

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY (DESIGNATION OF DELIVERY BODIES) (TRANSMISSION)
REGULATIONS 2023

2023 No. 1228

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. Purpose of the instrument

2.1 The purpose of this instrument is to designate delivery bodies to hold functions in respect of tenders relating to electricity transmission under the regime enabled by sections 6BA to 6H of the Electricity Act 1989 (“the Act”).

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 (that is the jurisdictions which the instrument forms part of the law of) is England and Wales and Scotland.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Sections 6BA to 6H of the Act contain provision to enable competitions to be held for matters in respect of electricity networks (those matters include the design, build, ownership and operation of electricity projects). Section 6BB of the Act provides that the Secretary of State may, by regulations, designate a person for the purposes of that section (a “delivery body”), and the delivery body will hold functions in respect of competitions.

6.2 Regulation 3 of this statutory instrument designates the national system operator as the delivery body for competitions in respect of electricity transmission (other than in respect of offshore transmission licences) and its functions will be set out in separate regulations which will be made under section 6C of the Act after this statutory instrument has been made. Regulation 4 maintains Ofgem as the delivery body in respect of the grant of offshore transmission licences and the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (SI. 2015/1555), made under section 6C of the Act, contain the process for those competitions.

7. Policy background

What is being done and why?

- 7.1 Competitive tenders in onshore electricity networks are expected to save consumers up to £1 billion by 2050, and invite greater inward investment as well as enabling new and innovative solutions to be brought into the electricity transmission network. At present, competitions are delivered by Ofgem to determine the person who should hold an offshore transmission licence. Competitions will be extended by the Department to more matters in respect of all electricity transmission networks – both onshore and offshore - by secondary legislation to be made under the Act by the end of 2024.
- 7.2 This Statutory Instrument designates the system operator (the body which holds a licence issued by Ofgem which enables it to co-ordinate electricity flows across GB) as the delivery body to run tenders for electricity network competitions which do not result in the grant of an offshore transmission licence. It is appropriate that the system operator holds the role of delivery body for electricity network competitions which will relate to relevant electricity projects (as defined in section 6BA of the Act), which may include tenders for the design, build ownership and operation of transmission infrastructure. This is because it is a body independent of incumbent transmission owners, a status which will be further confirmed once its functions are exercised by the Independent System Operator and Planner (ISOP). It has a central role in network planning, putting it in a strong position to identify projects for competition and, using experience gained through Pathfinders¹ and its development of the Early Competition plan², to run tenders for these.
- 7.3 Ofgem already undertakes the function of delivery body for competitions in respect of the grant of offshore transmission licences and it is appropriate that Ofgem maintain this role for consistency.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 Between 3 August 2021 and 26 October 2021, the Department for Business, Energy and Industrial Strategy, as was, consulted on, amongst other things, the body/bodies that the Secretary of State considered to run electricity network competitions. The Department received responses from a range of stakeholders, including incumbent network owners and potential investors in network competitions. The full consultation and government response can be found here: <https://www.gov.uk/government/consultations/competition-in-onshore-electricity-networks>.

¹ <https://www.nationalgrideso.com/industry-information/balancing-services/pathfinders>.

² <https://www.nationalgrideso.com/future-energy/projects/early-competition>.

11. Guidance

11.1 Guidance is not required for this statutory instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no formal monitoring and review requirements for this instrument. The functions of the delivery bodies appointed by the statutory instrument will be internally reviewed as competitions are run, as part of good practice.

15. Contact

15.1 Rachel Siddell at the Department for Energy Security and Net Zero. Telephone: 07341 776892 or email: Rachel.siddell@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul van Heyningen, Deputy Director for Net Zero Electricity Networks, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Bowie at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.