



Department  
of Energy &  
Climate Change

# The Energy Savings Opportunity Scheme

Government Response to the 'Energy Savings  
Opportunity Scheme' consultation

June 2014





Government Response to the 'Energy Savings Opportunity Scheme' consultation

Presented to Parliament  
by the Secretary of State for Energy and Climate Change  
by Command of Her Majesty

June 2014



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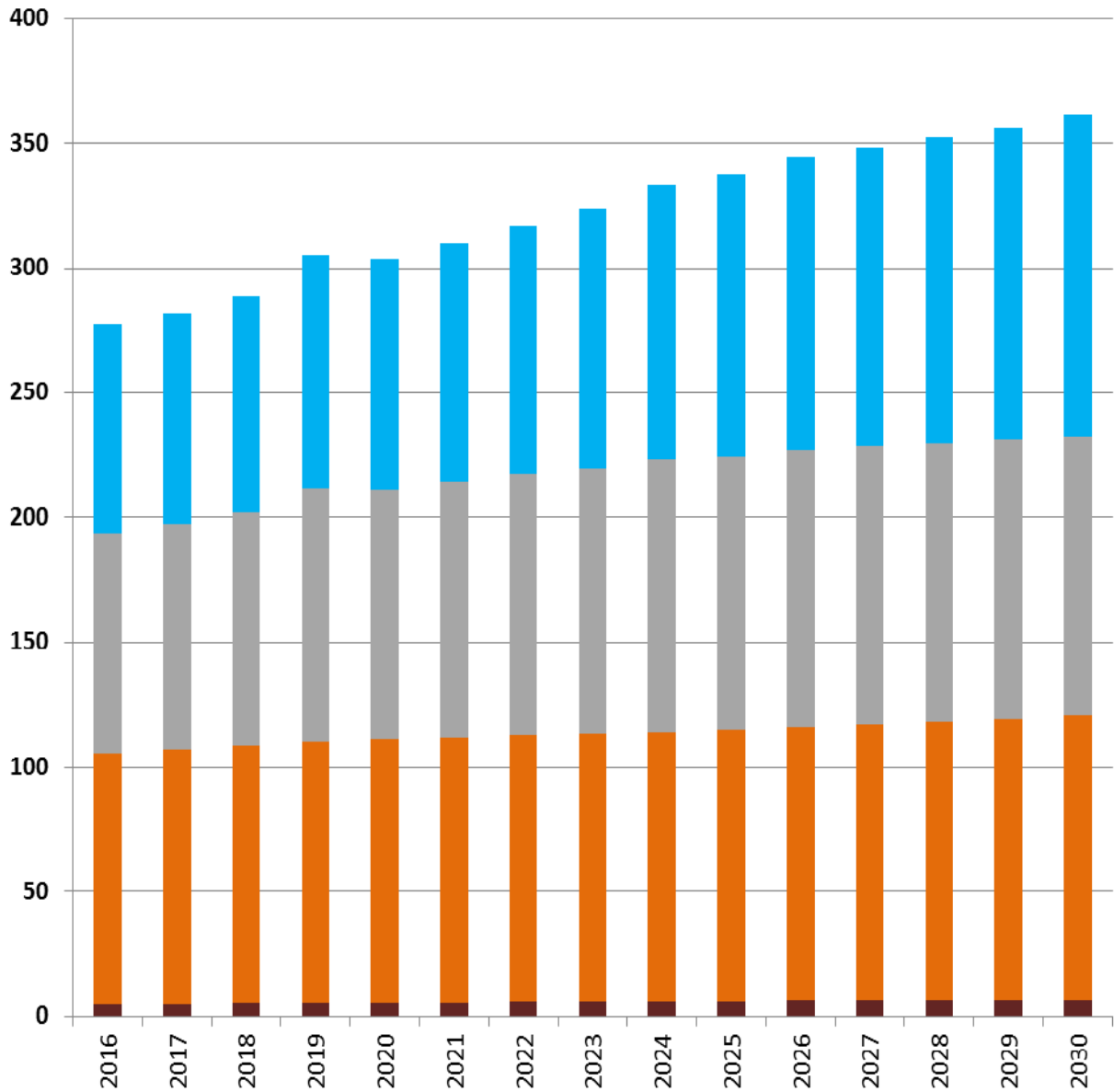
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### Estimated energy bill savings (£m) for ESOS participants, split by sector<sup>1</sup>



<sup>1</sup>real 2014 prices

■ Other ■ Transport ■ Industrial ■ Commercial

**“The scheme could benefit the UK as a whole by up to £1.6 billion with the vast majority of this being felt directly by business through lower bills”**

Rt Hon. Gregory Barker, Minister of State for Energy and Climate Change



# Ministerial Foreword



We know that many businesses in the UK are already committed to energy efficiency. But we also know that there is still significant untapped energy efficiency potential in the UK economy.

Improving energy efficiency is a win for everyone. It increases business productivity, profitability and competitiveness. It drives down operating costs and generates wider benefits for organisations, improving the quality of working spaces and employee welfare. Identifying and implementing energy efficiency measures also creates jobs.

The Energy Savings Opportunity Scheme (ESOS) will help large organisations identify savings they can make on energy bills. The scheme could benefit the UK as a whole by up to £1.6 billion with the vast majority of this being felt directly by business through lower bills. This benefit can be realised if businesses in the scheme make an average energy reduction of just 0.7%.

ESOS aims to multiply existing good energy management practice – ensuring that businesses which are already seizing their own energy saving opportunity can comply easily, building on current work, while also providing an effective framework for less advanced companies to catch-up with the market leaders.

The scheme is designed to help support economic growth through smarter energy use; by ensuring participants have access to trusted advice on energy savings opportunities. It is good for business, good for the environment, and will help ensure that the UK continues to be regarded internationally as a leader on energy efficiency.

Saving energy is good for the UK as a whole – leading to improved energy security, cleaner air, and a reduced requirement for new infrastructure, and helping ensure we all play our part in tackling climate change.

A handwritten signature in black ink, appearing to read 'Gregory Barker', written over a white background.

Rt Hon. Gregory Barker

Minister of State

# Executive Summary

## Summary of ESOS policy approach

This document sets out the Government's response to its consultation on the Energy Savings Opportunity Scheme (ESOS). It is being published alongside our Final Stage Impact Assessment, and a Guide to ESOS for participants and other interested parties. In parallel, regulations which will give effect to the scheme have been laid in Parliament.

Organisations which think they may be in scope of ESOS may wish to read the Guide to ESOS, which will help them determine if they are in scope and explain in further detail next steps for complying with ESOS.

Copies of all of these documents can be found here:

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

## The Energy Savings Opportunity Scheme

The EU Energy Efficiency Directive entered into force in November 2012. The Directive aims to drive improvements in energy efficiency across the EU. Article 8(4) includes a requirement that all large (non-SME) enterprises undertake energy audits by 5 December 2015 and every 4 years thereafter. This is the largest new policy within the Directive from a UK perspective.

The Government has developed the Energy Saving Opportunity Scheme (ESOS) in order to comply with the Article 8(4) requirement. On 10 July 2013 the Government launched a 12-week consultation on the proposals for this scheme, seeking the views of business, industry and trade bodies, and other interested parties. The consultation closed on 3 October 2013. The Government contracted independent expert consultants to carry out detailed analysis of consultation responses and has since been developing the legislation and guidance that give effect to the scheme.

The scheme seeks to minimise the administrative burden on business, including by realising synergies with existing policies and requirements, such as the CRC Energy Efficiency Scheme. At the same time, the Government also aims to maximise the energy efficiency and economic gains from the scheme.

## ESOS timetable

ESOS will run in four year phases. For each phase, there will be a qualification date, when participants should determine if they are in scope of the scheme, and a compliance date, by which participants must have completed their ESOS Assessment.

For the purposes of determining whether they are in scope of ESOS, participants need to consider their size (and group structure) at the qualification date (see Question 4).

The first qualification date will be 31 December 2014. Undertakings that qualify for ESOS on this date will need to participate in ESOS.

The first compliance date will be 5 December 2015; all participants must have completed the required energy audits and notified the Environment Agency, as scheme administrator, that they have done so by this date.

ESOS will continue in four year phases, with subsequent qualification dates and compliance dates on each four-year anniversary of these initial dates (see Question 4 & 5).

## Who must comply with ESOS

Participation in ESOS will be mandatory for any undertaking which carries out business activity within the UK and which meets any one of the following criteria:

1. It has 250 or more staff;<sup>1</sup>
  2. It has fewer than 250 staff but has an annual turnover exceeding €50m and a balance sheet exceeding €43m
  3. It is part of a corporate group which includes a large undertaking (as defined by (1) or (2), above).
- } “large undertakings”

In determining whether they meet the financial thresholds above, undertakings should use their most recent annual financial statements ending on or before the qualification date. Sterling figures should be converted into Euros using the Bank of England Pounds Sterling – Euros spot rate prevailing on the qualification date. See

<http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp?Travel=NlxRSx&into=GBP>

Throughout this document, undertakings which meet one or more of the qualification criteria are referred to as ‘participants’.

Participants may work in any industry including, for example, joint ventures, partnerships and charitable organisations (providing they are an undertaking).

The scheme will not apply to public bodies. For the purposes of ESOS, public bodies are defined as organisations which must comply with public contracting regulations<sup>2</sup> (see Question 3). There are a range of other provisions in the Directive which relate to the energy efficiency of public bodies.

## Corporate groups

In the case of corporate groups, there will be flexibility to allow group members to participate together or as separate participants (see Question 3).

In the case of a corporate group wholly confined to the UK, the default position will be that all the members of a corporate group participate as a single participant. In such a case, by default, the highest parent operating in the UK will be responsible for ensuring an ESOS Assessment includes their own energy use and that of any subsidiaries for which they are responsible.

In the case of a corporate group comprising an overseas parent with several UK subsidiaries, the default position will be that there will be a separate ESOS participant for each highest UK parent (participating in respect of itself and its subsidiaries).

<sup>1</sup> Staff includes employees, partners and owner/managers

<sup>2</sup> In relation to England, Wales & Northern Ireland, the Public Contracts Regulations 2006; in relation to Scotland, the Public Contracts (Scotland) Regulations 2012

## Joint ventures

Joint ventures, where they pass the qualification thresholds, will also be required to participate in ESOS. Joint ventures will participate separately from the venture partners, reflecting the fact that no individual venture partner has control of the joint venture, and so it is not part of any one of their corporate groups. See Question 3 for more details.

## Trusts

Assets held in trust will be included in ESOS if they qualify. This will depend on whether the organisation that is party to the agreement for the supply of energy to the assets qualifies for ESOS or not.

In most cases, where the organisation that is party to the energy supply agreement qualifies, they will be responsible for ensuring the compliance of the trust assets with ESOS – as a separate ESOS participant for each trust. However, where this organisation is a trustee, the responsibility will fall first to any alternative investment fund manager (AIFM) or operator. There will also be some flexibility for organisations to allocate responsibility to other parties, by mutual consent.

## Voluntary use of ESOS by others

Organisations which are not required to participate in ESOS by virtue of the qualification criteria outlined above (such as SMEs which are not part of a participating corporate group) may still benefit from voluntarily measuring energy consumption and undertaking energy audits carried out or overseen by a qualified auditor.

## ESOS Assessments

ESOS participants must complete an ESOS Assessment in each compliance phase, by the compliance date.

ESOS will run in four year phases. The first compliance date will be 5 December 2015; the second will be 5 December 2019; and every four years thereafter.

An ESOS Assessment includes three main requirements:

- Firstly, participants must measure all their energy use for a continuous twelve month period.
- Secondly, the participant must undertake audits covering all their main areas of energy consumption.
- Thirdly, the participant must report their compliance to the Environment Agency, as the scheme administrator, by the compliance date.

Participants must also maintain an ESOS Evidence Pack providing a full record of ESOS compliance.

## Measurement of total energy use/spend

To begin their ESOS Assessment, participants must calculate all their energy use<sup>3</sup> for a continuous twelve month period. The requirement for 12 months' data is to ensure seasonal variations are taken into account. Under a 'comply or explain' approach, participants may use less than 12 months' worth of data if they have a reasonable justification for doing so – e.g. records are unavailable or it would be disproportionate to gather them. In such cases, participants must record their reasons for not doing so in their ESOS Evidence Pack.

All the energy supplied to a participant for consumption in the UK will be within scope of ESOS (See Question 11). This includes all energy consumed by assets held or activities carried out by the participant.

Where a participant is supplied with energy but transfers it on, and where the amount of energy transferred on is known, the participant can deduct this from its total energy use (see Question 11). For example, where a landlord transfers electrical supply on to its tenants and meters this supply it may deduct this from its overall energy use.

Participants may calculate their total energy use either in energy units, such as kWh, or in expenditure terms. This total should include energy used in buildings, industrial processes and transportation. Energy use that takes place outside the UK will not be within scope of the scheme (with the exception of energy used in international transport, where specific rules apply – see below).

Participants will have some flexibility in determining the period over which they measure their energy use (see Question 9). This allows participants to determine when measurement is most efficient, perhaps aligning with the measurement or reporting time periods for other schemes, such as the CRC Energy Efficiency Scheme. Energy used by a participant's road fleet will be within scope of the scheme. This will include company owned vehicles, company cars and grey fleet (private vehicles of directors/employees used in the business of the participant) (see Questions 15 & 16).

## International transport energy use

For all transport energy use, it is the participant that is supplied with fuel and uses it in their business that must consider this energy use (see Question 14).

For aviation and shipping, participants will be required to measure at least all energy consumed in journeys that begin and/or end in the UK.

For international road and rail transport, participants will be required to measure at least all the energy consumed in the portion of journeys that takes place in the UK (see Question 14).

Where a participant chooses to measure additional transport movements beyond the required minimum (e.g. where an airline measures all its flights, for administrative ease) it must identify its areas of significant energy use based on all measured energy use.

## Energy audits

Participants must ensure that at least 90% of their total energy use is subject to ESOS Energy Audits or an alternative route to compliance (see Question 8). For the purposes of ESOS the areas of energy usage which cumulatively meet 90% of total energy consumption are referred to

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<sup>3</sup> For corporate groups, this includes the energy use of all group members.

as “areas of significant energy use”. Other areas of energy consumption will not require an audit.

### **ESOS Energy Audits**

ESOS Energy Audits must also be based on 12 months' worth of data (unless a reasonable explanation can be given as to why this is not necessary or possible). Energy Audits should provide recommendations for any cost-effective energy efficiency measures that can be undertaken – with estimated costs and benefits quantified. These recommendations, and the energy audits themselves, should focus on those aspects of energy use that are within the participant's control. For example, a landlord will not be required to assess the energy use of tenants occupying part of their office space.

ESOS will operate in four year compliance periods. Participants can count audits undertaken throughout the four year cycle towards their compliance with ESOS. For example, where a process is identified as a main energy using activity through the measurement process, any audit of this activity that has already taken place in the four-year phase can be counted towards overall compliance.

For the first phase of ESOS where the compliance period will be shorter than 4 years, running from June 2014 to 5 December 2015, auditing activity carried out since 6<sup>th</sup> December 2011 may be used to support compliance.

ESOS Energy Audits must be undertaken, overseen or reviewed by a qualified 'Lead Assessor' (see Questions 21 - 26).

### **Alternative routes to compliance**

Participants that have in place an energy management system (certified to ISO50001 standard) will be considered to have complied with the audit requirement for all areas of energy use which it covers (see Question 19).

Where participants have had energy audits through the Green Deal or to obtain Display Energy Certificates (DECs) (where accompanied by a recommendation report), these audits will be recognised for the purposes of ESOS (see Question 13). Any building which has had such an audit within the ESOS cycle in question can be counted as having been audited for the purposes of ESOS in that cycle (with regard to the specific building for which the audit was undertaken).

### **Using existing energy audits to support compliance**

Lead Assessors may also consider work undertaken to obtain other audits and assessments, such as the Carbon Trust Standard, a Green Fleet Review, and work undertaken as part of an energy or environmental management system (for example, an ISO 140001 Environmental Management System) or as part of business as usual activity by a participant's energy manager or sustainability team. Lead Assessors may take this work into account for ESOS compliance if it meets the minimum requirements of ESOS (see Questions 18 & 20).

Participants will also be able to use data gathered under the CRC or other Government schemes to support their compliance with ESOS. Where, for instance, energy audits have been carried out to identify energy efficiency savings to meet Climate Change Agreement targets, these may also contribute to ESOS compliance provided that they meet the minimum requirements of ESOS.

## Reporting requirements

Participants will be required to notify the Environment Agency of their compliance at the end of each compliance period (see Question 29). The basic notification details will include confirmation of compliance; information on the participant, including the name of the director(s) or equivalent who signed off the report and information on the Lead Assessor, including name and approved qualification (or approved membership of a professional register).

For undertakings that are complying as a group, the participant will also need to provide information on the participant undertakings.

Participants will also have the opportunity to voluntarily disclose additional information about the results of their ESOS Assessment and energy audits, actions taken as a result, and their energy consumption and management in general (See Question 30).

The Environment Agency will publish a list of all participants which have notified that they have complied with ESOS, together with any voluntary information provided by participants.

## Auditor requirements

Each participant will need to appoint a Lead Assessor to lead the ESOS Assessment process, ensuring that work is undertaken by staff with appropriate knowledge and experience and that all areas of significant energy consumption are addressed (see Question 23). Lead Assessors can be internal staff (see Question 24) or can be external professionals contracted by the participant. All Lead Assessors must belong to an 'approved register'.

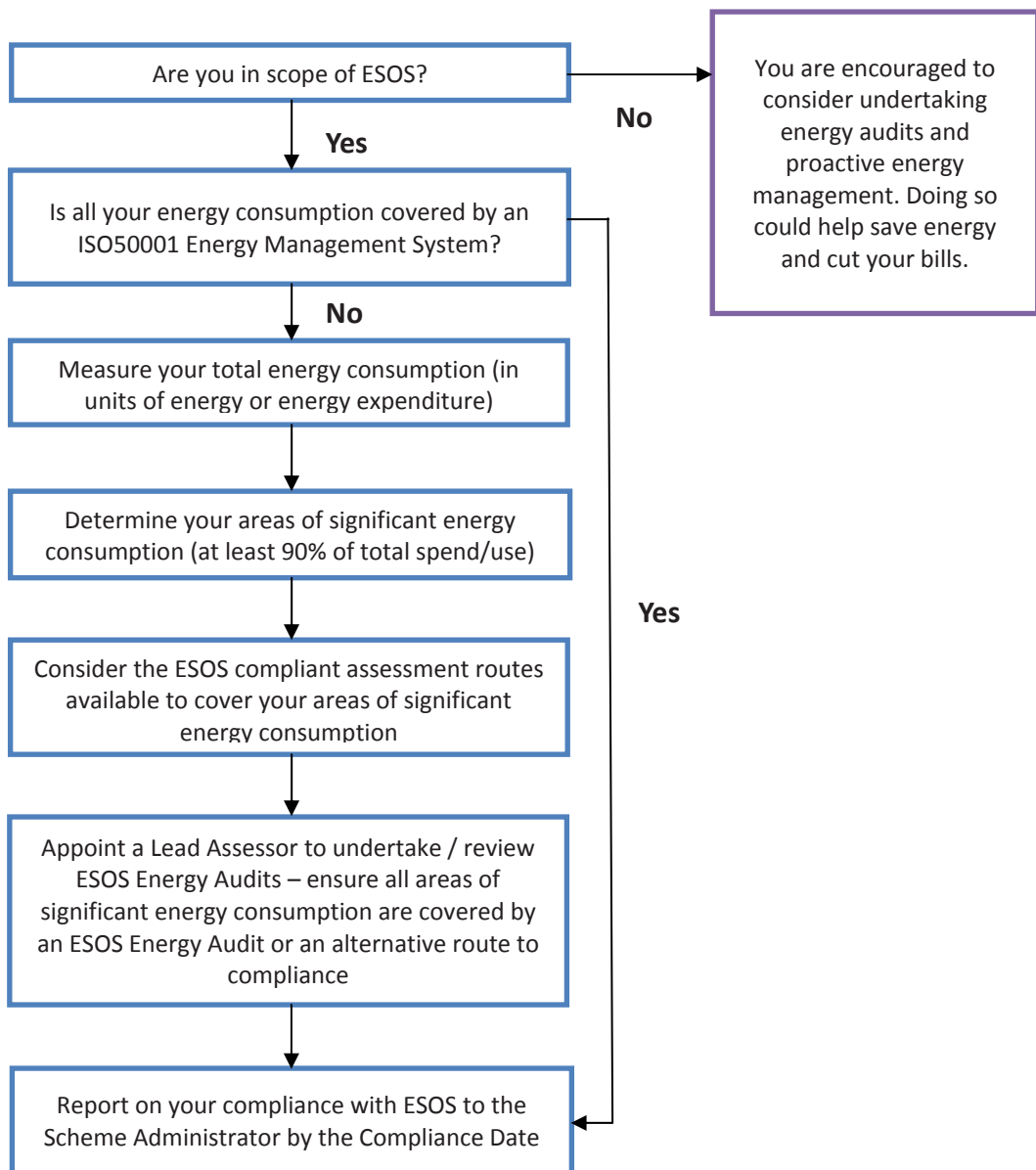
The Environment Agency, as the scheme administrator for ESOS, will maintain a list of 'approved registers', which it will make available on its website (see Question 25).

DECC expects that the list of 'approved registers' will draw on a range of existing professional qualifications/memberships as well as providing the opportunity for professional bodies to introduce new registers. We are aiming to launch the process for professional bodies to obtain approval for current registers of energy professionals by July, with a view to the Environment Agency approving the first registers of Lead Assessors later this year.

## Penalties

The scheme administrator and compliance bodies (regulators) shall have the power to impose penalties on participants that are found to be non-compliant (see Question 36).

## Key steps to complying with ESOS





## What happens next?

Some key dates relating to the launch of ESOS and the first compliance period are provided below. More information on compliance periods is provided in the section relating to consultations Questions 4 and 5.

- June 2014 – The Government Response and Guide to ESOS are published. ESOS scheme regulations come into force.
- July - December 2014 – Details of approved registers of lead ESOS assessors are published.<sup>4</sup>
- Autumn 2014 – Scheme administrator publishes detailed compliance guidance.
- 31 December 2014 – The qualification date for the first ESOS compliance period.
- 5 December 2015 – The compliance date for the first ESOS compliance period, by which time participants must notify the Environment Agency of their compliance with the scheme.

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<sup>4</sup> Publication will take place on a rolling basis as applications from professional bodies are considered and approved.

# Conducting the Consultation Exercise

## Consultation approach

On 10 July 2013, the Government published its consultation “Energy Savings Opportunity Scheme”. The consultation posed 37 questions on a range of topics, including on the architecture of the scheme, who should be included, what they should have to do and when, and who should administer the scheme.

The Government undertook a range of targeted engagement activities as follows:

- An online consultation process, allowing responses via the web or email, with the option to respond in hard copy format as preferred;
- A programme of regional stakeholder outreach events across the UK outlining the consultation proposals;
- Engagement with key stakeholders through our Expert Advisory Panel; and,
- A series of meetings with stakeholders looking at specific areas of policy.

During the consultation and policy development process, officials have met over 400 stakeholders from more than 300 organisations.

## Summary of responses

In total there were 147 responses to the consultation (listed at Appendix 1). Table 1 contains a breakdown of responses by sector.

Sector	Number of responses
Charities, NGOs and agencies	8
Energy intensive industries	15
Green Economy <sup>5</sup>	18
Hotel chains / hospitality	1
Light industry and manufacturing	13
Other primarily office based companies	16
Property / land management	6
Retail	8
Trade bodies	41
Transport	2
Universities and other bodies	5
Utilities	14
<b>Total</b>	<b>147</b>

Detailed analysis of consultation responses, undertaken by independent expert consultants, has been published alongside this Government Response, and was used to develop the Government's position.

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<sup>5</sup> The "Green Economy" category relates to environmental and energy consultancies and other professional bodies involved in this industry.

# Findings

The following sections relate to the various aspects of the Energy Savings Opportunity Scheme that were consulted on between July and October 2013. They follow the chapter structure of the consultation document. For each topic, information has been set out as follows:

- What we proposed – as set out in the consultation document '*Energy Savings Opportunity Scheme*;
- What respondents said – an overview of responses to each topic, as well as specific comments from stakeholders; and
- Government consideration and decision – our response to stakeholder feedback, including the rationale for considering or adopting particular scheme details.

# Introductory Questions

## Question 1 – Evidence to support the impact of policy options

### What we proposed

The consultation and Consultation Stage Impact Assessment outlined six high-level options for the policy, and set out the Government's assessment of the costs and benefits of these options. The options reflected the strategic choices that needed to be made in implementing the Directive.

The high level options were:

- Option 1: Survey-based assessment of uptake of ESOS Assessments to inform Government reporting to the EC and compliance monitoring.
- Option 2: Basic notification to the scheme administrator by participants to confirm they have complied.
- Option 3: Instead of reporting to a scheme administrator, require or allow participants to voluntarily make public disclosure of their compliance with ESOS.
- Option 4: Basic notification to the scheme administrator by participants to confirm their compliance, accompanied by a cost recovery mechanism to recoup the administration costs of the scheme.
- Option 5: Comprehensive reporting by participants to the scheme administrator, of their compliance and of the results of their energy audits.
- Option 6: Mandatory site audits to all participants' sites, along with production of Display Energy Certificates (DECs) for all their buildings over 250m<sup>2</sup>.

These options are discussed in more detail in Questions 28 to 33. Here, we sought evidence from consultees, on the likely impacts of the various options.

### Consultation question

*Q1. Do you have any evidence which could assist us in calculating the impact of the options set out in this consultation document and the consultation stage Impact Assessment?  
(Further detailed questions are also included in the Impact Assessment)*

### What respondents said

87 responses to this question were received. 38 of these (44%) stated that they could not provide any evidence to support the calculation of the impact of the various options. In a minority of cases, this was due to concerns regarding the sharing of commercially sensitive information.

Nine respondents provided information to help with calculating the impact of the options. For example, one energy auditor shared information on the average cost of and savings from their energy audits. A number of other reports and literature reviews were provided. Other respondents also provided information regarding the costs of climate change policies on their respective products. Eleven respondents suggested they might be able to provide specific information to help with the calculations, should it be required.

29 respondents (33%) highlighted aspects of their own experiences with energy audits that they suggested should be taken into account when considering the impacts of the policy. Many of

these focussed on the likely costs of ESOS Assessments, based on the respondents own experiences.

During the consultation process we also sought input through our Expert Stakeholder Advisory Panel and through stakeholder workshops and events, to further inform our analysis of the impact of the various options.

### **Government consideration and decision**

The evidence provided by consultees and other stakeholders has been utilised, as appropriate, to update the Impact Assessment for ESOS. A revised Impact Assessment has been published alongside this Government Response. This includes information on the methodology and assumptions used in calculating the impacts of the high-level policy options.

## **Question 2 – Territorial extent**

### **What we proposed**

The Directive applies UK-wide and requires UK-wide compliance. Given that many businesses operate across the UK, the Government proposed implementing a single UK-wide scheme to comply with Article 8(4) of the Directive.

### **Consultation question**

*Q2. Do you agree that there should be one energy audits scheme applied on a UK-wide basis, and are there any regionally specific needs that should be taken in to account for enterprises operating in England and Wales, Scotland and Northern Ireland?*

### **What respondents said**

103 out of 120 respondents (86%) agreed that the ESOS scheme should apply UK-wide (rising to 97% out of those that gave a straight 'yes' or 'no' answer). Key reasons for favouring a UK-wide scheme were that it would minimise duplication, reduce overall cost and administration and help to avoid confusion and maximise the benefits arising from the policy.

12 respondents (10%) agreed that the regional impact of ESOS could vary and that there was a need to understand regional variations.

### **Government consideration and decision**

The Government has decided to legislate for ESOS on a UK-wide basis. This approach has been agreed with the devolved administrations in Scotland, Wales and Northern Ireland.

# Organisations in scope

## Question 3 – Defining an enterprise

### What we proposed

We proposed that the definition of enterprise used in the Directive was such that ESOS would include, for example, charitable bodies engaged in an economic activity, public and private companies, charter corporations, joint ventures and partnerships. We proposed that public bodies would not meet the definition of enterprise and so would not be within scope of ESOS.

### *Corporate groups*

We proposed that corporate groups would qualify for ESOS where one or more organisation within the group is a large UK undertaking. We anticipated that the scheme would target each of the highest UK parent companies in corporate groups, so that the corporate group as a whole (i.e. including all UK undertakings within the group) would need to be subject to an energy audit.

### *Group disaggregation*

We proposed that corporate groups would be allowed to 'disaggregate', so that subsidiaries can participate in ESOS separately, provided all the undertakings with the group still participated in the scheme. We anticipated this arrangement would give corporate groups the flexibility to align ESOS compliance with existing energy management or with the management of other financial issues within groups. We proposed that corporate groups wishing to disaggregate would need to notify the scheme administrator accordingly.

### *Non-UK firms*

We proposed that non-UK entities with energy use in the UK but no corresponding UK legal entity would not be required to comply with ESOS.

### *Franchises, universities and subcontractors*

We proposed that the employees, turnover and balance sheet figures of franchisees would not be grouped together with those of franchisors in determining the size of the franchisor. Similarly we proposed not to group together university colleges, where these have separate legal entities from the university as a whole.

We also proposed that the energy use of contractors would not be considered as part of a participant's ESOS Assessment.

## Consultation question

Q3. Do you agree with this overall approach to defining the 'enterprise', and could you currently identify if you (or organisations you are familiar with) are in scope?

Specifically are you content with the approach proposed with respect to:

- a. Group enterprises
- b. Voluntary disaggregation of group enterprises
- c. Non-UK firms
- d. Franchisors
- e. Subcontractors
- f. Universities

Yes / No / Qualified Support (Please give reasoning)

## What respondents said

There was broad support for the overall approach to defining enterprise with 73% of respondents agreeing with the approach and a further 20% giving qualified support.

The proposed approach to corporate groups was supported by 92% of respondents. Some support for the approach was qualified in response to the proposal to permit voluntary disaggregation. These qualifications largely centred on the notion that disaggregation should not be used as a mechanism to avoid a duty to comply with the scheme. However, the proposal to allow voluntary disaggregation received support from 96% of respondents.

The proposed approach to non-UK organisations was supported by 86% of respondents. One respondent noted that some organisations might be registered overseas but have significant UK operations, for example, financial services institutions registered in Crown Dependencies. A number of other respondents emphasised a separate point: that energy usage outside of the UK should not fall within the scope of ESOS, as this could lead to possible double counting with schemes in place in other EU Member States.

The proposals regarding franchises were supported by 90% of respondents, with many commenting that the proposals would minimise burden.

The proposal to exclude the energy use of subcontractors from the ESOS Assessments of participants received support from 97% of respondents, though it was noted that the final policy would require clarity in terms of exactly what was meant by the terms energy use and subcontractors in this regard.

Finally, the proposal not to group together university colleges for the purposes of ESOS received support from 91% of respondents. A small number of respondents (<5) called for a universal decision on the inclusion or exclusion of universities while others noted that the exclusion of public bodies would lead to universities being included or excluded on the basis of their funding. Only two respondents expressed a preference for universities to be considered in their entirety.

## Government consideration and decision

Participation in ESOS will be mandatory for:

1. Large undertakings operating in the UK
2. Undertakings which belong to a corporate group which includes a large undertaking operating in the UK

An undertaking is defined by the Companies Act 2006 section 1161(1) as:



(a) a body corporate or partnership, or

(b) an unincorporated association carrying on a trade or business, with or without a view to profit.

It will be up to individual organisations to determine whether they qualify as an undertaking. The Government expects that the definition will include organisations that are public and private companies, partnerships, joint ventures, charitable organisations (engaged in an economic activity) and majority privately funded universities. It will also include the UK establishments of organisations based overseas (where those UK establishments include at least one large undertaking). Based on the assumption that highest parent organisations participate in ESOS together with their subsidiaries (i.e. as one undertaking), the Government expects around 9,400 participants to be within scope in the first phase of the scheme<sup>6</sup>. The section on 'corporate groups' below provides more information on this.

In line with views expressed by consultation respondents, the overseas activities of UK based undertakings will not be within scope of the scheme. There will be special rules for international transportation (see Question 14).

In determining whether they are a large undertaking, organisations shall follow the rules explained below regarding size (see Question 4).

### *Large undertakings*

A 'large undertaking' is defined as one which is (a) a body corporate or partnership, or (b) an unincorporated association carrying on a trade or business, with or without a view to profit,<sup>7</sup> and which:

- Has 250 or more employees; or
- Has fewer than 250 employees, but has an annual turnover exceeding €50m **and** a balance sheet exceeding €43m.

In determining whether they meet the financial thresholds above, undertakings should use their most recent annual financial statements ending on or before the qualification date. Sterling figures should be converted into Euros using the Bank of England Pounds Sterling – Euros spot rate prevailing on the qualification date. See

<http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp?Travel=NlxRSx&into=GBP>

### *Corporate groups*

In line with the consultation proposal, and support from consultation respondents, undertakings operating in the UK that are part of a group including a large undertaking operating in the UK at the qualification date will also be required to participate in ESOS for that phase. See Questions 4 and 5 for more information regarding the qualification date and compliance date.

The default expectation is that such undertakings will comply along with their "highest UK parent". A highest parent is an undertaking operating in the UK that does not have a parent organisation that is captured by the scheme. A highest parent group comprises this parent and its UK subsidiaries and organisations it controls.

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<sup>6</sup> See Annex I of the ESOS Final Stage Impact Assessment

<sup>7</sup> As defined by Section 1161 of the Companies Act 2006

Where an overall group has an overseas ultimate owner, with subsidiaries in the form of several highest parent groups operating in the UK, all of these highest parent groups will participate in ESOS, providing at least one of these groups includes a large UK undertaking.

Highest parent groups will alternatively have the option to disaggregate for the purposes of compliance. Disaggregation, so that undertakings within a corporate group comply separately, must be mutually agreed by the relevant undertakings. Disaggregation does not provide a route to exempt any undertakings in the group from compliance. Undertakings will qualify for ESOS if there is a large undertaking in the rest of their entire corporate group; an undertaking does not need to be part of the same sub-group (centred around a highest UK parent) as this large undertaking in order to qualify.

There may be more than one highest parent in a corporate group. In this case, the highest parents will also have the option to aggregate together for the purposes of compliance. Aggregation between highest parents (and any subsidiaries) will require the mutual consent of the highest parents.

### *Changes to structure of corporate groups after qualification for ESOS*

Where an undertaking leaves a corporate group after the qualification date but before the compliance date (see Question 4 and 5), the default position is that it must comply with ESOS separately from the former group. However, it may, by mutual consent with its former highest parent, choose to aggregate with its former group for the purposes of compliance. It may also choose to aggregate with its new group, for the purpose of compliance, providing there is mutual consent.

### *Notification as part of a corporate group*

If a number of undertakings are complying as a group, one undertaking must take responsibility for ensuring compliance and notifying this to the Environment Agency. When notifying, the participant will be required to outline:

- The name of their highest parent
- Any aggregation with other highest parent groups that have been agreed for the purposes of compliance
- Any disaggregation that has occurred, listing out the undertakings that are not complying as part of their highest parent group and the groupings by which they are complying; and,
- The total number of relevant undertakings they are notifying for.

### *Subcontractors*

In determining their size, undertakings shall not be required to consider the staff, turnover and total assets of any subcontractors.

Participants will not need to consider the energy use of subcontractors in their ESOS Assessments if they are not being supplied with this energy for use in their business.

For example, where a construction company is supplied with energy to one of its construction sites and this energy is used by subcontractors onsite as part of the overall construction project, this energy shall be in scope of the construction companies ESOS Assessment, as it is supplied to the company and used in the business of their construction onsite, albeit by a third party.

By contrast, where a company outsourced, for example, its payroll functions to an offsite external provider it would not need to include the energy use of this provider in its ESOS

Assessment; the external provider is the party supplied with energy and is using this in its business of providing payroll services.

### *Franchises*

In addition, franchisees and franchisors will be considered as separate legal entities, and will be included separately in ESOS if they exceed the qualification threshold. However, if they so wish, franchisees will be able to group together, either with other franchisees or their franchisor, for the purposes of complying with ESOS and notifying compliance.

### *Universities*

In line with the majority of responses, where university colleges are separate legal entities from the university as a whole (and therefore constitute separate undertakings) they shall not be required to group together with the university.

### *Joint ventures*

Joint ventures, where they pass the qualification thresholds, will also be required to participate in ESOS. Joint ventures will participate separately from the venture partners, reflecting the fact that no individual venture partner has control of the joint venture, and so it is not part of any one of their corporate groups.

Any UK subsidiaries of a qualifying joint venture would qualify for ESOS and a joint venture would participate as a group with these subsidiaries – with the joint venture positioned as their highest UK parent. Here, the same rules allowing disaggregation from the highest UK parent (as described above) would also apply.

### *Public bodies*

Public sector organisations will not be within scope of ESOS. Organisations shall be considered public sector organisations if they are required to comply with public contracting regulations.<sup>8</sup> This includes the contracting authorities outlined in these regulations and organisations which receive the majority of their funding from public sources.

Organisations operating with a mix of public and private funding, such as universities, will need to carefully consider whether they are within scope of ESOS.

### *Trusts*

Assets held in trust will be included in ESOS, if they qualify. This will depend on whether the organisation that is party to the agreement for the supply of energy to the assets qualifies for ESOS or not. i.e. a dominant beneficiary, alternative investment fund manager (AIFM), operator, or trustee will only be required to participate in ESOS in respect of assets held in trust if it is a large undertaking or part of a corporate group containing a large undertaking.

In most cases, where the ESOS participant is party to the energy supply agreement in relation to the assets held in trust, they will be responsible for ensuring the compliance of the trust assets

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<sup>8</sup> The Public Contracts Regulations 2006 for England, Wales and Northern Ireland and the Public Contracts (Scotland) Regulations 2012 in Scotland.

with ESOS. However, where the participant is a trustee, the responsibility will fall first to any operator or AIFM.

Where trustees or dominant beneficiaries are responsible for ensuring the compliance of trust assets with ESOS a flexibility provision will apply – i.e. the trustee or dominant beneficiary will have the option to transfer the responsibility to ensure compliance to another undertaking, by mutual consent between the parties.

A trustee, operator or AIFM participating in relation to multiple trusts will comply as a separate participant for each trust. So, for example, where an AIFM is responsible for ensuring compliance in relation to the assets of a specific trust, it shall participate separately in respect of this trust from any other trusts it is responsible for. As a relevant undertaking in its own right, the AIFM, operator or trustee will also need to participate separately in respect of its own operations.

There is an exception to this rule for dominant beneficiaries. Where a dominant beneficiary is responsible for ensuring compliance in relation to its assets held in trust (i.e. where it is party to an agreement for the supply of energy to these assets) its compliance in relation to this energy use will not be separate from its overall compliance with ESOS (unless it has allocated the responsibility in relation to the trust assets to another undertaking, in accordance with the flexibility provision described above).

## Questions 4 & 5 – Scheme timetable

### What we proposed

To determine what undertakings are required to comply with ESOS we proposed introducing a “qualification date” for each phase of the scheme. Undertakings which are in scope of ESOS as of the qualification date will be required to comply with the scheme by the compliance date for the phase.

We proposed two approaches to qualification for ESOS. The first option was for ESOS to operate in four year phases, with a qualification date on each four-year anniversary of the initial date (e.g. 1 January 2015, 1 January 2019, 1 January 2023). Participants that qualified in each phase would then be required to comply with ESOS within one year of the qualification date.

The second approach was for an annual qualification date (e.g. 1 January). Undertakings would be included in ESOS on the basis of their size at the qualification date. Participants that qualified would be required to undertake an ESOS Assessment within a year of the qualification date, unless the participant had been subject to an ESOS compliant energy audit within the last four years. Where some parts of the participant’s energy use had been subject to an ESOS compliant energy audit in the last four years, those parts could be excluded.

### Consultation question

*Q4. What do you think should be the initial ‘qualification date’ for organisations to determine if they are in scope of the scheme? For example, 1 January 2015 or 31 March 2015 (Please give reasoning).*

### What respondents said

108 responses were received to Question 4. There was no clear preference for either of the example dates suggested (1 January or 31 March 2015). Of the 74 respondents that did outline

a preferred date, 36 chose 1 January 2015, 32 chose 31 March 2015 and six put forward alternative dates.

In favour of a 1 January qualification date, respondents noted this date would give ESOS participants a suitable amount of time to confirm that they qualify for ESOS, but also provide the maximum amount of time to undertake the ESOS Assessments in 2015. In addition, it was noted that the CCA and EU ETS both have compliance periods aligned with a calendar year.

Respondents in favour a qualification date of 31 March 2015 noted that this date would give organisations the maximum amount of time to confirm they qualify for ESOS, and that this date aligns with the qualification date under the CRC. However, the CRC operates in five year phases and so, depending on whether an annual or four-yearly qualification date is adopted in ESOS (Question 5), the qualification dates of ESOS and CRC may only coincide in certain years.

35 respondents did not express a preference for either of the suggested dates. Of these, 14 suggested the qualification date should be "as early as possible" to allow the maximum possible time for enterprises to determine if they qualify and to undertake an ESOS Assessment if they do. The other respondents gave a variety of answers, with no clear preferences for specific options.

### **Government consideration and decision**

ESOS will have an initial qualification date of 31 December 2014. Undertakings will be required to assess whether they meet the qualifying criteria for ESOS at this date.

Undertakings will refer to their individual accounts, or equivalents, prepared for the last financial year ending on or before the qualification date, in considering their turnover and balance sheet assets. Undertakings shall determine the number of staff based on the number of staff in place during the financial year covered by the individual accounts, or equivalents, prepared for the last financial year ending on or before the qualification date that shall be included.

A 31 December 2014 qualification date is considered to give sufficient time for participants to complete an ESOS Assessment following confirmation of their qualification. In practice most undertakings will be able to determine whether they qualify in advance of the official qualification date (i.e. where their financial year ends before 31 December). This will allow additional time for the completion of their ESOS Assessment.

The choice of 31 December aligns with the view expressed through consultation responses for a qualification date that gives participants as much time as possible.

In addition, the period in which organisations measure their total energy data must include the qualification date (see Question 9), so that the energy use definitely relates to the ESOS obligated organisation (given that corporate structures regularly change over time).

### **Consultation question**

*Q5. Which of the following approaches do you prefer in terms of when new entrants are required to undertake ESOS Assessments?*

*A. ESOS would operate in 4 year phases. Organisations identify if they are in scope once every four years and then undertake an ESOS Assessment within a year of the qualification date.*

*B. Every year, organisations determine whether they are sufficiently large to be included in ESOS based on their size at the qualification date. If in scope, that organisation carries out an ESOS Assessment within a year of the qualification date, unless the entire organisation is covered by compliant assessment undertaken within the last four years.*

*Prefer A / Prefer B / Propose alternative / Comments (Please give reasoning)*

## What respondents said

110 responses were received to Question 5. 57 seven of these (52%) favoured option A, and 38 (35%) preferred option B, while fifteen (14%) proposed an alternative or gave another answer.

Those in favour of option A noted that requiring organisations to assess whether they qualify for ESOS only once every four years was simpler and less burdensome.

Those in favour of option B noted that annual qualification for the scheme would over time reduce the peaks in demand that may be seen with four year phases. It was also noted that annual qualification assessments would not be overly burdensome; would mean ESOS better reflected organisational changes; would help ensure all undertakings that meet the scheme qualification criteria are complying; and, would contribute to an organisational focus on energy efficiency. Some respondents also commented that annual qualification assessments could work for larger participants if a staggered approach to undertaking the ESOS Energy Audits across four years rather than within 12 months of the qualification date was allowed.

There was no general consensus on a preferred approach from those respondents proposing an alternative or giving another answer. Phases of five and three years were suggested (in line with CRC and ISO certification respectively), along with other qualification and phase/timetable suggestions.

## Government consideration and decision

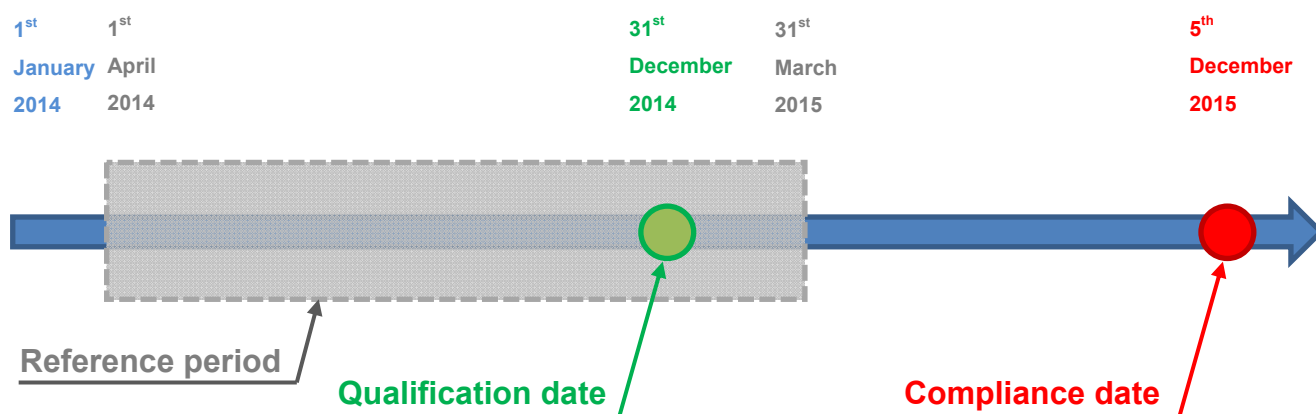
The Government considers the argument that one qualification assessment every four years (option A) is less burdensome and simpler to be persuasive. However, we recognise that some larger participants may find it difficult to complete an ESOS Assessment of the whole organisation within 12 months of this date. We also note the risk that such a system could create peaks in the energy audit market, between the ESOS qualification date and the ESOS compliance date. As such, we have made adjustments to the approach to reflect this.

ESOS will run in four year phases. The first qualification date will be 31 December 2014 (see Question 4), with subsequent qualification dates every four years following this (31 December 2018, 31 December 2022 etc.). Where an undertaking qualifies for ESOS in any phase, it must complete its ESOS Assessment by the 5 December following the qualification date i.e. 5 December 2015 in the first phase, 5 December 2019 in the second phase and so on.

To manage the risk of peaks in demand between each qualification date and the compliance date on the following 5 December, and to provide participants with as much flexibility as possible, participants will be able to consider energy audit work completed at any time within the phase (i.e. within four years prior to the compliance date) towards their compliance in that phase. For example, for the first compliance date, participants will be able to consider work completed on or after 6 December 2011 towards their compliance on 5 December 2015.

Annual qualification assessments were considered to be overly burdensome on smaller undertakings, while phases of periods other than four years were not considered suitable, given that the Directive requires energy audits to be undertaken by 5 December 2015 and once every four years thereafter.

Figure 1: Phase 1 reference period (example)



This approach enables the possibility for the demand for energy audits to be spread more evenly across phases. Nonetheless, peaks in demand – which would most likely be caused by large numbers of participants complying close to the deadline – are a possibility under any approach. The Government has considered a range of scenarios describing how in practice participants would act in order to comply with ESOS, including the timing of the estimated demand for energy audits, to assess the likelihood of the energy audit supply chain being able to meet the demand for energy audits generated by ESOS, under the chosen approach to qualification.

The Government estimates that, under an optimistic<sup>9</sup> scenario, around 700 full-time assessors would be required to meet the estimated demand for energy audits generated by ESOS; while under more pessimistic scenarios between 1,500 and 3,000 full-time assessors would be needed. For the purposes of the Final Stage Impact Assessment we use a central estimate of 1,500. Based on available evidence on the number of qualified energy professionals with skills to be able to undertake energy audits, the Government estimates that the supply chain should be able to meet the demand for energy audits generated by ESOS.

Furthermore, the Government has undertaken a sensitivity analysis to show the impact on the estimated costs and benefits of the policy if ESOS Assessments turned out to be higher than under the central estimate. The table below, which appears in the ESOS Final Stage Impact Assessment, shows that, in the event that audit costs were to double, the net present value of the policy would reduce by £164m; while business as a whole would face additional costs of £14m.

	Central audit cost assumption	50% higher assessment costs	100% higher assessment costs
<b>Estimated net present value of ESOS</b>	£1,636m	£1,554m	£1,472m
<b>Estimated annual cost to business<sup>10</sup></b>	£35m	£42m	£49m

<sup>9</sup> The detailed assumptions underpinning the various scenarios are set out on page 40 of the ESOS Final Stage Impact Assessment and are based around: the extent to which organisations disaggregate for the purposes of ESOS; the assumed proportion of in-scope already compliant with ESOS; and the timing and spread of the estimated demand for energy audits on the market.

<sup>10</sup> In 'Equivalent Annual Net Cost to Business'

# What is required?

## Question 6: Minimum requirements for ESOS

### What we proposed

We proposed that the minimum requirements for ESOS should include a review of the energy consumption of an organisation, including buildings, industrial operations and processes, and transport activities. We proposed that the ESOS Energy Audits should

- Measure energy use across the organisation, and identify areas of significant energy consumption;
- Identify energy efficiency opportunities; and,
- Evaluate and report on the cost-effectiveness of opportunities identified, including setting out the costs and benefits of each energy efficiency opportunity.

We also proposed, where practicable, that energy audits should be based on life cycle cost analysis (LCCA) instead of simple payback periods (SPP) and that participants must submit an energy intensity ratio with their ESOS report, which would measure their energy efficiency based on a self-selected ratio (see question 10).

### Consultation question

*Is our proposed interpretation of the minimum requirements for ESOS reasonable, on the basis that ESOS auditors would need to exercise professional judgment and discretion as to their application?*

### What respondents said

The proposed minimum requirements were supported by 61 out of 104 respondents (59%). Only 15 respondents (14%) disagreed with the statement, while 28 respondents gave a qualified answer.

Some respondents agreed with the proposals provided that further detail is set out in compliance guidance. Suggestions for areas where guidance should be provided included the appropriate number of site visits required for different participants. A number of respondents raised concerns about the added complexity of using life cycle cost analysis. Respondents also raised concerns about the energy intensity ratio (see Question 10).

Other respondents suggested that the minimum requirements are sufficiently flexible to ensure consistency and equity across a diverse range of participants. They recommended that the Government should ensure that auditors have appropriate competence and experience in order to support the correct interpretation of ESOS requirements.

### Government consideration and decision

In line with the majority of responses the minimum requirements for ESOS will reflect those outlined in the consultation. In response to the concerns surrounding further detail on the minimum requirements, a Guide to ESOS has been published alongside this report (see Question 7). This includes guidance on the appropriate number of site visits and practicable use



of LCCA, and on additional voluntary disclosures to the Environment Agency as ESOS Scheme Administrator. The Government intends that the Environment Agency will publish detailed compliance guidance, which will supersede the existing Guide to ESOS, on behalf of the scheme administrator by autumn 2014.

We are also working to ensure that Lead Assessors are adequately qualified and competent to assist participants in correctly interpreting the minimum requirements of ESOS (question 22 to 24).

## Question 7 – Good Practice Guidance

### What we proposed

We proposed the development of non-statutory good practice guidance, to sit alongside the ESOS regulations, to help participants understand in general terms the minimum requirements for compliance with the scheme, and opportunities to voluntarily go beyond compliance. This guidance would provide more information on conducting detailed assessments and energy audits, as well as examples and case studies and, potentially, templates for ESOS Energy Audit reports. We anticipated that the good practice guidance would be developed by the scheme administrator following key decisions on the structure of ESOS being made.

### Consultation question

*Q7. Do you support our proposals to develop good practice guidance for organisations? (Yes/No) If yes, what do you think should be included?*

- a. Minimum ESOS requirements? Yes / No*
- b. A draft template for ESOS reports? Yes / No*
- c. Best practice options? Yes / No*
- d. Anything else? (Comments)*

### What respondents said

The proposal to develop good practice guidance was supported by 115 out of 121 (95%) respondents. There was strong support (95%) for the inclusion of an explanation of ESOS minimum requirements and draft ESOS report templates. There was strong support (89%) for the inclusion of information on best practice.

Some respondents noted that the guidance should be developed with industry bodies. There were also calls from some respondents for the guidance to be developed early to allow participants to implement procedures and processes to support compliance.

Respondents also commented that the guidance should include information on how ESOS fits with other energy efficiency related schemes such as the EU Emissions Trading Scheme and the CRC Energy Efficiency Scheme. A range of existing standards, guidance documents and toolkits that the guidance should make reference to (e.g. BS EN 16247, CIBSE Guide F) were also highlighted. Several respondents suggested that the guidance should also include audit and calculation methodologies.

## Government consideration and decision

In line with the majority of consultation responses the Government has developed a Guide to ESOS which has been published alongside this document which can be found at:

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

The document includes information on how the ESOS scheme fits within the wider energy efficiency policy landscape, the minimum requirements of ESOS and further advice on how a participant could approach compliance, including references to existing standards, further guidance documents and toolkits/methodologies. It also includes draft templates for reports to participants' Boards to be made following ESOS Energy Audits.

The Government intends that the Environment Agency, as scheme administrator, will publish detailed compliance guidance for the scheme, which will supersede the existing Guide to ESOS, by autumn 2014.

## Question 8 – *De minimis* energy use

### What we proposed

We proposed that participants would be allowed to exclude a certain percentage of their energy consumption (e.g. 5%) from the requirement to undertake an energy audit under ESOS. This would enable participants to focus their energy audits on the areas and assets that consume the most energy.

### Consultation questions

*Q8. Should the Government set a legal energy spend based percentage threshold, to allow organisations to exempt energy that collectively amounts to no more than this de minimis percentage of total energy spend?*

*If yes, what percentage should this be and why? If no, what approach should be adopted to set a statutory de minimis and why?*

### What respondents said

Of the 106 respondents, eighty (75%) responded positively to this question. Only 26 (25%) responded negatively.

Those who supported the inclusion of a *de minimis* threshold noted that a requirement to assess 100% of energy consumption could lead to lower returns of audits, as participants would have to spend significant time reviewing the energy consumption of small, low-energy consumption assets and activities. Many respondents also commented that including this provision would be in line with the principle of *de minimis* in existing regulation, in particular the CRC.

A number of respondents questioned whether the *de minimis* should be based on energy spend, as this could lead to confusion with other schemes which focus on energy use, rather than energy spend data. They also noted that energy price fluctuations could lead to discrepancies between energy spend values over time.

Of those who proposed supported a specific *de minimis* threshold, 21 out of 58 were in favour of a 5% *de minimis* and twenty were in favour of a 10% *de minimis*. Ten respondents favoured less than 5% and four were in favour of more than 10%.

### Government consideration and decision

In line with the majority of consultation responses, the Government has decided to include a provision to allow participants to exclude certain energy consumption from their energy audits. This was in response to strong feedback that such an approach would avoid placing disproportionate burdens on participants while ensuring that audits realised significant energy efficiency benefits.

In light of consultation responses, the Government has decided on a *de minimis* of 10% of energy consumption.

We recognise that slightly more respondents in favour of a *de minimis* argued that this should be 5% or less. However, we agree with those respondents who argued that that this could in some cases have placed a disproportionate burden on business, rather than allowing audits to focus on the largest areas of energy usage. Participants may also choose to audit more than 90% of their energy consumption if they so wish.

In response to the mixed views regarding a *de minimis* based on energy spend data, participants will be allowed to establish their *de minimis* based on either energy spend or energy use data. This gives participants the flexibility to choose the unit that most suits them. If they have accurate data on energy consumption available, they may use that data to calculate their *de minimis* threshold. If not, participants can use data on energy spend. Participants must choose one data metric (i.e. energy spend or energy use, in kWh or equivalent) and apply it to all their energy uses and activities to determine their total energy consumption and their *de minimis*.

To calculate the *de minimis* the participant must measure their total energy consumption across 12 months (or provide a reasonable explanation in their evidence pack if a shorter time period has been used). There will be a window during which participants must undertake this measurement. See Question 9 below for more details.

## Question 9 – Calculating energy consumption

### What we proposed

We proposed that participants would be required to measure their total energy consumption and that this could be measured using energy spend data – that is, the amount the participant pays for their energy. This was proposed as all participants should know the amount they spend on energy, whereas data on energy use, particularly for small sites and activities, may be difficult to obtain and burdensome to standardise across different energy types.

We proposed a set of provisions that require participants to gather energy data for energy audits from a specific period of time, with the objective of giving clarity and flexibility to ESOS participants. We proposed that audits should be based on at least six months' worth of energy consumption data, but also proposed to encourage the use 12 months' data by requiring participants to explain their reasoning where they had used data from a period shorter than this. Finally, we proposed that participants were required to use data no older than two years old. Specifically, the data used to conduct a particular energy audit must be from within two years of the date of the audit taking place.

## Consultation question

Q9. Do you agree with the Government's proposed approach to calculating energy usage by:

a. Allowing the use of existing data sets in order to simplify compliance? (i.e. organisations can draw on data gathered over any period during the two years prior to the ESOS Assessments being conducted)?

b. Setting a minimum six month time period which energy use data should cover to inform an ESOS Assessment?

c. Promoting use of 12 months' data, with the onus on organisations to comply or explain deviations from this good practice approach?

## What respondents said

90 out of 107 respondents (84%) were in favour of our proposals regarding the calculation of energy usage, while seventeen (16%) were opposed. Numerous respondents commented positively on the flexibility in compiling data, enabling participants to use existing data sets, some of which are already collected for other schemes.

A number of respondents raised concerns about the ability to use 6 months' worth of data, noting that this could lead to an inaccurate representation of a participant's energy consumption e.g. 6 months' data would not take into account seasonal variation. They noted that 12 months' data would more fully represent a participant's activity and avoid these distortions. This feedback was also frequently heard during outreach events with stakeholders. Some respondents caveated support for the proposal on the condition that the Government require participants to explain where they have used data for a period less than 12 months, noting that this would provide flexibility where there is an insufficient amount of data.

## Government consideration and decision

### *Requirements for the measurement of total energy use*

In line with calls from a numerous respondents, participants may choose to measure energy consumption as either energy expenditure or in units of energy use (e.g. kWh). This gives participants the flexibility to choose the unit that most suits them. When calculating total energy consumption, participants must choose one data metric (i.e. energy spend or energy use, in kWh or equivalent) and apply it to all their energy uses and activities to determine their total energy consumption and their *de minimis* (see Question 8).

To identify their areas of significant energy use, ESOS participants will be required to measure their total energy consumption towards the end of the compliance period. The measurement must:

- (1) Comprise of a period of 12 consecutive months' data on energy spend or use
- (2) Begin no more than 12 months before the qualification date (i.e. must begin on or after 1 January 2014 for the first phase of ESOS)
- (3) End on or before the compliance date (i.e. end on or before 5 December 2015 for the first phase of ESOS).

Taken together, these points mean that the 12 month period over which participants measure their energy use will always include the qualification date – thereby ensuring that the ESOS Assessment relates to the structure and assets of a participant at the time of qualification.

### *Requirements for data supporting ESOS Energy Audits*

ESOS Energy Audits will need to be based on relatively recent energy data. In line with the large majority of consultation responses, the Government has decided to allow participants to use existing data sets from any period during the two years prior to the energy audit.

Participants must use a single metric (either an energy unit, such as kWh, or energy expenditure) for the purposes of determining their total energy consumption and thereby identify areas of significant energy use. Energy audits themselves (targeting the significant areas of energy use) cannot be based on expenditure, but may be based on whichever units of energy are most suitable for the area of energy use being assessed.

Following calls from numerous respondents that 12 months' data would provide a more accurate representation of participant's energy consumption, the Government will require (rather than encourage) participants to use 12 consecutive months' worth of data in their energy audits. If consecutive data of this length is unavailable, participants must explain why in their evidence pack. Failure to provide a reasonable explanation will leave the participant open to compliance procedures.

Finally, the data used for energy audits must begin no earlier than 12 months before the compliance period begins and it must not extend past the compliance date. This is to help smooth the volume of audits each year. Specifically, it is to allow participants, if they so wish, to do audits in the first year of a new phase, using data from the last year of the preceding phase – providing there is no overlap in the data used for audits in successive phases. However, the same dataset must not be used in two consecutive compliance periods, as the Energy Efficiency Directive requires a new audit each phase.

In summary the data used for energy efficiency audits must:

- (1) Comprise of a period of 12 consecutive months data on energy use
- (2) Begin no earlier than 12 months before the commencement of the compliance period (i.e. data must begin no earlier than 6 December 2010 for the first ESOS phase)
- (3) Begin no earlier than 24 months before the commencement of the first ESOS Energy Audit that the participants undertakes (e.g. for an ESOS Energy Audit undertaken on say 1 April 2015, data must begin no earlier than 1 April 2013)
- (4) Not extend beyond the compliance date (i.e. not extend beyond 5 December 2015 for the first ESOS phase)
- (5) Not be the same data as used in the audit for the previous phase, or overlap with that data

## **Question 10 – Energy Intensity Ratio**

### **What we proposed**

The Government sought views on whether to require ESOS Assessments to include a single energy intensity ratio for the participant as a whole, which could be tracked over time in subsequent audits.

The intention was to adopt a proportionate approach to the requirement in the Directive that organisations consider their 'energy consumption profile' (i.e. energy use over time). This was considered more proportionate than requiring separate profiling of each aspect of energy usage

over time, including: all buildings over a threshold size, each significant transport energy use, and every sizable industrial process.

### Consultation question

*Q10. Do you think that ESOS Assessments should include an energy intensity ratio as opposed to HMG requiring in law energy consumption profiles for all key buildings, transport and industrial processes?*

### What respondents said

79 out of 111 respondents (71%) favoured mandating the inclusion of an energy intensity ratio as an alternative to mandating detailed site-by-site energy consumption profiling.

Respondents who were opposed to the Government's proposed approach expressed concern that energy intensity ratios would not provide a meaningful tool to improve energy management.

One written response to the consultation questioned the Government's interpretation of 'consumption profile':

*"We believe that the original intention was that this should be interpreted in its everyday English sense of an analysis of the manner and use of energy, rather than the narrower sense of a review of energy consumption over time."*

This was also a view expressed by a number of stakeholders during meetings and workshops which took place during the consultation period.

In particular, a number of businesses and energy auditors considered that while energy intensity ratios could be a useful communications tool, they did not provide granular enough information to support improvements in energy efficiency. Many energy auditors and managers who engaged in consultation events and workshops were clear that some form of energy consumption profiling, of specific buildings, transport and industrial processes, would be necessary to develop energy efficiency recommendations, although they were strongly opposed to the approach outlined above of separate profiling of each aspect of energy usage.

### Government consideration and decision

The Government has concluded, based on the responses to the consultation, that it is not necessary to set out in legislation detailed requirements relating to consumption profiles for each individual site/process.

Instead, the Government intends to set out in legislation that ESOS Assessments must include a review of energy consumption profiles where appropriate and reasonably practicable. This reflects the fact consumption profiling – including analysis of demand over time and the way that is used within a particular asset (or group of assets) or process can help determine meaningful energy efficiency recommendations.<sup>11</sup>

While recognising that the majority of respondents favoured mandating for inclusion of an energy intensity ratio in ESOS Energy Audits, on balance the Government has concluded that it is not necessary to require an energy intensity ratio in order to meet the requirements of the

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<sup>11</sup> For instance, EN16247-1 ('Energy Audits Part 1: General Requirements') requires audits to include analysis of energy consumption, including patterns of energy demand over time, in order to determine energy efficiency improvement opportunities.

Directive. Therefore, the Government does not intend to require the use of energy intensity ratios as part of ESOS compliance. However, we do consider that companies can benefit from developing such ratios and would encourage them to do so where it would add value to their energy management practices.

The Government believes that this approach strikes the right balance between ensuring that the UK meets the requirements set by the Directive without placing unnecessary constraints on ESOS participants as to how they conduct their ESOS Assessments.

## Question 11 – Energy in scope

### What we proposed

We proposed that ESOS participants only include in their ESOS Assessments the energy they directly pay for or produce. i.e. a landlord would not be responsible for auditing energy paid for and consumed by a tenant.

### Consultation question

*Do you agree that ESOS Assessments should only include all significant energy use directly paid for or produced by the organisation?*

### What respondents said

The proposal that ESOS Assessments should only include all significant energy use directly paid for or produced by the participant was agreed by 92 out of 117 respondents (79%).

Many respondents suggested that ESOS should only include the energy that participants use. Respondents claimed that they were more likely to be able to measure and control the energy they consumed. A number of respondents cited situations in which it would be impractical for those who pay for energy directly to conduct an energy audit. This situation is particularly prominent in property relationships, where a landlord may pay for the bill but may not consume the energy and may have limited influence over the consumption of energy by tenants.

### Government consideration and decision

In response to feedback from respondents, and to align ESOS with similar schemes, participants will be required to include within their ESOS Assessment energy supplied to and consumed by them. This includes all energy consumed by assets held or activities carried out by the participant. It also includes energy that is self-supplied (e.g. from on-site generation) except where this is in the form of capturing and using surplus heat.

The rules regarding which energy a participant must include in the ESOS Assessment are intentionally similar to the approach adopted in the CRC – this is to provide maximum clarity and consistency for participants. However, some modifications have been applied to recognise that ESOS has a wider scope than CRC (for instance, including transport), and places different responsibilities on participants.

### *Energy to be excluded from ESOS Assessments and Energy Audits*

The Government will not require participants to assess energy they are supplied with that is not for consumption. Where metering is in place, participants should deduct any energy or fuel they supply on to another organisation from their own measurement of energy consumption. Where metering is not in place, participants may make deductions on the basis of estimations, provided these are based on verifiable inputs (i.e. inputs that can be proven and traced to a particular and objective source – e.g. an energy bill).

This will prevent fuel suppliers being responsible for conducting energy audits on fuel they supply to third parties. The Government aims to ensure that those responsible for conducting energy audits are in the best position to implement energy efficiency measures.

Participants will only be required to audit energy efficiency in relation to energy use over which they have control. This provision is to ensure, for example, that landlords are not required to conduct intrusive energy efficiency audits on the energy consumption of their tenants. However, landlords should, for example, consider the energy efficiency of a boiler used to supply heat to multiple tenants, where they have influence over the choice of boiler.

## **Question 12 – Site visits**

### **What we proposed**

We proposed that ESOS participants and auditors be given discretion as to how many site visits are undertaken as part of the overall ESOS Assessment and as part of each energy audit. A 'site' could be a building, industrial process, transport activity etc. Our understanding was that stipulating the types or number of sites required to be visited would be overly prescriptive given the diverse range of participants in the scheme.

### **Consultation question**

*Do you agree that ESOS auditors should be given discretion as to the number of site visits they undertake as part of an audit?*

### **What respondents said**

The proposal to give discretion on the number of site visits was supported 96 out of 114 respondents (84%).

Of those in favour, 20 respondents commented that it would be acceptable for auditors to be given discretion as to the number of site visits if there were given guidance during their certification process or elsewhere.

Of those in favour, 14 out of 94 respondents also commented that a limit should be placed on the number of site visits conducted. It was suggested that this would limit the cost of the assessments by preventing participants from conducting an unnecessary number of visits.

### **Government consideration and decision**

In the Consultation Stage Impact Assessment, the Government estimated the costs and benefits of an option which included mandatory site visits for all energy audits. In practice, many organisations, particularly those with largely homogenous sites, will require relatively few site



visits as the relevant information will be easy for the assessor to obtain, reducing the cost of an ESOS Assessment. The Government estimated that the audit costs could be as much as six times greater under an option which required mandatory site visits compared to an option which gives auditors discretion to agree with the participant the appropriate number of site visits to conduct.

In line with the majority of consultation responses the Government considers it appropriate to allow auditors discretion to agree with the participant the appropriate number of site visits they conduct as part of ESOS Energy Audits. The Government does not intend to place a minimum requirement on the number of site visits as this approach may be overly burdensome, especially for participants with a small number of sites.

Following the calls from some respondents that auditors are given guidance on the appropriate number of site visits, broad guidance on this is included in the Guide to ESOS (see Question 7). This outlines the factors that should be considered when determining the appropriate number of site visits as part of an overall ESOS Assessment or individual energy audit.

### Question 13 – Green Deal assessments and Display Energy Certificates

Information on the consultation proposals, respondents' views and Government consideration and decision in relation to Question 13, has been grouped together with Questions 18 to 20 (see below).

### Question 14 – International transportation

#### What we proposed

The consultation noted that the Directive includes all energy use from transport. . As such, energy use from international aviation and shipping is not exempt from the scope of energy audits, including energy use from international aviation or shipping from the scope of energy audits. As such, the Government consulted on three possible approaches for including this energy use in the scheme, as laid out in the consultation question below.

We noted that Approach A would align most closely to the general proposal that participants must audit energy that they directly pay for; Approach B would align most closely with the approach to international aviation under EU ETS; while, Approach C would offer the most comprehensive coverage of energy use.

#### Consultation question

*Q14. With respect to transport, which one of the following approaches should be adopted in relation to international aviation and/or shipping:*

- a. All fuels purchased within the UK should be considered within scope of ESOS*
- b. Energy usage of all flights/shipping departing the UK should be considered within scope of ESOS*
- c. All fuels purchased anywhere in the world should be considered within scope of ESOS*

*Prefer A / Prefer B / Prefer C / prefer different approaches for aviation and shipping / prefer an alternative approach (Please give reasoning)*

## What respondents said

56 of 87 (64%) responses favoured option A, while three (3%) preferred option B and fifteen (17%) preferred option C. 13 respondents (15% of the total) suggested an alternative. The responses from representative trade bodies (18 for A, one for C and one for an alternative) also indicated the overall preference for option A. A number of responses in favour of option A noted it was a simpler approach. A number of respondents noted that various options might entail overlap with other schemes, particularly if the same journeys were captured by different Member States' schemes.

Responses in favour of option B noted that it represented a sensible proportion of their business and/or would be easy to calculate. Responses in favour of option C noted it reduced opportunities for gaming by purchasing fuels overseas.

Some respondents questioned the proposed inclusion of transport within the scheme. More specifically, the inclusion of shipping was queried, on the basis of overlap with other planned European legislation (focussing on monitoring reporting and verification of carbon emissions from EU shipping).

## Government consideration and decision

Direct engagement with shipping and aviation stakeholders helped to further inform this policy decision, as few airlines / shipping firms responded to the consultation. In aviation, it was noted that the EU Emissions Trading Scheme, which includes the UK, currently requires airlines to measure emissions for all intra-European Economic Area flights, from the point of departure. It was also noted that the aviation industry already monitors fuel use, on the basis of fuel used in journeys rather than on the basis of location of fuel use.

The possibility of an energy audit including energy use based on the location of fuel purchase (i.e. including fuel bought in the UK) was considered burdensome by both the shipping and aviation industries. Such an approach would require the determination of where specific units of fuel were bought. Moreover, it would also require the use of a series of rules to nominally allocate fuel purchased to fuel use, in order to determine which flights / ship movements to audit for energy efficiency – adding unnecessary complexity.

A system based on the geographical location of the start of journeys was therefore felt to better align to existing policies and be more practical. However, it was noted that there may be energy efficiency opportunities in relation to both departures and arrivals into the UK (that is, at both ends of journeys). The Government does not consider this to create an undue risk of overlap with other Member State schemes set up in response to the Directive, since only undertakings operating in the UK are included in ESOS.

As such, participants will be required to measure at least the energy consumption for journeys that begin and/or end in the UK in measuring the undertaking's total energy consumption (see Question 9 for more details on measuring energy use). This applies where the participants (e.g. airlines and shipping companies) are supplied fuel, rather than where the participant buys airline / shipping tickets. For example, a participant that pays for a shipping service to be provided by another company won't need to consider this energy use. Instead, the shipping company, which uses this energy in its business of providing a shipping service, must consider the energy use. Similarly, participants will not need to attribute energy use to airline tickets purchased. Rather, airlines that are within scope of ESOS will be responsible for measuring their own energy use.

Where, to reduce administrative burdens (or for any other reason), participants measuring energy use in international aviation and shipping choose to include additional journeys in their measurement of energy consumption (e.g. an airline measures fuel use from all its flights globally), they will be required to base their identification of areas of significant energy use on

this larger measurement (see Question 8 for more information on the identification of areas of significant energy use).

The decision to include, as a minimum, energy consumed in journeys that begin and/or end in the UK, reflects the Government's consideration that it is these journeys over which the UK can reasonably exert authority, since they involve UK ports/airports.

The approach, however, allows participants to measure more than strictly required if they prefer (e.g. because it is administratively easier), whilst also ensuring that the level of energy auditing they must undertake increases in line with their increased measurement. This option to include non-UK energy use applies only to energy used in international aviation and shipping.

Participants will have similar flexibility in relation to international road and rail transportation. Here, participants will be required to measure at least all the energy consumed in the portion of journeys that takes place in the UK. Again, a participant may choose to measure additional energy use (for example, of the portion of journeys taking place outside the UK, or of journeys that take place wholly outside the UK), but they must then identify their areas of significant energy use based on this total measured energy use.

## Questions 15 & 16 – Transport

### What we proposed

We proposed that any transport fleet that has been audited in the four years prior to December 2015, for example through a Green Fleet review, could be exempted from the requirement for an energy audit in the first compliance phase. Going forward, it was proposed that participants would need to ensure that their transport function continued to be audited at least once every four years, unless it fell below the scheme *de minimis*.

We proposed that the use, by staff, of personal vehicles on behalf of participants, where this is billed for on business expenses, should be considered within scope of ESOS. However, it was not proposed that any flight, train, ship, bus tickets or taxi receipts billed on expenses by staff should be included with the scope of ESOS, since the participant would not control the energy performance of the transport company and would not be directly paying for the energy use, but rather for a transportation service. In addition, we proposed that energy use in commuting should be excluded from the scope of ESOS, since this is the responsibility of the individual not the participant.

Finally, we proposed that the good practice guidance should encourage ESOS auditors to give recommendations to improve transport energy efficiency, for example by re-moding travel or increasing video-conferencing, where possible, in order to promote the advantages of going beyond the minimum requirements of ESOS in this regard.

### Consultation question

*Q15. With respect to transport, should an organisation's vehicle fleet be deemed to have undertaken the equivalent of an ESOS Assessment if it has been subject to a Green Fleet review conducted within four years prior to the energy audit deadline, and are there other reviews similar to Green Fleet reviews that should also be considered?*

*Yes / No / Comments (please give reasoning)*

## What respondents said

65 out of 74 responses (88%) to this question supported the proposal that vehicle fleet subject to a Green Fleet review conducted within the four years prior to the compliance date should be deemed audited for the purposes of that phase. Respondents noted this would reduce the burden on and increase the flexibility for participants and would promote the uptake of Green Fleet reviews.

Other respondents suggested that other schemes, such as membership to the Fleet Transport Association Logistics Carbon Reduction Scheme (LCRS), should be considered as alternatives to an ESOS Energy Audit in the same way as a Green Fleet review.

Those opposed to the proposal noted that the scope of a Green Fleet review is insufficient to cover the ESOS requirements, as it doesn't consider energy consumption of vehicles. Furthermore, it was noted that Green Fleet reviews are only available for vehicles in England and do not cover vehicles that weigh more than 3.5 tonnes.

## Government consideration and decision

Although the majority of respondents favoured the inclusion of Green Fleet reviews in the scheme as a route to compliance, the Government has decided not to provide specifically for Green Fleet reviews to be regarded as equivalent to an ESOS Energy Audit of the vehicle fleet. Instead, as with other energy audit schemes (see Question 20), the ESOS Lead Assessor will be able to consider audit work undertaken as part of a Green Fleet review (if conducted within the four years prior to the compliance date) and take it into account for the purposes of ESOS compliance. This will also apply to work undertaken under other energy audit and assessment schemes, such as the LCRS. This is intended to address concerns that Green Fleet Reviews may not always be of sufficient scope to comply with ESOS, while still allowing them to be used to support compliance where they meet the minimum requirements set by the scheme.

This approach is seen by the Government as maximising flexibility, while also allowing Lead Assessors to assess on a case-by-case basis whether the auditing work carried out complies with the minimum standards required for ESOS. This would fall under the Lead Assessor's "review" function (see Question 23 for more details).

## Consultation question

*Q16. With respect to transport, do you agree with our proposed approach to employee travel on company business?*

- a. That 'grey fleet' should be included within the scope of ESOS;*
- b. That travel purchased via contractual arrangements (e.g. train tickets) should not be included as a minimum requirement for ESOS;*
- c. That commuting should not be included within scope of ESOS; and,*
- d. That good practice guidance should promote the advantages of going beyond the minimum requirements of ESOS*

*Yes / No / Comments (please give reasoning)*

## What respondents said

65 out of 90 (72%) responses supported the overall approach to employee travel on company business outlined in the consultation. Respondents that expressed a lack of support for the overall approach generally provided comments in opposition to one or more of the specific propositions.

72 out of 94 (77%) responses to part A of this question supported the inclusion of the energy use of private vehicles where used for business purposes (“grey fleet”). Those in support noted that grey fleet travel is extensive and it is not covered by any other policy, and would therefore add significant value if included within ESOS. Those against noted that the inclusion of grey fleet would add significant administrative burden.

The proposals to parts B, C and D to the question received strong support from respondents (90%, 97% and 96% respectively).

### **Government consideration and decision**

The energy use of company cars and company fleet vehicles will also be within scope of ESOS where that energy is consumed in relation to the business of the participant ((e.g. where car use is claimed for on business expenses).

Similarly, the energy use of a participant’s grey fleet will be considered within scope of ESOS, insofar as it relates to the business of the participant. This reflects the significant potential efficiency gains that respondents noted could be possible in this area. The inclusion of grey fleet energy is also consistent with the general rule regarding which energy use should be included within ESOS (see Question 11) since a supply of energy (vehicle fuel) is being made to a representative of the participant for use in its business.

To reduce the administrative burden associated with measuring the energy use of grey fleet and company fleet vehicles, participants will not be required to measure this energy use exactly, but may instead make reasonable estimations based on verifiable inputs (e.g. mileage) and a general conversion factor (e.g. energy use per mile). The Guide to ESOS will provide more information on how to go beyond these minimum requirements and estimate vehicle energy use more accurately (see Question 7).

Where vehicle energy use comprises only a small portion of total energy use it can be allocated to the overall *de minimis* and no audit work need be undertaken. See Question 8 for more information on the *de minimis*.

As proposed in the consultation, the energy use of staff commuting to and from work and from travel on company business that is purchased through contractual arrangements for transport services, such as a train ticket, shall not be included within the scope of ESOS.

## **Question 17 – Industrial processes**

### **What we proposed**

We proposed that ESOS Assessments should include energy from industrial processes, including waste heat recycling and the use of process waste as fuel. This was in order to ensure that all energy consumption was included in the ESOS Assessment and that energy audits would reflect any energy efficiency gains already made through such measures.

### **Consultation question**

*Q17. With respect to industrial processes, should ESOS Assessments cover all energy use, including waste heat recycling and use of process waste as fuel?*

## What respondents said

The proposal to include all energy use from industrial processes within the scope of ESOS Assessment was supported by 84 out of 107 respondents (79%).

A number of comments were given supporting the inclusion of waste heat recycling citing that it represents a significant opportunity for the improvement of industrial efficiency and that therefore it is vital that it is considered in ESOS Assessments. Respondents also commented that industrial processes were included in the CRC scheme and that ESOS requirements should align with this.

A total of 23 respondents (21%) disagreed with the proposal. Of those who disagreed, some questioned the cost effectiveness and practicality of the measurements that would be required. Several respondents suggested the measurement of waste heat would be costly for business and could lead to inaccurate measurement. Other respondents highlighted that measuring waste heat would amount to double accounting and would restrict the reward of implementing further energy efficiency production measures.

## Government consideration and decision

In line with the majority of consultation responses energy use in industrial processes will be included in ESOS Assessments. This is in accordance with the Directive which states that all energy consumption should be included in assessments.

A number of respondents cited concerns regarding the cost-effectiveness and practicality of measurement of waste heat. Where energy is generated as a by-product of an industrial activity and subsequently used by the participant they will not be required to include this energy within the scope of their ESOS Assessment. As such, the challenges of measuring waste heat generated as a by-product of industrial activities are not relevant.

Participants will be required to measure heat that is supplied to them by a third party. Here, the supply arrangements should yield information that the participant can use in calculating their total energy use as part of ESOS.

In practice, for many participants direct supplies of heat will not be an area of significant energy consumption. In addition, in the case that accurate measurement of the heat supplied is impossible, participants may provide estimates, provided they are based on verifiable data (i.e. inputs that can be proven and traced to a particular and objective source – e.g. a meter reading) and provided that participants record and evidence these estimations within their evidence packs. Guidance on the appropriate use of estimates is included in the Guide to ESOS (see Question 7) which has been published alongside this Government Response.

## Questions 13 & 18 to 20 – Alternative routes to compliance

### What we proposed

In our consultation we proposed potentially allowing energy audits available through other schemes to act, where appropriate, as alternatives to a separate ESOS Energy Audit for the purposes of ESOS compliance. Our rationale was that this could provide businesses with additional flexibility. Question 15 above outlines the approach to be taken to already available transport review schemes.

For buildings, we proposed that for participants with energy use from buildings, audits to obtain a Display Energy Certificates (DECs) or qualifying Green Deal assessments would be allowed

as an alternative route to compliance for those buildings they cover, provided the relevant audit/assessment is conducted within the compliance period and the certificate/assessment is still valid at the compliance date.

With regard to organisational energy management systems and existing energy auditing programs, in line with the Directive, we proposed that any participant with a current EN ISO50001 (energy management system) certificate would be deemed in compliance with ESOS for the operations covered by the certificate. Any energy audit certified via a UKAS approved certification body as carried out to EN16247 (standard of energy audits) could also potentially be deemed ESOS compliant.

Similarly, we proposed that participants with a current ISO14001 (Environmental Management System) certificate could potentially be deemed in compliance with ESOS for the operations covered by the certificate, providing the environmental management system included energy audits that met the minimum requirements of the Directive. We proposed to work with the UK Accreditation Service (UKAS) and UK certifiers of ISO14001 to develop a certification standard for ISO14001 Environmental Management Systems that would include a requirement for such energy audits (see Question 34).

We also proposed that the scheme administrator would have an on-going responsibility to consider whether any other European or international standards have evolved sufficiently to count as additional exemptions from ESOS.

The consultation also recognised that other initiatives that provide audits of the minimum standard required by the Directive may already be in place, such as the UK Carbon Trust Standard. It was proposed that the scheme administrator would have a responsibility to determine the initiatives that met the minimum requirements of the Directive. Providing, for example, that the Carbon Trust Standard was deemed to meet the minimum requirements, participants that were compliant with that standard and continue to be so up until December 2015 would be deemed in compliance with ESOS in the first phase.

The approach to the Carbon Trust Standard and other such initiatives was proposed as a transitional arrangement. The consultation proposed that, after December 2015, it would be up to the Carbon Trust and other promoters of domestic initiatives to ensure their auditors met the level of competence required to conduct ESOS Assessments and were appropriately certified (see Questions 22 and 25 for more information on auditor qualifications and certification).

### **Consultation question**

*Q13. With respect to buildings, do you agree that where an organisation has installed DECAs or chooses to comply by undertaking Green Deal assessments for some or all of its buildings within the past four years, those buildings should not need to have an ESOS Assessment conducted too in order to comply with the requirements of the Directive?*

*Yes / No / Comments (Please give reasoning)*

### **What respondents said**

65 out of 106 respondents (61%) supported the proposed recognition of DECAs and Green Deal assessments as an alternative route to compliance in ESOS. It was noted that this approach minimised duplication and may support the roll out of DECAs in the private sector and the uptake of Green Deal assessments.

Some respondents commented that, to be acceptable as alternative routes to compliance, DECAs and Green Deal assessments should be required to meet the minimum requirements of ESOS Energy Audits in terms of data used and detail provided. Some felt one or both were

likely to be too simplistic and to not offer tailored and specific energy efficiency recommendations. In addition, some respondents noted that DEC and the Green Deal were based on nominal energy consumption, with calculations depending on the building size and type, rather than using measured energy consumption to inform recommendations.

### **Government consideration and decision**

The Government considers that DEC and Green Deal assessments do meet the minimum standard required by the Directive and they will therefore be considered ESOS compliant.<sup>12</sup>

Participants that have undertaken DEC assessments (and been issued with a recommendation report) or Green Deal assessments in the four year period leading up to a compliance date will not need to reassess these buildings for the purposes of ESOS compliance. This will avoid duplication, allow participants flexibility in terms of how they choose to comply with ESOS and drive uptake of DECs and Green Deal assessments.

While the Government notes concerns about the data used in DECs and Green Deal assessments raised by some respondents, the comments received are relevant only to domestic Green Deal assessments, whereas it is non-domestic Green Deal assessments that would be more relevant to ESOS participants. The non-domestic Green Deal is at an early stage of development and as such recognising it as an alternative route to ESOS compliance is intended as a means of future-proofing the scheme and encouraging links between the two schemes.

### **Consultation question**

*Q18. With respect to industrial processes, are there any specific issues that you wish to raise in relation to implementing the requirement to conduct ESOS Assessments, including with regards to the overlap with existing schemes?*

*Yes (please give reasoning) / No*

### **What respondents said**

There were 97 responses to this question, 68 of which raised issues, which mainly focussed on the overlap with existing policies, including Climate Change Agreements (CCAs), the EU Emissions Trading Scheme (EU ETS), the CRC Energy Efficiency Scheme (CRC), Green House Gas (GHG) reporting requirements and Integrated Pollution Prevention and Control licensing. In particular, some respondents suggested that if a participant has activities that are covered by CRC or EU ETS these activities should not require energy audits under ESOS. It was suggested by some respondents that the success of other schemes in improving energy efficiency would mean that ESOS could add little value in this regard.

Respondents noted that aligning as far as possible with the measuring and reporting required under other schemes would greatly reduce the burden on participants of complying with ESOS.

### **Government consideration and decision**

The Government wishes to align as closely as possible with the requirements of other schemes in order to reduce burden, and has taken a number of steps to achieve this. This includes

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<sup>12</sup> DECs are not available in Scotland and Green Deal assessments are not available in Northern Ireland.



allowing participants flexibility over when they measure energy use for the purposes of ESOS, so that this measurement can be aligned with that being undertaken for other schemes. Participants will be required to measure their energy use across a period of 12 months but will have a longer time period, or 'window', in which to do so (see Question 9). This will allow participants significant opportunity to align measurement of energy use under ESOS with their responsibilities under other schemes. See Question 9 for more information on the requirements for participants to measure energy use.

The suggestion by some respondents that activities covered by existing schemes should be wholly exempted from ESOS is not permissible under the Directive. The requirement of the Directive to use recent energy data to identify cost-effective measures to increase energy efficiency across the participant as a whole, is not a requirement of these existing schemes. As such, there is no firm basis for the Government to automatically exempt all energy use covered by these schemes. However, if a participant is in practice measuring energy use and identifying energy efficiency recommendations as required by ESOS under an existing scheme, then the ESOS Lead Assessor will be able to assess whether this meets the minimum requirements of the scheme. If this is the case then there would be no need to repeat an energy audit covering the same energy use.

### Consultation question

*Q19. In addition to ISO50001 and ISO14001 (where it includes an energy audit), are there any other EU / international management systems which you think should also provide an 'exemption' (i.e. an alternative compliance route)? If answering this question with any proposed additional EMSs, please provide evidence of why you think they would meet the minimum audits standard set by the Directive*

### What respondents said

90 consultation respondents (61% of the total) provided written responses to this question. Of those, 25 recommended other energy management systems that should be recognised by ESOS, including the Carbon Trust Standard, ISO standards (other than ISO50001 and ISO14001), the EU Eco-Management and Audit Scheme (EMAS) and the Certified Emissions Measurement and Reduction Scheme (CEMARS). A common theme of many responses was that it should be only those standards which specifically require the monitoring of energy consumption and completion of energy audits that should be acceptable as alternative routes to compliance with ESOS.

38 respondents also commented on the proposals regarding ISO50001 and ISO14001 (with energy audits) as alternative routes to compliance with ESOS. Of these, 35 (92%) were in general agreement with the proposals, though it was noted that ISO14001 should provide an alternative only as long as it incorporates effective energy audits.

### Government consideration and decision

In the line with the Directive and as supported by consultation responses, the Government believes ISO50001 certification to be a suitable alternative to an ESOS Energy Audit. As such, certification to this standard shall provide an alternative route to compliance with ESOS – providing the certification took place within the compliance phase and is still valid at the compliance date of the phase (see Question 5 for more information on compliance phases).

Where certification to the ISO50001 standard covers the entire participant (at the time of certification), this shall be sufficient for the participant to comply with ESOS in that phase, provided the certification is still valid at the compliance date. That is, such certification shall be

the equivalent to completing a full ESOS Assessment. In such cases the participant will not need to use an ESOS auditor to validate their ESOS compliance.

Where the certification covers only part of a participant's business (e.g. covering only one subsidiary of the participant, or only one site) and therefore only part of its energy use, there will remain a requirement for an ESOS Lead Assessor to validate whether the system addresses sufficient energy use to constitute compliance with ESOS. Where there are significant areas of energy use (i.e. energy use too great to be allocated to the *de minimis*) not covered by the certification these will need to be subject to an ESOS-compliant energy audit for the participant to be in compliance.

If a participant acquires new assets or starts new energy consuming operations after certification, recertification will not be required, provided that these new assets/operations are included within scope of the certified system. So, if a company has a building that has an ISO50001 certified energy management system and buys new energy consuming assets for this building, for example new IT servers, this will not create a requirement to recertify. However, if the participant acquired a wholly new building, site or subsidiary outside of the scope of the existing certified management system, or if the servers were installed outside the scope of this system, such new energy use would need to be audited or attributed to the *de minimis*.

After further consideration of the costs and benefits of doing so, the Government does not now intend to develop an additional standard to allow compliance via an ISO14001 standard Environmental Management System combined with energy audits. Since the Directive requires that these energy audits would have to meet the same minimum standards as ESOS Energy Audits, this route to compliance would effectively mirror that for the scheme overall. As such, the Government does not believe that the development of such a standard would increase flexibility for businesses in complying with ESOS. In addition, creating this standard and adding an additional route to compliance with ESOS increases the overall complexity of the scheme and increases the burden on business in determining how to comply.

Regarding energy audits carried out to the EN16247 standard, where the ESOS Lead Assessor judges that this work meets the minimum required standard for ESOS Energy Audits it may be counted towards compliance (see Question 20).

### Consultation question

*Q20. Do you agree with the proposed transitional arrangements to consider whether certain existing UK schemes can be deemed compliant with the Directive's requirements for audits conducted in 2015?*

*In particular,*

*a. Do you think the Carbon Trust Standard meets the minimum audits criteria set in the Directive?*

*b. And are there any other UK initiatives that you think should be deemed to be compliant for audits conducted in December 2015?*

*Yes / No / Comments (Please give reasoning)*

### What respondents said

81 out of 114 (71%) respondents agreed with the overall proposals for transitional arrangements outlined above. 63 of 92 respondents to part A (68%) agreed that a participant that has obtained the Carbon Trust Standard should be deemed to have met the minimum requirements of the Directive. Respondents in support of this approach noted that it would avoid

duplication and increase cost effectiveness. Many also commented that the Carbon Trust Standard was a robust and well established scheme.

However, it was noted by some respondents that the Carbon Trust Standard does not require auditors to provide advice on energy efficiency recommendations and in some cases does not require an energy audit. As such, its attainment does not guarantee the full requirements of an ESOS Energy Audit have been met. Other respondents noted the Carbon Trust Standard goes beyond the requirements of ESOS, in that it requires year-on-year improvements. Furthermore, respondents pointed out that the Carbon Trust Standard is a commercial product (owned by the Carbon Trust) and as such subject to change due to commercial pressures.

41 responses were received for part B. 13 of these suggested there were no other UK initiatives that should be deemed to have provided compliant audits for the purpose of ESOS' December 2015 compliance date.

28 respondents suggested other initiatives that should contribute towards ESOS compliance in the first phase including continuous emissions management systems (CEMS) (suggested by 10 respondents), ISO standards (five respondents), CRC (three respondents), CCAs (three respondents) and a number of other assessments (such as the Building Research Establishment Environmental Assessment Methodology) and schemes backed by legislation (e.g. Green Deal, EU ETS) which were each suggested by a small number of respondents.

### Government consideration and decision

In addition to using DECAs, Green Deal assessments and ISO50001 certification as alternative routes to compliance (see Questions 13 and 19 above), the Government has decided that ESOS Lead Assessors will also be able to make an assessment of work carried out under other schemes on a case-by-case basis and count this work towards ESOS compliance as appropriate. As such, where the Lead Assessor is able to conclude, after review or verification of results and methodology, that work carried out in relation to other schemes is sufficient in scope, timing and quality to meet the minimum requirements of an ESOS Energy Audit, that work may be counted towards ESOS compliance. The Government believes that this flexible approach provides for minimal duplication of effort and a reduced burden on participants, but also safeguards the overall standard of the ESOS scheme and compliance with the requirements of the Directive. See Question 18 for more information on how the ESOS scheme provides for alignment with various other Government schemes and reporting requirements.

As such, work to achieve initiatives such as the Carbon Trust Standard may be used to support ESOS compliance if conducted to the minimum standards for ESOS Energy Audits. However, DECC does not intend to give these initiatives a privileged position in legislation. This is to mitigate the risk that different initiatives could be of varying quality and their application might not meet the minimum standards required by the Directive. This could risk the integrity of the UK's compliance with the Directive, and lead to a 'race to the bottom' in terms of the quality of audits.

Figure 2: Covering all areas of significant energy consumption via a combination of compliance routes



# Who can conduct an ESOS Energy Audit?

## Questions 21 to 26 – ESOS Lead Assessors

### What we proposed

The Directive requires that Article 8(4) compliant energy audits be undertaken by suitably qualified and/or accredited experts. The Government proposed requiring that all ESOS Assessments should have a suitably qualified 'Lead Assessor', and set out two different options for meeting this requirement:

- a. Accreditation of Lead Assessors through UKAS approved certification bodies
- b. Requiring ESOS auditors to belong to registers approved by the scheme administrator and managed by professional bodies.

The Government also sought views on the capacity of the market to respond to the demand that will be generated by ESOS by December 2015.

In the consultation, the Government stated its intention to develop a new Publicly Available Specification (PAS) setting out the level of competence required for Lead Assessors under ESOS. This PAS, known as PAS 51215 (Energy assessment – Competency of a lead energy assessor – Specification) was subject to a separate public consultation (undertaken by BSI) which ran from December 2013 to January 2014. The PAS is now publicly available from BSI and copies can be purchased here: <http://shop.bsigroup.com/>

### Consultation question

*Q21. Is there sufficient capacity within the energy efficiency advice sector to meet the demand that will be generated by ESOS, and particularly to ensure all organisations are able to conduct assessments by December 2015?*

*If no, what further steps need to be taken to generate that capacity:*

- a. By industry and professional bodies?*
- b. By the Government?*

### What respondents said

There were mixed views as to current levels of capacity in the market to respond to ESOS. 41% of respondents answered that there was already sufficient capacity in the market, with 31% responding negatively and the remainder giving qualified answers.

Those who responded positively highlighted that there were already a range of qualified auditors already trained to standards developed by organisations such as CIBSE, the Energy Institute and/or other bodies.

Respondents expressed concerns about the short timescale for delivering ESOS Assessments by December 2015, and emphasised the need for a streamlined accreditation/qualification route to ensure auditors were qualified early enough to allow businesses to meet this timescale.

Respondents also expressed concern that the four-year cycle for conducting energy audits could lead to peaks and troughs in demand which the market might struggle to respond to.

### **Government consideration and decision**

The Government recognises the challenge of delivering a sufficient number of quality ESOS Assessments by December 2015, and of the potential problems in demand that could occur from a four-year auditing cycle.

To address this, ESOS is intended to maximise flexibility for participants and to help ensure that ESOS Lead Assessors are able to respond to demand. In particular regulations will allow the following:

- a. For participants to conduct ESOS Energy Audits at any point throughout each phase (although they must calculate their total energy consumption in the last year of each phase); and,
- b. For qualified ESOS auditors to provide external verification of audits conducted in-house. This means that a Lead Assessor may review work undertaken by others who carry out energy audits to the necessary standards of ESOS but who are not formally qualified as Lead Assessors.

The Government will also adopt the 'scheme administrator' route to qualification for Lead Assessors, outlined in more detail below, on the grounds that the majority of respondents have stated that this is a lighter-touch and quicker route to ensuring a sizeable pool of qualified ESOS Lead Assessors.

### **Consultation question**

*Q22. Are there existing industry specific qualifications / standards which we should take account of in developing an ESOS auditors PAS specification?*

### **What respondents said**

81% of respondents to this question identified specific standards which could be taken into account in developing PAS 51215. These included:

- Energy Institute's Chartered Energy Manager Status
- CIBSE's registers of Low Carbon Consultants and Low Carbon Energy Auditors
- Standard BS EN 16247
- Chartered Institution of Building Services Engineers
- Membership with Register of Professional Energy Consultants (RPEC)
- Green Deal Qualification
- ISO standards (E.g. ISO 50001, ISO 50002, ISO 50003 and ISO 40001)
- Chartered Environmentalist status
- IEMA's environmental auditor scheme
- National Occupational Specifications for Energy Auditors
- Certified Energy Manager / Certified Energy Auditor status (developed by the Association of Energy Engineers)

### **Government consideration and decision**

The Government commissioned the British Standards Institute (BSI), the UK's national standards body, to develop PAS 51215 to set the level of competence for lead ESOS auditors. The Government worked with BSI to agree a steering committee for PAS 51215 which included

representatives from a number of the organisations mentioned by consultation respondents, including the Energy Institute, IEMA, CIBSE, and Asset Skills, as well as representatives from industry. The intention in developing PAS 51215 was to agree a common consensus with industry for the level of competence of ESOS auditors, which could provide a benchmark against which to assess the qualifications referred to by respondents.

BSI has now published PAS 51215; the Government has decided that this will be the level of competence required of ESOS Lead Assessors. The Environment Agency will be responsible for approving registers of individuals who demonstrate this level of competence, and which are maintained by professional bodies, rather than individual auditors being required to benchmark themselves separately against the PAS (see question 25 for more detail on this).

### Consultation question

*Q23. Do you agree with the Government's proposals on lead ESOS auditors:*

- a. That a 'Lead Assessor' should sign off each ESOS Assessment, drawing on the input and assessments of more technical specialists as appropriate, as part of checking that all significant energy use across the organisation has been considered?*
- b. That minimum qualifications should apply to Lead Assessors only, rather than to all those participating in an assessment?*

### What respondents said

80% of respondents agreed with the Government's proposal that Lead Assessors should be required to sign off each ESOS Assessment, and that the minimum qualifications should apply to Lead Assessors only.

While the significant majority of respondents were supportive of the Government's proposals, a number also suggested that minimum standards of qualification should also apply to those supporting Lead Assessors in their work. Around 21 respondents (out of 115 for question 23) stated that it is necessary for all auditors to have a minimum qualification to avoid complications and errors and to ensure that standards are maintained.

### Government consideration and decision

Participants will be required to use Lead Assessors to conduct or oversee ESOS Energy Audits or to review the conduct and quality of ESOS compliant audits conducted by others. A Lead Assessor will also need to review compliance with the ESOS Assessment process as a whole. Lead Assessors may be external professionals or qualified internal experts.

The Government recognises that a number of respondents expressed concern about not requiring minimum auditing standards of all auditors. The Government considers that requiring everyone involved in conducting ESOS Assessments to be qualified could be unduly onerous. The Government is satisfied that requiring a Lead Assessor to approve ESOS compliance, combined with sufficient quality assurance processes, will be satisfactory to safeguard the quality of audits.

### Consultation question

*Q24. What particular steps will need to be taken by organisations to ensure that in-house experts had the 'necessary independence' to audit business activity?*

## What respondents said

Respondents expressed a range of views around what steps could be taken to ensure that in-house experts were sufficiently independent to effectively audit business activity. Some consultees felt that having in-house experts undertaking auditing activity could be beneficial to participants because they would be more familiar with the activities being audited. Others suggested that in-house auditors should have their work externally verified. A small number of respondents suggested that having high standards of competence mandated in legislation could safeguard independence, with 5 respondents noting that impartiality and independence could be safeguarded through relevant ISO standards.

## Government consideration and decision

The Directive requires the Government to take steps to ensure that audits are carried out in an 'independent and cost-effective' manner. The Government recognises that it may well be more cost-effective for some participants to carry out ESOS Assessments in-house, but this needs to be balanced against the need for independence.

To meet this requirement in a proportionate way, PAS 51215 will require ESOS auditors to act in a professional manner. The Government has also decided that where participants use an in-house Lead Assessor two directors<sup>13</sup> (or, only where a company does not have directors, equivalent senior managers) – rather than just one – should be required to consider the findings of a participant's ESOS Assessment and energy audits and confirm that, to the best of their knowledge, the participant has complied with the scheme. This approach is intended to ensure that in-house audits are not just carried out by a technical team e.g. the facilities team, with sign-off only from that team's director/equivalent. Requiring two directors, or equivalents, to sign-off the report ensures it will be considered by at least one director other than that of the team carrying out the audit. This is intended to be a light-touch way to ensure that in-house assessments are sufficiently independent.

Organisations which choose to undertake an energy audit in-house will therefore incur an additional cost, equal to the cost of a second Director's time spent considering the results of the assessment. For the purposes of estimating costs to ESOS participants of complying with ESOS in the Final Stage Impact Assessment<sup>14</sup>, the Government has assumed that an organisation which chooses to undertake an assessment in-house will do so having determined that the cost of doing so (including the cost of a second Director's sign off) does not exceed the cost of a procuring an external energy audit. Therefore, the cost associated the requirement for an additional Director to sign off on an in-house audit is included in our estimate of the overall administrative burden on ESOS participants, presented in the Final Stage Impact Assessment.

## Consultation question

*Q25. Which approach to accreditation would you prefer to be put in place and why?*

- a. UKAS accredit certifying bodies to certify ESOS auditors*
- b. The scheme administrator approves lists of ESOS auditors which are managed by professional bodies?*

<sup>13</sup> For the purposes of ESOS, a Director is defined as someone who has the role and responsibilities of a Director within the meaning of the Companies Act 2006.

<sup>14</sup> <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>

## What respondents said

71% of respondents who expressed a preference preferred Option B – that the scheme administrator should approve lists of ESOS auditors which are managed by professional bodies. 23% of respondents who expressed a preference preferred Option A, and the remaining 6% proposed an alternative approach.

Respondents who favoured Option A generally did so on the grounds that it provided a robust and well-established route to accreditation.

However, the majority of respondents favoured Option B on the grounds that it would be quicker and more cost-effective to implement. Respondents considered that existing registers could be used or adapted to ensure that a pool of ESOS auditors is quickly established. Respondents who favoured Option B felt that the UKAS accreditation route (option A) would be slow and costly to implement.

A small number of consultees proposed alternatives, such as DECC establishing a contract with a private sector organisation to assess competence of auditors, or DECC drawing up a list of certain qualifications itself.

## Government consideration and decision

The Government believes that it is important to have a fair and impartial process in place through which to determine who is entitled to act as a Lead Assessor under ESOS. In line with the significant majority of consultees' views, the Government agrees that Option B is, on balance, the best approach, and intends to legislate on that basis.

Under this approach, the scheme administrator will establish and run a process to identify a list of approved professional registers. An energy professional will be able to act as a Lead Assessor for the purposes of ESOS if he/she is registered on an approved professional register.

The Government has already had a number of conversations with a range of professional bodies who stand ready to develop proposals to submit to the scheme administrator based on existing registers of professionals or on the basis of registers being developed specifically for the purposes of ESOS.

We recognise the urgency of getting approved Lead Assessors in place and will continue working closely with the scheme administrator and with industry to do this by autumn 2014.

## Consultation question

*Q26. Do you have any views on the proposed quality assurance arrangements for ESOS Assessments; in particular, what percentage of audits should be subject to quality assurance (e.g. 10% as is the case with the CRC or 2% as is the case with EPCs and DECs)?*

## What respondents said

Respondents expressed a range of views to this question. 33% suggested that a 10% audit sample would be suitable however, 37% suggested that a 2% audit sample would be more appropriate. A significant number of respondents also proposed alternatives – such as 5%.

For advocates of a 2% rate of quality assurance, the prime driver was the need to minimise the unnecessary administrative burden on business and that this would be more efficient for the Government and in line with a 'light-touch' regulatory approach.



Advocates of a 10% rate of quality assurance checks argued that this would provide greater assurance as to compliance with the scheme and better safeguard the quality of the ESOS Assessments.

### **Government consideration and decision**

The Government does not intend to set a rate for compliance checks in legislation. On reflection, and after discussions with the relevant scheme administration bodies, we consider that it is best to allow the compliance bodies (see Question 35) flexibility to adopt a risk based approach to compliance. The Government intends that this should involve two elements:

- a. Checks to ensure that companies in scope of ESOS are complying with the regulatory requirements;
- b. Quality assurance checks on ESOS Assessments themselves to ensure that these are conducted to an appropriate standard.

We will continue to work with the compliance bodies to agree these arrangements over the coming months, with a view to the first compliance checks taking place after the December 2015 deadline for compliance.

# Compliance and reporting

## Question 27 – Records

### What we proposed

We proposed that ESOS Assessment records are stored for a minimum of six years. This would enable participants to compare the results of an ESOS Assessment with the previous assessment. In addition, the time period aligns with the storage requirement of the CRC.

### Consultation question

*Q27. Should ESOS Assessment records be stored for 6 years, as with the CRC?*

### What respondents said

The proposal to require ESOS Assessment records to be stored for six years was supported by 48 out of 71 respondents (68%). However, a significant number of respondents (32%) thought that a six year storage time did not align well with the four year cycle of the scheme. Of those who suggested alternate storage times, five respondents suggested four years and thirteen suggested eight or more years. Those who suggested eight or more years cited the ability to compare the assessment results over a longer period of time. One respondent noted that while the CRC storage requirement was 6 years, reports are produced every year and participants have at least six reports for comparison.

### Government consideration and decision

After further consideration of the point raised by consultation respondents, that a storage period of six years does not align well the ESOS scheme, the Government will require that participants store the records for at least the two subsequent compliance periods

The Government believes that while a six year storage requirement aligns well with the CRC scheme, it does not align well with the four year cycle of ESOS. Requiring participants to store records for two previous assessments will enable comparison of assessment results over time. This achieves the goal of enabling comparison without setting a specific storage time.

## Questions 28 to 33

The Government sought views on a number methods by which it might fulfil its legal obligation to provide information to the EU Commission about the uptake of energy audits in the UK. These are outlined in Question 1 above. The options are dealt with in more detail by questions 28 to 32 below. Question 33 asks respondents to outline their preferred approach.

## Question 28 – Survey based compliance and disclosure

### What we proposed

This question sought views on gathering reporting data via a periodic survey of a randomly sampled selection of large enterprises to ensure that they have either carried out ESOS Energy Audits or have complied by other means. The survey data would then be used to generate a compliance rate and might also be extended to estimate the number of energy audits being taken up by SMEs on a voluntary basis. We acknowledged that there are limitations to this approach. In the absence of information about who was at risk of non-compliance, compliance checks would necessarily be randomised, rather than by a risk-based approach to targeting participants. This would lead to unnecessary burden to already compliant participants, and provide only limited data with which to evaluate the effectiveness of the policy.

### Consultation question

*Q28. Would a survey based approach to collecting data on the number of large enterprises participating in ESOS / complying by means of EMS (option 1) be adequate, given the UK's obligation to report to the European Commission on uptake of energy audits, and the aim to develop a targeted enforcement regime?*

### What respondents said

A survey based approach to collecting data on the number of large enterprises participating in ESOS, or complying by means of an EMS, was considered adequate by 35 of 97 (36%) respondents to the question. The majority of respondents – 62 of 97 (64%) – did not agree with a survey based approach.

Supporters of a survey based approach suggested that ESOS regulations should be 'light touch' and that a survey approach would allow this. In addition, it was suggested this would be the least costly and burdensome approach, while providing a good gauge of the level of compliance.

Respondents opposed to a survey based approach echoed the potential drawbacks highlighted in the consultation (see above) and also provided further reasons why it was inadequate. It was noted a survey approach would provide only an estimate of compliance levels, based upon a sample of large enterprises, and that this may not meet the requirements of the Energy Efficiency Directive. In addition, respondents suggested this approach would make enforcement more difficult and may lead some organisations to avoid complying on the basis of the minimal risk of being selected for follow-up.

### Government consideration and decision

In line with the majority of respondents to this consultation question, the Government believes that a survey based approach is not the best way to fulfil our legal obligation to provide information about the uptake of energy audits. There are strategic benefits to having some form of notification of compliance from participants, in order to facilitate targeting of enforcement activity and minimise unnecessary burden (see Question 29 below). A survey based approach is unable to deliver these benefits.

## Question 29 – Notification to support enforcement

### What we proposed

This question sought views on requiring participants to notify the scheme administrator that they are in scope of ESOS and confirm that they have complied with the scheme. Regular, mandatory notification is a familiar form of compliance to most organisations. In addition, this aligns with the approach adopted under the CRC, CCAs and EU ETS.

We also proposed that this form of notification would support an effective enforcement as it would enable the scheme administrators to inspect compliance and follow up on those who haven't notified.

### Consultation question

*Q29. To support an effective enforcement regime, should large enterprises be required to notify the scheme administrator that they are in scope and have conducted an ESOS assessment (or compiled by another means)? (Option 2 in the Impact Assessment)?*

### What respondents said

The proposal to require participants to notify the scheme administrator that they are in scope of ESOS and confirm that they have complied with the scheme was supported by 94 out of 106 (89%) of respondents.

Many of these cited synergies with other regulations such as CRC and CCAs as a basis for supporting this approach.

Some respondents also highlighted that basic notification was less burdensome than Option 1 which proposes a survey based approach to checking compliance, citing that it would be more burdensome for those participants selected to provide data for the surveys.

Of the 12 respondents (11%) that did not agree with this proposal, many did not disagree with notification in principle. Some commented that any notification should be undertaken via a pre-existing notification route, such as CRC.

### Government consideration and decision

In line with the majority of responses, participants will be required to notify to confirm that they are in scope of ESOS and have complied with the scheme. The Government believes that this is the least burdensome and most effective way to administer the scheme for both participants and the scheme administrator and it will ensure that the Government will be able to meet its reporting requirements on the uptake of energy audits to the EU Commission.

While a number of respondents suggested that notification could be done via an existing scheme, the Government does not believe this will be an effective solution. Although some participants may be covered by other schemes, such as CRC, many of the participants will not. As such an ESOS specific notification system would have to be created anyway. In addition, related policies such as the CRC do not have the same reporting deadline as ESOS and this could impact on the Government's obligation to report on the uptake of assessments within the timescales outlined in the Energy Efficiency Directive (Article 24).

## Questions 30 – Disclosure of ESOS Assessments

### What we proposed

This question sought views on requiring participants to make public disclosures relating to their ESOS compliance. We noted that requiring public disclosure might increase the uptake of energy efficiency measures and increase the net benefit of ESOS to participants. However, we also noted that mandatory public disclosure would increase the administrative burden placed on participants by the policy.

### Consultation question

*Q30. What is your preferred approach to disclosure of an ESOS Assessment (option 3 in the Impact Assessment)?*

- a. Do nothing.*
- b. Mandatory disclosure that an ESOS Assessment has been conducted.*
- c. Mandatory disclosure of an organisation's overall response to ESOS Assessment.*
- d. Voluntary disclosure of an organisation's overall response to an ESOS Assessment with a light-touch enforcement regime for those organisations which do so.*

*Approach A, B, C or D? Please state your reasoning*

### What respondents said

There were 112 responses to this question, which were split relatively evenly across options A to D. 24 respondents (21%) did not support disclosure of the results of ESOS Assessment results. Respondents in favour of option A generally supported a survey-based approach to monitoring take-up or basic notification to the scheme administrator (Impact Assessment Options 1 and 2 respectively, discussed in relation to Questions 28 and 29 above).

Respondents suggested that public disclosure went beyond the requirements of the Directive; that requiring disclosure of actions in response to ESOS Assessments would disadvantage those participants that had already taken action to implement energy efficiency measures, and; that it would be inappropriate to require disclosure of the results of ESOS Assessments as these would likely contain commercially sensitive information.

Respondents also challenged the notion that requiring public disclosure would drive additional uptake of energy efficiency measures, noted that GHG reporting regulations already require disclosures in a participant's Director's Report and pointed out that a lack of standardised public disclosure mechanisms would increase the burden on the scheme administrator in determining the compliance of participants.

27 respondents (24%) supported option B. It was suggested that while option A would not be sufficient to inform the Government's reporting to the European Commission regarding the number of energy audits undertaken options C and D went beyond the requirements of the Directive and would incur additional costs. Furthermore, respondents noted that option B would avoid the disclosure of commercially sensitive information. It was also suggested that this disclosure could be combined with the GHG reporting requirements.

32 respondents (29%) favoured option C. These respondents noted that the requirement to disclose responses to an ESOS Assessment would raise awareness of energy saving opportunities at board level; would incentivise participants to take action, and; would be acceptable as long as the required disclosures were not overly detailed.

29 respondents (26%) favoured option D. Respondents noted that this option would encourage disclosure without requiring participants to disclose information that was potentially commercially sensitive.

### **Government consideration and decision**

The Government recognises the potential benefit of requiring participants to make public disclosures of their ESOS Assessments. For instance, this may create a reputational driver to implement energy efficiency recommendations for consumer facing enterprises or through shareholder pressure; and a competitiveness driver through increasing awareness and understanding of the potential cost savings through implementing energy efficiency measures. On the other hand, company concern about releasing performance information can lead to selective information release, aimed at portraying a positive corporate image, which can undermine the incentive to take positive steps to increase energy efficiency. Many of the responses to the consultation highlighted these potential impacts of the various disclosure options.

To better understand the impact of options around disclosure, the Government commissioned a review into the impact of central and public disclosure methods for reporting energy use and energy efficiency<sup>15</sup> ("the Rapid Evidence Review"). A copy of the report has been published alongside the Impact Assessment. While the report identified evidence indicating that certain features of reporting and disclosure schemes can drive positive behaviour change in certain contexts, it also concluded that much of this evidence is not necessarily transferrable to the energy efficiency context. As a result, the Government cannot assume that disclosure and/or central reporting of ESOS Assessments would drive greater action on energy efficiency.

Fundamentally, the review failed to identify any evidence that could help quantify the potential energy savings benefits of the different policy options considered in the Impact Assessment. The disclosure options would create additional costs for ESOS participants, which have been estimated for the purposes of the Final Stage Impact Assessment. The Government estimates that public disclosure would cost the average participants an estimated additional £3,000.

In light of consultation responses to this question, and the fact that it has not been possible to quantify the benefits of disclosure, the Government will not require public disclosure in corporate annual reports, or elsewhere, of the fact that a participant has undertaken an ESOS Assessment or of its actions as a result of this assessment.

However, the Rapid Evidence Review highlighted some evidence to support the case for a voluntary disclosure scheme, which has the potential to drive greater energy efficiency benefits without requiring participants to incur additional costs. Therefore, the Environment Agency will ask ESOS participants to disclose information voluntarily. This will include the following questions:

1. (a) Does your organisation have a quantitative energy efficiency target and/or benchmarks?  
  
(b) If your organisation does have a quantitative target and/or benchmarks, can you disclose a key target / benchmark?

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<sup>15</sup> Eunomia, 'Evidence Review on the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy Efficiency', <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>.

(c) If your organisation does not have a quantitative target and/or benchmarks, will you adopt any such measures in light of your ESOS Assessment?

2. (a) Has the Board of Directors of your organisation discussed the results of your ESOS Assessment?  
(b) Has senior management of your organisation discussed the results of your ESOS Assessment?
3. (a) Have you published any information relating to your ESOS Assessment report? (e.g. key findings, or key actions taken in light of the ESOS Assessment)  
(b) If you have published any information on-line, please provide a link to the web page where this information is available

The Environment Agency will publish a list of participants, including any information that they have voluntarily provided in response to the questions posed. This is intended to increase the profile of action on energy efficiency and to publicise leadership exhibited by ESOS participants.

### Question 31 – Information to be disclosed and Director sign-off

#### What we proposed

The Government invited views from respondents as to what type of information they would like to see participants disclose following their ESOS Assessment, should disclosure be required. The following options were presented:

1. Cost savings identified in the energy audits: this would provide information on the financial benefits of ESOS Assessments and highlight the benefits of better energy management. It would also provide a useful source of quantitative information on the energy saving potential for the UK.
2. Disclosing action taken in light of an ESOS Assessment would provide a valuable source of qualitative information on the opportunities available for energy reduction.
3. Disclosing a participant's energy intensity ratio could help encourage participants to improve their internal energy management systems. Also it could facilitate comparison between participants energy efficiency performance.

The Government also invited views on whether a director (or equivalent) should be required to sign off on the ESOS Assessment of a participant.

#### Consultation question

*Q31. If you are in favour of public disclosure, what sort of information would you like to see disclosed? For example:*

- cost savings available from audit recommendations
- action taken in light of an ESOS Assessment
- the organisation's energy intensity ratio

*And should a Director of a large enterprise be required to sign off on the corporate ESOS disclosure?*

*Yes / No / Comment. Why?*

## What respondents said

There were 75 responses to the first part of this question. 52 of these (69%) supported one or more of the suggested items for disclosure in the question. The remaining twenty-three respondents re-affirmed their lack of support for public disclosure. Many suggested that the incompatibility of diverse results would result in meaningless or unfair comparison. Respondents also noted the commercially sensitive nature of energy and cost-saving information. Some respondents also noted that disclosure could duplicate the requirements of some participants under different regulations, such as CCAs.

Disclosure of potential cost savings from audit recommendations and of the participant's energy intensity ratio were both supported by 16 respondents (21%). Disclosure of action taken following the assessment was supported by fifteen respondents (20%). 15 respondents (20%) also suggested additional disclosures including:

- The change in the participant's energy consumption since the previous assessment;
- A list of energy reduction opportunities identified; details of the investment required alongside each energy efficiency opportunity and plans for implementation;
- More information on the route to compliance taken by the participant (e.g. ISO 50001 certification, DECs, ESOS Energy Audits); and
- Information on the types of energy being used by the participant (e.g. electricity, gas, vehicle fuel) as measured in the ESOS Assessment.

There were 90 responses to the second part of the question, with 70 (78%) in favour of the requirement for a Director to sign-off any disclosures required. However, many respondents that supported the requirement for disclosures were not in favour of disclosures overall.

Respondents in favour of a Director signing off on the ESOS Assessment argued that such sign-off would increase the level of importance placed on the ESOS Assessment and subsequent action by senior management; demonstrate organisational commitment to energy reduction; and add credibility to the assessment.

Those against Director sign-off had split views. Some called for sign-off more specifically by the Chief Executive Officer, Chief Financial Officer or equivalent, while others noted that requiring any Director sign-off would be too time-consuming.

## Government consideration and decision

In response to the mixed opinion expressed in the consultation responses and the lack of evidence on the effects of disclosure (see Question 30), the Government does not intend to require participants to publicly disclose information on their ESOS findings as part of their compliance.

The responses to the consultation indicated a number of valid concerns concerning public disclosure. Many respondents were concerned about the commercial sensitivity of certain data. In implementing the Energy Efficiency Directive, the Government must strike a balance between meeting the minimum requirements of the Directive while also avoiding measure that could disadvantage UK businesses.

In addition some respondents highlighted that the benefits of disclosure, particularly for the purpose of benchmarking, are unclear and potentially unfair. The Rapid Evidence Review (see p.58) published alongside the Impact Assessment identified evidence indicating that certain features of reporting and disclosure schemes can drive positive behaviour change in certain contexts, the evidence is insufficiently strong to be confident that there is a significant benefit from disclosure.



A number of responses also highlighted that the Directive does not specify the requirement to publicly disclose information. As such, requiring disclosure of key ESOS findings (or action taken in light of ESOS Energy Audits) would amount to 'gold plating', or going beyond the requirements of the Directive. The Government has therefore decided that participants will not be required to publicly disclose information on their ESOS findings as part of their compliance with ESOS. Participants will only be required to notify the Environment Agency, as the scheme administrator, that they have complied and provide basic details of their compliance (see Questions 29, 30 and 32).

### *Director sign-off*

Options that raise the profile of an ESOS Assessment so that the opportunities for cost reduction are recognised at board level are more likely to deliver energy savings. Consultation responses indicated that a majority of respondents were in favour of Director sign-off. Respondents that did not think disclosure was appropriate in general were nonetheless among those that commented that any disclosure that is required should be signed off by a director.

The Rapid Evidence Review considers, in light of evidence on other schemes, that "mandating board sign-off would help drive investments in energy efficiency".<sup>16</sup> In light of this evidence, the Government has decided to require that a Director (or equivalent senior officer, for participants without Directors) sign off ESOS Assessments. This is also in line with standard practice for audit reporting, which generally involves a written report to senior stakeholders.

Some respondents disagreed with the assertion that director sign-off helps to raise the profile of energy efficiency within an organisation. However, the results of the research into the impacts of public disclosure, although inconclusive, did suggest this effect. The Government considers that requiring directors (or equivalent senior officers, for participants without Directors) to sign-off an audit will help increase the organisational attention given to ESOS Energy Audits and thereby help increase energy efficiency uptake.

## **Question 32 – Reporting to the scheme administrator**

### **What we proposed**

This question sought views on whether to require ESOS participants to report the results of their ESOS Assessment to the scheme administrator. The Government noted that requiring the reporting of the results of ESOS Assessments to a scheme administrator might significantly aid the evaluation of ESOS and also provide evidence to inform subsequent policy development, give an indication of the scale of opportunity in the energy efficiency market and provide information to inform subsequent academic research. Moreover, this option would allow the scheme administrator to target its follow-up and enforcement action more cost effectively.

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<sup>16</sup> See page 89 of Eunomia, 'Evidence Review on the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy Efficiency'. <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>.

## Consultation question

Q32. *Should large organisations be required to report on key ESOS Assessment findings to the scheme administrator (option 5 in the Impact Assessment)?*

*Yes / No / Comments Please state your reasoning*

*If yes:*

*a. what information should be collected and how?*

*b. Should the scheme administrator store information internally or publicly disclose some information (and if so, what)?*

## What respondents said

There were 106 responses to this question with opinions fairly evenly split. 51 respondents (48%) were in favour of reporting key findings to the scheme while 55 respondents (52%) opposed this.

Those in favour suggested such reporting would promote compliance, facilitate effective enforcement by the regulator, allow the comparison of results and provide useful data and be the easiest way for the UK to meet the reporting requirements placed on it by the Directive (with regard to the number of energy audits undertaken).

Those against such reporting raised concerns around the handling, by the scheme administrator, of commercially sensitive information and the administrative burden of such reporting. There were also concerns that this went beyond the requirements of the Directive.

There were 52 responses to the second part of the question. With regard to part A, those that indicated a preference for how information should be collected all suggested an online system of reporting. The suggestions for the types of information that should be collected by the scheme administrator largely mirrored those suggestions, in response to Question 31, for information that should be publicly disclosed, though in general called for a greater level of detail. Of those favouring reporting, respondents most commonly called for the following to be reported to the regulator: the total energy usage of the participant, the total energy savings identified by the energy audit and the recommendations / energy efficiency measures identified.

The majority of comments (40) focussed on part B, concerning the storage and disclosure of collected information. Seven respondents favoured only internal storage and use by the scheme administrator; fifteen favoured internal storage and usage with some limited public disclosure; twelve favoured public disclosure, and; six favoured some other use or combination of uses.

Those respondents in favour of only internal storage and use cited the commercially sensitive nature of the information as reasoning. Those in favour of limited public disclosure noted that information should be made available for use to the Government, its agencies and/or academic institutions. However, respondents called variously for such information to be anonymised, disclosed in aggregate form only and/or only disclosed as part of the ESOS evaluation process.

The comments made in support of public disclosure of information, through the regulator, largely reiterated those made in support of public disclosure made in relation to Question 30 above. Other respondents also suggested that the Government should make clear the scope of the intended uses of information submitted to the scheme administrator before participants submit this information; that publicly disclosed information should be only be disclosed in a meaningful manner, and; that information should only be publicly disclosed on a voluntary basis (see Question 30 for more discussion of voluntary disclosure).

## Government consideration and decision

The rapid evidence review (see page 58), published alongside the Impact Assessment, identified evidence indicating that certain features of reporting and disclosure schemes can drive positive behaviour change in certain contexts, it also concluded that much of this evidence is not necessarily transferrable to the energy efficiency context. As a result, the report was reluctant to assume that disclosure and/or central reporting of ESOS Assessments would drive greater action on energy efficiency. Fundamentally, the review failed to identify any evidence that could help quantify the potential energy savings benefits of the different policy options considered in the Impact Assessment. We know that the disclosure options would create additional costs for ESOS participants, which we have estimated for the purposes of the Final Stage Impact Assessment. The Government estimates that central reporting would cost the average participants an estimated additional £1,000.

In order to minimise the burden on participants, and to ensure that participants are not required to disclose commercially sensitive information, the Government will not require participants to report the key findings of ESOS Assessments to the scheme administrator. However, participants will remain free to disclose information relating to their ESOS Assessment, including the results and information taken as a result, on a voluntary basis. They will also be given the opportunity to voluntarily submit additional information to the Environment Agency (see Question 30 above).

## Question 33 – Reporting by UK Government to the European Commission

### What we proposed

The consultation laid out six options by which the Government might meet its requirements for reporting on the uptake of energy audits to the European Commission while ensuring an effective ESOS scheme. Some of these options have been addressed by Questions 28 to 32 (see above). It was noted the options are not mutually exclusive and could be combined. The options presented were as follows:

Option 1: Survey-based assessment of uptake of ESOS Assessments to inform the Government's reporting to the EC and compliance monitoring (addressed in Question 28 above).

Option 2: Basic notification to the scheme administrator by organisations to confirm they are a) in scope and b) have complied (addressed in Question 29 above)

Option 3: Instead of reporting to a scheme administrator, require or allow organisations to voluntarily make public disclosure of their compliance with ESOS (addressed in Questions 30 and 31 above).

Option 4: Basic notification to the scheme administrator by organisations to confirm their compliance, accompanied by a cost recovery mechanism to recoup the administration costs of the scheme from participants.

Option 5: Comprehensive reporting by participants to the scheme administrator, of their compliance and of the results of their energy audits.

Option 6: Mandatory site audits to all large organisations' sites, along with production of Display Energy Certificates (DECs) for all their buildings over 250m<sup>2</sup>.

## Consultation question

*Q33. What is your preferred option or combination of options for meeting the UK's reporting obligations to the European Commission and ensuring a cost-effective scheme, and are there any options that you think the Government should definitely not pursue?  
Please give reasoning.*

## What respondents said

Support for the various options expressed in the question was split between the options with no obvious overall preference. Some respondents expressed support for more than one of the options. Of a total of forty-seven expressions of support for the various options six (13%) were in favour of a survey approach; 13 (28%) were in favour of basic notification to the scheme administrator with one additional expression of support for this to be combined with a cost recovery mechanism; twelve (26%) favoured public disclosure; 11 (23%) favoured reporting of compliance and audits result to a scheme administrator, and; only four (9%) favoured mandatory site audits and Display Energy Certificates (DECs) for buildings.

## Government consideration and decision

ESOS participants will be required to notify the scheme administrator that they have complied with ESOS. They will also be able to provide some additional information, on a voluntary basis (see Question 30). The Government believes that this is the least burdensome and most effective way to administer the scheme for both participants and the scheme administrator and will ensure that the Government will be able to meet its reporting requirements on the uptake of energy audits to the EU Commission. The various costs and benefits of the different approaches are explored as part of the Impact Assessment published alongside this Government Response.

## Question 34 – Compliance via an environmental or energy management system

### What we proposed

We proposed that an ISO50001 Energy Management System or an audit compliant with the European Standard EN 16247, where these apply to the participant as a whole, would satisfy the requirements of ESOS. Participants with valid certificates would need to show these to the scheme administrator to confirm that they applied to the participant as a whole (rather than, say, just one site). If these did not apply to the whole of the participant, additional energy audits would be required for un-audited significant energy uses.

We also proposed that, in line with the Directive, large enterprises with an ISO14001 Environmental Management System, where this includes energy audits that meet the minimum requirements of the Directive and where this applies to the participant as a whole, would also be compliant. We proposed to work with UK certifiers of ISO14001 to develop a certification standard to for ISO14001 Environmental Management Systems that include such energy audits.

## Consultation question

*Q34. Should the same compliance route be adopted for organisations complying via an approved EMS as for those undertaking ESOS Assessments?*

*Yes / No / Comment*

## What respondents said

82 of 97 respondents (85%) agreed that the compliance route (discussed in Questions 28 to 33 above) should be the same for participants complying via an Energy or Environmental Management System as for those undertaking ESOS Assessments. Some respondents suggested participants should be required to declare whether they had complied via ESOS Energy Audits, a management system or a mixture of the two. Some respondents suggested that reporting for those complying via a management system should remain equally light-touch as for other participants.

Those against having the same compliance reporting route for participants complying via an energy management system (15%) in general used this question to reiterate opposition to compliance via either ISO50001 or ISO14001 (where it includes energy audits).

## Government consideration and decision

In the line with the Directive and as supported by consultation responses, the Government believes ISO50001 certification to be a suitable alternative to an ESOS Assessment and as such, certification to this standard shall provide an alternative route to compliance with ESOS.

ISO5001 certification shall act as an alternative route to compliance with ESOS to the extent that the scope of the certification covers the participant and provided the certification took place within the compliance phase and is still valid at the compliance date of the phase.

In line with the majority of consultation responses, ESOS participants complying wholly or partly through ISO5001 certification shall report compliance to the scheme administrator in the same way as those participants complying via ESOS Assessments (see Question 33). All participants will be required, in their notification to the scheme administrator, to state the route by which they have complied with ESOS.

However, ISO14001 will not be adopted as alternative routes to compliance (see Question 19 for details), given that ISO 14001 does not automatically include energy audits/reviews which meet the minimum standards set by the Directive.

# Scheme administration and enforcement

## Question 35 – Scheme administrator

### What we proposed

The Government outlined its intention to establish a regulator to oversee the operation of ESOS, with the following key functions:

- Maintaining guidance
- Overseeing compliance with the scheme
- Approving registers of Lead Assessors

In the consultation document, the Government outlined its view that a public regulator was best placed to act as scheme administrator and oversee the enforcement regime on behalf of the Government, given that they would be tasked with regulating key elements of the scheme's delivery, including the potential imposition of sanctions in some instances of non-compliance.

The Government also noted that there appeared to be advantages in adopting the approach to scheme administration used for the CRC Energy Efficiency Scheme – whereby a UK wide scheme administrator works closely with relevant devolved agencies in respect of enforcement in the devolved administrative areas. This UK wide approach would aim to reduce administrative complexity for participants and ensure a 'level playing field'.

At the same time, the consultation sought views on a number of bodies which might be suitable to undertake the role.

### Consultation question

Q35. *Who do you think should be appointed as the scheme administrator?*

- a. *The Environment Agency working alongside devolved agencies*
- b. *The National Measurement Office*
- c. *Trading Standards*
- d. *Other (and if so, who)?*

### What respondents said

83% of respondents thought that the Environment Agency would be best placed to regulate the scheme. 13% of respondents preferred a range of alternative options, including: the National Measurement Office (NMO), Trading Standards, or a contracted out arrangement with the private sector. 5% of respondents selected multiple options.<sup>17</sup>

The key arguments in support of appointing the Environment Agency to regulate the scheme were that it had the relevant skill-set and also administered a number of similar schemes, providing the opportunity to streamline processes and to thereby minimise the administrative burden on business and the Government and allow application of lessons learned from other

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<sup>17</sup> Three responses selected both EA and other, 1 response selected EA, NMO and other, 1 response selected NMO and other.

schemes. A small number of respondents expressed concern at the way in which the CRC Energy Efficiency Scheme had been enforced.

### **Government consideration and decision**

In line with the views of a significant majority of respondents, the Environment Agency has been appointed to act as the UK-wide administrator. The Government agrees with the respondents who commented that the EA's administration of a range of similar schemes means that the Agency are well placed to administrate ESOS in a cost-effective way for both business and the Government.

In line with the model for administration of the CRC Energy Efficiency Scheme, the Government intends that the relevant authorities will lead on compliance and enforcement of ESOS in their jurisdictions: Natural Resources Wales, the Scottish Environmental Protection Agency, and the Northern Ireland Environment Agency. These 'compliance bodies' will be responsible for overseeing compliance and enforcement activity in their respective jurisdictions. This position has been agreed with the devolved administrations as part of the UK-wide approach to implementation of Article 8(4). Following discussions with the oil and gas industry, the Secretary of State will act as the compliance body for offshore activities as is the case with the significant majority of other offshore industry regulation.

The Government will continue working with the Environment Agency and the other compliance bodies to ensure that scheme administration arrangements are fully established as soon as practicably possible.

The Government and the Environment Agency are working with the other compliance bodies to ensure that scheme administration is implemented in a cost-effective way. This includes considering tendering out aspects of the scheme administration arrangements where it is appropriate to do so.

## **Question 36 – Penalties and appeals**

### **What we proposed**

The Government proposed that penalties should be in place for misdemeanours and provided a list of possible misdemeanours for which penalties could be applied. These included:

- Failure to notify the scheme administrator
- Failure to carry out an audit to the required standard
- Failure to provide information when requested by the scheme administrator
- Deliberately misleading the scheme administrator in response to a formal information request
- Refusing to allow the enforcement body access to premises, where access is reasonable (e.g. in order to ensure accuracy of audit findings).

The Government also proposed that civil sanctions (as opposed to criminal penalties) would be sufficient to address these misdemeanours. Such sanctions were proposed as a necessary backstop to ensure credibility and compliance with ESOS. At the same time, however, it was suggested that the scheme administrator would have a degree of discretion as to how to apply these sanctions.

The consultation document specified that civil sanctions would include the ability to impose fixed or discretionary monetary penalties, as well as enforcement notices, which would require

participants who had committed a misdemeanour to undertake a number of steps in order to come into compliance.

### Consultation question

*Question 36: Do you agree that there should be some form of penalty applicable in the following instances, and are civil sanctions sufficient to address these misdemeanours?*

- a) Failure to notify the scheme administrator*
- b) Failure to carry out an audit to the required standard*
- c) Failure to provide information when requested by the scheme administrator*
- d) Deliberately misleading the scheme administrator in response to a formal information request*
- e) Refusing to allow the enforcement body to access the premises, where access is reasonable (e.g. in order to ensure accuracy of audit findings).*

### What respondents said

The proposal to penalise various types of non-compliance was supported by 84 out of 110 respondents (76%). Respondents agreed that penalties would help give the scheme credibility and increase compliance. In many cases respondents commented that penalties should be discretionary and flexible in nature and that the scheme administrator should pursue corrective action in the first instance.

A number of respondents said that non-compliances subject to penalties should be defined in greater detail and several expressed concern about the appropriateness of giving the scheme administrator the right to enter a participant's premises.

11 respondents did not agree that penalties would be appropriate for ESOS. They noted that rising energy prices and existing schemes would drive compliance in the absence of the deterrent of penalties and recommended a 'comply or explain' approach.

### Government consideration and decision

In line with the significant majority of consultation responses and the requirements of the Directive, the Government is creating civil penalties to ensure compliance with ESOS, but no criminal penalties. The Government believes, in agreement with the majority of respondents, that such sanctions will be sufficient to address any misdemeanours relating to ESOS compliance.

In response to the calls by some respondents, penalties will be discretionary and flexible in nature. The scheme compliance bodies have the power to reduce and waive penalties after issuing them to participants. However, penalties remain as the ultimate recourse in instances of non-compliance.

In addition to types of non-compliance the consultation proposed should be penalised, non-compliance through *failure to comply with an enforcement notice* may also incur penalties. Enforcement notices enable the scheme compliance bodies to require participants to take a number of steps to come into compliance or provide information on request. Making non-compliance with enforcement notices a misdemeanour will help to give credibility to the scheme compliance bodies by allowing them to penalise participants who do not comply with their enforcement notices.



The Government has determined that the following civil penalties are appropriate to ensure compliance with ESOS.

1. For all non-compliances, the scheme compliance bodies will have the power to publish information on non-compliance on its website such that this information is available to the public. This will include:
  - a. The name of the ESOS participant; and
  - b. Details of the failure in respect of which a civil penalty has been imposed; and
  - c. The penalty amount
2. For failure to notify the scheme administrator of compliance by the required date and/or failure to provide basic details as part of notification, there will be a fixed penalty and an additional penalty for each day of non-compliance. This is in order to encourage compliance as soon as possible. The scheme administrator may impose some or all of the penalties outlined below. The penalty will be:
  - a. A fixed penalty of up to £5000; and/or
  - b. An additional £500 for each day starting on the day after the date of compliance until the notification is completed, subject to a maximum of 80 days; and/or
  - c. Publication of details of non-compliance
3. For failure to maintain adequate records to demonstrate compliance with ESOS the penalty will be:
  - a. A fixed penalty of up to £5000; and/or
  - b. The cost to the scheme administrator for undertaking sufficient auditing activity to confirm that a participant has complied with ESOS; and/or
  - c. Publication of details of non-compliance
4. For failure to undertake an ESOS Assessment or comply via an alternative approved route to compliance there will be a discretionary penalty allowing the scheme administrator to require the participant to take a number of steps toward compliance and a fixed monetary penalty. Failure to comply with any aspect of an ESOS Assessment (not using sufficient data, not using a Lead Assessor etc.) would be considered failure to comply. Where non-compliance is explained under 'comply or explain' then the scheme administrator will consider whether the justification given is reasonable before determining whether to impose a penalty. The penalty will be:
  - a. A requirement to conduct an ESOS Assessment by a date specified by the scheme regulator; and/or
  - b. A penalty of up to £50,000; and/or
  - c. An additional £500 per day penalty for each day starting on the day after the compliance date that the participant remains non-compliant; and/or
  - d. Publication of details of non-compliance
5. Failure to comply with an enforcement notice will incur a fixed penalty and an additional penalty for each day of non-compliance. This in order to encourage compliance as soon as possible. The penalties will be:
  - a. A fixed penalty of up to £5000; and/or
  - b. An additional £500 for each day starting on the day after the date of compliance until the notification is completed, subject to a maximum of 80 days; and/or
  - c. Publication of details of non-compliance
6. For making a statement which is false and misleading there will be a monetary penalty that is flexible enough to take account of the nature of the misdemeanour and large enough that it can act as a deterrent to this offence. The penalty will be:
  - a. A monetary penalty of up to £50,000; and
  - b. Publication of details of non-compliance

### *Remittances of penalties*

We propose that any money received from penalties issued to ESOS participants must be paid in to the UK Consolidated Fund.

### *Appeals*

Participants will have recourse to specific mechanisms to appeal enforcement actions undertaken by the compliance bodies. For enforcement activity conducted by the Environment Agency and Natural Resources Wales, participants can appeal to the First-tier Tribunal. Where the Scottish Environment Protection Agency engages in enforcement activity, participants can appeal to the Scottish Ministers, and where the Northern Ireland Environment Agency undertakes enforcement activity, participants can appeal to the Planning Appeals Commission.

To find out more information on appeals, participants should contact their relevant compliance body.

## **Question 37 – Any other issues**

### **Consultation question**

*Q37. Are there any other issues you wish to raise in relation to the Energy Savings Opportunity Scheme that have not been covered in other consultation questions?*

### **What respondents said**

111 respondents provided comments in relation to this question. The majority of responses to this section focussed on allowing businesses flexibility in complying with the overall requirements of the scheme, including by taking advantage of synergies with existing energy efficiency related schemes (for example, the CRC Energy Efficiency Scheme, the EU Emissions Trading Scheme and Climate Change Agreements), or by allowing participants to undertake their energy audits in stages over time.

Some respondents proposed excluding certain industries or types of organisation from the scheme, such as energy intensive industries and those already employing best practice. Others questioned the inclusion of certain types of energy use such as transport energy. In addition, some respondents questioned the overall timetable for ESOS and, in particular, whether there was scope for delaying the launch of the scheme.

Other comments dealt in detail with the scheme provisions. Further information can be found in the Analysis of Consultation Responses published alongside this Government Response.

### **Government consideration and decision**

The additional information provided in response to this question, and through additional stakeholder engagement before, during and after the consultation process, was used to inform the policy-making process. The Government considers that our policy approach meets the requirements of the Directive and also provides flexibility to business in how they comply, ensuring that the burden of compliance is minimised.

The Government also recognises that it is important that ESOS fits with other Government schemes. As such, we have taken steps to allow participants to align their responsibilities under ESOS with those under other schemes - for example:

- By providing some flexibility in the window of time over which participants must measure energy use (see Question 9).
- By allowing participants to take account of other audit work they have already undertaken (for example to obtain DEC's or as part of Green Deal assessments or ISO50001 certification (see Questions 13 and 19)

By allowing ESOS Lead Assessors to take account of energy audit work conducted under other schemes, where the Lead Assessor judges that this meets the requirements of ESOS (see Questions 18 and 20).

# Glossary

**Aggregation** – Where participants group together for the purposes of compliance.

**Alternative Investment Fund Manager** – the fund manager in relation to a trust, as defined by the Alternative Investment Fund Managers Regulations 2013

**Areas of significant energy consumption** – Energy consuming activities/assets that consume at least 90% of the participant's total energy consumption in the **reference period**.

**Approval body** – An organisation which manages one or more **approved registers**

**Approved register** – A register of individuals which has been approved by the Scheme Administrator as demonstrating that registered individuals are competent **to act as Lead Assessors**.

**CCA** – Climate Change Agreements

**Company cars** – Road vehicles that are owned or leased/rented by the participant for the use of staff in the business of the undertaking but are also available for personal use.

**Company fleet** – Road vehicles that are owned or leased/rented by the participant for the use of staff in the business of the undertaking.

**Compliance date** – The deadline by which participants must notify the Scheme Administrator that they have complied with ESOS.

**Compliance period** – The period in which participants must conduct an ESOS Assessment

**CRC** – the CRC Energy Efficiency Scheme

**DECs** – Display Energy Certificates

**De minimis** – The proportion of a participant's total energy consumption (measured as energy units used or energy expenditure) for which ESOS Energy Audits, or alternative compliance procedures, are not required.

**The Directive** – The EU Energy Efficiency Directive 2012/27/EU.<sup>18</sup>

**Disaggregation** – Where participants that form a corporate group choose to separate for the purposes of compliance.

**Dominant beneficiary** – A beneficiary of a trust who is entitled to half or more of the assets of the trust.

**ESOS** – The Energy Savings Opportunity Scheme.

**ESOS Assessment** – Includes all activities required to ensure compliance including the measurement of total energy use; the identification of areas of significant energy consumption; the ESOS Energy Audits undertaken; and any use of alternative routes to compliance.

**ESOS Energy Audit** – An energy efficiency audit meeting the minimum requirements of the ESOS scheme.

**Evidence Pack** – A participant's record of their ESOS Assessment, including justifications for any allowable deviations from scheme requirements.

**Financial year** – The 12 month period for which an undertaking prepares its financial statements and annual report.

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<sup>18</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:EN:PDF>

**Grey fleet** – Road vehicles that are owned or leased/rented by the staff of the undertaking but are used in the business of the undertaking.

**Highest parent** – A participant that does not have a parent undertaking captured by ESOS.

**Individual accounts** – As defined by Section 396 of the Companies Act 2006.<sup>19</sup>

**Large undertaking** – An undertaking which:

- Has 250 or more employees; or
- Has fewer than 250 employees, but has an annual turnover exceeding €50m **and** a balance sheet exceeding €43m.

**Lead Assessor** – A person included on an approved register held by an approval body.

**Life cycle cost analysis** – A way to demonstrate an investment will be economical over its entire life by accounting for all the costs that could reasonably be incurred over the period, including in manufacture/installation and disposal. For instance, this would include maintenance and depreciation costs.

**Operator** – the manager in relation to a trust, with permission under Part 4A of the Financial Services and Markets Act 2000<sup>(20)</sup> to carry on a regulated activity

**Participant** – A **large undertaking** or, alternatively, an undertaking operating in the UK which is part of a corporate group that includes a **large undertaking**

**Public body** – Any organisation that is required to comply with public contracting regulations in force in the UK, as either a contracting authority or as an organisation which receives a majority of its funding from public sources.<sup>21</sup>

**Qualification date** – The date on which undertakings must determine whether they qualify for the scheme in that phase.

**Reference period** – The period of time for which undertakings must measure their total energy consumption in order to identify their 'areas of significant energy consumption' that they are required to assess.

**Simple Payback Period** – The period of time required for the financial savings from reduced energy usage to equal the amount of the investment in an energy saving measure.

**SME** – An undertaking which has fewer than 250 employees and which also meets one (or both) of the following financial thresholds:

- (i) has either an annual turnover not exceeding €50m; and/or,
- (ii) a balance sheet total not exceeding €43m

**Staff** – This shall include the employees, owner-managers and partners of an undertaking.

**Undertaking** – *(a) a body corporate or partnership, or (b) an unincorporated association carrying on a trade or business, with or without a view to profit.*<sup>22</sup>

**Verifiable data** – Data that can be proven and traced to a particular and objective source – e.g. a meter reading.

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<sup>19</sup> As per Section 396(1), Companies Act individual accounts must comprise a balance sheet as at the last day of the financial year, and a profit and loss account.

<sup>20</sup> 2000 c.8. Part 4A is substituted by section 11(2) of the Financial Services Act 2012 (c. 21).

<sup>21</sup> In relation to England, Wales & Northern Ireland, the Public Contracts Regulations 2006; in relation to Scotland, the Public Contracts (Scotland) Regulations 2012

<sup>22</sup> As defined by Section 1161 of the Companies Act 2006

# Relevant extracts from the Energy Efficiency Directive

## Article 2

(25) 'Energy audit' means a systematic procedure with the purpose of obtaining adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings

## Article 8

(4) Member States shall ensure that enterprises that are not SMEs are subject to an energy audit carried out in an independent and cost-effective manner by qualified and/or accredited experts or implemented and supervised by independent authorities under national legislation by 5 December 2015 and at least every four years from the date of the previous energy audit.

(5) Energy audits shall be considered as fulfilling the requirements of paragraph 4 when they are carried out in an independent manner, on the basis of minimum criteria based on Annex VI, and implemented under voluntary agreements concluded between organisations of stakeholders and an appointed body and supervised by the Member State concerned, or other bodies to which the competent authorities have delegated the responsibility concerned, or by the Commission. Access of market participants offering energy services shall be based on transparent and non-discriminatory criteria.

(6) Enterprises that are not SMEs and that are implementing an energy or environmental management system - certified by an independent body according to the relevant European or International Standards - shall be exempted from the requirements of paragraph 4, provided that Member States ensure that the management system concerned includes an energy audit on the basis of the minimum criteria based on Annex VI.

## Annex VI: Minimum criteria for energy audits including those carried out as part of energy management systems

The energy audits referred to in Article 8 shall be based on the following guidelines:

(a) be based on up-to-date, measured, traceable operational data on energy consumption and (for electricity) load profiles;

(b) comprise a detailed review of the energy consumption profile of buildings or groups of buildings, industrial operations or installations, including transportation;

(c) build, whenever possible, on life-cycle cost analysis (LCCA) instead of Simple Payback Periods (SPP) in order to take account of long-term savings, residual values of long-term investments and discount rates;

(d) be proportionate, and sufficiently representative to permit the drawing of a reliable picture of overall energy performance and the reliable identification of the most significant opportunities for improvement.

Energy audits shall allow detailed and validated calculations for the proposed measures so as to provide clear information on potential savings.

The data used in energy audits shall be storable for historical analysis and tracking performance.



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