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STATUTORY INSTRUMENTS

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**2014 No. 1643**

**ENERGY**

**The Energy Savings Opportunity Scheme Regulations 2014**

<i>Made</i>	- - - -	<i>24th June 2014</i>
<i>Laid before Parliament</i>		<i>26th June 2014</i>
<i>Coming into force</i>	- -	<i>17th July 2014</i>

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to energy and energy sources, makes the following Regulations in exercise of the powers conferred by that section:

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Energy Savings Opportunity Scheme Regulations 2014 and come into force on 17th July 2014.

**Interpretation**

2. (1) In these Regulations—

- “approval body” has the meaning given in regulation 12(4)(b);
- “approved list” has the meaning given in regulation 12(5);
- “approved register” has the meaning given in regulation 12(4)(a);
- “certified energy management system” has the meaning given in regulation 33(1);
- “Chief Inspector” has the meaning given in regulation 6(1)(b);
- “compliance body” has the meaning given in regulation 6(1);
- “compliance date” has the meaning given in regulation 4(4);
- “compliance notice” has the meaning given in regulation 35(1);

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<sup>(1)</sup> [S.I. 2010/761](#).

<sup>(2)</sup> [1972 c. 68](#). Section 2(2) is amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and by paragraph 1 of Schedule 1(1) to the European Union (Amendment) Act [2008 \(c. 7\)](#).

“the Directive” means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency<sup>(3)</sup>;

“display energy certificate” has the meaning given in regulation 34(4)(a);

“employee” has the meaning given in—

- (a) section 230(1) of the Employment Rights Act 1996<sup>(4)</sup> in relation to England, Wales and Scotland, and
- (b) article 3(1) of the Employment Rights (Northern Ireland) Order 1996<sup>(5)</sup> in relation to Northern Ireland;

“energy” has the meaning given in Article 2(1) of the Directive;

“energy audit” means an audit carried out, as part of an ESOS assessment, in accordance with Chapter 3 of Part 4;

“energy consumption” has the meaning given in regulation 23(1);

“energy efficiency” has the meaning given in Article 2(4) of the Directive;

“energy measurement unit” means a unit by which the supply or consumption of energy is commonly measured;

“enforcement notice” has the meaning given in regulation 38(1);

“ESOS assessment” means an assessment carried out in accordance with Part 4;

“evidence pack” has the meaning given in regulation 28(1);

“group undertaking” has the meaning given in section 1161(5) of the Companies Act 2006<sup>(6)</sup>;

“highest parent” has the meaning given in regulation 17(3);

“highest parent group” has the meaning given in regulation 17(2);

“initial compliance period” has the meaning given in regulation 4(1);

“lead assessor” has the meaning given in regulation 11;

“legislative provision” means an enactment, including—

- (a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (b) Northern Ireland legislation;

“Notification System” has the meaning given in regulation 8(1);

“offshore activity” means activity which includes—

- (a) the exploitation of mineral resources in or under the shore or bed of waters in the offshore area,
- (b) the conversion of a place under the shore or bed of such waters for the purpose of storing gas,
- (c) the storage of gas in, under or over such waters or the recovery of gas so stored,
- (d) the unloading of gas at a place in, under or over such waters, and
- (e) the provision of accommodation for persons who work on or from an offshore installation which is maintained for the production of petroleum or the storage or unloading of gas

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(3) OJ No L 315, 14.11.2012, p1, to which there is an amendment not relevant to these Regulations. Article 8(4) to (6) is transposed by these Regulations.

(4) 1996 c. 18.

(5) 1996 No. 1919 (N.I. 16).

(6) 2006 c. 46.

where storing gas includes storing gas with a view to its permanent disposal, and “gas” means gas within the meaning of section 2(4) of the Energy Act 2008<sup>(7)</sup> or carbon dioxide;

“offshore area” means—

- (a) the sea adjacent to England, Scotland, Wales and Northern Ireland from the low water mark to the landward baseline of the United Kingdom territorial sea,
- (b) the United Kingdom territorial sea adjacent to England, Scotland, Wales and Northern Ireland,
- (c) the sea in any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964<sup>(8)</sup>, and
- (d) the sea in any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009<sup>(d)</sup>

and includes the places above those areas, and the bed and subsoil of the sea within those areas;

“offshore installation” means an installation or structure used for carrying on an offshore activity, which is situated in the waters of, or on the seabed in, the offshore area, but excluding a ship or a floating structure which is not being maintained on station during the course of an offshore activity;

“offshore undertaking” means an undertaking whose activities consist wholly or mainly of offshore activities;

“parent undertaking” has the meaning given in section 1162 of the Companies Act 2006;

“participant” has the meaning given in regulation 17(1);

“the PAS” has the meaning given in regulation 12(1);

“penalty notice” has the meaning given in regulation 39(1);

“premises” means any land, vehicle or vessel, or any plant which is designed to move or be moved;

“publication penalty” has the meaning given in regulation 41(1);

“qualification date” has the meaning given in regulation 4(3);

“qualifying Green Deal assessment” has the meaning given in regulation 34(4)(b);

“relevant undertaking” has the meaning given in regulation 15(1);

“responsible officer” has the meaning given in regulation 30(2);

“responsible undertaking” has the meaning given in regulation 18;

“the Scheme” means the Energy Savings Opportunity Scheme established by these Regulations;

“scheme administrator” has the meaning given in regulation 5;

“subsequent compliance period” has the meaning given in regulation 4(2);

“subsidiary undertaking” has the meaning given in section 1162 of the Companies Act 2006;

“undertaking” has the meaning given in section 1161(1) of the Companies Act 2006;

“working day” means any day other than—

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or

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(7) 2008 c. 32.

(8) 1964 c. 29, amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23), and by section 103 of the Energy Act 2011 (c. 16).

(d) 2009 c. 23.

- (c) a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(9).
- (2) Save as otherwise appears, any reference in these Regulations to a numbered Part, Chapter or regulation is a reference to that numbered Part, Chapter or regulation in these Regulations.

#### **Duty to review**

- 3. (1) At intervals of no more than 5 years, the Secretary of State must—
  - (a) carry out a review of the operation and effect of these Regulations,
  - (b) publish the conclusions of the review in a report.
- (2) In carrying out a review the Secretary of State must, so far as is reasonable, have regard to how Article 8(4) to (6) of the Directive is transposed in other Member States.
- (3) Any report must in particular—
  - (a) set out the objectives intended to be achieved by these Regulations,
  - (b) assess the extent to which those objectives are achieved,
  - (c) assess whether those objectives remain appropriate, and
  - (d) where the objectives remain appropriate, assess the extent to which they could be more effectively achieved.

## **PART 2**

### **The Energy Savings Opportunity Scheme**

#### **CHAPTER 1**

##### **Scheme compliance periods**

#### **Compliance periods**

- 4. (1) The “initial compliance period” means the period which begins on the coming into force of these Regulations and ends on 5th December 2015.
- (2) A “subsequent compliance period” means a period which—
  - (a) begins on the 6th December immediately following the end of the preceding compliance period, and
  - (b) ends on the 5th December four years later.
- (3) The “qualification date” means—
  - (a) in relation to the initial compliance period, 31st December 2014,
  - (b) in relation to a subsequent compliance period, the 31st December immediately preceding the compliance date for that compliance period.
- (4) The “compliance date”, in relation to the initial compliance period and subsequent compliance periods, means the 5th December on which that compliance period ends.

## CHAPTER 2

### Scheme administration

#### **Scheme administrator**

5. The “scheme administrator” is the Environment Agency.

#### **Compliance bodies**

6. (1) The “compliance body” means—
- (a) the scheme administrator, in respect of England,
  - (b) the Chief Inspector constituted under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>(10)</sup> (the “Chief Inspector”), in respect of Northern Ireland,
  - (c) the Scottish Environment Protection Agency, in respect of Scotland,
  - (d) the Natural Resources Body for Wales, in respect of Wales,
  - (e) the Secretary of State for Energy and Climate Change, in respect of offshore undertakings.
- (2) Subject to paragraph (1), two compliance bodies may agree which of them will act as the compliance body in relation to a participant.

#### **Co-operation and sharing of information**

7. (1) The compliance bodies must—
- (a) co-operate with each other in the exercise of their functions under these Regulations,
  - (b) provide each other with such of the information provided to, or obtained by them, under these Regulations or any other legislative provision, as is required to enable them to carry out their functions under these Regulations.

(2) A compliance body must, when requested by another compliance body, assist it in the exercise of its functions under these Regulations, by taking any action specified in the request where it is reasonable to do so.

(3) In this regulation a reference to “functions” means, in relation to the Environment Agency, its functions as scheme administrator and as a compliance body.

#### **Notification System**

8. (1) The scheme administrator must establish a system (the “Notification System”) which enables responsible undertakings to—

- (a) notify information as required by these Regulations, and
- (b) voluntarily notify such additional information as the scheme administrator considers appropriate.

(2) The scheme administrator must take reasonable steps to ensure that the Notification System is available for use by responsible undertakings at such times as the scheme administrator considers reasonable.

(3) The scheme administrator may establish administrative arrangements in relation to the operation of the Notification System.

### **Provision of information to the Secretary of State**

9. The scheme administrator must provide to the Secretary of State any information held by it by virtue of these Regulations as is requested.

### **Publication of information**

10. The scheme administrator must publish the following information held on the Notification System—

- (a) the number of undertakings that have complied with the Scheme,
- (b) a list of responsible undertakings which have notified information in accordance with regulation 8(1)(a) and, where they have notified additional information under regulation 8(1)(b), or have notified information under paragraph 1(f) or (h) of Schedule 3, that information.

## **CHAPTER 3**

### **Lead assessors**

#### **Lead assessors**

11. In these Regulations “lead assessor” means an individual whose name appears on an approved register.

#### **Approval bodies and approved registers**

12. (1) The scheme administrator must determine whether an individual meets the competence requirements (the “competence requirements”) set out in Publicly Available Specification 51215 (“the PAS”)(11), in accordance with this regulation and regulation 13.

(2) The scheme administrator must consider an application by a professional body for a determination that the individuals on a register maintained by that body meet the competence requirements.

(3) Where the scheme administrator is not satisfied that a register is a register of individuals who meet the competence requirements, it must make a determination to that effect and notify the professional body maintaining that register accordingly.

(4) Where the scheme administrator is satisfied that a register is a register of individuals who meet the competence requirements, it must make a determination to that effect and notify the professional body maintaining that register accordingly, and—

- (a) “approved register” means a register which the scheme administrator has determined is a register of individuals who meet the competence requirements, and
- (b) “approval body” means a professional body that maintains an approved register.

(5) The scheme administrator must publish a list of approved registers (the “approved list”) by 5th December 2014, and must keep that list up to date in accordance with regulation 13.

(6) An approval body must—

- (a) take reasonable steps to ensure that an individual on its approved register continues to meet the competence requirements,
- (b) ensure that its approved register contains an up to date record of individuals who meet the competence requirements,

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(11) PAS 51215:2014 “Energy efficiency assessment – Competence of a lead energy assessor - Specification” published in 2014 by the British Standards Institution (ISBN 978 0 580 84377 8).

- (c) maintain a record of the name of any individual who is removed from its approved register, including the date on which they were removed and the reason for their removal, for four years after that removal,
  - (d) respond to reasonable requests from the scheme administrator, the compliance bodies and participants, for confirmation that an individual is on its approved register,
  - (e) notify the scheme administrator of any substantive changes to the process for including an individual on its approved register.
- (7) In making a determination under paragraph (3) or (4), or reviewing the approved list under regulation 13(1), the scheme administrator may require such information from the professional body as is necessary to make its determination.
- (8) For the purposes of this Chapter “professional body” means—
- (a) a professional association, membership of which is wholly or mainly restricted to individuals who have, or are seeking to attain, a recognised level of competence appropriate to the practice of the profession concerned, or
  - (b) an association, the primary purpose of which is the advancement of a particular branch of knowledge or the fostering of professional expertise, connected with the past or present professions or employments of its members (whether individuals, or a body of persons corporate or unincorporated).

### **Reviews of approval**

- 13.** (1) The scheme administrator—
- (a) must review the approved list once in every subsequent compliance period, by requiring every approval body to renew its application for approval, and
  - (b) may review its determination that a register is an approved register, at any time.
- (2) In any case where the scheme administrator is no longer satisfied that individuals on an approved register meet the competence requirements, it must—
- (a) notify the professional body maintaining that register accordingly, and of the fact that the register will be removed from the approved list in accordance with sub-paragraph (b), and
  - (b) remove that register from the approved list after the expiry of the time specified for appeal in regulation 14(1).
- (3) The scheme administrator may, at any time, direct an approval body to review whether an individual on its approved register continues to meet the competence requirements.

### **Appeals**

- 14.** (1) Where the professional body maintaining a register is notified of—
- (a) a determination under regulation 12(3), or
  - (b) the proposed removal of that register from the approved list under regulation 13(2)(a),
- that body may, within 28 days (or where that period expires on a day other than a working day, by no later than the next working day), appeal to the Secretary of State against the decision.
- (2) The removal of a register from the approved list is suspended pending the resolution of the appeal referred to in paragraph (1).

## PART 3

### Undertakings

#### CHAPTER 1

##### Relevant undertakings

###### Relevant undertakings

15. (1) Subject to regulation 16, an undertaking is a “relevant undertaking” in relation to a compliance period if, on the qualification date for that compliance period, it is—

- (a) a large undertaking, or
- (b) a small or medium undertaking which is a group undertaking in respect of a relevant undertaking falling within sub-paragraph (a).

(2) For the purposes of these Regulations whether an undertaking is a large undertaking, or is a small or medium undertaking, is to be determined in accordance with Schedule 1.

###### Excluded undertakings

16. (1) The following are not relevant undertakings—

- (a) a public body,
- (b) an undertaking to which an insolvency procedure is applied.

(2) In this regulation—

- (a) an insolvency procedure is applied to an undertaking in the circumstances described by paragraph 120(7) of Schedule 6 to the Finance Act 2000<sup>(12)</sup>,
- (b) “public body” means—
  - (i) in relation to bodies in England, Wales and Northern Ireland, a ‘contracting authority’ as defined in regulation 3 of the Public Contracts Regulations 2006<sup>(13)</sup>,
  - (ii) in relation to bodies in Scotland, a ‘contracting authority’ as defined in regulation 3 of the Public Contracts (Scotland) Regulations 2012<sup>(14)</sup>.

###### Participants

17. (1) In these Regulations “participant” means—

- (a) a relevant undertaking required to comply with the Scheme on its own behalf,
- (b) where two or more relevant undertakings comply with the Scheme as a group in accordance with paragraph (2), or paragraph 1, 3, 7 or 10 of Schedule 2, that group of undertakings.

(2) Where, on the qualification date for a compliance period—

- (a) two or more relevant undertakings are group undertakings in respect of each other, and
- (b) one of those group undertakings is a highest parent in respect of all the other group undertakings

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<sup>(12)</sup> 2000 c. 17. Paragraph 120(9) defines certain terms used in paragraph 120(7); both are amended by paragraph 33 of Part 1 of Schedule 1 to S.I. 2003/2096.

<sup>(13)</sup> S.I. 2006/5; relevant amending instruments are S.I. 2007/3542, 2008/2683, 2008/2848, 2009/1307, 2010/976, 2011/2053, 2011/2581, 2011/3058 and 2013/252 and 2014/834, S.R. & O. (NI) 2010 No 133; also amended by section 1 of the Crofting Reform (Scotland) Act 2010 [asp 14](#) and Schedule 20 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

<sup>(14)</sup> S.S.I. 2012/88, relevant amending instruments are S.S.I. 2012/108 and S.I. 2013/252.

those undertakings constitute a “highest parent group” for the purposes of these Regulations and must comply with the Scheme as one participant unless paragraph 1, 3, 7 or 10 of Schedule 2 apply.

- (3) For the purposes of these Regulations—
- (a) a parent undertaking is a “highest parent” where it has no parent undertaking which is a relevant undertaking,
  - (b) a highest parent is the highest parent in respect of any group undertaking in relation to which it is a parent, and
  - (c) an undertaking (A) is the parent undertaking of an undertaking (C) within the meaning of section 1162(5) of the Companies Act 2006, where any of A’s subsidiary undertakings (B) are, or are to be treated as, parent undertakings of C, notwithstanding B is not a relevant undertaking.

## CHAPTER 2

### Responsible undertakings

#### **Role of the responsible undertaking**

**18.** The “responsible undertaking” in relation to a participant means the relevant undertaking which is responsible for a participant’s compliance with the Scheme, determined in accordance with regulation 19 or Schedule 2.

#### **Determination of the responsible undertaking**

**19.** (1) Where a relevant undertaking falls within regulation 17(1)(a), it is the responsible undertaking in relation to its own compliance with the Scheme.

(2) Subject to paragraph (3), where a highest parent group complies with the Scheme as one participant in accordance with regulation 17(2), the highest parent is the responsible undertaking in relation to that participant’s compliance with the Scheme.

(3) All the relevant undertakings in a highest parent group may agree in writing that an undertaking within the group, other than the highest parent, is to be the responsible undertaking in relation to the participant’s compliance with the Scheme.

(4) Where paragraph 1, 3, 7 or 10 of Schedule 2 applies, the responsible undertaking is to be determined in accordance with that Schedule.

(5) Any reference in these Regulations to a responsible undertaking is to be construed in accordance with this regulation and Schedule 2.

(6) The agreements referred to in paragraph (3) and in paragraphs 2, 4, 6, 7 and 11 of Schedule 2 must be made between the responsible officers of the relevant undertakings.

## PART 4

### ESOS Assessments

#### CHAPTER 1

##### General

#### **Duty to carry out ESOS assessment**

**20.** A responsible undertaking must carry out an ESOS assessment, which includes an energy audit, in accordance with this Part.

### **Role of the lead assessor**

- 21.** (1) A responsible undertaking must—
- (a) appoint at least one lead assessor for the purposes of the ESOS assessment,
  - (b) provide any appointed lead assessor with a copy of the evidence pack maintained in accordance with regulation 28 in relation to any previous ESOS assessment in relation to the participant,
  - (c) ensure that the ESOS assessment is reviewed by a lead assessor.
- (2) In reviewing an ESOS assessment the lead assessor must—
- (a) consider whether the ESOS assessment meets the requirements of these Regulations, and
  - (b) notify the responsible undertaking accordingly.

## **CHAPTER 2**

### **Energy consumption**

#### **Duty to calculate total energy consumption**

- 22.** (1) A responsible undertaking must, unless regulation 33(3) applies, calculate the participant's total energy consumption.
- (2) The calculation referred to in paragraph (1) must—
- (a) be carried out on or after the qualification date for the compliance period,
  - (b) subject to paragraph (3), be based on the energy consumption of assets held, and activities carried on, by the participant on the qualification date for that compliance period, and
  - (c) be based on the participant's energy consumption during the reference period.
- (3) A responsible undertaking may elect to exclude from the calculation referred to in paragraph (1) energy consumed by any asset which is no longer held by it, or by any activity which is no longer carried on by it (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, any asset which is no longer held, or any activity which is no longer carried on, by any of those relevant undertakings) on the compliance date.
- (4) In these Regulations—
- (a) “activities carried on” includes offshore activities,
  - (b) “assets held” includes offshore installations.
- (5) The “reference period”, in relation to a compliance period, means a period of 12 consecutive months which—
- (a) begins no more than 12 months before the qualification date, and
  - (b) ends on or before the compliance date.

#### **Energy consumption – general**

- 23.** (1) Subject to regulation 24, the “energy consumption” of a participant means energy that is—
- (a) supplied to the participant, and
  - (b) consumed by assets held, or activities carried on, by the participant
- but excludes any energy which is supplied by the participant to another person.
- (2) For the purposes of paragraph (1)—
- (a) energy is supplied to a participant where—

- (i) the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, one or more of them) agrees with a person (“S”) that S will supply energy to the participant, and the participant is supplied with energy further to that agreement,
  - (ii) two or more relevant undertakings agree with S that S will supply energy to them and they are supplied with energy further to that agreement, and one or more of them agrees to be the participant in relation to some or all of that energy supply, or
  - (iii) the participant supplies energy, other than surplus heat, to itself, and
- (b) energy is supplied by a participant to another person (“R”), where the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, one or more of them) agrees with R that the participant will supply energy to R, and R is supplied with energy further to that agreement,
- and the amount of the supply is measured.

(3) In this regulation “surplus heat” means heat generated as a by-product of an industrial process carried on by the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, carried on by one or more of them).

- (4) Subject to regulation 24(3) and (4), the energy consumption of a participant—
- (a) in the case of an offshore undertaking, excludes energy which is consumed by the participant outside the United Kingdom and offshore area,
  - (b) in any other case, excludes energy which is consumed by the participant outside the United Kingdom.

- (5) In this regulation energy supplied or consumed is “measured” where—
- (a) the amount of energy is measured in energy measurement units, or
  - (b) the cost of the energy is measured (“energy spend”).

(6) In calculating measured energy supplied or consumed for the purposes of this Chapter, a responsible undertaking must base that calculation—

- (a) (except in the case of energy supplied by the participant to another person) on only one of the methods set out in paragraph (5), and
- (b) where reasonably practicable, on verifiable data.

(7) Where verifiable data is not available for all of the reference period—

- (a) the calculation may be based on reasonable estimates of the amount of energy consumed, or the energy spend, and
- (b) the responsible undertaking must—
  - (i) notify the scheme administrator accordingly, and
  - (ii) record details of the method used and the extent to which, and the reasons why, verifiable data was not used.

### **Energy consumption - transport**

**24.** (1) In relation to energy consumed for the purposes of transport, the energy consumption of a participant also includes energy that is—

- (a) supplied to an individual who is authorised by the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, authorised by one or more of them) to receive the supply of energy for the purposes of transport, and
- (b) consumed for the purposes of transport by that individual in the course of their employment by, or acting on the business of, the participant.

- (2) For the purposes of these Regulations—
- (a) “energy consumed for the purposes of transport” means energy used by a road going vehicle, a vessel, an aircraft or a train,
  - (b) “aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface,
  - (c) “road going vehicle” means any vehicle—
    - (i) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994<sup>(15)</sup>, or
    - (ii) which is an exempt vehicle under that Act,
  - (d) “train” has the meaning given in section 83 of the Railways Act 1993<sup>(16)</sup>, and
  - (e) “vessel” means any boat or ship which is self-propelled and operates in or under water.
- (3) The energy consumption of a participant includes energy which is consumed for the purposes of transport by an aircraft or a vessel during the course of any journey which—
- (a) starts,
  - (b) ends, or
  - (c) both starts and ends
- within the United Kingdom.
- (4) Notwithstanding regulation 23(4), a participant may elect to include—
- (a) energy consumed for the purposes of transport by an aircraft or a vessel, during the course of a journey which both starts, and ends, outside the United Kingdom,
  - (b) energy consumed outside the United Kingdom for the purposes of transport by a road going vehicle or a train.

### **Identification of areas of significant energy consumption**

**25.** (1) After calculating the participant’s total energy consumption in accordance with this Chapter, the responsible undertaking may elect to identify the participant’s “areas of significant energy consumption” for the purposes of Chapter 3 of this Part.

(2) In these Regulations a participant’s “areas of significant energy consumption” means those assets held, or activities carried on, by the participant which together account for not less than 90% of the participant’s total energy consumption—

- (a) measured in energy measurement units, or
- (b) measured by energy spend.

## **CHAPTER 3**

### **Energy savings opportunities**

#### **Duty to carry out an energy audit**

**26.** (1) Subject to Part 6, a responsible undertaking must carry out an energy audit in accordance with this Chapter—

- (a) in any case where the responsible undertaking has identified the participant’s areas of significant energy consumption, in relation to those areas of significant energy consumption, or

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<sup>(15)</sup> 1994 c. 22.

<sup>(16)</sup> 1993 c. 43, to which there are amendments not relevant to these Regulations.

(b) in any other case, in relation to the participant's total energy consumption.

(2) A responsible undertaking may elect to comply with the requirements of paragraph (1) by carrying out two or more energy audits, each relating to a different area of the participant's energy consumption.

(3) So far as reasonably practicable, an energy audit must be based on verifiable data evidencing the participant's energy consumption in relation to its areas of significant energy consumption (or, where paragraph (1)(b) applies, its total energy consumption), measured in energy measurement units, over a 12 month period.

(4) Subject to paragraph (5), the 12 month period referred to in paragraph (3) must be a period of 12 consecutive months which—

(a) in relation to the initial compliance period, begins—

(i) no earlier than 6th December 2010, and

(ii) no more than 24 months before the commencement of the energy audit,

(b) in relation to a subsequent compliance period, begins—

(i) no more than 12 months before the start of the compliance period, and

(ii) no more than 24 months before the commencement of the energy audit, and

ends on or before the compliance date for that compliance period.

(5) The 12 month period must be such that no data is used as the basis for energy audits carried out in more than one compliance period.

(6) Where a responsible undertaking elects, in accordance with paragraph (2), to carry out two or more energy audits in relation to different areas of its energy consumption, the participant may use different 12 month periods for each of those audits.

(7) In any case where verifiable data evidencing the participant's energy consumption is not available for a 12 month period in accordance with paragraph (3), the energy audit may be based on—

(a) verifiable data evidencing the participant's energy consumption over a shorter period, provided that the requirements of paragraph (4) are complied with, or

(b) a reasonable estimate of the participant's energy consumption over the 12 month period referred to in paragraph (3).

(8) Where paragraph (7) applies the responsible undertaking must—

(a) notify the scheme administrator accordingly, and

(b) record details of the extent to which, and the reasons why, 12 months' verifiable data was not used.

### **Identification of energy saving opportunities**

27. (1) An energy audit must, so far as reasonably practicable—

(a) analyse the participant's energy consumption and energy efficiency,

(b) identify any way in which the participant can improve its energy efficiency,

(c) recommend any measure falling within sub-paragraph (b) which is reasonably practicable and cost effective for the participant to implement (an "energy saving opportunity"), and

(d) identify the estimated costs and benefits of any energy saving opportunity.

(2) The analysis required by paragraph (1)(a) must, where appropriate and reasonably practicable, be based on "energy consumption profiles".

(3) For the purposes of this regulation, "energy consumption profile" means—

- (a) a breakdown of the different ways in which energy is consumed by activities carried on, and assets held, by the participant, and
  - (b) where appropriate, an analysis of any variations in that energy use.
- (4) For the purposes of paragraph (1)(c), whether a measure is cost effective to implement must be determined by reference to—
- (a) the estimated reduction in energy consumption which would be achieved as a result of the measure being implemented, calculated in terms of energy measurement units or energy spend, and
  - (b) the estimated cost of implementing the measure.
- (5) Whenever practicable, the cost of implementing a measure must be based on an analysis of whether the investment in the measure will be economical over its entire life, taking into account the costs of implementing the measure, including the costs of purchase, installation, maintenance, and depreciation.
- (6) In any case where the energy audit does not include an analysis based on energy consumption profiles, the responsible undertaking must—
- (a) notify the scheme administrator accordingly, and
  - (b) record details of the alternative method of analysis used and the extent to which, and the reasons why, the energy audit does not include an analysis based on energy consumption profiles.

## CHAPTER 4

### Records

#### **Evidence packs**

- 28.** (1) A responsible undertaking must maintain a written record in relation to each ESOS assessment carried out by it (the “evidence pack”) which includes—
- (a) records of any data used for the purposes of—
    - (i) the calculation of total energy consumption under Chapter 2 of this Part,
    - (ii) the identification of areas of significant energy consumption under regulation 25,
    - (iii) the energy audit under Chapter 3 of this Part, including in particular the identification of energy saving opportunities under regulation 27,
  - (b) evidence of the certification of any certified energy management system, and any display energy certificate or qualifying Green Deal assessment, relied on by the participant in accordance with Part 6,
  - (c) any agreement made in accordance with regulation 19(3), or paragraph 2, 4, 6, 7 or 11 of Schedule 2,
  - (d) the notification given by the lead assessor under regulation 21(2)(b), and
  - (e) any information recorded in accordance with regulation 23(7)(b)(ii), 26(8)(b), or 27(6)(b).
- (2) The evidence pack must be kept for at least two subsequent compliance periods following the compliance period to which it relates.

## PART 5

### Reporting of ESOS Assessments

#### Notification of compliance

**29.** A responsible undertaking must notify the scheme administrator using the Notification System whether the participant has complied with Part 4, (or, as the case may be, Part 6) in relation to a compliance period by providing—

- (a) the basic information set out in Schedule 3, and
- (b) the confirmation required by regulation 31

after the qualification date, and by no later than the compliance date, for that compliance period.

#### Responsible officers

**30.** (1) A participant must appoint one or more responsible officers in relation to an ESOS assessment.

(2) In these Regulations “responsible officer” means a person who is nominated for the purposes of these Regulations and is—

- (a) where applicable, a director of the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, a director of one of them) within the meaning of section 250 of the Companies Act 2006 (a “director”)(17), or
- (b) where there is no person falling within sub-paragraph (a) in relation to a participant, a person exercising management control in the participant (or, in the case of two or more relevant undertakings complying with the Scheme as one participant, such a person in relation to one or more of the relevant undertakings).

(3) In any case where the lead assessor appointed under regulation 21(1) is independent of the participant, one responsible officer must be nominated, and in any other case, two responsible officers must be nominated.

(4) For the purposes of this regulation a person appointed by a responsible undertaking as lead assessor is independent of the participant if they are not—

- (a) connected with it by virtue of being a person who is, or has in the last 12 months been—
  - (i) an employee,
  - (ii) a director, partner or other person exercising management control, or
  - (iii) a shareholderof the participant, or
- (b) a spouse or civil partner of a person falling within sub-paragraph (a).

#### Confirmation to be given by responsible officer

**31.** A notification required by regulation 29 must include confirmation that—

- (a) the responsible officer is satisfied to the best of their knowledge that—
  - (i) the participant is within the scope of the Scheme, and
  - (ii) the responsible undertaking has complied with the Scheme,
  - (iii) the basic information provided under regulation 29(a) is correct, and

- (b) the responsible officer has seen and considered the recommendations of the audit and any alternative routes to compliance relied upon in accordance with Part 6.

## PART 6

### Alternative routes to compliance

#### Energy consumption not subject to audit

**32.** Any energy consumption of an undertaking which falls within this Part is not required to be audited under Chapter 3 of Part 4.

#### Compliance with ISO 50001

**33.** (1) This regulation applies in any case where a participant's energy management system is certified, within the compliance period, as being in compliance with ISO 50001 (a "certified energy management system"), and that certification remains valid on the compliance date.

(2) The participant is deemed to have complied with Chapter 3 of Part 4 in relation to its energy consumption which falls under the certified energy management system.

(3) Where the total energy consumption of a participant falls under the certified energy management system, the participant is deemed to have complied with Part 4 of these Regulations.

(4) In this regulation—

- (a) "certified" means certified by a body that is accredited, for the purpose of certifying compliance with ISO 50001, by at least one of the following—
- (i) a member of the International Accreditation Forum,
  - (ii) a national accreditation body,
- (b) "energy management system" has the meaning given in Article 2(11) of the Directive,
- (c) "ISO 50001" means the international standard "*50001:2011 Energy management systems – Requirements with guidance for use*"**(18)**, and
- (d) "national accreditation body" means a national accreditation body of a Member State within the meaning of Article 2(11) of Regulation (EC) no 765/2008 of the European Parliament and of the Council**(19)**.

#### Display Energy Certificates and Green Deal Assessments

**34.** (1) This regulation applies in any case where, in relation to a building occupied by a relevant undertaking—

- (a) a display energy certificate has been issued during the compliance period, and remains valid on the compliance date, or
- (b) a qualifying Green Deal assessment has been carried out during the compliance period and remains valid on the compliance date.

(2) The relevant undertaking is deemed to have complied with Chapter 3 of Part 4 in relation to its energy consumption connected to that building.

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**(18)** ISO 50001:2011 "*Energy management systems – Requirements with guidance for use*" published in 2011 by the International Organization for Standardization (ISBN 978-92-67-10552-9).

**(19)** OJ No L 218 13.8.2008, p30.

- (3) In any case where only part of the energy consumption of a participant falls within paragraph (2) the participant—
- (a) must consider whether the display energy certificate, or the qualifying Green Deal assessment (as the case may be) relates to all of its areas of significant energy consumption (or, where regulation 26(1)(b) applies, to all of its energy consumption), and
  - (b) must comply with Chapter 3 of Part 4 in relation to any of its areas of significant energy consumption (or, where regulation 26(1)(b) applies, to any of its energy consumption) which do not fall within paragraph (2).
- (4) In this regulation—
- (a) “display energy certificate” means—
    - (i) in relation to a building in England or Wales, a display energy certificate which complies with regulation 15 of the Energy Performance of Buildings (England and Wales) Regulations 2012<sup>(20)</sup> and a valid recommendation report within the meaning of regulation 4 of those Regulations, and
    - (ii) in relation to a building in Northern Ireland, a display energy certificate which complies with regulation 12 of the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008<sup>(21)</sup> and a valid advisory report within the meaning of regulation 2(1) of those Regulations,
  - (b) “qualifying Green Deal assessment” means an energy efficiency assessment within the meaning given in regulation 7 of the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012<sup>(22)</sup>.

## PART 7

### Compliance and Enforcement

#### CHAPTER 1

##### Monitoring compliance

#### Compliance notices

**35.** (1) A compliance body may serve a notice on a responsible undertaking requesting such information as it considers necessary to enable it to monitor compliance with these Regulations (a “compliance notice”).

- (2) A compliance notice must—
- (a) be in writing,
  - (b) be served on the person to whom it is addressed,
  - (c) specify the date by which compliance with it is required.
- (3) A compliance notice may be varied or revoked in writing at any time by the compliance body that issued it.
- (4) Where a responsible undertaking—
- (a) fails to comply with a compliance notice, or
  - (b) in the opinion of the compliance body, supplies incomplete or inaccurate information,

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<sup>(20)</sup> S.I. 2012/3118; relevant amending instruments are S.I.s 2013/181 and 2014/880.

<sup>(21)</sup> S.R. (NI) 2008 No 170, amended by S.R. (NI) 2013 No 12. There are other amendments not relevant to these Regulations.

<sup>(22)</sup> S.I. 2012/2079.

the compliance body may instead determine the information requested.

(5) A determination under paragraph (4) must be made in writing and include information about appeals under Part 9 of these Regulations and, within 10 days of making the determination, be served on the responsible undertaking.

### **Inspection**

**36.** (1) A compliance body may inspect any premises, and any thing in or on those premises, in order to monitor compliance with these Regulations.

(2) Reasonable prior notice must be given before exercising the power in paragraph (1).

(3) A compliance body may authorise in writing such persons (“authorised persons”) who appear suitable to exercise the compliance body’s powers of inspection under this regulation.

(4) An authorised person must, when inspecting premises, produce a copy of the written authorisation referred to in paragraph (3) on request.

(5) A person in control of the premises to which the compliance body or authorised person requires access—

- (a) must allow the authorised person to have access to those premises, and
- (b) where the premises are an offshore installation, must afford the compliance body or authorised person such facilities and assistance, including the provision of transport, accommodation and other subsistence, as necessary and reasonably practicable.

(6) A compliance body or an authorised person may, when inspecting premises—

- (a) require the production of any record,
- (b) take measurements, photographs, recordings or copies of any thing,
- (c) require any person at the premises to provide facilities and assistance to the extent that is within that person’s control.

### **Other information**

**37.** (1) A responsible undertaking must notify the scheme administrator if it becomes aware that it is in breach of any requirement of these Regulations.

(2) A compliance body may take into account any information—

- (a) provided to it in accordance with paragraph (1), or
- (b) held by it, or provided to it, by virtue of any other provision in these Regulations or any other legislative provision,

in determining whether a responsible undertaking has complied with these Regulations.

## **CHAPTER 2**

### **Enforcement**

#### **Enforcement notices**

**38.** (1) In any case where the relevant compliance body reasonably believes that a responsible undertaking has failed to comply with a requirement of these Regulations, that compliance body may serve a notice on that responsible undertaking in accordance with this regulation (an “enforcement notice”).

(2) An enforcement notice must—

- (a) be in writing,

- (b) be served on the person to whom it is addressed,
  - (c) specify—
    - (i) the provision of these Regulations which the compliance body believes has been breached,
    - (ii) the matters constituting the breach,
    - (iii) the steps that must be taken to remedy the breach,
    - (iv) the date by which those steps must be taken, and
  - (d) include information about appeals under Part 9.
- (3) An enforcement notice may be varied or revoked in writing at any time by the compliance body that issued it.

## PART 8

### Civil penalties and breaches

#### CHAPTER 1

#### Civil penalties

#### **Penalty notices**

**39.** (1) In any case where the relevant compliance body is satisfied that a responsible undertaking is liable to a civil penalty under this Part, it may serve a notice on that responsible undertaking (a “penalty notice”) imposing the penalties and other requirements set out in this Part.

- (2) A penalty notice must—
  - (a) be in writing,
  - (b) be served on the person to whom it is addressed,
  - (c) specify—
    - (i) the breach of these Regulations in respect of which the penalty is imposed,
    - (ii) the steps that must be taken to remedy the breach,
    - (iii) the nature of the penalty, and
  - (d) include information about appeals under Part 9.
- (3) A penalty notice imposing a financial penalty must specify—
  - (a) where no daily penalty applies or the total amount of the daily penalty can be determined at the date of service of the notice—
    - (i) the total amount due,
    - (ii) where applicable, how it has been calculated, and
    - (iii) to whom, and the date by which, it must be paid,
  - (b) where a daily penalty applies and the total amount of the daily penalty cannot be determined at the date of service of the notice—
    - (i) the amount of the initial penalty,
    - (ii) details of the applicable daily penalty, and
    - (iii) to whom the penalty must be paid.

(4) Where a notice has been served under paragraph (3)(b) and the total amount of the daily penalty can be determined after the date of service of the notice, the compliance body must serve a further notice on the responsible undertaking which complies with paragraph (3)(a).

(5) The daily penalty rate must be calculated by reference to working days.

(6) The compliance body must remit to the Secretary of State any financial penalty received.

#### **Effect and recovery of financial penalty**

**40.** (1) Where—

(a) an initial penalty applies,

(b) the total amount of the daily penalty can be determined at the date of service of the notice, the financial penalty is due 60 working days after notice of that penalty is given.

(2) If unpaid, a financial penalty is recoverable as a civil debt by the compliance body.

#### **Effect of publication penalty**

**41.** (1) The “publication penalty” means publication on the scheme administrator’s webpage, or another compliance body’s website, of the following information in relation to a penalty notice—

(a) the name of the responsible undertaking and, where different, of the participant,

(b) details of the breach of these Regulations in respect of which the penalty notice has been issued, and

(c) details of any financial penalty imposed.

(2) The information in paragraph (1) must be published for a minimum period of one year, and may be published for such longer period as the scheme administrator or the compliance body (as the case may be) determines.

(3) A publication penalty may not take effect until the period specified for any appeal against the penalty has expired.

#### **Discretion in waiving, imposition and modification of civil penalties**

**42.** (1) Where the compliance body considers appropriate, it may—

(a) waive a civil penalty,

(b) allow additional time to pay any financial penalty,

(c) impose a lower financial penalty, or substitute a lower financial penalty where one has already been imposed, or

(d) modify the application of a publication penalty.

(2) Where, at any time before a financial penalty is due to be paid, the compliance body ceases to be satisfied that the responsible undertaking is liable for that penalty, it may serve a further notice on that undertaking—

(a) withdrawing the penalty notice, or

(b) modifying the penalty notice.

## CHAPTER 2

### Breach of Regulations

#### **Failure to notify**

**43.** (1) The penalties in paragraph (2) apply where a responsible undertaking fails to notify the scheme administrator of its compliance, contrary to regulation 29.

(2) The penalties are—

(a) the financial penalties of—

(i) an initial penalty of up to £5,000, and

(ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice subject to a maximum of 80 working days, and

(b) the publication penalty.

#### **Failure to maintain records**

**44.** (1) The penalties in paragraph (2) apply where a responsible undertaking fails to maintain records, contrary to regulation 28.

(2) The penalties are—

(a) the financial penalties of—

(i) an initial penalty of up to £5,000, and

(ii) a sum representing the cost to the compliance body of confirming the responsible undertaking has complied with the Scheme, and

(b) the publication penalty.

(3) The penalty notice may specify the steps the compliance body requires the responsible undertaking to take to remedy the breach.

#### **Failure to undertake an energy audit**

**45.** (1) The penalties in paragraph (2) apply where a responsible undertaking fails to carry out an audit, contrary to Chapter 3 of Part 4, where the alternative routes to compliance in Part 6 do not apply.

(2) The penalties are—

(a) the financial penalties of—

(i) an initial penalty of £50,000, or such lesser amount as the compliance body may determine, and

(ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the compliance notice subject to a maximum of 80 working days, and

(b) the publication penalty.

(3) The penalty notice may specify the steps the compliance body requires the responsible undertaking to take, including conducting or completing an ESOS assessment, to remedy the breach, and the date by which such steps must be taken.

### **Failure to comply with notice**

**46.** (1) The penalties in paragraph (2) apply where a responsible undertaking fails to provide information, or to take steps, required by a compliance notice, an enforcement notice or a penalty notice.

(2) The penalties are—

(a) the financial penalties of—

(i) an initial penalty of up to £5,000, and

(ii) a daily penalty of up to £500 for each working day the responsible undertaking remains in breach, starting on the day after the service of the penalty notice subject to a maximum of 80 working days, and

(b) the publication penalty.

### **False or misleading statement**

**47.** (1) The penalties in paragraph (2) apply where a responsible undertaking makes a statement which is false or misleading when notifying information to the scheme administrator or a compliance body, or when providing information required by a compliance notice, an enforcement notice or a penalty notice.

(2) The penalties are—

(a) £50,000, or such lesser amount as the compliance body may determine, and

(b) the publication penalty.

## **PART 9**

### **Appeals and service of documents**

#### **Appeals**

**48.** (1) A responsible undertaking served with a determination under regulation 35(5) or paragraph 13(2) of Schedule 2, or with an enforcement notice, or a penalty notice, may appeal to the relevant appeal body on the grounds that the determination, enforcement notice or penalty notice (as the case may be) was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unreasonable.

(2) The relevant appeal body—

(a) in the case of an appeal against a determination made, or an enforcement notice or a penalty notice issued, by the scheme administrator, the Natural Resources Body for Wales, or the Secretary of State for Energy and Climate Change, is the First-tier Tribunal,

(b) in the case of an appeal against determination made, or an enforcement notice or a penalty notice issued by the Scottish Environment Protection Agency, is the Scottish Ministers,

(c) in the case of an appeal against a determination made, or an enforcement notice or a penalty notice issued by the Chief Inspector, is the Planning Appeals Commission.

(3) “First-tier Tribunal” has the meaning given in section 3 of the Tribunals, Courts and Enforcement Act 2007(23).

(4) “Planning Appeals Commission” has the meaning given in of Article 110(1) of the Planning (Northern Ireland) Order 1991(24).

(5) Schedule 4 has effect in relation to the making of appeals to the Scottish Ministers and the Planning Appeals Commission.

### **Effect of an appeal**

49. The bringing of an appeal suspends the determination, enforcement notice or penalty notice (as the case may be) being appealed taking effect pending determination of the appeal.

### **Determination of an appeal**

50. An appeal body may—

- (a) cancel the determination, enforcement notice or penalty notice (as the case may be),
- (b) affirm the determination, enforcement notice or penalty notice (as the case may be), whether in its original form or with such modification as it sees fit,
- (c) instruct the scheme administrator or the relevant compliance body to do, or not to do, any thing which is within the power of the scheme administrator or compliance body.

### **Service of documents**

51. Any determination or notice required to be served on a responsible undertaking, may be served by—

- (a) delivering or sending it to, or leaving it at—
  - (i) the responsible undertaking’s registered office (where applicable),
  - (ii) the responsible undertaking’s principal place of activity, or
  - (iii) another address in the United Kingdom specified by the responsible undertaking as its address for service, or
- (b) sending it by electronic means to the email address provided by the responsible undertaking pursuant to paragraph 1(b) of Schedule 3.

## **PART 10**

### **Application of these Regulations with modifications to relevant trust assets**

#### **Relevant trust assets**

52. (1) This Part applies where a relevant undertaking is—

- (a) a dominant beneficiary,
- (b) a trustee,
- (c) an AIFM, or
- (d) an operator

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(23) 2007 c. 15. Such appeals are assigned to the General Regulatory Chamber of the First-tier Tribunal by virtue of article 3(a) of the First-tier Tribunal and Upper Tribunal (Chamber) Order 2010 (S.I. 2010/2655).

(24) S.I. 1991/1220 (N.I. 11), to which there are amendments not relevant to these Regulations.

in relation to a relevant trust on the qualification date for a compliance period.

- (2) A relevant trust exists where—
  - (a) one or more trustees hold one or more assets (“relevant trust assets”) on trust for the benefit of one or more beneficiaries, and
  - (b) one or more relevant undertakings, at least one of which is a relevant undertaking mentioned in paragraph (1), agrees with a person (“S”) that S will supply energy to the relevant trust asset, and the trust asset is supplied with energy further to that agreement.
- (3) For the purposes of this Part—
  - (a) “AIFM” has the meaning given in regulation 4 of the Alternative Investment Fund Managers Regulations 2013<sup>(25)</sup>,
  - (b) “dominant beneficiary” means a beneficiary that is entitled to more than half of the assets of the relevant trust,
  - (c) “operator” means a person with permission under Part 4A of the Financial Services and Markets Act 2000<sup>(26)</sup> to carry on a regulated activity, and
  - (d) “regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000<sup>(27)</sup>.

#### **Participants and responsible undertakings in relation to relevant trust assets**

**53.** (1) Subject to paragraph (5), where the dominant beneficiary enters into the agreement referred to in regulation 52(2)(b), the relevant trust asset is an asset held by the dominant beneficiary for the purposes of these Regulations.

(2) Where the AIFM or the operator enters into the agreement referred to in regulation 52(2)(b), the AIFM or the operator (as the case may be) is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(3) Where a trustee enters into the agreement referred to in regulation 52(2)(b) and there is an AIFM or an operator in relation to the relevant trust, the AIFM or the operator (as the case may be) is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(4) Subject to paragraph (5), where a trustee enters into the agreement referred to in regulation 52(2)(b) and there is no AIFM or operator in relation to the relevant trust, the trustee is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset.

(5) Subject to paragraph (7) in any case where paragraph (1) or (4) apply, the dominant beneficiary or the trustee (as the case may be) may enter into an agreement with another undertaking (“U”) to the effect that U is required to comply with the Scheme on its own behalf in relation to the energy consumption of the relevant trust asset,

(6) In any case where two or more relevant undertakings mentioned in regulation 52(1) enter the agreement mentioned in regulation 52(2)(b), they must agree which of them is required to comply with the Scheme in relation to the energy consumption of the relevant trust asset.

(7) An agreement referred to in paragraph (5) or paragraph (6) must be made in writing between the responsible officers of the undertakings.

(8) In the circumstances set out in paragraphs (2), (3), (4) and (5) these Regulations apply with the modifications set out in Schedule 5.

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<sup>(25)</sup> S.I. 2013/1773, to which there are amendments not relevant to these Regulations.

<sup>(26)</sup> 2000 c. 8. Part 4A is substituted by section 11(2) of the Financial Services Act 2012 (c. 21).

<sup>(27)</sup> Section 22 is amended by section 7(1) of the Financial Services Act 2012.

24th June 2014

*Gregory Barker*  
Minister of State  
Department of Energy and Climate Change

## SCHEDULE 1

Regulation 15(2)

## Relevant undertakings

**Large undertakings, and small or medium undertakings****1.** In these Regulations—

- (a) a “large undertaking” means an undertaking which either—
  - (i) employs at least 250 persons, or
  - (ii) has an annual turnover in excess of 50 million euro and an annual balance sheet total of 43 million euro, and
- (b) a “small or medium undertaking” means an undertaking which employs fewer than 250 persons and either—
  - (i) has an annual turnover not exceeding 50 million euro, or
  - (ii) has an annual balance sheet total not exceeding 43 million euro

determined in accordance with this Schedule.

**Financial thresholds**

**2.** The annual turnover, and the annual balance sheet total, of an undertaking must be determined as follows.

**3.** Any conversion into euro of the annual turnover or the annual balance sheet total for the purposes of paragraph 1, must be calculated on the basis of the currency conversion rate applicable on the qualification date for the compliance period.

**4.** In this Schedule “turnover” has the meaning given in section 474(1) of the Companies Act 2006<sup>(28)</sup> with the modification that for “company” there is substituted “undertaking”.

**5.** In relation to an undertaking the directors of which are required to prepare accounts under section 394 of the Companies Act 2006 (*duty to prepare individual accounts*)—

- (a) the annual turnover and the annual balance sheet total for that undertaking are the annual turnover and annual balance sheet total recorded in those accounts for the financial year ending on, or in the 12 months immediately preceding, the qualification date, or
- (b) where those accounts are not based on an accounting period of 12 months in accordance with sub-paragraph (a), a calculation of the annual turnover for a 12 month period, on a pro-rata basis.

**6.** In relation to an undertaking the directors of which are not required to prepare accounts under section 394 of the Companies Act 2006, and have prepared accounts which comply with section 395 of that Act (*Individual Accounts: applicable accounting framework*), the annual turnover and the annual balance sheet total for that undertaking are—

- (a) the annual turnover and annual balance sheet total recorded in those accounts for the financial year ending on, or in the 12 months immediately preceding, the qualification date, or
- (b) where those accounts are based on an accounting period of other than 12 months in accordance with sub-paragraph (a), a calculation of the annual turnover for a 12 month period, on a pro-rata basis.

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(28) 2006 c. 46, to which there are amendments not relevant to these Regulations.

7. In relation to an undertaking where individual accounts are not required under the Companies Act 2006, unless the undertaking is a relevant undertaking falling within regulation 15(1)(b), a responsible officer of the undertaking must estimate the annual turnover and annual balance sheet total for the undertaking for a 12 month period including the qualification date.

### **Employee threshold**

8. The number of persons employed by an undertaking must be determined as follows.
9. For the purposes of this Schedule, a person is employed by an undertaking if they are—
  - (a) an employee of the undertaking,
  - (b) an owner manager of the undertaking,
  - (c) a partner in the undertaking.

10. The number of persons employed by an undertaking on the qualification date is the total of the number of persons employed by the undertaking in each of the months in the accounting period used to calculate the undertaking's annual turnover and balance sheet total, divided by the number of months in that period.

### **Change of status**

11. Where, in any accounting period, an undertaking is a large undertaking (or a small or medium undertaking, as the case may be), it retains that status until it falls within the definition of a small or medium undertaking (or a large undertaking, as the case may be) for two consecutive accounting periods.

## SCHEDULE 2

Regulation 17(1)(b)

### Groups of undertakings

#### **Aggregation**

1. Subject to paragraphs 3 and 4, two or more highest parent groups may comply with the Scheme as one participant.

2. Where paragraph 1 applies, all the highest parents in those highest parent groups must agree in writing which of them is to be the responsible undertaking in relation to the participant's compliance with the Scheme and, in the absence of such agreement, each highest parent is the responsible undertaking in relation to the compliance of its highest parent group.

#### **Disaggregation**

3. Subject to paragraph 4, the relevant undertakings comprising a highest parent group may comply with the Scheme—

- (a) as individual participants,
- (b) as two or more participants,
- (c) by a combination of sub-paragraphs (a) and (b)

provided every undertaking comprising the highest parent group complies with the Scheme.

4. An undertaking may only comply with the Scheme other than as a member of the highest parent group where that is agreed in writing by the undertaking and the highest parent.

5. Where an undertaking complies as an individual participant in accordance with paragraph 3(a) or (c), it is the responsible undertaking in relation to its compliance with the Scheme.

6. Where two or more undertakings comply as one participant in accordance with paragraph 3(b) or 3(c), those undertakings must agree in writing which of them is to be the responsible undertaking in relation to their compliance with the Scheme, and in the absence of such agreement, each undertaking is responsible for its own compliance with the Scheme.

### **Change of group**

7. Any undertaking which is a member of a highest parent group, or of a participant formed in accordance with paragraph 3(b) or (c), on the qualification date, and ceases to be part of that group or participant before the compliance date—

- (a) may agree in writing with the highest parent that it will comply with the Scheme as if it were still a member of that group or participant,
- (b) may agree in writing with the highest parent of another highest parent group that it will comply with the Scheme as a member of that group, or
- (c) in the absence of an agreement made in accordance with sub-paragraph (a) or (b), must comply with the Scheme on its own behalf.

8. Where paragraph 7(a) or (b) applies, the undertaking must use the same reference period as the relevant participant.

9. Where paragraph 7(c) applies, the undertaking is the responsible undertaking in relation to its compliance with the Scheme.

### **Compliance of franchise undertakings as a group**

10. Subject to paragraph 11, two or more franchise undertakings may comply with the Scheme as one participant.

11. Where paragraph 10 applies, those franchise undertakings must agree in writing that they will comply with the Scheme as one participant, and which of them is to be the responsible undertaking in relation to their compliance.

12. In these Regulations—

- (a) a “franchise agreement” exists where one undertaking (“the franchisee”) and another undertaking (“the franchisor”) agree that—
  - (i) the franchisee carries on a business activity which is the sale or distribution of goods or the provision of services (the “franchise business”),
  - (ii) the franchise business is carried on under a name which the franchisor provides to the franchisee,
  - (iii) the premises where the franchise business is carried on are used exclusively for that business by the franchisee, and
  - (iv) those premises have an internal or external appearance agreed by the franchisor and that appearance is similar to that of other premises in respect of which the franchisor has entered into a franchise agreement,
- (b) where a franchise agreement exists, “franchise premises” means—
  - (i) the premises described in sub-paragraph (a), and
  - (ii) any other premises used by the franchisee in relation to carrying on the franchise business,

- (c) a “franchise undertaking” means the franchisor, and any franchisee, that are party to a franchise agreement,
- (d) a franchise agreement does not exist where the franchisee and the franchisor are group undertakings in relation to each other.

### **Determinations**

**13.** (1) A compliance body may determine whether or not a relevant undertaking is a member of a participant.

(2) A determination under sub-paragraph (1) must be made in writing and include information about appeals under Part 9 of these Regulations and, within 10 days of making the determination, be served on the relevant undertakings the compliance body considers are affected by it.

## SCHEDULE 3

Regulation 29(a)

### Basic information to be notified to the scheme administrator

- 1.** Information to be notified in relation to a responsible undertaking—
  - (a) name,
  - (b) email address and telephone number,
  - (c) registered office (where applicable),
  - (d) principal place of activity, where the responsible undertaking has no registered office,
  - (e) company registration number (where applicable),
  - (f) trading or other name by which the responsible undertaking is commonly known (where applicable),
  - (g) name, postal address, email address and telephone number of at least two individuals who will act as contacts for the responsible undertaking, one of whom is the responsible officer,
  - (h) where the responsible undertaking has a parent undertaking to which these Regulations do not extend (the “global parent”), the name of the global parent, and the trading or other name of the group of undertakings of which the global parent is the parent,
  - (i) name of the relevant trust (where applicable).
- 2.** Information to be notified where the responsible undertaking is, or was on the qualification date, one of two or more undertakings complying with the Scheme as one participant—
  - (a) the number of undertakings comprising the participant,
  - (b) where paragraph 1 of Schedule 2 applies, the fact that an agreement under paragraph 2 of Schedule 2 has been made, and the names of the relevant highest parents,
  - (c) where paragraph 3, 4, or 7 of Schedule 2 applies, the information in paragraph 1(a) in relation to any undertaking that has ceased to be, part of the participant since the qualification date.
- 3.** Information to be notified in relation to the responsible officer—
  - (a) name,
  - (b) full title or position in the undertaking,
  - (c) contact details,

- (d) date on which the responsible officer considered the recommendations of the scheme assessment.
- 4. Information to be notified in relation to the lead assessor—
  - (a) name,
  - (b) relevant approved register.
- 5. Information to be notified in relation to the assessment—
  - (a) whether, and if so to what extent, the participant has relied on Part 6 in complying with the Scheme,
  - (b) the notification required by regulations 23(7)(b)(i), 26(8)(a), and 27(6)(a).

#### SCHEDULE 4

Regulation 48(5)

#### Appeals procedure

### PART 1

#### Procedure for appeals against determinations made, and enforcement and penalty notices issued, by the Scottish Environment Protection Agency

1. This Part applies to appeals against determinations made, and enforcement and penalty notices issued, by the Scottish Environment Protection Agency.
2. The Scottish Ministers must appoint an independent person to hear appeals on behalf of the appeal body.
3. A person who wishes to appeal to the Scottish Ministers under regulation 48(1) must give them written notice of the appeal together with a statement of the grounds of appeal.
4. The Scottish Ministers must as soon as is reasonably practicable send a copy of that notice and statement to the Scottish Environment Protection Agency.
5. An appellant may withdraw an appeal by notifying the Scottish Ministers who must, as soon as is reasonably practicable, notify the Scottish Environment Protection Agency accordingly.
6. Notice of appeal in accordance with paragraph 3 is to be given before the expiry of the period of 28 (or where that period expires on a day other than a working day, by no later than the next working day) after the date of the determination, or the date of service of the enforcement notice or penalty notice (as the case may be).
7. The standard of proof to be applied by the Scottish Ministers in determining an appeal is proof on the balance of probabilities.

### PART 2

#### Procedure for appeals against determinations made, and enforcement and penalty notices issued, by the Chief Inspector

8. This Part applies to appeals against determinations made, and enforcement and penalty notices issued, by the Chief Inspector.

9. A person who wishes to appeal to the Planning Appeals Commission under regulation 48(1) must give them written notice of the appeal together with a statement of the grounds of appeal.

10. The Planning Appeals Commission must as soon as is reasonably practicable send a copy of that notice and statement to the Chief Inspector.

11. An appellant may withdraw an appeal by notifying the Planning Appeals Commission who must, as soon as is reasonably practicable, notify the Chief Inspector accordingly.

12. Notice of appeal in accordance with paragraph 9 is to be given before the expiry of the period of 28 calendar days (or where that period expires on a day other than a working day, by no later than the next working day) after the date of the determination, or the date of service of the enforcement notice or penalty notice (as the case may be).

13. The appeal body must determine the appeal and paragraphs (1) and (3) of Article 111 of the Planning (Northern Ireland) Order 1991<sup>(29)</sup> apply in relation to the determination of the appeal as they apply in relation to the determination of an appeal under that Order.

14. The Planning Appeals Commission must determine the process for determining appeals taking into account any requests of the appellant or the Chief Inspector.

15. An appeal under this Part must be accompanied by a fee and Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 has effect as if the reference to an appeal under that Order included a reference to an appeal under these Regulations.

16. The standard of proof to be applied by the Planning Appeals Commission in determining an appeal is proof on the balance on probabilities.

## SCHEDULE 5

Regulation 53(8)

### Modification of the application of these Regulations in relation to certain relevant trust assets

1. (1) Part 3 applies with the following modifications.

(2) Regulations 17, 18, and 19, and Schedule 2, do not apply, and instead the “participant” and the “responsible undertaking” in relation to relevant trust assets—

- (a) mean the undertaking which is required to comply with the Scheme in relation to those relevant trust assets, determined in accordance with regulation 53(2), (3), (4), (5) or (6),
- (b) where they are the participant and the responsible undertaking in relation to the relevant trust assets of two or more relevant trusts, must comply with the Scheme as a separate participant and responsible undertaking in relation to each relevant trust,
- (c) where they are also a participant or a responsible undertaking by virtue of regulations 17, 18 and 19, must comply with the Scheme as a separate participant or responsible undertaking (as the case may be) in accordance with those regulations.

2. (1) Part 4 applies with the following modifications.

(2) In regulation 21(1)(b) for “participant” there is substituted “relevant trust asset”.

(3) Regulation 22(1) to (3) does not apply and instead the responsible undertaking must, unless regulation 33(3) applies—

- (a) subject to sub-paragraph (4), calculate the total energy consumption of all relevant trust assets held in the relevant trust on the qualification date for that compliance period, and

<sup>(29)</sup> Article 111(1) is amended by [S.I. 2006/1252 \(N.I. 7\)](#) articles 1(3)(b) and 15(2), and by [S.R. 2006/222](#) article 2.

- (b) base that calculation on the energy consumption of the relevant trust assets during the reference period.
- (4) The responsible undertaking may elect to exclude from the calculation referred to in subparagraph (3) any relevant trust asset which is no longer held in the relevant trust on the compliance date.
- (5) Regulation 23(1) and (2) does not apply and instead—
  - (a) the “energy consumption” of a relevant trust asset means energy that is supplied to, and consumed by, the relevant trust asset, but excluding any energy which is supplied from the relevant trust asset to another person,
  - (b) for the purposes of paragraph (a)—
    - (i) energy is supplied to a relevant trust asset when it is supplied pursuant to the agreement referred to in regulation 52(2)(b), or the relevant trust asset supplies energy, other than surplus heat, to itself,
    - (ii) energy is supplied from a relevant trust asset to another person (“R”) where the relevant undertaking that entered the agreement referred to in regulation 52(2)(b) agrees with R that it will supply energy to R, and R is supplied with energy further to that agreement,
 and the amount of the supply is measured.
- (6) In regulation 23(4) and (6)(a) for “participant”, wherever it appears, there is substituted “relevant trust asset”.
- (7) In regulation 24—
  - (a) paragraph (1) does not apply,
  - (b) in paragraph (3) for “the energy consumption of a participant” there is substituted “the energy consumption of relevant trust assets”.
- (8) Regulation 25 does not apply and instead—
  - (a) after calculating the total energy consumption of the relevant trust assets, the responsible undertaking may elect to identify the relevant trust assets’ areas of significant energy consumption for the purposes of Chapter 3 of Part 4, and
  - (b) the “areas of significant energy consumption” of relevant trust assets means those relevant trust assets held by the relevant trust which together account for not less than 90% of the total energy consumption—
    - (i) measured in energy measurement units, or
    - (ii) measured by energy spend.
- (9) Regulation 26 applies with the modifications that any reference to the energy consumption, or the total energy consumption, of a participant is to be read as if it were a reference to the energy consumption or, the total energy consumption (as the case may be) of the relevant trust assets.
- (10) Regulation 27 applies with the modifications that—
  - (a) in paragraph (1)(a) for the words “participant’s energy consumption and energy efficiency” there is substituted “energy consumption and energy efficiency of the relevant trust assets”,
  - (b) for paragraph (1)(b) there is substituted “identify any way in which the relevant undertaking that entered the agreement referred to in regulation 52(2)(b) can improve the energy efficiency of the relevant trust asset”,
  - (c) in paragraph (1)(c) for “the participant” there is substituted “that relevant undertaking”,
  - (d) in paragraph (3)(a) for the words “by activities carried on, and assets held, by the participant” there is substituted “by the relevant trust asset”.

(11) In regulation 28 for paragraph (1)(c) there is substituted “any agreement made under regulation 53(5) or (6),”.

3. (1) Part 6 applies with the following modifications.

(2) In regulation 32 for “an undertaking” there is substituted “a relevant trust asset”.

(3) In regulation 33—

(a) in paragraph (1) for the words “a participant’s energy management system” there is substituted “an energy management system in relation to the relevant trust asset”,

(b) in paragraph (2) for the words “its energy consumption” there is substituted “the energy consumption of the relevant trust asset”,

(c) in paragraph (3) for “a participant” there is substituted “a relevant trust asset”.

(4) In regulation 34—

(a) in paragraph (1) for the words “occupied by a relevant undertaking” there is substituted “which is a relevant trust asset”,

(b) in paragraph (2) for “relevant undertaking” there is substituted “participant”, and for “its” there is substituted “the”,

(c) in paragraph (3) for “of a participant” there is substituted “of a relevant trust asset”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 2(2) of the European Communities Act 1972 and implement Article 8(4), (5) and (6) of Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency, and come into force on [ ] July 2014.

Part 2 establishes the Energy Savings Opportunity Scheme (“the Scheme”), administered by the Environment Agency.

Part 3 requires large undertakings, and small or medium undertakings which are group undertakings in respect of a large undertaking (with specified exceptions), to participate in the Scheme. It requires group undertakings to participate in the Scheme as one participant, in default of agreement to the contrary. It places duties on one “responsible” undertaking in each group (or, where an undertaking participates individually, on that undertaking) in relation to the Scheme. A group of undertakings participating as a group, and a sole undertaking participating individually, are referred to as “participants” in the Scheme.

Part 4 requires responsible undertakings to carry out an assessment of the energy consumption of the participant. It requires the responsible undertaking to audit that energy consumption (or, where it has identified areas of significant energy consumption which account for no less than 90% of the participant’s total energy consumption, that energy consumption) in every compliance period. The first compliance period ends on 5th December 2015, and subsequent four-year compliance periods end on 5th December 2019 and so on. The audit must analyse the participant’s energy efficiency, and recommend reasonably practicable ways in which that energy efficiency can be improved (an “energy saving opportunity”). Audits must be carried out by (or supervised or reviewed by) approved

assessors who meet the competence requirements enforced by a professional body and set out in a Publicly Available Specification.

Part 5 requires responsible undertakings to notify the Environment Agency of their compliance with the Scheme by providing prescribed information and confirmation of compliance by a responsible officer of the undertaking.

Part 6 prescribes certain measures which will be accepted as alternative routes to comply with the Scheme, namely a valid energy management system, a Display Energy Certificate and Green Deal Assessment.

Part 7 sets out the compliance and enforcement role of the compliance bodies. These bodies are: the Environment Agency in respect of England, Chief Inspector in respect of Northern Ireland, the Scottish Environment Protection Agency in respect of Scotland, the Natural Resources Body for Wales in respect of Wales, and the Department of Energy and Climate Change in respect of offshore undertakings. The compliance bodies are empowered to monitor compliance with the Scheme by inspection and requests for information in the form of compliance notices, and to issue enforcement notices in the case of default.

Part 8 provides for civil penalties to be imposed by the compliance bodies in respect of certain breaches of the Regulations, and Part 9 provides for appeals against determinations, enforcement notices and penalty notices.

Part 10 sets out the way in which the Regulations apply, with modifications, in relation to certain assets held on trust.

Copies of PAS 51215:2014, referred to in regulation 12, can be obtained from any of the sales outlets operated by the British Standards Institute (BSI) (<http://bsigroup.com>), or by post from the BSI at Milton Keynes. Copies of ISO 50001:2011, referred to in regulation 33, can be obtained from the International Organization for Standardization (ISO) (<http://www.iso.org>).

A transposition note, and a full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector, are annexed to the Explanatory Memorandum which is available alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).