

Subsidiary Legislation made under s.15 of the Environmental Protection (Energy Efficiency) Act 2009 as read with section 23(g)(i) of the Interpretation and General Clauses Act.

**ENERGY SAVINGS OPPORTUNITY SCHEME  
REGULATIONS 2016**

**(LN. 2016/194)**

*Commencement*                      **6.10.2016**

Amending enactments	Relevant current provisions	Commencement date
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**Transposing EU:**  
Directive 2012/27/EU

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**2009-28**

Environmental Protection (Energy End-Use Efficiency)

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*In exercise of the powers conferred on him by section 15 of the Environmental Protection (Energy Efficiency) Act 2009 as read with section 23(g)(i) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of transposing Article 8(4), (5) and (6) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on Energy Efficiency, the Minister has made the following Regulations—*

**PART 1**  
*Preliminary***Short title and commencement.**

1. These Regulations may be cited as the Energy Savings Opportunity Scheme Regulations 2016 and come into operation on the day of publication.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires—

“approval body” has the meaning given to it by regulation 9(4)(b);

“approved list” has the meaning given to it by regulation 9(5);

“approved register” has the meaning given to it by regulation 9(4)(a);

“certified energy management system” has the meaning given to it by regulation 30(1);

“Commissioner of Police” means the Commissioner as defined by section 2 of Police Act 2006;

“compliance body” means the compliance body within the meaning of regulation 6;

“compliance date” has the meaning given to it by regulation 4(4);

“compliance notice” has the meaning given to it by regulation 31(1);

“Directive” means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency as amended;

“employee” has the meaning given to it by section 2 of the Employment Act;

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- “energy” has the meaning given to it by Article 2(1) of the Directive;
- “energy audit” means an audit carried out, as part of an ESOS assessment, in accordance with regulations 23 and 24 in Part 4;
- “energy consumption” has the meaning given to it by regulation 20(1);
- “energy efficiency” has the meaning given to it by 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 to it by regulation 34(1);
- “ESOS assessment” means an assessment carried out in accordance with Part 4;
- “evidence pack” shall be understood within the meaning of regulation 25(1);
- “group undertaking” has the meaning given to it by section 277 of the Companies Act 2014;
- “highest parent” shall be understood within the meaning of subregulation (2)(a) and regulation 13(3);
- “initial compliance period” has the meaning given to it by regulation 4(1);
- “large undertaking” means an undertaking which either-
- (a) employs at least 250 persons; or
  - (b) has an annual turnover in excess of 50 million euro and an annual balance sheet total of 43 million euro;
- “lead assessor” means an individual whose name appears on an approved register;
- “Minister” means the Minister with responsibility for the environment;
- “Notification System” has the meaning given to it by regulation 7(1);
- “offshore activity” means activity which includes-

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- (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 where storing gas includes storing gas with a view to its permanent disposal;

“offshore area” means the British-Gibraltar territorial sea adjacent to Gibraltar 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 to it by section 276 of the Companies Act 2014;

“participant” means-

- (a) a relevant undertaking required to comply with the Scheme on its own behalf; and
- (b) where two or more relevant undertakings comply with the Scheme as a group in accordance with regulation 12(5), or regulation 13(1), (3) (7) or (10), that group of undertakings;

“the PAS” has the meaning given to it by regulation 9(1);

“penalty notice” has the meaning given to it by regulation 35(1);

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

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

“relevant undertaking” has the meaning given to it by regulation 12(1);

“responsible officer” has the meaning given to it by regulation 27(2);

“responsible undertaking” has the meaning given to it by regulation 15;

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

“scheme administrator” means the department of the Government designated by regulation 5;

“small or medium undertaking” means an undertaking which employs fewer than 250 persons and either-

- (a) has an annual turnover not exceeding 50 million euro; or
- (b) has an annual balance sheet total not exceeding 43 million euro determined in accordance with this Schedule;

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

“subsidiary undertaking” has the meaning given to it by section 276 of the Companies Act 2014;

“undertaking” has the meaning given to it by section 277 of the Companies Act 2014;

“working day” means any day other than-

- (a) a Saturday or a Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a bank holiday within the meaning of section 2 of the Banking and Financial Dealings Act .

(2) For the purposes of these Regulations-



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- (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 276 of the Companies Act 2014, 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.

## (3) 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 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; and

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- (d) a franchise agreement does not exist where the franchisee and the franchisor are group undertakings in relation to each other.

(4) Except as otherwise appears, any reference in these Regulations to a numbered Part or regulation is a reference to that numbered Part or regulation in these Regulations.

**Duty to review.**

3.(1) The Minister must, at intervals of no more than 5 years—

- (a) carry out a review of the operation and effect of these Regulations; and
- (b) publish the conclusions of the review in a report.

(2) In carrying out a review the Minister must, so far as is reasonable, have regard to how Article 8(4) to (6) of the Directive is transposed in Member States.

(3) Any report referred to in subregulation (1) 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*****Energy Savings Opportunity Scheme*****Scheme compliance periods.**

4.(1) The “initial compliance period” means the period which begins on the coming into force of these Regulations and ends on 5<sup>th</sup> December 2016.

(2) A “subsequent compliance period” means a period which—

- (a) begins on the 6<sup>th</sup> December immediately following the end of the preceding compliance period; and
- (b) ends on the 5<sup>th</sup> December 2019.

- (3) The “qualification date” means-
- (a) in relation to the initial compliance period, 31<sup>st</sup> December 2014; or
  - (b) in relation to a subsequent compliance period, the 31<sup>st</sup> 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 5<sup>th</sup> December, every 4 years after the 5<sup>th</sup> December 2019.

**Scheme administration.**

5. The Department of Environment is hereby designated as the scheme administrator under these Regulations.

**Compliance body.**

6.(1) There shall be a compliance body for the purposes of these Regulations.

- (2) The scheme administrator must function as the compliance body.

**Notification System.**

7.(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.

(4) A responsible undertaking must notify the scheme administrator of whether it qualifies for an ESOS assessment by the date ending 5<sup>th</sup> December 2016.

**Publication of information.**

8. The scheme administrator must publish the following information held on the Notification System-

- (a) the number of undertakings that have complied with the Scheme; and
- (b) a list of responsible undertakings which have notified information in accordance with regulation 7(1)(a) and, where they have notified additional information under regulation 7(1)(b), or have notified information under regulation 26(2)(a)(vi) or (vii), that information.

**Approval bodies and approved registers.**

9.(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”), in accordance with this regulation and regulation 10.

(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 6<sup>th</sup> October 2016, and must keep that list up to date in accordance with regulation 10.

(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;
- (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;
- (d) respond to reasonable requests from 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 subregulation (3) or (4), or reviewing the approved list under regulation 10(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 regulation and regulations 10 and 11, “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.**

10.(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

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- (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 paragraph (b); and
- (b) remove that register from the approved list after the expiry of the time specified for appeal in regulation 11(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.

**Appeal to the Minister against decision under this Part.**

11.(1) Where the professional body maintaining a register is notified of-

- (a) a determination under regulation 9(3); or
- (b) the proposed removal of that register from the approved list under regulation 10(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 Minister against the decision.

(2) The removal of a register from the approved list shall remain suspended pending the resolution of the appeal referred to in subregulation (1).

**PART 3**  
**Undertakings****Relevant undertakings.**

12.(1) Subject to regulation 13, 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

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

(2) For the purposes of these Regulations where an undertaking is a large undertaking or a small or medium undertaking, is to be determined in accordance with the definitions thereof in regulation 2(1) and also subregulations (3) and (4) of this regulation and regulation 14.

(3) The annual turnover, and the annual balance sheet total, of an undertaking must be determined in accordance with the Companies Act 2014 and any conversion into euro of the annual turnover or the annual balance sheet total for the purposes of this subregulation, must be calculated on the basis of the currency conversion rate applicable on the qualification date for the compliance period.

(4) 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,

those undertakings constitute a “highest parent group” for the purposes of these Regulations and must comply with the Scheme as one participant unless regulation 13 (1), (3), (7) or (10) apply.

(5) A public body is not a relevant undertaking for purpose of these Regulations.

(6) In subregulation (5) “public body” means, a ‘contracting authority’ as defined in regulation 3 of the Procurement (Public Sector Contracts) Regulations 2016.

**Groups of undertakings.**

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

(2) Where subregulation (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 shall be the responsible undertaking in relation to the compliance of its highest parent group.

(3) Subject to subregulation (4), the relevant undertakings comprising a highest parent group may comply with the Scheme-

- (a) as individual participants;
- (b) as two or more participants; or
- (c) by a combination of paragraphs (a) and (b) if 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 (a) or (c) of subregulation (3), 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 (b) or (c) of subregulation (3), 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.

(7) Any undertaking which is a member of a highest parent group, or of a participant formed in accordance with paragraph (b) or (c) of subregulation (3), 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 paragraph (a) or (b), must comply with the Scheme on its own behalf.

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



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

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

(11) Where subregulation (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) A compliance body may determine whether or not a relevant undertaking is a member of a participant.

(13) A determination under subregulation (12) 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.

**Employee threshold and change of status.**

14(1) The number of persons employed by an undertaking must be determined in accordance with subregulations (2), (3) and (4) below.

(2) For the purposes of this regulation and regulations 12, a person is employed by an undertaking if that person is-

- (a) an employee of the undertaking;
- (b) an owner manager of the undertaking; or
- (c) a partner in the undertaking.

(3) 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.

(4) 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.

**Role of the responsible undertaking.**

15. 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 13 or 16.

**Determination of the responsible undertaking.**

16.(1) Where a relevant undertaking falls within paragraph (a) of the definition of “participant”, it is the responsible undertaking in relation to its own compliance with the Scheme.

(2) Subject to subregulation (3), where a highest parent group complies with the Scheme as one participant in accordance with regulation 12(4), 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 regulation 13(1), (3), (7) or (10) 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 regulation 13.

(6) The agreements referred to in subregulation (3) and in regulations 13(2), (4), (6), (7) and (11) must be made between the responsible officers of the relevant undertakings.

**PART 4**  
***ESOS Assessments***

**Duty to carry out ESOS assessment.**

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

**Role of the lead assessor.**

18.(1) A responsible undertaking must-

- (a) appoint at least one lead assessor for the purposes of the ESOS assessment;

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- (b) provide any appointed lead assessor with a copy of the evidence pack maintained in accordance with regulation 25 in relation to any previous ESOS assessment in relation to the participant; and
  - (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.

**Duty to calculate total energy consumption.**

19.(1) A responsible undertaking must, unless regulation 30(3) applies, calculate the participant's total energy consumption.

- (2) The calculation referred to in subregulation (1) must-
- (a) be carried out on or after the qualification date for the compliance period;
  - (b) subject to subregulation (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 subregulation (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; and
  - (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.**

20.(1) Subject to regulation 21, 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 subregulation (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 21(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 Gibraltar and offshore area;
- (b) in any other case, excludes energy which is consumed by the participant outside Gibraltar.

(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 regulations 19 to 22, 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 subregulation (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.**

21.(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 in respect of which a licence is required under the Transport Act 1998;
- (d) “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 Gibraltar.

(4) Notwithstanding regulation 20(4), a participant may elect to include 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 Gibraltar.

**Identification of areas of significant energy consumption.**

22.(1) After calculating the participant’s total energy consumption in accordance with this regulation and regulations 19 to 21, the responsible

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undertaking may elect to identify the participant's "areas of significant energy consumption" for the purposes of this regulation and regulations 19 to 21.

(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.

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

23.(1) Subject to Part 6, a responsible undertaking must carry out an energy audit in accordance with this regulation and regulation 24-

- (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
- (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 subregulation (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 subregulation (1)(b) applies, its total energy consumption), measured in energy measurement units, over a 12 month period.

(4) Subject to subregulation (5), the 12 month period referred to in subregulation (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-

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- (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 subregulation (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 subregulation (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 subregulation (4) are complied with; or
  - (b) a reasonable estimate of the participant's energy consumption over the 12 month period referred to in subregulation (3).
- (8) Where subregulation (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.**

- 24.(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 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 subregulation (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 subregulation (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.

**Evidence packs.**

25.(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 regulations 19 to 22,
  - (ii) the identification of areas of significant energy consumption under regulation 22,
  - (iii) the energy audit under regulations 23 and 24, including in particular the identification of energy saving opportunities under regulation 24;
- (b) evidence of the certification of any certified energy management system, and any display energy certificate, relied on by the participant in accordance with Part 6;
- (c) any agreement made in accordance with regulation 16(3), or regulation 13 (2), (4), (6), (7) or (11);
- (d) the notification given by the lead assessor under regulation 18(2)(b); and
- (e) any information recorded in accordance with regulation 20(7)(b)(ii), 23(8)(b), or 24(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.**

26.(1) 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 subregulation (2); and

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- (b) the confirmation required by regulation 28 after the qualification date, and by no later than the compliance date, for that compliance period.

(2) The basic information which must be notified to the scheme administrator are set out below-

- (a) information to be notified in relation to a responsible undertaking-
  - (i) name,
  - (ii) email address and telephone number,
  - (iii) registered office (where applicable),
  - (iv) principal place of activity, where the responsible undertaking has no registered office,
  - (v) company registration number (where applicable),
  - (vi) trading or other name by which the responsible undertaking is commonly known (where applicable),
  - (vii) 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,
  - (viii) 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, and
  - (ix) name of the relevant trust (where applicable);
- (b) 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-
  - (i) the number of undertakings comprising the participant,
  - (ii) where regulation 13(1) applies, the fact that an agreement under subregulation (2) of regulation 13 has been made, and the names of the relevant highest parents;

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- (iii) where regulation 13(3), (4) or (7) applies, the information in paragraph (a)(i) in relation to any undertaking that has ceased to be, part of the participant since the qualification date;
- (c) information to be notified in relation to the responsible officer-
  - (i) name,
  - (ii) full title or position in the undertaking,
  - (iii) contact details, and
  - (iv) date on which the responsible officer considered the recommendations of the scheme assessment;
- (d) information to be notified in relation to the lead assessor-
  - (i) name, and
  - (ii) relevant approved register; and
- (e) information to be notified in relation to the assessment-
  - (i) whether, and if so to what extent, the participant has relied on Part 6 in complying with the Scheme, and
  - (ii) the notification required by regulations 20(7)(b)(i), 23(8)(a), and 24(6)(a).

**Responsible officers.**

27.(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 2(1) of the Companies Act 2014 (a “director”); or

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- (b) where there is no person falling within 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 18(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 shareholder of the participant; or
- (b) a spouse or civil partner of a person falling within paragraph (a).

**Confirmation to be given by responsible officer.**

28. A notification required by regulation 26 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,
  - (ii) the responsible undertaking has complied with the Scheme, and
  - (iii) the basic information provided under regulation 26(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.**

29. Any energy consumption of an undertaking which falls within this Part is not required to be audited under regulations 23 and 24.

**Compliance with ISO 50001.**

30.(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 regulations 23 and 24 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"; 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.

**PART 7**

*Compliance and Enforcement***Compliance notices.**

31.(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, the compliance body may instead determine the information requested.

(5) A determination under subregulation (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.**

32.(1) A compliance body may inspect any premises, and anything 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 subregulation (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 subregulation (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 anything; and
- (c) require any person at the premises to provide facilities and assistance to the extent that is within that person's control.

**Other information.**

33.(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 subregulation (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.

**Enforcement notices.**

34.(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*

#### **Penalty notices.**

35.(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

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- (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 subregulation (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 subregulation (3)(a).
- (5) The daily penalty rate must be calculated by reference to working days.

**Effect and recovery of financial penalty.**

36.(1) Where-

- (a) an initial penalty applies; and
- (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.**

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37.(1) The “publication penalty” means publication on the scheme administrator’s webpage 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 subregulation (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.**

38.(1) Where the compliance body considers appropriate, it may-

- (a) waive a civil penalty;
- (b) allow additional time to pay any financial penalty; or
- (c) impose a lower financial penalty, or substitute a lower financial penalty where one has already been imposed.

(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.

**Failure to notify.**

39.(1) The penalties in subregulation (2) apply where a responsible undertaking fails to notify the scheme administrator of its compliance, contrary to regulation 26.

(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,
- (b) the publication penalty.

**Failure to maintain records.**

40.(1) The penalties in subregulation (2) apply where a responsible undertaking fails to maintain records, contrary to regulation 25.

(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;

(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.**

41.(1) The penalties in subregulation (2) apply where a responsible undertaking fails to carry out an audit, contrary to regulations 23 and 24, 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

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the day after the service of the compliance notice subject to a maximum of 80 working days; and

(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.**

42.(1) The penalties in subregulation (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

**False or misleading statement.**

43.(1) The penalties in subregulation (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***Appeal.**

44.(1) A responsible undertaking served with a determination under regulation 13(13) or 32(5) or with an enforcement notice, or a penalty

notice, may appeal to the Supreme Court on the grounds that the determination, enforcement notice or penalty notice was-

- (a) based on an error of fact;
- (b) wrong in law; or
- (c) unreasonable.

(2) 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.**

45. The Supreme Court 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; or
- (c) instruct the scheme administrator or the relevant compliance body to do, or not to do, anything which is within the power of the scheme administrator or compliance body.

#### **Service of documents.**

46. 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 Gibraltar 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 under regulation 26(2)(a)(ii).

**PART 10*****Application of these Regulations with modifications to relevant trust assets*****Relevant trust assets.**

47.(1) This Part applies where a relevant undertaking is-

- (a) a dominant beneficiary;
- (b) a trustee;
- (c) an AIFM; or
- (d) an operator 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 subregulation (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 to it by regulation 2(1) of the Financial Services (Alternative Investment Fund Managers) Regulations 2013;
- (b) “dominant beneficiary” means a beneficiary that is entitled to more than half of the assets of the relevant trust;
- (c) “operator” means a market operator within the meaning of section 2(1) of the Financial Services (Markets in Financial Instruments) Act 2006 to carry on a business in the regulated market; and

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- (d) “regulated activity” means a business in the regulated market within the meaning of the Financial Services (Markets in Financial Instruments) Act 2006.

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

48.(1) Subject to subregulation (5), where the dominant beneficiary enters into the agreement referred to in regulation 47(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 47(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 47(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 subregulation (5), where a trustee enters into the agreement referred to in regulation 47(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 subregulation (7) in any case where subregulation (1) or (4) applies, 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 47(1) enter the agreement mentioned in regulation 47(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 subregulation (5) or subregulation (6) must be made in writing between the responsible officers of the undertakings.

(8) In the circumstances set out in subregulations (2), (3), (4) and (5), these Regulations apply with the modifications set out in regulation 49.



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

49.(1) Regulations 2(2), 13, 15 and 16, do not apply, and instead the word “participant” and the phrase “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 48(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; and
- (c) where they are also a participant or a responsible undertaking by virtue of regulations 14, 15 and 16, must comply with the Scheme as a separate participant or responsible undertaking (as the case may be) in accordance with those regulations.

(2) Part 4 applies with the following modifications-

- (a) in regulation 18(1)(b) for “participant” there is substituted “relevant trust asset”;
- (b) regulation 19(1) to (3) does not apply and instead the responsible undertaking must, unless regulation 30(3) applies-
  - (i) subject to subregulation (3), calculate the total energy consumption of all relevant trust assets held in the relevant trust on the qualification date for that compliance period, and
  - (ii) base that calculation on the energy consumption of the relevant trust assets during the reference period.
- (c) the responsible undertaking may elect to exclude from the calculation referred to in paragraph (b) any relevant trust asset which is no longer held in the relevant trust on the compliance date;
- (d) regulation 20(1) and (2) does not apply and instead-

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- (i) 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,
- (ii) for the purposes of sub-paragraph (i)-
  - (A) energy is supplied to a relevant trust asset when it is supplied pursuant to the agreement referred to in regulation 47(2)(b), or the relevant trust asset supplies energy, other than surplus heat, to itself,
  - (B) energy is supplied from a relevant trust asset to another person (“R”) where the relevant undertaking that entered the agreement referred to in regulation 47(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.
- (e) in regulation 20(4) and (6)(a) for “participant”, wherever it appears, there is substituted “relevant trust asset”;
- (f) in regulation 21-
  - (i) subregulation (1) does not apply,
  - (ii) in subregulation (3) for “the energy consumption of a participant” there is substituted “the energy consumption of relevant trust assets”;
- (g) regulation 22 does not apply and instead-
  - (i) 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 regulations 23 and 24, and
  - (ii) 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;
  - (h) regulation 23 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;
  - (i) regulation 24 applies with the modifications that-
    - (i) in subregulation (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”,
    - (ii) for subregulation (1)(b) there is substituted “identify any way in which the relevant undertaking that entered the agreement referred to in regulation 47(2)(b) can improve the energy efficiency of the relevant trust asset,”,
    - (iii) in subregulation (1)(c) for “the participant” there is substituted “that relevant undertaking”,
    - (iv) in subregulation (3)(a) for the words “by activities carried on, and assets held, by the participant” there is substituted “by the relevant trust asset” ; and
  - (j) in regulation 25 for subregulation (1)(c) there is substituted “(c) any agreement made under regulation 47(5) or (6),”.
- (3) Part 6 applies with the following modifications-
- (a) in regulation 29 for “an undertaking” there is substituted “a relevant trust asset”;
  - (b) in regulation 31-
    - (i) in subregulation (1) for the words “a participant’s energy management system” there is substituted “an energy management system in relation to the relevant trust asset”,
    - (ii) in subregulation (2) for the words “its energy consumption” there is substituted “the energy consumption of the relevant trust asset”,

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- (iii) in subregulation (3) for “a participant” there is substituted “a relevant trust asset”.