EXPLANATORY MEMORANDUM TO

THE POLICING AND CRIME ACT 2017 (MARITIME ENFORCEMENT POWERS: CODE OF PRACTICE) REGULATIONS 2017

2017 No. [XXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument brings into force a Code of Practice to be followed by law enforcement officers when arresting a person under the maritime enforcement powers set out in Chapter 5 of Part 4 of the Policing and Crime Act 2017 ("the 2017 Act") in relation to any offence committed under the law of England and Wales.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 Chapters 5 to 7 of Part 4 of the Policing and Crime Act 2017 introduce new maritime specific powers for law enforcement officers across the United Kingdom. The powers, which include the power to stop, board, detain and divert vessels, can be used by law enforcement officers in England, Wales, Scotland or Northern Ireland in respect of any offence under the law of their jurisdiction.

4.2 The power of arrest in relation to England and Wales is set out in section 90 of the Policing and Crime Act 2017. This section provides a law enforcement officer with the power to arrest without warrant any person whom the officer has reasonable grounds to suspect to be guilty of an offence under the law of England and Wales that has been, or is being, committed on:

a) a United Kingdom ship in England and Wales waters, foreign waters or international waters,

b) a ship without nationality in England and Wales waters or international waters,

c) a foreign ship in England and Wales waters or international waters, or

d) a ship, registered under the law of a relevant territory, in England and Wales waters or international waters.

4.3 Section 94 requires that a Code of Practice be prepared and issued in respect of the practice to be followed by law enforcement officers when arresting a person under the power conferred by section 90, in particular what information needs to be given to the

arrested person at the time of arrest. This instrument is necessary to bring this Code into force.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales and Scotland. Whilst the Code of Practice concerns a power of arrest for offences under the law of England and Wales, the power can, in limited circumstances (namely hot pursuit of a ship under section 86), be exercised in Scotland waters.

6. European Convention on Human Rights

6.1 The Minister of State for Policing and the Fire Service has made the following statement regarding Human Rights:

"In my view the provisions of the Policing and Crime Act 2017 (Maritime Enforcement Powers: Code of Practice) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Section 30 of the Police Act 1996 Act provided that the powers of a constable in England and Wales were limited to England and Wales and the adjacent United Kingdom waters. This limitation can hamper the disruption of criminal activity in the maritime context as our law enforcement agencies are not always able to act effectively when a crime had taken place on board a ship. The powers in Chapter 5 of Part 4 of the Policing and Crime Act 2017 close this gap by ensuring that law enforcement agencies are capable of operating effectively in a maritime context when investigating any offence triable in England and Wales that has taken place on board a relevant ship.

7.2 In order for the maritime powers to be commenced and exercised by law enforcement officers in England and Wales, this Code of Practice must be in place to ensure that law enforcement officers have clear information on what to do when exercising the power of arrest. The Government is also working with the Scottish Government and Northern Irish Executive with a view to commencing the maritime powers simultaneously as they relate to Scotland and Northern Ireland. This instrument will come into force on the same date as Chapters 5 and 6 of Part 4 of the Act come into force.

Consolidation

7.3 As this instrument simply brings into force a standalone Code of Practice, no question of consolidation arises.

8. Consultation outcome

8.1 This instrument has not been the subject to a formal public consultation.

8.2 The Home Office has conducted a targeted consultation which sought the views of stakeholders with an interest in the draft Code of Practice which this instrument brings into force. The Code of Practice was sent out to operational law enforcement

agencies that will be responsible for using the power of arrest, representatives of the legal profession, the Devolved Administrations, and interested Government departments. Stakeholders were given two weeks to respond in writing with comments. The Home Office received comments and engaged orally with stakeholders and in response made a number of minor changes for the purposes of clarity.

9. Guidance

9.1 No guidance has been prepared in relation to this instrument. However, the Code of Practice to which this instrument relates has been laid before Parliament.

10. Impact

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

10.2 There is no material impact on the public sector.

10.3 A full impact assessment was carried out on the Policing and Crime Bill, which covers the maritime provisions. (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533787/PC_Bill_Overarching_IA_for_Lords_intro.pdf). A separate 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 The provisions of the 2017 Act and, by extension, the provisions of this instrument, will be subject to the normal post-legislative review three to five years after Royal Assent.

13. Contact

13.1 Preet Singh of the Home Office can answer any queries regarding the instrument: Tel: 020 7035 1024 or email: preet.singh@homeoffice.gsi.gov.uk