STATUTORY INSTRUMENTS

2024 No. 905

ENERGY

The Independent System Operator and Planner (Designation) Third Party Compensation Regulations 2024

Made - - -	*-at 10.50 a.m. on 5th September 2024*
Laid before Parliament	*at 2.00 p.m. on 5th September 2024*
Coming into force	*1st October 2024*

The Secretary of State for Energy Security and Net Zero makes these Regulations in exercise of the powers conferred by section 174 of, and paragraph 14(2) of Schedule 9 to, the Energy Act 2023(**a**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Independent System Operator and Planner (Designation) Third Party Compensation Regulations 2024.

(2) These Regulations come into force on 1st October 2024.

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

Interpretation

2. In these Regulations—

"claim" has the meaning given in regulation 3;

"claimant" has the meaning given in regulation 3;

"designation" means the designation of a person as the Independent System Operator and Planner under section 162(1) of Energy Act 2023;

"relevant act" means anything done by the Secretary of State in preparation for or in connection with designation.

Claims that may be brought

3. A person who suffers loss or damage as a result of a relevant act (a "claimant") may bring a claim for compensation under these Regulations for that loss or damage (a "claim") if—

(a) the claimant is not, in relation to a transfer scheme—

(i) the transferor;

(ii) a parent undertaking or subsidiary undertaking of the transferor;

(**a**) 2023 c. 52.

(iii) a subsidiary undertaking of a parent undertaking of the transferor (other than the transferor),

and for these purposes "parent undertaking" and "subsidiary undertaking" have the meanings given in the Companies Act 2006(**a**), and

(b) the claim relates only to loss or damage that the claimant has suffered as a direct result of a relevant act, and does not relate to any—

(i) indirect or consequential loss (including loss of profit, business, contracts, revenues, diminution in value or loss of opportunity);

(ii) loss or damage that is already covered by compensation payable under a transfer scheme, whether that compensation is payable to the transferor or to the claimant;

(iii) loss or damage in respect of which the claimant is entitled to claim compensation pursuant to any condition of a licence granted under—

(aa) section 6 of the Electricity Act 1989(**b**), or

(bb) any of sections 7 to 7AC of the Gas Act 1986(**c**),

the main purpose of which is to restrict or otherwise govern the revenue that the licence holder may earn in carrying out activities that are the subject of conditions in the licence, or any decision or determination of the GEMA under such a condition.

Procedure for bringing claims

4.—(1) A claim must be in writing, and must include—

(a) the identity and contact details of the claimant;

(b) a description of the relevant act that the claimant alleges to have caused the loss or damage which is the subject of the claim;

(c) a description and quantification of that loss or damage, and an explanation of how that loss or damage—

(i) is the direct result of the relevant act, and

(ii) otherwise meets the conditions in regulation 3(b);

(d) details of any steps that the claimant has taken or proposes to take to avoid or mitigate the loss or damage suffered;

(e) evidence in support of the matters included under sub-paragraphs (c) and (d).

(2) A claimant must bring a claim by sending it—

(a) to the Secretary of State—

(i) by email, to NESO@energysecurity.gov.uk;

(ii) by post, to the NESO Policy Sponsorship Team at the Department for Energy Security and Net Zero(**d**), and

(b) no later than—

(i) 6 months after the date of the designation to which the claim relates, or

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(**a**) 2006 c. 46 (see section 1162 of, and Schedule 7 to, that Act).

(**b**) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27) and was amended by sections 136(1) and 145(5) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20), and sections 166(4) and (5), 186(7) and 205(8) of the Energy Act 2023 (c. 52); and by S.I. 2011/2704 and S.I. 2012/2400. There are other amendments, but none are relevant.

(**c**) 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was amended by sections 3(2) and 76 of, paragraph 4 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000, and section 149(5) of, and Part 1 of Schedule 23 to, the Energy Act 2004; and by S.I. 2011/2704. Section 7ZA was inserted by section 149(6) of the Energy Act 2004. Section 7A was inserted by section 6(1) of the Gas Act 1995 and amended by section 3(2) of, and paragraph 2(1) of Schedule 6 to and Schedule 8 to, the Utilities Act 2000 and section 149(7) of the Energy Act 2004. Section 7AA was inserted by section 168(3) of the Energy Act 2023. Section 7AB was inserted by S.I. 2012/2400. Section 7AC was amended by section 185(6) of the Energy Act 2023.

(**d**) The address of the Department for Energy Security and Net Zero is 55 Whitehall, London, SW1A 2HP.

(ii) at the end of such later period as the Secretary of State may, at the request of a claimant, agree in writing is appropriate in respect of a particular claim, having regard to any exceptional circumstances relating to that claim.

(3) A claimant must provide such further information, documents or evidence as the Secretary of State reasonably requests in relation to a claim that the claimant has brought.

Determination of claims

5.—(1) If the Secretary of State determines that a claim meets the conditions of regulation 3 and that the claimant has complied with the requirements of regulation 4 in respect of it, the Secretary of State must—

(a) determine what compensation, if any, it would be just for the claimant to receive in respect of its claim,

(b) send the claimant written notice of that determination, and

(c) pay that compensation to the claimant.

(2) In making a determination under paragraph (1), the Secretary of State must have regard to—

(a) the extent of the loss or damage suffered by the claimant,

(b) the extent to which that loss or damage was a direct consequence of a relevant act,

(c) any steps that the claimant—

(i) has taken or proposes to take, or

(ii) could reasonably have been expected to take,

to avoid or mitigate that loss or damage,

(d) the extent to which the evidence provided by the claimant in support of its claim is complete, coherent and accurate, and

(e) where the evidence provided by the claimant in support of its claim is not complete, coherent and accurate, the extent to which the absence of such evidence is justifiable.

Appeals

6.—(1) A claimant may appeal a determination of the Secretary of State under regulation 5 to—

(a) in England and Wales, the High Court, or

(b) in Scotland, the Court of Session.

(2) An appeal under paragraph (1) must be brought within 6 months of the Secretary of State making the determination to be appealed.

Michael Shanks
Minister for Energy
Department for Energy Security and Net Zero

At 10.50 a.m. on 5th September 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the payment of compensation by the Secretary of State to third parties who suffer loss or damage in consequence of anything done by the Secretary of State in preparation for or in connection with the designation of a person (as Independent System Operator and Planner) under section 162(1) of the Energy Act 2023.

Regulation 3 sets out who may bring a claim, and defines the scope of loss and damage in respect of which a claim may be brought. Regulation 4 sets out the formal requirements that a claim must meet in order to be considered.

Regulation 5 sets out the duties of the Secretary of State in respect of claims and the matters to which the Secretary of State must have regard in determining what compensation a claimant is to receive.

Regulation 6 identifies the procedure that a clamant may follow to appeal against a determination of its claim by the Secretary of State and specifies the time frame within which they must do this.

A full Impact Assessment has not been published in support of this instrument, as no significant impact on the private, voluntary or public sector is foreseen.

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