

EXPLANATORY MEMORANDUM TO
THE MARITIME ENFORCEMENT POWERS (PERSONS OF A SPECIFIED
DESCRIPTION) REGULATIONS 2017

2017 No. 1188

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Chapters 5, 6 and 7 of Part 4 of the Policing and Crime Act 2017 (“the PCA”) set out new maritime enforcement powers which are exercisable by law enforcement officer, for the purpose of preventing, detecting, investigating or prosecuting offences committed on board vessels operating at sea. Chapter 5 covers English and Welsh offences, Chapter 6 covers Scottish offences and Chapter 7 covers Northern Irish offences. The purpose of this instrument is to specify members of the Ministry of Defence Police as law enforcement officers for the purposes of these Chapters. The Ministry of Defence Police (“MDP”) has a large marine contingent and MDP officers need to be able to use the new powers to enable them to carry out their policing functions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This is the first time these powers have been used to specify a description of person able to exercise the maritime enforcement powers. The specific inclusion of ‘a member of British Transport Police’ in sections 84(3) and 96(3) throws doubt on whether members of the MDP can exercise these powers across the UK. This legal uncertainty will prevent MDP officers from exercising these powers once they are brought into force. As MDP officers exercise jurisdiction in UK territorial waters, it is important that they are unequivocally able to exercise the maritime enforcement powers to carry out their policing functions.
- 4.2 It is not within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly to confer these functions on MDP officers, and therefore the consent of the Scottish Ministers under section 96 or the Department for Justice Northern Ireland under section 107 is not required.

5. Extent and Territorial Application

5.1 The extent and territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Ministry of Defence Police Act 1987 is drafted so that MDP officers are able to exercise powers exercisable by ‘constables’ across the UK. The Policing and Crime Act 2017 vests the new maritime powers in “law enforcement officers”, but due to the way that the provisions have been drafted, specifically the inclusion of “a constable who is a member of the British Transport Police Force” in sections 84 and 96, there is real doubt as to whether MDP officers can exercise any of the new maritime enforcement powers. As the MDP force has a large marine contingent based in England and Scotland, and MDP officers have jurisdiction across the whole of the UK for defence purposes, including in UK territorial waters, MDP officers need to be able to use the new maritime enforcement powers in order to carry out their policing functions.

7.2 The power to specify a member of the MDP as a person also able to exercise the new maritime powers is therefore being exercised to put this beyond doubt across the UK.

Consolidation

7.3 Not applicable.

8. Consultation outcome

8.1 No separate consultation has been carried out.

9. Guidance

9.1 In relation to England and Wales, MOD Police officers will comply with the Code of Practice that will be issued by the Home Secretary. This will provide guidance on information to be given to a person at the time of arrest.

9.2 In relation to Scotland, the Scottish Government will issue non-statutory guidance governing the use of arrest and powers under this provision that the MOD Police will consult.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This Instrument does not relate to business activity.

13. Contact

13.1 Karen Feather at the Ministry of Defence Telephone: 020 7807 8245 [Direct line telephone number] or email: DSR-PolicingPoll@mod.gov.uk can answer any queries regarding the instrument.