

**EXPLANATORY MEMORANDUM TO
THE ENERGY SAVINGS OPPORTUNITY SCHEME REGULATIONS 2014**

2014 No. 1643

- 1.** This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument introduces a scheme – the Energy Savings Opportunity Scheme (“ESOS”) - under which all large undertakings (and any small or medium undertakings which are members of the same corporate group as a large undertaking) must audit their energy use, in four-yearly cycles.

2.2 ESOS requires these undertakings to calculate their total energy use, and then to audit that use (subject to some exceptions) in each cycle. The audit must be carried out or reviewed by an approved assessor, who must analyse the undertaking’s energy consumption and energy efficiency, and identify reasonably practicable and cost effective ways in which they can improve their energy efficiency.

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

3.1 None

4. Legislative Context

4.1 This instrument transposes Article 8(4)-8(6) of the EU Energy Efficiency Directive (“the Directive”)¹ which requires member states to introduce mandatory energy audits for all ‘large enterprises’.²

4.2 It is a requirement of European law that the provisions of a Directive be given effect in the national legal system of Member States.

4.3 A Transposition Note is attached at Annex B.

¹ Directive 2012/27/EU. OJ No L 315, 14.11.2012,

² Defined in the regulations as any organisation organisations which: employs 250 or more members of staff; has both an annual turnover of above €50m and a balance sheet above €43m; or belongs to a corporate group which includes an undertaking which meets one of the first two qualifying criteria.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 ESOS is the UK Government's approach to transposing Article 8(4)-8(6) of the Directive. The aim of the Directive is to drive improvements in energy efficiency in member states. The EU has a target to save 20% of its primary energy consumption by 2020, against a 2007 business as usual projection through improvements in energy efficiency. In 2011 the Commission estimated that existing policies meant that the EU was only on track to get half way towards that target. The Directive is intended to put the EU back on track to meet the target.

7.2 Article 8(4-6) of the Directive imposes an obligation on EU member states to require all large enterprises (non-SMEs) to conduct energy efficiency audits once every four years. It is intended to provide large enterprises with information on their energy consumption in order to incentivise energy efficiency improvements. The Energy Savings Opportunity Scheme (ESOS) is the UK Government's policy for transposing this requirement.

7.3 Under ESOS, relevant undertakings will be required to measure their total energy consumption (that is, energy supplied to them and consumed by assets held, or activities carried on by them including energy consumption in buildings, transport and industrial processes). Subject to some exceptions, participants will be required to conduct energy audits of their areas of significant energy consumption. Energy audits must identify cost-effective recommendations to improve energy efficiency and must be carried out or reviewed by a qualified lead energy assessor.

7.4 Participants will be required to notify the scheme administrator – the Environment Agency – that they have complied with the scheme by providing certain prescribed information. Compliance with ESOS will be monitored by a number of bodies, determined by the location of the relevant undertaking, and those compliance bodies will have powers to require information and carry out inspections to monitor compliance. They will also have the powers to impose penalties, including financial penalties for non-compliance.

7.5 There has been a moderate level of interest in ESOS to date. From July to October 2013 the Government conducted a public consultation and received 150 written

responses. Throughout the development of ESOS policy the Government met with over 400 stakeholders from 300 organisations.

8. Consultation outcome

8.1 From 10 July 2013 to 3 October 2013, the Government held a 12-week public consultation on the proposals for ESOS, seeking the views of business, industry and trade bodies, and other parties. The Government received approximately 150 responses to the consultation. The consultation document set out implementation options for a new Energy Savings Opportunity Scheme, and invited comments and alternative options to be considered.

8.2 In general, respondents were broadly supportive of the proposed implementation of the Directive. Respondents preferred the policy to be simple, understandable, and minimise compliance costs to participants. Respondents were also keen to avoid duplication with existing regulation and requirements.

8.3 An independent consultancy conducted an in-depth analysis of the consultation responses, the results of which are published on GOV.UK.³

9. Guidance

9.1 The Government is publishing a Guide to ESOS which will outline the requirements of the scheme and help industry understand the practical steps they will need to take to comply with ESOS and improve their energy management. The Environment Agency, who will act as the scheme administrator for ESOS, will publish their own compliance guidance which will supersede the Guide in due course.

9.2 A copy of the Guide has also been published on GOV.UK.⁴

10. Impact

10.1 Large undertakings that are in scope of the policy will be required to undertake an ESOS assessment. Large undertakings include not for profit organisations which carry out economic activities. We estimate that around 9,400 large undertakings will be required to participate in ESOS.

10.2 Public sector bodies⁵ are not in scope of ESOS. However, the public sector is impacted through the need to administer the scheme.

³ <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>

⁴ Ibid.

⁵ A public sector body means: (i) in relation to bodies in England, Wales and Northern Ireland, a 'contracting authority' as defined in regulation 3 of the Public Contracts Regulations 2006; and (ii) in relation to bodies in Scotland, a 'contracting authority' as defined in regulation 3 of the Public Contracts (Scotland) Regulations 2012.

10.3 The overall net benefit of ESOS is estimated at £1.6bn between 2015 and 2030 in present value terms.

10.4 An Impact Assessment (IA), which includes the Government's best estimate of the impact on business, charities and voluntary bodies, is attached to this Explanatory Memorandum and will be published on the www.legislation.gov.uk website.

11. Regulating small business

11.1 This instrument does not regulate small business.

12. Monitoring & review

12.1 The Secretary of State is required to carry out a review of the operation and effect of the instrument and publish an assessment at intervals of no more than 5 years after these regulations come in to force.

13. Contact

Martin Adams at the Department of Energy and Climate Change (tel: 0300 068 2853 or email: esos@decc.gsi.gov.uk) can answer any queries regarding the instrument.