

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 3: Civil Nuclear Constabulary

Section 51 and Schedule 10: The Civil Nuclear Police Authority

180. **Section 51** should be read in conjunction with Schedule 10. It establishes the Civil Nuclear Police Authority as a body corporate, and gives the Authority the power to employ persons and to determine their pay and conditions. The Secretary of State will be responsible for appointing the members of the Authority, including the Chairman. The Act does not prescribe the detailed composition of the Authority, but the intention is that membership will consist of independent members and representatives of the civil nuclear industry. The intention is to achieve a balanced membership containing a clear independent element, including members with specialised policing knowledge, whilst retaining representatives of the industry in the majority. The Government intends that the rules on appointment set out by the Office of the Commissioner for Public Appointments (“OCPA”) will be followed in making appointments to the Police Authority.
181. The Police Authority will be able to determine the pay and conditions of its employees. The intention is that employees of the Police Authority will be eligible for membership of the UKAEA pension scheme, but there is also power for the Authority, with the Secretary of State’s consent, to set up a new pension scheme for its employees.
182. **Part 4** of Schedule 10 sets out the financial arrangements and responsibilities of the Police Authority. It sets a borrowing limit and allows the Secretary of State to guarantee loans, to make grants and determine the financial duties of the Police Authority. In the normal course the Government’s expectation is that the Police Authority will, as now, recover its costs from those to whom it provides services. Provision for grants and borrowing is being made so that large capital items can be provided for in this way if necessary. The Police Authority’s accounts will be audited by the Comptroller and Auditor General, and laid before Parliament.
183. Part 5 of the Schedule makes it clear that the Police Authority is not part of the Crown, and designates it as a public authority for the purposes of the Freedom of Information Act 2000.

Section 52: The Civil Nuclear Constabulary

184. **Section 52** places an obligation on the Police Authority to secure the maintenance of the Civil Nuclear Constabulary, in similar terms to the obligation on police authorities for Home Office police forces under section 6 of the **Police Act 1996 (c.16)**. It also defines the primary function of the Constabulary as the protection of civil licensed nuclear sites and the safeguarding of nuclear material.

Section 53 and Schedule 11: Chief Constable and other senior officers

185. [Section 53](#) should be read in conjunction with Schedule 11. It requires the Police Authority, with the approval of the Secretary of State, to appoint a Chief Constable and a Deputy Chief Constable. (The Police Authority must consult the Chief Constable before appointing the Deputy.)
186. [Schedule 11](#) sets out the circumstances in which the Police Authority may suspend a senior officer in order to maintain public confidence, and enables the Police Authority to require such an officer to retire or resign in the interests of efficiency or effectiveness. It also gives the Secretary of State a power to require the Police Authority to exercise these powers in relation to the Chief Constable. These provisions mirror those for Home Office Forces.

Section 54: Functions of senior officers

187. [Section 54](#) sets out the circumstances in which other senior officers (Deputy Chief Constable or Assistant Chief Constables) may stand in for the Chief Constable. These mirror provisions in other police legislation.

Section 55: Members of the Constabulary

188. [Section 55](#) makes it clear that members of the Constabulary will be under the direction and control of the Chief Constable. Unlike area forces all members of the Constabulary will be employees of the Police Authority, as well as office holders. A member of the Civil Nuclear Constabulary who makes the appropriate declaration under this section in either England & Wales or Scotland will have police powers and privileges throughout Great Britain within the jurisdiction set out in section 56.

Section 56: Jurisdiction of Constabulary

189. [Section 56](#) sets out the jurisdiction of members of the Constabulary in terms similar to that set out in section 76 of the [Anti-Terrorism, Crime and Security Act 2001 \(c.24\)](#). Whilst the jurisdiction will remain broadly the same as at present, three adjustments are being made. The first of these will remove the Constabulary's jurisdiction on premises which are not nuclear sites but are in the possession or under the control of UKAEA (by virtue of Schedule 3 to the [Atomic Energy Act 1954 \(c.11\)](#)) or of certain nuclear operators (by virtue of paragraph 4 of Schedule 1 to the [Nuclear Installations Act 1965 \(c.11\)](#) or section 19 of the [Atomic Energy Act 1971 \(c.11\)](#)). There is no longer any need for the Constabulary to protect premises which do not hold nuclear material. The second will remove the Constabulary's jurisdiction to exercise police powers in respect of the property of UKAEA or certain nuclear operators within a 15 mile radius of their premises (which the Constabulary has by virtue of section 2 of the [Metropolitan Police Act 1860 \(c.135\)](#), as adapted by the provisions mentioned above). The third extends police powers and privileges to members of the Civil Nuclear Constabulary beyond their 'core jurisdiction' (as set out in section 56(1) to 56(4)) to anywhere else in Great Britain, essentially so long as they are exercising powers and privileges there in connection with their core jurisdiction. The purpose is to ensure that, for example, members of the Constabulary can escort someone who has committed an offence within their core jurisdiction to a police station outside their core jurisdiction, or they can pursue someone outside their core jurisdiction who has committed an offence within their core jurisdiction whether or not that crime relates to the security of nuclear material the Constabulary is safeguarding.
190. Members of the Constabulary have general policing powers within their jurisdiction. Operational arrangements are set out in a national policing protocol and in individual memoranda of understanding between the Constabulary and the Home Office and Scottish forces.

Section 57: Stop and search under Terrorism Act 2000

191. **Section 57** enables members of the Civil Nuclear Constabulary to be authorised by a senior officer of the Constabulary, under section 44 of the **Terrorism Act 2000 (c.11)**, to stop and search for articles which could be used in connection with terrorism without grounds for suspicion. In practice such powers are likely to be used mainly in connection with securing trans-shipment sites as part of a joint operation with local police forces, and subject to agreed arrangements between the respective chief constables. The authorisation will lapse during any period in which the Constabulary ceases to have jurisdiction in the place or area specified in the authorisation.

Section 58: Government, administration and conditions of service

192. The Home Secretary has powers under section 50 of the **Police Act 1996 (c.16)** to make regulations regarding the government, administration and conditions of service of Home Office police forces. These regulations will not apply to the Civil Nuclear Constabulary although the relevant provisions are currently adopted for the UKAEA Constabulary as a matter of practice. Section 58 places a statutory obligation on the Police Authority to ensure that, where it makes provision about conditions of service of the Constabulary, these only differ from Police Act regulations which contain provision about such matters in so far as is necessary to reflect the circumstances and structure of the Constabulary. This will ensure close alignment of common conditions and standards with other police forces, whilst enabling recognition of the distinct circumstances of the Constabulary. Before making provision about such matters, the Police Authority will have to consult the Chief Constable, the Police Federation and any approved rank-related associations.
193. **Paragraph 3** of Schedule 13 provides the Secretary of State with a power to give directions to the Police Authority on matters covered by section 50 of the **Police Act 1996 (c.16)**. This is a fallback power, intended for use in circumstances where the Secretary of State believes the Police Authority has failed to implement any relevant regulations correctly.

Section 59: Members of the Constabulary serving with other forces

194. **Section 59** ensures that, where members of the Constabulary are seconded to other police forces with the agreement of the respective chief officers, they shall have the same powers and privileges as members of the force to which they are seconded. This mirrors arrangements that already exist between other forces, but from which the Constabulary has thus far been excluded.

Section 60: Charges

195. The Government's intention is that the Police Authority will, as now, recover its costs from those to whom it provides services. Section 60 essentially requires those organisations to whom the Constabulary provides services to meet the costs incurred by the Police Authority in or in connection with the provision of those services. In other words, the intention is that the Police Authority should set its charges at the level that will enable it to recover fully the costs of providing such services. As is standard practice for Non Departmental Public Bodies, the detailed financial arrangements of the Authority will be set out in its Financial Memorandum.

Section 61 and Schedule 12: Planning and reports

196. **Section 61** should be read in conjunction with Schedule 12. The Schedule is based on provisions of the **Police Act 1996 (c.16)**, differing only where necessary to meet the specific needs of the Civil Nuclear Police Authority. The intention is to ensure that, as far as possible within the NDPB framework and the interests of national security, the Authority operates under the same framework of governance and openness as Home Office and other forces. The Police Authority is required to produce annual policing

objectives for the Constabulary, which must be consistent with directions issued by the Secretary of State, and to have regard to the National Policing Plan and general policing objectives set by the Home Office. The Government also intends that the Police Authority should have regard to any similar document describing national policing priorities in Scotland.

197. The Schedule also requires the Police Authority to produce an annual policing plan setting out the means by which the objectives are to be met and the financial resources available. The Police Authority will also have to issue a three-year strategy plan. These plans are to be published.
198. **Part 2** of Schedule 12 sets out the reports that the Police Authority and the Chief Constable are obliged to provide. Again the intention is to replicate the requirements on other police forces as far as is practicable within the constraints of national security. The Police Authority will be required to issue an annual report, which the Secretary of State will publish and lay before both Houses of Parliament.
199. The Police Authority will also be able to require the Chief Constable to report to it on any policing matter. The Secretary of State will have a similar power to require the Police Authority and the Chief Constable to report to him on any policing matter. These provisions mirror those for other police forces.

Section 62: Inspection

200. **Section 62** puts on a mandatory, statutory footing the current arrangements whereby the UKAEA Constabulary is subject to voluntary inspection by Her Majesty's Inspectors of Constabulary ("HMIC"). It also allows the Secretary of State to initiate an inspection, and places a duty on the Secretary of State to make the report of an inspection public, subject to national security considerations. Where an inspection covers the Constabulary's activities in Scotland then HMIC must consult the Scottish inspectors about the Scottish aspects of the inspection.

Section 63 and Schedule 13: Supervision by Secretary of State

201. **Section 63** should be read in conjunction with Schedule 13. Schedule 13 gives the Secretary of State the power (amongst other things) to issue to the Police Authority directions setting out objectives for it, directions relating to the activities of the Constabulary, and directions relating to the Constabulary's conditions of service. The main purposes of these powers are:
 - to allow the Secretary of State to set strategic and policing objectives for the Police Authority. This is broadly equivalent to the power to set such objectives for Home Office forces in section 37 of the **Police Act 1996 (c.16)**;
 - to ensure that the Police Authority and the Constabulary implement the security standards, guidelines and procedures set by the Secretary of State, including:
 - (a) the tasks which the Constabulary is to perform;
 - (b) the nuclear sites which the Constabulary is to protect, and the minimum number of constables which should be deployed there;
 - (c) detailed requirements on protection of information and security vetting;
 - (d) certain qualitative criteria such as training, intelligence matters, special operations and exercises;

This preserves the current arrangements whereby the Secretary of State, through the Office for Civil Nuclear Security, sets the security framework and agrees and monitors the security arrangements for all civil nuclear sites;

- to allow the Secretary of State to ensure that the Police Authority's employment practices retain parity with other police forces. Where directions deal with matters which are dealt with by regulations under section 50 of the [Police Act 1996 \(c.16\)](#) (police force regulations), the direction may differ from those regulations only in so far as is necessary to reflect the circumstances and structure of the Constabulary;
- to allow the Secretary of State to require specific remedial action where he believes the Police Authority is failing to meet objectives he has set or has failed to comply with a direction he has given or where a HMIC report is critical of the Authority's efficiency or effectiveness.

Section 64: Civil Nuclear Police Federation

202. [Section 64](#) gives statutory recognition to the Civil Nuclear Police Federation to represent members of the Constabulary in matters affecting their welfare and efficiency. The arrangements will mirror those for other police forces and put on a statutory footing the current arrangements whereby members of the UKAEA Constabulary are represented by a non-statutory police federation.

Section 65: Rank - related associations

203. [Section 65](#) allows the Secretary of State to approve further associations to represent certain ranks of the Constabulary who are not members of the Civil Nuclear Police Federation in welfare and efficiency matters. This is to allow flexibility in the event that, for example, some ranks of the Constabulary wish to establish an alternative approved body (such as a superintendents' association).

Section 66: Representation at certain disciplinary proceedings

204. [Section 66](#) mirrors the arrangements for area police forces and the British Transport Police. Currently the UKAEA Constabulary implements on a voluntary basis disciplinary procedures closely based on those set out in regulations under section 50 of the [Police Act 1996 \(c.16\)](#). These (or similar) arrangements will continue.

Section 67: Trade union membership

205. [Section 67](#) prevents members of the Constabulary from being a member of a trade union (subject to certain limited exceptions). This puts on a statutory footing the current informal arrangements, and brings those arrangements into line with the long established principles incorporated in other police legislation.

Section 68: Application of offences etc applying to constables

206. [Section 68](#) extends the offences of assault on constables and impersonation of police to members of the Civil Nuclear Constabulary. It also makes it an offence to cause disaffection within the Constabulary. Again the policy intention is to ensure that the same offences that apply in relation to other police forces apply in relation to the Constabulary.

Section 69 and Schedule 14: Minor amendments relating to the Constabulary

207. [Section 69](#) should be read in conjunction with Schedule 14. It substitutes in a number of Acts the Civil Nuclear Constabulary for the UKAEA Constabulary. This is largely to maintain the existing position. Paragraph 6 of Schedule 14 extends the definition of "Crown servant" in the Official Secrets Act 1989 to ensure that that Act applies in relation to the Civil Nuclear Constabulary in the same way that it applies in relation to Home Office and Scottish police forces.

These notes refer to the Energy Act 2004 (c.20) which received Royal Assent on 22 July 2004

Section 70: Nuclear transfer scheme for UKAEA Constabulary

208. **Section 70** requires the transfer of constables in the current UKAEA Constabulary, and of certain civilian employees of UKAEA, to the Police Authority. Constables transferred under these arrangements will not need to make another declaration following transfer.