

Mandatory Energy Auditing – the Energy Savings Opportunity Scheme

The Government has published the final form of its mandatory energy auditing scheme for large companies. The scheme is required under the 2012 European Energy Efficiency Directive and will require group participation for qualifying organisations. The structure of the scheme draws in certain respects from the existing CRC Energy Efficiency Scheme, which results in both some complexity in its operation, but also some familiarity with the concepts and mechanisms employed. This Briefing looks at the key aspects of the scheme.

In its response to consultation¹, the Department of Energy & Climate Change has set out details of an Energy Savings Opportunity Scheme (ESOS) which will require an audit of participating companies' energy use every four years. It is hoped that, through auditing and the identification of potential energy savings, consumption will be reduced and contribute towards Europe-wide targets.² Regulations establishing ESOS have been made and come into force on 17 July 2014³

Qualification for ESOS

Participation in ESOS is mandatory for "large companies" and is required on a group basis for any group that contains at least one large company. A large company is one which:

- Has 250 or more staff; or
- Has annual turnover of over €50m and a balance sheet of over €43m⁴.

Similarly to the CRC scheme, groups will participate together as one Participant but ESOS allows reasonable flexibility for groups to "disaggregate" into groupings that make sense to the organisation (e.g. along divisional lines). It is expected that there will be around 9400 Participants in the first phase of ESOS⁵.

Key issues

- Organisations will have to audit energy use and identify energy savings once every 4 years
- The scheme requires group participation for large companies
- Audit information will not have to be published

¹ Government Response to the '[Energy Saving Opportunity Scheme' Consultation – June 2014](#)

² For further information on energy efficiency targets, see our client briefing: [New EU 2020 Climate and Energy Policy Framework, ETS structural changes and Shale Gas Policy published – January 2014](#)

³ [The Energy Savings Opportunity Scheme Regulations 2014](#)

⁴ Broadly speaking, this is determined by company accounts for the financial year ending in the calendar year leading up to the qualification date.

⁵ There are detailed rules concerning how trust assets and disposals of undertakings and assets should be dealt with. Each of these is different in some respects from the CRC scheme position.

ESOS will operate in 4 year compliance phases (the first phase is partially retrospective running from 6 December 2011 to 5 December 2015). Relevant companies will have to participate in the scheme for a phase if they qualify on the qualification date (the relevant date for the first compliance period being 31 December 2014).

ESOS Assessments

The central requirement of ESOS is to carry out an ESOS Assessment (including an energy assessment and an energy audit) in relation to the Participant. This will need to be led by a registered assessor, who could be an in-house assessor or an external consultant.

Energy Assessments

Within the 4 year compliance period, a Participant must carry out an assessment of the total energy supplies made to the Participant during a continuous 12 month reference period which straddles the qualification date. For example, a possible reference period for the first compliance period could be 1 April 2014 to 31 March 2015 (which would match a Participant's CRC reporting period).

Only UK energy supplies are included, and these can be measured by energy units, or energy costs. In addition to familiar areas of energy supply measured under the CRC (e.g. to buildings), the energy assessment must cover energy used by the Participant for:

- Road and rail transport within the UK, and even company car use will be covered.
- Air and maritime transport nationally, and internationally where it either starts or ends in the UK.
- Industrial processes and, therefore, it must cover energy which might be included within the EU Emissions Trading System or covered by Climate Change Agreements.

Unlike the CRC scheme, Landlords will not have to include energy which they supply to their tenants (although they could agree otherwise). It is not clear why this should be the case, and this is likely to create inconvenient inconsistency with CRC reporting.

Energy Audits

Having carried out the energy assessment, Participants will then need to ensure that all "significant areas of energy use" (those forming at least 90% of the energy use measured in the assessment) are subject to an energy audit. The energy audit can be carried out specifically for ESOS. Alternatively, other audit-type work will qualify for all or part of the audit, such as energy use covered by an ISO 50001 energy management system, Green Deal Assessment or Display Energy Certificate. Similarly, other types of assessment work may assist in the carrying out of the audit, e.g. Carbon Trust Standard or Green Fleet Reviews as long as the work satisfies minimum standards.

The energy audit will have to analyse energy consumption and identify practical and cost-effective energy saving measures in relation to the significant areas of energy use audited. Controversially, DECC decided not to introduce a requirement to include an energy intensity ratio as part of the audit (e.g. energy use per employee, which would more easily allow comparison of an organisation's energy use over time as the organisation grows or shrinks).

The energy audit must be based on 12 months' continuous data but this can originate from any time during the compliance period (or in the year before it), subject to some further conditions. So, for the first compliance period ending 5 December 2015, data from any time after 5 December 2011 could be used.

Responsibility for Compliance and Notification to Environment Agency

One undertaking within the Participant (the "Responsible Undertaking") will be responsible for compliance with ESOS and this will normally be the highest UK parent undertaking. Unlike the CRC scheme, there is no joint and several liability for other group members within the Participant.

The Responsible Undertaking will need to notify the Environment Agency, on or before the end of the compliance period (5 December 2015 for the first phase), that the Participant is subject to ESOS and has complied with the scheme. This notification will have to be signed off by a director (or two directors if an internal lead assessor has run the ESOS Assessment).

Enforcement of ESOS

The Environment Agency will be the administrator for ESOS, with devolved national regulators taking responsibility for certain aspects. A range of civil penalties will apply to breaches of the ESOS regulations. Most significantly, failure to carry out an ESOS Assessment could attract a penalty of up to £50,000, with a daily default penalty of £5,000 until the Participant is brought into compliance.

Auditing records will need to be kept for the subsequent two compliance periods.

No publication of information

The Government has decided not to insist on publication of the ESOS Assessment data, either directly by Participants, or indirectly through the Environment Agency, on the basis that this would gold-plate the requirements of the Energy Efficiency Directive. The audit information will, therefore, only be used for Participants' own purposes, although existing corporate reporting requirements relating to environmental information might require disclosure of the findings in certain cases.

Final Comments and Next Steps

In the absence of a requirement to publish ESOS Assessments or to include an energy intensity ratio in them, it remains to be seen whether ESOS will make a significant impact on energy efficiency targets.

In any event, ESOS is likely to lead to a significant additional administrative burden for some organisations. Each organisation should begin to consider whether it is, or its group contains, a large company, based on the qualification date of 31 December 2014. They should also begin to consider:

- Energy monitoring and reporting structures they have in place;
- Energy supply information available covering the period from 6 December 2011 to date; and
- Possible sources of existing audit work or certifications that could help in complying with ESOS.

Organisations with operations elsewhere in the EU should also look out for the emergence of analogous schemes requiring energy audits of those operations. The Directive provides some flexibility for Member States to implement the energy auditing requirements and such schemes might, therefore, operate in materially different ways.

Authors



Nigel Howorth
Partner

Environment & Planning Group

T: +44 20 7006 4076

E: nigel.howorth@cliffordchance.com



Michael Coxall
Senior Professional Support
Lawyer

Environment & Planning Group

T: +44 20 7006 4315

E: michael.coxall@cliffordchance.com

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www.cliffordchance.com

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