EXPLANATORY MEMORANDUM TO

THE INDEPENDENT SYSTEM OPERATOR AND PLANNER (DESIGNATION) THIRD PARTY COMPENSATION REGULATIONS 2024

2024 No. 905

1. Introduction

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

2. Declaration

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

2.2 Emily Bourne, Director for Energy Systems and Networks, at the Department for Energy Security & Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Barnaby Lane at the Department for Energy Security & Net Zero, email barnaby.lane@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 The Energy Act 2023 ("the Act") contains powers in Schedule 9 to make transfer schemes in connection with the Secretary of State's designation of a person as the Independent System Operator and Planner ("the ISOP"), to transfer designated property, rights or liabilities in exchange for compensation. This instrument is separate from that arrangement and is made in order to compensate third parties who have suffered direct loss or damage in connection with the Secretary of State's designation of a person as the ISOP.

4.2 This instrument specifies how such third parties may claim compensation from the Secretary of State. It sets out the parties entitled to make a claim under this instrument, the information and evidence a claimant must provide to substantiate their claim, and the time periods in which a claim must be made. It also sets out how the Secretary of State is to make any determination as to compensation, the expectation that evidence must be complete, coherent and accurate and the process for appealing a determination.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

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

5. Policy Context

What is being done and why?

5.1 In order to support the delivery of the Government's energy ambitions on net zero and energy independence, new technical roles are required and a body with the remit and expertise to fulfil them. These roles are needed to help plan and shape the electricity and gas systems, drive competition and innovation, and ensure Government and Ofgem decisions are based on robust technical advice.

5.2 In July 2021, the previous Government and Ofgem published a joint consultation on the future of system operation with options for roles and organisational design models. This consultation confirmed the view that a new ISOP can play a vital part in helping us meet these challenges.

5.3 The Act provides the legislative framework to enable the establishment and designation of the ISOP, with the objectives, duties and powers that meet this critical need.

5.4 This new body will bring together the planning for the electricity and gas systems, and potentially systems for new technologies like hydrogen and carbon capture and storage, into a single institution to enhance our ability to transition to a zero-carbon energy system and reduce the costs involved. The ISOP will build on the existing capabilities and functions of the National Grid Electricity System Operator Limited (**NGESO**), managing the electricity system in real time, as well as supporting its future development. It will also be responsible for gas strategic network planning, long-term forecasting and market strategy functions. As a new independent public body, the ISOP will be a trusted and expert institution providing independent advice to Government and Ofgem.

5.5 The Act provides the Secretary of State with the power to make a transfer scheme. This power will be exercised to ensure that the existing capabilities and functions, for example those of the NGESO, can be transferred to the ISOP for the purpose of establishing and operating it in its new environment. The statutory transfer scheme powers created under the Act make provision for managing compensation to the entity whose property, rights or liabilities are being transferred under the scheme.

5.6 The Act also makes provision for Regulations to set out the process by which any third parties who may have suffered loss or damage in consequence of anything done by the Secretary of State in preparation for or in connection with the ISOP's designation, may make a claim for compensation.

5.7 The desired outcome of this instrument is that any third parties who may have suffered direct loss or damage as the direct result of the Secretary of State's designation of a person as the ISOP understand the process by which they can make a claim for compensation, for the consideration of the Secretary of State.

What was the previous policy, how is this different?

5.8 The establishment of the ISOP is a new policy, created by the Act. The Act provides the Secretary of State with powers to make a transfer scheme to transfer designated property, rights or liabilities from one person to another person.

5.9 The Act provides for the level of compensation payable under a transfer scheme to be agreed between the parties.

5.10 The Independent System Operator and Planner Transfer Scheme Compensation Regulations 2024 (S.I. 2024/125) relates to how compensation under such a transfer scheme is determined in the absence of agreement between the parties, including provision regarding the process for appointment of an independent valuer.

5.11 Third parties, not party to a transfer scheme may suffer losses in connection with the Secretary of State's designation of a person as the ISOP. The Act and the Independent System Operator and Planner Transfer Scheme Compensation Regulations 2024 do not provide for the determination of compensation for third parties. This instrument provides for some such third parties to be compensated for their losses.

6. Legislative and Legal Context

How has the law changed?

6.1 The Act contains powers in Schedule 9 to make transfer schemes in connection with the Secretary of State's designation of a person as the ISOP, to transfer designated property, rights or liabilities in exchange for compensation. This instrument is separate from that arrangement and is made to compensate third parties which have suffered direct loss or damage in connection with the Secretary of State's designation of a person as the ISOP.

6.2 This instrument is one of the Statutory Instruments supporting the designation of a person as the ISOP under section 162 of the Act.

Why was this approach taken to change the law?

6.3 The Act makes provision for the Secretary of State to make regulations to compensate third parties which have suffered direct loss or damage in connection with the Secretary of State's designation of a person as the ISOP.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no requirement to consult formally on the contents of this Instrument.

7.2 However, the Department of Energy Security and Net Zero consulted widely on the creation of the ISOP, engaging with ~100 stakeholders, predominantly in the energy industry. The previous Government's and Ofgem's response to this consultation confirmed it intended to proceed with the creation of the ISOP and the implementation of primary and secondary legislation to enable this.

8. Applicable Guidance

8.1 Guidance on this instrument is not applicable.

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 there is no significant impact on the private, voluntary, or public sector foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is a negligible impact, or no significant, impact, on business, charities or voluntary bodies because this instrument is intended to provide a process for third-party compensation claims to be considered.

9.3 The legislation's impact on small or micro businesses is negligible because this instrument is intended to provide a process for third-party compensation claims to be considered.

9.4 The impact on the public sector is negligible. This instrument does not set out any routes to compensation beyond those established in the Act.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 These Regulations do not make "regulatory provision" within the meaning of the Small Business, Enterprise and Employment Act 2015. In addition, the ability to make a claim under these Regulations lapses 6 months after the relevant designation (subject to the limited ability to extend that period, set out in regulation 5). These Regulations are therefore likely to cease to have material effect within a few years of commencement. There are therefore no formal monitoring and review requirements for this instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

None.

12. European Convention on Human Rights

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

"In my view the provisions of The Independent System Operator and Planner (Designation) Third Party Compensation Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

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.