

EXPLANATORY MEMORANDUM TO
THE ENERGY SAVINGS OPPORTUNITY SCHEME (AMENDMENT) REGULATIONS
2015

2015 No. 1731

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 corrects drafting errors in Schedules 1, 2 and 4 to the Energy Savings Opportunity Scheme Regulations 2014 (“the 2014 Regulations”).

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

3.1 In its ninth report of the 2014-15 session, published on 27th October 2014, the Joint Committee drew the special attention of both Houses to the 2014 Regulations on the ground that they are defectively drafted in three respects. Regulations 2(3), (4)(b) and (4)(c) of this instrument correct those three defects. Two other corrections are made by regulations 2(2) and (4)(a) of this instrument. Accordingly, this instrument is being issued free of charge.

4. **Legislative Context**

4.1 The 2014 Regulations transpose Article 8(4) to (6) of the Energy Efficiency Directive¹ by introducing a scheme - the Energy Savings Opportunity Scheme (“ESOS”) - which requires large undertakings (and certain small or medium undertakings which are members of the same corporate group as a large undertaking) to carry out energy audits. A transposition note for Article 8 of the Energy Efficiency Directive was published alongside the 2014 Regulations on the www.legislation.gov.uk website.

4.2 Large undertakings, for the purpose of Article 8(4) to (6) of the Energy Efficiency Directive, are undertakings that are not “SMEs” as defined in Title 1 of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.² The category of SMEs is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

¹ Directive 2012/27/EU.

² OJ L 124, 20.5.2003, p. 36.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Subject to some exceptions, ESOS requires large undertakings (and small or medium undertakings that are members of the same corporate group as a large undertaking) to calculate their total energy use, and then to audit that use. The audit must be carried out, and compliance notified to the Environment Agency, by 5 December 2015. These requirements are repeated in four-yearly cycles thereafter.

7.2 This instrument makes minor amendments to the 2014 Regulations to correct defects identified by the Joint Committee. In addition, regulation 2(2) of this instrument amends the definition of “large undertaking” in Schedule 1 to the 2014 Regulations to remove uncertainty that may otherwise have arisen as to whether certain undertakings (with fewer than 250 employees but with an annual turnover over EUR 50m and an annual balance sheet total over EUR 43m) are large undertakings within the meaning of the 2014 Regulations. It is a requirement of Article 8(4) to (6) of the Energy Efficiency Directive that these undertakings are subject to an energy audit.

7.3 The Environment Agency, which administers the ESOS scheme, has issued detailed guidance on the scheme, and includes a clear explanation of the definition of a large undertaking. The amendment made by regulation 2(2) will bring the statutory definition of “large undertaking” in line with that explanation and, as such, it is not intended to issue fresh guidance on this issue.

7.4 Regulations 2(3) and (4) of this instrument make other minor drafting corrections to Schedules 2 and 4 to the 2014 Regulations.

7.5 This instrument is the first amending instrument to the 2014 Regulations. No consolidation is planned.

8. Consultation outcome

8.1 No consultation has been carried out on this instrument. The Government held a 12 week public consultation on the 2014 Regulations. The consultation document and the

Government Response³ set out in full the threshold for the large undertakings falling within the scope of ESOS.

9. Guidance

9.1 The Environment Agency has published compliance guidance.⁴ This superseded a guide to ESOS published by the Government.⁵

10. Impact

10.1 No impact on business, charities or voluntary bodies is expected. The instrument corrects drafting errors which may otherwise have created uncertainty as to the application of the 2014 Regulations.

10.2 No impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment of the 2014 Regulations was published alongside those Regulations on the www.legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not regulate small business.

12. Monitoring & review

12.1 This instrument amends Regulations which are already subject to review by virtue of regulation 3 of the 2014 Regulations. That regulation requires the Secretary of State to carry out a review of the operation and effect of the 2014 Regulations and to publish the conclusions of the review at intervals of no more than 5 years.

13. Contact

Nina Webber at the Department of Energy and Climate Change (tel: 0300 068 8298 or email: nina.webber@decc.gsi.gov.uk) can answer any queries regarding the instrument.

³ The consultation document and Government Response can be found at:

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

⁴ <https://www.gov.uk/government/publications/comply-with-the-energy-savings-opportunity-scheme-esos>

⁵ <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>