

December 2021

Consultation Response:

Amendments to the Environment Agency's Enforcement and Sanctions Policy as it applies to the Energy Savings Opportunity Scheme

Overview

The Environment Agency consulted on proposals to amend Section D of Annex 2 to the Environment Agency's published Enforcement and Sanctions Policy for breaches of the Energy Savings Opportunity Scheme Regulations 2014. The consultation ran from 29 September 2021 to 10 November 2021.

We received 4 responses, including 2 in favour of our approach to enforcement and no objections to our proposals. We will progress to update our Enforcement and Sanctions Policy as outlined in the consultation and attached in Annex 1.

Summary of responses

Our proposed amendments aim to ensure that we continue to deliver a high level of compliance for the Energy Savings Opportunity Scheme (ESOS) in a balanced and proportionate way by

- Improving the overall enforcement process for non-compliance
- Clarifying further our enforcement approach and better reflecting the schemes legislation
- Improving consistency in our enforcement, maintaining proportionality whilst enabling the option of more than one penalty being applied to persistent offenders.
- Better positioning of our enforcement approach for future phases of the scheme
- Continuing to take an understanding approach for new entrants.

We received some general comments on how the enforcement of the scheme could be improved as well as general observations about how the scheme operates. Although those comments are outside of the scope of the consultation, we have summarised them below.

General enforcement concerns:

Respondents commented that

- The Environment Agency should make additional effort to contact new entrants and make them aware of their obligations, in plenty of time for the new entrant to comply
- Organisations should have a mechanism to let their regulator know about changes in contact details so that the right person can be contacted about Enforcement Notices
- Organisations are held responsible for failures to notify or mistakes that are made when completing the forms

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- Organisations should be given the opportunity to notify their regulator of their intention to comply and then an agreed time to comply. Reasons given for not complying included a lack of capacity from the appointed Lead Assessor, or within the organisation itself; records not being available due to Lead Assessor no longer being active (retired/gone out of business), or due to change of ownership, merger, or acquisition.

Environment Agency response

We make every effort to contact all qualifying organisations, particularly new entrants, to remind them of their ESOS obligations before the notification deadline as part of our notification process.

We usually give a 3-month notice period to allow participants to come into compliance as part of any enforcement activities undertaken by us and our enforcement approach allows us to take into consideration if a participant is a new entrant. We seek to resolve concerns with all participants before considering enforcement.

Participants are responsible for ensuring that their contact details in the ESOS Notification system are correct and up to date. Participants can amend their contact details at any time by completing a new notification submission.

We offer support to participants to help avoid notification failures and /or form errors. However, participants are responsible for ensuring that these activities are completed correctly. Participants can contact us to discuss their situation during every part of the enforcement process and provide any mitigation they feel is relevant.

The scheme allows compliance activities to be completed by Lead Assessors to take place over a 4-year period and the Environment Agency, as scheme administrator, publishes a list of Professional Bodies who maintain registers of ESOS Lead Assessors. The ESOS guidance “Comply with the Energy Savings Opportunity Scheme” stipulates under section 8.4 Keeping Records, what information needs to be kept and for how long.

IT infrastructure

We received a comment suggesting improvements to the ESOS notification portal. Although out of scope of our consultation, we feel it is helpful to mention that the current IT infrastructure in place for ESOS is being reviewed as part of the Department for Business, Energy and Industrial Strategy’s own consultation which closed on 28 September 2021. Consideration is being given to the proposed changes to ESOS and the suitability of the current IT system to be able to adapt to these. Further detail will be provided in due course on any implemented modifications.

Conclusion

We are grateful for the responses received and would like to thank all respondents for their comments. We will progress to update Section D of Annex 2 of the Environment Agency’s Enforcement and Sanctions Policy as outlined in the consultation.