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MODERN SLAVERY ACT 2015 MARITIME ENFORCEMENT POWERS (England and Wales)

Code of Practice

Code of Practice to be followed by constables and enforcement officers when arresting a person under the power conferred by paragraph 4 of Schedule 2 to the Modern Slavery Act 2015

March 2016

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Presented to Parliament pursuant to paragraph 5(10) of Schedule 2 to the Modern Slavery Act 2015

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1 Introduction

- 1.1 This Code deals with the practice to be followed by constables and enforcement officers when arresting a person under the power conferred by paragraph 4 (2) of Part 1 of Schedule 2 to the Modern Slavery Act 2015 (“the Act”). The 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 Act has been, or is being, committed on a ship. Where it applies, the constable or enforcement officer may arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence. See *Notes 1, 2, 3 and 4*.
- 1.2 The powers in Part 1 of Schedule 2 to the Act (which includes the power of arrest in paragraph 4) may be only exercised for the purpose of preventing, detecting, investigating or prosecuting an offence under section 1 or 2 and in accordance with sections 35 and 38 of the Act. They are limited to:
- a UK ship in England and Wales waters, foreign waters or international waters
 - a ship without nationality in England and Wales waters or international waters
 - a foreign ship in England and Wales 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 England and Wales waters.
- 1.3 The authority of the Secretary of State is required before a 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 (defined as above), within the territorial sea adjacent to the United Kingdom.
- 1.4 This Code of Practice must be readily available for arresting constables and enforcement officers, and at all designated police stations and authorised places of detention for consultation by police and enforcement officers, members of the public, police staff, police force control rooms, Police Force Single Points of Contact and detained persons.
- 1.5 The *Notes for Guidance* are not provisions of this code.

2 Information to be given on Arrest

- 2.1 A person who is arrested, or further arrested, 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 it is impracticable to do so because of their condition or behaviour at the time of arrest or, 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 it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”

Where the use of the Welsh Language is appropriate, a constable may provide the caution directly in Welsh in the following terms:

“Does dim rhaid i chi ddweud dim byd. Ond gall niweidio eich amddiffyniad os na fyddwch chi’n sôn, wrth gael eich holi, am rywbeth y byddwch chi’n dibynnu arno nes ymlaen yn y Llys. Gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth.”

- 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 6*

Other information to be provided

- 2.5 The arresting constable or enforcement officer should ensure that, as soon as is reasonably practicable after arrest, the person is informed that if they feel they need medical help, they should tell the constable or enforcement officer.
- 2.6 The arresting constable or enforcement officer should ensure that, as soon as is reasonably practicable after their arrest on board the ship, the arrested person is informed that when they arrive at a police station or authorised place of detention, they will be told in full about the rights available to them and how they will be able to exercise those rights. The arrested person must also be given a summary of the procedural rights that they will have access to in full at the police station or authorised place of detention in the following manner:
- (a) You will be asked if you want a lawyer to help you and if you want a lawyer, you should tell the officer in charge. They will arrange for you to obtain legal advice and this legal advice is free.
 - (b) You will be asked if you want someone to be told where you are and if you want someone informed, you should tell the officer in charge. They will arrange this for you. This is free. In certain circumstances, the officer in charge will ensure that an appropriate adult who is independent of the police attends the police station/authorised place of detention to assist you.
 - (c) If you want to look at the police rules - they are called the Codes of Practice - you should tell the officer in charge who will provide them to you.

- (d) You will be asked if you need medical help. You should tell the officer in charge if you feel ill or have been injured. They will arrange medical help for you, and this help is free.
 - (e) If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.
 - (f) You must be told about the offence you are suspected of committing and why you have been arrested and are being detained.
 - (g) You or your solicitor must be allowed to see records and documents about why you have been arrested and detained and about your time at the police station or authorised place of detention.
 - (h) If you need an interpreter, one must be provided. You can also have certain documents translated. This is free.
 - (i) If you are not British and you want to contact your embassy or consulate or want them to be told you are detained, tell the officer in charge. This is free.
 - (j) You must be told how long you can be detained for.
 - (k) If you are charged and your case goes to court, you or your solicitor will have a right to see the prosecution evidence before the court hearing.
- 2.7 The information in *paragraphs 2.5 and 2.6* may be provided orally and/or in a written notice if available. The notice may also include information about the offences mentioned in *paragraph 1.1*.
- 2.8 Where the arresting constable or enforcement officer believes that the period starting from the time of the person's arrest and ending on their arrival at the designated police station or authorised place of detention is likely to exceed 24 hours they must ensure that the arrested person is informed of this.
- 2.9 In the case of transit that is likely to exceed 24 hours, the arrested person must be informed that they will be brought to a police station or authorised place of detention as soon as it is reasonably practicable to do so and the arrested person should be informed of the maximum length of time that is anticipated to elapse before the arrested person is brought to a police station. The arrested person must be reminded that the caution in *paragraph 2.3* continues to apply whilst they are under arrest and when they arrive at the police station or authorised place of detention. See *Note 7*.
- 2.10 The arresting constable or enforcement officer should ensure effective communication with the arrested person including the interpretation and translation of any information provided by way of a written notice. Any information provided orally or in writing must be in simple and accessible language, and take into account any particular needs of vulnerable suspects.

3 Urgent interviews

3.1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence 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 an offence;
- 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 Code C. See *Note 8*.

4. Power to obtain information

4.1 Paragraph 3 of Part 1 of Schedule to the Act includes a power to require a person on the ship to provide information about themselves and about anything on the ship. The purpose of this is to enable constables and enforcement officers to take control of the ship and to determine the need to search the ship and persons on the ship.

4.2 Paragraph 3.1 above does not apply to, or in anyway restrict, the exercise of this power by constables and enforcement officers.

5. Detention conditions - general

5.1 As far as it is reasonably practicable to do so, the constable or enforcement officer should ensure that appropriate arrangements to safeguard the health and welfare of arrested persons, including provisions for refreshments, food and adequate rest, and medical attention whilst they are under arrest and detained on board the ship are in place. A record of these arrangements should be made in accordance with this paragraph. This record shall be presented to the custody officer when the arrested person arrives at the police station.

6 Records of Arrest

6.1 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
 - anything said by the person at the time of arrest and
 - the officer making the arrest at sea should make a note of the time, the latitude / longitude at the point of interdiction or boarding of the vessel; and if possible note where the vessel was heading prior to it being ordered to stop and be boarded. Also, a record of the ship's name, number and country of registration (if known) and the flag flown at point of boarding should be made.
- 6.2 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.
- 6.3 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 relevant PACE provisions apply, including the requirement that a custody record must be opened in accordance with paragraph 2 of PACE Code C. 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. See PACE Code C *paragraph 3.4*.

Notes for guidance

1. For the purposes of this Code, ‘offence’ means an under either section 1 or section 2 of the Modern Slavery Act 2015. Under section 1, a person commits an offence if the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude; or the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour. 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 another person (“V”) with a view to V being exploited - it is irrelevant whether V (whether an adult or a child) consents to the travel.
2. The human trafficking offence in section 2 of the Act has extra-territorial effect. A UK national commits an offence regardless of where the travel, or where the arranging or facilitating of that travel, takes place. For example, a UK national who traffics a person from Spain to France could be prosecuted in England and Wales for this offence. The offence has a more limited territorial effect in relation to non-UK nationals. Such a person commits the offence if any part of the arranging or facilitating of travel takes place in the UK, or if the UK is the country of arrival, entry, travel or departure of the trafficked person.
3. For the purposes of this Code, a ‘constable’ is a member of a police force in England and Wales, a port constable within the meaning of section 7 of the Marine Navigation Act 2013 or a person appointed to act as a constable under provision made by virtue of section 16 of the Harbours Act 1964, a member of the British Transport Police Force, or a National Crime Agency officer designated with the powers and privileges of a constable in England and Wales in accordance with the Crime and Courts Act 2013.
4. For the purposes of this Code, 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.
5. An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason why 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 a person does not understand the caution, the person giving it should explain it in their own words.
7. The period of time during which a person arrested on board the vessel is in transit to the police station or authorised place of detention is different from the “detention clock” which is determined in accordance with Part IV of the Police and Criminal Evidence Act 1984 (PACE). Generally, the PACE “detention clock” starts from the time a person arrested for an offence arrives at the police station or authorised place of detention.

8. *Provisions of PACE Code C relevant to the conduct of an urgent interview carried out before the arrested person arrives at a police station or other authorised place of detention include: 11.5, 11.7 to 11.11, 11.13 to 11.15 and 13.2. In summary, these paragraphs state that no interviewer may try to obtain answers or elicit a statement by the use of oppression and that the interviewer shall ensure that an accurate record must be made of each interview regardless of the location. For a non-English speaking person an urgent interview can be conducted by using the appropriate means to do so.*

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