

Energy Savings Opportunity Scheme (ESOS) consultation: Response Form

Thank you for taking the time to respond to our consultation in implementation of the Energy Savings Opportunity Scheme (ESOS). A copy of the consultation document can be found here: <https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Please use the space provided in this form to respond, but we will also consider any further material that you wish to share.

About you / your organisation

Name:	Dr Richard Leese
Organisation:	Mineral Products Association
Email:	Richard.leese@mineralproducts.org
Telephone:	0207 963 8000

Confidentiality

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

I am content for the information contained in this response to be made public	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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If you want your information to be treated as confidential please provide a brief explanation as to why. It would be helpful if you could explain if there is any information in particular which this applies to.

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Q1. Do you have any evidence which could assist us in calculating the impact of the options set out in this consultation document and the Impact Assessment?
(Further detailed questions are also included in the Impact Assessment).

MPA has outlined the cumulative burden of energy and climate change taxes and legislation on the two principle energy intensive mineral products (cement and lime). The evidence shows that by 2020 cement manufacturers will face a cumulative cost of energy and climate change policies of €136m. This could increase to as much as €250m if the sector loses its carbon leakage status in the 2014 EU ETS carbon leakage review. For lime manufacturers the cumulative costs expected by 2020 are around €23m but could increase to as much as €49m if carbon leakage status is lost.

These costs include both the direct and indirect costs of energy and climate change policies including the indirect cost of EU ETS (the cost pass through of full auctioning by power generators), carbon price support, feed-in-tariffs, renewables obligation, electricity market reform and the capacity market and the direct cost of EU ETS, Climate Change Levy (with CCA) and the taxation of energy products directive cost on transport.

Q2. Do you agree that there should be one energy audits scheme applied on a UK-wide basis, and are there any regionally specific needs that should be taken in to account for enterprises operating in England and Wales, Scotland and Northern Ireland?

Yes No Qualified Support

In principle MPA does not support additional legislation for those companies already regulated by EUETS, CCA and CRC. However, for organisations not covered by these schemes a single audit scheme appears to be the most appropriate approach.

Q3. Do you agree with the overall approach to defining 'enterprises' in scope, and could you currently identify if you (or organisations you are familiar with) are in scope?

Yes No Qualified Support

Specifically, are you content with the approach proposed with respect to:

- | | | |
|--|---|-----------------------------|
| a. Group enterprises | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| b. Voluntary disaggregation of group enterprises | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| c. Non-UK firms | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| d. Franchisors | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| e. Subcontractors | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| f. Universities | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

There is an argument that suggests that proportionally SME's have most to gain from energy efficiency measures. Many large enterprises are already captured by one or more of CCA, CRC or EU ETS. Government should analyse where proportionally the greatest energy savings can occur because our belief is that energy intensive industries are already maximising their energy saving potential and this would suggest that some of the larger SME's should be captured by the scheme, particularly those with high energy bills.

MPA does however, support the voluntary disaggregation of group enterprises.

Q4. What do you think should be the initial 'qualification date' for organisations to determine if they are in scope of the scheme?

For example, 1 January 2015 or 31 March 2015 (Please give reasoning).

Calendar year is preferred so 1 January 2015.

Q5. Which of the following approaches do you prefer in terms of when new entrants are required to undertake ESOS assessments?

A. ESOS would operate in 4 year phases. Organisations identify if they are in scope once every four years and then undertake an ESOS assessment within a year of the qualification date.

B. Every year, organisations determine whether they are sufficiently large to be included in ESOS based on their size at the qualification date. If in scope, that organisation carries out an ESOS assessment within a year of the qualification date, unless the entire organisation is covered by compliant assessments undertaken within the last four years.

Prefer A Prefer B Propose Alternative

Q6. Is our proposed interpretation of the minimum requirements for ESOS reasonable, on the basis that ESOS assessors would need to exercise professional judgment and discretion as to their application?

Yes No Qualified support

Assessors and verifiers are not known for their pragmatism when flexibility or professional judgement is required. They often take the most stringent course of action to avoid criticism by their accrediting body.

An element of discretion is useful when preparing the number of site visits; however discretion in general does not provide clarity on compliance which is important for companies that aim to avoid civil sanctions.

Paragraph 4.5 of the consultation document states that "...The Government recognises that the corollary of giving ESOS assessors discretion (e.g. to judge when life cycle assessment is practical)". MPA believes that DECC has misinterpreted EE Directive which refers to a life cycle approach in terms of cost analysis, where information is available. Assessors should not be given free hand to recommend 'life cycle assessment' in relation to energy saving opportunities at production and manufacturing sites. Life cycle assessment is an environmental impact assessment tool which is appropriate for assessing the whole life impacts of e.g. buildings. In particular life cycle assessment is the only robust method for assessing the relative share of embodied impacts in construction products versus their use in functional units and buildings over their whole useful life.

Q7. Do you support our proposals to develop good practice guidance for organisations?

Yes No

If yes, what do you think should be included:

- a. Minimum ESOS requirements? Yes No
b. A draft template for ESOS reports? Yes No
c. Best practice options? Yes No

The good practice guidance should not include best practice options as these will differ considerably between sectors and organisations. The organisations covered by ESOS should be allowed to identify what is best practice for their operations.

The guidance should however include guidance concerning areas of 'deemed compliance' i.e. allowing EUETS, CCA and CRC energy to be excluded from additional measures to ensure Better Regulation principles are upheld, overlap is avoided and there is not any amount of duplication of effort.

Q8. Should the Government set a legal energy spend based percentage threshold, to allow organisations to exempt energy that collectively amounts to no more than this *de minimis* percentage of total energy spend?

Yes No

If yes, what percentage should this be and why?

If no, what approach should be adopted to set a statutory *de minimis* and why?

Yes, a *de minimis* threshold would be useful. Drawing on the experience of other schemes, considerable effort can be wasted on trivial sources of energy, for example the EU ETS guidance on small combustion sources ("Scope of installation and inclusion of small emission sources", EA, 30 August 2012) which requires the inclusion of energy from Bunsen burner combustion and other trivial sources in the monitoring and reporting requirements of the EU ETS. This kind of approach diverts the company valuable resources (energy managers) away from making improvements to administration for little or no environmental benefit.

A percentage of 5% may offer a good *de minimis* although some thought would need to be given as to whether this is 5% of total energy use or 5% of energy spend.

Q9. Do you agree with the Government's proposed approach to calculating energy usage by:

- a. **Allowing use of existing data sets in order to simplify compliance? (I.e. organisations can draw on data gathered over any period during the two years prior to the ESOS assessment being conducted)?**
- b. **Setting a minimum six month time period which energy use data should cover to inform an ESOS assessment?**
- c. **Promoting use of 12 months data, with the onus on organisations to comply or explain deviations from this good practice approach?**

Yes No

Please give reasoning:

Q10. Do you think that ESOS assessments should include an energy intensity ratio as opposed to HMG requiring in law energy consumption profiles for all key buildings, transport and industrial processes?

Yes No

The energy intensity ratio should be set by the company. Flaws in the initial design of the CRC scheme have led to the removal of the performance league table because it is acknowledged that organisations have very different energy profiles. The EE Directive does not require organisations to calculate a single ratio, moreover the EED requires the operator to quantify its energy consumption profile.

Q11. Do you agree that ESOS assessments should only include all significant energy use *directly paid for* or produced by the organisation?

Yes No

No, because energy efficiency intensity could then be manipulated by organisations depending on the amount of energy that is paid for and that acquired by other means or agreements.

However, to prevent this the audits would need to be based on energy consumption and if the organisation is not the one billed for the energy, the data may be difficult to obtain.

The audits will need to be pragmatic and flexible to ensure organisations obtain useful information from them.

Q12. Do you agree that ESOS assessors should be given discretion as to the number of site visits they undertake as part of an audit?

Yes No

Yes, in discussion with the company if the ESOS assessor is a third party.

Q13. With respect to buildings, do you agree that where an organisation has installed DEC's or chooses to comply by undertaking Green Deal assessments for some or all of its buildings within the past four years, those buildings should not need to have an ESOS assessment conducted too in order to comply with the requirements of the Directive?

Yes No

Yes, but other schemes should also have deemed compliance status e.g. energy consumed on EUETS sites, energy captured by the CRC scheme and energy contained within a climate change agreement.

Q14. With respect to transport, which one of the following approaches should be adopted in relation to international aviation and/or shipping:

- a. All fuels purchased within the UK should be considered within scope of ESOS**
- b. Energy usage of all flights/shipping departing the UK should be considered within scope of ESOS**
- c. All fuels purchased anywhere in the world should be considered within scope of ESOS**

Prefer A Prefer B Prefer C Propose Alternative

Option A is easier to manage especially where organisations have just a small element of their business in the shipping or aviation sector.

Q15. With respect to transport, should an organisation's vehicle fleet be deemed to have undertaken the equivalent of an ESOS assessment if it has been subject to a Green Fleet review conducted within four years prior to the energy audit deadline, and are there other reviews similar to Green Fleet reviews that should also be considered?

Yes No

Q16. With respect to transport, do you agree with our proposed approach to employee travel on company business?

- a. That 'grey fleet' should be included within the scope of ESOS;**
- b. That travel purchased via contractual arrangements (e.g. train tickets)**

- should not be included as a minimum requirement for ESOS;**
- c. That commuting should not be included within scope of ESOS; and,**
 - d. That good practice guidance should promote the advantages of going beyond the minimum requirements of ESOS**

Yes No

Collecting transport data is time consuming. If transport energy use is less than say 5% of the total company energy consumption then it should be allowed to be excluded from the assessment. The 5% should be calculated using the proposed four approaches described in the question.

Q17. With respect to industrial processes, should ESOS assessments cover all energy use, including waste heat recycling and use of process waste as fuel?

Yes No

Government should align with the terminology of the EE Directive and not gold plate its conditions. The Article 8 and Annex VI requirements are for energy audits and not energy assessments. The requirements of Annex VI do not specifically reference waste heat recycling or the inclusion of process waste as a fuel. MPA believes that the UK should implement the conditions of the EED and not gold plate its requirements by requiring additional effort in respect of WHR and waste as a fuel.

Q18. With respect to industrial processes, are there any specific issues that you wish to raise in relation to implementing the requirement to conduct ESOS assessments, including with regards to the overlap with existing schemes?

Yes No

Energy covered by existing schemes such as EU ETS, CRC and CCA should be excluded from the Article 8 audit and any requirements that result from the Article 8 audit. This will ensure that there is not duplication of effort. DECC should learn the lessons from CCA and CRC that overlapping requirements of energy efficiency or climate change measures create confusion for operators and lead to additional cost and diversion of resources.

Q19. In addition to ISO50001 and ISO14001 (where it includes an energy audit), are there any other EU / international management systems which you think should also provide an 'exemption' (i.e. an alternative compliance route)?

If proposing additional EMSs, please provide evidence of why you think they would meet the minimum audits standard set by the Directive

MPA welcomes the use of ISO14001 and ISO50001 as a route to ESOS compliance. However, the proposal in paragraph 6.35 of the consultation document limits this possibility. For mixed activity organisations the ISO14001 certification scope is unlikely to cover all of the company activities. Some organisations will have ISO14001 certification for particular divisions of the company or business units manufacturing certain products. ESOS should allow for the flexibility for the scope of the ISO14001 certification to be excluded from ESOS even if it does not have the whole organisation in scope. Where there is a significant energy consumption in the remaining business (following the ISO14001 exemptions) then we would expect they would be required to be part of ESOS, perhaps a de minimis threshold could be used here e.g. if 95% of the company energy use is covered by ISO14001 then ESOS is not required.

Q20. Do you agree with the proposed transitional arrangements to consider whether certain existing UK schemes can be deemed compliant with the Directive's requirements for audits conducted in 2015? In particular:

a. Do you think the Carbon Trust Standard meets the minimum audits

criteria set in the Directive?

b. And are there any other UK initiatives that you think should be deemed to be compliant for audits conducted in December 2015?

Yes No

Yes it seems sensible for the carbon trust standard to be deemed compliant for Dec 2015 audits.

Yes, there are other UK initiatives that could be considered deemed compliance. Energy covered by the CCA's which have recently undergone an evidence based target setting process, which was checked Ricardo-AEA for DECC, should also be deemed compliant for the Dec 2015 audit.

Q21. Is there sufficient capacity within the energy efficiency advice sector to meet the demand that will be generated by ESOS, and particularly to ensure all organisations are able to conduct assessments by December 2015?

Yes No

If no, what further steps need to be taken to generate that capacity:

- a. By industry and professional bodies?**
- b. By the Government?**

The capacity is unknown until the assessor requirements are finalised. If the compliance can be provided by an extension of scope to ISO 14001 then there may be a better chance that the capacity is available.

Q22. Are there existing industry specific qualifications / standards which we should take account of in developing an ESOS assessors PAS specification?

Yes No

If yes, what do you think should apply as the minimum and why?

Chartered Environmentalist status and, specifically for the cement industry, NVQ's in cement process technology, should also be taken into account when looking at the qualifications required by assessors to undertake audits.

Q23. Do you agree with the Government's proposals on lead ESOS assessors:

- a. That a 'lead assessor' should sign off each ESOS assessment, drawing on the input and assessments of more technical specialists as appropriate, as part of checking that all significant energy use across the organisation has been considered?**
- b. That minimum qualifications should apply to lead assessors only, rather than to all those participating in an assessment?**

If no, should there be different minimum qualifications for more technical members of an audit team and what should these be?

Yes No

Comments:

Q24. What particular steps will need to be taken by organisations to ensure that in-house experts had the 'necessary independence' to audit business activity?

Companies with certified management systems are well versed at having internal audit teams that are not directly responsible for the areas that they are auditing. The same approach should apply to ESOS.

Q25. Which approach to accreditation would you prefer to be put in place and why?
a. UKAS accredit certifying bodies to certify ESOS assessors
b. The scheme administrator approves lists of ESOS assessors which are managed by professional bodies.

Prefer A Prefer B Propose Alternative

If you prefer Approach B please set out details of any registers already in existence which could be easily modified to meet the needs of the ESOS scheme

IEEMA Registered Auditors could be used.

Q26. Do you have any views on the proposed quality assurance arrangements for ESOS assessments; in particular, what percentage of audits should be subject to quality assurance (e.g. 10% as is the case with the CRC or 2% as is the case with EPCs and DEC)s)?

10% 2% Other

Comments / reasoning:

Q27. Should ESOS assessment records should be stored for 6 years, as with the CRC?

Yes No

Yes, but no longer than 6 years as this is the minimum requirement set by the Directive.

Q28. Would a survey based approach to collecting data on the number of large enterprises participating in ESOS / complying by means of EMS (option 1) be adequate, given the UK's obligation to report to the European Commission on uptake of energy audits, and the aim to develop a targeted enforcement regime?

Yes No

Comments / reasoning:

Q29. To support an effective enforcement regime, should large enterprises be required to notify the scheme administrator that they are in scope and have conducted an ESOS assessment (or complied by another means)? (option 2 in the Impact Assessment)?

Yes No

Yes, but there should not be any additional requirements other than to notify the scheme administrator that they are in scope and have conducted an ESOS assessment

Q30. What is your preferred approach to disclosure of an ESOS assessment (option 3 in the Impact Assessment)?

- a. Do nothing
- b. Mandatory disclosure that an ESOS assessment has been conducted
- c. Mandatory disclosure of an organisation's overall response to ESOS assessment
- d. Voluntary disclosure of an organisation's overall response to an ESOS

assessment with a light-touch enforcement regime for those organisations which do so

Approach A

Approach B

Approach C

Approach D

Comments / reasoning:

Q31. If you are in favour of public disclosure, what sort of information would you like to see disclosed? For example:

- cost savings available from audit recommendations
- action taken in light of an ESOS assessment
- the organisation's energy intensity ratio

There should not be a mandatory requirement for disclosure. Disclosure should not have to include costs or other sensitive information such as the investments and changes made as a result of the ESOS. The organisation energy intensity ratio is appropriate to the organisation itself and will be largely meaningless to others. The example with the CRC performance league table shows that publishing information on organisations with different structures, scope and energy profiles is meaningless.

And should a Director of a large enterprise be required to sign off on the corporate ESOS disclosure?

Yes No

This should not be a mandatory requirement but could be made voluntary if organisations wish.

Q32. Should large organisations be required to report on key ESOS assessment findings to the scheme administrator (option 5 in the Impact Assessment)?

Yes / No / Comments Please state your reasoning

Yes No

No, MPA supports Option 1 for a basic level of disclosure on whether the ESOS has been carried out.

If yes:

- what information should be collected and how?**
- should the scheme administrator store information internally or publicly disclose some information (and if so, what)?**

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Q33. What is your preferred option or combination of options for meeting the UK's reporting obligations to the European Commission and ensuring a cost-effective scheme, and are there any options that you think the Government should definitely not pursue?

Summary information could be collected and aggregated by the scheme administrator so that the UK can fulfil its obligations for reporting, however, individual operators should not be required to disclose or externally report what could be sensitive information.

Q34. Should the same compliance route should be adopted for organisations complying via an approved EMS as for those undertaking ESOS assessments?

Yes No

No, approved EMS verifiers could provide the Government with the aggregate number of Article 8 audits that have been carried out. This would reduce the administration on the operators.

Q35. Who do you think should be appointed as the scheme administrator?
a. **The Environment Agency working alongside devolved agencies**
b. **The National Measurement Office (NMO)**
c. **Trading Standards**
d. **Other (and if so, who)?**

Environment Agency NMO Trading Standards Other

None of those listed have the geographical coverage and all of the skills necessary for being the scheme administrator, however, of the three organisations the Environment Agency is the least worst option.

Q36. Do you agree there should be some form of penalty applicable in the following instances, and are civil sanctions sufficient to address these misdemeanours?

- a. **Failure to notify the scheme administrator.**
- b. **Failure to carry out an audit to the required standard.**
- c. **Failure to provide information when requested by the scheme administrator.**
- d. **Deliberately misleading the scheme administrator in response to a formal information request.**
- e. **Refusing to allow the enforcement body access to premises, where access is reasonable (e.g. in order to ensure accuracy of audit findings).**

Yes No

Yes, but the penalties should only relate to a restricted list of misdemeanours that have direct consequences in not meeting the obligations of the Directive i.e. the 'lighter touch' and 'last resort' enforcement mentioned in the consultation document should start by only having critical elements that can be addressed using civil penalties.

Q37. Are there any other issues you wish to raise in relation to the Energy Savings Opportunity Scheme that have not been covered in other consultation questions?

MPA rejects the use of information submitted to the scheme administrator for the academic purposes referred to in section 31 of the condoc.