

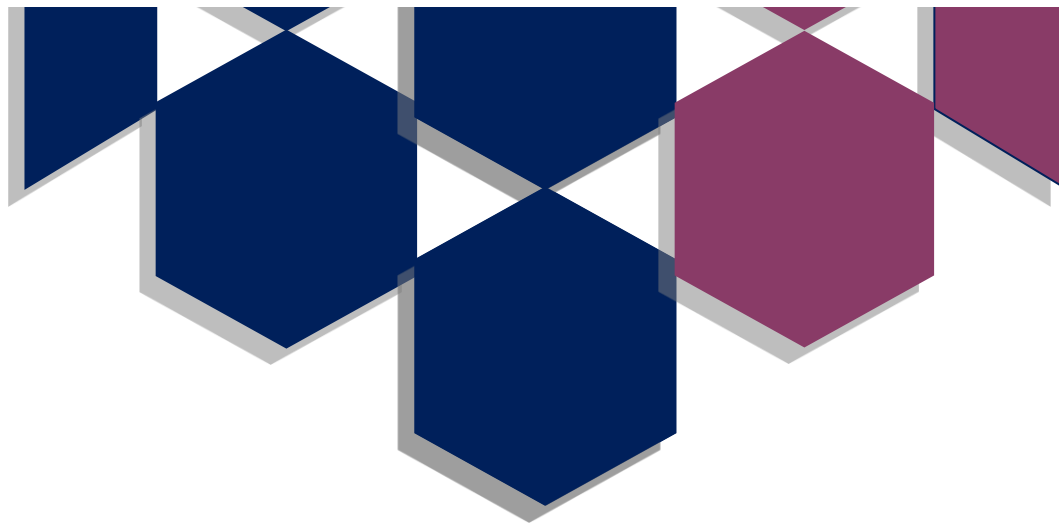


Department of
Justice
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Building a fair, just and safer community



CODE OF PRACTICE ON THE EXERCISE OF MARITIME POWERS UNDER THE MODERN SLAVERY ACT 2015



Public consultation

This consultation begins on 26 October 2015 and closes on 21 December 2015.

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1. Introduction

1.1 This paper invites comments on a draft code of practice for Northern Ireland constables and enforcement officers on the exercise of the power of arrest on a vessel in respect of a 'modern slavery' offence. Background information and further detail is outlined in this paper and a copy of the draft code is attached.

1.2 Copies of this document in other formats, including Braille, large print, computer disk etc may be made available on request. Please let us know if you need copies in an alternative language or format.

1.3 Consultees are invited to submit any comments to the Department no later than 21 December 2015. Responses should be emailed to htconsultation@dojni.x.gsi.gov.uk or posted to the following address:

Human Trafficking Team
Protection and Organised Crime Division
Department of Justice
Room B4.20
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

1.4 If you require any additional information, or would like to discuss any aspects of the consultation, please contact Alison Redmond by telephone: 028 90 528677 or by email Alison.Redmond@dojni.x.gsi.gov.uk

2. Background

2.1 On 8 December 2014, the Northern Ireland Assembly agreed a Legislative Consent Motion (LCM) to extend certain provisions in the Modern Slavery Bill to Northern Ireland, including those relating to maritime enforcement powers. The Modern Slavery Act 2015 (“the MS Act”) received Royal Assent on 26 March 2015, resulting in the provision of new United Kingdom-wide enforcement powers to tackle human trafficking and slavery offences at sea.

2.2 The powers are for the use of Northern Ireland constables and enforcement officers to tackle suspected human trafficking or slavery offences at sea. Northern Ireland constables means members of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve. Enforcement officers are defined as a designated customs official; a person who is a commissioned officer of any of Her Majesty’s ships, or a person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force). This is set out at section 39 of the MS Act.

2.3 The powers themselves are set out at sections 37 and 38 of and Schedule 2 to the MS Act. These are:

- powers to stop, board, divert and detain a vessel (paragraph 20 of Schedule 2);
- powers to search and obtain information (paragraph 21 of Schedule 2); and
- powers of arrest and seizure (paragraph 22 of Schedule 2).

2.3 It is anticipated that these powers will be commenced in early 2016. Use of the powers by Northern Ireland constables and enforcement officers are limited to:

- UK ships in Northern Ireland waters, foreign waters or international waters;

- ships without nationality in Northern Ireland waters or international waters;
- foreign ships in Northern Ireland waters; or
- ships, registered under the law of a relevant territory (being the Isle of Man, any of the Channel Islands or a British overseas territory), in Northern Ireland waters.

2.4 In addition, the powers may only be exercised for the purpose of preventing, detecting, investigating or prosecuting an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, in accordance with section 37(2)(a) and 37(9) of the MS Act.

2.5 The authority of the Chief Constable of the Police Service of Northern Ireland (PSNI) is required before an enforcement officer may exercise the powers under section 37 of the MS Act.

2.6 The authority of the Secretary of State is required before a Northern Ireland constable or an enforcement officer may exercise these powers in relation to (i) a UK ship in foreign waters or (ii) a foreign ship, or a ship registered under the law of a relevant territory (as defined at 2.3 above), within the territorial sea adjacent to the United Kingdom. In line with section 3 of the Territorial Waters Jurisdiction Act 1878, the consent of the Secretary of State may be required in order to prosecute individuals who are not UK nationals.

3. Requirement on DOJ to prepare and issue a code of practice

3.1 Paragraph 22(2) of Schedule 2 to the Act provides a power of arrest where a Northern Ireland constable or enforcement officer has reasonable grounds to suspect that 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.

3.2 Paragraph 23 of Schedule 2 requires the Department of Justice in Northern Ireland to prepare and issue a code of practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the power conferred by paragraph 22 of Schedule 2 to the MS Act.

3.3 A draft code is set out at pages 9 to 14. It sets out the procedures to be followed by Northern Ireland constables and enforcement officers when exercising the paragraph 22(2) power of arrest. Guidance on the procedural safeguards for arrested persons is provided, including information to be given on arrest; terms of the caution; detention conditions; and records of arrest.

3.4. The draft code also emphasises that, in line with section 37 of the MS Act, enforcement officers (as defined at 2.2 above) must obtain the authority of the Chief Constable before exercising the power of arrest in Northern Ireland waters except where they are exercising hot pursuit powers under section 38 of the Act.

United Kingdom wide position

3.5. Similar codes will be prepared by the Home Office and Scottish Government to cover the exercise of the powers of arrest by English, Welsh and Scottish constables and enforcement officers.

3.6. In line with the MS Act, the Home Secretary will commence the suite of maritime powers, including those which relate to Northern Ireland. The Department of Justice intends to co-ordinate the introduction of the code with the commencement of the powers.

3.7 Consultees are invited to submit any comments on the draft code of practice below.

4. Equality, regulatory and financial impact

4.1 Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. An equality screening exercise has been carried out and no adverse impacts on the groups listed under section 75 have been identified. It has been concluded that a full Equality Impact Assessment is not required.

4.2 The code of practice would not impose any restriction on business, charities or voluntary bodies and consequently the need for a full Regulatory Impact Assessment has been screened out.

4.3 We do not assess there to be any substantive costs for law enforcement linked to the power of arrest. We envisage that any minor costs would be absorbed within existing budgets.

4.4 Consultees are invited to submit any additional equality, regulatory and financial implications which may be relevant to the implementation of the secondary legislation.

MODERN SLAVERY ACT 2015

CODE OF PRACTICE

MARITIME POWERS

CODE OF PRACTICE TO BE FOLLOWED BY
NORTHERN IRELAND CONSTABLES AND
ENFORCEMENT OFFICERS WHEN ARRESTING
A PERSON UNDER THE POWER CONFERRED
BY PARAGRAPH 22(2) OF SCHEDULE 2 TO THE
MODERN SLAVERY ACT 2015

Commencement – Transitional Arrangements

This Code applies to any arrest made under the power conferred by paragraph 22(2)
of the Modern Slavery Act 2015 after 00:00 on
DD MMMM YYYY

1 Introduction

- 1.1 This Code of Practice deals with the practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the power conferred by paragraph 22(2) in Part 3 of Schedule 2 to the Modern Slavery Act 2015 (“the MS Act”). That paragraph applies if the constable or enforcement officer has reasonable grounds to suspect that an offence under section 1 (slavery, servitude and forced or compulsory labour) or section 2 (human trafficking) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 has been, or is being, committed on a ship. Where it applies, the constable or enforcement officer may arrest without warrant anyone whom the constable or officer has reasonable grounds for suspecting to be guilty of the offence. *See Notes 1, 2 and 3.*
- 1.2 The powers in Part 3 of Schedule 2 to the Act (which includes the paragraph 22(2) power of arrest) are limited to:
- a United Kingdom ship in Northern Ireland waters, foreign waters or international waters,
 - a ship without nationality in Northern Ireland waters or international waters,
 - a foreign ship in Northern Ireland waters, or
 - a ship, registered under the law of a relevant territory (being the Isle of Man, any of the Channel Islands or a British overseas territory), in Northern Ireland waters.
- 1.3 These powers may only be exercised for the purpose of preventing, detecting, investigating or prosecuting an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, in accordance with section 37(2)(a) and 37(9) of the MS Act.
- 1.4 The authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer may exercise these powers in Northern Ireland territorial waters, except where the enforcement officers are exercising powers of hot pursuit under section 38 of the MS Act. *See note 3.*
- 1.5 The authority of the Secretary of State is required before a Northern Ireland constable or an enforcement officer may exercise these powers in relation to (i) a United Kingdom ship in foreign waters or (ii) a foreign ship, or a ship registered under the law of a relevant territory (defined as above), within the territorial sea adjacent to the United Kingdom. The consent of the Secretary of State may be required in order to prosecute a person who is not a United Kingdom national where the power of arrest has been exercised. *See note 4*
- 1.6 This Code of Practice must be readily available for arresting constables and enforcement officers and at all police stations for consultation by police officers and police staff, detained persons and members of the public.
- 1.7 The Notes for Guidance at the end of this document are not provisions of this code.

2 Information to be given on Arrest

- 2.1 A person who is arrested or further arrested for any offence mentioned in paragraph 1.1 must be informed as soon as it is practicable, or if not, as soon as it becomes practicable thereafter, that they are under arrest and the grounds and reasons for their arrest. *See note 5.*

Caution

- 2.2 A person who is arrested or further arrested for any offence mentioned in paragraph 1.1 must be cautioned unless:
- (a) it is impracticable to do so by reason of their condition or behaviour at the time;
 - (b) they have already been cautioned immediately prior to arrest.

Terms of the caution

- 2.3 The caution, which must be given on arrest, should be in the following terms:
- “You do not have to say anything, but I must caution you that if you do not mention when questioned something which you later rely on in Court, it may harm your defence. If you do say anything it may be given in evidence.”
- 2.4 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the caution is preserved. *See note 5.*

Other information

- 2.5 The constable or enforcement officer should inform the arrested person that on arrival at the designated police station or authorised place of detention they will be informed of their rights and entitlements in accordance with paragraph 3.1 of Code of Practice C issued under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). This information must also be provided in a written notice, under paragraph 3.2 of PACE NI Code C. The notice may also include information about the offences mentioned in paragraph 1.1
- 2.6 The constable or enforcement officer must, as far as it is practicable, make arrangements to enable arrested persons whilst they are detained under arrest on board the ship, to communicate effectively with the arresting officers in the same way as a suspect who can read, speak and understand English. Effective communication includes the interpretation and translation of information which is provided by way of a written notice. The information which is provided orally or in writing must be in simple and accessible language, taking into account any particular needs of vulnerable suspects.

- 2.7 The constable or enforcement officer must inform the arrested person if it appears that the period starting from the time of their arrest and ending on their arrival at the designated police station or authorised place of detention will exceed 24 hours. The arrested person must be reminded that the caution in paragraph 2.3 continues to apply whilst they are detained under arrest on board the ship and when they arrive at the designated police station or authorised place of detention. If the person was arrested outside of United Kingdom territorial waters, they should be reminded that he or she is still under arrest once inside the United Kingdom's territorial waters.

3 Urgent Interviews

- 3.1 For the purpose of this Code, the term 'interview' has the same meaning as in PACE NI Code C paragraph 11.1A . Following a decision to arrest a suspect, they must not be interviewed about the listed offence (ie. an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015) except at a police station or other authorised place of detention, unless the consequent delay would be likely to:
- (a) lead to:
- interference with, or harm to, evidence connected with a listed offence of human trafficking or slavery, servitude and forced or compulsory labour;
 - interference with, or physical harm to, other people; or
 - serious loss of, or damage to, property;
- (b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or
- (c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

- 3.2 If in accordance with paragraph 3.1 an urgent interview is carried out, the interviewer is responsible for ensuring that the interview is conducted and recorded in writing, in accordance with the relevant provisions of PACE NI Code C that would apply if the interview was carried out after the arrested person had disembarked and arrived on land in Northern Ireland.

4 Detention conditions - General

- 4.1 The constable or enforcement officer must, as far as it is practicable, make arrangements to safeguard the health and welfare of the arrested persons whilst they are detained under arrest on board the ship.

5 Records of Arrest

- 5.1 The arresting constable or enforcement officer is required to record in his or her pocket book or by other methods used for recording information:
- the nature and circumstances of the offence leading to the arrest;
 - the reason or reasons why arrest was necessary;
 - the giving of the caution; and
 - anything said by the person at the time of arrest.
- 5.2 Such a record should be made at the time of the arrest unless impracticable to do so. If not made at that time, the record should then be completed as soon as possible thereafter.
- 5.3 On arrival at the police station or authorised place of detention the arrested person must be brought before the custody officer as soon as practicable. At this point the PACE provisions apply, including the requirement that a custody record must be opened in accordance with Section 2 of PACE NI Code C (Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers). The information given by the arresting officer regarding the circumstances and reason or reasons for arrest shall be recorded as part of the custody record.

Notes for guidance

- 1 *For the purposes of this Code, ‘offence’ means an offence under either section 1 or section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. Under section 1 of that Act, a person commits an offence if the person holds another person (“B”) in slavery or servitude and the circumstances are such that the person knows or ought to know that B is held in slavery or servitude; or the person requires B to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that B is being required to perform forced or compulsory labour. The consent to B to any act which forms part of that offence is irrelevant. In the case of a human trafficking offence under section 2 of the Act, a person commits an offence if the person arranges or facilitates the travel of B with a view to B being exploited - it is irrelevant whether B (whether an adult or a child) consents to any act which forms part of that offence is irrelevant.*

- 2 *For the purposes of this Code, a ‘constable’ is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.*

- 3 *For the purposes of this Code, an ‘enforcement officer’ is capable of exercising the power of arrest. An enforcement officer is a designated customs official (under Part 1 of the Borders, Citizenship and Immigration Act 2009), a commissioned officer of any of her Majesty’s ships, or a person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force. Section 39 of the MS Act refers.*
In line with section 37(3) of the MS Act, the authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer may exercise powers under Part 3 powers, including the paragraph 22(2) power of arrest. However, the authorisation of the Chief Constable is not required where the powers are exercised in accordance with section 38 of the MS Act (hot pursuit of ships in United Kingdom waters).

- 4 *Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that the Secretary of State’s consent may be required before the prosecution of a person arrested at sea who is not a United Kingdom national.*

- 5 *An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence’s nature, and when and where it was committed. The suspect must also be informed of the reasons or reasons why arrest is considered necessary. Vague or technical language should be avoided.*

- 6 *If it appears that a person does not understand the caution, the person giving it should explain it in their own words.*