





# 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  Moderate impact  Variable impact  High impact



























Briefing material available (see overleaf)



Call or email for more information

What is it and why does it matter?	Who is affected?	In force?	Compliance burden	Reputation risk	Potential penalties	More info?
<b>EBA Guidelines on outsourcing arrangements</b> Mandatory requirements for banks to audit supply chain for vulnerabilities.	Financial services digital supply chain, including cloud providers	30 Sept 2019				
<b>EcoDesign Directive - LOT9 for Servers:</b> 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				
<b>EED - Energy Efficiency Directive Art 8 / ESOS</b> 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				
<b>ETS - EU Emissions Trading Scheme:</b> 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				
<b>Gasoil Storage Tank Regulations</b> 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				
<b>GPP - Green Public Procurement for DCs:</b> 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	Published Sept 2020				
<b>GDPR - General Data Protection Regulation:</b> 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				
<b>Heat Network (Metering and Billing) Regs:</b> Addresses landlord/ tenant split incentives. Requires accurate attribution of heat/cooling.	All sites potentially obliged but few will be in practice.	Dec 2015				
<b>IED – Industrial Emissions Directive (EPR):</b> 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				
<b>MCPD - Medium Combustion Plant Directive &amp; Specified Generator Controls:</b> 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				

<b>MEES - Minimum Energy Efficiency Standard:</b> No facilities can be leased with EPC certificate below E.	All commercial facilities. No exemptions. Doesn't apply to industrial space.	April 2018 / 2023				
<b>NIS - Network and Information Security Directive:</b> Requires best practice in cyber protection and reporting.	Operators of any essential service.	May 2018				
<b>National Security and Investments Bill</b> Will strengthen govt powers to intervene in M&A activity to protect national security	Not yet defined but future scope may include data centres	Imminent				
<b>Red Diesel: changes to taxation regime</b> Limits eligible use of red diesel to agriculture, rail and some heating from March 2022	At consultation: DCs would have to dispose of red diesel	Mar 2022				
<b>SECR: Streamlined Energy and Carbon Reporting:</b> Not streamlined. Replaces CRC & GHG. Increased scope and complexity.	Large companies. 11,900 companies now obliged (up from 1,100)	1 April 2019				
<b>TM44 (part of Energy Performance of Buildings Directive):</b> Requires 5 yearly inspections/ audits of cooling equipment	Appears to apply to industrial space. No obvious exceptions	April 2012				

## 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

<b>EBA</b>	<b>EBA (European Banking Association) Guidelines on Outsourcing</b> <a href="#">Guidelines available from the EBA website</a> plus the <a href="#">2019 Bank of England consultation on Outsourcing and Third Party Risk Management</a> two very useful notes from CRS aimed at cloud and data centre providers <a href="#">CharlesRussellSpeechlys Note 1</a> <a href="#">CRS Note 2</a> (updated March 2019) <b>Look out for:</b> Further clarification
<b>ECO/LOT9</b>	<b>EcoDesign Directive - LOT9 for Servers</b> This activity has generated a colossal body of work. Please get in touch. Some sample positions are below. <a href="#">Relevant legislative proposals and official documents</a> <a href="#">Data Centres Council Communication 2017</a> <a href="#">Updated Council position August 2018</a> <a href="#">techUK consultation input 2017</a> and <a href="#">Provisional notes submitted to BEIS 2017</a> <a href="#">DIGITALEUROPE consultation input</a> <a href="#">DIGITALEUROPE Position 2016</a> Emma Fryer musing on Beetles <b>Look out for:</b> Revised proposals
<b>ESOS</b>	<b>EED - Energy Efficiency Directive Article 8 (ESOS)</b> <a href="#">Relevant legislation and compliance obligations</a> <a href="#">EA overview (2014)</a> <a href="#">ESOS Briefing (Jacobs 2014)</a> <a href="#">ESOS briefing notes EA Q&amp;A (2014)</a> <b>Look out for:</b> ESOS - A Case Study in Lily Gilding
<b>EU ETS</b>	<b>ETS Phase III &amp; IV</b> Relevant <a href="#">legislation and guidance Phase III</a> and <a href="#">UK position on Phase IV, Outcomes from DGCLIMA 2014</a> <a href="#">Briefing for BIS 2014</a> , <a href="#">Low Emitters workshop with DECC 2016</a> , <a href="#">Generator Compliance Roadmap (Cones of Pain)</a> : <a href="#">Simplified route to measuring fuel use in generators and ready reckoner</a> <a href="#">Interaction of EUETS, CCA and CRC post 2014</a> <a href="#">The future of carbon pricing in the UK: 2019 consultation, techUK response</a> <a href="#">Carbon emissions tax consultation 2020: techUK response</a> <b>Look out for:</b> Govt decision on emissions trading post Brexit
<b>Gasoil</b>	<b>Gasoil tank storage regs</b> While operators comply with regulatory requirements not all are using the correct terminology <a href="http://www.techuk.org/insights/news/item/14003-gasoil-storage-tanks-terminology-matters">http://www.techuk.org/insights/news/item/14003-gasoil-storage-tanks-terminology-matters</a> <a href="https://www.gov.uk/guidance/storing-oil-at-a-home-or-business">https://www.gov.uk/guidance/storing-oil-at-a-home-or-business</a>
<b>GDPR</b>	<b>GDPR - General Data Protection Regulation:</b> <a href="#">The Brave New World of GDPR</a> , <a href="#">GDPR Decision Tree for Data Centres</a> ; <a href="#">ICO: GDP 12 Steps to take now</a> <a href="#">Briefing notes on Data Protection Act (includes GDPR basics)</a> , <a href="#">Charles Russell Speechlys: Bringing Clarity to the Cloud</a> <b>Look out for:</b> Clarifications through case law
<b>GPP</b>	<b>GPP - Green Public Procurement for data centres</b> <a href="#">Relevant legislative proposals and other documents</a> , <a href="#">techUK input to second draft proposals</a> <a href="#">techUK input to final proposals</a> , <a href="#">techUK input to GPP proposals Dec2017</a> <a href="#">Data Centre Performance Metrics for Tiny Tots</a> , <a href="#">Final technical report (June 2020)</a> <b>Look out for:</b> Publication and development of guidance

HNR	<b>HNR - Heat Networks (Metering and Billing) Regulations</b> <a href="#">Relevant legislation</a> and <a href="#">guidance</a> <a href="#">Notes from workshop plus decision tree</a> <a href="#">Compliance Nuts and Bolts for Heat Network (metering and billing) Regulation</a> , <b>Look out for:</b> over ambitious due diligence practitioners
IED/EPR	<b>IED – Industrial Emissions Directive (Implemented through EPR – Environmental Permitting Regulations)</b> <a href="#">Relevant legislation, guidance</a> and <a href="#">contextual information</a> <a href="#">Industry position: IED permitting March 2018</a> <a href="#">Generator Compliance Roadmap (Cones of Pain)</a> <a href="#">Stairway to Heaven: IED compliance pathway</a> and <a href="#">IED: In or OUT (are you captured?)</a> <a href="#">techUK MCPD and SGC Briefing note and decision tree for Data Centres</a> ; <a href="#">EA Combustion Roadmap</a> <a href="#">Implication of NOX for data centres</a> . <b>Look out for:</b> Best Available Techniques (BAT) for Data Centres
MCPD SGC	<b>MCPD &amp; SGC- Medium Combustion Plant Directive &amp; Specified Generator Controls (implemented through EPR)</b> <a href="#">MCPD Directive (EU)</a> . <a href="#">UK Legislation MCPD and SGC</a> . <a href="#">Environment Agency Guidance MCPD and SGC</a> <a href="#">techUK MCPD and SGC Briefing note and decision tree for Data Centres</a> , <a href="#">Generator Compliance Roadmap</a> <a href="#">Briefing on Emergency Generation</a> and <a href="#">Council Communication on DSR Policy Conflicts</a> , <a href="#">Implication of NOX for data centres</a> <b>Look out for:</b> changes to EA guidance as legislation beds in
MEES	<b>MEES - Minimum Energy Efficiency Standard</b> <a href="#">Relevant legislation and guidance</a> No techUK briefing available yet, though members like CBRE have produced useful <a href="#">guidance notes</a> Please call or email for further information: Contact: <a href="mailto:emma.fryer@techuk.org">emma.fryer@techuk.org</a>
NIS	<b>NIS - Network and Information Security Directive:</b> Contact: <a href="mailto:talal.rajab@techuk.org">talal.rajab@techuk.org</a> <a href="#">Legislation</a> <a href="#">ICO Guide to NIS</a> <a href="#">NCSC Guidance to NIS</a> <a href="#">Proposed legislation</a> <a href="#">techUK Consultation response September 2017</a> <a href="#">Government response to targeted consultation</a> <b>Look out for:</b> Case law
NSIB	<b>National Security and Investment Bill</b> <i>Useful sources include:</i> <a href="https://commonslibrary.parliament.uk/research-briefings/cbp-8784/">https://commonslibrary.parliament.uk/research-briefings/cbp-8784/</a> <i>See:</i> <a href="#">insight from Charles Russell Speechlys</a> and <a href="#">overview from Herbert Smith Freehills</a> . <b>Look out for:</b> Consultation with short response period and major implications
RED DIESEL	<b>HMT Proposals to reform tax treatment of red diesel</b> Consultation docs: <a href="https://www.gov.uk/government/consultations/consultation-on-reforms-to-the-tax-treatment-of-red-diesel-and-other-rebated-fuels">https://www.gov.uk/government/consultations/consultation-on-reforms-to-the-tax-treatment-of-red-diesel-and-other-rebated-fuels</a> Our response: <a href="https://portal.techuk.org/SignIn?ReturnUrl=%2Fmy-insights%2Finsight%2F%3Fid%3Df1191812-9a04-eb11-a813-000d3ab0a7d2">https://portal.techuk.org/SignIn?ReturnUrl=%2Fmy-insights%2Finsight%2F%3Fid%3Df1191812-9a04-eb11-a813-000d3ab0a7d2</a>
SECR	<b>Streamlined Carbon and Energy Reporting</b> Nothing streamlined about this clunky instrument. Replaces GHG and CRC reporting obligations. Scope and burden both widened. <a href="#">techUK response to the consultation</a> <a href="#">techUK SECR Guidance for Data Centres</a> <a href="#">Government Response</a> <a href="#">SECR Guidance</a> . <a href="#">Useful explanation from the Carbon Trust</a> , <a href="#">RPC review</a> <a href="#">Full impact assessment</a>
TM44	<b>TM44 – Energy Performance of Buildings Directive</b> Our insight: <a href="#">TM44 and EPBD</a> Documentation on gov.uk: <a href="#">Guide to air conditioning inspections for buildings 2012</a> CIBSE guide: <a href="https://www.cibse.org/Knowledge/knowledge-items/detail?id=a0q20000008I7etAAC">https://www.cibse.org/Knowledge/knowledge-items/detail?id=a0q20000008I7etAAC</a>

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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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