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STATUTORY INSTRUMENTS

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**2014 No. 1643**

**The Energy Savings Opportunity Scheme Regulations 2014**

**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.

**CHAPTER 2**

**Energy consumption**

**Duty to calculate total energy consumption**

**22.—**(1) A responsible undertaking must, unless regulation 33(3) applies, 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.

### **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, and
  - (b) the responsible undertaking must—
    - (i) notify the scheme administrator accordingly, and
    - (ii) record details of the method used and the extent to which, and the reasons why, verifiable data was not used.

### **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<sup>(1)</sup>, or
  - (ii) which is an exempt vehicle under that Act,
- (d) “train” has the meaning given in section 83 of the Railways Act 1993<sup>(2)</sup>, 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.

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(1) 1994 c. 22.

(2) 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 Chapter 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 90% of the participant’s total energy consumption—

- (a) measured in energy measurement units, or
- (b) measured by energy spend.

**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.

(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).
- (8) Where paragraph (7) applies the responsible undertaking must—
  - (a) notify the scheme administrator accordingly, and
  - (b) record details of the extent to which, and the reasons why, 12 months' verifiable data was not used.

### **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”), and
  - (d) identify the estimated costs and benefits of any energy saving opportunity.
- (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.

## 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 or 11 of Schedule 2,
  - (d) the notification given by the lead assessor under regulation 21(2)(b), and
  - (e) any information recorded in accordance with regulation 23(7)(b)(ii), 26(8)(b), or 27(6)(b).
- (2) The evidence pack must be kept for at least two subsequent compliance periods following the compliance period to which it relates.