EXPLANATORY MEMORANDUM TO

THE ENERGY INFORMATION REGULATIONS 2011

2011 No. 1524

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Energy Information Regulations 2011 ("the 2011 Regulations") transpose European Directive 2010/30/EU establishing a framework for the setting of energy labelling and standard product information requirements for energy-related products ("the Energy Labelling Directive"). These Regulations enable the Secretary of State to enforce the provisions of this Directive to improve the environmental performance of products through the provision of information to consumers. A transposition note is attached at Annex A.

2.2 The 2011 Regulations revoke the following UK regulations which transposed daughter directives of Directive 92/75/EEC:

- Energy Information (Combined Washer-Driers) Regulations SI 1997/1624
- Energy Information (Dishwashers) Regulations SI 1999/1676
- Energy Information (Household Air Conditioners) (No. 2) Regulations SI 2005/1726
- Energy Information (Household Electric Ovens) Regulations SI 2003/751
- Energy Information (Household Refrigerators and Freezers) Regulations SI 2004/1468
- Energy Information (Lamps) Regulations SI 1999/1517
- Energy Information (Tumble Driers) Regulations SI 1996/601
- Energy Information (Washing Machines) Regulations SI 1996/600
- Energy Information (Washing Machines) (Amendment) Regulations SI 1997/803

2.3 The 2011 Regulations also revoke the Energy Information and Energy Efficiency (Miscellaneous Amendments) Regulations SI 2001/3142 and the Energy Information (Miscellaneous Amendments) Regulations 2009 SI 2009/2559.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Energy Labelling Directive is the legal framework within which the European Commission brings forward delegated acts (formerly 'implementing measures' prior to the Lisbon Treaty) on specific products or product groups in order to provide information

to consumers on environmental performance, and thus encourage the market to move towards more energy efficient products. Eight implementing measures were adopted under the previous framework all of which take the form of daughter directives and were therefore transposed into UK law. A further four delegated acts have been adopted under the recast Directive which are all directly applicable European regulations (three of which will replace existing implementing measures when their requirements come into effect).

4.2 The Directive 2010/30/EU was adopted on 19 May 2010. It is a recast of the earlier Directive 92/75/EEC which established the original framework for the setting of energy labelling and other information requirements for energy-using products. The recast 2010 Directive widened the framework to cover energy related products – those which do not necessarily use energy themselves but have a significant impact on energy use and can therefore contribute to saving energy.

4.3 The Directive 92/75/EEC was not itself transposed, so requirements were introduced into UK law through transposition of the daughter directives that implemented requirements for individual products.

4.4 Amending UK Regulations agreed in 2009 (2009/2559) transferred the powers of market surveillance and enforcement for those requirements relating to suppliers (manufacturers and importers) to the Secretary of State. They empowered the Secretary of State to contract out this role to a Government body or agency. They came into force on 15 October 2009. Requirements relating to dealers (retailers) remained with Trading Standards.

4.5 The transposing Regulations (listed in paragraph 2.2 of this Explanatory Memorandum) introduced criminal sanctions for breach of the Regulations. The 2011 Regulations retain these sanctions. In order to provide a more flexible and proportionate enforcement regime, they also introduce the following civil sanctions, as an alternative:

- compliance notice,
- stop notice,
- enforcement undertakings and
- variable monetary penalty.

4.6 The 2011 Regulations also introduce powers to require manufacturers to pay for the costs of testing if it is proven that their product does not comply with the ecodesign legislation.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Energy Labelling Directive provides coherent EU framework for energy labelling and ensures that disparities among national regulations do not become obstacles to intra-EU trade. It defines conditions and criteria for setting energy labelling requirements for environmentally relevant product characteristics (such as energy efficiency and water usage), through delegated acts.

7.2 The implementing measures under former Directive had 92/75 previously taken the form of daughter directives, but the recast Directive 2010/30 EU provides for delegated acts to take the form of EU Regulations so this is likely to happen in future. The delegated acts put in place requirements to produce accurate labels and that that the labels are displayed, in accordance with the requirements of the delegated act, at point of sale.

7.3 Effective enforcement of implementing measures is essential to ensure delivery of the desired economic and environmental benefits. It protects businesses that are compliant from unfair competition from non-compliant goods. It also helps to ensure that consumers benefit from the anticipated financial savings through lower energy bills, as well as protecting the environment.

- Consolidation

7.4 The 2011 Regulations revoke and replace the UK transposing SIs and the 2001 Regulations which amended some aspects of these SIs, and the 2009 Regulations (see paragraphs 2.2 and 2.3 of this Explanatory Memorandum for a complete list).

8. Consultation outcome

8.1 A consultation on the proposals to introduce civil sanctions and cost sharing was held from 23 March to 23 June 2010. The consultation document and summary of responses are available at:

http://www.archive.defra.gov.uk/corporate/consult/eup-labelling2010/index.htm

8.2 20 responses were received from a range of organisations including NGOs, trade associations, manufacturers, a professional association and a power company. Of these,

- 18 supported the proposed range of civil penalties, and
- 15 supported the preferred option for cost sharing.

8.3 Respondents welcomed the proposals for an improved, risk based and collaborative approach to compliance. They agreed that the introduction of civil sanctions would act as a deterrent and deal with non-compliance in a more proportionate and flexible manner. They also agreed with the introduction of cost sharing for products found to be non-compliant. Respondents commented that stakeholders should be

consulted about guidance on the procedures for civil sanctions and cost sharing and that this guidance should be clear and transparent.

8.4 Having considered all the responses to the consultation, the Government has decided to include powers to impose civil sanctions and cost sharing in the 2011 Regulations. In line with the comments received, the market surveillance authority will consult on and publish guidance before it starts to use its civil sanctions and cost sharing powers.

9. Guidance

9.1 Guidance is available on the website of the Department for Environment, Food and Rural Affairs to assist those placing on the market products that are covered by delegated acts under the Energy Labelling Directive. This guidance will be updated as and when new implementing measures are introduced. It is available at: http://archive.defra.gov.uk/environment/business/products/energy/documents/guidance-notes.pdf

9.2 The market surveillance authority will consult on and publish guidance about civil sanctions and cost sharing.

10. Impact

10.1 The transposition of the recast Energy Labelling Directive will not give rise to costs or benefits to the public sector, charities, the voluntary sector or small business, until a new, product-specific delegated act is proposed, adopted and brought into force. Impact Assessments will be produced before any new delegated act is agreed.

10.2 Our impact assessments, for labelling, estimate that the four delegated acts already agreed under the new Framework Directive (cold appliances, dishwashers, washing machines and televisions) will provide around £300m net benefits to the UK over the next ten years, mostly in the form of savings on consumers' and businesses' energy bills.

10.3 The introduction of civil sanctions and cost sharing will safeguard net benefits of around £6m over the next ten years, as a result of labelling already accounted for within Impact Assessments. This figure can be expected to increase significantly as further implementing measures are agreed. This covers the total of all measures whether they apply to the business or public sector.

10.4 Impact Assessments for the proposed penalty regime and cost sharing are attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. Please note the impact assessment for the proposed penalty regime is currently being revised as recommend by the Regulatory Policy Committee, however the original is attached for information.

11. Regulating small business

11.1 The legislation applies to small business. The potential impact on small business and how to limit this will form part of the Impact Assessment for any new implementing measure.

11.2 Businesses will only incur penalties or be required to pay for the costs of testing, if it is proven that their product does not comply with the ecodesign legislation. The introduction of civil sanctions and cost sharing will therefore not impact disproportionately upon small business.

12. Monitoring & review

12.1 The Energy Labelling Directive requires the European Commission to review the effectiveness of the Directive and of its delegated acts no later than 31 December 2014. It shall then, as appropriate, present proposals to the European Parliament and the Council for amending the Directive.

12.2 The Government will draw up a framework to monitor the use of the new sanctioning powers. It will create a forum to review results from the monitoring framework with stakeholders before a formal review. This forum will contribute to an assessment of whether the new powers are being used consistently and in line with the published enforcement policy and guidance. A formal review of how the new sanctioning powers are being implemented will be carried out two years after their introduction.

13. Contact

Maggie Charnley at the Department for Environment, Food and Rural Affairs Tel: 020 7238 1530 or email: Maggie.S.Charnley@defra.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE FOR DIRECTIVE 2010/30/EU ESTABLISHING A FRAMEWORK FOR THE SETTING OF ENERGY LABELLING AND STANDARD PRODUCT INFORMATION OF THE CONSUMPTION OF ENERGY AND OTHER RESOURCES BY ENERGY-RELATED PRODUCTS (ENERGY LABELLING DIRECTIVE)

1. Legislative background

a) The Energy Labelling Framework Directive 2010/30/EU (OJ No 153/ 18.06.2010 p 1) ("the Directive"), and

b) Regulation EC No 765/2008 of the European Parliament and of the Council of 9 July 1998 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ No. L128 13/8/2008 p.30) ("RAMS").

The UK Energy Information Regulations 2011 transpose the Directive, which provides for a framework for the implementation of individual EU energy-related product information measures. Prior to the recast, these measures took the form of daughter directives. Since the recast, and since the Lisbon Treaty came into force on 1 December 2010, the implementing measures will be 'delegated acts' and are anticipated to take the form of directly-applicable EU regulations. Eight products are currently covered by daughter Directives. Four delegated acts have already been agreed under the recast Directive, three of which will replace existing measures and one of which is a new product (televisions).

In addition, these Regulations implement and supplement elements of RAMS. RAMS is a directly applicable EU Regulation which provides a framework for the market surveillance of any product subject to community harmonisation legislation. Community harmonisation legislation means any community legislation harmonising the conditions for the marketing of products. This includes energy labelling, and so any applicable delegated act in these Regulations is community harmonisation legislation within the meaning of RAMS. Accordingly, any applicable implementing measure in these Regulations is a measure which is subject to RAMS. The provisions of RAMS apply directly to any manufacturer and empowers market surveillance authorities as defined in RAMS and the Directive to take the actions set out in RAMS in Articles 15 to 29.

2. Revocation

The UK has used this transposition as an opportunity to simplify the existing legal architecture as future delegated acts are anticipated to take the form of directly applicable EU regulations rather than daughter directives as in the past, which required individual transposition. The Regulations therefore revoke and replace the UK regulations, which transposed daughter directives of the former Energy Labelling Directive (92/75/EEC), and also revokes related amending regulations.

If a daughter directive had been implemented by way of UK regulations these regulations now revoke the former UK Regulations and apply the provisions of that daughter directive directly as an EU Measure in Schedule 1 since the daughter directives deal only with technical standards.

This means that all products subject to either a daughter directive or a delegated act are now governed by one single UK enforcement regime for all products rather than nine separate regulations with differing regimes.

3. Producing, verifying and displaying the label – criminal sanctions and civil sanctions

Regulation 11(1) creates the offences of contravening the requirements set out in the Directive, namely the responsibilities of suppliers, the responsibilities of dealers, the information requirements, and providing misleading information. Regulation 11(1) creates an offence of not complying with the requirements of RAMS as it applies to energy labelling.

The UK has taken a 'copy out' approach to the Directive so that its meaning is neither enhanced nor detracted from. The one aspect understood to be discretionary (provided it meets the requirements of the Directive) is the monitoring and enforcement regime, which is summarised below.

Three Market Surveillance Authorities have responsibilities for monitoring and enforcing the Energy Information Regulations. The National Measurement Authority (NMO) will, on behalf of the Secretary of State for Environment, Food and Rural Affairs, be responsible for enforcing the supplier requirements, information requirements and misleading information requirements. Trading Standards will be responsible for enforcing the dealer requirements and information requirements and in Northern Ireland the Department of Enterprise Trade and Industry. In addition, the Advertising Standards Authority, which is an industry self-regulatory body, will monitor the advertisement requirements (which are part of the information requirements) and provide the first level of enforcement. The NMO will provide further enforcement where it is required.

The Energy Information Regulations introduce new civil sanctions which the market surveillance authority may impose as an alternative to a criminal sanction for a breach of Regulation 12(1) which sets out criminal offences. The civil sanctions are: a compliance notice, a variable monetary penalty, a third party undertaking, a stop notice, an enforcement undertaking and a non compliance penalty.

Annex A

Article of Directive	Subject matter	Transposition in Energy Information Regulations 2011
Article 1: Subject matter and scope	This article sets out the subject matter and scope of the Directive. The Directive establishes the Community legal framework for bringing forward delegated acts on specific products or product groups in order to provide consumers with information on consumption of energy and other relevant resources during use.	Regulation 3 sets out the scope as laid out in the Directive.
Article 2: Definitions	This article contains definitions of key terms.	Regulation 2(2)(b) states that expressions used in these Regulations have the meaning they bear in the Directive.
Article 3: Responsibilities of Member States	This article places several responsibilities on Member States.	Each requirement has been dealt with separately (see below).
Article 3(1)(a)	This article makes Member States responsible for ensuring that suppliers and dealers fulfil their obligations, as set out in Articles 5 and 6 of the Directive.	Regulation 4 sets out that Local Weights and Measures enforce the responsibilities of dealers and the Secretary of State enforces the responsibilities of suppliers. To note that the National Measurement Office (NMO) will enforce on behalf of the Secretary of State and in Northern Ireland the Department of Enterprise Trade and Investment.
Article 3(1)(b)	This article prohibits the display of other labels where they are likely to mislead or confuse end-users.	Regulation 10 prohibits the display of misleading labels. The UK market surveillance authority will enforce this provision.
Article 3(1)(c)	This article requires Member States to ensure that the introduction of energy labels is accompanied by a promotional campaign.	Not necessary to transpose. The UK is working with retailers of electrical and electronic goods, to communicate the label to consumers.
Article 3(1)(d)	This article tasks Member States with cooperating with each other on the implementation of the Directive.	Not necessary to transpose. The UK is an active member of the Labelling Administrative Cooperation, and is committed to sharing information on compliance with other Member States and the Commission.
Article 3(2)	This article requires Member States to ensure product compliance. This involves making a product compliant, taking necessary preventive measures aimed at ensuring compliance and if necessary taking the product off the market.	Regulation 4 empowers market surveillance authorities and authorised persons to carry out enforcement to ensure product compliance. RAMS also applies. The UK will use an enforcement regime of civil sanctions and cost sharing. The approach is laid out in detail in Schedules 3, 4 and 5.
Article 3(3) and (4)	This article sets out Member States reporting requirements.	Not necessary to transpose. The UK will submit reports to the Commission as required by the Directive.
Article 4: Information requirements	This article sets out the requirements for Member States to ensure that information is	Regulation 9 is a copy out from the Directive.

Article of Directive	Subject matter	Transposition in Energy Information Regulations 2011
	provided to end-users both at point of purchase whether in a shop or from distance (e.g. online or from a catalogue), and in advertisements.	In order to ensure compliance the UK has an enforcement regime as follows: TSOs will check for display of label at point of purchase. The Advertising Standards Agency will check that adverts and distance sales meet the requirements. The market surveillance authority will carry out enforcement using the regime as laid out above, where necessary.
Article 5: Responsibilities of suppliers	This article requires suppliers to supply a label and a fiche, and to produce technical documentation to enable the accuracy of the label and fiche to be assessed.	Regulation 7 requires suppliers to supply a label and a fiche, and to produce technical documentation to enable the accuracy of the label and fiche to be assessed.
Article 6: Responsibilities of dealers	This article requires dealers to visibly display a label, as set out in the relevant delegated act.	Regulation 8 requires dealers to visibly display a label, as set out in the relevant delegated act.
Article 7: Distance selling and other forms of selling	This article sets out the requirements for delegated acts make provision for display of the label and other information as they relate to distance selling.	Regulation 9 (information requirements) transposes the requirements for distance selling, in parallel with Article 4.
Article 8: Free movement	This article requires that Member States not prohibit the marketing of compliant products, and that they will consider labels and fiches as being compliant unless they have evidence to the contrary. It also requires suppliers to provide evidence concerning the accuracy of the information supplied on their labels or fiches, where the Member State has reason to suspect that this information is incorrect.	Not necessary to transpose. Regulation 7 transposes this supplier requirement in parallel with the requirements in Article (5) – it requires suppliers to produce technical documentation which is sufficient to enable the accuracy of the information and the label to be assessed, and to make it available on request.
Article 9: Public procurement and incentives	This article encourages Member States to procure only such products which comply with the highest performance levels. It also prohibits Member States from providing incentives for products which are not in the highest performance class (taxation and fiscal measures are not considered incentives).	Not necessary to transpose. The UK is active in the development of Government Buying Standards, which encourage government procurers to purchase products which meet stringent environmental performance criteria.
Article 10: Delegated acts	This article sets out that the Commission will produce delegated acts for each individual product.	Regulation 6 gives effect to Schedule 1, which lays out the EU measures which apply under this Directive.
Article 11: Exercise of the delegation	This article explains the time limit, which the Commission has powers to adopt delegated acts.	Not necessary to transpose.

Annex A

Article of Directive	Subject matter	Transposition in Energy Information Regulations 2011
Article 12: Revocation of the delegation	This article lays down conditions under which the Commission can lay a delegated act.	Not necessary to transpose.
Article 13: Objections to delegated acts	This article sets out who can object to the laying of delegated acts.	Not necessary to transpose.
Article 14: Evaluation	This article set the Commission a date of no later than 31 December 2014 to review the effectiveness of the Directive.	Not necessary to transpose.
Article 15: Penalties	This article requires Member States to set penalties that are effective, proportionate and dissuasive.	Regulation 11 to 14 lay out the offences, which will be subject to penalties. Regulation 6 gives effect to Schedule 4, covering civil sanctions which can be used by the MSA instead of or in addition to criminal sanctions.
Article 16: Transposition	This article requires Member States to bring in to force by 20th June at the latest regulations necessary to comply with the Directive and that the regulations shall apply from 20th July.	The Regulations will be made by 20th June in accordance with Article 16.1 and come into force on the 20th July 2011 in accordance with Article 16.1.1.
Article 17: Repeal	This article repeals the previous Energy Labelling Directive 92/75/EEC and the amending Regulation 1882/2003	Regulation 17 gives effect to schedule 5 which revokes regulations which implemented the Daughter Directives, which transposed the earlier Directive (92/75/EC). The Daughter Directives are now directly applicable EU measures and are purely technical standard documents and are given effect as directly applicable EU measures by Schedule 1.
Article 18: Entry into force	This article states that this Directive shall enter into force on the day following its publication in the Official Journal of the European Union. Some responsibilities on suppliers enter into force on July 2011.	Not necessary to transpose.
Article 19: Addressees	This article states that this Directive is addressed to the Member States	Not necessary to transpose.

Title:	Impact Assessment (IA)
Impact Assessment of the Proposed Penalty Regime for the Energy Using Products and Energy Labelling Regulations	**IA No:**
Lead department or agency: Department for Environment, Food and Rural Affairs	**Date: 12/10/10**
Other departments or agencies:	**Stage:** Final
	Source of intervention: Domestic
	Type of measure: Secondary
	Contact for enquiries: Nicole Kearney - 020 7238 6653

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

In November 2009, following a public consultation, the Government appointed the National Measurement Office (NMO) as the Market Surveillance Authority (MSA) responsible for the enforcement of the requirements of the Eco-design of Energy Using Products and Energy Labelling Framework Regulations. The consultation and accompanying Impact Assessment stressed that the benefits of the chosen option could only be realised if they were safeguarded by a proportionate, effective and dissuasive penalty regime.

What are the policy objectives and the intended effects?

The MSA will need to have access to a range of flexible and proportionate enforcement options in order to ensure the highest possible level of compliance with the Regulations. Currently the MSA only has access to criminal sanctions which can be disproportionate and onerous.The accompanying consultation document (Ref 1) looks at options for enforcement, in keeping with the findings of the Macrory review and Hampton principles, i.e. providing a deterrent to non-complaince, be transparent and fair, eliminating any financial gains from non-compliance and therefore safeguarding the benefits of the regulations and create a level playing field for compliant business.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The costs and benefits of the preferred option - to introduce civil sanctions have been set against the current situation. This option has been consulted on publicly and stakeholders have been very supportive of its implementation.

In addition, an option initially considered was strengthening the existing criminal sanctions, as well as introducing civil sanctions. This will be considered separately in light of the planned further consultation under the Fairer and Better Environmental Enforcement project, which will set out more detailed proposals to strengthen criminal sentencing of the worst environmental offenders.

Finally, a third option, which is both theoretically possible but practically unrealistic, has been considered. It involves monitoring and enforcement of every single product placed on the market to ensure 100% compliance with the Ecodesign Regulations, but will not be pursued due to the incredibly high costs of implementation.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	The policy will be reviewed 2 years from the date of commencement.
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Implementation of a Civil Sanctions Regime

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	£5.15m	**£70m**
High	-		£14.9m	**£202m**
Best Estimate	-		£12.5m	**£ 170m**

Description and scale of key monetised costs by 'main affected groups'

Annual costs of enforcement under the NMO are estimated in the final compliance and enforcement IA (Ref 3). This includes administration, staffing and testing costs to the NMO of £9.9m over the period 2010-2010 and the additional costs imposed on consumers (through higher heating bills) as well as non-traded CO_2 increases through the Heat Replacement Effect. **These costs are already covered in the previous IA and therefore not counted within this IA.**

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	£9.9m	**£134m**
High	-		£28.3m	**£385m**
Best Estimate	-		£24.6	**£334m**

Description and scale of key monetised benefits by 'main affected groups'

Putting in place this option should guarantee that the rate of non-compliance is reduced by 3%, from 6.2% to 3.2%, and therefore safeguard net benefits of £164m already claimed within the final compliance and enforcement IA (see table p.20 Option 2 in final compliance and enforcement IA for net present value). **These benefits are already covered in the previous IA and therefore not counted within this IA.**

Other key non-monetised benefits by 'main affected groups'

As explained within the evidence base, the current 6.2% rate of non-compliance is thought to be a very conservative estimate. With the actual rate of non-compliance likely to be higher, this proposed option safeguards even larger (above £164m) net benefits. There may also be allocative efficiency benefits through an improved ability to make industry pay for non-compliance, reducing overall compliance costs.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

All costs and benefits of implementing this option have already been claimed within the final compliance and enforcement IA and are therefore not claimed within this IA. However, these costs and benefits will not be realised without an effective and proportionate enforcement regime.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			20 November 2010		
Which organisation(s) will enforce the policy?			National Measurement Office		
What is the annual change in enforcement cost (£m)?			£ 0.6m - £1.9m		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** -	**Non-traded:** -	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	NO	NO

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	10
Small firms Small Firms Impact Test guidance	No	10
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Consultation on the Introduction of Civil Sanctions and Cost Sharing for the Energy Using Products and Energy Labelling Regulations
2	Impact Assessment of the Proposed Penalty Regime for the Energy Using Products and Energy Labelling Regulations – Draft Stage (Consultation)
3	Impact Assessment of Cost Sharing options available to the Market Surveillance Authority under the Energy Using Products and Energy Labelling Regulations - Final Stage
4	Impact Assessment on the compliance & enforcement regime of the Energy-Using Products (EuP) & Energy Labelling Directives
5	Summary of responses and Government response to the consultation on the introduction of civil sanctions and cost sharing for the Energy Using Products and Energy Labelling Regulations held 23rd March – 15th June 2010

Evidence Base (for summary sheets)

A. BACKGROUND

The EuP Framework Directive includes an obligation for Member States to put in place a robust market surveillance and enforcement regime to ensure compliance with the requirements of the various implementing measures. Specifically, the Directive requires Member States to put in place a **Market Surveillance Authority (MSA)** which has powers to carry out checks on products, request relevant information from manufacturers and request the recall of non compliant products.

In June 2009, the consultation "Implementation of the Market Surveillance and Enforcement Requirements of the Eco-design of Energy Using Products and Energy Labelling Framework Directives" was published.[2]

This consultation examined the rationale and options for putting in place a Market Surveillance Authority (MSA) as required by the Directives. As a result of the feedback received, the preferred option to give this function to a dedicated team in a different Government Agency was chosen.

The previous consultation looked at the options for who would be responsible for enforcing the EuP and Labelling Directives and predicted the theoretical rate of compliance which could be achieved. In all cases, one of the main assumptions was that there would be an effective enforcement process in place i.e. where proportionate and meaningful fines, in the form of improved sanctions, would be issued.

A consultation on the proposals to introduce civil sanctions and cost sharing was held from 23 March to 23 June 2010 (Refs 1 & 5). 20 responses were received from a range of organisations including NGOs, trade associations, manufacturers, a professional association and a power company. Of these,

- 18 supported the proposed range of civil penalties and
- 15 supported the preferred option for cost sharing.

This impact assessment looks at the implications of the options under consideration for the enforcement arrangements, compared to the situation where no civil penalties regime is put in place.

B. RATIONALE FOR INTERVENTION

The Eco Design of Energy using Products (EuP) and Energy Labelling Framework Directives require Member States to put in place a robust market surveillance and enforcement regime to ensure that products placed on the market comply with the requirements of their implementing measures. To ensure that the MSA can enforce these requirements an effective and dissuasive penalties regime is needed in order to ensure that non-compliance is kept at the lowest level possible and that, as a result, the benefits of the measures claimed in the previous impact assessment are safeguarded. (See page 8 of Ref 3 for clarification of what is meant by safeguarding costs and benefits in this Impact Assessment.)

Currently only criminal sanctions are available to the MSA in cases where products are found to be non-compliant. Cases brought against non-compliant manufacturers can be tried at a

[2] http://webarchive.nationalarchives.gov.uk/20100505154859/; http://www.defra.gov.uk/corporate/consult/eup-labelling/index.htm

magistrates court or crown court. It is likely that around 95% of cases would be tried at the magistrates court (in part due the costs of going to crown court for both parties) where the maximum fine for non-compliance is £5000.

This approach is disproportionate in two ways:

- The maximum fine in the magistrates court is not likely to be a sufficient monetary deterrent against non-compliance for large companies with a high turnover and thousands of products on the market. In addition the costs to the MSA of trying companies through the Crown courts to secure more proportionate fines are prohibitive.

- For minor offences which could be easily remedied by the manufacturer such, as a mis-printed label for example, it is excessive to use the magistrates court route in order to enforce compliance.

To ensure a high level of compliance, the MSA will need to draw on flexible and proportionate enforcement options to both penalise instances of non-compliance and prevent future breaches. Introducing a system of civil sanctions in the form of administrative penalties has the potential to be the most effective method for resolving instances of non-compliance as well as providing a sufficient deterrent in the first place to discourage non-compliance.

Such penalties would enable the MSA to choose the 'best fit' of enforcement options for each individual case. Proportionate and effective sanctions will do more to level the playing field for compliant businesses and remove economic advantage by ensuring that non-compliant companies incur same or higher costs than compliant companies.

To enforce compliance with the Ecodesign Directive Implementing Measures it is proposed the MSA are able to use the following enforcement actions.

- Compliance Notice
- Stop Notice
- Enforcement Undertakings
- Variable Monetary Penalty

For Energy Using Products, the MSA will be able to enforce compliance by issuing, for retailers and manufacturers, either a Compliance notice (CN), Stop Notice (SN) and Enforcement Undertaking (EU). Additionally for manufacturers the MSA will be able issue a Variable Monetary Penalty (VMP).

For Energy Labelling, the MSA will be able to issue a Compliance notice (CN) and Stop Notice (SN) Enforcement Undertaking (EU) and Variable Monetary Penalty (VMP) to manufacturers. Details for each of the Civil Sanctions are set out below.

As proposed in the previous consultation, Trading Standards retain the responsibility for checking the requirements of retailers to display the energy label correctly.

Relationship between the Final Compliance and Enforcement Impact Assessment (signed-off October 2009), and the Civil Sanctions & Cost-Sharing Impact Assessment (at Final sign-off stage)

It was a requirement of the Ecodesign and Labelling Directives to both put in place a Market Surveillance Authority and ensure that penalties for non-compliance are effective, proportionate and dissuasive. The compliance and enforcement Impact Assessment (Ref 3) conducted a cost

effectiveness analysis of improving compliance through three types of institutional arrangements for product testing.

- Option 1: To continue, as was then the case, with trading standards officers (TSOs) carrying out the enforcement function for all products.
- Option 2: To move the enforcement function to a dedicated team in an existing body or agency.
- Option 3: A hybrid approach, where TSOs would retain responsibility for compliance of domestic products and a separate body or agency would enforce the requirements for nondomestic products.

The analysis pointed to Option 2 as being the most cost effective option to reduce non-compliance (down from 6.2% to 3.2%).

The analysis also considered three product testing regimes, varying in terms of the scope and frequency of testing, for each of the three types of institutional arrangements described above. These were a 5-years rotation, 2-years rotation, and 1-year full testing. It concluded a 2-years rotation was the most cost effective option in each case.

In October 2009, the Final Impact Assessment was signed-off for agreeing to put into place the National Measurement Office (NMO) as the market surveillance authority to ensure UK compliance with the European Ecodesign minimum standards (i.e. Ref 3: the Compliance and Enforcement Impact Assessment).

The **Civil Sanctions Impact Assessment** simply reiterates the impacts in the Final Compliance & Enforcement Impact Assessment, as it was assumed in the Final Compliance & Enforcement Impact Assessment that there was a sufficient penalties regime in place in order to deliver the benefits (i.e. the addition of administrative penalties to criminal penalties required to deliver a realistic disincentive as described in the Civil Sanctions Impact Assessment was already assumed). The Final Civil Sanctions Impact Assessment therefore presents nothing more than the benefits already promised in a previous Impact Assessment, and is simply putting in place the penalties regime to safeguard them.

The **Cost-Sharing Impact Assessment** (Ref 2) models options which analyse various ways to place the cost-burden, associated with ensuring compliance and enforcement, between Government and industry – with options flexing the assumptions around whether all industry players face the burden, or simply those who ultimately don't comply (with the latter further discouraging non-compliance). Further information about the costs of testing is given in: Annexes 2 and 3 of the Cost Sharing Impact Assessment (Ref 2); and in Box 3 on page 19 of the consultation document on the proposals to introduce civil sanctions and cost sharing (Ref 1).

> It is therefore intended that, in line with the MSA's approach to compliance issues that the proposed civil sanctions regime will be strengthened and supported by the introduction of a cost sharing scheme as part of the market surveillance authority's compliance testing programme, thereby safeguarding the benefits claimed in the previous impact assessment even further. The Government's preferred civil sanctions scheme has been consulted on alongside the cost sharing policy and a vast majority of respondents have supported both approaches.

Whilst individually, a system of cost sharing and new civil sanctions would encourage businesses to comply with the Ecodesign regulations, together the proposals are expected to create an even greater incentive for manufacturers and retailers to ensure their products are compliant. Both proposals will have a significant behavioural impact on non-compliant businesses. Cost sharing in particular creates a more powerful incentive to be compliant and ensures that non-compliant business are seen to pay for the costs of failed tests which would otherwise be imposed on compliant businesses. In addition, the civil sanctions regime holds a set of flexible and proportionate responses to non-compliance once it is discovered. While civil

sanctions are expected to safeguard the estimated benefits of having introduced a new enforcement body, the cost sharing policy is expected to increase the amount of these safeguarded benefits and reduce the rates of non-compliance beyond those already safeguarded by the civil sanction regime.

The measures together should decrease rates of non-compliance, therefore reducing the costs to Government, consumers and compliant businesses. Now the MSA is in place it is expected that they will discover a much greater number of instances of non-compliance, so although there have been few cases brought to court over the past decade, introducing both civil sanctions and cost sharing policies would avoid the need for cases to go to court, compared to a system where only criminal penalties are available to the MSA. This would therefore lighten the burdens on the judicial system.

C. BASELINE FOR ANALYSIS

Paragraphs 19-21 of the consultation document on the proposals to introduce civil sanctions and cost sharing (Ref 1) explained that the NMO were committed to a collaborative approach to market surveillance and enforcement. They would work closely with industry to improve understanding and assist companies to comply with the regulations. They would carry out a risk-based, proportionate and targeted approach to inspection and enforcement. They would focus on bringing products into compliance, rather than moving straight to issuing penalties or prosecution.

The costs/benefits of the proposed option (introducing civil sanctions) are set against the case in which no such penalty regime is put in place. It should be stressed that the costs and benefits within this IA are the same costs and benefits from the original IA. There are no new costs and benefits to take into account rather the options analysis here form a component of safeguarding the benefits estimated previously.

Those costs related to the set up of civil sanctions specifically are already included in the costs of transferring the role of Market Surveillance Authority to the NMO within the previous IA.

D. PROPOSED OPTIONS

INTRODUCE CIVIL SANCTIONS IN THE FORM OF ADMINISTRATIVE PENALTIES IN ADDITION TO STRENGTHENING THE EXISTING CRIMINAL SANCTIONS

The current criminal sanctions available to the MSA are via the magistrates' court, with a maximum £5,000 fine available. In the previous consultation we put forward proposals to strengthen the existing criminal sanctions as well as introduce civil sanctions and most stakeholders were supportive of the ideas. However it was decided not to pursue strengthening of the criminal sanctions at this point.

INTRODUCE CIVIL SANCTIONS (THE PREFERRED OPTION)

It is proposed that, in addition to the existing criminal sanctions, the following civil sanctions are available to the MSA. The sanctions aim to be in-keeping with the findings of Hampton and Macrory as well as mirroring, as closely as possible, the proposals set out by the Fairer and Better Environmental Enforcement project in order to maintain consistency in environmental regulation.

It is proposed the MSA are able to use the following enforcement actions:

- Compliance Notice
- Stop Notice
- Enforcement Undertakings
- Variable Monetary Penalty

For Energy Using Products, the MSA will be able to enforce compliance by issuing, for retailers and manufacturers – either a Compliance notice (CN), Stop Notice (SN) and Enforcement Undertaking (EU). Additionally for manufacturers the MSA will be able issue Variable Monetary Penalty (VMP)

For Energy Labelling, the MSA will be able to issue a Compliance notice (CN) and Stop Notice (SN) Enforcement Undertaking (EU) and Variable Monetary Penalty (VMP) to manufacturers.

As proposed in the previous consultation, Trading Standards retain the responsibility for checking the requirements of retailers to display the energy label correctly.

INTRODUCE CIVIL SANCTIONS AND CHECK EVERY SINGLE PRODUCT PLACED ON THE MARKET

It is proposed that, in addition to the existing criminal sanctions, civil sanctions along the line of the proposed option are put in place and that, in addition, every single product placed on the market is checked for compliance with the Regulations. This is clearly a theoretical but unrealistic option, used here as a qualitative only comparison with the preferred option. While the full cost and benefits safeguarded by this option have not been quantified below, it is possible to conclude that, when compared with the proposed option, this option would:

- safeguard more benefits than the preferred option by reducing the rate of non-compliance further from 3.2% (originally 6.2% conservative estimate reduced to 3.2% by the proposed option) to 0%;

- increase the cost exponentially, as in order to check or test every single product placed on the market (and safeguard the additional benefits above), the NMO annual testing cost, the staff and administrative costs listed in the proposed option will quickly escalate in to the billions of pounds.

Therefore this option is not pursed or quantified further in this assessment.

E. COSTS AND BENEFITS OF THE PROPOSED OPTION

The costs and benefits of non-compliance were assessed within the previous IA. The following section provides a summary of this analysis:

The costs and benefits of the two components of non-compliance were calculated separately in the first impact assessment, the two components were:

i. **The projected reductions in energy consumption not being achieved, because products are not as efficient as they claim to be.**

The final IA estimated the overall rate of non-compliance to be at around 6.2%. This estimated non-compliance rate is considered to be a very conservative estimate. Non-compliance with Minimum Energy Performance Standards (MEPS) is also expected to be significant but is not added to the current rate of non-compliance due to the risk of double-counting. In practice a product which does not meet the minimum energy label class has a high risk of not meeting the MEPS, thus infringing both regulations.

Table 1 – estimated % level of compliance with the energy labelling framework directive

	% of products in each 'non-compliance category'	**% they are deviating from required standard**	**% currently lost from non-compliance**
'Non-compliant' but within tolerance	40	10	4
Deviating by one energy label class	8	20	1.6
Deviating by more than one energy label class	2	30	0.6
TOTAL			**6.2**

ii. **Manufacturers not making the costly improvements necessary to meet the energy-efficiency standards they are claiming.**

All of the assumptions remain the same in this Impact Assessment. In summary:

This results in total present value costs of non-compliance of £700m, and total present value benefits of non-compliance of £336m. Therefore, **the Net Present Value foregone due to non-compliance is £364m** (between the period 2010-2020).

It is considered to be disproportionately costly to try to reach a figure of 100% and therefore perfect compliance. There will always be a minority of manufacturers who are prepared to take the risk and introduce non-compliance products onto the market and there will also always be instances of error either in product mislabelling or mistakes made during the manufacturing process which could lead to product non-compliance. Effective market surveillance and enforcement is about minimising as far as possible these episodes of non-compliance.

Administrative burdens were considered for the purposes of this impact assessment, however, the amount expected was considered too minimal to include on the covering summary sheets.
The assumption is that an average of 3 businesses will be impacted by the civil sanctions regime per year. It is assumed that a financial clerk, paid at £11.14 per hour (based on category 412 from the standard cost model – http://www.bis.gov.uk/files/file44505.pdf), will spend 30 minutes administrative work on civil sanctions, which involves paying a fine or the administrative processes behind ensuring the business's products meet the requirements to bring their products into compliance.

This would amount to an administrative burden of £18.82 per year, impacting non-compliant businesses alone, based on the assumption that they do not push for an appeal against the cost sharing invoice.

PREFERRED OPTION COSTS AND BENEFITS

After evaluation of the options, the preferred option to move the enforcement function to a central body was implemented following the consultation process.

Cost of preferred option from the original IA

NMO - annual testing costs	826,000
Staffing costs (annual)	160,000
Additional admin costs (annual)	60,000
Energy label display enforcement (annual)	50,000

Regime 2 total costs (discounted to 2009) for the period 2010-2020: ***£9.9m***

Costs are estimated as salaries of 3-4 full time staff – to run awareness raising activities, a testing programme and take enforcement action where necessary – to be around £220k pa. We estimate that a small proportion of this budget around 15% would be used specifically for set up of the civil sanctions regime in the first year.

Benefits of proposed option

Putting in place the proposed option safeguards the benefits predicted in the first IA. It therefore should facilitate the reduction in the rate of non-compliance from 6.2% to 3.2% and safeguard a net present value of £164m. As this has already been claimed in the final IA on compliance and enforcement, it has not been claimed separately here.

By netting-off the overall costs and benefits of Ecodesign and Energy Labelling, we can estimate the total cost of non-compliance. Based on initial estimates of the total projected net benefits from EuP and ELD, for 21 product categories (for the period 2010-2020), the estimated Net Present Value of these measures is estimated to be as follows:

- **PV Total Benefits:** £11.3bn
- **PV Total Costs:** £2.7bn

It is also estimated that 80% of the total costs of Ecodesign and Energy Labelling measures results from costs incurred by manufacturers and passed on to consumers, and 20% occurs due to costs associated with greater household heating (because of the Heat Replacement Effect when more efficient appliances are used).

The overall costs of non-compliance can be estimated as follows:

- Applying a 6.2% rate of non-compliance to the overall projected benefits from improving compliance (such as reduced energy bills and CO_2e savings), which provides a cost of non-compliance of £700m.

- Applying a 6.2% rate of non-compliance to the costs subsequently imposed on society due to increased household heating requirements (because of the Heat Replacement Effect), suggests a benefit of non-compliance of £34m.

- Applying a 14% rate of non-compliance to costs subsequently not incurred by the manufacturer or imposed on consumers, which suggests a benefit of non-compliance of £302m.

This results in total present value costs of non-compliance of £700m, and total present value benefits of non-compliance of £336m. Therefore, **the Net Present Value foregone due to non-compliance is £364m** (between the period 2010-2020).

Other benefits not achieved due to non-compliance include reductions in energy bills. It is difficult to predict how much money could be lost by consumers who have bought products which operate at a higher energy consumption than expected. However, a significant amount of potential savings could be foregone.

There is likely to be some impact in reducing the 6.2% figure, as at the very least results will be published, however only Option1 can deliver as close as possible to the 3.2% non-compliance rates.

Option 1. Introduce Civil Sanctions

Competition Assessment

Businesses have been calling for a more effective market surveillance regime in order to provide a more level playing field. Proportionate and effective sanctions will do more to level the playing field for compliant businesses and remove economic advantage from those who fail to comply.

Small Firms Impact Test

The proposed option should not disproportionately impact upon small business as it is only under the instance of non-compliance that penalties would be incurred.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; There will be a political commitment to review the policy after 2 years, to verify that the preferred civil sanctions option is suitably ambitious to reduce the rates of non-compliance.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] The objective of the review will be to monitor how effectively the regulations are tackling non-compliance of energy using products on the market.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The review will consist of an evaluation of the progress made against the baseline in terms of non-compliance rates of selected product types on the market. This evaluation method is the most low-cost method, as it will allow the MSA to carry out tests on more products for a lower cost than formal compliance testing.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] Defra is currently discussing with the MSA the most appropriate method to estimate compliance rates in the UK. The preferred and low cost option is for the MSA to establish a baseline by carrying out market screening testing on selcted product types every three years. This involves a light touch testing programme whereby the MSA can carry out tests on products in stores to estimate the amount of products that do not meet the minimum requirements after an initial test. The MSA will carry out a follow up screening process on the same types of products 2 years later, where the results will be compared against the baseline.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] The success criteria for implementing the civil sanctions regime for the Ecodesign Regulations is a decrease in non-compliance rates, based on the results of the market screening undertaken by the MSA on selected products.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The MSA reports to Defra on a monthly basis on the Ecodesign testing programme, results and issues. In addition, the MSA provides tri-annual and annual reports to Defra on the testing programme, in order to assess the impact the policy has on the rates of non-compliance and the behavioural attitude of businesses.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Title:	Impact Assessment (IA)
Impact Assessment of Cost Sharing Options available to the Market Surveillance Authority under the Energy Using Products and Energy Labelling Regulations **Lead department or agency:** Department for Environment, Food and Rural Affairs **Other departments or agencies:**	**IA No:** **Date:** 12/10/2010 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Nicole Kearney - 020 7238 6653

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Under the Eco-design of Energy Using Products (EuP) and Energy Labelling (EL) Framework Directives, Member State Governments are responsible for market surveillance action in order to ensure compliance with the requirements of the Directives. Government wants to consider the options for improving the design of its market surveillance framework to ensure they deliver greater incentives to compliance and also to share part of the costs involved with industry.

What are the policy objectives and the intended effects?

Introducing a policy of cost sharing would encourage product compliance with the Regulations, as businesses would be even more deterred from placing non-compliant products on the market, if they must bear part of the costs of product testing. In addition introducing a policy of cost sharing would reduce burden on government expenditure.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1) Cost sharing regardless of whether products are compliant. Government pays 25% of the costs and industry pays 75% of the costs, if the first of the four tests fall outside the permitted tolerance.
2) Cost sharing only in instances where products are non compliant. Government funds all tests, but on proof of non-compliance (usually following four tests) the manufacturer reimburses all costs associated with testing.

OPTION 2 is the preferred option in the consultation, as it requires manufacturers of non-compliant products to pay for the testing costs, thereby providing additional incentive to comply with the Regulations, while at the same time increasing the likelihood of a level playing field for businesses.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 11/2012
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Introduce full cost sharing (25% vs 75%): Government pays first test and industry pays further three tests if required, with no possibility of reimbursement

Price Base Year 2009	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High:** 24.9m	**Best Estimate: £0-24.9m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate			£ 0 - 270.000	**£ 0 - 2.3m**

Description and scale of key monetised costs by 'main affected groups'

Scenario A: £0, no change to net costs (from baseline of previous compliance and enforcement IA).
Scenario B: Total costs increase to £870k, representing an additional annual cost of £270k that is incurred by industry.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				**£ 0 - 27.2m**

Description and scale of key monetised benefits by 'main affected groups'

Scenario A: £0, no change to net benefits (from baseline of previous compliance and enforcement IA: i.e. compliance/enforcement IA reduced 6.2% non-comliance to 3.2%, with no further change here)
Scenario B: Increases annual testing budget by £270k (45%). Increased testing should reduce non-compliance. It is assumed that this increase in budget can reduce non-compliance by a further 0.4% (i.e. from 3.2% to 2.8%), representing an additional (from Civil Sanction IA) safeguarded benefit of £27.2m.

Other key non-monetised benefits by 'main affected groups'

Consumer confidence in the validity of energy-efficiency claims are important for delivering future EuP policies and for wider environmental behaviour change. The creation of a 'level playing field' for manufacturers and retailers also has competition benefits. Allocative efficiency benefits through improved ability to make industry pay for non-compliance, reducing overall compliance costs.

Key assumptions/sensitivities/risks **Discount rate (%)**

Two scenarios are included within this option. Scenario A where Government can decrease expenditure for the testing programme, as costs would be shared with industry, and Scenario B where Government can increase the budget for the testing programme, as the costs are shared with industry. It is important to note that the "additional safeguarded benefits" offered here are only additional vis a vis the "Civil Sanciton" Impact Assessment, they do not expand the total amount of potential benefits already included in previous impact assessments.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	**AB savings:** n/a	**Net:** n/a	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			20/11/2010		
Which organisation(s) will enforce the policy?			National Measurement Office		
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	14
Small firms Small Firms Impact Test guidance	Yes	13
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Government initially funds all testing, but on proof of non-compliance the company reimburses all of the testing costs whether or not there has been a successful prosecution in the courts.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: £5.4	**High:** £12.1m	**Best Estimate: 5.4-12.1**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		0	**0**
High	Optional		162k	**1.4m**
Best Estimate			£ 0 - 162k	**£ 0 - 1.4m**

Description and scale of key monetised costs by 'main affected groups'

Scenario A: £0, no net change to costs
Scenario B: Total costs increase to £762k, representing an additional annual cost of £162k that is incurred by industry

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**5.4**
High	Optional		Optional	**13.5**
Best Estimate				**£5.4 - 13.5m**

Description and scale of key monetised benefits by 'main affected groups'

Scenario A: better incentives in place result in reduction in non-compliance of around 0.1% (i.e. from 3.2% to 3.1%) representing £5.4m additional (based on Civil Sanction IA) safeguarded benefit.
Scenario B: Increases annual testing budget by £162k (27%). Increased testing should reduce non-compliance. This option is therefore also assumed capable of reducing non-compliance by 0.2% (i.e. from 3.2% to 3%), representing additional (based on Civil Sanction IA) safeguarded benefits of £13.5m.

Other key non-monetised benefits by 'main affected groups'

Consumer confidence in the validity of energy-efficiency claims are important for delivering future Ecodesign policies and for wider environmental behaviour change. The creation of a 'level playing field' for manufacturers and retailers also has competition benefits. Allocative efficiency benefits through improved ability to make industry pay for non-compliance, reducing overall compliance costs. Potential for further benefits through positive behavioural impacts.

Key assumptions/sensitivities/risks **Discount rate (%)**

Two scenarios are included within this option. Scenario A where Government can decrease expenditure for the testing programme, as costs would be shared with industry, and Scenario B where Government can increase expenditure for the testing programme, as the Government budget would remain constant, with the addition of the costs shared with industry. It is important to note that the additional safeguarded benefits offered here are only additional vis a vis the "Civil Sanction" Impact Assessment, they do not expand the total amount of potential benefits already included in previous impact assessments."

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	**AB savings:** n/a	**Net:** n/a	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			20/11/2010		
Which organisation(s) will enforce the policy?			National Measurement Office		
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	14
Small firms Small Firms Impact Test guidance	Yes	13
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[2] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Consultation on the Introduction of Civil Sanctions and Cost Sharing for the Energy Using Products and Energy Labelling Regulations
2	Impact Assessment of Cost Sharing options available to the Market Surveillance Authority under the Energy Using Products and Energy Labelling Regulations - Draft stage (Consultation)
3	Impact Assessment of the Proposed Penalty Regime for the Energy Using Products and Energy Labelling Regulations – Final Stage
4	Impact Assessment on the compliance & enforcement regime of the Energy-Using Products (EuP) & Energy Labelling Directives
5	Summary of responses and Government response to the consultation on the introduction of civil sanctions and cost sharing for the Energy Using Products and Energy Labelling Regulations held 23rd March – 15th June 2010

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. BACKGROUND

In 2009, a consultation was published which examined the options for moving the duties for a Market Surveillance Authority (MSA) as required by the Ecodesign of Energy using Products (EuP) and Energy Labelling (EL) Framework Directives away from Trading Standards in Local Authorities to an existing single UK central body. As a result of the consultation, the preferred option, to give this function to a dedicated team in a different Government Agency, was chosen. The Secretary of State (Defra) subsequently appointed the National Measurement Office (NMO) on 2 November 2009. For more detailed information on the MSA, please refer to the accompanying consultation document on introducing civil sanctions and cost sharing.

In order to provide for more effective and fairer enforcement and to stretch the limited resources the Government has at its disposal, the 2009 consultation also included a proposal for introducing a system of cost sharing for product compliance testing. The accompanying Impact Assessment on the Compliance & Enforcement Regime of the Energy-Using Products (EuP) & Energy Labelling Directives raised the issue of implementing a cost-sharing regime (as set out in Option 1 in this IA). However the full costs and benefits of doing so were not appraised in detail. This impact assessment will set out the full costs and benefits of introducing two different options for a cost-sharing policy.

Product testing in order to demonstrate (non) compliance with the EuP and EL requirements is a long and involved process, often requiring a total of 4 tests (depending on the product group) and can cost some £10k to £20k to prove that a single product is non compliant. The costs of product testing include all costs incurred throughout a testing programme, such as the purchase of the products to be tested, the staffing costs, laboratory time, storage and disposal of products etc. Given the high number of products subject to this legislation, and in order to carry out a reasonable amount of testing, a substantial amount of funding is required to take full advantage of the benefits of nominating a new enforcement body.

The proposal to introduce a system of cost sharing proved controversial with stakeholders during the last consultation, so it was decided to consult further on cost sharing before deciding to introduce such a system. Government's preferred Option 2 – Cost sharing only in instances where products are found to be non-compliant, takes account of the majority of views from stakeholders and subsequent discussions with other Government Departments and the Devolved Administrations.

A consultation on the proposals to introduce civil sanctions and cost sharing was held from 23 March to 23 June 2010 (Refs 1 & 5). 20 responses were received from a range of organisations including NGOs, trade associations, manufacturers, a professional association and a power company. Of these,

- 18 supported the proposed range of civil penalties and
- 15 supported the preferred option for cost sharing.

For the purposes of this Impact Assessment, two options for the cost-sharing regime will be considered to assess both the key monetised and non-monetised costs and benefits. The two options are:

> **Option 1:** Cost sharing regardless of whether products are compliant, where Government pays for 25% of the costs and industry pays for 75% of the costs, if the tests fall outside the permitted tolerance.
>
> **Option 2:** Cost sharing only in instances where products are non-compliant, where Government funds all surveillance activities including tests, but on proof of non-

compliance (usually following four tests) the manufacturer reimburses all costs associated with testing. This is the preferred option in the consultation, as it requires manufacturers of non-compliant products to pay for the testing costs, thereby providing additional incentive to comply while at the same time increasing the likelihood of a level playing field for businesses.

In summary, the preferred Option 2 would introduce a system of cost sharing whereby manufacturers are charged for the full costs incurred (i.e. purchase, testing and disposal of product plus staff costs) for testing products that have been placed on the market and are not compliant with the EuP or Energy Labelling Regulations ('the regulations'). This option would safeguard the benefits claimed in the Impact Assessment on the compliance & enforcement regime of the Energy-Using Products (EuP) & Energy Labelling Directives. (See page 8 of Ref 3 for clarification of what is meant by safeguarding costs and benefits in this Impact Assessment.)

2. RATIONALE FOR INTERVENTION

Most of the Ecodesign implementing measures (mostly European Regulations) that have recently been agreed set down detailed criteria for product testing in order to verify compliance after a product has been placed on the market (i.e. market surveillance). In particular, they require that most products need to be tested a total of 4 times to prove that they are non-compliant with the Regulations (a different regime applies to some products such as industrial motors and lamps). Broadly speaking, an appliance must be tested once, and if the performance of the product is outside the range permitted (within a tolerance, usually 15%), a further three models must be tested, and the average result of these 3 tests (usually within a tolerance of 10%) determines whether the product is compliant. Testing costs vary, but our recent experience of testing certain appliances showed the costs of testing a single product to be in the region of £3k-5k, thus the costs of testing 4 models can easily reach £10k-20k. (see Annex 1 for estimated product group testing costs) There are thousands of products covered by these Regulations, and this number will increase considerably as new measures come into force over the coming years (See Annex 2).

While the implementing measures do specify that a total of 4 tests must be carried out to demonstrate that a product is non-compliant, they are silent on who should pay for the tests. Enforcement of the regulations is devolved to Member States, with little detail on this in the individual measures, or the Framework Directives, which, instead, set out the principles that must be followed by Member States in enforcing these measures. Given the high number of products, which will need to be tested over the next few years, we believe that there is a place for cost-sharing in the market surveillance regime to reduce the product testing costs to Government and to transfer a share of these costs to industry, in order to give further incentive to businesses to ensure their products are compliant. As regards "conformity assessment" that is required by manufacturers under the Framework Directives, industry can now follow the "self certification" module which has minimised their costs in this area.

By introducing a system of cost-sharing, responsibility for product testing is distributed more equally between Government and industry, so that Government can take on a more cost-effective regime for product testing, giving industry a greater incentive to comply with the Ecodesign and EL Regulations. In turn, this will ensure that non-compliance is kept at minimum level, creating a fairer playing field for businesses and that the benefits (financial and environmental) claimed in the previous impact assessment are safeguarded even further than those safeguarded with the implementation of civil sanctions.

Relationship between the Final Compliance and Enforcement Impact Assessment (signed-off October 2009), and the Civil Sanctions & Cost-Sharing Impact Assessment (at Final sign-off stage)

It was a requirement of the Ecodesign and Labelling Directives to both put in place a Market Surveillance Authority and ensure that penalties for non-compliance are effective, proportionate and dissuasive. The compliance and enforcement Impact Assessment (Ref 3) conducted a cost effectiveness analysis of improving compliance through three types of institutional arrangements for product testing.

- Option 1: To continue, as was then the case, with trading standards officers (TSOs) carrying out the enforcement function for all products.
- Option 2: To move the enforcement function to a dedicated team in an existing body or agency.
- Option 3: A hybrid approach, where TSOs would retain responsibility for compliance of domestic products and a separate body or agency would enforce the requirements for nondomestic products.

The analysis pointed to Option 2 as being the most cost effective option to reduce non-compliance (down from 6.2% to 3.2%).

The analysis also considered three product testing regimes, varying in terms of the scope and frequency of testing, for each of the three types of institutional arrangements described above. These were a 5-years rotation, 2-years rotation, and 1-year full testing. It concluded a 2-years rotation was the most cost effective option in each case.

In October 2009, the Final Impact Assessment was signed-off for agreeing to put into place the National Measurement Office (NMO) as the market surveillance authority to ensure UK compliance with the European Ecodesign minimum standards (i.e. Ref 3: the Compliance and Enforcement Impact Assessment).

The **Civil Sanctions Impact Assessment** (Ref 2) simply reiterates the impacts in the Final Compliance & Enforcement Impact Assessment, as it was assumed in the Final Compliance & Enforcement Impact Assessment that there was a sufficient penalties regime in place in order to deliver the benefits (i.e. the addition of administrative penalties to criminal penalties required to deliver a realistic disincentive as described in the Civil Sanctions Impact Assessment was already assumed). The Final Civil Sanctions Impact Assessment therefore presents nothing more than the benefits already promised in a previous Impact Assessment, and is simply putting in place the penalties regime to safeguard them.

The **Cost-Sharing Impact Assessment** models options which analyse various ways to place the cost-burden, associated with ensuring compliance and enforcement, between Government and industry – with options flexing the assumptions around whether all industry players face the burden, or simply those who ultimately don't comply (with the latter further discouraging non-compliance). Further information about the costs of testing is given in: Annexes 2 and 3 of this document; and in Box 3 on page 19 of the consultation document on the proposals to introduce civil sanctions and cost sharing (Ref 1).

It is therefore intended that, in line with the MSA's approach to compliance issues that the proposed civil sanctions regime will be strengthened and supported by the introduction of a cost sharing scheme as part of the market surveillance authority's compliance testing programme, thereby safeguarding the benefits claimed in the previous impact assessment even further. The Government's preferred civil sanctions scheme has been consulted on alongside the cost sharing policy and a vast majority of respondents have supported both approaches.

Whilst individually, a system of cost sharing and new civil sanctions would encourage businesses to comply with the Ecodesign regulations, together the proposals are expected to create an even greater incentive for manufacturers and retailers to ensure their products are

compliant. Both proposals will have a significant behavioural impact on non-compliant businesses. Cost sharing in particular creates a powerful incentive to be compliant and ensures that non-compliant business are seen to pay for the costs of failed tests which would otherwise be imposed on compliant businesses. In addition, the civil sanctions regime holds a set of flexible and proportionate responses to non-compliance once it is discovered. While civil sanctions are expected to safeguard the estimated benefits of having introduced a new enforcement body, the cost sharing policy is expected to increase the amount of these safeguarded benefits and reduce the rates of non-compliance beyond those already safeguarded by the civil sanction regime.

The measures together should decrease rates of non-compliance, therefore reducing the costs to Government, consumers and compliant businesses. Now the MSA is in place it is expected that they will discover a much greater number of instances of non-compliance, so although there have been few cases brought to court over the past decade, introducing both civil sanctions and cost sharing policies would avoid the need for cases to go to court, compared to a system where only criminal penalties are available to the MSA. This would therefore lighten the burdens on the judicial system.

3. BASELINE FOR ANALYSIS

Paragraphs 19-21 of the consultation document on the proposals to introduce civil sanctions and cost sharing (Ref 1) explained that the NMO were committed to a collaborative approach to market surveillance and enforcement. They would closely with industry to improve understanding and assist companies to comply with the regulations. They would carry out a risk-based, proportionate and targeted approach to inspection and enforcement. They would focus on bringing products into compliance, rather than moving straight to issuing penalties or prosecution.

For the purposes of this impact assessment, the baseline is the current situation where an Executive Agency has been put in place as the new MSA and where no cost sharing regime has been put in place. Government is responsible for the full costs of product testing and can only recoup all costs following a successful prosecution in the courts.

The final Compliance and Enforcement impact assessment presented with last year's consultation estimated the overall rate of non-compliance to be at around 6.2%, without the appointment of an enforcement body. This estimated non-compliance rate is considered to be a very conservative estimate, assuming an average 10% legal non-compliance with the Energy Labelling Framework Directive.

This results in total present value costs of non-compliance of £700m, and total present value benefits of non-compliance of £336m. Therefore, the Net Present Value foregone due to non-compliance is £364m (between the period 2010-2020).

By appointing an existing Executive Agency to carry out the role of the MSA, non-compliance rates were estimated to decrease by half, from 6.2% to 3.2%. Having an effective compliance and enforcement regime in place with appropriate sanctions, including a level of testing large enough to deter industry from non-compliance, should safeguard the £164m net benefit claimed in the final compliance and enforcement IA.

The MSA can test a limited number of products. If on average, the cost of one test for a product is £3000, the initial test will cost Government £3000 and each consecutive test conducted on 3 different models of the same product would cost an additional £3000 per test.
The total amount of costs for carrying out all tests to establish whether or not a product is compliant would amount to some £12,000.

4. COST-BENEFIT ANALYSIS OF COST-SHARING OPTIONS

A. Assumptions

The Impact Assessment on the Compliance & Enforcement Regime of the Energy-Using Products (EuP) & Energy Labelling Directives (Ref 3) calculated the estimated costs and benefits of the two components of non-compliance: the projected reductions in energy consumption not being achieved, because products are not as efficient as they claim to be; and manufacturers not making the costly improvements necessary to meet the energy-efficiency standards they are claiming. These assumptions remain the same in this impact assessment.

For the purpose of this impact assessment, we have assumed that if a product falls outside the tolerance by more than 5% in the first test, it is likely to fail overall the 4 tests. This estimate is based on the Market Picture Testing programme carried out by Defra in 2009 (http://efficient-products.defra.gov.uk/compliance). This testing is based on a limited sample size with broad assumptions as to which products would fail all 4 tests. This estimate is also the basis for the calculations set out in Annex 3, which set out how the costs of tests are distributed (in percentage) between Government and industry. There is no conclusive evidence on the failure rate of products. In particular, it is difficult to establish whether products that fail the first test are likely to fail all three tests.

As the MSA will be taking a risk-based approach to testing, it is assumed that they will only test products that they expect will fail all four tests.

For the purposes of the cost-benefit analysis of this impact assessment, the average cost incurred by one test will be estimated at £3000 for all products, although it is necessary to note that costs can vary greatly per product group. The assumption is that 200 tests (including retests) will be carried out per year. At a cost of £3000 per test, the testing budget is assumed to be set at £600,000 per annum. This sum is dependent on the MSA's budgeting decisions.

Administrative burdens were considered for the purposes of this impact assessment, however, the amount expected was considered too minimal to include on the covering summary sheets.
The assumption is that an average of 15 businesses will be impacted by the cost sharing scheme per year. It is assumed that a financial clerk, paid at £11.14 per hour (based on category 412 from the standard cost model – http://www.bis.gov.uk/files/file44505.pdf), will spend 30 minutes administrative work on cost sharing, which involves not more than paying the invoice.
This would amount to an administrative burden of £94.00 per year, impacting non-compliant businesses alone, based on the assumption that they do not push for an appeal against the cost sharing invoice.

B. Analysis of Costs and Benefits

Both Option 1 and Option 2 would give rise to two different scenarios:

Scenario A would allow for Government to decrease its expenditure for the testing programme, as costs would be shared with industry. In this case, Government can carry out the same amount of tests per annum at a lower cost than under the baseline.

Scenario B would increase Government expenditure for the testing programme, as the Government expenditure would remain constant, with the addition of the costs shared with

industry. In this case, Government can perform a higher amount of tests per annum for the same Government expenditure as under the baseline.

a. Costs

According to the calculations in Annex 3, costs will be shared between Government and Industry as follows:

	Baseline	Option 1	Option 2
Government pays % of tests	100%	55%	73%
Business pays % of tests	0%	45%	27%

Assuming that each test costs £3000 and 200 tests are carried out per year, the assumption is that £600,000 is available for product testing. Therefore, the costs to Government and business would be as follows.

Scenario A

Under Option 1, there would be no net change to the total testing budget, however government expenditure would decrease by 45% to £330,000 and industry would share the costs of testing by reimbursing 45% of the costs, £270,000.

Under Option 2, there would be no net change to the total testing budget, however government expenditure would decrease by 27% to £438,000 and industry would share the costs of testing by reimbursing 27% of the costs, £162,000.

	Annual Cost to Government	Annual Cost to Business	Total Annual Testing Budget
Baseline	£600,000	£0	£600,000
Option 1	£330,000	£270,000	£600,000
Option 2	£438,000	£162,000	£600,000

Scenario B

Under Option 1, government expenditure would remain constant and industry would contribute 45% of the baseline testing budget, increasing the product testing budget to £870,000.

Under Option 2, government expenditure would remain constant and industry would contribute 27% of the baseline testing budget, increasing the product testing budget to £762,000.

	Annual Cost to Government	Annual Cost to Business	Total Annual Testing Budget
Baseline	£600,000	£0	£600,000
Option 1	£600,000	£270,000	£870,000
Option 2	£600,000	£162,000	£762,000

b. Benefits *[note that all final percentages presented here are relative to a 6.2% non-compliance initial point if no compliance/enforcement was carried out]*

Scenario A

This scenario would offer increased incentives to manufacturers to comply with the Regulations, as they would have to bear the cost of product testing (as well as any civil sanctions or criminal penalties). This has not been quantified below.

Government would have the opportunity to reduce costs, by decreasing the budget available for product testing, as quantified below. The benefits estimated in the previous compliance and enforcement impact assessment would be effectively safeguarded, as the baseline amount of testing carried out per annum would not be affected, as is indicated below.

Under Option 1, 200 tests can be performed, maintaining the same level of compliance for a 45% decrease in Government expenditure.

Under Option 2, 200 tests can be performed, maintaining the same level of compliance for a 27% decrease in Government expenditure.

	Annual Cost to Government	Annual Cost to Business	Total tests per year	Percentage of non-compliance	Additional benefits in £
Baseline	£600,000	£0	200 tests	3.2%	£0
Option 1	£330,000	£270,000	200 tests	3.2%	£0
Option 2	£438,000	£162,000	200 tests	3.1%	£5.4m

Scenario B

This scenario would offer even higher incentives to manufacturers to comply with the Regulations than under Scenario A, as they would have to bear the cost of product testing (as well as any civil sanctions or criminal penalties). This has not been quantified below.

Government would have the opportunity to carry out a higher amount of tests at the same level of Government expenditure than under the baseline, as quantified below. The benefits estimated in the previous compliance and enforcement impact assessment would therefore be effectively safeguarded. The rates of non-compliance could be decreased even further than under Scenario A, thus generating additional (based on Civil Sanction IA) safeguarded benefits to those already estimated in the previous impact assessment. This has been quantified below.

Under Option 1, 45% more tests can be carried out with the £600,000 total testing budget.

Under Option 2, 27% more tests can be carried out with the £600,000 total testing budget.

	Annual Cost to Government	Annual Cost to Business	Total tests per year	Percentage of non-compliance	Additional safeguarded benefits in £
Baseline	£600,000	£0	200 tests	3.2%	0
Option 1	£600,000	£270,000	290 tests	2.8%	£24.9m
Option 2	£600,000	£162,000	254 tests	3%	£12.1m

Under Scenario B, it is assumed that the rates of non-compliance could be reduced further than those of the baseline:

Under Option 1, the rate of non-compliance could be reduced by 0.4%.

Under Option 2, the rate of non-compliance could be reduced by 0.2%.

The preferred option will impose a significantly reduced burden on industry than that considered in Option 1. It should also have a positive behavioural impact, that could reduce non-compliance rates further (than the rate estimated by simply taking into account the increase in testing) by providing the correct incentives for industry compliance.

C. Key Non-Monetised Benefits

Introducing a system for cost sharing would, in Scenario B, would reinforce the testing regime and attract other significant benefits that it is not possible to quantify or monetise. By ensuring that a level-playing field is created for UK manufacturers and businesses this regime will be seen as particularly favourable in the current economic climate. Also, as manufacturers become more compliant overtime a virtuous circle of compliance is established and stakeholders such as trade associations can actively and confidently promote energy efficiency messages.

Less non-compliant products on the market will also increase consumers' confidence in the purchases they make. It is also essential that in further developing product policies the Government has confidence in the actual levels of performance of the energy-using products procured and sold on the UK market, while contributing to the single market goals of the European Community.

Impact on Small Businesses

Implementing a system of cost-sharing is unlikely to affect small businesses.
The MSA is required to focus on raising awareness of the EuP and EL requirements, so the industry and small businesses will be made aware of the consequences of placing non-compliant products on the market. Businesses that acknowledge the EuP requirements will avoid placing non-compliant products on the market and will therefore not be impacted by this cost sharing policy.

Small businesses which continue to place non-compliant products on the market will be proportionately affected; however, any impact will be proportionate to the non-compliant action.

Competition Assessment

An effective cost sharing regime is expected to improve compliance in the market for Energy-using Products and should therefore increase competition, helping to create a fairer and level playing field for business, especially under Scenario B.

Option 2 ensures that only non-compliant business shares costs with Government, in comparison to Option 1 where no distinction is made between responsible and rogue

businesses. Option 2 ensures that rogue businesses have no competitive advantage over responsible businesses.
It is unlikely that this policy will affect the number of firms on the market, or the ease at which new firms can enter the market. Cost sharing would not contribute to the possibility of anti-competitive behaviour between manufacturers, retailers or importers.

It is possible that, a firm producing illegal non-compliant products could lose market share as a result of a reinforced testing programme and better enforcement. However, there is expected to be an overall positive impact on competition, ensuring that all firms are competing on equal terms and ensuring that consumers can have confidence in the claims made by businesses and the information they are provided with.

Cost sharing under Option 2 will safeguard the benefits of reducing non-compliance rates as calculated in the Impact Assessment on the Compliance & Enforcement Regime of the Energy-Using Products (EuP) & Energy Labelling Directives. If the second scenario is adopted under Option 2, more benefits could be safeguarded than those claimed from the baseline.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; There will be a political commitment to review the policy after 2 years, to verify that the preferred cost sharing regime is suitably ambitious to reduce the rates of non-compliance.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] The objective of the review will be to monitor how effectively the regulations are tackling non-compliance of energy using products on the market.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The review will consist of an evaluation of the progress made against the baseline in terms of non-compliance rates of selected product types on the market. This evaluation method is the most low-cost method, as it will allow the MSA to carry out tests on more products for a lower cost than formal compliance testing.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] Defra is currently discussing with the MSA the most appropriate method to estimate compliance rates in the UK. The preferred and low cost option is for the MSA to establish a baseline by carrying out market screening testing on selcted product types every three years. This involves a light touch testing programme whereby the MSA can carry out tests on products in stores to estimate the amount of products that do not meet the minimum requirements after an initial test. The MSA will carry out a follow up screening process on the same types of products 2 years later, where the results will be compared against the baseline.
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] The success criteria for implementing the cost sharing policy for the Ecodesign Regulations is a decrease in non-compliance rates, based on the results of the market screening undertaken by the MSA on selected products.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The MSA reports to Defra on a monthly basis on the Ecodesign testing programme, results and issues. In addition, the MSA provides tri-annual and annual reports to Defra on the testing programme, in order to assess the impact the policy has on the rates of non-compliance and the behavioural attitude of businesses.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

Annex 2 – Product group testing costs

Detailed testing group example: Domestic Wet Goods

The domestic wet goods product group is representative of the types of products which will be tested under this compliance regime. It consists of:

Small and large washing machines – currently around 950 models on the market

washer/driers and dishwashers – currently around 900 models on the market

In total, following introduction of the measures, we can expect there to be at least 1700 models on the market.

Testing 12 products each from Large Washing Machines, Small Washing Machines, Washer/Driers, Dishwashers = 48 products @ £3000 each) = **£144,000**

Retesting at estimated 15% failure rate (7 products fail, test a further 3 of each = 21 products) = **£63,000**

Total detailed testing cost for four specific products from the Domestic Wet Group (£144,000 + £63,000) = **£207,000 (rounded to £205K)**

ANNEX 3 - Estimated costs based on the 2009 market picture testing failure rates

Example scenarios have been based on an average of £3000 per test

Example 1: Washer/Driers
23 machines tested
6 machines failed first test on energy consumptions
5 machines failed all 4 tests.

- Baseline:
  MSA pays 23 tests + 6x3 retests = 41 tests in total (£3000 x 41 = £123,000)
  Business pays 0 tests, but undergoes enforcement action after a successful prosecution

- Option 1:
  MSA pays 23 tests + 0 retests = 23 tests in total (£3000 x 23 = £69,000)
  Business pays 6x3 retests = 18 in total (£3000 x 18 = £54,000)

- **Option 2:**
  MSA pays MSA pays 23 tests + 6x3 retests = 41 tests initially (£123,000)
  Business pays 0 tests initially

  If 5 out of 6 retests fail:
  Business reimburses MSA all costs of failed tests: 5 products x 4 tests = 20 tests in total (£3000 x 20 = £60,000)
  So MSA pays 41 tests – 20 reimbursed tests = 21 tests in total (£3000 x 21 = £63,000)

Example 2: Ovens
24 machines tested
2 machines failed first test on energy consumption
0 failed all 4 tests.

- Baseline:
  MSA pays 24 tests + 2x3 retests = 30 tests in total (£3000 x 30 = £90,000)
  Business pays 0 tests, but undergoes enforcement action after a successful prosecution

- Option 1:
  MSA pays 24 tests + 0 retests = 24 tests in total (£3000 x 24 = £72,000)
  Business pays 2x3 retests = 6 in total (£3000 x6 = £18,000)

- **Option 2:**
  MSA pays 24 tests + 2x3 for retests = 30 tests initially (£90,000)
  Business pays 0 tests initially

  If 0 retests fail:
  No reimbursement by business to the MSA

Example 3: Fridges
12 machines tested
7 machines failed first test on energy consumption
2 machines failed all 4 tests.

- Baseline:
  MSA pays 12 tests + 7x3 retests = 33 tests in total (£3000 x 33 = £99,000)
  Business pays 0 tests, but undergoes enforcement action after a successful prosecution

- Option 1:
  MSA pays 12 tests + 0 retests = 12 tests in total (£3000 x 12 = £36,000)
  Business pays 7x3 for retests = 21 tests in total whether or not the product is proved non-compliant (£3000 x 21 = £63,000)

- **Option 2:**
  MSA pays 12 tests + 7x3 for retests = 33 tests initially (£99,000)
  Business pays 0 tests initially

  If 2 of the retests fail:
  Business reimburses MSA all costs of failed tests: 2 products x 4 tests = 8 tests in total (£3000 x8 = £24,000)
  So MSA pays 33 tests – 8 reimbursed tests = 25 tests in total (£3000 x 25 = £75,000)

Total distribution of costs under each scenario:

Baseline: MSA pays 104 tests – Business pays 0 tests
Option 1 : MSA pays 57 tests – Business pays 47 tests
Option 2 : MSA pays 76 tests – Business pays 28 tests