

**EXPLANATORY MEMORANDUM TO
THE ENERGY EFFICIENCY (ENCOURAGEMENT, ASSESSMENT AND
INFORMATION) REGULATIONS 2014**

2014 No. 1403

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (“DECC”) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument imposes a duty on the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Northern Ireland departments (together, the “competent authorities”) to:

- Develop programmes to encourage small or medium-sized enterprises (SMEs) to undergo energy audits and make available to SMEs examples of how energy management systems could be beneficial to their business.
- Undertake an assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling by 31st December 2015; and ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria.
- Ensure that information on energy efficiency mechanisms is accessible and widely disseminated to relevant market actors; encourage the provision of information to banks and other financial institutions about the possibilities of financing measures; and promote the provision of suitable information, training and other awareness-raising initiatives to inform individuals of the benefits of energy efficiency.
- Promote the energy services market by publishing information about: energy performance contracts, the current and future development of the energy services market, and a list of energy service providers; and by encouraging the development of quality labels.
- Evaluate and, where necessary, take action to remove barriers to energy efficiency.

2.2 This instrument also imposes a duty on the Gas and Electricity Markets Authority (“the Authority”) to undertake an assessment of the energy efficiency potentials of the gas and electricity infrastructure in Great Britain, including measures identified for energy efficiency improvement, and to deliver this assessment to the Secretary of State by 30th June 2015.

2.3 This instrument makes amendments to the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007¹, the interpretation provisions of the Energy Efficiency (Eligible Buildings) Regulations 2013² and to regulation 4(b) of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014³.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 11(a) of this instrument amends the definition of “central government” that appears in regulation 2 of the Energy Efficiency (Eligible Buildings) Regulations 2013. The amendment is made to address the comments of the JSCI in its 22nd Report (published on 7 March 2014).

3.2 Regulation 12 of this instrument amends regulation 4(b) of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014. The amendment is made to address the drafting issue raised by the JCSI in its correspondence of 14 May 2014 to the Parliamentary Unit of the Department of Energy & Climate Change.

4. Legislative Context

4.1 This instrument transposes certain provisions of Articles 8, 14, 15, 17, 18 and 19 of Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (“the Directive”)⁴. The full text of the relevant provisions of these Articles is provided at Annex A.

4.2 It is a requirement of European law that the provisions of a Directive be given effect in the national legal system of Member States. Whilst there are existing administrative policies which, in practice, meet some of the requirements of the Directive that are being transposed by this instrument there is no existing legal obligation to do so. The legal obligation is imposed by this instrument.

4.3 A Transposition Note is attached at Annex B.

5. Territorial Extent and Application

This instrument applies to the United Kingdom, with the exception of Regulations 5 and 6 which do not extend to Northern Ireland.

6. European Convention on Human Rights

¹ SI 2001/292 amended by SI 2009/229

² S.I. 2013/3220.

³ S.I. 2014/952.

⁴ Directive 2012/27/EU. OJ No L 315, 14.11.2012, p1.

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

7. Policy background

7.1 The aim of the Directive is to drive improvements in energy efficiency across the EU. It is intended to put the EU on track to reduce energy use by 20% by 2020 (against 2007 Business As Usual projections).

7.2 Article 8 requires that Member States encourage small and medium-sized enterprises (SMEs) to voluntarily undergo energy audits. Moreover, it requires non-SMEs to carry out energy audits once every four years. This instrument transposes Article 8(2) only; separate regulations will be laid before Parliament will transpose Article 8(4) – 8(6), and the other provisions of Article 8 have already been transposed or do not require transposition. Article 8(2) requires Member States to develop programmes to encourage SMEs to undergo audits and highlight to SMEs concrete examples of the benefits of energy management systems. The UK will include such examples and promotion in its guidance on the Energy Savings Opportunity Scheme (ESOS),⁵ alongside encouragement of SMEs to voluntarily undertake ESOS energy audits. The UK will also work with relevant trade bodies and professional associations to promote uptake of energy audits by SMEs. The UK intends to produce a further guidance pamphlet specifically for SMEs in due course. The Carbon Trust currently offers energy assessment to SMEs and the Energy Saving Advice Service helpline offers advice on energy efficiency to SMEs.

7.3 The objective of Article 14 is to encourage the identification of cost-effective potential for delivering energy efficiency, through the use of cogeneration of heat and electricity, efficient district heating and cooling, and the recovery of industrial waste heat. This instrument transposes Articles 14(1), (3) and (10) of the Directive only.⁶ The Directive repeals the whole of Directive 2004/8/EC of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC⁷ (“the Cogeneration Directive”) which concerned the promotion of cogeneration (or combined heat and power) based on a useful heat demand in the internal energy market.

7.4 Article 14(1) and (3) require Member States to carry out and notify to the Commission a comprehensive assessment and cost-benefit analysis to identify the potential for the application of high-efficiency cogeneration and efficient district heating and cooling. The Commission may request that a Member State update the assessment in intervals of five years. The Secretary of State will carry out the assessment and cost-benefit analysis and any updates thereof for England, Wales and Northern Ireland. The Scottish Ministers will carry out the assessment and cost-benefit analysis and any updates

⁵ This Scheme will transpose the requirements of Article 8(4) – 8(6) which requires non-SMEs to carry out energy audits once every four years from 5 December 2015.

⁶ Article 14(4) to (9) will be transposed via amendments to the Environmental Permitting (England and Wales) Regulations 2010 No. 675.

⁷ OJ No L 052, 21/02/2004, p50-60.

thereof for Scotland. The two assessments, one for England, Wales and Northern Ireland, and one for Scotland, will be notified to the Commission on behalf of the UK by the Secretary of State; the two assessments will not be combined.

7.5 Article 14(10) requires Member States to ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each Member State on the basis of the harmonised efficiency references values referred to in point (f) of Annex II of the Directive. Member States must ensure that this guarantee of origin complies with the requirements and contains at least the information specified in Annex X and must recognise the guarantees of origin issued under these provisions by other Member States. Article 14(10) and Annexes II and X of the Directive replace the provisions of Article 5 and Annex III of the Cogeneration Directive. These provisions of the Cogeneration Directive were transposed in Great Britain by the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007⁸ (“the Cogeneration Regulations”). This instrument transposes Article 14(10) by amending the Cogeneration Regulations to bring them into line with the provisions on certification of high-efficiency cogeneration in the Directive.

7.6 Article 15 of the Directive contains measures to promote energy efficiency in the design and operation of gas and electricity network infrastructure. This includes a requirement at Article 15(2) for Member States to ensure an assessment is undertaken by 30th June 2015 of the energy efficiency potentials of their gas and electricity infrastructure, with measures identified for improvement. This instrument transposes Article 15(2); the UK is already legally compliant with the other provisions of Article 15.

7.7 The Electricity Act 1989⁹ and the Gas Act 1986¹⁰ impose a duty on the Gas and Electricity Markets Authority (“the Authority”) to have regard to sustainable development duty in exercising certain functions. The Authority is the governing body of the Office of Gas and Electricity Markets (“Ofgem”) which already collects information on the physical characteristics of the energy infrastructure and identifies improvement measures as part of its regulatory functions. This instrument places an obligation on the Authority to carry out and deliver to the Secretary of State the energy efficiency assessment required by Article 15(2), allowing information collected by Ofgem to be taken into account, together with any additional inputs from network companies as appropriate.

7.8 This instrument transposes Article 17(1) and (4) of the Directive. The other provisions of Article 17 have already been transposed or do not require transposition. 17(1) requires Member States to ensure that information on available energy efficiency mechanisms and financial and legal frameworks is transparent and widely distributed to all relevant market actors. This must include the provision of information to financial institutions about the possibilities of participating in the financing of energy efficiency improvement measures. 17(4) requires Member States, with the participation of

⁸ SI 2007/292 amended by SI 2009/229.

⁹ Section 3A(2) of the Electricity Act 1989 c.29

¹⁰ Section 4AA(2) of the Gas Act 1986 c.44

stakeholders, to promote suitable information, awareness-raising and training initiatives to inform citizens of the benefits of energy efficiency.

7.9 The UK has a number of measures in place that fulfil these requirements, including the Green Deal, the Energy Saving Advice Service and the Green Investment Bank. This statutory instrument imposes a duty on the competent authorities (the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Northern Ireland departments) to ensure that these requirements of Article 17 will continue to be met.

7.10 Article 18 contains measures to promote the energy services market and access for SMEs to this market. This instrument transposes Articles 18(1), (2)(a) and (2)(b), placing the requirement to fulfil these provisions on the competent authorities. The other subsections of this Article have already been transposed through existing legislation. 18(1) and (2)(a) require Member States to disseminate and publicise information about contracts for energy services and energy performance contracts, including specific resources which will benefit participants and encourage possible participants in the market. This information will be hosted on the GOV.UK website and its availability will be publicised. Article 18(1) also requires Member States to encourage the development of quality labels.

7.11 Articles 18(2)(b) and 19(1) are concerned with the evaluation and removal of barriers to energy performance contracting and energy efficiency. A detailed evaluation of barriers was conducted before the publication of the Energy Efficiency Strategy. The Government has introduced a range of policies to tackle these barriers and will continue to develop new policies. This instrument places a duty on the competent authorities to comply with Articles 18(2)(b) and 19(1).

8. Consultation outcome

There has been no public consultation on the policy implemented by this instrument since the requirements only affect central government. Other government departments and the devolved administrations were consulted and were supportive of the approach to transposing the relevant requirements of Articles 8, 14, 15, 17, 18 and 19 of the Directive.

9. Guidance

There is no intention to publish guidance as the required action will be undertaken by the Government and Ofgem.

10. Impact

An impact assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies. No impact on the public sector is foreseen over and above existing policies.

11. Regulating small business

The instrument does not regulate small businesses.

12. Monitoring & review

12.1 The Secretary of State is also required to carry out a review of the operation and effect of the instrument and publish an assessment.

13. Contact

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