

EXPLANATORY MEMORANDUM TO
THE NATIONAL SECURITY (PROHIBITED PLACES) (CIVIL NUCLEAR)
REGULATIONS 2023

2023 No. 1114

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the legislation is to designate locations and ships in the civil nuclear industry as prohibited places under the powers in the National Security Act 2023. The act replaces the previous prohibited places regime contained in the Official Secrets Act 1911 ('the OSA'). It creates two offences and gives police additional powers at designated sites.

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 this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 No statement is required as the instrument is subject to negative resolution procedure and does not amend primary legislation.

6. Legislative Context

- 6.1 This instrument is being made to ensure that the prohibited place provisions of the National Security Act 2023 are applied to the UK's civil nuclear sector to ensure these locations are afforded the same level of protection as other designated sites, in the interests of national security.
- 6.2 Prohibited places are inherently sensitive sites that are likely to be the target of state threat activity or other types of threats that do not have a state link. Access to such sites could be a precursor to espionage offences or sabotage.
- 6.3 The previous legislation (under s.3(c) of the OSA for civil nuclear prohibited places: The Official Secrets (Prohibited Place) Order 1955 – S.I. 1955/1497 (S. 136) and The Official Secrets (Prohibited Places) Order 1994 – S.I. 1994/968) no longer accurately reflects the significant changes to the sector that have taken place over the last thirty years and refers to entities which no longer exist and uses terms to describe sites

which are no longer in use. Moreover, these Orders have been repealed by the National Security Act 2023 and therefore need replacing.

6.4 This SI seeks to update these provisions for the civil nuclear sector.

7. Policy background

What is being done and why?

7.1 The National Security Act 2023 repealed the existing prohibited places regime and replaced it with a new one comprising:

7.2 Two offences of unlawful access to a site designated as a prohibited place with a) a purpose prejudicial to the safety or interests of the UK (maximum penalty of 14 years imprisonment) or b) knowledge that the site is prohibited (maximum penalty of six months in prison).

7.3 Creation of police powers to direct a person not to approach, not to inspect, or to leave a prohibited place or the area adjacent to it. It would be made an offence if the person fails to comply with the police direction.

7.4 These offences capture the range of harmful activity that can be conducted through different vectors including carrying out the activity in person, remotely and electronically.

7.5 This statutory instrument ensures that the civil nuclear sector, in its present and future forms, is extended the same level of deterrence as other prohibited places in the UK, in the interests of national security.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Under the OSA, the Government could designate as “prohibited places” locations which are sensitive for national security reasons. A person committed an offence under section 1(a) of the Act if they approached, inspected, passed over, were in the neighbourhood of, or entered a prohibited place for any purpose prejudicial to the safety or interests of the state. Offences committed under this law were prosecuted by the police and the Crown Prosecution Service and devolved equivalents, with a maximum sentence of 14 years in prison.

Why is it being changed?

7.7 The Orders made under the OSA which designated civil nuclear entities as prohibited places are now out of date due to changes in the nuclear industry and have been repealed by the National Security Act 2023. To ensure legislation accurately reflects the UK’s current (and future) civil nuclear sector (e.g. UK Atomic Energy Agency no longer being involved in nuclear fission, British Nuclear Fuels Limited being wound up as nuclear operator, URENCO being restructured and new nuclear build starting at Hinkley Point C) and the Government’s current understanding of security risks to the industry, new regulations are needed.

7.8 This instrument recognises the changes in the sector, ensures the law can effectively be enforced and designates a considerably larger number of locations and several ships to reflect the industry and our more mature assessment of risk.

What will it now do?

- 7.9 The offences and additional police powers in the National Security Act will apply to an up-to-date list of civil nuclear locations and ships. The intention is to deter two types of harm:
- 7.10 Surveillance or trespass by a state-sponsored individual or group of a sensitive nuclear location, which could lead to espionage and the proliferation of sensitive material, information and technology, or its sabotage.
- 7.11 Surveillance or trespass by other individuals or groups of a sensitive nuclear location, which could similarly lead to the theft or sabotage of nuclear material, information and technology.
- 7.12 The legislation will preserve the flexibility to be able to reflect any changes in the sector by referring where possible to categories and types of sites rather than individual locations. This will avoid the need for the legislation to be updated annually as individual nuclear power stations are decommissioned and new reactors built, or if office locations change.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 The Department engaged directly with owners and site licensees of the civil nuclear sites that will be re-designated as prohibited places by this piece of legislation, as well as the Office for Nuclear Regulation and Civil Nuclear Constabulary. The consultation was undertaken in February 2023 and change in legislation was positively received with minimal impact on the operation of their businesses.

11. Guidance

- 11.1 The department is developing guidance to explain the new designation and powers in further detail for stakeholders.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it applies to a very small number of designated civil nuclear sites (and vessels) across Great Britain.

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 Department will continue to monitor this legislation to ensure its ability to capture current and future designated sites and provide them with the necessary level of national security.

15. Contact

- 15.1 Simon.Jessop at the Department for Energy Security and Net Zero: simon.jessop@energysecurity.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katrina Mcleay, Deputy Director for Nuclear Safety, Resilience and Regulation, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Andrew Bowie at the Department for Energy Security and Net Zero that this Explanatory Memorandum meets the required standard.