EXPLANATORY MEMORANDUM TO

THE INDEPENDENT SYSTEM OPERATOR AND PLANNER TRANSFER SCHEME COMPENSATION REGULATIONS 2024

2024 No. 125

1. Introduction

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

2. Purpose of the instrument

2.1 The Energy Act 2023 (the Act) makes provision for the establishment of the Independent System Operator and Planner (ISOP) as a public body with operational independence from Government, with responsibilities across both the electricity and gas systems, driving progress towards net zero while maintaining energy security and minimising costs for consumers.

2.2 This will require the Secretary of State (SoS) to make one or more statutory transfer schemes – for example to transfer into public ownership the shares, assets, property and liabilities of the National Grid Electricity System Operator (NGESO), in order to establish the ISOP.

2.3 This instrument 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland only.

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5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Act contains powers in Schedule 9 paragraph 8 to make provision in regulations regarding the procedure for appointing an independent valuer, the tests that have to be met for when there is "absence of agreement" regarding compensation and regarding the identity of the valuer, and the matters which to the valuer must have regard and assumptions which the valuer must make. Paragraph 8(2) of Schedule 9 states that the compensation is the amount agreed by the Secretary of State and the transferor, and in the absence of agreement is determined by an independent valuer.

6.2 Whilst the transfer of the NGESO from National Grid to the SoS is envisaged to be the most significant transfer scheme as part of the establishment of the ISOP, the powers in the Act allow the SoS to make any number of transfer schemes. This instrument therefore has to be wide enough to facilitate a number of different sorts of transfer schemes (whether involving transfers of shares or assets).

7. Policy background

What is being done and why?

7.1 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.

7.2 In July 2021, the 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, Independent System Operator and Planner can play a vital part in helping us meet these challenges.

7.3 The Energy Act 2023 provides the legislative framework to enable the establishment and designation of the ISOP, with the objectives, duties and powers that meets this critical need.

7.4 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 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.

7.5 The Act provides the power to make a transfer scheme to ensure that the existing capabilities and functions, for example those of the NGESO, can be transferred for the purpose of establishing the ISOP.

7.6 As explained in section 6, this instrument will establish a legal framework to be followed to determine the appropriate compensation payable to entities whose property, rights or liabilities are to be transferred, in the event of absence of agreement on compensation between the parties.

Summary of the instrument

7.7 This instrument, made under Schedule 9, Part 1, Paragraph 8(5), will principally establish a legal framework and process for when and how a valuer should be appointed, and the factors applicable when the valuer is performing their compensation determination.

7.8 In relation to transfer schemes enacted under the Act, this instrument provides that:

a. Absence of agreement regarding compensation will occur when the SoS has issued and discussed a draft offer with the transferor and proceeded to issue a transfer offer to the transferor, which the transferor does not accept within 10

working days. As set out in the Act, where there is absence of agreement regarding compensation between the parties, an independent valuer is then appointed to determine compensation.

b. Transfer offers and draft offers are to be provided by the SoS to the transferor. These offers must include documents setting out the proposed compensation payable by the SoS to the transferor.

c. Absence of agreement regarding a valuer occurs when a series of conditions have been satisfied relating to the SoS proposing a valuer, considering valuers proposed by the transferor, and offering to jointly apply to a professional body to appoint a valuer on the parties' behalf. If those conditions are met and no valuer has been appointed then the SoS can appoint a valuer on behalf of both parties.

d. In appointing or proposing a valuer the Secretary of State and the transferor must have regard to various factors such as experience, resources and conflicts.

e. The Valuer may prescribe certain procedures, which the valuation parties must follow, when reaching a compensation determination.

f. The Valuer must apply certain assumptions and must consider certain factors when reaching a compensation determination.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation is necessary for this instrument.

10. Consultation outcome

10.1 The Energy Act 2023 requires that before making a transfer scheme the SoS must consult the transferor(s), and such persons as the SoS considers appropriate.

10.2 There is no requirement to formally consult on the contents of this SI. Nevertheless, recognising that National Grid is expected to be the main impacted stakeholder by this SI, the Department of Energy Security and Net Zero have undertaken an engagement with National Grid to support understanding of the policy and process established by the SI, alongside a limited number of other affected parties.

11. Guidance

11.1 Not applicable.

12. Impact

12.1 The impact on charities or voluntary bodies is negligible. The impact on businesses will be limited to those entities whose property, rights or liabilities will be the subject of a transfer scheme, as described at section 2.2 above. The key impact will be through exercise of the transfer scheme power under the Act. This instrument clarifies the circumstances in which an independent valuer would be appointed, and how they would carry out their valuation.

12.2 The impact on the public sector is negligible. This instrument does not set out any routes to compensation beyond those established in the Energy Act 2023.

12.3 A full Impact Assessment has not been published in support of this SI, as no significant impact on the private, voluntary or public sector is foreseen. The instrument has been drafted in line with the powers in the Energy Act, such that a transferor is entitled to appropriate compensation as set out in the relevant transfer scheme. The Act stipulates that the compensation is "to be the amount agreed by the SoS and the transferor, or in the absence of such agreement, determined by an independent valuer". This instrument does not create any new obligations regarding routes to compensation, nor does it provide any indication of monetary values in respect of the compensation amount. The instrument does not regulate any ongoing business activity.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause. This is because it relates to procedures to determine compensation in relation to transfer schemes under the Act, and there is no wider impact on business.

15. Contact

15.1 George Berry at the Department for Energy Security & Net Zero email: george.berry@energysecurity.gov.uk can be contacted with any queries regarding this instrument.

15.2 Teresa Camey, Deputy Director for Future System Governance at the Department for Energy Security & Net Zero, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Graham Stuart, Minister at the Department for Energy Security & Net Zero, can confirm that this Explanatory Memorandum meets the required standard.