

Insights

ESOS PHASE 3 BEGINS – WHAT THIS MEANS FOR YOUR ORGANISATION

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SUMMARY

The Energy Savings Opportunity Scheme (“ESOS”) is a mandatory energy efficiency assessment and monitoring scheme in the UK.

The qualification date for the third phase of ESOS (31 December 2022) has recently passed. If your organisation meets the qualification thresholds on the qualification date, you must take a number of steps prior to the end of the assessment period on 5 December 2023.

Following ESOS Phase 2, the Government undertook a consultation with the aim of improving the efficacy of ESOS. Most suggested measures considered will not be implemented until ESOS Phase 4, but through an amendment to the Energy Bill, the Government intends to implement certain changes at the Phase 3 stage.

DOES YOUR ORGANISATION QUALIFY FOR PHASE 3?

To qualify, an organisation must be a “large undertaking” on the qualification date (31 December 2022). This is defined as either:

- a. having an annual turnover in excess of £44m and annual balance sheet of over £38m; or
- b. employing at least 250 people in the UK.

Where one company in a group of companies meets the criteria, the whole UK group on the qualification date must be assessed. The highest UK parent will be responsible for ensuring the compliance of the whole group, as the ‘responsible undertaking’.

A UK-registered establishment of an overseas organisation also falls within the scope of ESOS assessment where the UK-registered entity’s activities meet at least one of the threshold tests.

STEPS A QUALIFYING ORGANISATION MUST TAKE

Where an organisation qualifies for ESOS, it must take the following steps:

- 1. Calculate total energy consumption for the organisation or group consumed by buildings, industrial processes, and transport.** For Phase 3, energy usage must be calculated in standardised units, (kWh/m² for buildings, kWh/unit output for industrial processes, and kWh/miles travelled for transport) in line with reporting under the Streamlined Energy and Carbon Reporting requirements.
- 2. Identify and audit areas of significant energy consumption.** For Phase 3, this will (subject to parliamentary approval) require organisations to identify which of its buildings, processes and/or transport functions account for at least 95% of the group or organisation's overall energy usage. The organisation is allowed to classify up to 5% of its energy use as 'de minimis' and discount it from reporting. (This is a decrease from the 10% that organisations were permitted to discount in Phases 1 and 2.) An ESOS compliant energy audit must be for a continuous 12 months' verifiable data, analysing the organisation's energy consumption and efficiency to identify where energy saving opportunities arise.
- 3. Appoint a lead assessor, who must be approved by an appropriate professional body register.** The lead assessor will carry out, oversee and review the energy use audit process. Lead assessors can be external consultants or contractors, or can be internal employees, so long as they have the necessary professional certifications. Provided parliamentary approval is achieved, ESOS Reports prepared for Phase 3, unlike those prepared for Phase 2, are to contain standardised compliance information (including an energy intensity metric) that will be set out in a template. The lead assessor will ensure that the report meets the relevant ESOS standards and that the report identifies recommendations the organisation can take to improve energy efficiency.
- 4. Notify the Environment Agency that an ESOS assessment has been carried out in accordance with the regulations.** ESOS Phase 3 reports are also intended to be formally shared with subsidiaries.
- 5. Retain records** of the ESOS assessment report, including details of the methodology, site visits undertaken, and measures identified to implement further energy efficiency measures.

EFFECTS OF NON-COMPLIANCE

As the administrative authority for the ESOS scheme, the Environment Agency is responsible for compliance and enforcement, and can issue civil sanctions, including financial penalties.

Where the Environment Agency determines that there has been non-compliance, it exercises its discretion in deciding whether to waive, reduce, or extend the time to pay a civil penalty.

The penalties for these offences include financial (an initial penalty of £5,000 for the failure to notify, maintain records or comply with a notice, and an initial penalty of up to £50,000 for failure to carry out an audit or providing a misleading statement). For most of the breaches, the penalty amount increases for each day of non-compliance. The Environment Authority will also publicise information relating to the breach, and can require organisations to take such steps as necessary to rectify the breach.

GET STARTED

It is important to get the ESOS compliance under way as soon as possible. Whereas in Phase 2, the Environment Agency exercised its discretion and offered organisations who received compliance extensions, it is currently unlikely that such extensions will be granted during Phase 3.

RELATED PRACTICE AREAS

- Environment

MEET THE TEAM



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