EXPLANATORY MEMORANDUM TO

THE ENERGY SAVINGS OPPORTUNITY SCHEME (AMENDMENT) REGULATIONS 2026

2026 No. 701

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Katie White OBE MP, Minister for Climate at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Olivia Absalom, Deputy Director for industrial decarbonisation at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Fiona Gorski at the Department for Energy Security and Net Zero can be contacted by email at the following address with any queries regarding the instrument: businessenergyuse@energysecurity.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument will deliver changes which are needed to strengthen and improve the Energy Savings Opportunity Scheme (ESOS):

- Requiring fuller reporting by ESOS participants on any energy saving measures they have proposed and / or implemented, in order to increase participants' accountability for acting to reduce their energy consumption.
- Removing two compliance routes that are no longer considered to meet best practice standards.

4.2 Removing certain ESOS obligations for participants who comply exclusively using the ISO 50001 certification compliance route (meaning that that certification covers either the participant's total energy consumption (TEC) or its significant energy consumption (SEC), where SEC is the energy consumed by assets and activities which account for 95% of the TEC), because of the assurances provided by that international standard.

- Making further minor changes to support regulator activities, improve data quality, facilitate quality checks of ESOS assessments and extend an existing exemption from ESOS that applies in relation to insolvency proceedings.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Scotland, Wales and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Proposals to strengthen ESOS were the subject of a public consultation in 2021 and received good levels of support from those who responded, as set out in the previous government's 2022 response to that consultation. Many of the proposed changes were implemented by the Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (the "2023 Regulations"). However, a decision was taken to postpone other changes due to limits on the time available and to implement them in Phase 4 of the scheme (which runs from 06 December 2023 to 05 December 2027) via a further instrument. This is described in section 10 of the Explanatory Memorandum to the 2023 Regulations: The Energy Savings Opportunity Scheme (Amendment) Regulations 2023. This instrument takes forward postponed changes from the 2021 consultation and some additional minor ones.

What was the previous policy, how is this different?

5.2 These changes complete updates already implemented by the 2023 Regulations that relate to reporting and disclosure of information by participants:

- Requirement for participants to submit, and have published, an ESOS action plan setting out any commitments to implement energy efficiency measures during a compliance period, followed by two annual progress updates setting out information on measures implemented.
- Requirement to submit, and have published, information about the total energy savings achieved by all measures implemented during a compliance period.

5.3 The instrument builds on the above provisions to increase participants' accountability for taking action on energy efficiency.

5.4 In addition, the instrument sets stronger standards for ESOS by removing compliance routes that are no longer considered best practice and delivers additional minor improvements to the scheme.

5.5 The previous government postponed the addition of a net zero assessment for ESOS, originally intended to be introduced in Phase 3 under the 2023 Regulations. This is described in the Explanatory Memorandum to those regulations. The current government has decided to consider introducing this change after Phase 4 of ESOS, to ensure its integration with other business reporting changes already in progress.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument makes changes to ESOS by making amendments to the Energy Savings Opportunity Scheme Regulations 2014 under powers conferred by the Energy Act 2023

6.2 The background and aims of ESOS are described below:

Main features of ESOS, as introduced by the Energy Savings Opportunity Scheme Regulations 2014

6.3 The Energy Savings Opportunity Scheme (ESOS), as introduced, requires large businesses in the UK and their corporate group, to carry out an assessment of their energy consumption at least once every four years (in an interval of time termed the 'compliance period'). The assessment enables the identification of energy saving opportunities, which are cost-effective measures that the participant can implement, on a voluntary basis, to improve its energy efficiency.

The assessment must be based on an energy audit(s), or use 'alternative routes to compliance' either partly or wholly in place of energy audit(s). Alternative routes to compliance can be an ISO 50001 certification, Display Energy Certificate (DEC) or a Green Deal Assessment (GDA).

The compliance route(s) used (whether energy audit(s) or alternative compliance routes in place of energy audit(s)) must cover either the participant's total energy consumption (TEC) or its significant energy consumption (SEC) as the participant chooses. The significant energy consumption is the energy used by assets and activities that amounts to 95% of the participant's TEC. Participants with ISO 50001 covering TEC were in addition exempt under the 2014 Regulations from carrying out an ESOS assessment.

Details of the assessment are recorded in an ESOS report, and a responsible officer (director or equivalent from the participant) must confirm the participant's compliance with the scheme. A lead assessor is required (except in certain circumstances) to confirm they have reviewed the assessment.

The participant must confirm it has completed the ESOS assessment by submitting a 'notification of compliance' (NOC) to the scheme regulator (the Environment Agency) by the last day of the compliance period (the 'compliance date'). Some of the information in the NOC is published.

Previous changes made by the Energy Savings Opportunity Scheme (Amendment) Regulations 2023

6.4 Changes to strengthen ESOS were made by the Energy Savings Opportunity Scheme (Amendment) Regulations 2023 (the "2023 Regulations") and took effect in the third compliance period (i.e. 'Phase 3'- 06 December 2019 to 5 June 2024). They included measures to increase participants' accountability by requiring them, in the compliance period following that in which they submitted their NOC, to disclose and have published an action plan and two progress updates.

The action plan sets out any measures proposed to be implemented and is required to be submitted within the first year of the new compliance period. The two progress updates, which must be submitted within the second and third years of the compliance period respectively, set out information about any measures that have been implemented.

The 2023 Regulations removed the exemption from an ESOS assessment for participants with ISO 50001 covering the TEC.

Changes made by this statutory instrument

6.5 The instrument introduces the following changes:

6.5.1 The participant is required to submit a third progress update within the fourth (i.e. last) year of the compliance period. This requirement applies to action plans relating

to the fourth compliance period (06 December 2023 – 05 December 2027) onwards. This means the third progress update relating to Phase 4 will be required to be submitted in the final year of the fifth compliance period (06 December 2027 – 05 December 2031). The information requirements remain the same as for the progress updates that are already required to be submitted under the 2023 Regulations. These include confirmation of whether the measure was implemented by the deadline in the action plan (if applicable) and an estimate of the energy savings achieved during the 12-month period covered by the progress update.

This new requirement ensures more complete information is reported on any measures implemented, which addresses the current data gap in the fourth year of the compliance period, and increases participants' accountability.

6.5.2 The ESOS assessment is required to include a review of any current action plan of its relevant undertakings (which relate to the previous compliance period) to identify any measures which were proposed but not implemented, and which are not expected to be implemented, before the end of the compliance period. The reasons must be included in the ESOS report and NOC, although they will not be required to be published in order to prevent the release of potentially commercially sensitive information of individual participants.

These new requirements increase participants' accountability. The inclusion of the reasons in the ESOS report supports their visibility at director level, and their inclusion in the NOC provides DESNZ with access to information that supports policy development.

6.5.3 The participant is also required to include the following information in both the ESOS report and NOC -

a. an estimate of the energy savings achieved during the compliance period

b. the measures implemented to achieve the energy savings

c. the energy saving category (defined at regulation 2) to which each measure most closely relates

d. estimate of the energy savings achieved by each measure

The information at a. is an existing requirement. The information at b. and c. is currently required in the ESOS report on a provisional basis only ('*where reasonably practicable';* where *'previously identified and calculated'*.) The instrument removes the provisional wording due to the availability of information in action plans and progress updates which assists in meeting the requirements. The information at d. is a new requirement. The instrument removes an existing requirement on including a calculation of the payback period of each measure in the ESOS report. The information at a. is already required to be published, however the information at b. - d. will not be published to avoid the release of potentially commercially sensitive information.

The reasons for requiring the information a. – d. to be included in the ESOS report and the NOC are the same as those given under the last paragraph of subsection above.

6.5.4 Participants with an ISO 50001 certification covering SEC or TEC will not be required to produce an ESOS report or appoint a lead assessor.

Currently, all participants are required to produce an ESOS report, and an exemption from appointing a lead assessor only applies in relation to an ISO 50001 certification if it covers the TEC.

The ISO 50001 certification provides a high standard for recording, monitoring and improving energy efficiency, so the ESOS report and lead assessor requirements are considered unnecessary where compliance is wholly via that route (ie the ISO 50001 applies to the SEC or TEC). Therefore, removing these requirements will reduce unnecessary administrative costs for participants complying wholly via an ISO 50001 certification.

6.5.5 Removal of two alternative routes to compliance, the Display Energy Certificate (DEC) and the Green Deal Assessment (GDA). These compliance routes are no longer considered to meet best practice standards. Both provide recommendations that are more limited in scope and less tailored than those identified by an ESOS audit.

6.5.6 A number of additional minor changes are made by the instrument:

- Requirement for lead assessors to provide notification to their professional body, within a specified time period, of each ESOS assessment they have reviewed, along with the participant's contact details, to enable the professional body to request to see the ESOS report in order to carry out quality checks.
- Requirement for additional / amended information to be reported in the NOC on the number of sites to which the audit relates, ISO 50001 certification details and standard industrial classification (SIC) codes, to support the activities of the compliance bodies and improve data quality.
- An exemption from ESOS which currently applies to large undertakings (businesses) that become subject to insolvency proceedings between the ESOS qualification date (which is the date on which it is determined whether the criteria for ESOS participation are met) and the compliance date is extended to include its corporate group. The exemption does not apply if the corporate group contains another large undertaking to which insolvency proceedings do not apply
- Improved recording of methods and data used for making estimates, and requirements for certain calculations to be made in kWh.

Why was this approach taken to change the law?

6.6 Legislative changes are the only means to deliver the changes needed, both to ensure participants act to meet the new requirements and disclose data relating to them, and to provide the legal authority to make corresponding changes to the online reporting system for participants. The changes required do not require substantial reworking of the existing regulations, so the instrument amends the original Energy Savings Opportunity Scheme Regulations 2014, rather than remaking the regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The main proposals in the instrument were included in a 2021 consultation by the previous government. A full description of the consultation, and its outcome, is set out in section 10 of the Explanatory Memorandum to the 2023 Regulations (see the link under section 5 above).

8. Applicable Guidance

8.1 The compliance bodies for ESOS for each of the devolved regions of the UK, and the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) in relation to offshore activities associated with ESOS, are responsible for publishing guidance for participants on complying with ESOS. They also publish contact details to enable any queries about the scheme to be submitted by email.

8.2 Guidance will be issued when the draft instrument is laid in Parliament. As it is not issued under any legal requirement it will not be subject to legislative scrutiny.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the direct cost to business (Equivalent Annual Net Direct Cost to Business - EANDCB) from the changes is expected to be well below the £10m de minimis threshold. It is estimated the changes will increase direct annual costs to businesses by between £0.6m and £1.3m, outlined further in paragraph 9.2. Some of the changes address data quality issues and support compliance monitoring by regulators and are not expected to have wider impacts. The removal of GDAs and DECs as compliance routes, and the introduction of a third progress update, are expected to lead to greater identification and take-up of energy efficiency measures, ultimately leading to energy savings, benefitting businesses and society. These wider impacts are harder to quantify.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is expected to primarily be through the direct compliance costs with the regulations. The proposals are expected to affect these costs in the following ways. All of the changes will incur some direct cost to businesses due to the need to familiarise themselves with the changes. Some of the changes will reduce ongoing compliance costs to businesses, such as removing the requirement for an ESOS report for participants that use ISO 50001 to cover either the SEC or TEC. Others will likely increase the admin burden on businesses, such as removing DEC and GDA compliance routes. Using evidence from previous evaluations of ESOS and wage data from the ONS's Annual Survey of Hours and Earnings, it is estimated that the net effect of these changes would be an increase in direct costs to businesses (EANDCB) of between £0.6m and £1.3m each year.

9.3 The legislation impacts small or micro businesses which must comply with ESOS if they belong to the same corporate group as a large business, defined as a business having: i) 250 or more employees and / or ii) >£44m annual turnover and >£38m annual balance sheet total. Unless otherwise agreed, the highest parent(s) in the corporate group complies on behalf of all businesses in the highest parent group.

9.4 There is no significant impact on the public sector because public bodies are excluded from ESOS. Bodies may qualify, however, if they receive funding from both public and private sources, as is the case for some higher education institutions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is the application of regulation 3 of the ESOS Regulations 2014, which requires the Secretary of State to carry out a review of

the operation and effect of the regulations and publish its conclusion in a report at intervals of no more than 5 years. The latest review, dated 18 July 2025, is published here: The Energy Savings Opportunity Scheme Regulations 2014 – second Post Implementation Review) and a further review will be published by no later than 18 July 2030.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Although the instrument makes corrections to two errors in the existing regulations, the free issue procedure has by agreement with the SI Registrar, not been applied. This is because the application of the free issue procedure would be considered disproportionate due to the corrections being minor and technical in nature. The changes form a small part of those delivered by the instrument which form the primary reason for the instrument.

11.2 The corrections are:

- Regulation 51(b) of the current regulations contains a reference to an obsolete provision, the removed paragraph 1(b) of Schedule 3 which referred to the email address and telephone number of the responsible undertaking. The error has been corrected by amending regulation 51(b) to refer to line 2 of table A in Schedule 3, which is an extant reference to the email address and telephone number of the responsible undertaking.
- Column 3 of rows 2 and 4 of Table G required withholding from publication information reported by the participant on the amount of total energy consumption, or significant energy consumption, as applicable, attributable to each organisational purpose. The instrument amends those provisions to require the information to be published. The changes enable the energy intensity ratios published for each participant to be interpreted in relation to the information.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because the Energy Savings Opportunity Scheme Regulations 2014 (SI 2014/1643) were originally enacted to transpose Article 8 of the EU Energy Efficiency Directive (2012/27/EU) into UK law. The European Communities Act 1972 provided the enabling power for the ESOS Regulations 2014. Under the European Union (Withdrawal) Act 2018, which repealed the 1972 Act, the 2014 Regulations were retained to ensure continuity in UK energy policy. The enabling power in the Energy Act 2023 replaced that in the 1972 Act, to allow changes to be made to existing ESOS regulations or the making of new regulations.