

## **ENERGY SAVINGS OPPORTUNITY SCHEME (ESOS)**

The Energy Savings Opportunity Scheme (ESOS) requires larger companies and non-public sector organisations in the UK to carry out mandatory energy saving assessments. It requires participants to calculate their total energy consumption, carry out energy audits and identify where energy savings can be made. ESOS is in force in the UK from 17 July 2014<sup>1</sup>.

The aim of the scheme is to help organisations identify energy efficiency savings and to support and increase good energy management. Energy efficiency is an important part of climate change mitigation, both at a UK and at an EU level.

The EU Energy Efficiency Directive 2012 (Directive) requires member states across the EU to introduce a framework of measures for promoting energy efficiency, in order to achieve the EU's 2020 energy efficiency target of cutting its annual consumption of primary energy by 20%.

ESOS implements Article 8(4) of the Directive requires all member states to introduce a regime of regular energy audits for large enterprises to promote energy efficiency measures. These audits must be undertaken by 5 December 2015, and then every four years thereafter.

### **Does ESOS apply to my organisation?**

ESOS applies to relevant undertakings, which are:

- Large undertakings including:
  - Limited or public companies
  - Trusts
  - Partnerships
  - Unincorporated associations
  - Not-for-profit bodies that are engaged in a trade or business (which could include some charities)
  - Some universities.
- Corporate groups qualify if at least one UK group member meets the ESOS definition of a large undertaking.

Large undertakings are those that meet one of the following criteria on the qualification date for the relevant phase:

- Employ at least 250 people.
- Have an annual turnover over EUR50<sup>2</sup> million and an annual balance sheet total over EUR43 million, based on the undertaking's most recent annual financial statements ending on or before the qualification date.

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<sup>1</sup> DECC has published a Guide which can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323307/ESOS\\_Guide\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323307/ESOS_Guide_FINAL.pdf)

<sup>2</sup> Trigger levels are set in euros to reflect the EU Energy Efficiency Directive 2012. This means that undertakings will have to convert their financial results into euros to determine qualification. For borderline cases, the rate of exchange on the qualification date may determine whether they must comply with ESOS.

## **Who is an employee?**

A person is 'employed' by an undertaking if they are:

- An employee.
- An owner manager.
- A partner.

An 'employee' is a person employed under contracts of service. Their contracted hours and status (full time/part time) are irrelevant to their classification as an employee. The number of employees means the average number of persons employed by the undertaking in the year.

## **When does my organisation have to take action?**

To assess if you qualify, you need to take your employee numbers, turnover and balance sheet totals from the accounts:

- For the financial year ending on the qualification date of 31 December 2014; or
- In the 12 months immediately preceding the qualification date of 31 December 2014.

The initial compliance period runs from 17 July 2014 to 5 December 2014. Subsequent compliance periods last for four years, starting with 6 December 2015.

Between July-December 2014 we expect details of approved registers of lead ESOS assessors to be published.

In autumn 2014 the EA will publish detailed compliance guidance.

For each phase, there is a:

- Qualification date - This is the date at which relevant undertakings must decide if they qualify for ESOS. The first qualification date is 31 December 2014. Subsequent qualification dates are every four years after that.
- Compliance date - This is the date by which ESOS assessments must be completed and compliance notified to the EA. The first compliance date is 5 December 2015. Subsequent compliance dates are every four years after that.

## **What energy must we measure?**

Participants must measure their total energy consumption across a 12-month reference period :-

This includes energy consumed in:

- Buildings.
- Transport. Section 7 of the DECC guide contains detailed guidance on how energy used in transport, including international journeys, should be calculated.
- Industrial processes.

A participant's energy consumption consists of the energy that is both:

- Supplied to the participant, either under an agreement with a supplier or generated by the participant. (However, surplus heat generated as a by-product of an industrial process carried out by the participant is excluded.)
- Consumed by the assets held, or activities carried on, by the participant. Energy consumed by the participant outside the UK is excluded (save for some exceptions on international travel).

### **Particular situations**

A Landlord who supplies energy to a tenant under an agreement, need not include that energy in calculating its total energy consumption under ESOS, provided that the amount of energy is measured (e.g. by a sub meter). However, if the energy is not measured, the landlord will need to include that energy as part of its ESOS assessment. Where a landlord provides energy to the shared parts of a building, the landlord must include that in calculating its total energy consumption.

Assets held on trust must be included if the organisation that is party to the agreement for the supply of energy to the assets qualifies for ESOS. That organisation will usually be the participant for the purposes of the assets, so must account for the trust assets in its ESOS assessments. The position is different if the party to the energy supply agreement is a trustee. There are also provisions allowing organisations to allocate responsibility to other parties, by written agreement.

### **Summary**

The legislation presents new challenges for large organisations that are caught by it. There are penalties for non-compliance and although the Environment Agency has promised light touch regulation in England, the regulator may issue civil sanctions including financial penalties if an organisation does not meet the scheme's obligations, for instance by failing to do the required audits or notify compliance.

For more information please contact [Catherine Davey](#) or [Beverley Flynn](#).

*This information is necessarily brief and is not intended to be an exhaustive statement of the law.  
It is essential that professional advice is sought before any decision is taken.*

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