

EXPLANATORY MEMORANDUM TO
THE MARITIME ENFORCEMENT POWERS (SPECIFICATION OF THE CIVIL
NUCLEAR CONSTABULARY) REGULATIONS 2023

2023 No. 172

AND

THE POLICING AND CRIME ACT 2017 (MARITIME ENFORCEMENT POWERS:
REVISED CODE OF PRACTICE) REGULATIONS 2023

2023 No. 173

1. Introduction

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

2. Purpose of the instruments

2.1 The purpose of the Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023 is to specify members of the Civil Nuclear Constabulary (CNC) as “law enforcement officers” for the purposes of the maritime enforcement powers in Chapters 5 and 6 of Part 4 of the Policing and Crime Act 2017 (“PCA 2017”). This will allow the CNC to exercise the maritime enforcement powers in Chapter 5 for England and Wales and Chapter 6 for Scotland.

2.2 The purpose of the Policing and Crime Act 2017 (Maritime Enforcement Powers: Revised Code of Practice) Regulations 2023 (“the Code of Practice Regulations”) is to amend the Code of Practice to be followed by law enforcement officers when arresting a person under the power conferred by section 90 of the PCA 2017. This Code is being amended so that it sets out all those who can be “law enforcement officers” under section 84 PCA 2017, including those designated in regulations made under section 84: the CNC (pursuant to the Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023), the Ministry of Defence Police and 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.

4. Extent and Territorial Application

4.1 The extent of the Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023 (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales and Scotland. The extent of the Code of Practice Regulations is England and Wales.

4.2 The territorial application of the Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023 (that is, where the instrument produces

a practical effect) is England and Wales and Scotland. The territorial application of the Code of Practice Regulations is England and Wales.

5. European Convention on Human Rights

- 5.1 As the Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023 is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
- 5.2 As the Code of Practice Regulations is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 The CNC was established under Chapter 3 of Part 1 of the Energy Act 2004, which sets out the CNC's core functions. Section 55 of the Energy Act 2004 makes provision as to the members of the CNC. Its statutory responsibility is to provide protection of civil nuclear sites and nuclear materials in Great Britain and when in transit aboard UK-flagged merchant vessels within inland waters of Great Britain, territorial waters of the United Kingdom adjacent to England, Wales and Scotland, international waters and foreign territorial waters.
- 6.2 In addition to its core mission the CNC also support wider national policing contingencies, via collaboration agreements under s22A Police Act 1996. This is also enabled by section 59 of the Energy Act 2004, which provides that, where a member of the CNC serves with a police force listed in that section, that CNC member shall have the same powers and privileges as a member of that force.
- 6.3 Section 84 of the PCA 2017 allows "law enforcement officers" to exercise certain maritime enforcement powers in the territorial sea adjacent to England and Wales and sometimes in foreign and international waters, for the purpose of preventing, detecting, investigating or prosecuting an offence under the law of England and Wales. Section 96 of the PCA 2017 provides similar enforcement powers in the territorial sea adjacent to Scotland in relation to offences under the law of Scotland. Sections 84 and 96 PCA 2017 set out which persons are "law enforcement officers" for the purposes of Chapters 5 and 6 of part 4 respectively, and include powers for the Secretary of State to specify additional persons as "law enforcement officers", by regulations. Members of the Ministry of Defence Police have been specified as law enforcement officers under sections 84, 96 and 107 PCA 2017 (see SI 2017/1188) and members of the Royal Navy Police have been specified as law enforcement officers under section 84 PCA 2017 (SI 2020/1554).
- 6.4 The Maritime Enforcement Powers (Specification of the Civil Nuclear Constabulary) Regulations 2023 specifies members of the CNC as law enforcement officers for the purpose of Chapters 5 and 6 of Part 4 of the PCA 2017, which will allow them to exercise the maritime enforcement powers contained in those parts of the PCA 2017.
- 6.5 It is not within the legislative competence of the Scottish Parliament to confer these functions on CNC officers, and therefore the consent of the Scottish Ministers under section 96 is not required.
- 6.6 Section 94 PCA 2017 requires that a Code of Practice ("the Code") 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. The Code, and any revision to the Code, must be brought into operation by regulations made by the

Secretary of State. In 2018, the first version of the Code was brought into operation by the Policing and Crime Act 2017 (Maritime Enforcement Powers: Code of Practice) Regulations 2018 (SI 2018/229).

- 6.7 The Code has been updated so that it sets out all those who can be “law enforcement officers” under section 84 of the Policing and Crime Act 2017, including those specified in Regulations made under section 84(3)(g), that is, the CNC, Royal Navy Police and Ministry of Defence Police. The Policing and Crime Act 2017 (Maritime Enforcement Powers: Revised Code of Practice) Regulations 2023 is required to bring the necessary revisions to the Code into force.

7. Policy background

What is being done and why?

- 7.1 Further to 6.1 to 6.3 above, one of the CNC’s core functions is to provide armed protective security escort for the transit of civil nuclear material aboard specialist UK-flagged merchant vessels within the inland waters of Great Britain, territorial waters of the United Kingdom adjacent to England, Scotland and Wales, international waters and foreign territorial waters.
- 7.2 The designation of CNC officers as designated “law enforcement officers” under sections 84 and 96 PCA 2017 will bring CNC in line with Home Office forces, British Transport Police and Ministry of Defence Police. These powers would enable CNC officers to more effectively deal with any offences that may threaten safety and security whilst conducting armed maritime escort operations of civil nuclear material.
- 7.3 In addition, the CNC also need to be designated as law enforcement officers who can exercise the maritime enforcement powers in order to support wider national policing contingencies in the maritime domain, via collaboration agreements under s22A Police Act 1996.
- 7.4 The supporting Code of Practice for the maritime enforcement powers within PCA 2017 is being updated so that it sets out all those who can be “law enforcement officers” under section 84 of the Policing and Crime Act 2017, including the CNC. Accordingly, the Code of Practice Regulations is required to bring these amendments to the Code into operation.

8. European Union Withdrawal and Future Relationship

- 8.1 These instruments do not relate to withdrawal from the European Union neither do they trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 No formal consultation was required due to the low impact of these instruments. The Home Office has consulted with stakeholders who are directly affected by these instruments, including the Civil Nuclear Constabulary and interested government departments.

11. Guidance

11.1 No additional Guidance is required.

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, and no increase in taxation or expenditure is required or implied.

12.3 A full Impact Assessment has not been prepared for these instruments because they relate to specialised contingent policing powers in the context of protective security operations for large, specialised businesses (i.e. nuclear and maritime sectors). The impact is expected to be protective and positive, enhancing existing operational activity and reducing the risk of terrorism. The financial impact per business is expected to be negligible, with no increase in fees or regulation. Key stakeholders in the nuclear and maritime industry are fully supportive of the operational output which this SI is designed to underpin. The powers will bring CNC into line with Home Office and other police forces (already so designated), and therefore will have a negligible marginal impact, and will enhance existing operational activity.

13. Regulating small business

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

14. Monitoring & review

14.1 These instruments and their outcomes will be subject to internal monitoring and review by Home Office, Department for Energy Security and Net Zero, and the Civil Nuclear Police Authority.

14.2 These instruments do not include a statutory review clause because they do not regulate businesses and therefore the requirements of the Small Business, Enterprise and Employment Act 2015 do not apply.

15. Contact

15.1 Thomas Greenwood at the Home Office (Telephone: 03001050171 or email: thomas.greenwood1@homeoffice.gov.uk) can be contacted with any queries regarding the instruments.

15.2 Debbie Bartlett, Deputy Director for Protect and Prepare at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Tom Tugendhat MP, Security Minister at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.