EXPLANATORY MEMORANDUM TO

THE ENERGY ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No. 706

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Declaration

2.1 Justin Tomlinson, Minister of State for Energy Security and Net Zero 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 Bryn Kewley at the Department for Energy Security and Net Zero, Telephone: 07920806499 or email: nesoproject@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 uses the power conferred on the Secretary of State in Section 330 (1) and (2) of the Energy Act 2023 (EA23) to make amendments in consequence of or in connection with the EA23.

4.2 Part 5 of the EA23 laid the legislative groundwork for the creation of National Energy System Operator (NESO) (referred to in EA23 as the Independent System Operator and Planner or ISOP).

4.3 Part 6 of the EA23 introduces a new governance framework for gas and electricity codes, including the role of the Code Manager. Under the new framework, code administrators and industry panels will be replaced by code managers who will be selected and licensed by Ofgem.

4.4 This instrument also makes other miscellaneous consequential amendments to wider legislation to that to ensure that they reflect, or are consistent with, EA23.

Where does the legislation extend to, and apply?

4.5 The general 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. The

amendments will have the same as the legislation they amend but some amendments expressly do not extend to Northern Ireland.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 This instrument predominantly forms part of the Department for Energy Security and Net Zero's programme to deliver the National Energy System Operator (NESO) and to reform the governance of gas and electricity industry codes. EA23 laid the legislative framework for these reforms, and this instrument makes consequential amendments to reflect these changes throughout the statute book. Other miscellaneous amendments, consequential on the entry into force of EA23 or connected with it and not related to these policy areas are also made by this instrument: these amendments concern the hydrogen levy in Part 2 of the EA23; the competitive tendering of electricity projects in Part 7 of the that Act and amendments related to the introduction of regulations concerning heat networks and heat network zones by Part 8 of that Act.

5.2 The amendments are technical in nature. For NESO, they seek to achieve two aims: firstly, the current Electricity System Operator is given various duties and responsibilities in statute, many of them through reference to the 'Transmission licence' that the system operator holds. Once the NESO is created, this licence will become an 'Electricity System Operator licence' and so numerous updates are required to ensure the relevant duties and responsibilities continue to apply where necessary. Secondly, the instrument reflects the creation of NESO as a public corporation and amends several non-energy sector pieces of legislation that relate to public bodies.

5.3 The SI will also make amendments to ensure legislation – for example, the Countryside and Rights of Way Act 2000 – refers to the correct gas licence holder. This will ensure legislative consistency and thereby ensuring that the powers in the EA23 are able to work effectively.

5.4 As part of the reform to gas and electricity industry energy codes, we have created a new type of licence, therefore numerous updates are required to ensure that statutory duties and responsibilities that apply to electricity and gas licensees generally, apply to code managers only where appropriate. This instrument will integrate provisions for the recently established role of 'code managers' and the licensing framework for such entities.

What was the previous policy, how is this different?

5.5 EA23 laid out the legislative framework for the creation of NESO, but it did not update throughout the statute book references to the previous System Operator nor to the licences which NESO will hold and through which Ofgem will regulate NESO. Updates throughout the statute book are therefore necessary to reflect these changes. Furthermore, EA23 did not amend the statute book to reflect the creation of NESO as a public corporation. Updates are required to add NESO to the list of public bodies which are affected by various pieces of non-energy sector pieces of legislation. This SI, then, is necessary to make these changes and ensure that legislation reflects the energy system once NESO is created.

5.6 The Competition and Markets Authority (CMA) previously expressed concerns about certain aspects of code governance. The new governance framework, outlined in the EA23 is agile and responsive to change, benefits consumers and competition, and supports innovation. Under the new system for energy code governance, code administrators and industry panels will be replaced by code managers who will be selected and licensed by Ofgem. These bodies will be directly accountable to Ofgem and will take on the role of making recommendations, and in some cases decisions on modifications to the codes. Ofgem will implement the reformed framework and drive strategic changes across the codes in the interest of consumers and competition. This SI is necessary to make consequential changes across legislation to reflect the new governance framework and licencing regime.

6. Legislative and Legal Context

How has the law changed?

6.1 EA23 laid the legislative groundwork for 1) creation of NESO (Part 5) and 2) governance reform of gas and electricity industry codes (Part 6).

6.2 There are currently many references to, for example, holders of licences under section 6 of the Electricity Act 1989 generally, or transmission licence holders specifically, across the statute book. The creation of NESO and the granting of its licences gives rise to the need to make several consequential amendments to update these references.

6.3 These consequential amendments will serve to clarify, in legislative terms, which of the National Grid Electricity System Operator's (NGESO) and National Gas Transmission's (NGT) powers, rights, and duties NESO will or will not inherit.

6.4 Section 183 of EA23 defines what is meant by both 'code manager' and 'code manager licences'. This consequential SI recognises that the code manager licence is a new class of licence and extends provisions of legislation which apply generally to licences under the Gas Act and Electricity Act, or holders of those licences, so that they apply to code manager licences and code managers.

6.5 This SI will exempt the code manager licensing regime from the scope of the Provision of Services Regulations 2009 (PoSR). This decision has been taken as the PoSR could impose constraints on DESNZ and Ofgem when developing the new code governance regime, and mean it may breach the PoSR or at least create uncertainty about PoSR compliance. These constraints may prevent the code manager selection regime developing in a way that is consistent with the Department's objectives and in a way that is aligned with consultation responses to date. Disapplying PoSR will avoid the potential for code manager legislation or decisions to be challenged on the basis that they are inconsistent with PoSR.

6.6 This SI also makes changes to the Utilities Act 2000 enable the Secretary of State, before 26th October 2030 (7 years from the passing of EA23), to create Standard Licence Conditions (SLCs) for the new code manager licence. The SI also excludes the licence application regulations from applying to code manager licences.

6.7 As a result of the new code governance framework, consequential amendments are needed to the following pieces of primary energy legislation; the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000. Amendments to other pieces of primary legislation are required, inclusive of the Enterprise Act 2002 and the Consumers, Estate Agents and Redress Act 2007. This SI also amends secondary legislation inclusive of the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2019 and the Amendment of the

Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations 2019 to ensure that they reflect, or are consistent with, EA23.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes. This SI is being made using the powers conferred by Section 330 of EA 2023 to make consequential provisions.

7. Consultation

Summary of consultation outcome and methodology

7.1 In March 2024, DESNZ and Ofgem published a joint consultation on energy code reform: code manager licensing and secondary legislation. This consultation follows previous consultations in 2019 and 2021 and represents further refinement of policy development.

7.2 These consultations do not relate to consequential amendments. The consequential changes needed in this SI are needed as a result of this policy development.

7.3 DESNZ has not carried out a public consultation relating to these consequential changes as these changes are minor and technical in nature. These consequential amendments to legislation will ensure relevant legislation reflects, or is consistent with, provision made in or under EA2023. DESNZ has, however, consulted multiple times with the most impacted stakeholder NGESO who will become NESO. DESNZ has also consulted with Devolved Administrations regarding amendments to specific pieces of devolved 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 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business and consumers. As the SI does not regulate any ongoing business activity, there is no expectation that the regulations will have a direct cost to business and therefore the impact to the status quo is considered negligible.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these consequential amendments are technical in nature and seek to resolve inconsistencies to legislation, for example, caused by changes to definitions. As the SI does not regulate any ongoing activities, there is no expectation that the regulations will have a direct cost to businesses, charities and/or voluntary bodies, and therefore the impact to the status quo is considered negligible.

9.3 There is no, or no significant, impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because these consequential amendments are technical in nature and seek to resolve inconsistencies to legislation, for example, caused by changes to definitions.

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, Minister of State for Energy Security and Net Zero (Justin Tomlinson) has made the following statement:

10.2 There is no expected significant annualised net impact on business (greater than +/-£5 million net annualised). There are no other factors that would make it particularly desirable to include a review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 These Regulations are made under the power in section 330(1) of EA23 to make amendments which are consequential on or in connection with that Act. Some of the amendments in these regulations go beyond what might be regarded as consequential but in the Department's view are made 'in connection with' that Act.

11.2 The majority of the regulations in this instrument come into force when section 166(2) of EA23 is brought into force. That section is brought into force by a separate statutory instrument (Commencement Order). The reason for this commencement provision is that there is still some uncertainty about when the ISOP will take up its role and some flexibility in bringing these consequential amendments into force is necessary.

11.3 Regulations 28, 29, and 36 make amendments to a number of statutory instruments which contain a definition of the 'balancing and settlement code'. This code is currently maintained in accordance with conditions contained in electricity transmission licences. Once the ISOP takes up its role, this code will be maintained under the ISOP's 'electricity system operator licence' (see section 6(1)(da) of the Electricity Act 1989). The existing statutory instruments contain various fixed in force dates for the code, but these dates are obsolete in the context of a code which has changed many times and which is now to be maintained under a different licence. The Department considers that it is appropriate to amend the reference to the code in these instruments, so that it is the code which exists from time to time rather than at a fixed date, in consequence of or in connection with the change from existing licence holder to the new ISOP licence holder.

12. European Convention on Human Rights

12.1 Justin Tomlinson, Minister of State for Energy Security and Net Zero, has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Act 2023 (Consequential Amendments) 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.