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The National Energy System Operator: statutory foundations, functions and licences

Statutory basis for establishment

The National Energy System Operator ("**NESO**") came into existence on 1 October 2024, when the Secretary of State for the Department for Energy Security and Net Zero ("**DESNZ**") designated National Energy System Operator Limited as the Independent System Operator and Planner (the "**ISOP**") pursuant to section 162 of the Energy Act 2023. NESO was established following the then government's acquisition of the Electricity System Operator from National Grid, bringing it into public ownership. NESO is wholly owned by the Secretary of State.

NESO is the independent gas and electricity system operator and planner for Great Britains energy system. The government's stated intention is for NESO to take an "enhanced whole system approach to planning and operating the energy sector". Understanding NESO's statutory footing, its functions and the licences through which it operates is essential for participants across the sector.

Corporate form

NESO is a private company limited by shares incorporated in England and Wales, governed by the Companies Act 2006 and successor legislation, in addition to the framework of sectoral energy regulation that applies to it by virtue of its designation as the ISOP and the conditions of its licences.



The NESO Framework Document (the "**Framework**") agreed between NESO and DESNZ sets out the broad governance framework within which NESO, as ISOP, and DESNZ operate; it is not itself legally binding but is intended to be observed all parties.

Core statutory functions

Section 161(2) and (3) of the Energy Act 2023 set out the ISOP's functions, which include:

- co-ordinating and directing the flow of electricity onto and over transmission systems;
- making and administering arrangements for the provision of services to facilitate that co-ordination;
- carrying out strategic planning and forecasting in connection with the development of transmission systems, the provision of ancillary services, and other arrangements relating to the conveyance or supply of electricity;
- carrying out strategic planning and forecasting in connection with the development of pipeline systems for the conveyance of gas; and
- providing advice, analysis or information in relation to its statutory objectives and listed matters.

NESO is also required to keep under review developments relating to the energy sector that may be relevant to the carrying out of any of its functions. The Framework confirms that NESO's functions may be amended or added to over time.



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Three principal objectives

NESO is required to carry out its functions in the way that it considers is best calculated to promote the following three objectives:

- **Net zero objective:** enabling the Secretary of State to meet the duties under section 1 (net UK carbon account target for 2050) and section 4(1)(b) (carbon budgets) of the Climate Change Act 2008;
- **Security of supply objective:** ensuring the security of supply, to existing and future consumers, of electricity conveyed by distribution or transmission systems and gas conveyed through pipes; and
- **Efficiency and economy objective:** promoting efficient, co-ordinated and economical systems for electricity distribution and transmission and the conveyance of gas, and promoting efficiency and economy on the part of persons carrying out system activities.

(s163(1) Energy Act 2023)

Duty to have regard to particular matters

When carrying out its functions, NESO must have regard to: (a) the need to facilitate competition between persons carrying out system activities; (b) the consumer impact of a relevant activity; (c) the whole-system impact of a relevant activity; and (d) the desirability of facilitating innovation in the carrying out of relevant activities (section 164(1) Energy Act 2023).

Duty to have regard to strategy and policy statement

NESO must have regard to the strategic priorities set out in the then current strategy and policy statement ("**SPS**") designated under section 131(1) of the Energy Act 2013. It must notify the Secretary of State if it concludes that a policy outcome in the SPS is not realistically achievable. (s165 Energy Act 2023).

Duty to have regard to designated strategic plans and network connections

Section 165A of the Energy Act 2023, inserted by section 18 of the Planning and Infrastructure Act 2025, requires NESO, when carrying out its functions relating to the management of connections to the transmission system, to have regard to "designated strategic plans" as designated by the Secretary of State by regulations. The Electricity Network Connections (Designated Strategic Plans) Regulations 2026 (SI 2026/223) have designated the Clean Power 2030 Action Plan as the first such strategic plan. (s165A Energy Act 2023).

Advisory and information duties

So far as reasonably practicable, NESO must comply with requests from a Minister of the Crown or Ofgem for advice, analysis or information in connection with any of NESO's functions, its three statutory objectives or the matters listed in section 164(1). It must also keep under review developments relating to the energy sector that may be relevant to the carrying out of any of its functions. (s171 - 173 Energy Act 2023).

Spatial planning

Beyond its statutory functions, NESO has been commissioned by the UK, Scottish and Welsh governments to produce the Strategic Spatial Energy Plan ("**SSEP**") for the GB energy system, set to be published in 2027. The SSEP will provide a blueprint for the location for new energy infrastructure, focusing on generation and storage of electricity, including hydrogen assets, to facilitate the clean energy transition across Great Britain. The SSEP will inform a Centralised Strategic Network Plan which will set out what transmission network infrastructure is needed to deliver the SSEP blueprint.



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Licences

NESO must hold the following two separate licences simultaneously, both created by amendments made by the Energy Act 2023 to pre-existing energy legislation:

- **Electricity system operator licence:** Section 166 of the Energy Act 2023 amends the Electricity Act 1989 to include a prohibition on the unlicensed activity of co-ordinating and directing the flow of electricity onto and over transmission systems and creating the electricity system operator licence to authorise that activity.
- **Gas system planner licence:** Section 168 of the Energy Act 2023 amends the Gas Act 1986, to include a prohibition on the unlicensed activity of carrying out "planning and forecasting functions of the Independent System Operator and Planner" and creating the gas system planner licence.

Interlocking licence requirement

The two licences are inseparable pursuant to section 166 of the Energy Act 2023: a person may not be granted an electricity system operator licence unless the same person already holds, or is simultaneously granted, a gas system planner licence. Equally, a person may not be granted a gas system planner licence unless the same person holds or is simultaneously granted an electricity system operator licence.

Content and modification of licence conditions

The detailed operational obligations on NESO, including those relating to the Grid Code, the Balancing and Settlement Code, the System Operator Transmission Owner Code and other industry codes, are set out in the conditions of the electricity system operator licence and gas system planner licence. Among the key licence conditions is a requirement for NESO to put in place and maintain such systems, processes and other governance arrangements as are necessary to maintain its independence and to ensure that it does not become a party to any arrangements that compromise, or could reasonably be seen as compromising, that independence.

Operational independence

NESO has operational independence to manage and organise itself effectively and to act as an expert independent body. While NESO's Board of Directors retains operational control, it is accountable to the Secretary of State as shareholder for its corporate performance, in line with general company law. Where the Secretary of State deems it necessary to exercise their power as shareholder to direct or instruct NESO in relation to its operations, the Secretary of State must follow the procedure set out in NESO's Articles of Association, and any such direction or instruction may only be issued with the express approval of the Secretary of State, Permanent Secretary or relevant Minister of State. In practice, the Framework records a commitment to resolve concerns informally before exercising formal powers.

Governance structure

NESO operates under a board-based corporate governance structure, consistent with the UK Corporate Governance Code and relevant public body guidance. At least half of the Board, excluding the Chair, are non-executive directors whom the Board considers to be independent. The Board must constitute at least three committees (audit and risk, remuneration and nominations) in line with the UK Corporate Governance Code.

The role of the Board is to set strategy and direction for NESO in accordance with relevant legislation and NESO's licence conditions. The Chair is appointed by the Secretary of State and is accountable to the shareholder. Board composition must comply with any obligations set out in NESO's licences, for example in relation to directors being sufficiently independent.

This article is intended to highlight issues and is not comprehensive, nor does it constitute legal advice. Should you wish to discuss any of the matters raised, please get in touch.





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