

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 8: Enforcement

Chapter 1: Enforcement Officers

Marine Enforcement Officers

619. These sections enable the MMO and the Welsh Ministers to appoint enforcement officers for the purpose of enforcing marine licensing, nature conservation and sea fisheries legislation. Such officers are called marine enforcement officers, or MEOs. On appointment, an MEO is automatically a British sea-fishery officer (see section 239). Any commissioned officer of the Royal Navy, and any person in charge of an aircraft or hovercraft of the Armed Services, are also MEOs.
620. The sections also enable the Department of the Environment in Northern Ireland to appoint officers with the common enforcement powers to enforce licensing and the Scottish Ministers to appoint officers with the common enforcement powers to enforce licensing and nature conservation legislation. For areas where the new enforcement officer powers do not apply, existing enforcement powers will remain in place.
621. Enforcement of sea fisheries, licensing and nature conservation in the marine area is currently performed by: British sea-fishery officers, under legislation such as the Sea Fisheries (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fishery Limits Act 1976 and the Fisheries Act 1981; officers appointed under the Sea Fisheries Regulation Act 1966; officers appointed under the Food and Environment Protection Act 1985; and officers appointed under the Wildlife and Countryside Act 1981 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. Enforcement powers in these Acts and Regulations are consolidated here.
622. Where the MMO takes on responsibility for enforcement of regulations which are not otherwise covered by the Act, the regulations will be amended to enable enforcement officers to exercise Chapter 2 powers (common powers) and Chapter 3 powers (other powers). Examples of such regulations include the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007, the Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001 and the Grants for Fishing and Aquaculture Industries Regulations 2007.

Section 235: Marine enforcement officers

623. This section allows the MMO and the Welsh Ministers to appoint marine enforcement officers (“MEOs”). The appointment of such officers may be restricted, so that they do not have the ability to use all the powers officers would otherwise have on appointment: for example, limitations to the geographical area within which an officer may use the powers. Commissioned officers of the Royal Navy and anyone in the Royal Navy, Army or RAF in charge of an aircraft or hovercraft are automatically MEOs. *Subsection (3)*

is a transitional provision allowing the Secretary of State to appoint MEOs in advance of the establishment of the MMO, which will then appoint MEOs in England.

Section 236: Enforcement of marine licensing regime

624. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing the marine licensing regime set out in Part 4 of the Act. The enforcement powers that may be exercised by an MEO for enforcing licensing legislation are the common enforcement powers in Chapter 2 and the specific powers relating to requirements for information about certain substances and objects in Chapter 3 (see section 263).
625. The area where enforcement powers may be used is set out in *subsection (9)* as the relevant enforcement area. However, by virtue of *subsection (3)(d)*, MEOs may also exercise their powers in Scotland and the Scottish inshore region where they are investigating an offence suspected of being committed within the relevant enforcement area. They may use their powers in the Scottish offshore region only if they are in “domestic hot pursuit”.
626. “Domestic hot pursuit” is similar to the international agreement under UNCLOS for pursuit of a vessel, and allows pursuit of a vessel, marine installation or aircraft across national jurisdictions within the UK. Domestic hot pursuit is triggered if the officer has given a signal to stop which is ignored and the vessel leaves the relevant enforcement area and travels into an area where the officer would not otherwise be able to exercise his powers, such as the Scottish offshore region. Pursuit must be continuous, although the pursuing officer, vessel, etc. may change. It allows the officer to use powers under the Act in another jurisdiction within the UK, if the officer does not otherwise have powers in that area. This power does not affect any powers the officer might have under international law.
627. The section provides that MEOs may not use their powers to enforce the marine licensing regime to the extent that it relates to any activity in Wales or the Welsh inshore region concerning or arising from the exploration for, or production of, petroleum or anything done in the course of taking installation abandonment measures in any other part of the relevant enforcement area.
628. Outside the UK marine area, the powers may be exercised in relation to any British vessel, aircraft or marine structure or any vessel which was loaded within the relevant enforcement area.
629. Only an officer of the Armed Services may exercise enforcement powers in relation to a warship.

Section 237: Enforcement of nature conservation legislation

630. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing legislation relating to nature conservation. It also sets out the legislation that an MEO may enforce. The enforcement powers that may be exercised are the common enforcement powers in Chapter 2.
631. Within the UK and its marine area there are some restrictions as to where MEOs may exercise their powers for enforcing nature conservation legislation. MEOs have jurisdiction in the relevant enforcement area as defined in section 237(13). If an MEO is investigating an offence suspected of being committed within the relevant enforcement area, they may exercise their powers in Northern Ireland and Scotland and in the territorial waters around Northern Ireland or Scotland by virtue of *subsection (3)(c)*. In the Scottish offshore region they may exercise their powers only if in domestic hot pursuit (see explanatory note to section 236).

632. Outside the UK marine area, an MEO may exercise the powers in relation to any British vessel or marine installation.

Section 238: Enforcement of fisheries legislation

633. This section sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing sea fisheries legislation. The enforcement powers that may be exercised are both the common enforcement powers in Chapter 2 and fisheries specific powers in Chapter 3 relating to: the inspection and seizure of objects at sea (section 264); seizing fish or fishing gear for the purpose of forfeiture (sections 268 and 269); detention of vessels in connection with court proceedings (section 279); and production of certain equipment (section 284).
634. MEOs are able to use the common powers in circumstances as described in *subsection (4)*. MEOs may use these powers in the relevant enforcement area as defined by section 238(10). MEOs cannot use their powers in Scotland or Northern Ireland or their waters unless in domestic hot pursuit (see explanatory note to section 236) or if they are using them in relation to a British fishing boat which is not a Scottish or Northern Ireland fishing boat. However, the effect of section 239 is that they will retain British sea-fishery officer powers where they do not have MEO powers.
635. Outside British fishery limits, MEOs may exercise their powers in relation to any British vessel or marine installation, other than a Scottish or Northern Ireland fishing boat.
636. Only an officer of the Armed Services may exercise enforcement powers in relation to a warship.

Section 239: Marine enforcement officers as British sea-fishery officers

637. Section 7 of the Sea Fisheries Act 1968 provides for the appointment of British sea-fishery officers (BSFOs). This section makes MEOs automatically BSFOs on appointment but provides that where MEOs are able to exercise common enforcement powers under the Act, they cannot use their BSFO powers. Thus MEOs may use BSFO powers where their MEO powers are not available to them (for example, in enforcing against a Scottish boat in Scottish waters which an MEO had not pursued under section 237(4)).

Other enforcement officers

Section 240: Marine licensing: oil and gas and other reserved matters

638. The Secretary of State will be able to appoint persons to enforce Part 4 of the Act, to the extent that it relates to the licensing of activities relating to various reserved matters. The range of activities in respect of which such persons will be able to exercise enforcement powers differs depending on that part of the UK marine licensing area in which the activities take place. In the Scottish offshore region these activities are limited to those that relate to oil and gas, defence and the prevention of pollution (see *subsection (1)(a)*). In the Welsh inshore region these activities are limited to those that relate to the exploration for, or production of, petroleum (as described in *subsection (1)(b)*). In all other parts of the UK marine licensing area, except the Northern Ireland inshore region, the activities are limited to installation abandonment measures as described in *subsection (1)(c)* and defined in *subsection (6)*. No other enforcement officers appointed under this Part will be able to enforce marine licences in relation to these matters in the areas described. Enforcement officers appointed under this section will have no functions in relation to oil and gas activities in Northern Ireland inshore waters, unless they are investigating an offence suspected of having taken place in their area of jurisdiction.

639. Enforcement officers appointed under this section will have access to the common enforcement powers in Chapter 2 of this Part and the specific power for requiring certain information relating to licensing in Chapter 3. They will have similar powers to other officers appointed under this Part for pursuing offenders across national and international boundaries.

Section 241: Marine licensing: Northern Ireland

640. This section allows the Department of the Environment in Northern Ireland to appoint persons for the purpose of enforcing Part 4 of the Act (marine licensing). Such an enforcement officer may exercise enforcement powers in England, Wales and Northern Ireland and in relation to any vessel, aircraft or marine installation within the UK marine licensing area other than the Scottish offshore region. If such an officer is investigating an offence suspected of being committed within their area of jurisdiction, they may use enforcement powers in Scotland and in the Scottish inshore region. However, the officer may only use these powers in the Scottish offshore region if in “domestic hot pursuit” (see explanation to section 236).
641. Enforcement officers appointed under this section do not have any powers to enforce Part 4 of the Act so far as relating to any oil and gas activities in Wales. In addition, they do not have any powers to enforce Part 4 of the Act so far as relating to the taking of installation abandonment measures (defined in *subsection (10)*), unless such measures are taken in Northern Ireland or the Northern Ireland inshore region.

Section 242: Marine licensing: enforcement in Scottish offshore region

642. This section enables Scottish Ministers to appoint persons for the purposes of enforcing licensing under Part 4 of this Act in the Scottish offshore region. Such officers will have access to the common enforcement powers in Chapter 2 of this Part and the specific power for requiring certain information relating to licensing in Chapter 3. These officers may not exercise their powers to enforce Part 4 so far as it relates to a limited range of reserved matters, such as oil and gas related activities (see section 240).
643. If an officer appointed by Scottish Ministers to enforce licensing is investigating an offence suspected of being committed within the Scottish offshore region, the powers to investigate on land and in inshore waters elsewhere in the UK may be used. To enforce in the offshore area other than in the Scottish offshore region, these powers will need to be used under domestic hot pursuit rules (see explanatory note to section 236).

Section 243: Enforcement of MCZs in Scottish offshore region

644. This section enables Scottish Ministers to appoint officers with the common powers for the purpose of enforcing section 140, which creates the offence of damaging etc protected features of MCZs, in the Scottish offshore region. Officers appointed by Scottish Ministers to enforce MCZs, investigating an offence suspected of being committed within the Scottish offshore region, may exercise their powers to investigate on land and in inshore waters elsewhere in the UK. They will need to use domestic hot pursuit to pursue offenders from the Scottish offshore region to other offshore areas within the UK marine area.
645. *Subsections (4), (5) and (6)* set out the circumstances in which a vessel is subject to hot pursuit (see explanatory note to section 236). They require that the vessel is in the Scottish offshore region, that an audible or visible signal is given for the offending vessel to stop and that the pursuit of the vessel is not interrupted.
646. *Subsection (8)* provides that persons appointed under this section may not exercise their powers in relation to British warships.

*These notes refer to the Marine and Coastal Access Act 2009
(c.23) which received Royal Assent on 12th November 2009*

Interpretation

Section 244: Interpretation of this Chapter

647. This section provides definitions for the key terms used in this Chapter of the Act.