EXPLANATORY MEMORANDUM TO

THE ENERGY SAVINGS OPPORTUNITY SCHEME (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1342

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Act.

1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to amend the Energy Savings Opportunity Scheme Regulations 2014 (S.I. 2014/1643 as amended, 'the ESOS Regulations') to address deficiencies that arise from the withdrawal of the United Kingdom from the European Union taken together with the operation of other provisions made under the European Union (Withdrawal) Act 2018. The purpose is also to make an amendment under section 2(2) of the European Communities Act 1972 to reflect a more recent publication of a relevant international standard on Energy Management Systems ('ISO 50001'), to ensure updated standards are referenced in the ESOS Regulations.

Explanations

What did any relevant EU law do before exit day?

2.2 The ESOS Regulations impose obligations on certain undertakings if they are large (or if they are small or medium but in the same corporate group as a large undertaking), as defined by thresholds relating to number of employees or financial thresholds relating to annual turnover/balance sheet, to conduct energy assessments at least every four years. Those financial thresholds are set out in euros. Also, the ESOS Regulations provide that qualifying undertakings can comply with their obligations by way of having an Energy Management System which is certified as being in compliance with ISO 50001. ISO 50001 is a specification created by the International Organization for Standardization for establishing, implementing, maintaining and improving an energy management system. The ESOS Regulations provide that that certification must have been by a body that is accredited, for the purpose of certifying compliance with ISO 50001, by a member of the International Accreditation Forum or by a national accreditation body of a Member State within the meaning of Article 2(11) of Regulation (EC) No 765/2008 (OJ No L 218 13.8.2008, p30). The ESOS Regulations also provide that that certification must be of compliance with the 2011 version of ISO 50001 ('50001:2011 Energy management systems' Requirements with guidance for use').

Why is it being changed?

2.3 As above, the financial thresholds mentioned in paragraph 2.2 are in euros, and, to reflect that the UK will no longer be a Member State, is being converted to pounds sterling. Further, with regard to the provisions in relation to ISO 50001 mentioned in paragraph 2.2, after exit day the United Kingdom Accreditation Service ('UKAS')

will not be a national accreditation body of a Member State. Finally, a 2018 version of ISO 50001 has been published ('50001:2018 Energy management systems' Requirements with guidance for use').

What will it now do?

2.4 The financial thresholds are being converted from euros to pounds sterling. The provisions in relation to ISO 50001 are being changed to specifically provide that accreditation can be by the United Kingdom's national accreditation body. The provisions in relation to ISO 50001 are also being changed to permit certification of compliance with the 2018 version of ISO 50001.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument was laid in draft on 22 November 2018 for sifting under the European Union (Withdrawal) Act 2018. This S.I. is subject to the negative procedure because the amendments made by the instrument under the European Union (Withdrawal) Act 2018 do not contain provisions under paragraph 1(2) of Schedule 7 to that Act, and do not change the underlying ESOS scheme in the UK. The Sifting Committees approved the instrument for decision by the negative procedure on 6 December 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application.

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Energy Savings Opportunity Regulations (SI 2014/1643 as amended, 'the ESOS Regulations') transposed Article 8(4) to 8(6) of the Energy Efficiency Directive (Directive 2012/27/EU). The ESOS Regulations were made under section 2(2) of the European Communities Act 1972. A transposition note for Article 8 of the Energy Efficiency Directive was published alongside the ESOS Regulations on the www.legislation.gov.uk website.

6.2 The ESOS Regulations require large undertakings (and certain small or medium undertakings which are members of the same corporate group as a large undertaking) to carry out energy assessments. Large undertakings are defined as undertakings which either:

i.) employ at least 250 persons, or

ii.) meet certain financial thresholds (specifically, having an annual turnover in excess of 50 million euro and an annual balance sheet total in excess of 43 million euro).

6.3 Regulation 33 of the ESOS Regulations provides that ESOS participants whose total energy consumption falls under an Energy Management system certified as compliant with ISO 50001 are considered to have complied with their obligations under Part 4 of the ESOS Regulations. The certification must remain valid on the compliance date for the compliance period (the next compliance date being 5 December 2019). The certification must have been completed by a body which 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 of a Member State within the meaning of Article 2(11) of Regulation (EC) no 765/2008. The United Kingdom Accreditation Service (UKAS) has been appointed for that purpose by regulation 3 of the Accreditation Regulations 2009 (S.I. 2009/3155).

6.4 The ESOS Regulations also provide that ISO 50001 is a reference to the 2011 version of that standard.

6.5 This Instrument makes provision to fix deficiencies arising from the United Kingdom's exit from the European Union, by way of providing for financial thresholds for qualification dates after exit day to be in pounds sterling and making specific provision for accreditation for the purposes of certification of compliance with ISO 50001 to be by the United Kingdom's national accreditation body. Further, this Instrument also provides that compliance may be with the 2018 version of ISO 50001.

7. Policy background

What is being done and why?

7.1 ESOS is a mandatory energy assessment scheme for organisations in the UK that meet the qualification criteria. Qualifying organisations must carry out ESOS assessments at least every four years. These assessments are audits of the energy used by their buildings, industrial processes and transport to identify cost-effective energy saving measures.

7.2 This Instrument has the effect of converting the financial thresholds for the definition of large undertaking into values set in pounds sterling.

7.3 For the purposes of certifying compliance with ISO 50001, this Instrument preserves the status quo by providing that the certification can also be made by a body that is accredited by the UK's national accreditation body, even after the UK is no longer a Member State and irrespective of whether UKAS continues to be a member of the International Accreditation Forum. The Regulations will continue to provide that accreditation can also be by a member of the International Accreditation Forum or by a national accreditation body of a Member State within the meaning of Article 2(11) of Regulation (EC) No 765/2008 (as it applies in the European Union).

7.4 Further, this Instrument makes provision to permit that compliance may be achieved by way of certification of compliance with the latest ISO 50001 standard (ISO 50001:2018), as well as the 2011 version.

7.5 This Instrument applies to energy efficiency which is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under s2(2) of the European Communities Act 1972, in order to make an amendment to permit compliance by way of certification of compliance with the 2018 version of ISO 50001.

9. Consolidation

9.1 The instrument makes amendments to the Energy Savings Opportunity Scheme Regulations 2014 as amended. The Department is not planning to consolidate these pieces of legislation at this time.

10. Consultation outcome

10.1 No consultation was required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen. We have sought the views of the devolved administrations in Northern Ireland, Scotland and Wales about the amendments made by this instrument. Northern Ireland have provided their consent.

11. Guidance

11.1 No guidance is required for this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant impacts on business or the public or voluntary sectors are foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is as set out in the existing provision made for five-yearly reviews of the ESOS Regulations.

14.2 The Regulation does not include a statutory review clause. To the extent that this instrument is made under section 2(2) of the European Communities Act 1972, no review clause is required under the Small Business, Enterprise and Employment Act 2015 because of the existing provision made for review in the ESOS Regulations.

14.3 Also, to the extent this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Andy Jackson at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 5577 or email: Andy.Jackson@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Rutter, Deputy Director for Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Claire Perry MP, the Minister of State for Energy and Clean Growth at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the amendments made by the instrument under the European Union (Withdrawal) Act 2018 do not contain provisions under paragraph 1(2) of Schedule 7 to that Act, and do not change the underlying ESOS scheme in the UK.

2. Appropriateness statement

2.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

2.2 This is the case because the amendments made by the instrument under the European Union (Withdrawal) Act 2018 seek only to make provision for qualification thresholds after exit to be in pounds sterling rather than euros and to make express provision for the role of the United Kingdom's national accreditation body in accrediting bodies which certify compliance with a relevant international standard, and therefore does not change the underlying scheme in the UK.

3. Good reasons

3.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are that, following the UK's withdrawal from the European Union, the provisions under the European Union (Withdrawal) Act 2018 are designed to convert references to euros to pounds sterling, to reflect that the UK will no longer be a Member State. This instrument also allows the UK national accreditation body to continue to be able to provide ISO 50001 accreditation if they are not, or cease to be, a member of the International Accreditation Forum.

4. Equalities

4.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I the Rt Hon Claire Perry MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.