EXPLANATORY MEMORANDUM TO

THE MARITIME ENFORCEMENT POWERS (SPECIFICATION OF THE ROYAL NAVY POLICE) REGULATIONS 2020

2020 No. 1554

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Chapter 5 of Part 4 of the Policing and Crime Act 2017 ("the PCA") sets out maritime enforcement powers, which are exercisable by law enforcement officers for the purpose of preventing, detecting, investigating or prosecuting offences committed on board vessels which are encountered at sea.

2.2 The purpose of the Maritime Enforcement Powers (Specification of the Royal Navy Police) Regulations 2020 is to specify members of the Royal Navy Police as law enforcement officers for the purposes of the maritime enforcement powers in Chapter 5 of Part 4 of the Act. By doing so this will have the effect of extending maritime enforcement powers to members of the Royal Navy Police.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

4.3 Chapter 5 of Part 4 of the Act confers powers on law enforcement officers for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Royal Navy personnel routinely conduct enforcement activity in the UK Marine Area as marine enforcement officers in relation to fishery protection under the Marine and Coastal Access Act 2009. Section 235 of the 2009 Act defines a "marine enforcement officer" as including "any person who is a commissioned officer of any of Her Majesty's ships" and "any person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force". Marine enforcement officers have the common enforcement powers prescribed in Chapter 2 of Part 8 of the 2009 Act, including the power to board and inspect vessels (section 246), the power to enter and inspect premises (section 247), a power of search (section 250), a power to require the production of documents (section 251) and a power to seize and retain or remove items found on premises. A marine enforcement officer may also direct a vessel to go to a port and detain it there (section 259). A marine enforcement officer does not have a power of arrest. Royal Navy personnel may also assist a marine enforcement officer and in doing so perform any of the functions of a marine enforcement officer under that officer's supervision (section 261).

6.2 Royal Navy personnel are also defined as enforcement officers for the purposes of the Immigration Act 1971. The powers relate to offences in section 25 (Assisting unlawful immigration to member State or the United Kingdom), 25A (Helping asylum-seeker to enter the United Kingdom) and 25B (Assisting entry into the United Kingdom in breach of deportation order or exclusion order). The definition of an "enforcement officer" in relation to Royal Navy personnel is the same as the definition under the Marine and Coastal Access Act 2009. The powers of an enforcement officer are contained in Schedule 4A of the 1971 Act and include powers to stop, board divert and detain vessels as well as to search them. Royal Navy personnel may also assist an enforcement officer and in doing so perform any of the functions of an enforcement officer under that officer's supervision. A power of arrest is contained in paragraph 11 of Schedule 4A.

6.3 A commissioned officer of any of Her Majesty's ships is also an enforcement officer for the purposes of the Criminal Justice (International Cooperation Act 1990 in relation to drug trafficking offences. Schedule 3 of the 1990 Act includes powers to stop, board divert and detain vessels as well as to search them. Royal Navy personnel may also assist an enforcement officer and in doing so perform any of the functions of an enforcement officer under that officer's supervision. Paragraph 4 of Schedule 3 of the 1990 Act confers powers of arrest on an enforcement officer.

6.4 Royal Navy personnel are also enforcement officers for the purposes of the Modern Slavery Act 2015 and have similar powers as under the Criminal Justice (International Cooperation) Act 1990. The definition of an enforcement officer in relation to Royal Navy personnel is the same as the definition under the Marine and Coastal Access Act 2009 and Royal Navy personnel may also assist an enforcement officer and in doing so perform any of the functions of an enforcement officer under that officer's supervision.

6.5 Section 92 of the PCA currently provides a means by which Royal Navy personnel can assist civilian police.

6.6 Specifying members of the Royal Navy Police as law enforcement officers for the purpose of Chapters 5of Part 4 of the PCA allows them to exercise the maritime enforcement powers contained in that Part of the Act. These powers include the power

to stop, board, divert and detain vessels, the power to search vessels and persons and the power to arrest persons in England and Wales waters. These powers in Scotland waters where there has been a hot pursuit into those waters. The authority of the Secretary of State is required before a law enforcement officer boards a United Kingdom ship in foreign waters and such authority may only be exercised if the State, or the relevant territory, in whose waters the powers would be exercised consents to the exercise of the powers.

6.7 The authority of the Secretary of State is also required before a law enforcement officer exercises maritime enforcement powers, in relation to a foreign ship, or a ship registered under the law of a relevant territory (the Isle of Man, the Channel Islands or a British Overseas Territory), within the territorial sea adjacent to England and Wales or Scotland or in international waters. The Secretary of State may only give authority in relation to a foreign ship if:

(a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales,

(b) the home state has authorised the United Kingdom to act for that purpose, or

(c) the United Nations Convention on the Law of the Sea 1982 otherwise permits the exercise of the powers in relation to the ship.

7. Policy background

What is being done and why?

7.1 Contingency work associated with the UK's preparations for the end of the EU Transition Period has identified that there is an operational case for extending the powers of law enforcement officers under Chapters 5 of Part 4 of the PCA to members of the Royal Navy Police. Extending those powers will provide operational flexibility at sea if the Transition Period expires without a comprehensive fishing agreement in place between the UK and the EU. While the police forces of the UK have enforcement powers underpinned by statute, they have only limited capability to intervene at sea. In contrast the Royal Navy has the capability but no general statutory basis to intervene at sea.

7.2 The existing practise for any intervention at sea, is a joint operation with both the police and military participating; the police providing the legal basis for intervention with the military in support. It is possible however, that a joint operation may be impractical for example due to poor weather conditions or geographical location of the incident. Therefore, to ensure that the Royal Navy has the legal basis to intervene without the police in proximity, it is appropriate to specify a limited group of Royal Navy personnel, namely members of the Royal Navy Police, as law enforcement officers for the purposes of the PCA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to contingency preparations that are required in the event that the Transition Period expires without a comprehensive fishing agreement in place between the UK and EU members.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 No separate consultation has been carried out.

11. Guidance

11.1 Guidance is not required on the Regulations.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The use of these powers will be monitored and the requirement for these regulations will be reviewed six months after it comes into effect.

15. Contact

15.1 Stuart Brewer at the Ministry of Defence, Telephone: 0207 218 4966 or email: stuart.brewer107@mod.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anthony McGee, Deputy Director for Operational Policy, at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 James Heappey, Minister for the Armed Forces at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.