**Data Centre Compliance Healthcheck**

**UPDATED October 2020**

Data centre operators struggle to keep abreast of the alphabet soup of regulatory obligations placed upon them. Compliance, however, is not optional and ignorance of the law is not viewed as an acceptable excuse by regulators. So this complexity is worrying, especially where the reputational risk or penalties are severe. The following selection includes some legislation that tends to catch out operators, as well as the more familiar obligations.

If any of these instruments are new to you then they might merit closer examination. If you are aware of other potential compliance issues not identified below, please feel free to flag them to [emma.fryer@techuk.org](mailto:emma.fryer@techuk.org) and we will pick them up in our next healthcheck.

**NB: These notes are not intended to be comprehensive nor should they be regarded as a substitute for professional advice.**

**Key:**
- ![Low impact](image)
- ![Moderate impact](image)
- ![Variable impact](image)
- ![High impact](image)

Briefing material available (see overleaf)  
Call or email for more information

<table>
<thead>
<tr>
<th>What is it and why does it matter?</th>
<th>Who is affected?</th>
<th>In force?</th>
<th>Compliance burden</th>
<th>Reputation risk</th>
<th>Potential penalties</th>
<th>More info?</th>
</tr>
</thead>
</table>
| **EBA Guidelines on outsourcing arrangements**  
Mandatory requirements for banks to audit supply chain for vulnerabilities. | Financial services digital supply chain, including cloud providers | 30 Sept 2019 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **EcoDesign Directive - LOT9 for Servers:**  
Aims to improve environmental performance of servers by imposing requirements at the design stage. | Primarily impacts IT hardware suppliers and operators that use their own IT hardware | Implementing | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **EED - Energy Efficiency Directive Art 8 / ESOS**  
This requires large organisations to implement an energy audit. Aims to drive energy use awareness and efficiency. | All large organisations across all sectors. Exemptions apply to holders of ISO50001 | July 2014 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **ETS - EU Emissions Trading Scheme:**  
Cap and trade scheme to reduce scope 1 carbon. Data centres may be exempted from phase IV. | Sites with standby plant capacity >20MWth in units ≥3MWth. | Jan 2013 / 2020 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **Gasoil Storage Tank Regulations**  
Secondary containment required for 110% of capacity. Operators are compliant but may be using the wrong terminology. | All commercial gasoil storage tanks over 200l | April 2010 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **GPP - Green Public Procurement for DCs:**  
Not really a compliance obligation but may be a prerequisite for EU public sector contracts | Providers of data centre services to EU public sector bodies | Publish ed Sept 2020 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **GDPR - General Data Protection Regulation:**  
Broadens definition of personal data. Extends liability for breaches to data processors. | All organisations in all sectors that store or process personal data. | May 2018 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **Heat Network (Metering and Billing) Regs:**  
Addresses landlord/tenant split incentives. Requires accurate attribution of heat/cooling. | All sites potentially obliged but few will be in practice. | Dec 2015 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **IED – Industrial Emissions Directive (EPR):**  
Controls pollutants to air, water, land. Primarily relates to generator emissions for large sites. Implemented under EPR | Operators with generating capacity >15MW (50MWth) No exemptions. | Jan 2010 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
| **MCPD - Medium Combustion Plant Directive & Specified Generator Controls:**  
Imposes max levels of NOx, SOx, PM for generators >1MWth and <50MWth. Implemented via EPR | All operators to register new plant. Elective generation (DSR) voids standby exemptions. | Dec 2018, 2025, 2030 | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) | ![Low impact](image) |
<table>
<thead>
<tr>
<th>MEES - Minimum Energy Efficiency Standard:</th>
<th>All commercial facilities. No exemptions. Doesn’t apply to industrial space.</th>
<th>April 2018 / 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Security and Investments Bill</td>
<td>Not yet defined but future scope may include data centres</td>
<td>Immine</td>
</tr>
<tr>
<td>Red Diesel: changes to taxation regime</td>
<td>At consultation: DCs would have to dispose of red diesel</td>
<td>Mar 2022</td>
</tr>
<tr>
<td>SECR: Streamlined Energy and Carbon Reporting:</td>
<td>Large companies. 11,900 companies now obliged (up from 1,100)</td>
<td>1 April 2019</td>
</tr>
</tbody>
</table>

## Compliance healthcheck: selected links

For more information, access to notes and other briefings contact [emma.fryer@techUK.org](mailto:emma.fryer@techUK.org) unless otherwise specified.

**EBA (European Banking Association) Guidelines on Outsourcing**


**Look out for:** Further clarification

**EcoDesign Directive - LOT9 for Servers**
This activity has generated a colossal body of work. Please get in touch. Some sample positions are below.

[Relevant legislative proposals and official documents](https://www.gov.uk/government/collections/data-centres)  **Data Centres Council Communication 2017**  Updated Council position August 2018  **techUK consultation input 2017**  and  **Provisional notes submitted to BEIS 2017**

**DIGITALEUROPE consultation input**  **DIGITALEUROPE Position 2016**

Emma Fryer musing on Beetles

**Look out for:** Revised proposals

**EED - Energy Efficiency Directive Article 8 (ESOS)**
[Relevant legislation and compliance obligations](https://www.gov.uk/government/collections/energy-efficiency-directive-2012)

**EA overview (2014)**  **ESOS Briefing (Jacobs 2014)**  **ESOS briefing notes EA Q&A (2014)**

**Look out for:** ESOS - A Case Study in Lily Gilding

**ETS Phase III & IV**

**The future of carbon pricing in the UK: 2019 consultation**, techUK response  **Carbon emissions tax consultation 2020: techUK response**

**Look out for:** Govt decision on emissions trading post Brexit

**Gasoil tank storage regs**
While operators comply with regulatory requirements not all are using the correct terminology

http://www.techuk.org/insights/news/item/14003-gasoil-storage-tanks-terminology-matters

https://www.gov.uk/guidance/storing-oil-at-a-home-or-business

**GDPR - General Data Protection Regulation**
[The Brave New World of GDPR](https://www.techuk.org/insights/news/item/14088-the-brave-new-world-of-gdpr)  **GDPR Decision Tree for Data Centres**  **ICO: GDPR 12 Steps to take now**

**Briefing notes on Data Protection Act (includes GDPR basics)**, Charles Russell Speechlys: Bringing Clarity to the Cloud

**Look out for:** Clarifications through case law

**GPP - Green Public Procurement for data centres**
[Relevant legislative proposals and other documents](https://www.gov.uk/government/publications/green-public-procurement-2014)  techUK input to second draft proposals  techUK input to final proposals, techUK input to GPP proposals Dec2017  **Data Centre Performance Metrics for Tiny Tots, Final technical report (June 2020)**

**Look out for:** Publication and development of guidance
| **HNR** | **HNR - Heat Networks (Metering and Billing) Regulations**  
Relevant legislation and guidance  
Notes from workshop plus decision tree  
Compliance Nuts and Bolts for Heat Network (metering and billing) Regulation, Look out for: over ambitious due diligence practitioners |
| **IED/PR** | **IED – Industrial Emissions Directive (Implemented through EPR – Environmental Permitting Regulations)**  
Relevant legislation, guidance and contextual information  
Industry position: IED permitting March 2018  
Generator Compliance Roadmap (Cones of Pain)  
Stairway to Heaven: IED compliance pathway and IED: In or OUT (are you captured?)  
techUK MCPD and SGC Briefing note and decision tree for Data Centres  
EA Combustion Roadmap  
Implication of NOX for data centres. Look out for: Best Available Techniques (BAT) for Data Centres |
| **MCPD SGC** | **MCPD & SGC Medium Combustion Plant Directive & Specified Generator Controls (implemented through EPR)**  
MCPD Directive (EU), UK Legislation MCPD and SGC  
Environment Agency Guidance MCPD and SGC  
techUK MCPD and SGC Briefing note and decision tree for Data Centres  
Generator Compliance Roadmap  
Briefing on Emergency Generation  
and  
Council Communication on DSR Policy Conflicts  
Implication of NOX for data centres  
Look out for: changes to EA guidance as legislation beds in |
| **MEES** | **MEES - Minimum Energy Efficiency Standard**  
Relevant legislation and guidance  
No techUK briefing available yet, though members like CBRE have produced useful guidance notes  
Please call or email for further information: Contact: emma.fryer@techuk.org |
| **NIS** | **NIS - Network and Information Security Directive:**  
Contact: talal.rajab@techuk.org  
Legislation  
ICO Guide to NIS  
NCSC Guidance to NIS  
Proposed legislation  
techUK SECR Guidance for Data Centres  
Government response to targeted consultation  
Look out for: Case law |
| **NSIB** | **National Security and Investment Bill**  
Useful sources include: https://commonslibrary.parliament.uk/research-briefings/cbp-8784/  
See: insight from CharlesRussellSpeechlys and overview from Herbert Smith Freehills  
Look out for: Consultation with short response period and major implications |
| **RED DIESEL** | **HMT Proposals to reform tax treatment of red diesel**  
Look out for: Consultation with short response period and major implications |
| **SCER** | **Streamlined Carbon and Energy Reporting**  
Nothing streamlined about this clunky instrument. Replaces GHG and CRC reporting obligations. Scope and burden both widened.  
techUK response to the consultation, techUK SECR Guidance for Data Centres, Government Response, SECR Guidance, Useful explanation from the Carbon Trust,  
RPC review  
Full impact assessment |
Our insight: TM44 and EPBD  
Documentation on gov.uk: Guide to air conditioning inspections for buildings 2012  
CIBSE guide: https://www.cibse.org/Knowledge/knowledge-items/detail?id=a0q20000008i7etAAC |

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- For more on our data centre programme see: techUK data centre programme: https://www.techuk.org/focus/programmes/data-centres
- Data centre programme overviews, 2019 overview and 2020 Q1 overview

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