

# MARINE AND COASTAL ACCESS ACT 2009

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## 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.

## **Interpretation**

### ***Section 244: Interpretation of this Chapter***

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

## ***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.

## ***Chapter 3: Licensing Enforcement Powers***

### ***Section 263: Power to require information relating to certain substances and objects***

676. This section enables enforcement officers to require a person to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure. People may also be required to declare information about substances or objects lost or missing from a vehicle, vessel, aircraft or marine structure. This re-enacts a power conferred by the Food and Environment Protection Act 1985 and relates to information about substances which might be harmful to human health or the environment. *Subsections (2) and (3)* prevent this information being used as evidence in a criminal prosecution (save for the offence of making a false statement, if the information given is found to be false).



## ***Chapter 4: Fisheries Enforcement Powers***

### **Inspection and seizure of objects at sea**

#### ***Section 264: Power to inspect and seize objects at sea***

677. This section provides enforcement officers with powers to inspect any object found in the sea which it is believed has been or is being used for or in connection with fishing. This includes powers to lift the object out of the sea for inspection. If the officer believes that the object in question has been used in committing, or is evidence of, an offence then it may be seized. The power to seize an object includes power to seize anything attached to or contained within the object (for example, fish). If the officer does not seize the item the officer must replace it or, if it is not practicable to do so, may seize it for subsequent collection by its owner.

#### ***Section 265: Reports of inspections under section 264***

678. This section contains reporting requirements that an enforcement officer must follow after inspecting objects under section 264. The report must state the date and time of the inspection, the identity of the officer in charge of the inspection and how the officer may be contacted.
679. Where anything has been seized the report must also state what has been seized, the reason for its seizure, and any further action to be taken in respect of the object.
680. Where the object has not been seized, then, wherever it is reasonably practicable to do so, a copy of the report must be attached to the object. If the report cannot be attached to the object, the section provides that the report should be served on every person who appears to the officer to be the owner, or one of the owners, of the object. If, after taking reasonable steps to identify any person as owning the object, the officer cannot do so, he must take reasonable steps to bring the report to the attention of persons likely to be interested in it.
681. Where an object was seized and the relevant authority has decided not to take proceedings in respect of any offence relating to the object, or such proceedings have concluded, the relevant authority must serve a copy of the report on every person who seems to be the owner, or one of the owners, of the property. If the object was seized under section 264(5) because it was impractical to replace it, the report and notice of collection must be served together. Where a relevant authority cannot identify any person as owning the object it must take reasonable steps to bring the contents to the attention of those likely to be interested in it.

#### ***Section 266: Retention of objects seized under section 264(2)***

682. This section provides for the retention by the relevant authority of any objects seized under section 264(2). The objects may be retained until such time that a decision has been made not to prosecute or where proceedings are completed without an order for forfeiture being made. In either event, the objects must be made available for collection. The object does not however have to be made available if it is gear or fish liable for forfeiture under section 275 or 276.

#### ***Section 267: Disposal of objects seized under section 264***

683. This section sets out arrangements for the disposal of objects seized under section 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection.
684. The relevant authority must send a “notice of collection” to every person who appears to the authority to be the owner, or one of the owners of, the property. The authority may take any other steps it sees fit to notify such persons that the object is available

for collection. Where an owner cannot be identified, it may take the action it sees fit to bring the notice to the attention of persons likely to be interested in it. The notice must state where the object is and that the object must be collected within 3 months or it will be disposed of.

## **Seizure for purposes of forfeiture**

### ***Section 268: Power to seize fish for purposes of forfeiture***

685. This section provides a power for an enforcement officer to seize fish for the purpose of forfeiture. The enforcement officer may only do this where a court has the power, following conviction, to order forfeiture. The power enables the seizure of fish from a vessel, from the sea or from the shore, including fish seized under section 252.
686. The section gives enforcement officers practical powers, such as allowing them to take the container the fish are in or to require the fish to be put in a container. It includes a power to require anybody (for example, crew, skipper etc) to keep the fish secure and not to tamper with them whilst the investigation is ongoing and until the fish are seized and removed. It also includes the power to request assistance from anybody in or on the premises whilst the enforcement officer is carrying out his duties, and the power to require a person carrying on an activity in respect of which the officer has functions to afford facilities and assistance.

### ***Section 269: Power to seize fishing gear for purposes of forfeiture***

687. The same principles which apply in relation to section 268 (regarding the seizure of fish for the purpose of forfeiture) apply here to the seizure of fishing gear.

### ***Section 270: Procedure in relation to seizure under section 268 or 269***

688. This section creates an obligation on the enforcement officer who seizes any fish or fishing gear under section 268 or 269 to serve a written notice on every person who appears to the officer to be the owner or one of the owners at the time the fish or gear were seized, and sets out other persons on whom the notice must be served (depending on the location from which the property was seized).
689. The written notice must state what has been seized, the reason for its seizure, the nature of the alleged offence committed and any proposed action to be taken. The notice must also indicate that, unless the property is liable for forfeiture under section 275 or 276, it will be kept until such time as it may be released or the court has ordered its forfeiture.
690. *Subsections (3) to (5)* set out the procedure where the fish or fishing gear has been seized following inspection carried out in accordance with section 264. It states that the officer must serve the notice referred to in section 265 at the same time as the notice which is to be served under this section and makes provision for the situation where the owner cannot be ascertained.

### ***Section 271: Retention of property seized under section 268 or 269***

691. This section provides the relevant authority with the power to retain any fish or fishing gear seized under section 268 or 269. However the property must be made available for collection as soon as is reasonably practicable where either the relevant authority decides not to bring court proceedings or any proceedings brought are concluded without an order for forfeiture being made.

### ***Section 272: Bonds for release of seized fish or gear***

692. This section allows the owner of any property (or the owner or charterer of the vessel if the property was seized from there) seized under section 268 or 269 and being retained under section 271 to lodge a bond with the relevant authority in return for its release. The

relevant authority may set conditions for the release and may enter into an agreement with the owner as to the amount of money to be given as the security. Where an agreement is not reached, the court may determine the amount to be paid as security.

693. If the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made, the relevant authority must return the bond as soon as possible. Where a court has the power to order the forfeiture of fish or fishing gear seized under section 268 or 269, that power applies equally to any bond given under this section.

### ***Section 273: Power of relevant authority to sell seized fish in its possession***

694. This section gives the relevant authority the power to sell any fish it has retained under section 271. The power of the court to order the forfeiture of the fish may be exercised in relation to the proceeds of the sale of the fish.
695. The relevant authority may retain the proceeds of sale until the court orders the money to be forfeit, the relevant authority has decided not to take proceedings or proceedings have concluded with no order for forfeiture having been made. If the relevant authority decides not to take proceedings or proceedings have concluded with no order for forfeiture having been made then the relevant authority must release the proceeds of the sale as soon as possible. *Subsections (5) and (6)* provide for the persons to whom the proceeds of sale are to be released and the procedure if that money remains unclaimed.
696. Provision is also made as to how the fish are to be sold, including a right for the relevant person to make representations as to how the fish are to be sold. This section also permits the relevant authority to deduct its reasonable expenses from the proceeds of sale.

### ***Section 274: Disposal of property seized under section 268 or 269***

697. Where the relevant authority no longer wishes to retain fish or fishing gear seized under section 268 or 269, or where it is required to make such property available for collection under section 271, section 274 requires a notice of collection to be served on every person who appears to be the owner, or owners, of the property. The notice must state the location from which the property may be collected and that if not collected within 3 months it will be disposed of. The specified location for collection will usually be a port office. It further makes provision where the relevant authority is unable to identify an owner.

## **Forfeiture**

### ***Section 275: Forfeiture etc of prohibited items***

698. This section provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. The forfeiture power applies to any fishing gear seized on board a vessel or from the sea which when seized by the enforcement officer could not be used for any form of fishing without committing an offence under the law of England and Wales. Examples of such gear include “French Dredges”, gill and other types of nets with mesh sizes between 71-89mm. The forfeiture power does not apply to gear found on land.

### ***Section 276: Forfeiture etc of fish failing to meet size requirements***

699. This section provides a forfeiture power in respect of fish that fail to meet size requirements which corresponds to the forfeiture power in respect of fishing gear in section 275.

***Section 277: Further provision about forfeiture under section 275 or 276***

700. This section gives effect to Schedule 18 which makes detailed provision in respect of the forfeiture under section 275 or 276 of gear or fish which fail to meet size requirements.

***Section 278: Forfeiture by court following conviction***

701. This section applies where, after a successful prosecution under fisheries legislation, the court orders the forfeiture of the fish or gear in respect of which the offence was committed. The relevant authority will be ordered to take possession of the property and may dispose of it as it sees fit. The proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property.

**Detention of vessels in connection with court proceedings**

***Section 279: Power to detain vessels in connection with court proceedings***

702. This section allows an enforcement officer to detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. The enforcement officer has the power to direct the vessel to port and a power to hold the vessel in port or require the person in charge of the vessel to do so.
703. The section provides that the power to detain may be used where an enforcement officer has reasonable grounds to suspect that an offence has been committed by the owner, master or charterer of a fishing vessel. Furthermore, in order to detain a vessel, the enforcement officer must either believe that court proceedings will be commenced in respect of the offence committed and there is a real risk that the alleged offenders will not attend court unless the vessel is detained, or the enforcement officer must suspect that following a conviction and imposition by the court of a fine, the court is likely to use its detention powers until all fines have been paid.
704. This section gives an enforcement officer powers to take the vessel and its crew to the nearest convenient port and detain the vessel there. A convenient port may not be the nearest in terms of distance, but it may be, for example, the nearest one able to take the size of the vessel, provide a berth or suitable storage.
705. An enforcement officer is required to issue a written notice to the person in charge of the vessel stating why the vessel has been detained and the circumstances in which it would be released.

***Section 280: Release of vessels detained under section 279***

706. This section makes provision for the release of a vessel which is being detained under section 279. The vessel ceases to be detained if: the notice for detention is withdrawn; the vessel is released by order of the court; proceedings associated with the vessel's detention have concluded; or the court exercises its power to detain the vessel.
707. An enforcement officer may withdraw a notice of detention at any time and such a notice must be withdrawn if any of the grounds for release are met: either that the relevant authority has decided to take no proceedings in respect of the vessel or if there is no longer reason to believe either that the person in question would fail to attend court or that a court would order detention of the vessel.

***Section 281: Power of court to order release of vessels***

708. This section applies in circumstances where a vessel has been detained under section 279. It provides a power for the court to order the release of the vessel. An order may be made by the court if it is satisfied that the continued detention of the vessel under section 279 is no longer necessary. This might be either because the continued

detention of the vessel is not necessary to secure any person's attendance at court or because following conviction the court would not order the vessel to be detained.

***Section 282: Bonds for release of vessels***

709. This section gives the relevant authority power to enter into an agreement with the owner or charterer of the vessel (or any of the owners or charterers of the vessel) to release a vessel detained under section 279 when a monetary security has been paid. The amount of the security will be settled by the two parties to the agreement. The relevant authority may impose conditions on the person who provides security.
710. The security must be returned if any of the grounds for release set out in *subsection (5)* are met.
711. Where the court imposes a fine, it may order that any money paid as security should be used towards the payment of the fine. If the fine imposed is less than the security that was paid, any surplus money must be returned to the person who provided the security.

***Section 283: Power of court to order repayment of bonds***

712. Where a bond has been paid pursuant to section 282 (and the notice of detention withdrawn) the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel.

**Production of equipment**

***Section 284: Power to require production of certain equipment***

713. An enforcement officer may request anybody on board a fishing boat to produce any automatic recording or transmitting equipment as set out in *subsection (2)*.

**Supplementary**

***Section 285: Service of notices, etc***

714. This section specifies the means by which notices required to be served under this Chapter must be served. Such notices are to be delivered in person, left at an appropriate address or sent by post. In relation to the owner of a vessel the appropriate address is further defined by reference to the address given in the appropriate register. The section stipulates the appropriate address for other persons, including firms and companies and unincorporated associations registered or doing business outside the UK.

***Section 286: Conclusion of proceedings***

715. This section establishes a means of determining when proceedings have been concluded. Where proceedings are terminated by an appealable decision, they are not to be considered as concluded until the time for making an appeal has passed, or, if an appeal is brought, until the conclusion of the appeal. This is significant for various purposes in this Chapter, for example in triggering the release of a vessel that has been detained.

***Section 287: Interpretation of this Chapter***

716. This section provides definitions for words or terms used in this Chapter.



## **Chapter 5: Common Enforcement Provisions**

### **Introductory**

#### **Section 288: Meaning of “enforcement officer”**

717. This section defines enforcement officer as someone who has powers under this Part of the Act, save those who have powers by virtue of being an assistant to an officer.

### **Duties of enforcement officers**

#### **Section 289: Duty to provide evidence of authority**

718. This section obliges enforcement officers who are exercising the common enforcement powers to show evidence that they have the authority to carry out their enforcement functions, when asked to do so. The duty does not apply to Marine Enforcement Officers of the Armed Services. If the officer thinks that to comply with the request immediately would create problems, such as putting the officer in personal danger or allowing evidence of an offence to be destroyed, the officer may defer complying with the request until it is practicable to do so.

#### **Section 290: Duty to state name and purpose, etc**

719. In conjunction with section 289, enforcement officers are also obliged to state their name, the power they are intending to use and reason for its use whenever they are requested to do so, although the officer may defer complying with the request if the immediate situation requires it (for example, if an officer thinks that the request is a delaying tactic to avoid the officer discovering an offence being committed at that moment in time). Someone assisting the enforcement officer need not give their name, but would need to say what power that person was proposing to exercise and the grounds for so doing, if so requested.

### **Liability of enforcement officers**

#### **Section 291: Liability of enforcement officers etc**

720. Enforcement officers and their assistants will be protected from liability in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions under the Act. This exemption from liability does not apply when an enforcement officer acts in bad faith or if there were no reasonable grounds for the officer to act in such manner, nor would it prevent damages from being awarded if the officer's actions were unlawful under section 6(1) of the Human Rights Act 1998. This immunity similarly covers any person assisting an enforcement officer.

### **Offences in relation to enforcement officers**

#### **Section 292: Offences in relation to enforcement officers**

721. This section provides for a number of offences that may be committed in relation to enforcement officers or people assisting them. Anyone who fails to comply with a requirement reasonably made by an enforcement officer, or prevents any other person from so doing, is guilty of an offence. However, *subsection (2)* provides that someone who was required to produce a licence under section 257 and did not do so at the time, but complied with a requirement to produce it later, is not guilty of an offence.
722. Where a person provides information to an enforcement officer in response to a requirement made by the officer, it is also an offence for the person knowingly or recklessly to provide false information, or intentionally to fail to disclose any relevant piece of information. Anyone who assaults or intentionally obstructs an enforcement

officer, when the officer is exercising his duties under this Part, is guilty of an offence. Anyone who pretends to be an enforcement officer is also guilty of an offence.

## ***Chapter 6: Miscellaneous and Supplementary***

### **Enforcement of Community rules**

#### ***Section 293: Enforcement of Community rules***

723. This section amends section 30 of the Fisheries Act 1981.
724. Section 30(1) is amended so that it applies both to enforceable Community restrictions and enforceable Community obligations. These restrictions and obligations are directly applicable and enforceable against all fishing boats within British Fishery Limits, and also English and Welsh boats outside those limits and persons in England and Wales.
725. The general power in section 30(2) for the Secretary of State to make by order provision to enforce Community obligations and restrictions is extended to English and Welsh fishing boats anywhere in the world and to persons of a specified description (specified within the order) on board fishing boats anywhere in the world. Persons on board Scottish or Northern Ireland fishing boats are excluded.
726. **Section 30** is further amended so that an Order in Council may be made extending the application of section 30(1) and (2) to any Isle of Man or Channel Islands fishing boat outside British Fishery Limits.

### **Administrative penalty schemes**

#### ***Section 294: Administrative penalty schemes***

727. This section introduces powers for the Secretary of State (in relation to England or vessels outside the Welsh zone) or the Welsh Ministers (in relation to Wales or vessels within the Welsh Zone) to apply Fixed Administrative Penalties (FAPs) to domestic fisheries offences, namely offences which do not originate in Community law. The vast majority of fisheries offences are breaches of Community law for which FAPs are available using existing powers made under section 30(2) of the Fisheries Act 1981.
728. The FAP scheme will complement the existing criminal system rather than replace it, as a person will be under no obligation to pay the penalty if he wishes to have the matter dealt with in court in the usual way. The scheme will be used to address fisheries offences such as offences under the Sea Fisheries Act 1868, the Sea Fish (Conservation) Act 1967, the Sea Fisheries Act 1968, the Fishery Limits Act 1976 and the British Fishing Boats Act 1983, including any offences in any of the orders made under these Acts. An order to make provision to apply FAPs may apply in relation to England and Wales, any vessels within British Fishery Limits other than the Scottish zone, Northern Ireland zone and the territorial sea adjacent to the Isle of Man, Jersey and Guernsey, and any English or Welsh fishing boats wherever they may be. *Subsection (6)* also provides that Her Majesty may by Order in Council provide for this scheme to apply to any Isle of Man or Channel Islands fishing boats which are outside British Fishery Limits.
729. The section sets out detail of the provision which may be made in the order, including the content of the penalty notice, who may issue a notice, the minimum and maximum amount of the penalty and matters as to payment.

### **Crown application**

#### ***Section 295: Application to the Crown***

730. The provisions in Chapters 1 to 5 of this Part apply to the Crown. Contravention of any provision of Chapter 5 will not make the Crown criminally liable.