

## About the ESOS Regulations

If you are a UK organization with more than 250 employees or revenues greater than €50M, it is possible that you will need to comply with the new Energy Savings Opportunity Scheme, commonly known as ESOS. This simple guide explains what ESOS is about, who it affects, and what you need to do in order to comply and avoid the risk of penalty charges.

### Does ESOS affect my organization?

The first question that many people ask is “does ESOS affect my organization?”. The answer to this question can sometimes be very complex, especially for organizations that are on the borderline, are in a state of change, or are part of a complex corporate structure. The Government’s guidance states;

*You must take part in ESOS if your organization qualifies as a large undertaking on the qualification date. The qualification date for the first compliance period is 31 December 2014. A large undertaking is any UK undertaking that meets either one or both of the conditions below:*

- *it employs 250 or more people*
- *it has an annual turnover in excess of 50 million euro (£38,937,777), and an annual balance sheet total in excess of 43 million euro (£33,486,489)*

*You also must take part in ESOS if your undertaking is part of a corporate group which includes another UK undertaking that meets either of these conditions.*

It is worth noting that there is a lot of small print associated with the above statement, which addresses issues ranging from the definition of an ‘employee’ through to changing organization structures. If your organization meets the above criteria, a safe starting point is to assume your business is captured by the legislation until proven otherwise.

ESOS does not apply to public sector organizations, and will largely affect businesses which meet the qualification criteria. The legislation also captures some qualifying charities, as well as some universities which receive more than fifty percent of their income from the private sector. There is the possibility for franchises to be treated as separate entities when assessing their qualification criteria, provided that certain conditions are met.

If you have an ISO 50001 energy management system that’s certified by an approved certification

body and covers all of your energy use (for the whole corporate group in the UK), this may count as your ESOS assessment.

The following organizations may be captured by ESOS; limited companies; public companies; trusts; partnerships; private equity companies or limited liability partnerships; unincorporated associations.



### The Scope of ESOS

In the first instance, the ESOS legislation requires all qualifying organizations to quantify their total energy consumption, whether this is from purchased electricity, gas or fuel oil etc. The legislation includes all energy consumed, and this extends to energy consumed in transport, production processes, buildings and even employee mileage claims. Special provisions exist to deal with the energy associated with joint ventures, sub-tenants and major contracts etc. Once your energy consumption has been quantified, audits must be undertaken on ninety percent of the consumption; the ten percent ‘de-minimis’ can be exempt from energy audits, and may cover areas which are difficult to audit or address.

The energy audits should identify energy savings initiatives, and should quantify the likely costs and benefits of each initiative when viewed on a whole life basis. Once the audits recommendations are documented, they must be reviewed and signed off by a company director, after which we can notify the Regulator that you have complied.

In some instances, it may be possible for previous audit work to be used, provided this meets certain professional standards. Examples may include DEC audits, Green Deal assessments or ISO 50001 audits completed in the previous four years.

Whilst organizations are encouraged to implement the identified savings, this is not mandatory. The audit and reporting process is to be repeated every four years, ensuring that organizations are continuously searching for new energy savings initiatives.

## The ESOS Lead Assessor

The ESOS compliance audits and calculations involve a lot of technical and commercial calculations. In order to ensure that this work is undertaken consistently and professionally, the Government have introduced the concept of the ESOS Lead Energy Assessor. The Lead Assessor is appointed by the organization being audited, and is responsible for scoping, managing and signing off the ESOS programme. Whilst the energy audits can be undertaken by any suitably qualified auditor, only certified and registered ESOS Lead Assessors can manage and sign off the ESOS programme.

## Compliance Timelines

In the first round of ESOS, organizations are required to assess if they are captured by ESOS based upon their operations and organization as of 31 December 2014; this is called the 'Qualification Date'. If an organization meets the qualification criteria, they must complete the first round of data analysis, undertake the energy audits and report to the Regulator by the 'Compliance Date'. In the first round of ESOS, this date is the 5<sup>th</sup> December 2015, and then every four years thereafter.



## Non Compliance

The Government have estimated that ESOS energy audits have the potential to reduce the UK's energy expenditure by £1.6Bn by 2030, adding to our economy and bottom line profits. Whilst it is not mandatory to implement audit recommendations, it is hoped that qualifying organizations will seize the opportunity to become more efficient. In addition to the benefits, the Government have legislated for a number of enforcement penalties to be imposed on those organizations which are not compliant by the Compliance Date (December 5<sup>th</sup> 2015 for ESOS round one). Companies which are found to be in breach of the legislation may be subject to discretionary penalties. The penalties range from a fixed penalty of £50,000 (+£500 / day) for not undertaking audits or for making false statements, through to £5,000 for not keeping the necessary records. Where a penalty is issued, the Regulator will also publish the name of the responsible

individual, their organization and the penalty details. It is unclear how vigorous the Regulator will be in enforcing these penalties in the first round.

## Want to know more?

If you need advice or support to manage your ESOS programme, then feel free to contact us ...



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