



Department for  
Business, Energy  
& Industrial Strategy

# Energy Security Bill Policy Statement

Code governance

August 2022



© Crown copyright 2022.

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: [energybill2021@beis.gov.uk](mailto:energybill2021@beis.gov.uk)

---

# Contents

Summary	4
Regulations for the selection of code managers	5
Background	5
Policy Objectives	6
Regulations on the content of the strategic direction document and possible transfer of this function to the Independent System Operator and Planner	8
Background	8
Policy Objectives	9
Regulations in connection with the Gas and Electricity Markets Authority's direct code change power	11
Background	11
Policy Objectives	12
Regulations for pension scheme provisions and amendments in connection with a transfer scheme	14
Background	14
Policy Objectives	15

## Summary

The Energy Security Bill was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the ambitious commitments in the British Energy Security Strategy to invest in homegrown energy and maintain the diversity and resilience of the UK's energy supply.

The Bill makes provision for the establishment of a new governance framework for the energy codes, which are documents that contain the detailed rules of the electricity and gas systems. This framework will move responsibility for governing these codes to one or more newly licensed code managers, who will be directly accountable to the Gas and Electricity Markets Authority (GEMA) rather than industry. It will also grant GEMA several new functions so that it can play a new strategic role in code governance. These new functions include the duty to publish an annual strategic direction statement; the ability to select and licence code managers; the ability to change the codes directly under a limited range of circumstances; and the ability to issue directions to the bodies who are responsible for managing the IT systems that support the energy market. To establish this new framework, the Bill will also grant GEMA a range of transitional powers, such as the ability to create transfer schemes.

This policy statement describes the powers to make regulations in connection with code reform that have been included in the Bill, as well as examples of how these powers are likely to be used and what they are intended to achieve. These regulations are expected to cover the following four areas:

- regulations for the selection of code managers;
- regulations on the content of the strategic direction document and the possible transfer of this function to the Independent System Operator and Planner (ISOP);
- regulations in connection with the Gas and Electricity Markets Authority's (GEMA) direct code change power; and
- regulations for pension scheme provisions and amendments in connection with a transfer scheme.

The examples that we have provided on each of these areas below are primarily illustrative in nature. They are therefore subject to change prior to the laying of regulations, either as a result of further policy development or, at least in some cases, the outcome of public consultation.

# Regulations for the selection of code managers

This statement describes the regulations that the Secretary of State and GEMA may make in connection with code manager selection. The intent of these regulations is to allow GEMA to select code managers competitively or non-competitively, with the choice of selection route guided by any conditions or constraints established by the Secretary of State.

The government intends to consult further on the details of these regulations in the first half of 2023. This consultation will cover the two delegated powers granted to the Secretary of State in connection with code manager selection: the power to make regulations on non-competitive selection; and the power to make regulations informing GEMA's choice of non-competitive vs competitive selection. The information provided below should therefore be viewed as hypothetical in nature, with any final decisions deferred until after the upcoming consultation. Any future engagement or consultation on the competitive selection process will be led by GEMA.

## Background

The Bill reforms the existing code governance arrangements by prohibiting the carrying out of code management activities without a licence unless an exemption is granted by the Secretary of State. This prohibition effectively establishes the new role of code manager for each code. In addition, the Bill also gives GEMA the power to select and license code managers, in accordance with the code manager selection processes set out in the associated regulations:

- **Selection method:** The Secretary of State will have the power to make regulations providing for the criteria under which a selection method will be determined (i.e., competitive versus non-competitive) and to specify any criteria that GEMA must consider when making a determination on which method to use. These regulations may also enable GEMA to switch selection methods if desirable and specify which persons, or type of person, may or may not be selected as code manager;
- **Non-competitive selection:** The Secretary of State will have the power to make regulations providing for the selection of code managers by non-competitive means. These regulations must ensure that GEMA is satisfied that the financial or other interests of an entity selected by this method will not prejudice their decision-making as code manager. These regulations may also include an option for GEMA to appoint a body as code manager that they have previously created, such as an independent built for purpose company or Special Purpose Vehicle (SPV); and
- **Competitive selection:** GEMA will have the power to make regulations (with Secretary of State approval) providing for the selection of code managers by competitive tender. As with non-competitive selection, these regulations must ensure that GEMA is satisfied

that the financial or other interests of an entity selected by this method will not prejudice their decision-making as code manager.

When proposals on code manager selection were put to stakeholders in 2021,<sup>1</sup> potential selection options were an area of keen interest and divided opinion amongst respondents, particularly around our original suggestion that tendering should be the default selection option. Based on these responses, we decided not to make any selection method the default. As a result, GEMA will retain the flexibility to decide on the selection method best suited for each case, within the bounds of any conditions or constraints established by the Secretary of State.

## Policy Objectives

When it is time to select a code manager for a given code, the first decision faced by GEMA will be whether to use a competitive or non-competitive selection method. Although the decision on which selection method to use will always be GEMA's, this decision will be guided by any conditions or constraints established in the Secretary of State's regulations of type (a) above, the details of which are subject to further consultation.

There may be cases in which non-competitive selection options are preferable, such as where there is only one viable candidate to become the code manager. This situation could potentially arise because of that candidate's outstanding knowledge and expertise or because no other candidate meets the requirements set out in regulations. One example of an outstanding candidate could be cases where an SPV had previously been created with the express purpose of managing a code, as is the case for the Retail Energy Code (REC).<sup>2</sup> In such cases, it would not be an effective use of Ofgem's resources to run a tender and would unnecessarily delay the appointment of that code manager. Regulations of type (b) above will likely list which types of body are eligible for selection by this method, although it is not yet clear whether such a list will be required.

Alternatively, running a tender may be the best selection method in a number of scenarios, including where there are several viable candidates for that code. Competitive selection may allow greater scrutiny of the bidders and direct comparison between the potential candidates. This could also place competitive pressure on what the candidates are each offering, potentially driving them to provide a better and more cost-effective service. Type (c) regulations will detail the relevant selection criteria, which may balance factors such as expertise, cost, knowledge, and conflicts of interest, as stated in the 2021 consultation.<sup>3</sup> Based on the responses to that consultation, GEMA intends that these selection criteria should not prohibit not-for-profit companies from being selected by competitive tender and will therefore not simply focus on selecting the lowest cost option.

In case the extra flexibility is needed, the type (a) regulations above will likely set out a process allowing GEMA to switch selection methods. It is envisaged that this process would primarily be used to switch from competitive to non-competitive selection methods, such as when GEMA has carried out (or tried to carry out) a competitive process and no code manager has been

identified, as it is unlikely that a non-competitive selection method will fail if the processes set out in the regulations are followed.

Where a selected code manager fails, for example due to insolvency, regulations may also set out processes to urgently replace them with a new code manager. Although the details of this process have yet to be determined, it may take the form of a shortened competitive selection or some form of direct selection. This process may entail ongoing actions for GEMA, for example regularly surveying the interest of code parties in being added to a list of potential 'code managers of last resort'.

Finally, it is worth noting that some code manager licences may have a time limit placed on them, either to allow new competitive selection or to replace a non-competitively selected code manager. In these cases, another selection process would be required upon licence expiration. It is anticipated that future selection decisions will follow similar procedures as the initial selection, although there is no guarantee that this will be true in all cases because regulations may be amended to better suit the needs of the code manager market over time. The Secretary of State may also add to the range of non-competitive selection options available to GEMA as the landscape of potential code manager candidates evolves, which could result in GEMA switching from one option to another for a given code.

# Regulations on the content of the strategic direction document and possible transfer of this function to the Independent System Operator and Planner

This statement describes the Secretary of State's power to make regulations in connection with GEMA's new duty to publish an annual strategic direction. These regulations will allow the Secretary of State to expand the list of content that GEMA is required to include in its strategic direction each year, in a way that safeguards their regulatory independence.

Although we believe that GEMA is currently the best placed organisation to publish this strategic direction, it is possible that the ISOP may emerge as a more suitable candidate once it is fully operational. Therefore, the Bill also includes a power for the Secretary of State to make regulations that would permanently transfer this duty from GEMA to the ISOP. All decisions regarding whether these regulations will be needed, as well as the potential circumstances and timing of their use, will be taken in future. They will also be subject to public consultation.

## Background

Respondents to the government's 2021 consultation<sup>4</sup> on code reform expressed broad support for the proposal that an annual strategic direction document would be a beneficial addition to code governance. The Bill therefore establishes a duty for GEMA to prepare and publish an annual strategic direction document, where it must set out its vision for how it believes the codes should evolve over the coming year. This document must contain a strategic assessment of government policies and wider developments relating to the energy sector, while also having regard to any advice provided by the ISOP.

If the Secretary of State concludes that the strategic direction requires additional content to better reflect government policy priorities, they may expand the list of required content by laying regulations. These regulations could only be used to increase minimum requirements and could not be used to limit content. All decisions on what details to include in the strategic direction document and what actions to take based on those details, if any, would ultimately be at the discretion of GEMA.

The Bill also includes a single-use power for the Secretary of State to make regulations that would permanently transfer GEMA's duty to set a strategic direction to the ISOP. The sole purpose of these regulations would be to make the minor amendments to primary legislation necessary to execute the transfer, the details of which are set out in the Bill itself. Prior to laying regulations, the Secretary of State would be required to consult with GEMA, the ISOP and anyone else likely to be affected by the proposed transfer. The regulations would also be



laid using the affirmative procedure in Parliament, as a reflection of the overall significance of the transfer.

## Policy Objectives

This section briefly outlines some preliminary thoughts on how the Secretary of State's new powers may be used. All of the information presented below is provisional in nature and may change prior to the laying of regulations.

### *Regulations to add to strategic direction content*

These regulations provide a means for the Secretary of State to require GEMA to include matters beyond those set out in the Bill in the strategic direction. Some examples of these matters could be as follows, although no decisions have yet to be taken on what the content of these regulations could be or whether to make them at all:

- **Strategy and Policy Statement:** The Energy Act 2013 allows the Secretary of State to designate a Strategy and Policy Statement (SPS) that sets out the government's strategic priorities and desired policy outcomes, which GEMA must have regard to when carrying out its regulatory functions. If any codes-relevant detail is contained in a designated SPS, then it may be desirable for GEMA to set that content out in its strategic direction document and explain how it thinks the codes should be modified as a result (if at all).
- **Specific new policy areas or wider developments:** The energy sector is undergoing a period of rapid change that is likely to continue for the foreseeable future. To supplement GEMA's obligation to report on matters relating to changes in government policy or developments in the energy sector, the Secretary of State may also identify specific policies or developments that it would like GEMA to consider when preparing and publishing its report.
- **Summary of ISOP advice:** GEMA will be required to have regard to any advice from the ISOP when preparing its strategic direction document. Future regulations could request that GEMA set out a summary of this advice on an annual basis, along with any actions that they think should be taken as a result, to convey this to stakeholders and code parties.

### *Regulations to transfer strategic direction to the ISOP*

The ISOP will be a new public body that combines planning for the electricity and gas systems with potential functions in relation to new technologies, such as hydrogen and carbon capture and storage. This 'whole-systems' approach will place the ISOP at the heart of the energy system, which could be beneficial when it comes to setting a strategic direction for energy codes.

When the ISOP is initially set-up, which is expected to be in or before 2024, it will likely need time to mature in its system-wide operation and planning functions before taking on additional

roles, such as the strategic direction. In addition, a major future component of the ISOP, the Electricity System Operator, is currently a code administrator for multiple codes and is expected to retain those roles at least until a new code manager(s) has been selected. Transferring responsibility for writing the strategic direction statement in this context could therefore present a conflict of interest for the ISOP, which would be undesirable. Due to the combination of these two factors, the timing of any potential future transfer of the strategic direction duty is unlikely to be within the first few years from when the ISOP is established.

The criteria for assessing whether the ISOP should assume responsibility for setting a strategic direction will be developed in future. At a minimum, it may be desirable for them to be fully resourced with the appropriate expertise, have a good track-record of fulfilling their primary functions and meeting key performance indicators, and to be advanced in their system-wide planning, strategy, advisory and forecasting capabilities. Stakeholder support for the ISOP assuming the strategic direction would also need to be taken into consideration when making this assessment.

The transfer of the strategic direction duty can only happen once and would represent a major change within the energy system. These regulations are specifically envisaged with the sole purpose of facilitating this transfer of duty. Prior to enacting a transfer of duty, it would be important to make all necessary preparations to ensure a smooth transition. This process could involve engaging with stakeholders about the transfer, as well as clearly communicating the expected transfer dates and process with relevant parties. If this power is exercised, it would be desirable for the transfer to be completed as quickly and effectively as possible, so that code managers would continue to receive strategic direction from the entity that is best placed to guide the evolution of the codes, whether GEMA or ISOP.

# Regulations in connection with the Gas and Electricity Markets Authority's direct code change power

The Bill grants GEMA the power to make direct code modifications in specific circumstances. However, due to the direct nature of this power, these circumstances may need to be carefully managed to ensure that they do not undermine the normal, code manager-led modification process. This statement describes how the Bill powers granted to the Secretary of State will help to avoid this outcome. These powers include the ability to make regulations further defining the circumstances in which a direct code modification can be made and the ability to set further requirements that must be met before the power can be used.

The intent behind these regulations is primarily to supplement information that has already been set out in primary legislation, if that is deemed to be necessary, rather than to act as a critical enabler of the new governance framework on their own. As a result, all decisions regarding whether these regulations will be needed, as well as when we might expect to introduce them to Parliament, will be taken in future. Any further consultation or engagement on the proposed content of these regulations will also be decided at that time.

## Background

The energy codes are documents that evolve in line with the energy market and must therefore be modified on a regular basis. The new code governance framework will make licensed code managers responsible for implementing the necessary code modifications in most cases. However, there may be situations in which it is beneficial for GEMA to have the option of modifying a code directly, without the need to submit this modification for consideration through the normal modification process.

The Bill lists five circumstances in which GEMA may make a direct code modification. These circumstances have been defined as narrowly as possible in response to feedback to our 2021 consultation,<sup>5</sup> which agreed that enhancing GEMA's powers to modify codes would be useful but that any power would need to be clearly defined and have robust checks and balances put in place. Therefore, the Bill restricts GEMA's ability to use the power unless it judges that at least one of the following specified circumstances applies:

- **Urgency:** where a delay caused by reliance on the normal code change process would be likely to have adverse effects on consumers or code parties;
- **Conflict of interest:** where a code manager has a conflict of interest that would likely prejudice the making of a modification under the normal code change process;

- **Nature of modification:** where the modification is needed to implement GEMA's strategic direction and its nature is such (e.g., its complexity) that the normal code change process would not be suitable;
- **Code consolidation:** where the modification relates to the merging of content from two or more codes; and
- **Consequential:** where the modification is needed as a consequence of the use of GEMA's transitional powers.

There may be cases in which these circumstances need supplementary information or definition. In these cases, the Secretary of State will be empowered to make regulations further describing the circumstances in which GEMA can make modifications directly. However, these regulations will not have the ability to add to the number of circumstances listed in the Bill or to alter their intent.

The Bill also sets out the processes that must be followed by GEMA before they can implement a direct modification. These processes include notifying and consulting specified parties, the possibility of a Secretary of State veto and publishing notice of the final decision. Although we believe these processes to be sufficient, the Bill will also empower the Secretary of State to make regulations that could expand on this list of requirements, if this is deemed to be necessary.

## Policy Objectives

This section briefly outlines some preliminary thoughts on how the Secretary of State's new powers may be used. All the information presented below is provisional in nature and may change prior to the laying of regulations.

### *Regulations specifying additional requirements for GEMA to meet*

Regulations setting additional requirements for GEMA to meet before making a direct code change could be used to ensure that the constraints on this power can adapt to future developments in the energy sector. For example, in response to a direct modification, a code party may appeal and have its appeal upheld by the Competition and Markets Authority (CMA), whose ruling may set a precedent for similar cases. Regulations could then be updated to place additional constraints on GEMA when making similar modifications in future, thereby providing enhanced guidance to relevant parties and potentially averting the need for future appeals.

There could also be unforeseen market-wide developments in technology or systems that could impact when the Secretary of State would or would not want GEMA to make direct modifications. Regulations could then be used to specify additional requirements that would need to be met, which would make sure that any modifications were both necessary and appropriate.

### *Regulations to further define the set of circumstances*

When seeking to interpret the five enabling conditions set out in the Bill, there is a risk that it may be unclear to either GEMA or to stakeholders whether a proposed modification would qualify. Regulations could be used in these cases to provide further detail supplementing one or more of the existing definitions, which would help to provide enhanced guidance to both GEMA and other interested parties.

Regarding cases of urgency, regulations could be used to clarify how the direct modification powers would interact with the existing urgent code modification provisions for a particular code. For example, regulations may require GEMA to conduct an assessment as to whether the usual modification process would likely cause delay before they could make a direct modification. They could also be used to further define the threshold that GEMA would need to meet before using this power by setting out more detail on the type, or magnitude, of “adverse effects” that would qualify.

Direct code changes for the purposes of avoiding prejudicial conflicts of interest may need further clarification as well. For example, regulations may set out that modifications related to a code manager’s cost recovery methodology, or to their roles and responsibilities, would always sit with GEMA. This would help to establish a clear line for both GEMA and code managers, while doing nothing to rule out the ability for GEMA to make case-by-case judgements on a code manager’s interests and possible prejudices.

Situations in which the “nature” of a modification is the reason that GEMA wants to use this power may benefit from additional clarification due to the subjective nature of this term. Regulations could require GEMA to justify how the modification will support the strategic direction or establish a more precise list of conditions for its usage, such as defining what level of “complexity” would qualify.

These regulations may also be used to specify what types of modification GEMA are permitted to make in connection with code consolidation. For example, they could limit this rationale to specific categories of modification, such as merging governance structures, or they could clarify that it is sufficiently broad to enable changes to substantive code provisions as well. Equally, it may be necessary to rule out certain elements from direct modification, for example technical specifications. While we see it as unlikely that GEMA would make unnecessary changes, stakeholders may benefit from the transparency made possible by these regulations if GEMA ever decides to embark on a future code consolidation exercise.

Finally, these regulations could limit the scope of consequential modifications that GEMA is able to make in connection with the use of its transitional powers. For example, defining ‘consequential’ in such a way as to rule out substantive changes to the codes, which would go beyond the intent of the power.

# Regulations for pension scheme provisions and amendments in connection with a transfer scheme

This statement describes GEMA's new power to make pension regulations in connection with a transfer scheme, if they are required to resolve various pension-related issues that may arise from the transfer of staff. Although it is not yet clear what the terms of these schemes would be, or whether they will need to be used at all, these regulations will allow the Government to ensure that (a) employees' and former employees' accrued pensions benefits are not adversely impacted by any transfer and (b) the future service benefits of employees are broadly the same immediately after the transfer as they were before. In addition, it is important that the pensions arrangements of such employees are not unnecessarily disturbed by needing to set up new pension schemes or by requiring any third-party consents.

The need for any such regulations will be assessed on a scheme-by-scheme basis, in consultation with the relevant parties.

## Background

The Bill grants GEMA the power to make two sets of complementary regulations in relation to a 'qualifying pension scheme', which is defined as any scheme that provides for the payment of pensions or other benefits to, or in respect of, current or former employees of a "transferor" or their associates. The narrow scope of this definition means that GEMA will only be able to make these regulations in connection with a transfer scheme established under Schedule 9(8) of the Bill, which may be used to facilitate the transfer of staff, physical IT assets or service contracts from existing organisations, such as code administrators, to incoming code managers.

The first set of regulations will allow GEMA to make various provisions in relation to a qualifying pension scheme, as long as those provisions are required in preparation for the granting of a code manager licence. A full list of potential provisions can be found in Schedule 10(2), but examples include the ability to enable participation in the qualifying pension scheme by specific persons, the power to divide a qualifying pension scheme into one or more new sections, and the power to reallocate assets, rights and liabilities within the sections of that scheme.

The second set of regulations will allow GEMA to amend qualifying pension schemes, either in preparation for the granting of a code manager licence or in connection with the contents of the first set of regulations. An example of a potential amendment includes the transfer of assets,

rights, liabilities or obligations between qualifying pension schemes, with the full list of possible amendments located in Schedule 10(3).

The Bill also includes protections against adverse treatment in order to protect the accrued benefits of the impacted employees and former employees as a result of the exercise of powers referred to above. Further details on what factors GEMA will be required to consider when making this assessment, and the process that it will need to follow, are set out in Schedule 10(4).

In order to enable the regulations to be drafted, GEMA may direct persons who hold relevant information in relation to any impacted pension schemes to provide specified information (see Schedule 10(5)).

## Policy Objectives

These regulations are intended to resolve any pension-related issues that may arise in connection with the exercise of GEMA's transitional transfer scheme power (whether or not there is a transfer of employees). Since the precise details of any future transfer schemes will be subject to negotiation between GEMA and relevant parties, the extent to which pensions may be affected is currently unclear. As a result, it is difficult to anticipate whether these regulations will be needed, which pension schemes might be impacted, and what kinds of provisions or amendments the regulations might contain.

Despite these uncertainties, it is still possible to set out some general principles that both GEMA and the Secretary of State will consider in connection with the exercise of this power. The main consideration, as set out in the Bill, is that GEMA must ensure that impacted employees and former employees are, in all material respects, no worse off in terms of their pensions provision immediately after the exercise of the powers (or, in relation to money purchased benefits, have an equivalent value). It is for this reason that GEMA's ability to make regulations includes such a broad range of potential provisions and amendments, without which it would be difficult to ensure that any issues caused by future transfer schemes could be appropriately addressed.

In addition to employee protection, the making of any future regulations in this area will also be guided by a commitment to engage in close consultation with relevant trustees and principal employers. Both GEMA and the Government recognise that pension schemes are a significant issue for employees and their employers, with any changes to their terms having potential consequences for both. It will therefore be crucial for GEMA to consult closely with relevant parties before making any provisions or amendments to qualifying pension schemes, which is why consultation requirements have been built into the Bill.

---

This publication is available from: [www.gov.uk/beis](http://www.gov.uk/beis)

If you need a version of this document in a more accessible format, please email [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk). Please tell us what format you need. It will help us if you say what assistive technology you use.