

MODERN SLAVERY ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Maritime Enforcement

Section 37 and Part 3 of Schedule 2: Enforcement powers in relation to ships: Northern Ireland

156. *Section 37* sets out powers for law enforcement in Northern Ireland (the police, customs officials, a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015 made under Schedule 24 to the Crime and Courts Act 2013, (once the relevant provisions come into force - expected in May 2015), will enable the powers to also be exercised by certain NCA officers who will fall within the definition of a constable because they will be designated with the powers and privileges of a constable. The details of the additional powers are set out in Part 3 of Schedule 2.
157. *Subsection (1)* sets out the scenarios in which a Northern Ireland 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 Northern Ireland, 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.
158. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, investigating or prosecuting a listed offence, set out in *subsection (9)*, and in accordance with the conditions of this section.
159. *Subsection (3)* provides that the authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer (a customs official or a member of Her Majesty's Armed Forces) may exercise any Part 3 powers.
160. *Subsection (4)* provides that a Northern Ireland constable or an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 3 of Schedule 2 in relation to a UK vessel in foreign waters.
161. *Subsection (5)* sets out that the approval of the Secretary of State for the scenario in *Subsection (4)* can only be provided if the state or relevant territory in question consents to the use of these powers.
162. *Subsection (6)* confirms that the authority of the Secretary of State is also required for a Northern Ireland 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.

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163. *Subsection (7)* sets out that the approval of the Secretary of State for the scenario in *Subsection (6)* 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 sub-section (2)(a); the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.
164. *Subsection (8)* 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.
165. *Subsection (9)* sets out the relevant Northern Ireland offences for this section
166. The detail of the powers set out in section 37 is set out in Part 3 of Schedule 2. *Paragraph 19*, sub-paragraph (1) introduces Part 3, which sets out the powers exercisable by Northern Ireland constables and enforcement officers under section 37 (Enforcement powers in relation to ships: Northern Ireland) and section 38 (Hot pursuit of ships in United Kingdom waters). *Sub-paragraph 19(2)* sets out the definitions of “items subject to legal privilege”, “listed offence”, and “the ship”.
167. *Paragraph 20* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in Northern Ireland, 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 Northern Ireland constable or enforcement officer is acting on the authority of the Secretary of State, as set out in section 37(6), the Northern Ireland constable or officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power a Northern Ireland 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. 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 Northern Ireland constable or an enforcement officer.
168. *Paragraph 21* provides a power to search a vessel and any person or object on that vessel, where a Northern Ireland 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 Northern Ireland constable or enforcement officer the power to require a person on the vessel under investigation to give information about themselves or about anything on the vessel. 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 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.
169. *Paragraph 22* provides a power of arrest where a Northern Ireland constable or enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A Northern Ireland 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 Northern Ireland 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.
170. *Paragraph 23* requires that the Department of Justice in Northern Ireland prepares and issues a code in respect of the practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the power conferred by *sub-*

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paragraph (1), in particular providing guidance as to the information to be given to the person at the time of arrest (*sub-paragraph (2)*). Subparagraph (3) confirms that failure to comply with the code does not render a Northern Ireland constable or officer liable to criminal proceedings. *Sub-paragraph (4)* sets out that the code is admissible in criminal and civil proceedings and may be taken into account by a court or tribunal where relevant. *Sub-paragraph (5)* provides that the Department of Justice in Northern Ireland may make revisions to the code at any time and *sub-paragraph (6)* states that the code will only come into effect when the Department lays a draft of the code before the Northern Ireland Assembly and provides by order for the code or a revised code to come into operation. *Sub-paragraph (7)* provides that an order bringing the code into operation may contain relevant transitional provisions or savings. *Sub-paragraph (8)* provides that an order under this section is subject to negative resolution and *sub-paragraph (9)* provides this is exercisable by statutory rule for the purposes of the [Statutory Rules \(Northern Ireland\) Order 1979 \(S.I. 1979/1573 \(N.I. 12\)\)](#).

171. [Paragraph 24](#) provides that a Northern Ireland 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 officer under their supervision.
172. [Paragraph 25](#) confirms that a Northern Ireland constable or enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Schedule.
173. [Paragraph 26](#) provides that, when required, a Northern Ireland constable or enforcement officer must provide evidence of their authority.
174. [Paragraph 27](#) confirms that a Northern Ireland constable or enforcement officer is not liable in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that the Northern Ireland constable or officer acted in good faith and there were reasonable grounds for their actions.
175. [Paragraph 28](#) creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a Northern Ireland constable or an enforcement officer in exercising the powers in this Schedule, or fails to comply with a requirement of a Northern Ireland 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 Northern Ireland constable or an enforcement officer requiring information when exercising the powers within this Schedule.
176. [Sub-paragraph 28\(3\)](#) sets out that a person guilty of an offence under this paragraph is liable on summary conviction, to a fine not exceeding the statutory maximum; and on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.