



# **The Energy Savings Opportunities Scheme: Briefing Paper**

A summary of the full ESOS guidance, what it means for your organisation and how to comply

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## Executive Summary

ESOS is the Energy Savings Opportunity Scheme from the Department of Energy and Climate Change and is mandatory for those organisations that meet the qualification criteria of:



\*as of 31<sup>st</sup> December 2022

In simple terms, an ESOS Assessment requires participants to do three things on a four year cycle:

1. Measure your total energy consumption
2. Conduct energy audits to identify cost-effective energy efficiency recommendations
3. Report compliance to the Environment Agency (as the scheme administrator) by the compliance date

Your ESOS Assessment must also be signed off by a Director or Senior Manager within your organisation, if this is not done it is considered one of the non-compliance activities that can incur a fine from the Environment Agency and also public disclosure of the organisation's name and non-compliance activity.

Phase 2 ran from 6th December 2015 to 5th December 2019. The important dates for Phase 3 are:

31st December 2022	5th December 2023
<ul style="list-style-type: none"> <li>• Expected qualification Date</li> <li>• The date on which you must base your assessment of the qualification criteria and that your 12 months of data must include.</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance Date</li> <li>• The date by which you must have undertaken an ESOS Assessment and notified the EA of your compliance.</li> <li>• If you know you will not meet this date you must still submit an Intent to Comply notification by the same date</li> </ul>

## ESOS Strengthening

On 19th July 2022 the Government announced its intention to include powers to make the necessary changes to ESOS in the Energy Bill via a Government amendment ([https://hansard.parliament.uk/lords/2022-07-19/debates/8F94D9C0-B93E-4A93-A5D2-F86908CA35FC/EnergyBill\(HL\)](https://hansard.parliament.uk/lords/2022-07-19/debates/8F94D9C0-B93E-4A93-A5D2-F86908CA35FC/EnergyBill(HL))).

It intends, subject to the Parliamentary timetable and scrutiny of the necessary primary and secondary legislation, including seeking views from the Devolved Administrations, to bring regulations into force ahead of the 5 December 2023 compliance deadline, setting out the requirements which ESOS participants will need to comply with in Phase 3, detailed above

The proposals to be adopted in Phase 3 on a mandatory basis are set out in the response to questions 2, 3, 8, 15, 20 and 21 in the Government Response and relate to:

- A standardised template for including compliance information in the ESOS report, generally comprising ESOS information the participant should already have available
- The reduction of the 10% de minimis exemption to up to 5%
- The addition of an energy intensity metric in ESOS reports
- Requirement to share ESOS reports with subsidiaries
- Requirement for ESOS reports to provide more information on next steps for implementing recommendations
- Requirement for participants to set a target or action plan following the Phase 3 compliance deadline, on which they will be required to report against for Phase 4
- Collection of additional data for compliance monitoring and enforcement

The changes for Phase 3 will involve additional reporting to the scheme administrator (the Environment Agency) via the scheme portal, and other improvements in the quality of audits. They will generally not require re-visiting site level audits that meet the requirements under the current ESOS regulations. However, some organisations may be required to audit additional sites as a result of the reduced de-minimis. Given the data required must include the qualification date it cannot be calculated until January 2023 at the earliest. Much of the information required to be disclosed should have been part of the evidence pack that showed how participants met the ESOS requirements. ESOS participants may implement the addition of a net zero element to ESOS audits in Phase 3 on a voluntary basis, and the government is working with BSI on the production of a new net zero audit PAS standard to facilitate this. Participants can also implement other Phase 4 changes on a voluntary basis in Phase 3.

The Department of Energy and Climate change sets out 7 steps towards complying with ESOS:

1. Determine if you are in the scope of ESOS
2. Consider if all your energy consumption is covered by an ISO50001 Energy Management System
3. Measure your total energy consumption
4. Determine your areas of significant energy consumption
5. Consider the routes to compliance available to cover your areas of significant energy consumption
6. Audit areas of significant energy consumption
7. Report your ESOS compliance and maintain an evidence pack

## The ESOS Evidence Pack

Each participant in ESOS is required to maintain an ESOS Evidence Pack detailing certain aspects of their compliance with ESOS. This should include:

- Details of the undertakings making up your participant and identification of the responsible undertaking
- Details of the responsible board-level Director(s) or equivalents that have taken the lead on signing-off your compliance with ESOS
- Details of your Lead Assessor
- The calculation of your total energy consumption
- A list of your identified areas of significant energy consumption
- Details of the routes to compliance used to cover each area of significant energy consumption
- Your reasons, where applicable, for using less than 12 months of data for the measurement of total energy consumption
- Your reasons, where applicable, for using less than 12 months of data to support an ESOS Energy Audit
- Details of the audit methodology used in your ESOS Energy Audits
- Your reasons, where applicable, for being unable to use verifiable data on energy use or energy expenditure to support your calculation of total energy use and the methodology of estimation made
- Justification, where applicable, where your auditor does not consider an energy consumption profile in their audit of an area of significant energy use

## Roles and responsibilities

The table below sets out the roles of both the Lead Assessor and the participant in completing ESOS Assessments. The overall legal responsibility for compliance remains with the participant.

Requirement/action	Work to be undertaken by	
	ESOS participant	Lead Assessor
Overall responsibility for compliance with ESOS	✓	
Appoint Lead Assessor	✓	
Highlight any audit work already undertaken	✓	
Agree audit methodology for new audits	✓	✓
Define scope of audits	✓	
Agree audit timetable	✓	✓
Agree sampling approach	✓	✓
Agree no. of site visits required	✓	✓
Make available data for audit	✓	
Identify energy saving opportunities		✓
Calculate energy/cost savings of measures identified (LCCA or another method, e.g. SPP)		✓
Determine energy use profiles		✓
Present audit(s) recommendations		✓
Review overall ESOS Assessment		✓
Obtain director(s)/senior managers sign off of audit(s) findings and recommendations	✓	
Notify the Scheme Administrator of compliance by the compliance date	✓	
Maintain an ESOS Evidence Pack to substantiate the audit(s) and its findings and recommendations	✓	✓

## Penalties, enforcement, appeals

Unlike other schemes where there was a frustration caused by non compliance enforcement, the Environment Agency has been appointed as the UK wide administrator of ESOS and has been given a budget for enforcement. The EA will be empowered to apply civil penalties against an organisation/group found to be required to participate in ESOS and found to be non-compliant with its requirements. ESOS adopts a 'comply or explain' approach to some of the requirements, where non-compliance is explained under these provisions then the compliance body will consider whether the justification given is reasonable before determining whether to impose a penalty.

For all non-compliance the Scheme Administrator will have the power to publish information on non-compliance on their website, making it available to the public. This information will include:

- The name of the ESOS participant
- Details of the failure in respect of which a civil penalty has been imposed
- The penalty amount

The following non-compliance activities will incur a financial penalty:

Non compliance activity	Maximum fixed penalty	Daily penalty (for each day of non compliance from the compliance date for a maximum of 80 days)	Additional requirements
Failure to notify the Scheme Administrator of compliance by the required date and/or failure to provide basic information as part of notification.	£5,000	£500	
Failure to maintain adequate records to demonstrate compliance with ESOS	£5,000		The cost to the compliance body for undertaking sufficient auditing activity to confirm that an organisation has complied with ESOS
Failure to undertake an ESOS Assessment	£50,000	£500	To conduct an ESOS Assessment by a specified date from the compliance body
Failure to comply with an enforcement, compliance or penalty notice	£5,000	£500	
Making a statement which is false and misleading	£50,000		

Participants will be able to appeal enforcement action that is based on an error of fact, wrong in law, or unreasonable.