EXPLANATORY MEMORANDUM TO

THE CODE MANAGER SELECTION REGULATIONS 2024

2024 No. 1081

1. Introduction

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

2. Declaration

2.1 Michael Shanks, Parliamentary Under-Secretary of State at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Teresa Camey, Deputy Director for Energy Systems and Governance at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Oana Georgescu at the Department for Energy Security and Net Zero, Telephone: 07561 879887 or email: codereform@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument is made under the enabling powers in sections 187(2), 187(3) and 188(1-3) of the Energy Act 2023 (the Act) in connection with the powers granted to the Gas and Electricity Markets Authority (GEMA) for selecting a code manager. These Regulations are providing GEMA with the details needed in order to implement the reform, specifically regarding to choice of selection route, code manager eligibility, and selection on a non-competitive basis.

4.2 The legislation empowers GEMA to establish and apply criteria for selecting a code manager, either competitively or non-competitively. GEMA will be able to seek expressions of interest from potential candidates, ensuring that no person with a financial or other interest that could compromise the integrity of the role is selected. GEMA will also have the discretion to manage conflicts of interest by requiring candidates to eliminate or mitigate them as a condition of selection. When directly selecting a code manager, GEMA must establish and publish selection criteria, allow representations on the proposed licence grant, and issue a notice of grant. Additionally, GEMA will have the authority to create a company to serve as the code manager or select a code manager of last resort when an existing manager's licence is revoked and there is insufficient time for the usual procedures.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument is England, Wales and Scotland.

4.4 The territorial application of this instrument is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The Act established the legislative framework for reforming the governance of the gas and electricity codes – the detailed rules of the energy system. Part of this reform was to establish a regulatory regime for a new role of "code manager" as a licensed body who will be responsible for the governance of one or more industry codes in the gas and electricity sectors. These Regulations are made in connection with the code manager selection process, such as informing GEMA's choice between competitive and non-competitive selection processes for a code manager and establishing the requirements that must be met by a person in order to be selected as code manager.

What was the previous policy, how is this different?

5.2 The previous code governance arrangements were successful when dealing with an energy system that was more predictable, with incremental changes over time. The Code Governance Reform programme aims to create a code governance framework that is easier to understand, more agile and forward-looking to align with government priorities. The primary objective of the reform is to ensure that the energy codes keep pace with net zero ambitions and deliver for consumers. The reform will see the responsibility for the energy codes moving from industry parties to code managers. Code managers will be directly accountable to Ofgem under the terms of their licence and will take on roles previously performed by code administrators and code panels. These regulations provide a framework for GEMA to select the most appropriate code managers, while ensuring the risks posed by potential conflicts of interest are mitigated.

6. Legislative and Legal Context

How has the law changed?

6.1 This is new legislation implementing reforms made by the Act. The Act set out measures for the reformed gas and electricity code governance framework and these Regulations implement elements of that framework in relation to the selection of code managers. In particular, these Regulations establish the criteria by which GEMA can decide whether to select a code manager under a competitive or non-competitive process, make provision about code manager eligibility including where any conflicts of interest arise and set out details on the selection process on a non-competitive basis.

Why was this approach taken to change the law?

6.2 This is the approach set out in the Act to implement the powers granted to GEMA for selecting a code manager.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Energy Security and Net Zero and the Office of Gas and Electricity Markets concluded a joint consultation in May 2024 [1], which set out key proposals for the selection regulations of code managers. The consultation sought

[1] https://www.gov.uk/government/consultations/energy-code-reform-code-manager-licensing-and-secondary-legislation

views from existing code parties, wider industry players, consumer groups, academics, and existing code administrators and represented further refinement of policy development following previous consultations in 2019[2] and 2021[3]. The Department received 27 responses, most of them supportive of the regulatory proposals regarding code manager selection. The full Government response to this consultation can be found here: https://www.gov.uk/government/consultations/energy-code-reform-code-manager-licensing-and-secondary-legislation

8. Applicable Guidance

8.1 The Department will not provide any guidance in relation to this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

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

Impact on businesses, charities and voluntary bodies

9.2 The impact to business due to this instrument is small and contained to a small proportion of the energy industry, including existing code administrators, code parties and some wider industry players. There will be no net loss or gain to business as associated costs and revenues from the activity of code panels and code administrators will transfer to new, licenced code managers.

9.3 The legislation does not impact small or micro businesses.

9.4 The legislation does not impact charities or voluntary bodies.

9.5 The impact on the public sector is negligible. The main impact will be borne by current code administrators whose businesses will need to adapt to the new requirements outlined in these regulations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Michael Shanks, Parliamentary Under-Secretary of State for the Department for Energy Security and Net Zero has made the following statement: "There is no expected significant annualised net impact on business (greater than +/-£10 million net annualised). There are no other factors that would make it particularly desirable to include a review clause."

[2] https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes
[3] https://www.gov.uk/government/consultations/energy-code-reform-governance-framework

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Code Manager Selection Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").