



# Energy Act 2023

## 2023 CHAPTER 52

### PART 11

#### ENERGY SAVINGS OPPORTUNITY SCHEMES

##### *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representations may be made with respect to those provisions,and must consider any representations duly made and not withdrawn.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.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Section 263. (See end of Document for details)*

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- (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 \(3\)\(b\)](#).
- (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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**Changes to legislation:** There are currently no known outstanding effects  
for the Energy Act 2023, Section 263. (See end of Document for details)

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**Commencement Information**

**II** S. 263 in force at Royal Assent, see [s. 334\(2\)\(m\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Energy Act 2023, Section 263.