



Energy Act 2023

2023 CHAPTER 52

PART 11

ENERGY SAVINGS OPPORTUNITY SCHEMES

Administration, enforcement and appeals

260 Scheme administration

- (1) ESOS regulations may appoint one or more public authorities to carry out functions with respect to—
 - (a) administering an energy savings opportunity scheme;
 - (b) monitoring compliance with, and enforcing requirements imposed by, the regulations.
- (2) A person appointed by virtue of subsection (1) is referred to as a “scheme administrator”.
- (3) The regulations may make provision for a scheme administrator to authorise another person to exercise specified functions of the scheme administrator.
- (4) Regulations made by virtue of subsection (1) may in particular include provision about—
 - (a) the obtaining of information by, and the provision of information to, a scheme administrator;
 - (b) the determination by a scheme administrator of information in default of its being provided;
 - (c) the auditing and verification of information;
 - (d) the keeping, production and inspection of records;
 - (e) the determination by a scheme administrator of whether an undertaking is a participant in an energy savings opportunity scheme;
 - (f) cooperation and information sharing between scheme administrators.

Status: This is the original version (as it was originally enacted).

- (5) ESOS regulations may make provision imposing requirements on a participant relating to the provision of such facilities and services, including transport and accommodation, as may be necessary to facilitate the carrying out of any of the scheme administrator’s functions.
- (6) ESOS regulations may confer functions on a scheme administrator in relation to the publication of information relating to an energy savings opportunity scheme or its participants.
- (7) ESOS regulations may make provision—
 - (a) about the giving of guidance by a scheme administrator or the Secretary of State in connection with the operation of an energy savings opportunity scheme;
 - (b) requiring specified persons to have regard to such guidance.
- (8) ESOS regulations may make provision requiring the payment by participants to the scheme administrator of fees for or in connection with the carrying out by the scheme administrator of the scheme administrator’s functions.
- (9) ESOS regulations may confer a power on a national authority to require a scheme administrator to provide the authority with such information—
 - (a) relating to an energy savings opportunity scheme, and
 - (b) relevant to the exercise of the authority’s functions,
 as the authority requests.
- (10) In this section—
 - “national authority” means—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Scottish Ministers;
 - (d) the Department for the Economy in Northern Ireland;
 - “public authority” means a person with functions of a public nature.

261 Enforcement, penalties and offences

- (1) ESOS regulations may authorise a scheme administrator—
 - (a) to require the production of documents or the provision of information by any person;
 - (b) to question the officers of an undertaking;
 - (c) to enter premises with a warrant;
 - (d) to inspect premises and anything on premises and when doing so—
 - (i) to take measurements, photographs, recordings or copies;
 - (ii) to seize documents or records;
 - (iii) to require any person at the premises to provide facilities and assistance to the extent that is within that person’s control;
 - (e) to issue a notice requiring a participant to take steps specified in the notice for the purpose of—
 - (i) demonstrating compliance with requirements imposed by or under ESOS regulations, or
 - (ii) remedying a failure to comply with such requirements.

Status: This is the original version (as it was originally enacted).

- (2) ESOS regulations may make provision requiring a participant to give notice to a scheme administrator where the participant is unlikely to comply, or has failed to comply, with a requirement imposed by or under the regulations.
- (3) ESOS regulations may provide that a person is liable to one or more penalties in respect of—
 - (a) a failure to comply with a requirement imposed on the person by or under the regulations;
 - (b) making a false or misleading statement in connection with an energy savings opportunity scheme.
- (4) The provision that may be made by virtue of [subsection \(3\)](#) includes provision—
 - (a) for the publication of specified information relating to the failure to comply;
 - (b) authorising a scheme administrator to impose a financial penalty.
- (5) Where by virtue of [subsection \(3\)](#) ESOS regulations provide for the imposition of a financial penalty, the regulations—
 - (a) must provide for the penalty to be paid to the scheme administrator or such other person as the regulations may specify;
 - (b) may specify the amount of the penalty or provide for the amount to be determined by the scheme administrator in accordance with the regulations;
 - (c) may provide for the payment of a further penalty (of an amount specified by or determined in accordance with the regulations) for each day on which the failure to comply is not remedied;
 - (d) may specify how the penalty may be recovered.
- (6) ESOS regulations may create offences relating to energy savings opportunity schemes.
- (7) Regulations made by virtue of [subsection \(6\)](#) may provide for an offence created by the regulations to be triable—
 - (a) only summarily, or
 - (b) either summarily or on indictment.
- (8) Regulations made by virtue of [subsection \(6\)](#) may provide for an offence created by the regulations to be punishable with a fine.
- (9) Regulations may—
 - (a) provide for defences against offences;
 - (b) make provision about matters of procedure and evidence in proceedings relating to offences;
 - (c) include provision about the liability of a director, manager, secretary or other officer of a body corporate, or a partner of a Scottish partnership, or of a person purporting to act in such a capacity, where an offence under the regulations—
 - (i) is committed with the consent or connivance of such a person, or
 - (ii) is attributable to neglect on the part of such a person.
- (10) References in this section to a scheme administrator include references to a person authorised by a scheme administrator in accordance with provision in ESOS regulations made by virtue of [section 260\(3\)](#).

Status: This is the original version (as it was originally enacted).

262 Appeals

- (1) ESOS regulations that provide for the imposition of a financial penalty must also provide for a right of appeal to a court or tribunal against the imposition of the penalty.
- (2) ESOS regulations may confer rights of appeal against—
 - (a) decisions made in relation to an energy savings opportunity scheme, and
 - (b) penalties imposed (other than financial penalties) or enforcement action taken for failure to comply with the requirements of the regulations.
- (3) Regulations that make provision by virtue of subsection (2) must specify the court, tribunal or person who is to hear and determine an appeal made by virtue of that subsection.
- (4) The provision that may be made by virtue of subsection (1) or (2) includes, in particular, provision about—
 - (a) the grounds on which an appeal may be made;
 - (b) the procedure for making an appeal (including any fee which may be payable);
 - (c) suspending the effect of any decision, penalty or enforcement action pending determination of the appeal;
 - (d) the powers of the court, tribunal or person to which an appeal is made.