

EXPLANATORY MEMORANDUM TO

THE NATIONAL SECURITY ACT 2023 (CONSEQUENTIAL AMENDMENTS OF PRIMARY LEGISLATION) REGULATIONS 2023

2023 No. 1386

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes consequential amendments to a number of enactments in connection with the commencement of the National Security Act 2023 (“NS Act”)

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes an amendment to a local Act (the Letchworth Garden City Heritage Foundation Act 1995). The instrument is not a hybrid instrument as the amendment in question is an even-headed amendment of general application which is being made across the statute book.
- 3.2 This statutory instrument includes amendments to UK legislation, as well as Scottish, Welsh and Northern Irish legislation.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) varies between provisions. Most of the provisions that it amends apply to the whole of the UK, but the instrument also contains provisions which amend legislation that does not extend to the whole of the United Kingdom. For example, amendments to the Children and Young Persons Act and Criminal Justice Act only apply in England and Wales. There are amendments to devolved legislation, including the Criminal Procedure (Scotland) Act, Police and Criminal Evidence (Northern Ireland) Order 1989 and Justice (Northern Ireland) Act 2002.

5. European Convention on Human Rights

- 5.1 The Minister of State for Security, the Rt Hon. Tom Tugendhat, has made the following statement regarding Human Rights:

“In my view the provisions of the National Security Act 2023 (Consequential Amendments of Primary Legislation) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Under section 95 (*power to make consequential amendments*) of the NS Act the Secretary of State has the power to make consequential amendments by regulations (statutory instrument) in Parliament. There are numerous references across the statute books to the Official Secrets Acts 1911, 1920 and 1939 which are repealed by the NS Act, and replacement references are required. Consequential changes are also required in relation to other provisions in the NS Act such as the creation of new police powers. While some consequential amendments are made by Schedule 18 (*minor and consequential amendments*) to the NS Act the power co enables any further amendments to be made as a consequence of the provisions in the NS Act. This consequential order includes amendments to primary legislation and therefore is subject to the affirmative procedure. These Regulations are made in reliance upon section 13 of the Interpretation Act 1978.

7. Policy background

What is being done and why?

- 7.1 The NS Act, which received Royal Assent on 11 July 2023, is a response to the threat of hostile activity from states targeting the UK's democracy, economy and values. The NS Act will provide our world class law enforcement and intelligence agencies with new and updated tools to deter, detect and disrupt modern threats. The Act also introduces a new Foreign Influence Registration scheme, which will bring greater transparency by requiring registration of foreign influence in our political system and registration of a broader set of influence activities from specified foreign powers.
- 7.2 These Regulations make consequential amendments to account for new powers and offences created in the NS Act. These include:
- Amendments to update references in other legislation to the Official Secrets Acts 1911, 1920 and 1939 to reference the relevant provisions in the NS Act, or to repeal them entirely. This is because the NS Act repeals and replaces those Acts.
 - Amendments to the Atomic Energy Authority Act, Civil Aviation Act and Environment Act to account for the new prohibited places regime in the NS Act.
 - Amendments to the Criminal Justice and Police Act 2000 due to new search and seizure powers created in Schedule 2 to the NS Act.
 - Amendments to the Police and Criminal Evidence Act 1984 and the Children and Young Persons Act 1933 to account for the arrest and detention powers created by section 27 of, and Schedule 6 to, the NS Act.
 - Amendments to devolved legislation where such legislation references the Official Secrets Acts 1911, 1920 and/or 1939. This includes amendments to the Police Act 1997, the Disclosure (Scotland) Act 2020, and the Justice (Northern Ireland) Act 2002.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 No formal consultation was undertaken on these consequential amendments as they make technical and minor amendments that are consequential to provisions of the 2023 Act which were scrutinised by Parliament.

11. Guidance

11.1 No guidance is required in respect of this instrument.

12. Impact

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

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. An Impact assessment has been prepared in relation to the NS Act. A copy of the relevant impact assessment for the NS Act is available at Impact Assessment (publishing.service.gov.uk). Paragraph 92 of this assessment notes the limited impact this legislation will have on government, business or the general public. Hard copies of the impact assessments can be obtained by writing to the State Threats Unit, Homeland Security Group at the Home Office, 2 Marsham Street, London, SW1P 4DF.

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 provisions of the NS 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.

14.2 Furthermore, the Independent Reviewer of State Threats Legislation – a position created by Part 3 of the NS Act – will be able to review the consequential amendments made in this Order as part of their statutory review of the wider legislation.

15. Contact

15.1 National Security Consultations team at the Home Office nationalsecurityconsultations@homeoffice.gov.uk will answer any queries regarding the instrument.

15.2 The Deputy Director for the State Threats Unit at the Home Office can confirm that this explanatory memorandum meets the required standard.

15.3 The Rt. Hon. Tom Tugendhat MP, the Minister of State for Security at the Home Office can confirm that this explanatory memorandum meets the required standard.