

MODERN SLAVERY ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Maritime Enforcement

Section 36 and Part 2 of Schedule 2: Enforcement powers in relation to ships: Scotland

138. *Section 36* sets out powers for law enforcement in Scotland (the police, designated NCA officers, customs officials, or a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The details of the additional powers are set out in Part 2 of Schedule 2.
139. *Subsection (1)* sets out the scenarios in which a Scottish constable or an enforcement officer may use additional powers in relation to vessels where an offence of human trafficking or slavery is suspected, in waters adjacent to Scotland, or in international or foreign waters. These restrictions are in line with UK court jurisdiction, so wherever a suspect is apprehended prosecution can take place. The only exception to this is in the case of a UK vessel in the territorial waters of another state, where UK court jurisdiction only applies where the offender is a British citizen. However, as the nationality of a suspected offender may not be apparent prior to investigation, the power is provided for all UK vessels in this scenario.
140. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, or investigating a listed offence, set out in *subsection (8)*, and in accordance with the conditions of this section.
141. *Subsection (3)* provides that a Scottish constable or an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 2 of Schedule 2 in relation to a UK vessel in foreign waters.
142. *Subsection (4)* sets out that the approval of the Secretary of State for the scenario in *Subsection (3)* can only be provided if the state or relevant territory in whose waters the powers would be exercised consents to the use of these powers.
143. *Subsection (5)* confirms that the authority of the Secretary of State is also required for a Scottish constable or enforcement officer to use these powers in relation to a foreign vessel, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to the United Kingdom.
144. *Subsection (6)* sets out that the approval of the Secretary of State for the scenario in *Subsection (5)* can only be provided in relation to a foreign ship if one of the listed conditions has been met. This ensures the measure is aligned with the UN Convention on the Law of the Sea (UNCLOS). The conditions are: that the home state has requested the assistance of the UK for the purposes set out in *Subsection (2)(a)*; the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.

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(c.30) which received Royal Assent on 26 March 2015*

145. *Subsection (7)* adds that, in giving this authority in relation to a foreign ship, the Secretary of State must also give effect to any conditions or limitations the home state in question has made a condition of their authority.
146. *Subsection (8)* sets out the relevant Scottish offences for this section.
147. The detail of the powers set out in section 36 is set out in Part 2 of Schedule 2. *Paragraph 11* introduces Part 2, which sets out the powers exercisable by Scottish constables, designated NCA officers, and enforcement officers (customs officials or a relevant member of the Armed Forces) under section 36 (Enforcement powers in relation to ships: Scotland) and section 38 (Hot pursuit of ships in United Kingdom waters). *Sub-paragraph (2)* sets out the definitions of “items subject to legal privilege”, “listed offence”, and “the ship”.
148. *Paragraph 12* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in Scotland, or elsewhere, and detained there, where there are reasonable grounds to suspect that a slavery or human trafficking offence is being, or has been committed or the vessel is being used in connection with a slavery or trafficking offence. It notes that if the Scottish constable or enforcement officer is acting on the authority of the Secretary of State, as set out in section 36(5), the officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power a Scottish constable or an enforcement officer has the power to require any member of a vessel’s crew to take action necessary to support their enforcement activity in relation to the powers set out in *sub-paragraph 12(1)*. Written notice must be provided to the master of any vessel detained under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a Scottish constable or an enforcement officer.
149. *Paragraph 13* provides a power to search a vessel and any person or object on that vessel, where a Scottish constable or enforcement officer has reasonable grounds to suspect that there is evidence on the ship relating to a slavery or trafficking offence, or a connected offence. It gives a Scottish constable or enforcement officer the power to require a person on the vessel under investigation to give information about themselves. It confirms that searching may include (although is not limited to) opening containers, requiring the production of documents, books or records (in either hard copy or electronic form) and making photographs or copies of anything the a Scottish constable or officer has power to require. This power can only be used where a search is reasonably required to discover evidence of a slavery, trafficking or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves.
150. *Paragraph 14* provides a power of arrest where a Scottish constable or enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A Scottish constable or an enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. A Scottish constable or an officer may also seize and detain anything that appears to be evidence of that offence. The exception to this is any materials that the constable or officer has reasonable grounds to suspect are subject to legal privilege.
151. *Paragraph 15* provides that a Scottish constable or enforcement officer may take another person or relevant equipment or materials on board a vessel to support them in exercising the powers set out in this Schedule. The assistant may perform functions on behalf of the constable or officer under their supervision.
152. *Paragraph 16* confirms that a Scottish constable or enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Part of this Schedule.

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153. *Paragraph 17* provides that, when required, a Scottish constable or enforcement officer must provide evidence of their authority.
154. *Paragraph 18* creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a Scottish constable or an enforcement officer in performing the functions in this Part of this Schedule, or fails to comply with a requirement of a Scottish constable or an enforcement officer, without reasonable excuse. The second makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, in response to a Scottish constable or an enforcement officer requiring information when exercising the powers within this Schedule.
155. Sub-paragraph (3) of *paragraph 18* sets out that a person convicted of this offence will be subject, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.