STATUTORY INSTRUMENTS

2024 No. 1081

ENERGY

The Code Manager Selection Regulations 2024

Made - - - -	*28th October 2024*
Laid before Parliament	*31st October 2024*
Coming into force	*22nd November 2024*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 187(2) and (3), section 188 and section 331(2) of the Energy Act 2023(**a**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Code Manager Selection Regulations 2024 and come into force on 22nd November 2024.

(2) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Act 2023;

"Authority" means the Gas and Electricity Markets Authority;

"basis of selection" means whether a code manager(**b**) is to be selected on a competitive or non-competitive basis;

"candidate" means a person (other than a specially formed company) that the Authority considers to be a candidate for selection as code manager in relation to a code;

"code" means a designated document(**c**);

"selection criteria" means the criteria determined by the Authority under regulation 5(3);

"specially formed company" means a company formed by the Authority as provided in regulation 6;

"standard condition" means a condition of a licence determined by the Secretary of State as a standard condition by virtue of section 33(1) of the Utilities Act 2000(**d**).

(2) For the purposes of these Regulations—

(a) references to "code manager" include "person who is to be a code manager";

(**a**) 2023 c. 52.
(**b**) Defined in section 183(1) of the Energy Act 2023.
(**c**) Defined in section 182(1) of the Energy Act 2023.
(**d**) 2000 c. 27. Section 33(1) was amended by section 248(7)(b) of the Energy Act 2023 (c. 52) and regulations 5(4)(a)(i) and 5(4)(a)(ii) of the Energy Act 2023 (Consequential Amendments) Regulations 2024 (S.I. 2024/706). There are other amendments to section 33(1) but none are relevant to these Regulations.

(b) references to the conditions of a code manager licence(**a**) include, in relation to a given candidate, any conditions that are not standard conditions, and any modification of standard conditions, that the Authority proposes to include in that licence if granted to that candidate;

(c) the selection of a code manager in relation to a code is made when the code manager licence is granted to it(**b**);

(d) unless the context otherwise requires, references to a code manager or the selection of a code manager are to be taken as applying in relation to a particular code.

(3) Where these Regulations require the Authority to publish any notice or statement, the Authority must publish it in such manner as the Authority considers appropriate for bringing it to the attention of those likely to be affected by the matters the subject of such notice or statement.

Basis of selection

3.—(1) The Authority may establish criteria by which it will determine the basis of selection.

(2) Those criteria may be established to apply in relation to a particular code or to all or a sub-set of all codes generally.

(3) The Authority must publish a statement of any criteria established under paragraph (1) before making any determination to which they apply.

(4) Subject to regulation 7(2)(a), whenever a code manager is to be selected, the determination by the Authority of the basis of selection must be made in accordance with any criteria established under paragraph (1), and in the absence of such criteria or as to matters not addressed by such criteria, in the discretion of the Authority.

(5) Before determining the basis of selection in relation to a code, the Authority may seek expressions of interest from any person that the Authority considers may become a candidate for selection as code manager.

(6) Where the Authority has determined the basis of selection in relation to a code, the Authority may, before selecting a code manager in relation to that code, determine to change the basis of selection in the circumstances specified in paragraph (7).

(7) Those circumstances are where the Authority considers that it is no longer appropriate to proceed with selection under the original basis of selection, in the light of—

(a) the progress made, or lack of progress, in taking steps towards selection on that basis;

(b) information obtained by the Authority in the course of taking steps towards that selection; or

(c) other information coming to the attention of the Authority.

(8) The Authority must publish its determination of the basis of selection in relation to a code, and of any change in that basis, together with its reasons for such determination, as soon as reasonably practicable after making that determination.

Conflict of interest

4.—(1) Except as provided in paragraph (2), the Authority may not select a candidate as code manager in relation to a code unless the Authority is satisfied that the candidate has no financial or other interests that might prejudice the discharge by that candidate of the functions of the code manager of that code (a "potential conflict of interest").

(2) The Authority may, in its discretion, decide to select a candidate that has a potential conflict of interest if the Authority is satisfied that the potential conflict of interest is manageable.

(3) For the purposes of this regulation a potential conflict of interest is "manageable" if—

(**a**) Defined in section 183(2) of the Energy Act 2023.
(**b**) 1986 c. 44, section 7AC; 1989 c. 29, section 6(1)(g).

(a) measures can be taken by the candidate by which either—

(i) its interests which give rise to the potential conflict are removed, or

(ii) the risk of prejudice (as referred to in paragraph (1)) is avoided or mitigated to a level that the Authority considers acceptable; and

(b) either—

(i) those measures are taken by the candidate before it is selected, or

(ii) the candidate (if selected) will be required to take those measures, and the Authority is satisfied that the candidate will in fact take those measures.

(4) In determining whether a potential conflict of interest is manageable, the Authority may take into account—

(a) the terms and conditions of the code manager licence that will address conflicts of interest, and

(b) the ability of the candidate to comply with those conditions.

Non-competitive selection

5.—(1) This regulation applies in relation to a code where—

(a) the Authority has determined in accordance with regulation 3 that the code manager is to be selected on a non-competitive basis, and

(b) the Authority has not decided to proceed under regulation 6.

(2) Subject to the further provisions of this regulation, the Authority may select a particular candidate as code manager without following a process in which the possible selection of any other person is considered.

(3) The Authority must determine and publish a statement of the criteria that (in addition to the requirements of regulation 4 it will apply, and the process that it will follow, in deciding whether to select a candidate as code manager.

(4) The selection criteria may be established to apply in relation to a particular code or to all or a sub-set of all codes generally.

(5) The Authority may select a candidate as code manager only if the Authority is satisfied that the selection criteria are met in relation to the candidate.

(6) In determining whether the selection criteria are met in relation to a candidate, the Authority may take account of any decision it has made to exercise any of the Authority's powers under Schedule 12 or 13 of the Act.

(7) The Authority may not select a candidate as code manager unless the candidate has confirmed in writing to the Authority that it is willing to be selected and to have a code manager licence granted to it and has not withdrawn that confirmation.

(8) Before granting a code manager licence to a candidate the Authority must—

(a) publish a notice—

(i) stating that the Authority proposes to grant the licence and identifying the code and the name of the candidate;

(ii) stating the reasons why it proposes to grant the licence;

(iii) setting out the period within which representations may be made about the proposed grant of the licence, and

(b) consider any representations made within the period specified in the notice about the proposed grant of the licence.

(9) If after following the steps in paragraph (8) the Authority decides to grant the code manager licence to the candidate, the Authority must, as soon as practicable thereafter, publish a notice of the grant.

Specially formed company

6.—(1) Where the Authority determines in relation to a code that the code manager is to be selected on a non-competitive basis, the Authority may, instead of selecting a candidate under regulation 5, decide to—

(a) form a limited company, and

(b) select that company as code manager.

(2) The Authority may not select a specially formed company as code manager in accordance with paragraph (1) unless the conditions in paragraphs (3) to (5) are met.

(3) The first condition is that either—

(a) the Authority, and any nominee of the Authority, has ceased to be a member of the company, or

(b) the Authority has made arrangements by which no later than the relevant time the Authority and any such nominee will cease to be a member of the company.

(4) The second condition is that either—

(a) no person that is an officer or employee of or a contractor to the Authority is a director or other officer or employee of or engaged as a contractor by the company, or

(b) the Authority has made arrangements by which no later than the relevant time any such person will cease to be a director or other officer or employee of or engaged as a contractor by the company.

(5) The third condition is that the Authority is satisfied that, after taking account of any decision made by the Authority to exercise any of its powers under Schedule 12 or 13 of the Act, the specially formed company will at the relevant time be in compliance with the conditions of the code manager licence.

(6) For the purposes of paragraphs (3) to (5), the relevant time is the time of selection of the candidate or if later the time from which the code manager licence is effective.

(7) Before granting a code manager licence to a specially formed company, the Authority must—

(a) publish a notice—

(i) stating that the Authority proposes to grant the licence and identifying the code and the name and such other details of the company as the Authority considers appropriate;

(ii) stating the reasons why it proposes to grant the licence;

(iii) setting out the period within which representations may be made about the proposed grant of the licence, and

(b) consider any representations made within the period specified in the notice about the proposed grant of the licence.

(8) If after following the steps in paragraph (7) the Authority decides to grant the code manager licence to the specially formed company, the Authority must, as soon as reasonably practicable thereafter, publish a notice of the grant.

(9) Except as provided in paragraphs (2) to (5) nothing in these Regulations limits the powers of the Authority to take any step that it considers requisite or desirable for the formation or (pending its selection as code manager) management of a specially formed company.

Code Manager of Last Resort

7.—(1) Paragraph (2) applies, in relation to the selection of a replacement code manager, if—

(a) the Authority has decided to revoke a code manager licence;

(b) the revocation will be effective before the time by which the Authority considers it could select a code manager to replace the incumbent under the process that the Authority would otherwise adopt in conformity with these Regulations; and

(c) the Authority considers that it would be appropriate to select, as a replacement code manager, a person that holds a code manager licence in relation to another code.

(2) Where this paragraph applies—

(a) the Authority may decide to select a code manager of last resort on a non-competitive basis without regard to any criteria established under regulation 3(1);

(b) the need to appoint a code manager of last resort is to be treated as a sufficient reason (as referred to in regulation 3(8)) for that decision;

(c) the Authority may modify the selection criteria as the Authority considers appropriate in the circumstances and the Authority may publish the modified selection criteria (under regulation 5(3)) after selecting the code manager of last resort, if it is not practicable to do so earlier;

(d) regulation 5(8) does not apply, and in regulation 5(9) the reference to the steps in regulation 5(8) is to be disregarded.

(3) The Authority may commence taking steps toward the selection of a code manager of last resort under this regulation at any time at which a circumstance has arisen that would entitle it to revoke the licence of the incumbent in accordance with its terms, but a licence granted to the person selected as code manager of last resort will not be effective before the time from which the incumbent's licence is revoked.

(4) In this regulation—

"code manager of last resort" means a code manager to be selected as a replacement for a code manager in the circumstances described in paragraph (1);

"incumbent" means the code manager that is to be replaced by a code manager of last resort.

Michael Shanks
Parliamentary Under Secretary of State for Energy
Department for Energy Security and Net Zero

28th October 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Great Britain, make provision for the selection by the Gas and Electricity Markets Authority (the "Authority") of a person to which a licence is to be granted to act as code manager in relation to a document designated by the Secretary of State under section 182(1)(b) of the Energy Act 2023.

Regulation 2 sets out key terms used in the Regulations.

Regulation 3 provides for the determination by the Authority whether to select a code manager on a competitive or non-competitive basis (as described in section 187(1) of the Act), and the circumstances in which the Authority may change that determination.

Regulation 4 makes provision to ensure that no person with a conflict of interest is selected as a code manager.

Regulation 5 sets out the basis on which the Authority may select a code manager on a non-competitive basis, including the requirement for the Authority to establish and publish selection criteria, and (before making a selection) to publish notice of the proposed selection.

Regulation 6 provides that where it has decided on non-competitive selection, the Authority, instead of selecting an existing candidate, may itself form a company to be selected as code manager.

Regulation 7 provides that the Authority may deviate from the usual requirements of these Regulations in order to select a code manager of last resort where an existing code manager's licence is to be revoked and there is insufficient time to follow those usual requirements.

An Impact Assessment has not been prepared for this instrument because of the low level of impact on business and consumers.

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