

STATUTORY INSTRUMENT CONSENT MEMORANDUM

ENERGY ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before Senedd Cymru if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.

2. The Energy Act 2023 (Consequential Amendments) Regulations 2024 (the Regulations) is subject to the affirmative procedure and was laid before the UK Parliament on 13 May 2024 and can be found at:

<http://www.legislation.gov.uk/id/ukdsi/2024/9780348261448>

3. There is no statutory requirement for the Senedd to consent to the Regulations.

Summary of the Instrument and its objective (SO30A.4(i) requirement)

4. The objective of the instrument is to make the consequential changes necessary to deliver the National Energy System Operator (NESO) and to reform the governance of gas and electricity industry codes. The Energy Act 2023 laid the legislative framework for these reforms, and this instrument makes consequential amendments to reflect these changes throughout the statute book.

5. The Regulations makes consequential amendments arising from the Energy Act 2023. The Energy Act 2023 makes provision about energy production and security, the regulation of the energy market and the establishment of an independent, public corporation responsible for planning Britain's electricity and gas networks and operating the electricity system (the NESO). The Regulations clarify which of the National Grid Electricity Systems Operator's and National Gas Transmission's powers, rights, and duties the NESO will or will not inherit. There are currently many references to holders of licences 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. In accordance with these objectives, the Regulations amend The Environment (Wales) Act 2016.

6. The territorial extend of these Regulations is England and Wales, Scotland, and Northern Ireland.

Provision to be made by the Instrument for which consent is sought (SO30A.4(ii) requirement)

7. The provisions for which consent is sought are contained in Regulation 22 of Part 3 and amend 6(10)(d) the Environment (Wales) Act 2016. Section 6 of the 2016 Act requires public authorities in Wales to maintain and enhance biodiversity in the exercise of functions to promote the resilience of ecosystems. Subsection 10 deals with the definition of a statutory undertaker and 10(d) includes gas transporters within that definition.

8. Regulation 22 replaces subsection (d) a gas transporter (within the meaning of Part 1 of the Gas Act 1986 (c. 44)) with a new subsection (d) the holder of a licence under section 7 or 7AA of the Gas Act 1986. This change is consequential on the establishment of the new National Energy Systems Operator to update definitions of license holders across the statute book.

9. It is the view of the Welsh Government that the provisions described in paragraphs 7 and 8 above make provision in relation to Wales amending primary legislation within the legislative competence of the Senedd for the purposes of Standing Order 30A.

Why is it appropriate for the SI to make this provision (SO30A.4(iii) requirement)

10. It is my view that it is appropriate to deal with this provision in this Instrument as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in Wales. The change is non-contentious and technical in nature and makes a singular consequential change to primary legislation with the aim of clarifying which of the National Grid ESO's and National Gas Transmission's powers, rights, and duties the NESO will or will not inherit so that arrangements for the NESO may be commenced.

11. This UKSI is made under section 330 of the Energy Act 2023 which are powers the Senedd did not consent to. Notwithstanding that, now that these provisions are on the statute book we are committed to ensuring they are exercised responsibly.

12. The amendment contained in the Regulations is made in relation to statutory undertakers in the Environment (Wales) Act 2016, which are reserved authorities and if the change were to be implemented by a Senedd Bill would require Minister of the Crown consent. The Regulations are being made using a Secretary of State only power contained in the Energy Act. The Welsh Ministers have no equivalent power in that Act to effect the change.

Financial implications

13. There are no financial implications in Wales in consenting to the provisions in the Order.

Jeremy Miles MS

Cabinet Secretary for the Economy, Energy and Welsh Language
14 May 2024

