

# Opportunity knocks for the Energy Savings Opportunity Scheme

ESOS was introduced in the UK to implement Article 8 of the European Union's 2012 Energy Efficiency Directive (EED). We currently expect Brexit to take place in 2019 which is when the next round of audits will be due. Where does this leave the current energy efficiency targets? Unless the government actively takes steps to disapply the current UK legislation, those audits will still need to be done. Simon Keen explains.

“Energy Savings Opportunity Scheme” (ESOS), requires large undertakings to audit the energy efficiency of their properties and present the findings to their directors. There is no obligation to implement the findings; where an audit reveals cost-effective ways of saving energy, the prospect of reduced operating costs should be sufficient incentive alone. Businesses should therefore not see Article 8/ESOS as a “green” hoop to jump through but as an opportunity to achieve financial savings.

In the UK, compulsory ESOS energy audits had to be completed over Winter 2015/16, with filings due in January 2016, to confirm compliance. We advised clients on their obligations in the UK and elsewhere in Europe, and some consistent themes emerged. Another round of audits is expected in 2019, if not sooner (they might become annual in the UK as a replacement for the reporting element of the Carbon Reduction Commitment), so businesses operating in the UK who might be subject to the next round of audits should bear these points in mind.

1. Start work in plenty of time. There will be a rush as each deadline approaches, so engage with your preferred assessor while they have capacity to assist you properly and can achieve your timetable and budget.
2. It helps (a lot!) if you can clearly explain your business structures. Complying with ESOS requires filings by or on behalf of all qualifying undertakings that are part of a group that, in aggregate, meets certain turnover or other size thresholds in the UK, so knowing whether an entity is part of your or someone else's corporate group for compliance purposes, or has to comply in its own right, is essential. This can require careful legal analysis; having the right information to hand makes the analysis quicker and easier, especially if you operate across several jurisdictions or employ complex structures. The UK ESOS compliance filings must identify exactly which subsidiary undertakings they include, so you need to be able to confirm this.
3. Sometimes a parent undertaking and its subsidiaries (particularly separate businesses held as investments) will more appropriately comply separately. ESOS allows some subsidiaries to be “disaggregated” from their parent for this reason. Conversations about disaggregation are better held at an early stage, so that everyone knows in good time who is doing what.
4. Know when and how your properties were acquired, and who holds the title to them. ESOS does not require businesses to audit properties acquired after certain dates, which vary depending on whether the asset was acquired directly or by acquiring an interest in a holding vehicle. Some cases will need careful analysis.
5. Your property managers must collect and provide to your assessor the data needed for the audits and benchmarking, such as energy consumption and billing information and any previous energy efficiency audits or assessments. Your property management agreements may need updating to ensure that they do this. When you acquire new properties, especially if you do so indirectly, you should consider obtaining historic information from the seller as you may need to include data for periods before your acquisition in the scope of the audit.
6. Finally, it is worth stressing that compliance with ESOS is not simply a “tick the box” exercise, nor is it one for which you have to comply property by property. The process of carrying out audits and reporting compliance needs to be undertaken across your corporate group in the UK, and if a group fails to comply at all, or does not comply properly, there can be separate penalties for each failure. For instance, the Environment Agency has the power to levy fines for certain failures (which can combine a fixed penalty of up to £50,000 for each failure with additional daily fines for late compliance) and also to publish on its website details of businesses that have not complied, what they failed to do, and how much they were fined for not doing it, which could lead to reputational damage.

Whilst compliance with ESOS can be a complex process, let's not lose sight of its main policy objective and the potential upside. If done properly, audits should identify energy savings that, when implemented, will save money as well as improving energy efficiency!



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