

Consultation on proposed amendments to the Environment Agency's Enforcement and Sanctions Policy as it applies to the Energy Savings opportunity Scheme (ESOS)

Purpose

The purpose of this consultation is to seek views on our proposed amendments to Section D of Annex 2 to the [Environment Agency's published enforcement and sanctions policy](#) (ESP), which explains our enforcement approach for breaches of the Energy Savings Opportunity Scheme Regulations 2014.

Our proposed amendments aim to ensure that we continue to deliver a high level of compliance for ESOS in a balanced and proportionate way. Our proposal will streamline enforcement and incentivise prompt compliance.

Scope

ESOS is now in its sixth year and has reached a level of maturity. In its earlier stages we adopted a highly flexible approach, to reflect participants' lack of familiarity. This inevitably created complexity and was less efficient. It resulted in some participants, who came into compliance at the last possible moment, escaping any penalty at all, despite the regulatory effort required to deal with their persistent breaches.

With the end of the second compliance period this is no longer necessary or appropriate, and we are therefore proposing changes that, while maintaining proportionality, will both streamline the enforcement process and make it more effective.

We annex a PDF document which shows our proposed changes to Section D in tracked changes. Most of these are self-explanatory: many simply clarify existing wording or make it reflect the legislation more accurately. The key points are:

1. Whereas to date we have chosen not to apply some penalties, or to apply different penalties according to the status of the participant, we will in future adopt a more consistent approach and consider imposing separate penalties for each breach of the Regulations. This will encourage prompt compliance with statutory requirements and reward participants who observe the rules. It means a participant who repeatedly and deliberately fails to comply with requirements and subsequent statutory notices could in extreme cases face cumulative penalties totalling more than £200,000. (In reality, the exercise of our discretion under the ESP will almost always result in smaller total sums.)
2. We will, however, continue to take an understanding approach for new entrants.

Consultation Period

The consultation will run for a period of 6 weeks from the 29 September 2021 until the 10 November 2021.

Once the consultation closes, we will review all the responses and publish a consultation response document summarising responses and our comments as appropriate. This will be circulated via the ESOS Newsletter later this year.

How we will use your information

We will use your information to help shape the proposed amendments to the ESP. We will not publish names of individuals who respond. But we will publish the name of organisations. If you provide us with an email address, we will acknowledge receipt of your response, although we will not make substantive responses to individual representations. In accordance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, we may be required to publish your response to this consultation but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

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How to respond to this consultation

If you wish to respond to the consultation then please email:

mike.denbigh@environment-agency.gov.uk with a subject heading stating “ESOS consultation response.” Please include any responses within the email text as attachments cannot be included.

Consultation principles

We are running this consultation in accordance with the guidance set out in the [Government’s consultation principles](#).

If you have any queries or complaints about the way this consultation has been carried out, please email:

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