

Net-Zero: The Legal Obligations

Ben Standing, Senior Associate

What is Net Zero?

- Climate change Act 2008 - it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.
- Carbon budgets
- Duty to prepare proposals and policies for meeting carbon budgets

What change is needed?

- According to the Climate Change Committee:
 - resource and energy efficiency, that reduce demand for energy across the economy
 - societal choices that lead to a lower demand for carbon-intensive activities
 - extensive electrification, particularly of transport and heating, supported by a major expansion of renewable and other low-carbon power generation
 - development of a hydrogen economy to service demands for some industrial processes, for energy-dense applications in long-distance HGVs and ships, and for electricity and heating in peak periods
 - carbon capture and storage (CCS) in industry, with bioenergy (for GHG removal from the atmosphere), and very likely for hydrogen and electricity production.

Legal frameworks to help us meet our target

- **Energy Savings Opportunity Scheme Regulations 2014**
- **The Energy Efficiency (Building Renovation and Reporting) (Amendment) Regulations 2020**
- **The Minimum Energy Efficiency Standards Regulations 2015**
 - Relevant provisions
 - Enforcement

Legal frameworks to help us meet our target

- **The EU Emissions Trading System**
- **Future legislation:**
 - **The UK Emissions Trading System**
 - Changes to the planning regime
 - Environment and agriculture bills
 - Energy white paper - will it ever arrive?
 - Circular economy

Energy Savings Opportunity Scheme (“ESOS”) Regulations 2014

- **What are the ESOS Regulations?**
 - ESOS implements Article 8(4)-(6) of the EU Energy Efficiency Directive 2012 requiring Member States to introduce a framework of measures for promoting energy efficiency to achieve EU’s 2020 energy efficiency target of cutting its annual consumption of primary energy by 20%.
- **Who must comply?**
 - Large undertakings (employers of at least 250 people or has an annual turnover of 50 million Euros and an annual balance sheet in excess of 43 million Euros) (**Regulation 15**).
 - Public bodies and companies in insolvency are excluded.

Energy Savings Opportunity Scheme (“ESOS”) Regulations 2014

- **Key Obligations**

- **Regulation 20:** Carry out an ESOS assessment comprising of measuring total energy consumption (including buildings, transport and industrial processes) over a 12-month reference period.
- **Regulation 26:** Carry out energy audits of at least 90% of energy consumption. The extra 10% (the de minimis energy use) can be allocated in any combination and proportion.
- **Regulation 27:** Identify cost-effective recommendations to improve energy efficiency. Currently participants are not required to implement the energy efficiency recommendations identified by the energy audit but this may become mandatory in the future.
- **Regulation 28:** Responsible undertakings must keep ESOS evidence packs, consisting of a written record in relation to each ESOS assessment. Evidence packs must be kept for at least 2 compliance periods (8 years from the relevant compliance period).

Energy Savings Opportunity Scheme (“ESOS”) Regulations 2014

- **Enforcement and Penalties**

- Under regulation 38, compliance bodies can serve enforcement notices on a responsible undertaking that is in breach of the ESOS Regulations. These notices must include the nature of the breach, how to remedy it and a deadline for compliance.
- Civil penalties are available for a number of breaches of the ESOS Regulations including for failing to maintain records, failing to provide the Environment Agency with information about compliance, failing to carry out an energy audit and failing to comply with an enforcement notice.
- Civil penalties include financial penalties or publication penalties.

The Energy Efficiency (Building Renovation and Reporting) (Amendment) Regulations 2020

- Came into force on 24 June 2020. Will no longer have effect on 31 December 2020.
- They implement three requirements of the EU Energy Performance of Buildings Directive 2010 as amended by the Energy Performance of Buildings Directive 2018 ((EU)2018/844) (Amending EPB Directive 2010) as follows:
 - Article 2a: Requirement for Member States to produce a Long-Term Renovation Strategy to decarbonise their building stock by 2050.
 - Article 10(6): Requirement for Member States to link financial measures for improving the energy performance of buildings to those for energy savings.
 - Article 20(2): Requirement for Member States to provide energy efficiency advice and information.

The Minimum Energy Efficiency Standards Regulations 2015 (“MEES Regulations”)

- **Part 2** of the MEES Regulations contains a right for residential tenants to request their landlord’s consent to carry out energy efficiency improvements, regardless of whether this is permitted by the lease.
- **Part 3** provides that a landlord of a sub-standard property (properties with an EPC rating of F or G) must not grant new leases or continue existing leases unless the landlord:
 - makes sufficient energy efficiency improvements to the property, so that it is no longer substandard; or
 - claims a legitimate reason not to do so under the MEES Regulations and this has been validly registered on the PRS Exemptions Register.

The Minimum Energy Efficiency Standards Regulations 2015 (“MEES Regulations”)

- One legitimate reason is that an exemption in Chapter 4 of Part 3 of the MEES Regulations applies. These are as follows:
 - Consent exemption
 - Devaluation exemption
 - Temporary exemption
- Where a property is sub-standard a landlord may not:
 - Continue to let a domestic private rented (“PR”) property on or after 1 April 2020.
 - Continue to let a non-domestic PR property on or after 1 April 2023.
- Although the MEES Regulations refer to PR properties, they can apply to leases granted by public sector landlords as well as private landlords.

The Minimum Energy Efficiency Standards Regulations 2015 (“MEES Regulations”)

- **Enforcement**

- Part 3 of the MEES Regulations does not impose a positive obligation on a landlord to make energy efficiency improvements to properties so that they are no longer sub-standard.
- A breach of the MEES Regulations is not a criminal offence. Civil penalties are permitted to be imposed which can either be financial, or adverse publicity, for example entry of the details of the breach on the public part of the PRS Exemptions Register (or both).

The EU Emissions Trading System (“EU ETS”)

- The EU ETS is a cap and trade system that seeks to reduce greenhouse gas (“GHG”) emissions by requiring operators and installations in energy-intensive sectors e.g. manufacturing, oil refineries and power stations to surrender an equal number of emission allowances as the total emissions of GHG emissions from that installation for that year. Essentially, the number of allowances held by the operator at the end of an EU ETS year must be equal to, or more than, the total volume of GHG emissions from its installation for the EU ETS year.
- An allowance represents the right to emit one metric tonne of CO₂ into the atmosphere.
- Allowances can be purchased at auction or can be allocated for free by the regulator of certain industries.

What's in the pipeline?

The UK Emissions Trading System (“UK ETS”)

- The draft Greenhouse Gas Emissions Trading Scheme Order 2020 published on 14 July 2020 sets out the framework for the UK ETS.
- The Order will come into force the day after it is made to allow regulators to prepare for the transition. Requirements of the UK ETS will take effect from **1 January 2021**.
- The UK government would like to link the UK ETS to the EU ETS but this will depend on negotiations.

The UK Emissions Trading System (“UK ETS”): Key Features

- The UK ETS will cover the same GHGs and sectors as the EU ETS.
- Aligned with the EU ETS, the UK ETS will include an opt-out for hospitals or small emitters and an ultra-small emitter exemption.
- Under the UK ETS, operators will have to apply for a GHG emissions permit.
- The cap on UK ETS allowances allocated each year will initially be set at 5% below the UK’s expected notional share of the EU ETS cap for Phase IV of the EU ETS. The cap will be roughly 156 million allowances in 2021.
- Part 7 of the draft Order provides that the regulator can issue an enforcement notice or a civil penalty for non-compliance.

Future Homes Standard

- Consultation response due this autumn. Aim to implement by 2025
- Should reduce carbon emission by 75% - 80%
- New fabric standards: All new homes will be built with low carbon heating and standards for glazing, walls, floors and roofs that limit heat loss.
- Amendments to Parts L and F: the standards of the Building Regulations 2010 Parts L and F, which deal with conserving fuel power and ventilation respectively, will be increased from 2025.
- Changes to local planning authorities' power: local planning authorities will not be able to set their own energy efficiency standards higher than those in the amended Building Regulations.

Future obligations - EU Exit and a green recovery?

- Environment and agriculture bills
- Energy white paper - will it ever happen?
- Circular economy
- 'Simplification' of EIA

Contact us

Birmingham office

Victoria House
Victoria Square
Birmingham
B2 4BU

+44 (0)121 237 3900
+44 (0)121 236 1291

Exeter office

1st Floor
The Mount
72 Paris Street
Exeter
EX1 1JY

+44 (0)1392 458800
+44 (0)1392 458801

London office

15th Floor
6 Bevis Marks
London
EC3A 7BA

+44 (0)20 7337 1000
+44 (0)20 7929 1724

Manchester office

14th Floor
No.1 Spinningfields
1 Hardman Square
Spinningfields
Manchester
M3 3EB

+44 (0)370 270 6000
+44 (0)161 375 0068

Nottingham office

Mowbray House
Castle Meadow Road
Nottingham
NG2 1BJ

+44 (0)115 976 6000
+44 (0)115 947 5246

