
STATUTORY INSTRUMENTS

2014 No. 1643

The Energy Savings Opportunity Scheme Regulations 2014

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Energy Savings Opportunity Scheme Regulations 2014 and come into force on 17th July 2014.

Interpretation

2.—(1) In these Regulations—

“approval body” has the meaning given in regulation 12(4)(b);

“approved list” has the meaning given in regulation 12(5);

“approved register” has the meaning given in regulation 12(4)(a);

[^{F1}“areas of significant energy consumption” has the meaning given in regulation 25(2);]

“certified energy management system” has the meaning given in regulation 33(1);

“Chief Inspector” has the meaning given in regulation 6(1)(b);

“compliance body” has the meaning given in regulation 6(1);

“compliance date” has the meaning given in regulation 4(4);

“compliance notice” has the meaning given in regulation 35(1);

“the Directive” means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency ^{M1};

“display energy certificate” has the meaning given in regulation 34(4)(a);

“employee” has the meaning given in—

(a) section 230(1) of the Employment Rights Act 1996 ^{M2} in relation to England, Wales and Scotland, and

(b) article 3(1) of the Employment Rights (Northern Ireland) Order 1996 ^{M3} in relation to Northern Ireland;

“energy” has the meaning given in Article 2(1) of the Directive;

“energy audit” means an audit carried out, as part of an ESOS assessment, in accordance with Chapter 3 of Part 4;

“energy consumption” has the meaning given in regulation 23(1);

“energy efficiency” has the meaning given in Article 2(4) of the Directive;

[^{F1}“energy intensity ratio” has the meaning given in regulation 25C(2);]

“energy measurement unit” means a unit by which the supply or consumption of energy is commonly measured;

[^{F1}“energy saving category” means one of the following methods by which a participant can improve its energy efficiency—

- (a) an energy management practice,
- (b) a behaviour change intervention,
- (c) training,
- (d) a control,
- (e) capital investment, or
- (f) a method not falling within paragraph (a) to (e);]

[^{F1}“energy saving measure” has the meaning given in regulation 27A(7)(d);]

[^{F1}“energy saving opportunity” has the meaning given in regulation 27(1)(c);]

“enforcement notice” has the meaning given in regulation 38(1);

[^{F1}“ESOS action plan” has the meaning given in regulation 34A(3);]

“ESOS assessment” means an assessment carried out in accordance with Part 4;

[^{F1}“ESOS progress update” has the meaning given in regulation 34B(2);]

[^{F1}“ESOS report” has the meaning given in regulation 27A(4);]

“evidence pack” has the meaning given in regulation 28(1);

“group undertaking” has the meaning given in section 1161(5) of the Companies Act 2006 ^{M4};

“highest parent” has the meaning given in regulation 17(3);

“highest parent group” has the meaning given in regulation 17(2);

“initial compliance period” has the meaning given in regulation 4(1);

[^{F1}“kWh” means kilowatt hours;]

“lead assessor” has the meaning given in regulation 11;

“legislative provision” means an enactment, including—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (b) Northern Ireland legislation;

“Notification System” has the meaning given in regulation 8(1);

“offshore activity” means activity which includes—

- (a) the exploitation of mineral resources in or under the shore or bed of waters in the offshore area,
- (b) the conversion of a place under the shore or bed of such waters for the purpose of storing gas,
- (c) the storage of gas in, under or over such waters or the recovery of gas so stored,
- (d) the unloading of gas at a place in, under or over such waters, and
- (e) the provision of accommodation for persons who work on or from an offshore installation which is maintained for the production of petroleum or the storage or unloading of gas

where storing gas includes storing gas with a view to its permanent disposal, and “gas” means gas within the meaning of section 2(4) of the Energy Act 2008 ^{M5} or carbon dioxide;

“offshore area” means—

- (a) the sea adjacent to England, Scotland, Wales and Northern Ireland from the low water mark to the landward baseline of the United Kingdom territorial sea,
- (b) the United Kingdom territorial sea adjacent to England, Scotland, Wales and Northern Ireland,
- (c) the sea in any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 ^{M6}, and
- (d) the sea in any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009^(d)

and includes the places above those areas, and the bed and subsoil of the sea within those areas;

“offshore installation” means an installation or structure used for carrying on an offshore activity, which is situated in the waters of, or on the seabed in, the offshore area, but excluding a ship or a floating structure which is not being maintained on station during the course of an offshore activity;

“offshore undertaking” means an undertaking whose activities consist wholly or mainly of offshore activities;

[^{F1}“organisational purpose” means one of the following purposes for which energy is consumed by assets held, or activities are carried on, by a participant—

- (a) for transport,
- (b) for an industrial process,
- (c) for buildings, or
- (d) for any other purpose not falling within paragraph (a) to (c);]

“parent undertaking” has the meaning given in section 1162 of the Companies Act 2006;

“participant” has the meaning given in regulation 17(1);

“the PAS” has the meaning given in regulation 12(1);

“penalty notice” has the meaning given in regulation 39(1);

“premises” means any land, vehicle or vessel, or any plant which is designed to move or be moved;

“publication penalty” has the meaning given in regulation 41(1);

“qualification date” has the meaning given in regulation 4(3);

“qualifying Green Deal assessment” has the meaning given in regulation 34(4)(b);

[^{F1}“reference period” has the meaning given in regulation 22(5);]

“relevant undertaking” has the meaning given in regulation 15(1);

“responsible officer” has the meaning given in regulation 30(2);

“responsible undertaking” has the meaning given in regulation 18;

“the Scheme” means the Energy Savings Opportunity Scheme established by these Regulations;

“scheme administrator” has the meaning given in regulation 5;

[^{F1}“significant energy consumption” has the meaning given in regulation 25(4);]

[^{F1}“standard industrial classification” means the Office for National Statistics’ “UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007);]

“subsequent compliance period” has the meaning given in regulation 4(2);

“subsidiary undertaking” has the meaning given in section 1162 of the Companies Act 2006;

“undertaking” has the meaning given in section 1161(1) of the Companies Act 2006;

“working day” means any day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971 ^{M7}.

(2) Save as otherwise appears, any reference in these Regulations to a numbered Part, Chapter or regulation is a reference to that numbered Part, Chapter or regulation in these Regulations.

Textual Amendments

- F1** Words in [reg. 2\(1\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), 3

Marginal Citations

- M1** OJ No L 315, 14.11.2012, p1, to which there is an amendment not relevant to these Regulations. Article 8(4) to (6) is transposed by these Regulations.
- M2** 1996 c. 18.
- M3** 1996 No. 1919 (N.I. 16).
- M4** 2006 c. 46.
- M5** 2008 c. 32.
- M6** 1964 c. 29, amended by paragraph 1 of Schedule 3 to the [Oil and Gas \(Enterprise\) Act 1982 \(c. 23\)](#), and by section 103 of the [Energy Act 2011 \(c. 16\)](#).
(d)2009 c. 23.
- M7** 1971 c. 80.

Duty to review

3.—(1) At intervals of no more than 5 years, the Secretary of State must—

- (a) carry out a review of the operation and effect of these Regulations,
- (b) publish the conclusions of the review in a report.

(2) In carrying out a review the Secretary of State must, so far as is reasonable, have regard to how Article 8(4) to (6) of the Directive is transposed in other Member States.

(3) Any report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations,
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) where the objectives remain appropriate, assess the extent to which they could be more effectively achieved.

PART 2

The Energy Savings Opportunity Scheme

CHAPTER 1

Scheme compliance periods

Compliance periods

4.—(1) The “initial compliance period” means the period which begins on the coming into force of these Regulations and ends on 5th December 2015.

(2) A “subsequent compliance period” means a period which—

- (a) begins on the 6th December immediately following the end of the preceding compliance period, and
- (b) ends on the 5th December four years later.

(3) The “qualification date” means—

- (a) in relation to the initial compliance period, 31st December 2014,
- (b) in relation to a subsequent compliance period, the 31st December immediately preceding the compliance date for that compliance period.

[^{F2}(4) The “compliance date” means—

- (a) in relation to the compliance period beginning on 6th December 2019—
 - (i) for the purposes of regulations 10 (publication of information), 22(3) (exclusion of assets no longer held on the compliance date), 26(4) (period of energy audit), 27A (ESOS report), 29 (notification of compliance) and paragraphs 7 and 7A of Schedule 2 (groups of undertakings - change of group), 5th June 2024,
 - (ii) for the purposes of regulations 33 (compliance with ISO 50001) and 34 (display energy certificates and green deal assessments), either 5th December 2023 or 5th June 2024, as the participant elects, and
 - (iii) for all other purposes, 5th December 2023, and
- (b) in relation to all other compliance periods, the 5th December on which that compliance period ends.]

Textual Amendments

F2 Reg. 4(4) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), 4

CHAPTER 2

Scheme administration

Scheme administrator

5. The “scheme administrator” is the Environment Agency.

Compliance bodies

6.—(1) The “compliance body” means—

- (a) the scheme administrator, in respect of England,

- (b) the Chief Inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 ^{M8} (the “Chief Inspector”), in respect of Northern Ireland,
- (c) the Scottish Environment Protection Agency, in respect of Scotland,
- (d) the Natural Resources Body for Wales, in respect of Wales,
- (e) [^{F3}the Secretary of State for Energy Security and Net Zero], in respect of offshore undertakings.

(2) Subject to paragraph (1), two compliance bodies may agree which of them will act as the compliance body in relation to a participant.

Textual Amendments

F3 Words in reg. 6(1)(e) substituted (3.5.2023) by The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions (National Security and Investment Act 2021 etc) Order 2023 (S.I. 2023/424), art. 1(2), **Sch. para. 57(a)** (with art. 17)

Marginal Citations

M8 S.R. (NI) 2013 No 160.

Co-operation and sharing of information

7.—(1) The compliance bodies must—

- (a) co-operate with each other in the exercise of their functions under these Regulations,
- (b) provide each other with such of the information provided to, or obtained by them, under these Regulations or any other legislative provision, as is required to enable them to carry out their functions under these Regulations.

(2) A compliance body must, when requested by another compliance body, assist it in the exercise of its functions under these Regulations, by taking any action specified in the request where it is reasonable to do so.

(3) In this regulation a reference to “functions” means, in relation to the Environment Agency, its functions as scheme administrator and as a compliance body.

Notification System

8.—(1) The scheme administrator must [^{F4}ensure the establishment of] a system (the “Notification System”) which enables responsible undertakings to—

- (a) notify information as required by these Regulations, and
- (b) voluntarily notify such additional information as the scheme administrator considers appropriate.

(2) The scheme administrator must take reasonable steps to ensure that the Notification System is available for use by responsible undertakings at such times as the scheme administrator considers reasonable.

(3) The scheme administrator may establish administrative arrangements in relation to the operation of the Notification System.

Textual Amendments

- F4** Words in [reg. 8\(1\)](#) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [5](#)

Provision of information to the Secretary of State

9. The scheme administrator must provide to the Secretary of State any information held by it by virtue of these Regulations as is requested.

Publication of information

10.—^{F5}(1) The scheme administrator must publish the following information ^{F6}to the extent that it is] held on the Notification System—

- (a) the number of undertakings that have complied with the Scheme ^{F7}excluding Part 6A],
- (b) a list of responsible undertakings which have notified information in accordance with regulation 8(1)(a) and, where they have notified additional information under regulation 8(1)(b), ^{F8}... that information.

^{F9}(c) the information specified in column 3 of Tables A to I in Schedule 3,

- (d) each ESOS action plan, and
- (e) each ESOS progress update.]

^{F10}(2) The scheme administrator must publish the information referred to in—

- (a) paragraph (1)(a), (b) and (c), within the period of 6 months beginning with the compliance date for the compliance period to which the information relates, or within the period of 6 months beginning with the date of notification of the information using the Notification System, whichever is the later,
- (b) paragraph (1)(d), within the period of 6 months beginning with the date by which the responsible undertaking must notify the ESOS action plan in accordance with regulation 34A(6), or within the period of 6 months beginning with the date of notification of the information using the Notification System, whichever is the later, and
- (c) paragraph (1)(e), within the period of 6 months beginning with the date by which the responsible undertaking must notify the ESOS progress update in accordance with regulation 34B(6), or within the period of 6 months of beginning with the date of notification of the information using the Notification System, whichever is the later.]

Textual Amendments

- F5** Reg. 10 renumbered as reg. 10(1) (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [6\(a\)](#)
- F6** Words in [reg. 10\(1\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [6\(b\)\(i\)](#)
- F7** Words in [reg. 10\(1\)\(a\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [6\(b\)\(ii\)](#)
- F8** Words in [reg. 10\(1\)\(b\)](#) omitted (29.11.2023) by virtue of [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [6\(b\)\(iii\)](#)
- F9** [Reg. 10\(1\)\(c\)-\(e\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [6\(b\)\(iv\)](#)

F10 Reg. 10(2) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 6(c)

CHAPTER 3

Lead assessors

Lead assessors

11. In these Regulations “lead assessor” means an individual whose name appears on an approved register.

Approval bodies and approved registers

12.—(1) The scheme administrator must determine whether an individual meets the competence requirements (the “competence requirements”) set out in Publicly Available Specification 51215 (“the PAS”) ^{M9}, in accordance with this regulation and regulation 13.

(2) The scheme administrator must consider an application by a professional body for a determination that the individuals on a register maintained by that body meet the competence requirements.

(3) Where the scheme administrator is not satisfied that a register is a register of individuals who meet the competence requirements, it must make a determination to that effect and notify the professional body maintaining that register accordingly.

(4) Where the scheme administrator is satisfied that a register is a register of individuals who meet the competence requirements, it must make a determination to that effect and notify the professional body maintaining that register accordingly, and—

- (a) “approved register” means a register which the scheme administrator has determined is a register of individuals who meet the competence requirements, and
- (b) “approval body” means a professional body that maintains an approved register.

(5) The scheme administrator must publish a list of approved registers (the “approved list”) by 5th December 2014, and must keep that list up to date in accordance with regulation 13.

(6) An approval body must—

- (a) take reasonable steps to ensure that an individual on its approved register continues to meet the competence requirements,
- (b) ensure that its approved register contains an up to date record of individuals who meet the competence requirements,
- (c) maintain a record of the name of any individual who is removed from its approved register, including the date on which they were removed and the reason for their removal, for four years after that removal,
- (d) respond to reasonable requests from the scheme administrator, the compliance bodies and participants, for confirmation that an individual is on its approved register,
- (e) notify the scheme administrator of any substantive changes to the process for including an individual on its approved register.

(7) In making a determination under paragraph (3) or (4), or reviewing the approved list under regulation 13(1), the scheme administrator may require such information from the professional body as is necessary to make its determination.

(8) For the purposes of this Chapter “professional body” means—

- (a) a professional association, membership of which is wholly or mainly restricted to individuals who have, or are seeking to attain, a recognised level of competence appropriate to the practice of the profession concerned, or
- (b) an association, the primary purpose of which is the advancement of a particular branch of knowledge or the fostering of professional expertise, connected with the past or present professions or employments of its members (whether individuals, or a body of persons corporate or unincorporated).

Marginal Citations

- M9** PAS 51215:2014 “Energy efficiency assessment – Competence of a lead energy assessor - Specification” published in 2014 by the British Standards Institution (ISBN 978 0 580 84377 8).

Reviews of approval

- 13.**—(1) The scheme administrator—
- (a) must review the approved list once in every subsequent compliance period, by requiring every approval body to renew its application for approval, and
 - (b) may review its determination that a register is an approved register, at any time.
- (2) In any case where the scheme administrator is no longer satisfied that individuals on an approved register meet the competence requirements, it must—
- (a) notify the professional body maintaining that register accordingly, and of the fact that the register will be removed from the approved list in accordance with sub-paragraph (b), and
 - (b) remove that register from the approved list after the expiry of the time specified for appeal in regulation 14(1).
- (3) The scheme administrator may, at any time, direct an approval body to review whether an individual on its approved register continues to meet the competence requirements.

Appeals

- 14.**—(1) Where the professional body maintaining a register is notified of—
- (a) a determination under regulation 12(3), or
 - (b) the proposed removal of that register from the approved list under regulation 13(2)(a),
- that body may, within 28 days (or where that period expires on a day other than a working day, by no later than the next working day), appeal to the Secretary of State against the decision.
- (2) The removal of a register from the approved list is suspended pending the resolution of the appeal referred to in paragraph (1).

PART 3

Undertakings

CHAPTER 1

Relevant undertakings

Relevant undertakings

15.—(1) Subject to regulation 16, an undertaking is a “relevant undertaking” in relation to a compliance period if, on the qualification date for that compliance period, it is—

- (a) a large undertaking, or
- (b) a small or medium undertaking which is a group undertaking in respect of a relevant undertaking falling within sub-paragraph (a).

(2) For the purposes of these Regulations whether an undertaking is a large undertaking, or is a small or medium undertaking, is to be determined in accordance with Schedule 1.

Excluded undertakings

16.—(1) The following are not relevant undertakings—

- (a) a public body,
- (b) an undertaking to which an insolvency procedure is applied.

(2) In this regulation—

- (a) an insolvency procedure is applied to an undertaking in the circumstances described by paragraph 120(7) of Schedule 6 to the Finance Act 2000 ^{M10},
- (b) “public body” means—
 - (i) in relation to bodies in England, Wales and Northern Ireland, [^{F11}a ‘contracting authority’ as defined in regulation 3 of the Public Contracts Regulations 2006]^{M11}[^{F11}any of the “contracting authorities” as defined in regulation 2(1) of the Public Contracts Regulations 2015],
 - (ii) in relation to bodies in Scotland, a ‘contracting authority’ as defined in [^{F12}regulation 3 of the Public Contracts (Scotland) Regulations 2012]^{M12}[^{F12}regulation 2(1) of the Public Contracts (Scotland) Regulations 2015].

Textual Amendments

F11 Words in reg. 16(2)(b)(i) substituted (E.W.N.I.) (26.2.2015) by [The Public Contracts Regulations 2015 \(S.I. 2015/102\)](#), [reg. 1\(2\)](#), [Sch. 6 para. 26](#)

F12 Words in reg. 16(2)(b)(ii) substituted (S.) (18.4.2016) by [The Public Contracts \(Scotland\) Regulations 2015 \(S.S.I. 2015/446\)](#), [reg. 1\(2\)](#), [sch. 6 para. 11\(2\)](#) (with regs. 3-18, 99-101)

Marginal Citations

M10 [2000 c. 17](#). Paragraph 120(9) defines certain terms used in paragraph 120(7); both are amended by paragraph 33 of Part 1 of Schedule 1 to [S.I. 2003/2096](#).

M11 [S.I. 2006/5](#); relevant amending instruments are [S.I. 2007/3542](#), 2008/2683, 2008/2848, 2009/1307, 2010/976, 2011/2053, 2011/2581, 2011/3058 and 2013/252 and 2014/834, S.R & O. (NI) 2010 No 133; also amended by section 1 of the Crofting Reform (Scotland) Act [2010 asp 14](#) and Schedule 20 to the [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#).

M12 S.S.I. 2012/88, relevant amending instruments are S.S.I. 2012/108 and S.I. 2013/252.

Participants

17.—(1) In these Regulations “participant” means—

- (a) a relevant undertaking required to comply with the Scheme on its own behalf,
- (b) where two or more relevant undertakings comply with the Scheme as a group in accordance with paragraph (2), or paragraph 1, 3, 7 [^{F13}, 7A, 7B,] or 10 of Schedule 2, that group of undertakings.

(2) Where, on the qualification date for a compliance period—

- (a) two or more relevant undertakings are group undertakings in respect of each other, and
- (b) one of those group undertakings is a highest parent in respect of all the other group undertakings

those undertakings constitute a “highest parent group” for the purposes of these Regulations and must comply with the Scheme as one participant unless paragraph 1, 3, 7 [^{F14}, 7A, 7B,] or 10 of Schedule 2 apply.

(3) For the purposes of these Regulations—

- (a) a parent undertaking is a “highest parent” where it has no parent undertaking which is a relevant undertaking,
- (b) a highest parent is the highest parent in respect of any group undertaking in relation to which it is a parent, and
- (c) an undertaking (A) is the parent undertaking of an undertaking (C) within the meaning of section 1162(5) of the Companies Act 2006, where any of A's subsidiary undertakings (B) are, or are to be treated as, parent undertakings of C, notwithstanding B is not a relevant undertaking.

Textual Amendments

F13 Words in reg. 17(1)(b) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **7(a)**

F14 Words in reg. 17(2) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **7(b)**

CHAPTER 2

Responsible undertakings

Role of the responsible undertaking

18. The “responsible undertaking” in relation to a participant means the relevant undertaking which is responsible for a participant's compliance with the Scheme, determined in accordance with regulation 19 or Schedule 2.

Determination of the responsible undertaking

19.—(1) Where a relevant undertaking falls within regulation 17(1)(a), it is the responsible undertaking in relation to its own compliance with the Scheme.

(2) Subject to paragraph (3), where a highest parent group complies with the Scheme as one participant in accordance with regulation 17(2), the highest parent is the responsible undertaking in relation to that participant's compliance with the Scheme.

(3) All the relevant undertakings in a highest parent group may agree in writing that an undertaking within the group, other than the highest parent, is to be the responsible undertaking in relation to the participant's compliance with the Scheme.

(4) Where paragraph 1, 3, 7 [^{F15}, 7A, 7B,] or 10 of Schedule 2 applies, the responsible undertaking is to be determined in accordance with that Schedule.

(5) Any reference in these Regulations to a responsible undertaking is to be construed in accordance with this regulation and Schedule 2.

(6) The agreements referred to in paragraph (3) and in paragraphs 2, 4, 6, 7 [^{F16}, 7A, 7B,] and 11 of Schedule 2 must be made between the responsible officers of the relevant undertakings.

Textual Amendments

F15 Words in reg. 19(4) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **8(a)**

F16 Words in reg. 19(6) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **8(b)**

PART 4

ESOS Assessments

CHAPTER 1

General

Duty to carry out ESOS assessment

20. A responsible undertaking must carry out an ESOS assessment, which includes an energy audit, in accordance with this Part.

Role of the lead assessor

21.—(1) A responsible undertaking must—

- (a) appoint at least one lead assessor for the purposes of the ESOS assessment,
- (b) provide any appointed lead assessor with a copy of the evidence pack maintained in accordance with regulation 28 in relation to any previous ESOS assessment in relation to the participant,
- (c) ensure that the ESOS assessment is reviewed by a lead assessor.

(2) In reviewing an ESOS assessment the lead assessor must—

- (a) consider whether the ESOS assessment meets the requirements of these Regulations, and
- (b) notify the responsible undertaking accordingly.

[^{F17}(3) This regulation does not apply in relation to a participant whose total energy consumption as calculated in accordance with Chapter 2 is less than 40,000 kWh of energy.]

Textual Amendments

F17 Reg. 21(3) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 9

[^{F18}Estimates

21A.—(1) Where a responsible undertaking uses an estimate in accordance with these Regulations it must record details of the method used to make the estimate.

(2) Where a responsible undertaking uses an estimate in accordance with regulations 23(7), 25A(2), 25B(3) or 26(7)(b) it must—

- (a) notify the scheme administrator that an estimate was used, and
- (b) record in the evidence pack, the reasons why an estimate was used.]

Textual Amendments

F18 Reg. 21A inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 10

CHAPTER 2

Energy consumption

Duty to calculate total energy consumption

22.—(1) A responsible undertaking must ^{F19}... calculate the participant's total energy consumption.

(2) The calculation referred to in paragraph (1) must—

- (a) be carried out on or after the qualification date for the compliance period,
- (b) subject to paragraph (3), be based on the energy consumption of assets held, and activities carried on, by the participant on the qualification date for that compliance period, and
- (c) be based on the participant's energy consumption during the reference period.

(3) A responsible undertaking may elect to exclude from the calculation referred to in paragraph (1) energy consumed by any asset which is no longer held by it, or by any activity which is no longer carried on by it (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, any asset which is no longer held, or any activity which is no longer carried on, by any of those relevant undertakings) on the compliance date.

(4) In these Regulations—

- (a) “activities carried on” includes offshore activities,
- (b) “assets held” includes offshore installations.

(5) The “reference period”, in relation to a compliance period, means a period of 12 consecutive months which—

- (a) begins no more than 12 months before the qualification date, and
- (b) ends on or before the compliance date.

Textual Amendments

F19 Words in [reg. 22\(1\)](#) omitted (29.11.2023) by virtue of [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **11**

Energy consumption – general

23.—(1) Subject to regulation 24, the “energy consumption” of a participant means energy that is—

- (a) supplied to the participant, and
- (b) consumed by assets held, or activities carried on, by the participant

but excludes any energy which is supplied by the participant to another person.

(2) For the purposes of paragraph (1)—

- (a) energy is supplied to a participant where—
 - (i) the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, one or more of them) agrees with a person (“S”) that S will supply energy to the participant, and the participant is supplied with energy further to that agreement,
 - (ii) two or more relevant undertakings agree with S that S will supply energy to them and they are supplied with energy further to that agreement, and one or more of them agrees to be the participant in relation to some or all of that energy supply, or
 - (iii) the participant supplies energy, other than surplus heat, to itself, and
- (b) energy is supplied by a participant to another person (“R”), where the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, one or more of them) agrees with R that the participant will supply energy to R, and R is supplied with energy further to that agreement,

and the amount of the supply is measured.

(3) In this regulation “surplus heat” means heat generated as a by-product of an industrial process carried on by the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, carried on by one or more of them).

(4) Subject to regulation 24(3) and (4), the energy consumption of a participant—

- (a) in the case of an offshore undertaking, excludes energy which is consumed by the participant outside the United Kingdom and offshore area,
- (b) in any other case, excludes energy which is consumed by the participant outside the United Kingdom.

(5) In this regulation energy supplied or consumed is “measured” where—

- (a) the amount of energy is measured in energy measurement units, or
- (b) the cost of the energy is measured (“energy spend”).

(6) In calculating measured energy supplied or consumed for the purposes of this Chapter, a responsible undertaking must base that calculation—

- (a) (except in the case of energy supplied by the participant to another person) on only one of the methods set out in paragraph (5), and
- (b) where reasonably practicable, on verifiable data.

(7) Where verifiable data is not available for all of the reference period—

- (a) the calculation may be based on reasonable estimates of the amount of energy consumed, or the energy spend ^{F20} ...

^{F21}(b)

Textual Amendments

F20 Word in reg. 23(7)(a) omitted (29.11.2023) by virtue of The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **12(a)**

F21 Reg. 23(7)(b) omitted (29.11.2023) by virtue of The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **12(b)**

Energy consumption - transport

24.—(1) In relation to energy consumed for the purposes of transport, the energy consumption of a participant also includes energy that is—

- (a) supplied to an individual who is authorised by the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, authorised by one or more of them) to receive the supply of energy for the purposes of transport, and
- (b) consumed for the purposes of transport by that individual in the course of their employment by, or acting on the business of, the participant.

(2) For the purposes of these Regulations—

- (a) “energy consumed for the purposes of transport” means energy used by a road going vehicle, a vessel, an aircraft or a train,
- (b) “aircraft” means a self-propelled machine that can move through the air other than against the earth's surface,
- (c) “road going vehicle” means any vehicle—
 - (i) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994 ^{M13}, or
 - (ii) which is an exempt vehicle under that Act,
- (d) “train” has the meaning given in section 83 of the Railways Act 1993 ^{M14}, and
- (e) “vessel” means any boat or ship which is self-propelled and operates in or under water.

(3) The energy consumption of a participant includes energy which is consumed for the purposes of transport by an aircraft or a vessel during the course of any journey which—

- (a) starts,
- (b) ends, or
- (c) both starts and ends

within the United Kingdom.

(4) Notwithstanding regulation 23(4), a participant may elect to include—

- (a) energy consumed for the purposes of transport by an aircraft or a vessel, during the course of a journey which both starts, and ends, outside the United Kingdom,
- (b) energy consumed outside the United Kingdom for the purposes of transport by a road going vehicle or a train.

Marginal Citations

M13 1994 c. 22.

M14 1993 c. 43, to which there are amendments not relevant to these Regulations.

Identification of areas of significant energy consumption

25.—(1) After calculating the participant's total energy consumption in accordance with this Chapter, the responsible undertaking may elect to identify the participant's “areas of significant energy consumption” for the purposes of [^{F22}Chapters 2A and 3] of this Part.

(2) In these Regulations a participant's “areas of significant energy consumption” means those assets held, or activities carried on, by the participant which together account for not less than [^{F23}95%] of the participant's total energy consumption—

(a) measured in energy measurement units, or

(b) measured by energy spend.

[^{F24}(3) Where the responsible undertaking elects to identify the participant’s areas of significant energy consumption, the responsible undertaking must calculate the participant’s significant energy consumption.

(4) In these Regulations “significant energy consumption,” in relation to a participant, means the amount of the participant’s total energy consumption that is accounted for by the participant’s areas of significant energy consumption.]

Textual Amendments

F22 Words in [reg. 25\(1\)](#) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [13\(a\)](#)

F23 Word in [reg. 25\(2\)](#) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [13\(b\)](#)

F24 [Reg. 25\(3\)\(4\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [13\(c\)](#)

[^{F25}Conversion into kWh units

25A.—(1) Where a participant’s total energy consumption, or, if applicable, significant energy consumption, as calculated in accordance with this Chapter, is not measured in kWh, the responsible undertaking must convert the participant’s total energy consumption, or significant energy consumption into kWh.

(2) The conversion under paragraph (1) must—

(a) where reasonably practicable, be based on verifiable data, or

(b) otherwise, be based on a reasonable estimate of the amount of energy consumed in kWh.]

Textual Amendments

F25 [Reg. 25A](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), [regs. 1\(2\)](#), [14](#)

[^{F26}Chapter 2A

Calculations related to organisational purposes

Textual Amendments

F26 Pt. 4 Ch. 2A inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 15

Amount of energy consumption related to organisational purposes

25B.—(1) After calculating the participant’s total energy consumption in accordance with Chapter 2, the responsible undertaking must calculate—

- (a) in any case where the responsible undertaking has elected to identify the participant’s areas of significant energy consumption, the amount of the participant’s significant energy consumption that is attributable to each organisational purpose expressed in kWh, or
 - (b) in any other case, the amount of the participant’s total energy consumption that is attributable to each organisational purpose, expressed in kWh.
- (2) When added together, the results of the calculations—
- (a) under paragraph (1)(a) must equal the participant’s significant energy consumption, or
 - (b) under paragraph (1)(b) must equal the participant’s total energy consumption.
- (3) The calculations under paragraph (1)(a) or (b) must—
- (a) where reasonably practicable, be based on verifiable data, or
 - (b) otherwise, be based on a reasonable estimate of the amount of the participant’s significant energy consumption or the amount of the participant’s total energy consumption, as the case may be, that is attributable to the organisational purpose.

Energy Intensity Ratio

25C.—(1) After carrying out the calculations referred to in regulation 25B(1)(a) or (b), the responsible undertaking must calculate at least one energy intensity ratio in relation to each organisational purpose.

(2) Paragraph (1) does not apply in relation to an organisational purpose if the result of the calculation carried out under regulation 25B(1) in respect of the organisational purpose is zero.

(3) In these Regulations, an “energy intensity ratio” in relation to an organisational purpose, is a ratio which expresses A in relation to B, where—

“A” is the result of the calculation carried out under regulation 25B(1) in respect of the organisational purpose, and

“B” is a quantifiable factor associated with assets held, or activities carried out by the participant for the organisational purpose, over the reference period.]

CHAPTER 3

Energy savings opportunities

Duty to carry out an energy audit

26.—(1) Subject to Part 6, a responsible undertaking must carry out an energy audit in accordance with this Chapter—

- (a) in any case where the responsible undertaking has identified the participant's areas of significant energy consumption, in relation to those areas of significant energy consumption, or
- (b) in any other case, in relation to the participant's total energy consumption.

(2) A responsible undertaking may elect to comply with the requirements of paragraph (1) by carrying out two or more energy audits, each relating to a different area of the participant's energy consumption.

(3) So far as reasonably practicable, an energy audit must be based on verifiable data evidencing the participant's energy consumption in relation to its areas of significant energy consumption (or, where paragraph (1)(b) applies, its total energy consumption), measured in energy measurement units, over a 12 month period.

[^{F27}(3A) An energy audit must include visits to sites that the responsible undertaking considers are representative of how energy is used by the assets held, and activities carried on, by the participant during the 12 month period referred to in paragraph (3).]

(4) Subject to paragraph (5), the 12 month period referred to in paragraph (3) must be a period of 12 consecutive months which—

- (a) in relation to the initial compliance period, begins—
 - (i) no earlier than 6th December 2010, and
 - (ii) no more than 24 months before the commencement of the energy audit,
- (b) in relation to a subsequent compliance period, begins—
 - (i) no more than 12 months before the start of the compliance period, and
 - (ii) no more than 24 months before the commencement of the energy audit, and

ends on or before the compliance date for that compliance period.

(5) The 12 month period must be such that no data is used as the basis for energy audits carried out in more than one compliance period.

(6) Where a responsible undertaking elects, in accordance with paragraph (2), to carry out two or more energy audits in relation to different areas of its energy consumption, the participant may use different 12 month periods for each of those audits.

(7) In any case where verifiable data evidencing the participant's energy consumption is not available for a 12 month period in accordance with paragraph (3), the energy audit may be based on—

- (a) verifiable data evidencing the participant's energy consumption over a shorter period, provided that the requirements of paragraph (4) are complied with, or
- (b) a reasonable estimate of the participant's energy consumption over the 12 month period referred to in paragraph (3).

^{F28}(8)

[^{F29}(9) The responsible undertaking must record details of how it has carried out each energy audit in accordance with this Chapter including—

- (a) the period during which the energy audit was carried out,
- (b) the 12 month period to which the energy audit relates,
- (c) as measured in accordance with paragraph (3)—
 - (i) the participant's energy consumption in relation to its areas of significant energy consumption, or
 - (ii) where paragraph (1)(b) applies, the participant's total energy consumption,

- (d) the number of sites at which the participant holds assets, or carries on activities, to which the energy audit relates,
- (e) the number of sites visited for the energy audit,
- (f) the reasons why the sites visited for the energy audit are considered to be representative of how energy is used by the range of assets held, and activities carried on, by the participant during the 12 month period to which the energy audit relates, and
- (g) where paragraph (7)(a) applies, details of the extent to which, and the reasons why, 12 months' verifiable data was not used.]

Textual Amendments

- F27** Reg. 26(3A) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **16(1)(a)**
- F28** Reg. 26(8) omitted (29.11.2023) by virtue of [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **16(1)(b)**
- F29** Reg. 26(9) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **16(1)(c)**

Identification of energy saving opportunities

- 27.—(1) An energy audit must, so far as reasonably practicable—
- (a) analyse the participant's energy consumption and energy efficiency,
 - (b) identify any way in which the participant can improve its energy efficiency,
 - (c) recommend any measure falling within sub-paragraph (b) which is reasonably practicable and cost effective for the participant to implement (an “energy saving opportunity”),^{F30} ...
- [^{F31}(d) in respect of each energy saving opportunity—
- (i) identify the organisational purpose to which the energy saving opportunity most closely relates,
 - (ii) identify the energy saving category to which the energy saving opportunity most closely relates,
 - (iii) identify any considerations relevant to the implementation of the energy saving opportunity, including, if applicable—
 - (aa) any considerations arising from an obligation of any person under Part 3 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, in relation to any buildings used by the participant, and
 - (bb) information on any schemes under which grants or public funds from the United Kingdom Government, Scottish Government, Welsh Government or Northern Ireland Government may be available to support implementation of the energy saving opportunity,
 - (iv) estimate, in pounds, the costs and benefits of implementing the energy saving opportunity,
 - (v) identify any other non-financial costs and benefits that are not included in the estimate referred to in sub-paragraph (iv),
 - (vi) estimate the annual reduction in energy spend and the annual reduction in energy consumption which would be achieved as a result of implementing the energy saving opportunity, and
 - (vii) calculate the payback period for the energy saving opportunity, and]

- [^{F32}(e) recommend a programme for implementation of the energy saving opportunities (if any), including—
- (i) a timescale for implementation of the energy saving opportunities,
 - (ii) the estimated costs and benefits of implementing the programme, and
 - (iii) the payback period calculated for the programme.]
- (2) The analysis required by paragraph (1)(a) must, where appropriate and reasonably practicable, be based on “energy consumption profiles”.
- (3) For the purposes of this regulation, “energy consumption profile” means—
- (a) a breakdown of the different ways in which energy is consumed by activities carried on, and assets held, by the participant, and
 - (b) where appropriate, an analysis of any variations in that energy use.
- (4) For the purposes of paragraph (1)(c), whether a measure is cost effective to implement must be determined by reference to—
- (a) the estimated reduction in energy consumption which would be achieved as a result of the measure being implemented, calculated in terms of energy measurement units or energy spend, and
 - (b) the estimated cost of implementing the measure.
- (5) Whenever practicable, the cost of implementing a measure must be based on an analysis of whether the investment in the measure will be economical over its entire life, taking into account the costs of implementing the measure, including the costs of purchase, installation, maintenance, and depreciation.
- (6) In any case where the energy audit does not include an analysis based on energy consumption profiles, the responsible undertaking must—
- (a) notify the scheme administrator accordingly, and
 - (b) record details of the alternative method of analysis used and the extent to which, and the reasons why, the energy audit does not include an analysis based on energy consumption profiles.

[^{F33}(7) In these Regulations—

“payback period” in relation to an energy saving opportunity or programme means the period of time in years calculated as—

ab

where—

“a” is the estimated cost of implementing the energy saving opportunity or programme, and

“b” is the estimated reduction in energy costs per year from implementing the energy saving opportunity or programme.]

Textual Amendments

F30 Word in reg. 27(1)(c) omitted (29.11.2023) by virtue of [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **17(1)(a)**

F31 Reg. 27(1)(d) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **17(1)(b)**

F32 Reg. 27(1)(e) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **17(1)(c)**

F33 Reg. 27(7) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 17(2)

[^{F34}Chapter 3A

ESOS Report

Textual Amendments

F34 Pt. 4 Ch. 3A inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), 18

ESOS Report

27A.—(1) A responsible undertaking must produce an ESOS report in relation to each ESOS assessment.

(2) Paragraph (1) does not apply in relation to an ESOS assessment carried out for a compliance period ending on or before 5th December 2019.

(3) The ESOS report must be produced before the compliance date for the compliance period to which the ESOS assessment relates.

(4) In these Regulations, an “ESOS report” is a written record containing—

- (a) the information required by paragraph (5),
- (b) where the responsible undertaking has conducted an energy audit under Chapter 3, the information required by paragraph (6),
- (c) where the participant is deemed to have complied with Chapter 3 by virtue of Part 6, the information required by paragraph (7),
- (d) the information specified in column 1 of Tables A, C and E in Schedule 3,
- (e) where the responsible undertaking is one of two or more relevant undertakings complying with the Scheme as one participant, the information specified in column 1 of Table B in Schedule 3, and
- (f) where a lead assessor is required to be appointed under regulation 21, the information specified in column 1 of Table D in Schedule 3.

(5) An ESOS report must include—

- (a) the participant’s total energy consumption,
- (b) where the responsible undertaking has elected to identify the participant’s areas of significant energy consumption, the participant’s significant energy consumption, expressed in kWh, and the percentage of the participant’s total energy consumption it represents,
- (c) the energy intensity ratios calculated in accordance with regulation 25C, and
- (d) an estimate of energy savings achieved by the participant, produced in accordance with regulation 27B(1).

(6) Where a responsible undertaking has conducted an energy audit under Chapter 3, the ESOS report must include in relation to the energy audit—

- (a) the information required to be recorded in accordance with sub-paragraphs (a) to (f) of regulation 26(9),
- (b) a description of the analysis carried out in accordance with regulation 27(1)(a),

- (c) the information referred to in sub-paragraphs (b) to (e) of regulation 27(1),
 - (d) the sum of all the estimates made in accordance with regulation 27(1)(d)(vi) (annual reductions in energy spend and energy consumption),
 - (e) for each organisational purpose, the sum of the estimates made in accordance with regulation 27(1)(d)(vi) in respect of energy saving opportunities that are identified in accordance with regulation 27(1)(d)(i) as most closely relating to that organisational purpose, and
 - (f) for each energy saving category, the sum of the estimates made in accordance with regulation 27(1)(d)(vi) in respect of any energy saving opportunities that are identified in accordance with regulation 27(1)(d)(ii) as most closely relating to that energy saving category.
- (7) Where the participant is deemed to have complied with Chapter 3 by virtue of Part 6, an ESOS report must include—
- (a) where compliance is by virtue of regulation 33 (compliance with ISO 50001), information on which assets held, or activities carried on by the participant fall under the certified energy management system,
 - (b) where compliance is by virtue of regulation 34 (display energy certificates and green deal assessments), information on which assets held, or activities carried on by the participant are connected to a building referred to in regulation 34(1),
 - (c) the percentage of the participant’s total energy consumption that falls within regulation 33(2) or 34(2),
 - (d) any way in which the participant can improve its energy efficiency that is recommended to the participant through its method of deemed compliance with Chapter 3 (“an energy saving measure”),
 - (e) to the extent that the participant has obtained the information through its method of deemed compliance with Chapter 3—
 - (i) the organisational purpose and the energy saving category to which each energy saving measure most closely relates,
 - (ii) the estimated annual reduction in energy spend and energy consumption from implementing each energy saving measure,
 - (iii) the sum of all the estimates made in accordance with paragraph (ii),
 - (iv) for each organisation purpose, the sum of the estimates made in accordance with paragraph (ii) in respect of any energy saving measures that are identified in accordance with paragraph (i) as most closely relating to that organisational purpose, and
 - (v) for each energy saving category, the sum of the estimates made in accordance with paragraph (ii) in respect of any energy saving measures that are identified in accordance with paragraph (i) as most closely relating to that energy saving category,
 - (f) considerations relevant to the implementation of each energy saving measure, including, if applicable—
 - (i) any considerations arising from an obligation of any person under Part 3 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, in relation to any buildings used by the participant, and
 - (ii) information on any existing schemes under which grants or public funds from the United Kingdom Government, Scottish Government, Welsh Government or Northern Ireland Government may be available to support implementation of the energy saving measure, and

- (g) a programme, including a timescale, for implementation of the energy saving measures (if any).
- (8) In this regulation—
 - (a) references to a participant’s method of deemed compliance with Chapter 3 mean—
 - (i) where compliance is by virtue of regulation 33, the certified energy management system referred to in that regulation,
 - (ii) where compliance is by virtue of regulation 34(1)(a), the display energy certificate referred to in that regulation,
 - (iii) where compliance is by virtue of regulation 34(1)(b), the qualifying Green Deal assessment referred to in that regulation.
 - (b) references to a participant’s total energy consumption are references to the participant’s total energy consumption, in kWh, as calculated in accordance with Chapter 2.

Energy savings since the previous compliance date

27B.—(1) In preparation of an ESOS report under regulation 27A, a responsible undertaking must produce an estimate of energy savings achieved by the participant in the period beginning immediately after the previous compliance date and ending on the compliance date for the compliance period to which the ESOS report relates.

- (2) The responsible undertaking must also—
 - (a) estimate the proportion of the energy savings referred to in paragraph (1) that most closely relates to each organisational purpose,
 - (b) identify, where reasonably practicable, the measures implemented by the participant to achieve the energy savings referred to in paragraph (1), and
 - (c) for each measure identified in accordance with sub-paragraph (b)—
 - (i) identify the energy saving category to which the measure most closely relates, and
 - (ii) calculate the payback period for the measure.

(3) Paragraph (2)(c) does not apply to a measure unless the energy saving category to which the measure most closely relates, and the payback period for the measure, has been previously identified and calculated, as the case may be, in an energy audit under Chapter 3.

(4) In this regulation, “payback period” has the same meaning in relation to a measure as it has in regulation 27(7) in relation to an energy saving opportunity or programme.

Disclosure of information to group undertaking

27C.—(1) Subject to paragraphs (2) and (3), where there is any group undertaking in relation to the responsible undertaking on the qualification date for the compliance period to which the ESOS report relates, the responsible undertaking must disclose to the group undertaking those parts of the ESOS report and the evidence pack relevant to the group undertaking.

(2) The responsible undertaking is not required to disclose any part of the evidence pack to the group undertaking unless the participant is deemed to have complied with Chapter 3 by virtue of Part 6.

(3) To the extent that disclosure of those parts of the ESOS report or the evidence pack relevant to the group undertaking is prohibited by law—

- (a) paragraph (1) does not apply, and
- (b) the responsible undertaking must notify the scheme administrator using the Notification System identifying—

- (i) the parts of the ESOS report or the evidence pack that the responsible undertaking is prohibited from disclosing to the group undertaking, and
 - (ii) the reasons why the responsible undertaking considers that disclosure of those parts of the ESOS report or the evidence pack is prohibited by law.
- (4) For the purposes of this regulation, the parts of an ESOS report and evidence pack relevant to a group undertaking are those parts identifying—
- (a) where the responsible undertaking has conducted an energy audit under Chapter 3—
 - (i) any energy saving opportunity which relates to energy consumed, assets held, or activities carried on by the group undertaking,
 - (ii) the estimated costs and benefits of implementing any such energy saving opportunity,
 - (iii) any considerations relevant to the implementation of any such energy saving opportunity, and
 - (iv) any analysis of energy consumption and energy efficiency carried out in accordance with regulation 27(1)(a), including any energy consumption profiles produced in accordance with regulation 27(2) and (3) which relates to energy consumed, assets held, or activities carried on by the group undertaking, and
 - (b) where the participant is deemed to have complied with Chapter 3 by virtue of Part 6—
 - (i) where compliance is by virtue of regulation 33, any information under an ISO50001 energy management system as defined in that regulation relating to energy reviews which may relate to such group undertaking,
 - (ii) where compliance is by virtue of regulation 34, any display energy certificate as defined in that regulation which may relate to such group undertaking,
 - (iii) documented outputs of qualifying Green Deal assessments as defined in regulation 34 which may relate to such group undertaking,
 - (iv) any energy saving measure which relates to energy consumed, assets held, or activities carried on, by the group undertaking, and
 - (v) any considerations relevant to the implementation of any such energy saving measure.]

CHAPTER 4

Records

Evidence packs

28.—(1) A responsible undertaking must maintain a written record in relation to each ESOS assessment carried out by it (the “evidence pack”) which includes—

- (a) records of any data used for the purposes of—
 - (i) the calculation of total energy consumption under Chapter 2 of this Part,
 - (ii) the identification of areas of significant energy consumption under regulation 25,
 - (iii) the energy audit under Chapter 3 of this Part, including in particular the identification of energy saving opportunities under regulation 27,
- (b) evidence of the certification of any certified energy management system, and any display energy certificate or qualifying Green Deal assessment, relied on by the participant in accordance with Part 6,

- (c) any agreement made in accordance with regulation 19(3), or paragraph 2, 4, 6, 7 [^{F35}, 7A, 7B] or 11 of Schedule 2,
- (d) the notification given by the lead assessor under regulation 21(2)(b), ^{F36}...
- (e) any information recorded [^{F37}in accordance with regulation 21A(1), 27(6)(b), 34A(5)(b) or 34B(5)(b)],
- [^{F38}(f) any ESOS report,
- (g) the information notified to the scheme administrator in accordance with regulation 29,
- (h) any ESOS action plan, and
- (i) any ESOS progress update.]
- [^{F39}(2) The evidence pack must be kept—
- (a) in relation to the initial compliance period, until at least 5th June 2024, and
- (b) in relation to any other compliance period, for at least two subsequent compliance periods following the compliance period to which it relates.]

Textual Amendments

- F35** Words in reg. 28(1)(c) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **19(1)(a)**
- F36** Word in reg. 28(1)(d) omitted (29.11.2023) by virtue of [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **19(1)(b)**
- F37** Words in reg. 28(1)(e) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **19(1)(c)**
- F38** Reg. 28(1)(f)-(i) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **19(1)(d)**
- F39** Reg. 28(2) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **19(2)**

PART 5

[^{F40}Notification and confirmation requirements for ESOS Assessments]

Textual Amendments

- F40** Pt. 5 heading substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **20**

Notification of compliance

29.—[^{F41}(1)] A responsible undertaking must notify the scheme administrator using the Notification System whether the participant has complied with Part 4, (or, as the case may be, Part 6) in relation to a compliance period by providing—

- [^{F42}(a) where the responsible undertaking has conducted an energy audit under Chapter 3 of Part 4, the information specified in column 2 of tables A, C and E, F, G and H in Schedule 3,
- (aa) where the participant is deemed to have complied with Chapter 3 of Part 4 by virtue of Part 6—

- (i) to the extent not already provided under sub-paragraph (a), the information specified in column 2 of tables A, C, E, F, and H in Schedule 3,
- (ii) to the extent that the information is obtained by the participant through its method of deemed compliance with Chapter 3 of Part 4, the information specified in column 2 of Table G in Schedule 3, and
- (iii) the information specified in column 2 of Table I in Schedule 3,
- (ab) where the responsible undertaking is one of two or more relevant undertakings complying with the Scheme as one participant, the information specified in column 2 of Table B in Schedule 3,
- (ac) where a lead assessor is required to be appointed under regulation 21, the information specified in column 2 of Table D in Schedule 3, and]
- (b) the confirmation required by regulation 31

after the qualification date, and by no later than the compliance date, for that compliance period.

[^{F43}(2) In paragraph (1)(aa)(ii), references to the participant’s “method of deemed compliance with Chapter 3 of Part 4” have the same meaning as references to “method of deemed compliance with Chapter 3” in regulation 27A(8).]

Textual Amendments

- F41** Reg. 29 renumbered as reg. 29(1) (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **21(a)**
- F42** Reg. 29(1)(a)-(ac) substituted for reg. 29(1)(a) (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **21(b)**
- F43** Reg. 29(2) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **21(c)**

Responsible officers

30.—(1) A participant must appoint one or more responsible officers in relation to an ESOS assessment.

(2) In these Regulations “responsible officer” means a person who is nominated for the purposes of these Regulations and is—

- (a) where applicable, a director of the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, a director of one of them) within the meaning of section 250 of the Companies Act 2006 (a “director”)^{M15}, or
- (b) where there is no person falling within sub-paragraph (a) in relation to a participant, a person exercising management control in the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, such a person in relation to one or more of the relevant undertakings).

(3) In any case where the lead assessor appointed under regulation 21(1) is independent of the participant, one responsible officer must be nominated, and in any other case, two responsible officers must be nominated.

[^{F44}(3A) In any case where a lead assessor is not required to be appointed by virtue of regulation 21(3), two responsible officers must be nominated.]

(4) For the purposes of this regulation a person appointed by a responsible undertaking as lead assessor is independent of the participant if they are not—

- (a) connected with it by virtue of being a person who is, or has in the last 12 months been—

- (i) an employee,
 - (ii) a director, partner or other person exercising management control, or
 - (iii) a shareholder
- of the participant, or
- (b) a spouse or civil partner of a person falling within sub-paragraph (a).

Textual Amendments

F44 Reg. 30(3A) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **22**

Marginal Citations

M15 2006 c. 46.

Confirmation to be given by responsible officer

- 31.** A notification required by regulation 29 must include confirmation that—
- (a) the responsible officer is satisfied to the best of their knowledge that—
 - (i) the participant is within the scope of the Scheme, and
 - (ii) the responsible undertaking has complied with [^{F45}Parts 4 to 6,]
 - [^{F46}(iii) the information provided under regulation 29(a) to (ac) is correct, and]
 - (b) the responsible officer has seen and considered the recommendations of the audit and any alternative routes to compliance relied upon in accordance with Part 6.

Textual Amendments

F45 Words in reg. 31(a)(ii) substituted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **23(a)**

F46 Reg. 31(a)(iii) substituted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **23(b)**

PART 6

Alternative routes to compliance

Energy consumption not subject to audit

32. Any energy consumption of an undertaking which falls within this Part is not required to be audited under Chapter 3 of Part 4.

Compliance with ISO 50001

33.—(1) This regulation applies in any case where a participant's energy management system is certified, within the [^{F47}relevant period], as being in compliance with ISO 50001 (a “certified energy management system”), and that certification remains valid on the compliance date.

(2) The participant is deemed to have complied with Chapter 3 of Part 4 in relation to its energy consumption which falls under the certified energy management system.

(3) Where the total energy consumption of a participant falls under the certified energy management system, the participant is deemed to have complied with

- [^{F48}(a) the duty to carry out an energy audit in regulation 20,
- (b) regulation 21, and
- (c) Chapter 3 of Part 4].
- (4) In this regulation—
 - (a) “certified” means certified by a body that is accredited, for the purpose of certifying compliance with ISO 50001, by at least one of the following—
 - (i) a member of the International Accreditation Forum,
 - (ii) a national accreditation body [^{F49}of a Member State],
 - [^{F50}(iii) the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) No 765/2008 of the European Parliament and of the Council,]
 - (b) “energy management system” has the meaning given in Article 2(11) of the Directive,
 - (c) “ISO 50001” means the international standard “50001:2011 Energy management systems – Requirements with guidance for use”^{M16}[^{F51}or the international standard “50001:2018 Energy management systems – Requirements with guidance for use”], ^{F52}...
 - (d) “national accreditation body [^{F53}of a Member State]” means a national accreditation body of a Member State within the meaning of Article 2(11) of Regulation (EC) no 765/2008 of the European Parliament and of the Council^{M17}[^{F54}as it has effect in EU law],
 - [^{F55}(e) “relevant period” means—
 - (i) in the case of the compliance period beginning on 6th December 2019, the period beginning on that date and ending on the compliance date,
 - (ii) in any other case, the compliance period.]

Textual Amendments

- F47** Words in reg. 33(1) substituted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **24(a)**
- F48** Words in reg. 33(3) substituted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **24(b)**
- F49** Words in reg. 33(4)(a)(ii) inserted (31.12.2020) by The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342), regs. 1(3), **3(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F50** Reg. 33(4)(a)(iii) inserted (31.12.2020) by The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342), regs. 1(3), **3(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in reg. 33(4)(c) inserted (3.1.2019) by The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342), regs. 1(2), **2(2)**
- F52** Word in reg. 33(4)(c) omitted (29.11.2023) by virtue of The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **24(c)**
- F53** Words in reg. 33(4)(d) inserted (31.12.2020) by The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342), regs. 1(3), **3(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

- F54** Words in reg. 33(4)(d) inserted (31.12.2020) by The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1342), regs. 1(3), **3(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F55** Reg. 33(4)(e) inserted (29.11.2023) by The Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (S.I. 2023/1182), regs. 1(2), **24(d)**

Marginal Citations

- M16** ISO 50001:2011 “Energy management systems – Requirements with guidance for use” published in 2011 by the International Organization for Standardization (ISBN 978-92-67-10552-9).
- M17** OJ No L 218 13.8.2008, p30.

Display Energy Certificates and Green Deal Assessments

34.—(1) This regulation applies in any case where, in relation to a building occupied by a relevant undertaking—

- (a) a display energy certificate has been issued during the [^{F56}relevant period], and remains valid on the compliance date, or
- (b) a qualifying Green Deal assessment has been carried out during the [^{F57}relevant period] and remains valid on the compliance date.

(2) The relevant undertaking is deemed to have complied with Chapter 3 of Part 4 in relation to its energy consumption connected to that building.

(3) In any case where only part of the energy consumption of a participant falls within paragraph (2) the participant—

- (a) must consider whether the display energy certificate, or the qualifying Green Deal assessment (as the case may be) relates to all of its areas of significant energy consumption (or, where regulation 26(1)(b) applies, to all of its energy consumption), and
- (b) must comply with Chapter 3 of Part 4 in relation to any of its areas of significant energy consumption (or, where regulation 26(1)(b) applies, to any of its energy consumption) which do not fall within paragraph (2).

(4) In this regulation—

- (a) “display energy certificate” means—
 - (i) in relation to a building in England or Wales, a display energy certificate which complies with regulation 15 of the Energy Performance of Buildings (England and Wales) Regulations 2012 ^{M18} and a valid recommendation report within the meaning of regulation 4 of those Regulations, and
 - (ii) in relation to a building in Northern Ireland, a display energy certificate which complies with regulation 12 of the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 ^{M19} and a valid advisory report within the meaning of regulation 2(1) of those Regulations,
- (b) “qualifying Green Deal assessment” means an energy efficiency assessment within the meaning given in regulation 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 ^{M20},

[^{F58}(c) “relevant period” has the same meaning as in regulation 33(4)(e).]

Textual Amendments

- F56** Words in [reg. 34\(1\)\(a\)](#) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **25(a)(i)**
- F57** Words in [reg. 34\(1\)\(b\)](#) substituted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **25(a)(ii)**
- F58** [Reg. 34\(4\)\(c\)](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **25(b)**

Marginal Citations

- M18** [S.I. 2012/3118](#); relevant amending instruments are S.I.s 2013/181 and 2014/880.
- M19** S.R. (NI) 2008 No 170, amended by S.R. (NI) 2013 No 12. There are other amendments not relevant to these Regulations.
- M20** [S.I. 2012/2079](#).

^{F59}Part 6A

ESOS action plan and ESOS progress update

Textual Amendments

- F59** [Pt. 6A](#) inserted (29.11.2023) by [The Energy Savings Opportunity Scheme \(Amendment\) Regulations 2023 \(S.I. 2023/1182\)](#), regs. 1(2), **26**

ESOS action plan

34A.—(1) Following a notification by a responsible undertaking under regulation 29(1) in relation to a compliance period, the responsible undertaking must produce an ESOS action plan.

(2) Paragraph (1) does not apply to a notification made under regulation 29(1) in relation to a compliance period ending on or before 5th December 2019.

(3) An “ESOS action plan” is a written record—

(a) setting out—

- (i) each measure to improve its energy efficiency that the participant proposes to implement before the end of the relevant compliance period,
- (ii) whether the measure was recommended by an energy audit in accordance with regulation 27(1)(c),
- (iii) the date by which the participant proposes to implement the measure,
- (iv) an estimate of the total energy savings that the participant reasonably expects to achieve during the relevant compliance period by implementing the measure, in energy measurement units,
- (v) an estimate of the amount of the energy savings referred to in paragraph (iv) that the participant reasonably expects to achieve in relation to each organisational purpose, in energy measurement units, and
- (vi) the method used to calculate the estimate under paragraph (iv), or

(b) containing a statement that there is no measure to improve its energy efficiency that the participant proposes to implement before the end of the relevant compliance period.

- (4) Where the ESOS action plan contains an estimate in accordance with paragraph (3)(a)(iv), the responsible undertaking must identify whether the estimate is based on—
- (a) the estimated benefits calculated as part of the energy audit carried out in accordance with regulation 27(1)(d),
 - (b) estimated energy savings calculated through a method of deemed compliance with Chapter 3 of Part 4, or
 - (c) another reasonable estimation method.
- (5) Where an estimate is based on another reasonable estimation method by virtue of paragraph 4(c), the responsible undertaking must—
- (a) record a brief description of the method used to estimate the energy savings, and
 - (b) record the reason for using this method in the evidence pack.
- (6) Using the Notification System, the responsible undertaking must notify the scheme administrator of the ESOS action plan by providing—
- (a) the ESOS action plan, and
 - (b) the confirmation required by paragraph (8).
- (7) The notification required by paragraph (6) must be provided—
- (a) in relation to the compliance period beginning on 6th December 2019 by 5 December 2024, and
 - (b) in relation to all other compliance periods, within the period starting on the first day of the relevant compliance period and ending on the day before the one-year anniversary of that date.
- (8) The notification required by paragraph (6) must include confirmation that—
- (a) the responsible officer is satisfied to the best of their knowledge that the responsible undertaking has complied with paragraphs (1) to (5), and
 - (b) the responsible officer has seen and considered the ESOS action plan.
- (9) In paragraph (4)(b), references to the participant’s “method of deemed compliance with Chapter 3 of Part 4” have the same meaning as references to “method of deemed compliance with Chapter 3” in regulation 27A(8).
- (10) In this Regulation “relevant compliance period” means the compliance period following the compliance period to which the notification referred to in paragraph (1) relates.

ESOS progress update

- 34B.**—(1) Following notification of an ESOS action plan under regulation 34A(6) (“the latest ESOS action plan”), the responsible undertaking must produce—
- (a) an ESOS progress update during the period starting on the one year anniversary of the first day of the relevant compliance period and ending on the day before the two year anniversary of the first day of the relevant compliance period (“an initial progress update”), and
 - (b) an ESOS progress update during the period starting on the two year anniversary of the first day of the relevant compliance period and ending on the day before the three year anniversary of the first day of the relevant compliance period (“a further progress update”).
- (2) An ESOS progress update is a written record identifying any action taken by or on behalf of the participant since the relevant event to implement measures to improve the participant’s energy efficiency.
- (3) An ESOS progress update must include—

- (a) information identifying—
 - (i) any measure set out in the latest ESOS action plan that the participant has implemented since the relevant event,
 - (ii) whether such measure was implemented by any date specified for it in the latest ESOS action plan, and
 - (iii) any measure set out in the latest ESOS action plan that the participant has not implemented by any date specified for it in the latest ESOS action plan, and
 - (b) an estimate for the reduction in energy consumption that has been, or will be achieved during the relevant reporting period as a result of the actions identified in the ESOS progress update, calculated in energy measurement units, and
 - (c) the method used to produce the estimate in accordance with sub-paragraph (b).
- (4) In relation to the estimate referred to in paragraph (3)(b), the responsible undertaking must identify whether the estimate is based on—
- (a) an estimate of the reduction in energy consumption produced as part of an energy audit carried out in accordance with regulation 27(1)(d)(vi),
 - (b) an estimate included in the latest ESOS action plan, or
 - (c) another reasonable estimation method.
- (5) Where an estimate is based on another reasonable estimation method by virtue of paragraph 4(c), the responsible undertaking must—
- (a) record a brief description of the method used to estimate the reduction in energy consumption, and
 - (b) record the reason for using this method in the evidence pack.
- (6) Using the Notification System, the responsible undertaking must notify the scheme administrator of the ESOS progress update by providing—
- (a) the ESOS progress update, and
 - (b) the confirmation required by paragraph (7)
- within the relevant reporting period.
- (7) The notification required by paragraph (6) must include confirmation that—
- (a) the responsible officer is satisfied to the best of their knowledge that the responsible undertaking has complied with paragraphs (1) to (5), and
 - (b) the responsible officer has seen and considered the ESOS progress update.
- (8) In this Regulation—
- “relevant compliance period” has the same meaning as in regulation 34A(10),
- “relevant event” means—
- (a) in the case of an initial progress update, the notification of the latest ESOS action plan under regulation 34A(6);
 - (b) in the case of a further progress update, the notification of the initial progress update under paragraph (6).
- “relevant reporting period” means—
- (a) in the case of an initial progress update, the period referred to in paragraph (1)(a);
 - (b) in the case of a further progress update, the period referred to in paragraph (1)(b).]

PART 7

Compliance and Enforcement

CHAPTER 1

Monitoring compliance

Compliance notices

35.—(1) A compliance body may serve a notice on a responsible undertaking requesting such information as it considers necessary to enable it to monitor compliance with these Regulations (a “compliance notice”).

(2) A compliance notice must—

- (a) be in writing,
- (b) be served on the person to whom it is addressed,
- (c) specify the date by which compliance with it is required.

(3) A compliance notice may be varied or revoked in writing at any time by the compliance body that issued it.

(4) Where a responsible undertaking—

- (a) fails to comply with a compliance notice, or
- (b) in the opinion of the compliance body, supplies incomplete or inaccurate information,

the compliance body may instead determine the information requested.

(5) A determination under paragraph (4) must be made in writing and include information about appeals under Part 9 of these Regulations and, within 10 days of making the determination, be served on the responsible undertaking.

Inspection

36.—(1) A compliance body may inspect any premises, and any thing in or on those premises, in order to monitor compliance with these Regulations.

(2) Reasonable prior notice must be given before exercising the power in paragraph (1).

(3) A compliance body may authorise in writing such persons (“authorised persons”) who appear suitable to exercise the compliance body's powers of inspection under this regulation.

(4) An authorised person must, when inspecting premises, produce a copy of the written authorisation referred to in paragraph (3) on request.

(5) A person in control of the premises to which the compliance body or authorised person requires access—

- (a) must allow the authorised person to have access to those premises, and
- (b) where the premises are an offshore installation, must afford the compliance body or authorised person such facilities and assistance, including the provision of transport, accommodation and other subsistence, as necessary and reasonably practicable.

(6) A compliance body or an authorised person may, when inspecting premises—

- (a) require the production of any record,
- (b) take measurements, photographs, recordings or copies of any thing,
- (c) require any person at the premises to provide facilities and assistance to the extent that is within that person's control.

Other information

37.—(1) A responsible undertaking must notify the scheme administrator if it becomes aware that it is in breach of any requirement of these Regulations.

(2) A compliance body may take into account any information—

- (a) provided to it in accordance with paragraph (1), or
- (b) held by it, or provided to it, by virtue of any other provision in these Regulations or any other legislative provision,

in determining whether a responsible undertaking has complied with these Regulations.

CHAPTER 2

Enforcement

Enforcement notices

38.—(1) In any case where the relevant compliance body reasonably believes that a responsible undertaking has failed to comply with a requirement of these Regulations, that compliance body may serve a notice on that responsible undertaking in accordance with this regulation (an “enforcement notice”).

(2) An enforcement notice must—

- (a) be in writing,
- (b) be served on the person to whom it is addressed,
- (c) specify—
 - (i) the provision of these Regulations which the compliance body believes has been breached,
 - (ii) the matters constituting the breach,
 - (iii) the steps that must be taken to remedy the breach,
 - (iv) the date by which those steps must be taken, and
- (d) include information about appeals under Part 9.

(3) An enforcement notice may be varied or revoked in writing at any time by the compliance body that issued it.

PART 8

Civil penalties and breaches

CHAPTER 1

Civil penalties

Penalty notices

39.—(1) In any case where the relevant compliance body is satisfied that a responsible undertaking is liable to a civil penalty under this Part, it may serve a notice on that responsible undertaking (a “penalty notice”) imposing the penalties and other requirements set out in this Part.

(2) A penalty notice must—

- (a) be in writing,
- (b) be served on the person to whom it is addressed,

- (c) specify—
 - (i) the breach of these Regulations in respect of which the penalty is imposed,
 - (ii) the steps that must be taken to remedy the breach,
 - (iii) the nature of the penalty, and
- (d) include information about appeals under Part 9.
- (3) A penalty notice imposing a financial penalty must specify—
 - (a) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice—
 - (i) the total amount due,
 - (ii) where applicable, how it has been calculated, and
 - (iii) to whom, and the date by which, it must be paid,
 - (b) where a daily penalty applies and the total amount of the daily penalty cannot be determined at the date of service of the notice—
 - (i) the amount of the initial penalty,
 - (ii) details of the applicable daily penalty, and
 - (iii) to whom the penalty must be paid.
- (4) Where a notice has been served under paragraph (3)(b) and the total amount of the daily penalty can be determined after the date of service of the notice, the compliance body must serve a further notice on the responsible undertaking which complies with paragraph (3)(a).
- (5) The daily penalty rate must be calculated by reference to working days.
- (6) The compliance body must remit to the Secretary of State any financial penalty received.

Effect and recovery of financial penalty

- 40.**—(1) Where—
- (a) an initial penalty applies,
 - (b) the total amount of the daily penalty can be determined at the date of service of the notice,
- the financial penalty is due 60 working days after notice of that penalty is given.
- (2) If unpaid, a financial penalty is recoverable as a civil debt by the compliance body.

Effect of publication penalty

- 41.**—(1) The “publication penalty” means publication on the scheme administrator's webpage, or another compliance body's website, of the following information in relation to a penalty notice—
- (a) the name of the responsible undertaking and, where different, of the participant,
 - (b) details of the breach of these Regulations in respect of which the penalty notice has been issued, and
 - (c) details of any financial penalty imposed.
- (2) The information in paragraph (1) must be published for a minimum period of one year, and may be published for such longer period as the scheme administrator or the compliance body (as the case may be) determines.
- (3) A publication penalty may not take effect until the period specified for any appeal against the penalty has expired.

Discretion in waiving, imposition and modification of civil penalties

42.—(1) Where the compliance body considers appropriate, it may—

- (a) waive a civil penalty,
- (b) allow additional time to pay any financial penalty,
- (c) impose a lower financial penalty, or substitute a lower financial penalty where one has already been imposed, or
- (d) modify the application of a publication penalty.

(2) Where, at any time before a financial penalty is due to be paid, the compliance body ceases to be satisfied that the responsible undertaking is liable for that penalty, it may serve a further notice on that undertaking—

- (a) withdrawing the penalty notice, or
- (b) modifying the penalty notice.

CHAPTER 2

Breach of Regulations

Failure to notify

43.—(1) The penalties in paragraph (2) apply where a responsible undertaking fails to notify the scheme administrator of its compliance, contrary to regulation 29.

(2) The penalties are—

- (a) the financial penalties of—
 - (i) an initial penalty of up to £5,000, and
 - (ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice subject to a maximum of 80 working days, and
- (b) the publication penalty.

Failure to maintain records

44.—(1) The penalties in paragraph (2) apply where a responsible undertaking fails to maintain records, contrary to regulation 28.

(2) The penalties are—

- (a) the financial penalties of—
 - (i) an initial penalty of up to £5,000, and
 - (ii) a sum representing the cost to the compliance body of confirming the responsible undertaking has complied with the Scheme, and
- (b) the publication penalty.

(3) The penalty notice may specify the steps the compliance body requires the responsible undertaking to take to remedy the breach.

Failure to undertake an energy audit

45.—(1) The penalties in paragraph (2) apply where a responsible undertaking fails to carry out an audit, contrary to Chapter 3 of Part 4, where the alternative routes to compliance in Part 6 do not apply.

(2) The penalties are—

(a) the financial penalties of—

- (i) an initial penalty of £50,000, or such lesser amount as the compliance body may determine, and
- (ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the compliance notice subject to a maximum of 80 working days, and

(b) the publication penalty.

(3) The penalty notice may specify the steps the compliance body requires the responsible undertaking to take, including conducting or completing an ESOS assessment, to remedy the breach, and the date by which such steps must be taken.

Failure to comply with notice

46.—(1) The penalties in paragraph (2) apply where a responsible undertaking fails to provide information, or to take steps, required by a compliance notice, an enforcement notice or a penalty notice.

(2) The penalties are—

(a) the financial penalties of—

- (i) an initial penalty of up to £5,000, and
- (ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice subject to a maximum of 80 working days, and

(b) the publication penalty.

False or misleading statement

47.—(1) The penalties in paragraph (2) apply where a responsible undertaking makes a statement which is false or misleading when notifying information to the scheme administrator or a compliance body, or when providing information required by a compliance notice, an enforcement notice or a penalty notice.

(2) The penalties are—

- (a) £50,000, or such lesser amount as the compliance body may determine, and
- (b) the publication penalty.

PART 9

Appeals and service of documents

Appeals

48.—(1) A responsible undertaking served with a determination under regulation 35(5) or paragraph 13(2) of Schedule 2, or with an enforcement notice, or a penalty notice, may appeal to the relevant appeal body on the grounds that the determination, enforcement notice or penalty notice (as the case may be) was—

- (a) based on an error of fact,
- (b) wrong in law, or

- (c) unreasonable.
- (2) The relevant appeal body—
- (a) in the case of an appeal against a determination made, or an enforcement notice or a penalty notice issued, by the scheme administrator, the Natural Resources Body for Wales, or [^{F60}the Secretary of State for Energy Security and Net Zero], is the First-tier Tribunal,
 - (b) in the case of an appeal against determination made, or an enforcement notice or a penalty notice issued by the Scottish Environment Protection Agency, is the Scottish Ministers,
 - (c) in the case of an appeal against a determination made, or an enforcement notice or a penalty notice issued by the Chief Inspector, is the Planning Appeals Commission.
- (3) “First-tier Tribunal” has the meaning given in section 3 of the Tribunals, Courts and Enforcement Act 2007 ^{M21}.
- (4) “Planning Appeals Commission” has the meaning given in of Article 110(1) of the Planning (Northern Ireland) Order 1991 ^{M22}.
- (5) Schedule 4 has effect in relation to the making of appeals to the Scottish Ministers and the Planning Appeals Commission.

Textual Amendments

F60 Words in reg. 48(2)(a) substituted (3.5.2023) by The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions (National Security and Investment Act 2021 etc) Order 2023 (S.I. 2023/424), art. 1(2), **Sch. para. 57(b)** (with art. 17)

Marginal Citations

M21 2007 c. 15. Such appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chamber) Order 2010 (S.I. 2010/2655).

M22 S.I. 1991/1220 (N.I. 11), to which there are amendments not relevant to these Regulations.

Effect of an appeal

49. The bringing of an appeal suspends the determination, enforcement notice or penalty notice (as the case may be) being appealed taking effect pending determination of the appeal.

Determination of an appeal

- 50.** An appeal body may—
- (a) cancel the determination, enforcement notice or penalty notice (as the case may be),
 - (b) affirm the determination, enforcement notice or penalty notice (as the case may be), whether in its original form or with such modification as it sees fit,
 - (c) instruct the scheme administrator or the relevant compliance body to do, or not to do, any thing which is within the power of the scheme administrator or compliance body.

Service of documents

51. Any determination or notice required to be served on a responsible undertaking, may be served by—

- (a) delivering or sending it to, or leaving it at—

- (i) the responsible undertaking's registered office (where applicable),
 - (ii) the responsible undertaking's principal place of activity, or
 - (iii) another address in the United Kingdom specified by the responsible undertaking as its address for service, or
- (b) sending it by electronic means to the email address provided by the responsible undertaking pursuant to paragraph 1(b) of Schedule 3.

PART 10

Application of these Regulations with modifications to relevant trust assets

Relevant trust assets

52.—(1) This Part applies where a relevant undertaking is—

- (a) a dominant beneficiary,
- (b) a trustee,
- (c) an AIFM, or
- (d) an operator

in relation to a relevant trust on the qualification date for a compliance period.

(2) A relevant trust exists where—

- (a) one or more trustees hold one or more assets (“relevant trust assets”) on trust for the benefit of one or more beneficiaries, and
- (b) one or more relevant undertakings, at least one of which is a relevant undertaking mentioned in paragraph (1), agrees with a person (“S”) that S will supply energy to the relevant trust asset, and the trust asset is supplied with energy further to that agreement.

(3) For the purposes of this Part—

- (a) “AIFM” has the meaning given in regulation 4 of the Alternative Investment Fund Managers Regulations 2013^{M23},
- (b) “dominant beneficiary” means a beneficiary that is entitled to more than half of the assets of the relevant trust,
- (c) “operator” means a person with permission under Part 4A of the Financial Services and Markets Act 2000^{M24} to carry on a regulated activity, and
- (d) “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000^{M25}.

Marginal Citations

M23 S.I. 2013/1773, to which there are amendments not relevant to these Regulations.

M24 2000 c. 8. Part 4A is substituted by section 11(2) of the [Financial Services Act 2012 \(c. 21\)](#).

M25 Section 22 is amended by section 7(1) of the Financial Services Act 2012.

Participants and responsible undertakings in relation to relevant trust assets

53.—(1) Subject to paragraph (5), where the dominant beneficiary enters into the agreement referred to in regulation 52(2)(b), the relevant trust asset is an asset held by the dominant beneficiary for the purposes of these Regulations.

(2) Where the AIFM or the operator enters into the agreement referred to in regulation 52(2)(b), the AIFM or the operator (as the case may be) is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(3) Where a trustee enters into the agreement referred to in regulation 52(2)(b) and there is an AIFM or an operator in relation to the relevant trust, the AIFM or the operator (as the case may be) is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(4) Subject to paragraph (5), where a trustee enters into the agreement referred to in regulation 52(2)(b) and there is no AIFM or operator in relation to the relevant trust, the trustee is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(5) Subject to paragraph (7) in any case where paragraph (1) or (4) apply, the dominant beneficiary or the trustee (as the case may be) may enter into an agreement with another undertaking (“U”) to the effect that U is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset,

(6) In any case where two or more relevant undertakings mentioned in regulation 52(1) enter the agreement mentioned in regulation 52(2)(b), they must agree which of them is required to comply with the Scheme in relation to the energy consumption of the relevant trust asset.

(7) An agreement referred to in paragraph (5) or paragraph (6) must be made in writing between the responsible officers of the undertakings.

(8) In the circumstances set out in paragraphs (2), (3), (4) and (5) these Regulations apply with the modifications set out in Schedule 5.

Department of Energy and Climate Change

Gregory Barker
Minister of State

Changes to legislation:

There are currently no known outstanding effects for the The Energy Savings Opportunity Scheme Regulations 2014.