



# Energy Act 2023

## 2023 CHAPTER 52

### PART 11

#### ENERGY SAVINGS OPPORTUNITY SCHEMES

##### *Establishment and application of schemes*

#### **254 Energy savings opportunity schemes**

- (1) The Secretary of State may by regulations (“ESOS regulations”) make provision for the establishment and operation of one or more energy savings opportunity schemes.
- (2) An “energy savings opportunity scheme” is a scheme under which obligations are imposed on undertakings to which the scheme applies for one or more of the ESOS purposes.
- (3) The ESOS purposes are—
  - (a) enabling or requiring the energy consumption for which an undertaking is responsible, or the greenhouse gas emissions resulting from that consumption, to be assessed, audited, reported and published;
  - (b) enabling or requiring possible energy savings or emissions reductions to be identified and recommended;
  - (c) enabling or requiring the costs and benefits of possible energy savings or emissions reductions to be assessed;
  - (d) encouraging or requiring undertakings to produce plans or set targets for achieving energy savings or emissions reductions;
  - (e) encouraging or requiring undertakings to take action for the purpose of achieving energy savings or emissions reductions;
  - (f) encouraging or requiring undertakings to achieve energy savings or emissions reductions.
- (4) An energy saving is a reduction in the energy consumption for which an undertaking is responsible.

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- (5) An emissions reduction is a reduction in the greenhouse gas emissions that result from the energy consumption for which an undertaking is responsible (whether or not that consumption is also reduced).
- (6) ESOS regulations may make provision about determining—
  - (a) the energy consumption for which an undertaking is responsible;
  - (b) the greenhouse gas emissions resulting from that consumption.
- (7) ESOS regulations may—
  - (a) impose requirements on any person;
  - (b) confer functions on any person;
  - (c) provide for a person to exercise discretion in dealing with any matter.
- (8) The provision made by this Part is without prejudice to the generality of subsection (1).
- (9) For the purposes of this Part—
  - (a) the scheme established by the Energy Savings Opportunity Scheme Regulations 2014 (S.I. 2014/1643) is to be treated as having been established by provision made under subsection (1);
  - (b) a reference to a scheme administrator includes a reference to a compliance body within the meaning given by those Regulations.

## **255 Application of energy savings opportunity schemes**

- (1) ESOS regulations may provide for—
  - (a) an energy savings opportunity scheme to apply to specified descriptions of undertakings;
  - (b) specified descriptions of undertakings to be excluded from the application of the scheme.
- (2) ESOS regulations may make provision about circumstances in which—
  - (a) two or more participants are to be treated for the purposes of the regulations as if they were a single participant;
  - (b) an obligation imposed under the regulations on one participant is to be treated as if it had been imposed on a different participant.
- (3) The provisions of this Part relating to energy consumption apply to energy consumed by assets located, or activities carried on—
  - (a) wholly or partly in the United Kingdom;
  - (b) wholly or partly in an offshore area;
  - (c) where subsection (4) applies, elsewhere.
- (4) ESOS regulations may make provision about circumstances in which the energy consumption for which a participant is, for the purposes of the regulations, responsible may include energy consumed by—
  - (a) assets located elsewhere than in the United Kingdom or an offshore area, or
  - (b) activities carried on elsewhere than in the United Kingdom or an offshore area.
- (5) The provisions of this Part relating to greenhouse gas emissions apply to the emissions resulting from energy consumption to which this Part applies whether such emissions occur in the United Kingdom, in an offshore area or elsewhere.

- (6) ESOS regulations may make provision about the attribution of energy consumption to participants, including in particular provision about the treatment for the purposes of the regulations of—
- (a) a participant’s consumption of energy generated by that participant;
  - (b) energy consumption by a person over whom a participant has control or influence;
  - (c) energy consumption shared between a participant and one or more other participants or other persons;
  - (d) energy consumed by assets held on trust by or for a participant.
- (7) In this section, “offshore area” means—
- (a) waters landward of the seaward limit of the territorial sea adjacent to the United Kingdom,
  - (b) any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964, and
  - (c) any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009,
- and includes the places above those areas and the bed and subsoil of the sea within those areas.

*Assessments, energy savings and emissions reductions*

**256 Requirement for assessment of energy consumption**

- (1) ESOS regulations may require the carrying out of assessments of—
- (a) a participant’s energy consumption;
  - (b) the greenhouse gas emissions resulting from that consumption.
- Such an assessment is referred to as an “ESOS assessment”.
- (2) The provision that may be made by virtue of [subsection \(1\)](#) includes in particular provision about—
- (a) the frequency of ESOS assessments;
  - (b) the period or periods to which assessments must relate;
  - (c) how assessments are to be carried out;
  - (d) the information that must be provided or obtained for the purposes of an assessment;
  - (e) the matters that must be taken into account in an assessment;
  - (f) record-keeping in relation to an assessment.
- (3) ESOS regulations may make provision requiring an ESOS assessment, or specified parts of an ESOS assessment, to be carried out, approved or audited by a person appointed by a participant (referred to as “an assessor”).
- (4) Regulations made by virtue of [subsection \(1\)](#) may include provision enabling or requiring an ESOS assessment to include recommendations relating to energy savings or emissions reductions.
- (5) The provision that may be made by virtue of [subsection \(4\)](#) includes in particular provision about—
- (a) the matters about which recommendations may, must, or must not be made;

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- (b) the matters that must be taken into account in making a recommendation;
  - (c) the carrying out of a cost-benefit analysis before including a recommendation in a report.
- (6) “Cost-benefit analysis”, in relation to a recommendation or requirement to take action, means—
- (a) an estimate of the likely costs to a participant of acting in accordance with the recommendation or requirement;
  - (b) an estimate of the energy savings or emissions reductions likely to result from such action;
  - (c) an analysis of the costs referred to in [paragraph \(a\)](#) together with an analysis of the savings or reductions referred to in [paragraph \(b\)](#) and of any other benefits likely to arise.
- (7) ESOS regulations may make provision about the reporting of ESOS assessments, including in particular provision—
- (a) about the production of written reports;
  - (b) about the form and content of such reports;
  - (c) about the dissemination of such reports within an undertaking and between related undertakings.
- (8) ESOS regulations may make provision requiring a participant to notify a scheme administrator of specified matters relating to the participant’s compliance with requirements imposed by virtue of this section and may in particular include provision—
- (a) about the procedure for giving such notice;
  - (b) about the form and content of notices;
  - (c) about the publication of certain information contained within a notice;
  - (d) requiring a participant to justify its choice of assessor.
- (9) ESOS regulations may provide for any requirement imposed by virtue of [subsection \(1\)](#)—
- (a) to be treated as having been complied with by a participant in specified circumstances, or
  - (b) not to apply to a participant in specified circumstances.

## 257 Assessors

- (1) ESOS regulations may confer functions on an assessor in relation to assessing, monitoring and reporting on compliance with requirements imposed by the regulations.
- (2) ESOS regulations may provide that a participant may only appoint as an assessor a person of a specified description.
- (3) A description may be specified for the purposes of [subsection \(2\)](#) by reference to any criteria, including by reference to—
  - (a) a person’s competence, qualifications or experience;
  - (b) a person’s inclusion in a designated list or register;
  - (c) a person’s membership of a designated body;
  - (d) a person’s participation in a designated accreditation scheme;

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- (e) a person’s relationship to a participant.
- (4) For the purposes of this section, “designated” means designated by the Secretary of State or a scheme administrator in accordance with ESOS regulations.
- (5) A body may only be designated for the purposes of this section if the body is willing to be so designated.
- (6) ESOS regulations may make provision about—
  - (a) the giving of designations for the purposes of [subsection \(4\)](#);
  - (b) reviewing such designations;
  - (c) circumstances in which such a designation may be removed;
  - (d) maintaining and publishing a list of such designations.
- (7) ESOS regulations may make provision enabling a list or register of persons who may, or who may not, be appointed as an assessor for the purposes of [subsection \(2\)](#) to be maintained by—
  - (a) a designated body;
  - (b) a scheme administrator;
  - (c) the Secretary of State.
- (8) ESOS regulations may confer functions or impose requirements on a person responsible for maintaining a designated list or register and may in particular include provision—
  - (a) about the process for including a person in a list or register;
  - (b) about the details to be included in a list or register;
  - (c) for ensuring those details remain up to date;
  - (d) about the publication of a list or register;
  - (e) for the purpose of ensuring that a person included in a list or register continues to meet the criteria for appointment as an assessor;
  - (f) for the purpose of ensuring the quality of ESOS assessments;
  - (g) about the temporary or permanent removal of a person from a list or register in specified circumstances.
- (9) The regulations may make provision authorising a scheme administrator to share reports, notices or other information relating to an energy savings opportunity scheme with a designated body for the purposes referred to in [subsection \(8\)\(e\)](#) or [\(f\)](#).
- (10) ESOS regulations may make provision—
  - (a) enabling the Secretary of State or a scheme administrator to give a direction relating to the maintenance of a list or register;
  - (b) requiring a person responsible for maintaining a list or register to comply with such a direction.

## **258 ESOS action plans**

- (1) ESOS regulations may require participants to produce ESOS action plans.
- (2) An “ESOS action plan” is a written statement of—
  - (a) any action a participant proposes to take for the purpose of achieving energy savings or emissions reductions;

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- (b) any energy savings or emissions reductions targets a participant intends to achieve.
- (3) Where an ESOS action plan does not include any proposals for taking such action or any such targets, provision made by virtue of [subsection \(1\)](#) may require that a participant include an explanation in the plan.
- (4) ESOS regulations may make provision about the production of ESOS action plans, including in particular provision about—
  - (a) when a participant must produce a plan;
  - (b) the period to which a plan must relate;
  - (c) the form and content of a plan;
  - (d) the matters that must be taken into account in producing a plan.
- (5) ESOS regulations may make provision about the publication of ESOS action plans.

## **259 Action to achieve energy savings or emissions reductions**

- (1) ESOS regulations may make provision—
  - (a) imposing requirements (other than the requirements referred to in [paragraph \(b\)](#)) on participants so as to encourage them to—
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions, or
  - (b) requiring participants to—
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions.
- (2) The kinds of action that may be specified for the purposes of [subsection \(1\)](#) are—
  - (a) taking action in accordance with a recommendation made in an ESOS assessment;
  - (b) taking action in accordance with an ESOS action plan;
  - (c) taking any other action of a specified kind;
  - (d) taking action to achieve a target included in an ESOS action plan;
  - (e) taking action to achieve any other specified outcome;
  - (f) adopting processes, practices or systems of a specified kind;
  - (g) conforming to specified standards.
- (3) The provision that may be made by virtue of [subsection \(1\)\(a\)](#) includes in particular—
  - (a) provision requiring a participant to report—
    - (i) on whether the participant has taken the specified action, or on the steps taken by the participant towards doing so, or
    - (ii) on whether the participant has achieved the specified energy savings or emissions reductions, or on the progress made by the participant towards doing so;
  - (b) provision requiring a participant to provide an explanation for any of the matters mentioned in [paragraph \(a\)](#).

- (4) Provision made by virtue of [subsection \(1\)\(b\)](#) may include a requirement for a participant to report on action taken or energy savings or emissions reductions achieved.
- (5) Regulations made by virtue of [subsection \(1\)](#) may make provision—
  - (a) requiring participants to produce and retain evidence;
  - (b) about the verification of matters about which the participant has reported;
  - (c) about the publication of reports.
- (6) ESOS regulations may—
  - (a) specify the requirements imposed on a participant by virtue of [subsection \(1\)](#) by reference to a cost-benefit analysis;
  - (b) specify circumstances in which a participant is required to take action;
  - (c) impose a requirement to take a specified action on all participants in an energy savings opportunity scheme, or on all participants of a specified description.

*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.
- (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.

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- (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.
- (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\(3\)](#).

## 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—

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- (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.

*Procedure etc for regulations*

**263 ESOS regulations: procedure etc**

- (1) Before making ESOS regulations, the Secretary of State must consult such persons likely to be affected by the regulations as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before this section comes into force (as well as by consultation after that time).
- (3) Before making ESOS regulations that contain provision within devolved competence, the Secretary of State must give notice—
- (a) stating that the Secretary of State proposes to make ESOS regulations,
  - (b) setting out or describing the provisions of the regulations that contain provision within devolved competence, and
  - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to those provisions,
- and must consider any representations duly made and not withdrawn.
- (4) A notice under subsection (3) must be given to each relevant devolved authority, that is to say—
- (a) the Scottish Ministers, so far as the regulations contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, so far as the regulations contain provision within Welsh devolved competence;
  - (c) the Department for the Economy in Northern Ireland, so far as the regulations contain provision within Northern Ireland devolved competence.
- (5) The Secretary of State need not wait until the end of the period specified under subsection (3)(c) before making ESOS regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provisions referred to in subsection (3)(b).

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- (6) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provisions referred to in subsection (3)(b) have been taken into account in the regulations.
- (7) References in subsection (3) to provision within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.
- (8) Where the Secretary of State makes ESOS regulations that have effect in relation to the compliance period beginning on 6 December 2019 (see regulation 4 of the Energy Savings Opportunity Schemes Regulations 2014 (S.I. 2014/1643))—
- (a) subsections (3) to (7) do not apply, and
  - (b) before making the regulations, the Secretary of State must consult—
    - (i) the Scottish Ministers, so far as the regulations contain provision within Scottish devolved competence,
    - (ii) the Welsh Ministers, so far as the regulations contain provision within Welsh devolved competence, and
    - (iii) the Department for the Economy in Northern Ireland, so far as the regulations contain provision within Northern Ireland devolved competence,and subsection (2) applies to consultation under paragraph (b) as it applies to consultation under subsection (1).
- (9) ESOS regulations may create exceptions to any requirement imposed by the regulations.
- (10) ESOS regulations may—
- (a) make provision about application to the Crown;
  - (b) to the extent that they bind the Crown, restrict or modify the application of the regulations.
- (11) ESOS regulations containing any of the following (with or without other provision) are subject to the affirmative procedure—
- (a) provision extending the descriptions of undertaking to which the regulations apply;
  - (b) provision made by virtue of section 259(1)(b) of a kind not previously provided for in ESOS regulations;
  - (c) provision conferring on a scheme administrator enforcement powers of a kind not previously provided for in ESOS regulations;
  - (d) provision creating penalties;
  - (e) provision increasing the amount of financial penalties by more than is necessary to reflect changes in the value of money;
  - (f) provision creating an offence or increasing the fine for an existing offence;
  - (g) provision for the payment of a new fee.
- (12) Any other ESOS regulations are subject to the negative procedure.

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### *Directions and financial assistance*

#### **264 Directions to scheme administrators**

- (1) The Secretary of State may give directions to a scheme administrator.
- (2) The power to give directions under this section includes a power to vary or revoke the directions.
- (3) A scheme administrator must comply with any direction given to it under this section.

#### **265 Financial assistance to scheme administrators and participants**

- (1) The Secretary of State may give, or arrange for the giving of, financial assistance to—
  - (a) scheme administrators;
  - (b) participants.
- (2) “Financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.
- (3) Financial assistance under this section may be given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State.

### *Interpretation*

#### **266 Interpretation of Part 11**

- (1) In this Part—
  - “assessor” has the meaning given by [section 256\(3\)](#);
  - “cost benefit analysis” has the meaning given by [section 256\(6\)](#);
  - “emissions reduction” has the meaning given by [section 254\(5\)](#);
  - “energy consumption” has the meaning given by ESOS regulations;
  - “energy saving” has the meaning given by [section 254\(4\)](#);
  - “energy savings opportunity scheme” has the meaning given by [section 254\(2\)](#);
  - “ESOS action plan” has the meaning given by [section 258\(2\)](#);
  - “ESOS assessment” has the meaning given by [section 256\(1\)](#);
  - “ESOS regulations” means regulations made under [section 254\(1\)](#);
  - “greenhouse gas” has the meaning given by section 92 of the Climate Change Act 2008;
  - “participant” means an undertaking to which an energy savings opportunity scheme applies;
  - “related undertaking”, in relation to a participant, means a fellow subsidiary undertaking of, or a group undertaking in relation to, that participant;
  - “scheme administrator” has the meaning given by [section 260\(2\)](#);
  - “specified” means specified in ESOS regulations;
  - “undertaking”, “group undertaking” and “fellow subsidiary undertaking” have the meanings given by section 1161 of the Companies Act 2006.
- (2) For the purposes of this Part, provision—

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- (a) is within Welsh devolved competence if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
- (b) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
- (c) is within Northern Ireland devolved competence if it—
  - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
  - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.