area and in any other part of Scotland.
- (4) The powers which a marine enforcement officer has for the purposes of enforcing the marine protection and nature conservation legislation may not be exercised in relation to a British warship.
- (5) Any of those powers may also not be exercised in relation to any vessel mentioned in subsection (6) unless, in the case of a third country vessel (other than a vessel falling within paragraph (b) or (c) of that subsection), the United Kingdom is entitled under international law to exercise those powers without the consent of the flag state.
- (6) The vessels are—
 - (a) a third country vessel,
 - (b) a warship that is being used by the government of a State other than the United Kingdom,
 - (c) any other vessel that is being used by such a government for any non-commercial purpose.
- (7) In this section—
 - “flag state”, in relation to a vessel, is the State whose flag the vessel is flying or is entitled to fly,
 - “third country vessel” means a vessel which—
 - (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State, and
 - (b) is not registered in a member State,
 - “vessel” does not include aircraft.

The common enforcement powers

133 The “common enforcement powers”

In this Part, the “common enforcement powers” means the powers under sections 134 to 149.

Common enforcement powers of entry, search and seizure

134 Power to board and inspect vessels and marine installations

- (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.

135 Power to enter and inspect premises

- (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.

136 Power to enter and inspect vehicles

- (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,

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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.

137 Dwellings

- (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.

138 Powers of search, examination, etc.

- (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.

139 Power to require production of documents, etc.

- (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.

140 Powers of seizure, etc.

- (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.

141 Further provision about seizure

- (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.

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- (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—

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

142 Retention of seized items

- (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.

Miscellaneous and ancillary common enforcement powers

143 Power to record evidence of offences

- (1) A marine enforcement officer may use any device for the purpose of taking visual images of anything which the officer believes is evidence of the commission of a relevant offence.
- (2) The power conferred by this section is exercisable in relation to anything that—

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- (a) is in or on,
 - (b) is attached to or otherwise forms part of,
 - (c) is controlled from,
- any vessel, marine installation, premises or vehicle.
- (3) The officer may require any person in or on the vessel, marine installation, premises or vehicle to afford such facilities and assistance with respect to matters under the person's control as the officer considers would facilitate the exercise of the power conferred by this section.

144 Power to require name and address

Where a marine enforcement officer reasonably believes that a person has committed a relevant offence, the officer may require the person to provide the person's name and address.

145 Power to require production of licence, etc.

- (1) Where a marine enforcement officer reasonably believes that—
- (a) a person is or has been carrying on a relevant activity, and
 - (b) the person requires a licence or other authority to carry on the activity,
- the officer may require the person to produce the licence or other authority.
- (2) If the person is unable to produce the licence or other authority when required to do so, the person must produce it at such place, and within such period of time, as the officer may specify.

146 Power to require attendance of certain persons

- (1) Where a marine enforcement officer has—
- (a) boarded a vessel or marine installation,
 - (b) entered any premises,
- for the purpose of carrying out any relevant functions, the officer may require the attendance of any of the persons mentioned in subsection (2).
- (2) The persons are—
- (a) the person who is for the time being in charge of the vessel or marine installation,
 - (b) any other person who is on board the vessel or marine installation,
 - (c) the owner or occupier of the premises,
 - (d) any person who is on the premises.

147 Power to direct vessel or marine installation to port

- (1) Where a marine enforcement officer—
- (a) considers that it would not be reasonably practicable to exercise a power which the officer wishes to exercise in relation to a vessel or marine installation without detaining it in a port, or
 - (b) reasonably believes that—

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- (i) a vessel or marine installation is itself evidence of the commission of a relevant offence, and
 - (ii) the only reasonably practicable way to preserve the evidence is to detain the vessel or marine installation in a port,
- the officer may do any of the things in subsection (2).
- (2) The things are—
- (a) take, or arrange for another person to take, the vessel or marine installation and its crew to the port which appears to the officer to be the nearest convenient port,
 - (b) require the person who is for the time being in charge of the vessel or marine installation to take it and its crew to that port.
- (3) When the vessel or marine installation has been taken to a port, the officer may—
- (a) detain it there,
 - (b) require the person for the time being in charge of it to do so.
- (4) A marine enforcement officer who detains a vessel or marine installation under this section must serve a notice on the person who is for the time being in charge of it.
- (5) The notice must state that the vessel or marine installation is to be detained until the notice is withdrawn.
- (6) A notice served under subsection (4) may be withdrawn by service of a further notice signed by any marine enforcement officer.

148 Assistance, etc.

- (1) To assist in carrying out any relevant functions, a marine enforcement officer may bring—
- (a) any other person,
 - (b) any equipment or materials.
- (2) A person who is brought by a marine enforcement officer to provide assistance may exercise any powers conferred by this Act which the officer may exercise, but only under the supervision or direction of the officer.

149 Power to use reasonable force

- (1) A marine enforcement officer may use reasonable force, if necessary, in the exercise of any power conferred by this Act.
- (2) A person assisting a marine enforcement officer under section 148 may use reasonable force, if necessary, in the exercise of any power conferred by this Act.

Licensing: further enforcement powers

150 Power to require information relating to certain substances and objects

- (1) A marine enforcement officer may require any person—
- (a) to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure,

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- (b) to give information concerning any substances or objects lost from a vehicle, vessel, aircraft or marine structure.
- (2) A statement made by a person in response to a requirement made under this section may not be used against the person in criminal proceedings in which the person is charged with an offence to which this subsection applies.
- (3) Subsection (2) applies to any offence other than an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (statements made otherwise than on oath).
- (4) In this section, “vessel” has the same meaning as in section 64(1).

Duties of marine enforcement officers

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

- (1) Where one or more persons are present at the time a marine enforcement officer intends to exercise a power conferred by this Part, the officer may exercise the power only after complying with subsection (2) or, as the case may be, (3).
- (2) Where one person is present at that time, the officer must produce to the person evidence that the officer is authorised to exercise the power.
- (3) Where more than one person is present at that time, the officer must produce such evidence to the person who appears to the officer to have the greatest interest of those present in the exercise of the power, and is not required to produce it to any other person present.

152 Duty to state name and purpose, etc.

- (1) Before exercising any power conferred by this Part, a marine enforcement officer must if requested to do so give the information mentioned in subsection (3).
- (2) Before exercising any power conferred by this Part, any person assisting a marine enforcement officer by virtue of section 148 must, if requested to do so, give the information mentioned in paragraph (b) and (c) of subsection (3).
- (3) The information is—
 - (a) the person’s name,
 - (b) the power the person is proposing to exercise,
 - (c) the grounds for proposing to do so.
- (4) A person may exercise a power conferred by this Part only if the person complies with the duty imposed by subsection (1) or (as the case may be) that imposed by subsection (2).

153 Disapplication of sections 151 and 152 in relation to dwellings

Sections 151 and 152 do not apply as regards the exercise by a marine enforcement officer of any power conferred by this Part in relation to entry to a dwelling. (Schedule 3 makes specific provision in relation to the exercise of warrants under section 137 authorising a marine enforcement officer to enter a dwelling, in particular in paragraphs 6 to 9).

Liability of marine enforcement officers

154 Liability of marine enforcement officers

- (1) A person mentioned in subsection (2) is not to be liable in any civil or criminal proceedings for anything done (or omitted to be done) in or in connection with the discharge or purported discharge of the person's functions under this Act.
- (2) The persons are—
 - (a) any marine enforcement officer,
 - (b) any person assisting a marine enforcement officer by virtue of section 148.
- (3) Subsection (1) does not apply—
 - (a) if the act or omission is shown to have been in bad faith,
 - (b) if the act was carried out without reasonable skill or care,
 - (c) if there were no reasonable grounds for the act or omission,
 - (d) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c.42) (acts of public authorities incompatible with Convention rights).

Offences in relation to marine enforcement officers

155 Offences in relation to marine enforcement officers

- (1) A person commits an offence if the person—
 - (a) fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by a marine enforcement officer in the exercise of any power conferred by the Act,
 - (b) prevents any other person from complying with any such requirement or direction.
- (2) But a person does not commit an offence by reason of a failure to comply with a requirement under section 145(1) (to produce a licence or other authority for the carrying on of a relevant activity) if the person complies with section 145(2) (production of licence or other authority at a place and within a period specified by the marine enforcement officer).
- (3) A person who provides information in pursuance of a requirement reasonably made by a marine enforcement officer in the exercise of the power conferred by section 150 (requiring information relating to certain substances or objects) commits an offence if—
 - (a) the information is false in a material particular and the person—
 - (i) knows that it is,
 - (ii) is reckless as to whether it is,
 - (b) the person intentionally fails to disclose any material particular.
- (4) A person who intentionally obstructs a marine enforcement officer in the performance of any of the officer's functions under this Act commits an offence.
- (5) A person who assaults a marine enforcement officer in the performance of any of the officer's functions under this Act commits an offence.

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- (6) A person who, with intent to deceive, falsely pretends to be a marine enforcement officer commits an offence.
- (7) A person who is guilty of an offence under subsection (1), (3) or (6) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (8) A person who is guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding £20,000.
- (9) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding £50,000.
- (10) In this section, any reference to a marine enforcement officer includes a reference to a person assisting a marine enforcement officer by virtue of section 148.

General

156 General

The powers conferred on a marine enforcement officer by this Part are without prejudice to any powers exercisable by the officer apart from the Part.

Interpretation of Part 7

157 Interpretation of Part 7

- (1) In this Part—
 - “justice” means a sheriff, stipendiary magistrate or justice of the peace,
 - “marine enforcement officer” means a person appointed as such an officer by the Scottish Ministers,
 - “premises” includes land, but does not include any vehicle, vessel or marine installation,
 - “relevant activity” in relation to a marine enforcement officer, means any activity in respect of which the officer has functions,
 - “relevant function” in relation to a marine enforcement officer, means any function of the officer,
 - “relevant offence” in relation to such an officer, means any offence in respect of which the officer has functions,
 - “the relevant premises”, in relation to such an officer exercising a power of inspection conferred by section 134, 135 or 136, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.
- (2) In this Part, except where otherwise provided, any reference to a vessel includes a reference to—
 - (a) any ship or boat or any other description of vessel used in navigation,
 - (b) any hovercraft, submersible craft or other floating craft,
 - (c) any aircraft,
 but does not include a reference to anything that permanently rests on, or is permanently attached to, the seabed.