

**EXPLANATORY MEMORANDUM TO**  
**THE ENERGY SAVINGS OPPORTUNITY SCHEME (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 1182**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero (DESNZ) and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The instrument makes changes to the Energy Savings Opportunity Scheme (ESOS) to strengthen and standardise the requirements for ESOS audits, improve their quality, and require public disclosure of information relating to them. The changes are intended to increase the energy and related carbon savings of the scheme's participants.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument is England and Wales, Scotland, and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Scotland, Wales and Northern Ireland.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 The instrument amends the Energy Savings Opportunity Scheme Regulations 2014 (the 2014 Regulations) using an enabling power in the Energy Act 2023, to take forward a number of measures which formed part of the Government's core proposals in its 2021 consultation on ESOS. The proposals are intended to encourage ESOS participants to take action as a result of their ESOS reports in order to reduce their energy use and related greenhouse gas emissions, and increase savings on their energy bills.
- 6.2 The measures in the instrument all relate to the following proposals:
  - Strengthen requirements for audits and make them more standardised.
  - Improve the quality of ESOS audits.

- Require public disclosure of high-level recommendations by participants.
- 6.3 It is intended that a further instrument will be laid in due course to complete legislative changes relating to these proposals, with the addition of measures on a further proposal from the ESOS consultation:
- Add a requirement for the audit to include consideration of greenhouse gas emissions.

## 7. Policy background

### *What is being done and why?*

- 7.1 The proposals in the ESOS consultation received good levels of support from stakeholder groups who responded to the ESOS consultation. The instrument takes forward changes relating to them.

### *Explanations*

#### *What did any law do before the changes to be made by this instrument?*

- 7.2 ESOS is an energy assessment scheme which requires large organisations in the UK and their corporate group to carry out an audit of the energy used by their buildings, industrial processes and transport at least once every 4 years. It was introduced UK-wide via the ESOS Regulations 2014. The regulations addressed a finding in the 2012 UK Energy Efficiency Strategy that lack of information was a key barrier to the uptake of energy efficiency measures by business, while also transposing requirements in Article 8(4), (5) and (6) of the EU's Energy Efficiency Directive (2012/27/EU). As a result of the audit, the participant receives recommendations on cost-effective energy savings opportunities. Implementation of the recommendations is currently voluntary.
- 7.3 ESOS has broadly fulfilled its original objectives and has resulted in estimated annual energy efficiency savings of 1.65TWh for buildings, 1.51TWh savings for industrial processes, and 0.52TWh of fuel efficiency savings across the ESOS population, together with associated energy bill and emissions savings.

#### *Why is it being changed?*

- 7.4 The Business, Energy and Industrial Strategy (BEIS) Select Committee published a report into Energy Efficiency on 23 October 2019 which concluded that the government should improve ESOS so that it is more obviously geared towards driving business investment in energy efficiency, and that it should also require ESOS audits to be publicly available and should mandate action on ESOS recommendations.
- 7.5 Following an independent evaluation of the scheme (2017-2019), a Post-Implementation Review of ESOS (2020) identified opportunities to increase the uptake and implementation of energy efficiency measures by businesses. These opportunities included mandating implementation of ESOS recommendations and requiring public disclosure of ESOS recommendations and/or action, and were in alignment with recommendations made in the BEIS Select Committee report. In addition to the Post-Implementation Review findings, there was recognition that ESOS needed to reflect the changes to the policy landscape since it was first introduced, such as net zero targets and new policy initiatives.

- 7.6 On 6 July 2021, the government launched a consultation on strengthening ESOS which built on the findings of the Post-Implementation Review- see **section 10** – and set out decisions on its proposals in its Government Response, published on 18 July 2022.
- 7.7 In order to take forward the changes, a government amendment was made to the Energy Act 2023 to provide a power to replace the repealed regulation-making power in the European Communities Act 1972 under which the UK established ESOS in 2014.

What will it now do?

- 7.8 Addressing the proposals referred to at paragraph 6.2 in turn:

Strengthening requirements for audits / standardisation

- 7.9 The instrument contains measures at Regulation 13, 15 and 17 to strengthen and standardise the requirements for ESOS audits.
- 7.10 Regulation 13 amends Regulation 25 of the 2014 Regulations to reduce the maximum percentage of total energy consumption that may be excluded from the ESOS audit – the ‘de minimis’ – from 10% to 5%. The de minimis was designed to avoid disproportionate administrative burdens relative to potential energy savings, but its current level is considered to be higher than needed for this purpose.
- 7.11 Regulation 15 inserts new Regulations 25A and 25B into the 2014 Regulations to require responsible undertakings to lay out more detail in respect of the calculation of participants’ energy consumption, including energy intensity metrics, and Regulation 16 amends Regulation 26 of the 2014 Regulations to require the audit to include visits to sites that are considered to be representative and record specific details of how the audit was carried out.
- 7.12 Regulation 18 inserts new Regulations 27A, 27B and 27C into the 2014 Regulations as a new chapter 3A to require ESOS reports to be produced and to include additional data on compliance and energy savings. Additionally, parts of ESOS reports and evidence packs that are relevant to members of the corporate group are required to be disseminated to them.

Improve the quality of ESOS audits

- 7.13 Improvements are made to the quality of the ESOS audit by Regulation 17, which amends Regulation 27 of the 2014 Regulations, to specify information that must be identified in relation to energy saving opportunities, including their costs, benefits and a programme for implementing them, which is intended to encourage action to reduce energy use.

Require public disclosure of high-level recommendations by participants

- 7.14 Responsible undertakings are required by regulation 21, which amends Regulation 29 of the 2014 Regulations, to notify additional information to the scheme administrator to support compliance monitoring and enforcement.
- 7.15 Regulation 26 introduces new Regulations 34A and 34B into the 2014 Regulations as a new Part 6A to add a new requirement for responsible undertakings, including those relying wholly or partly on alternative compliance routes, to notify an ESOS action

plan to the scheme administrator setting out any commitments to implement energy efficiency measures, and provide annual progress updates on it.

- 7.16 Regulation 27 amends Schedule 2 of the 2014 Regulations to make provision where changes to corporate groups occur before the date on which an action plan or progress update in relation to that group is required to be notified.
- 7.17 Requirements for the public disclosure of information are set out at Regulation 6, which amends Regulation 10 of the 2014 Regulations. The requirements are intended to encourage action by ESOS participants by making them more accountable in relation to their ESOS reports. They apply to certain information notified to the scheme administrator under Regulation 21, which amends Regulation 29 of the 2014 Regulations, as well as to action plans and progress.

#### Other provisions

- 7.18 Regulation 4 amends Regulation 4 of the 2014 Regulations to extend the deadline for compliance with ESOS for some purposes, to allow participants more time to comply given the change made by these regulations.
- 7.19 Regulation 5 amends Regulation 8 of the 2014 Regulations to clarify that the scheme administrator may ensure the establishment of a notification system if they do not establish it themselves.
- 7.20 Regulation 9 amends Regulation 21 of the 2014 Regulations to disapply certain provisions for participants whose energy consumption is less than 40,000 kWh. Regulation 10 inserts new regulation 21A into the 2014 Regulations to set out requirements where estimates are made under the regulations. Regulation 22 amends Regulation 30 of the 2014 Regulations to make provision for two responsible officers to be appointed in cases where no lead assessor is required.
- 7.21 Regulation 28 substitutes a new Schedule 3 into the 2014 Regulations to provide details of information that must be included in an ESOS report, notified to the scheme administrator and published by them.
- 7.22 Regulation 29 amends Schedule 5 of the 2014 Regulations which applies in the case of certain relevant trust assets.
- 7.23 It is intended that a further instrument will be made on remaining measures relating to the core proposals in Phase 4 of ESOS, to enable them to be fully implemented.

### **8. European Union Withdrawal and Future Relationship**

- 8.1 The instrument is not made under the European Union (Withdrawal) Act 2018 and does not implement any “future relationship agreement” with the EU within the meaning provided by section 37 of the European Union (Future Relationship) Act 2020. It does however relate to the withdrawal of the United Kingdom from the European Union because the 2018 Act repealed the European Communities Act 1972 which provided the enabling power for the ESOS Regulations 2014. The power in the repealed 1972 Act has been replaced by an enabling power in the Energy Act 2023, which allows existing ESOS regulations to be amended or new regulations to be made on ESOS.

### **9. Consolidation**

- 9.1 N/A.

## **10. Consultation outcome**

- 10.1 A public consultation was conducted between 6 July and 28 September 2021. The audience for the consultation was UK large businesses, SMEs that are part of a corporate group with a large enterprise, local authorities, landlords, tenants, and the supply chain (energy efficiency installers, ESOS lead assessors etc.), professional bodies and compliance bodies, anyone affected by or concerned by the proposed improvements to the scheme, and those representing the interests of the sector. A total of 89 responses were received.
- 10.2 The consultation sought views on the core proposals set out under paragraphs 6.2 and 6.3.
- 10.3 These proposals received a good level of support, and a summary of the feedback received is provided for each proposed measure in the Government Response to the consultation, published on 18 July 2022: (<https://www.gov.uk/government/consultations/strengthening-the-energy-savings-opportunity-scheme-esos> ). A decision was taken to implement a limited number of the measures in Phase 3 under the instrument, proportionate to the time available before the 5 December 2023 compliance deadline. Due to subsequent delays on the passage of the Energy Act 2023 through Parliament, the instrument extends the compliance deadline to 5 June 2023 for some purposes. This was announced in a newsletter issued by the scheme administrator on 13 June 2023. The measures do not require ESOS participants to carry out significant changes to any energy audits carried out in Phase 3 before the publication of the Government Response, although some organisations may be required to audit additional sites as a result of the introduction of a reduction to ‘de minimis’, which is the percentage of total energy consumption that can be excluded from the audit, from 10% to 5%.
- 10.4 The remainder of measures relating to the core proposals for ESOS are intended to be implemented in Phase 4 of ESOS via a further instrument.
- 10.5 The measures in the instrument relate to matters of devolved competence in Northern Ireland, and reserved matters in Scotland and Wales. The outcome of the consultation with Northern Ireland was that no issues were raised about the changes to the policy, although there was interest in whether funding would be made available to participating businesses and the compliance body in NI, the Northern Ireland Environment Agency (NIEA). This is not current government policy however the Energy Bill contains provision enabling the Secretary of State to provide such financial assistance in the future by means of grants, loans, guarantees or indemnities.

## **11. Guidance**

- 11.1 The compliance bodies for ESOS for each of the devolved regions of the UK, and the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) in relation to offshore activities associated with ESOS, are responsible for publishing guidance for participants on complying with ESOS. They also publish contact details to enable any queries about the scheme to be submitted by email. DESNZ discussed changes to the scheme with these bodies, which supported their understanding of the new requirements in the instrument.
- 11.2 Guidance is expected to be issued when the draft instrument has been laid in Parliament. As it is not issued under any legal requirement it is not subject to legislative scrutiny.

## **12. Impact**

- 12.1 The impact on business, charities, voluntary bodies or public sector organisations that meet the qualifying criteria for ESOS is that they will need to meet additional reporting requirements, and a proportion may also need to audit additional sites if they have conducted audits where they have excluded more than 5% of total energy consumption from the audit, in order to meet the new requirements on reduction to the de minimis from up to 10%, to up to 5%. Due to the length of notice given regarding the changes, which were set out in the Government Response of 18 July 2022 and reiterated in newsletters issued by the scheme administrator, few participants are expected to need to audit additional sites due to lack of awareness of the change to the de minimis.
- 12.2 The qualifying criteria for ESOS are any undertaking, as defined by the Companies Act 2006, that either:
- employs 250 or more people; or
  - has an annual turnover in excess of £44 million, and an annual balance sheet total in excess of £38 million
- 12.3 Undertakings that are part of a corporate group which includes another UK undertaking or UK establishment which meets these criteria must also take part in ESOS. On the basis of Phase 2 compliance data up to 7,000 responsible undertakings (by default, the highest parent in the group, unless otherwise agreed by undertakings in that group) are estimated to be responsible for completing the ESOS assessment and notifying compliance, on behalf of 11,900 organisations in total.
- 12.4 The estimated total energy saving from the changes introduced by the instrument over the appraisal period 2023 – 2037 is 28TWh, equating to an estimated £1.12 billion in energy bill savings to participants. The Business Net Present Value is estimated at £809m (an average of £68K per large organisation and its corporate group). The energy bill savings will support businesses to keep the costs of their products and services affordable for consumers.
- 12.5 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website. In the central scenario, the laying of this SI will facilitate total benefits of £2,410m, a Net Present Value of £1,360m and Benefit Cost Ratio of £2.3. There is a reduction in the greenhouse gas emissions of 1.2 MtCO<sub>2</sub>e from 2023-2037.

## **13. Regulating small business**

- 13.1 ESOS applies to large organisations and their corporate groups, whose members could include Small and Micro Businesses (SMBs). Compliance data collected by the scheme administrator indicates that a number of SMBs fall within scope of ESOS, although precise figures are not collected. A number of provisions are in place which mitigate the effects of the scheme on SMBs, as set out below:
- The instrument will continue the existing arrangements under which the ‘responsible undertaking’, by default the highest UK parent, completes the ESOS assessment and notifies compliance to the scheme administrator for itself and the group undertakings. The highest parent could be an SMB (for example, where the parent organisation is a head office for a corporate group), however any other group undertaking may be chosen for this role with the agreement in writing of the other group undertakings.

- The costs of assessments (including paying for lead assessors) are funded at the discretion of the group, which could, for example, allow them to be equitably apportioned by agreement across the group, rather than borne solely by an SMB acting as a responsible undertaking.
  - The de minimis threshold will continue to be able to be applied on a group basis, potentially allowing SMBs to be excluded from the ESOS audit altogether. The Environment Agency has advised that SMBs are often excluded from group-level ESOS compliance on this basis since they consume relatively little energy compared to the wider group.
- 13.2 As the existing mitigatory provisions are considered to be adequate no further specific action is proposed to minimise regulatory burdens on small businesses.

#### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is the retention by the instrument of the existing provisions in Regulation 3 of the ESOS Regulations 2014, which require the Secretary of State to carry out a review of the operation and effect of the regulations and publish its conclusion in a report at intervals of no more than 5 years. A review will be carried out and published by no later than 25 February 2025, which is 5 years from the date of the last review published on 25 February 2020.

#### **15. Contact**

- 15.1 Suzanne Wallis at the Department for Energy Security and Net Zero, Telephone: 07769 422859 or email: [suzanne.wallis@energysecurity.gov.uk](mailto:suzanne.wallis@energysecurity.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Andrew Cooke, Deputy Director for Business Energy Transformation, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan, Minister for Energy Efficiency and Green Finance, at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.