



Post Implementation Review of the Ecodesign for Energy Related Products Regulations 2010 (S.I. 2010/2617)

Presented to Parliament

by the Secretary of State for Energy and Climate Change

by Command of Her Majesty

February 2016



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Print ISBN 9781474127295

Web ISBN 9781474127301

ID P002782228 02/16 53944 19585

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

POST IMPLEMENTATION REVIEW OF THE UK'S TRANSPOSITION OF THE ECODESIGN FOR ENERGY RELATED PRODUCTS REGULATIONS 2010 (S.I. 2010/2617)

INTRODUCTION

1. This document provides an overview of the Post Implementation Review (PIR) of the UK's Ecodesign for Energy-related Products Regulations 2010, (S.I. 2010/2617 as amended) ('the 2010 Regulations'). These Regulations provide the legislative basis for the compliance regime for implementing measures made under the Ecodesign for Energy-related Products Directive¹ (2009/125/EC) ('the Directive' or 'the Ecodesign Directive').
2. This legislation underpins Government's continued commitment to ensure that products subject to implementing measures under the Directive are compliant with the relevant requirements, to ensure that the energy savings and consumer benefits that result from more energy –efficient products are realised.
3. This Command Paper and the associated PIR (found at Annex 1) set out the Government's views on the effectiveness of the regulatory regime. It covers:
 - The extent to which the regulation is achieving its objectives;
 - The impacts that have resulted, and in particular, to what extent the effects anticipated in the regulation's original Impact Assessment (IA) actually occurred;
 - Whether there have been any unintended consequences.

BACKGROUND TO THE ECODESIGN FOR ENERGY –RELATED PRODUCTS DIRECTIVE (2009/125/EC)

4. The Ecodesign Directive allows for the development of minimum energy performance standards (MEPS) for specified energy-related products; it also allows other standards to be set for the products covered. MEPS ban the least energy efficient products from production in the EU market and import into the EU market. The Directive itself sets out the criteria for the classes of products that can be made the subject of standards and the obligations on manufacturers, suppliers and Member States.
5. Standards for each product type are specified in an implementing measure - generally an EU regulation but in a small number of cases through an industry voluntary agreement. Currently more than 20 products groups are covered by

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:285:0010:0035:EN:PDF>

regulations, and three are the subject of voluntary agreements. The European Commission's website has a list of measures currently in force:
<https://ec.europa.eu/energy/en/topics/energy-efficiency/energy-efficient-products>

6. The Ecodesign Directive extended the scope of products covered from 'energy-using' products in the original 2005 Directive², to include energy-related products (those which do not use themselves energy in their operational use phase, but can influence the use of energy).

BACKGROUND TO THE UK'S COMPLIANCE REGIME FOR THE DIRECTIVE

7. The original Ecodesign Directive for Energy-using Products (2005/32/EC) was transposed in the UK through the Ecodesign for Energy-Using Products Regulations 2007 (S.I 2007/2037). These regulations set out the compliance regime, which consisted of criminal sanctions, with enforcement activity being undertaken by local authority Trading Standards Officers in England, Scotland and Wales, and the Department of Department of Enterprise, Trade and Investment in Northern Ireland (each of which was a Market Surveillance Authority). The principal aim of the compliance regime is to ensure that products claiming to be compliant (as denoted by the CE mark) do indeed meet the relevant requirements.
8. When the Directive was re-cast as the Ecodesign for Energy-related Products Directive 2009, the UK transposed it through The Ecodesign for Energy-Using Products Regulations 2010³ ('the 2010 Regulations'). These Regulations retained the extant compliance regime but transferred the role of Market Surveillance Authority to the Secretary of State. The Secretary of State delegated this to the National Measurement Office (now the National Measurement and Regulation Office, NMRO), to ensure a consistent approach to compliance across the UK.
9. The 2010 Regulations introduced a range of civil sanctions: a compliance notice⁴, a variable monetary penalty⁵, a stop notice⁶ and an enforcement undertaking⁷. These sanctions were designed to allow a more flexible sanctions regime.
10. The 2010 Regulations also give the Market Surveillance Authority (MSA) powers to recover testing costs from manufacturers or importers of non-compliant products. This recovery of testing costs is referred to cost sharing.

² http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.191.01.0029.01.ENG

³ http://www.legislation.gov.uk/uksi/2010/2617/pdfs/uksi_20102617_en.pdf

⁴ A written notice issued by the NMRO which requires a company to take actions to bring products into compliance with the law and/or return to compliance within a specified period.

⁵ A monetary penalty designed to eliminate financial gain or benefit which the NMRO may impose for moderate to serious offences.

⁶ A written notice which requires the company to take immediate action in relation to an offence prohibiting an economic operator from carrying on an activity.

⁷ A voluntary agreement driven by an economic operator to undertake specific actions that would make amends for non-compliance and its effects within a specified timeframe.

SCOPE OF THE POST IMPLEMENTATION REVIEW (PIR)

11. The PIR considers only the significant changes to the compliance regime that were introduced in the 2010 Regulations: the impacts of the introduction of civil sanctions and the cost sharing option. These were the main options deployed in the UK to discharge its obligations under the Ecodesign Directive; consequently the PIR does not seek to evaluate the impacts of the Ecodesign Directive and its implementing measures in terms of environmental and consumer benefits.
12. The expectations in the impact assessments covering civil sanctions and cost-sharing proposals, and the operation since the 2010 Regulations came into force, show the 2010 Regulations to be low impact, low risk and not particularly high profile or contentious. In keeping with PIR guidance a light touch, low-resource PIR is proportionate for such regulations, the evidence sought was aimed at determining whether the 2010 Regulations had met their objectives and understanding how the implementation of the 2010 Regulations could be improved. The research sought qualitative evidence from organisations affected by them. Given the low impact, low risk nature of the 2010 Regulations, and the fact that the civil sanctions power was not expected to affect compliance, and the cost-sharing power has not been used, the evidence sought was not aimed at quantifying and monetising the costs and benefits of the 2010 Regulations.

RESEARCH AND ANALYSIS

13. PIR guidance provides three overarching research questions to be addressed:
 - a. To what extent are the Regulations working?
 - b. Is government intervention still required?
 - c. Are the Regulations and the way they are implemented the most appropriate approach?
14. These questions were addressed through a series of research questions (see Section 5 of the PIR). Responses to these questions were secured through semi-structured interviews with a range of stakeholders, and evidence provided by the NMRO from its operation of the compliance regime since 2010. The stakeholders included companies that had been subject to the NMRO's enforcement activities and those which had not. A full report setting out the methodology and results of that research has been published separately from this PIR at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>.
15. Section 6 of the PIR sets out the summary of evidence gathered from interviews with a range of stakeholders. The summary answers to the three questions are set out below.

To What Extent are the Regulations Working

16. The semi-structured interviews showed that some stakeholders, including a sanctioned company, felt that civil sanctions act as a deterrent to non-compliance. In cases where stakeholders suggested that civil-sanctions did not act as compliance driver, stakeholders suggested they achieved 100% compliance in any case, driven primarily by reputational reasons.
17. The semi-structured interviews show that stakeholders viewed the 2010 Regulations and the way they are implemented as being reasonable and fair, including by all three of the sanctioned companies that were interviewed.
18. The semi-structured interviews showed examples of companies changing their behaviour following civil sanctions. For example, one sanctioned company said that it now requested a greater level of certification and assurance from suppliers, and undertook more rigorous checks than it had done previously.

Is Government Intervention Still Required?

19. The UK government has the ability to make changes to the Regulations, such as removing cost sharing. Similarly, the UK government also has the ability to make changes to the way the Regulations are implemented. However, the Regulations transpose into UK law the requirements of The Ecodesign of Energy Related Products Directive. It is compulsory to have regulations which transpose these requirements. This means that some form of regulation is required. Therefore, Government intervention in the form of regulation is required.

Are the Regulations and the way they are implemented the most appropriate approach?

20. The semi-structured interviews suggest that stakeholders are very positive about the Regulations and the way they have been implemented. This view was held amongst sanctioned and non-sanctioned companies as well as trade associations. Stakeholders gave their views on how the NMRO had implemented the 2010 Regulations – typically words used to describe the NMRO's approach included 'credible', 'pragmatic' and 'pro-active'.
21. The perceived strengths of the NMRO's approach were; clear and structured processes, pragmatism, proactive industry engagement, the fact that there was only one national enforcement authority and the NMRO's role in leading at an EU level through its chairmanship of the committee on Administrative Cooperation (ADCO) for Market Surveillance Authorities . Some stakeholders also suggested the NMRO has a collaborative approach to enforcement, which was welcomed.
22. One perceived weakness of the way the 2010 Regulations have been implemented was a lack of visibility of market surveillance and enforcement activity. The findings from the semi-structured interviews suggest that this perceived lack of transparency could undermine the NMRO's credibility to some degree and could even promote non-compliance.

23. Several of the interviewees also highlighted what they perceived to be inconsistent approaches to market surveillance and enforcement of applicable implementing measures across the EU. Some interviewees commented that this led to higher costs to business.
24. Overall, this evidence suggests that the 2010 Regulations are operating as intended, but that some administrative issues could be addressed.

CONCLUSIONS AND NEXT STEPS FOR THE REGULATION

25. The evidence gathered for the PIR suggests that the civil sanctions power has met its objectives and that civil sanctions have helped to achieve a high level of compliance. Stakeholder views also suggest that civil sanctions have reduced cost to business, when compared to a counterfactual where only criminal sanctions are available.
26. The cost sharing power has not been applied in practice and there is no evidence of a deterrent effect. Therefore, the intended effect, of improved compliance as a result of cost sharing, has not been achieved. Given that cost sharing has not been applied in practice, there has also not been a related reduction in burden to Government. Therefore, the cost sharing power has not met either of its objectives. However, there was no suggestion that cost sharing could not be successfully applied in future, and therefore the Government is of the view that the cost sharing powers in the 2010 Regulations should be retained.
27. The research aimed to identify examples of unintended consequences through consultation with stakeholders. While no unintended consequences were identified, it is not possible to conclude that there are no unintended consequences. However, the research suggests that it is unlikely that there have been any major unintended consequences.
28. As a consequence the Government does not consider that it is necessary to amend the provisions of the 2010 Regulations. However there are several areas where the recommendations from the PIR can be taken forward by changes to administrative processes and these are discussed below.
29. The interviews suggested that there was a lack of visibility of the NMRO's market surveillance and enforcement activities. DECC will work with the MSA to ensure greater visibility of testing and enforcement activities, and that all published information should be made available on a single internet page.
30. Some stakeholders suggested that the NMRO's effectiveness may be limited by its budget. Cost sharing may allow the NMRO to increase the amount of testing it carries out. DECC will continue to work with the MSA to ensure cost sharing is applied wherever appropriate.

31. Although not the focus of the PIR research, the interviews also suggested an inconsistent approach to enforcement across the EU. DECC will continue to work with the European Commission and other Member States in order to better harmonise enforcement regimes, while recognising that enforcement regimes are a Member State competence. There has already been significant work to harmonise enforcement regimes through the UK-led ECOPLIANT project⁸, which is being continued through NMRO's participation in the follow-up project, EEPLiant⁹.

⁸ <http://www.ecopliant.eu/>

⁹ <http://eepliant.eu/>

Annex 1 Ecodesign for Energy-Related Products Regulations 2010 Post Implementation Review

Title: Ecodesign for Energy-Related Products Regulations 2010 IA/PIR No: RPC-3144(1)-DECC Lead department or agency: DECC Other departments or agencies: Contact for enquiries: Alex Parker (alex.parker@decc.gsi.gov.uk)	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory - sunset clause
	Date of implementation: 20/11/2010
	Date review due (if applicable): 20/11/2015
Summary	RPC: Fit for purpose

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

The Ecodesign for Energy-Related Products Regulations 2010 (referred to in this document as “the Regulations”) relate to the compliance and enforcement regime for minimum standards relating to energy-related products.¹⁰ The Regulations introduced two new powers:

1. The Market Surveillance Authority (MSA) has the power to impose civil sanctions, as an alternative to criminal sanctions, for offences related to placing products on the market that are non-compliant with the relevant minimum standards.
2. The MSA has the power to recover testing costs from manufacturers or importers of non-compliant products. This recovery of testing costs is referred to in this document as cost sharing.

The civil sanctions power was intended to maintain a high level of compliance with the relevant minimum standards. The civil sanctions power was not expected to lead to an increase in compliance rates. Instead, the civil sanctions power was intended to maintain the benefits of a robust compliance and enforcement regime, as implemented by the earlier Ecodesign for Energy-Using Products Regulations 2007¹¹ (as amended by the Ecodesign for Energy-Using Products (Amendment) Regulations 2009¹²), which are not within scope for this PIR. Therefore, the costs and benefits of a high level of compliance were not monetised in the civil sanctions impact assessment that was developed when the Regulations came into force. The civil sanctions power was also intended to reduce costs to business, as civil sanctions were expected to require lower legal costs compared with criminal sanctions.

The cost sharing power was intended to incentivise manufacturers and importers to produce products that are compliant with applicable implementing measures. Therefore, the cost sharing power was intended to reduce the level of non-compliance. The cost sharing power was also intended to reduce the burden on government. For more information on the policy objectives and intended effects please see section 3. Alternatively, please see the civil sanctions impact assessment¹³ and the cost sharing impact assessment¹⁴ that were carried out around the time the Regulations came into force.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The cost sharing power was expected to improve compliance rates by between 0.1% and 0.2%. This improvement was expected to be realised by the review date. The improvement in compliance rates was estimated to lead to a net benefit to society of between £5.4m and £12.1m (present value terms, real 2011 prices) for the period between 2010 and 2020.

¹⁰ http://www.legislation.gov.uk/uksi/2010/2617/pdfs/uksi_20102617_en.pdf

¹¹ <http://www.legislation.gov.uk/uksi/2007/2037/contents/made>

¹² <http://www.legislation.gov.uk/uksi/2009/2560/made>

¹³ http://www.legislation.gov.uk/ukia/2012/26/pdfs/ukia_20120026_en.pdf

¹⁴ <http://www.legislation.gov.uk/uksi/2010/2617/impacts/2010/473>

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

The expectations in the impact assessments, and the operation since the Regulations came into force, show the Regulations to be low impact, low risk and not particularly high profile or contentious. The PIR guidance suggests that a light touch, low-resource PIR is proportionate for such regulations. Therefore, the evidence sought was aimed at determining whether the Regulations had met their objectives and understanding how the implementation of the Regulations could be improved. The research sought qualitative evidence from organisations affected by them. Given the low impact, low risk nature of the Regulations, and the fact that the civil sanctions power was not expected to affect compliance, and the cost-sharing power has not been used, the evidence sought was not aimed at quantifying and monetising the costs and benefits of the Regulations. For more information on the rationale for evidence sought please see section 4.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Monitoring data on the number of companies that have been found to be non-compliant with minimum standards has been collected from the MSA, the National Measurement and Regulation Office (NMRO). To complement this monitoring data, qualitative research was commissioned to determine whether or not the Regulations have broadly met their objectives and to understand how the implementation of the Regulations could be improved. Stakeholder views were collected using semi-structured interviews with trade bodies, manufactures and importers.¹⁵ The NMRO and consumer organisations have also been consulted through a number of email exchanges and telephone conversations. For more information on the methodology please see section 5.

¹⁵ The methodology and findings of the semi structured interviews have been published in a separate findings report at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

The evidence gathered suggests that the civil sanctions power has met its objectives. Semi-structured interviews with stakeholders and consultation with the Energy Saving Trust (EST) suggested that civil sanctions helped to achieve a high level of compliance. Stakeholder views, including sanctioned companies and the NMRO, also suggest that civil sanctions reduced costs to business, when compared to where only criminal sanctions are available. Despite attempting to identify unintended consequences through consultation with stakeholders, none have been identified.

The cost sharing power has not been applied in practice, however. The semi-structured interviews also suggest a low level of awareness of the cost-sharing power. Therefore, it is very unlikely that the cost sharing power has acted as a deterrent and achieved the intended effect of improved compliance. Likewise, given that cost sharing has not been applied in practice, there has also not been a related reduction in burden to government. For more information on the results of the research please see section 6.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

The civil sanctions impact assessment estimated no costs or benefits as a result of the preferred policy option. The civil sanctions impact assessment stated that it was not possible to distinguish between the performance of civil and criminal sanctions in terms of improving compliance. The civil sanctions impact assessment mentioned that the preferred policy option would reduce the burden on business. However, the reduction in cost to business was not monetised.

The cost sharing impact assessment estimated a net benefit of between £5.4 and £12.1m (present value terms, real 2011 prices) between 2010 and 2020 as a result of the preferred option. The range in net benefit estimates was as a result of the cost sharing impact assessment considering two scenarios. In one scenario cost sharing was assumed to increase expenditure for the testing programme, leading to a net benefit estimate of £12.1m. In the other scenario, the budget of the testing programme was assumed to remain constant, leading to a net benefit estimate of £5.4m. The cost sharing power required for the preferred option was introduced by the Regulations. However, cost sharing has not been applied in practice. Therefore, the preferred option has not been implemented.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

The actual costs and benefits of the cost sharing power are estimated to be zero. This is different from the original estimates due to the fact that cost sharing has not been applied in practice.

In line with the PIR guidance on “*light touch*” PIRs, the impacts of the civil sanctions power have not been quantified. However, evidence from the NMRO and semi-structured interviews suggest that the civil sanctions power will have led to a small reduction in cost to business.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

In line with the 2014 Regulators' code the NMRO has taken an evidence based approach when deciding whether or not to test if products are compliant with the relevant minimum standards.¹⁶ Products are targeted according to the perceived risk of non-compliance, based on a number of factors such as company history. This means that not all products are tested. It also means that the products which are tested are not randomly selected. Therefore, it is not possible to say what proportion of products on the market would fail testing. This means it is difficult to say whether or not the introduction of the civil sanctions power has led to a change in compliance rates. However, it would have been disproportionate to conduct a large data collection exercise simply to estimate compliance rates.

There is a lack of evidence on what would happen in the absence of civil sanctions (i.e. in the counterfactual). This means it is difficult to estimate the costs and benefits of civil sanctions. However, the evidence available suggests only a small reduction in cost to business.

7. Lessons for future Impact Assessments

The NMRO suggested that as they plan their testing programme a year in advance, it would be difficult to use money recovered through cost sharing in order to carry out more tests. However, the impact assessments carried out around the time the Regulations came into force did not account for this. Therefore, any future impact assessments should not assume that costs recovered through cost sharing can be easily used to carry out more testing.

The PIR plan carried out as part of the original impact assessments assumed that compliance rates could be determined through a light touch testing programme. In reality, compliance rates can only be determined by using the results from certified test houses. Test results that do not come from certified test houses could potentially be misleading. Given the high cost of testing through certified test houses, establishing the proportion of products that are non-compliant with the relevant minimum standards would be disproportionately expensive.

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

The research supporting the PIR identified some possible improvements to the way the Regulations are implemented. In particular, the Department of Energy and Climate Change (DECC) could work with:

- the MSA to ensure cost sharing is applied wherever appropriate. This should help ensure the highest possible compliance rates and reduce the burden on government.
- the MSA to ensure greater visibility of testing and enforcement activities. This should help stakeholders to have confidence in the compliance and enforcement regime.
- the European Commission and other Member States to better harmonise testing regimes across the EU. This should include the development of testing databases. This should help ensure the highest possible compliance rates. It should also reduce the burden on government.

Sign-off For Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

A handwritten signature in black ink, appearing to be 'M:ac', written over a horizontal line.

Signed: _____

Date: 10/11/2015

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1. Introduction

This PIR examines the powers introduced by the Ecodesign for Energy-Related Products Regulations 2010 (referred to in this document as the Regulations).¹⁷ Evidence gathered through a number of semi-structured interviews¹⁸ and consultation with stakeholders has been used to inform recommendations on whether the Regulations should remain, be amended, be renewed or be replaced.

Section 2 of this document outlines the policy background, summarising the different pieces of legislation that form the policy area known as products policy. Section 3 outlines the intended effects of the Regulations. Section 4 outlines the rationale for the level of evidence sought for this PIR. Section 5 lists the key research questions and explains how the evidence has been collected. Section 6 outlines the evidence that has been collected. Section 7 concludes whether or not the Regulations have broadly met their objectives. Section 8 gives recommendations on whether the Regulations should remain, be amended, be renewed or be replaced.

2. Policy Background

There are a number of pieces of legislation in the products policy area. Setting out the framework for the products policy area are two EU directives:

1. The Ecodesign of Energy Related Products Directive 2009¹⁹
2. The Energy Labelling Directive 2010²⁰

The Ecodesign of Energy Related Products Directive 2009

The Ecodesign of Energy Related Products Directive 2009 allows for the development of minimum standards relating to the environmental performance of specified energy-related products.²¹ Most minimum standards relate to energy efficiency. However, other environmental standards exist, such as air quality and noise standards. Minimum standards ban the worst performing products from production for the EU market and import into the EU market.

¹⁷ http://www.legislation.gov.uk/ukxi/2010/2617/pdfs/ukxi_20102617_en.pdf

¹⁸ The methodology and findings of the semi structured interviews have been published in a separate findings report at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:285:0010:0035:en:PDF>

²⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:153:0001:0012:EN:PDF>

²¹ Energy-related products include products which use energy during use (e.g. lighting and boilers) as well as products that consume no energy in use, but which influence the consumption of energy (e.g. hot taps and windows.)

Minimum standards are voted on by Member States. Once agreed, minimum standards are set in product specific implementing measures.²² For products covered by implementing measures, the manufacturer must also use the CE mark to denote compliance with that implementing measure.

The requirements of The Ecodesign of Energy Related Products Directive 2009 were transposed into UK law by The Ecodesign for Energy-Using Products (Amendment) Regulations 2009²³, which amended the Ecodesign for Energy-Using Products Regulations 2007.²⁴ The Ecodesign for Energy-Using Products Regulations 2007 as amended were then replaced by the Regulations in 2010.

In 2011 an amendment was made to the Regulations.²⁵ This amendment inserted a requirement to review the Regulations after a period of 5 years. This PIR has been developed in accordance with that review requirement.

This PIR examines the policy changes introduced by the Regulations only. It does not examine other pieces of legislation in the products policy area. The policy changes introduced by the Regulations are outlined below.

Powers introduced by the Regulations

The Regulations give the Market Surveillance Authority (MSA)²⁶ the power to impose civil sanctions, as an alternative to criminal sanctions, for offences related to placing products on the market that are non-compliant with the relevant minimum standards.²⁷

The civil sanctions are a compliance notice²⁸, a variable monetary penalty²⁹, a stop notice³⁰ and an enforcement undertaking³¹.

The Regulations also give the MSA powers to recover testing costs from manufacturers or importers of non-compliant products. Compliance with applicable implementing measures is tested, at the MSA's expense, by testing a single example of a given model. Where that test suggests non-compliance with applicable implementing measures, the MSA must test further samples (typically 3).³² The Regulations give the MSA the power to recover the costs of the further tests from the manufacturer or importer responsible for the non-compliant product.³³ This recovery of testing costs is referred to in this document as cost sharing.

Another element of the Regulations is a change of scope which has yet to be implemented. This change in scope was driven by the change from the Ecodesign for Energy-Using Products

²² Implementing measures are usually regulations (but can be a voluntary agreements with industry) which give effect to the framework directive on a product specific basis. For the current list see:

https://ec.europa.eu/energy/sites/ener/files/documents/list_of_ecodesign_measures.pdf

²³ <http://www.legislation.gov.uk/ukxi/2009/2560/made>

²⁴ <http://www.legislation.gov.uk/ukxi/2007/2037/contents/made>;

²⁵ <http://www.legislation.gov.uk/ukxi/2011/2677/regulation/2/made>

²⁶ The Secretary of State is the market surveillance authority and has appointed the National Measurement and Regulation Office (NMRO) to act on her behalf; the NMRO acts across the UK.

²⁷ Criminal sanctions are those that can only be applied by a Court, civil sanctions are those that can be applied by the MSA without recourse to the Courts.

²⁸ A written notice issued by the NMRO which requires a company to take actions to bring products into compliance with the law and/or return to compliance within a specified period.

²⁹ A monetary penalty designed to eliminate financial gain or benefit which the NMRO may impose for moderate to serious offences.

³⁰ A written notice which requires the company to take immediate action in relation to an offence prohibiting an economic operator from carrying on an activity.

³¹ A voluntary agreement driven by an economic operator to undertake specific actions that would make amends for non-compliance and its effects within a specified timeframe.

³² The number of further tests required depends on the specific implementing measure.

³³ The Regulations do not allow the MSA to recover the costs of the original test.

Directive 2005³⁴ to the Ecodesign of Energy Related Products Directive 2009. This change brought energy-related products that are not energy-using products, such as windows, into scope. Previously, only energy-using products were in scope. However, no implementing measure has been introduced for a non-energy-using product. Therefore, this change has so far had no impact. Any future impact would be driven by a new implementing measure.

The UK regulations are amended periodically to extend the range of products subject to them, in line with each product specific regulation that is agreed across the EU and which applies in the UK automatically. The UK regulations themselves do not specify what standards are to be met.

The Energy Labelling Directive 2010

The Energy Labelling Directive is a framework directive designed to communicate complex information in a clear and understandable format regarding the energy consumption and performance of specified domestic appliances. It aims to help consumers make informed purchasing decisions. The directive also helps ensure a level playing field for manufacturers, while encouraging competition between them on the environmental aspects of their products. The Energy Labelling Directive is not directly relevant for the purposes of this PIR. However, it is mentioned here for context. A PIR relating to the compliance and enforcement regime for Energy Labelling is due to be published in 2016.

3. Objectives

The objectives of the Regulations were outlined in the civil sanctions impact assessment³⁵ and the cost sharing impact assessment³⁶, carried out around the time that the Regulations came into force. Those objectives include reducing costs to business, improving the level of compliance with applicable implementing measures and reducing the burden on government.

The civil sanctions power was intended to reduce costs to business, as civil sanctions were expected to require lower legal costs compared with criminal sanctions. It was also intended to maintain a high level of compliance with applicable implementing measures. The civil sanctions power was not expected to lead to an increase in compliance. Instead, the civil sanctions power was intended to maintain the benefits of a robust compliance and enforcement regime, as implemented by the earlier Ecodesign for Energy-Using Products (Amendment) Regulations

³⁴ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.191.01.0029.01.ENG

³⁵ http://www.legislation.gov.uk/ukia/2012/26/pdfs/ukia_20120026_en.pdf

³⁶ <http://www.legislation.gov.uk/ukxi/2010/2617/impacts/2010/473>

2009, which is itself not within scope for this PIR.³⁷ Therefore, the costs and benefits of a high level of compliance were not monetised in the civil sanctions impact assessment.³⁸

The cost sharing power was intended to incentivise manufacturers and importers to produce products that are compliant with applicable implementing measures. Therefore, the cost sharing power was intended to reduce the level of non-compliance. The cost sharing power was also intended to reduce the burden on government. The burden on government could either be reduced by passing costs from the government to sanctioned companies or by allowing more testing to be carried out. Further product testing was intended to act as a further incentive to manufacturers and importers to produce compliant products.³⁹

4. Rationale for the Level of Evidence Sought

As stated in the draft PIR guidance, when assessing what level of evidence is proportionate, *“the primary consideration should be whether the level of evidence collected is proportionate to the scale of the regulation and its expected impact. Where substantial impacts are expected to arise from regulations there may be a stronger case for substantial expenditure to ensure that evidence is captured robustly, so long as such expenditure will make an appreciable difference to the quality of the evidence collected”*.

The draft PIR guidance also states a number of secondary considerations including whether the regulation is high profile or contentious, whether the regulation is particularly risky and whether there is a lack of established data sources.

Expected scale of impact of the Regulations

The impact of civil sanctions was expected to be small scale; only 10 companies have been affected by civil sanctions. The civil sanctions power was expected to maintain the high level of compliance brought forward by the Ecodesign for Energy-Using Products (Amendment) Regulations 2009. Therefore, there was assumed to be no impact on compliance rates. Criminal sanctions were expected to impose many of the same costs and benefits as civil sanctions. The civil sanctions impact assessment suggested the introduction of civil sanctions would create greater flexibility which would be likely to reduce the legal costs of businesses. However, this reduction in cost was assumed to be small and was therefore not monetised as part of the impact assessment. Therefore, the civil sanctions impact assessment had an estimated net present value of zero.

³⁷ The costs and benefits of the Ecodesign for Energy-Using Products (Amendment) Regulations 2009 are mentioned here for context. The scope of this PIR only includes changes introduced by the Regulations. Benefits that are captured by the Ecodesign for Energy-Using Products (Amendment) Regulations 2009 include cost savings in the form of reduced consumer energy bills, greenhouse gas emissions savings and air quality improvement benefits. Expected costs captured by the Ecodesign for Energy-Using Products (Amendment) Regulations 2009 include increased capital costs associated with more efficient products and costs associated with carrying out testing.

³⁸ The civil sanctions impact assessment was declared fit for purpose by the RPC, and given a green rating, on 27/2/2012.

³⁹ The cost sharing impact assessment was reviewed by the RPC on 23rd September 2010, but did not receive a rating. At this time the RPC did not give ratings.

The cost sharing impact assessment had an estimated net benefit of between £5.4m and £12.1m (present value terms, real 2011 prices) between 2010 and 2020. However, the impacts assumed in the cost sharing impact assessment depended on cost sharing being applied in practice. The cost sharing power has not been applied in practice. Therefore, the estimated impact of the cost sharing power is also zero.

Risk of the Regulations

The Regulations were expected to be low risk. The Regulations replaced the previous Ecodesign for Energy-Using Products (Amendment) Regulations 2009. Therefore, the Regulations only introduced minor changes to the existing policy landscape. Criminal sanctions are still available if civil sanctions are found to not be effective. Similarly, the government can choose not to implement cost sharing if it is found to not be effective.

Media coverage and stakeholder concerns

The Regulations are not considered particularly high profile or contentious. Neither significant media coverage nor significant comment from stakeholders had been identified before the review was carried out.

As outlined above, the Regulations were expected to be low impact, low risk and not particularly high profile or contentious. The PIR guidance suggests that a light touch, low-resource PIR is proportionate for such regulations. Therefore, the evidence sought was aimed at determining whether the Regulations had broadly met their objectives and gaining an understanding of how the implementation of the Regulations could be improved. The evidence sought qualitative evidence from organisations affected by the Regulations. However, given the low impact nature of the Regulations, the evidence sought was not aimed at quantifying and monetising the costs and benefits of the Regulations.

Existing data sources

The draft PIR guidance also suggests that the extent of existing data sources should be considered when determining what level of evidence is proportionate. Existing monitoring data is available from the MSA, the National Measurement and Regulations Office (NMRO).⁴⁰ The NMRO regularly carry out testing of products. In line with the 2014 Regulators' code the NMRO has taken an evidence based approach when deciding whether or not to test if products are compliant with applicable implementing measures.⁴¹ Products are targeted according to the perceived risk of non-compliance, based on a number of factors such as company history. This means that not all products are tested. It also means that the products which are tested are not randomly selected. Therefore, it is not possible to estimate what proportion of products on the market would fail testing. However, there is data showing the number of products which have been tested and which have failed tests.

There has been a recently completed European Eco-design Compliance Project (ECOPLIANT) which highlights examples of good practice in MSAs.⁴² The examples of good practice have been reviewed as part of this PIR in order to determine whether any lessons can be learnt for the UK's compliance and enforcement regime. ECOPLIANT was delivered by a consortium of

⁴⁰ The Secretary of State is the market surveillance authority and has appointed the National Measurement and Regulation Office (NMRO) to act on her behalf; the NMRO acts across the UK.

⁴¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

⁴² ECOPLIANT established a framework for the coordination of the monitoring, verification and enforcement of the Ecodesign Directive that is suitable for use across the whole European Economic Area. <http://www.ecopliant.eu/>

National Government policy leads and Market Surveillance Authorities from ten different countries, led by the Department of Energy and Climate Change.⁴³

The NMRO's monitoring data and good practice examples highlighted by ECOPLIANT give useful evidence for this PIR. However, there were still some gaps in the evidence base. In particular, there had been no exercise to gather the views of stakeholders on the Regulations. Therefore, for this PIR the views of industry trade bodies, sanctioned companies, non-sanctioned companies, the NMRO and consumer groups have been sought through semi-structured interviews⁴⁴, a series of emails and telephone conversations.

5. Methodology

In line with the draft PIR guidance there are three overarching research questions:

1. To what extent are the Regulations working?
2. Is government intervention still required?
3. Are the Regulations and the way they are implemented the most appropriate approach?

More detailed research questions and the methodology used to answer those questions have been outlined below.

To what extent are the Regulations working?

The key policy changes introduced by the Regulations are the introduction of civil sanctions and the ability of the MSA to implement cost sharing.

The introduction of civil sanctions was intended to maintain a high level of compliance with applicable implementing measures. This led to the research question; **have civil sanctions helped companies to comply with applicable implementing measures?**

In order to answer this research question, the views of industry stakeholders have been captured through a number of semi-structured interviews. Telephone interviews have been conducted with industry trade bodies, sanctioned companies and non-sanctioned companies. Interviews were conducted with three different manufacturers' trade associations, three companies who had experienced sanctions under the Regulations and five non-sanctioned companies. For more detail on the methodology of these interviews see the methodology section in the findings report.

The views of the NMRO were also captured through a number of emails and telephone conversations. In order to capture the perspective of consumer groups, The Energy Saving Trust (EST) were also emailed in order to gather their views. A number of other consumer

⁴³ After a Machinery of Government change from Defra in April 2014, under which Ecodesign and Energy Labelling policy moved to DECC.

⁴⁴ The methodology and findings of the semi structured interviews have been published in a separate findings report at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

groups were also contacted. However, those consumer groups suggested they did not have an informed opinion in order to provide useful information.

The introduction of civil sanctions is also intended to reduce the burden on business. This leads to the research question, **how have the Regulations affected companies manufacturing and importing energy-related products?** As above, the views of industry trade bodies, sanctioned companies, non-sanctioned companies, the NMRO and consumer groups were sought through structure interviews, a series of emails and telephone conversations. Data on the cost of criminal sanctions has also been collected from the NMRO.

The introduction of the power of the MSA to implement cost sharing was intended to reduce the burden on government expenditure. Given that cost sharing has not been used in practice, this leads to the research question, **what are the barriers to cost sharing?** This research question has been addressed through a number of emails and telephone conversation with the NMRO.

As well as understanding whether the Regulations have met their objectives, it is also important to understand any other impacts of the Regulations. This leads to the research question, **have there been any unintended consequences as a result of the Regulations?** As above, in order to answer this research question, the views of industry trade bodies, sanctioned companies, non-sanctioned companies, the NMRO and consumer groups were sought through structure interviews, a series of emails and telephone conversations.

It is also important to understand how the Regulations have affected businesses. This leads to the research question, **how have the Regulations affected companies manufacturing and importing energy-related products?** As above, in order to answer this research question, the views of industry trade bodies, sanctioned companies, non-sanctioned companies, the NMRO and consumer groups were sought through structure interviews, a series of emails and telephone conversations.

Is government intervention still required?

The UK government has the ability to make changes to the Regulations, such as removing cost sharing. Similarly, the UK government also has the ability to make changes to the way the Regulations are implemented. However, the Regulations transpose into UK law the requirements of The Ecodesign of Energy Related Products Directive. It is compulsory to have regulations which transpose these requirements. This means that some form of regulation is required. Therefore, government intervention in the form of regulation is required.

Are the Regulations and the way they are implemented the most appropriate approach?

As mentioned above, it is important to understand whether improvements could be made to the Regulations or the way that they are implemented. In order to answer this research question, findings from ECOPLIANT have been reviewed. As part of ECOPLIANT, questionnaires were sent to market surveillance authorities in all Member States.⁴⁵ The purpose of the questionnaires was to understand how different market surveillance authorities were structured.

As above, the views of industry trade bodies, sanctioned companies, non-sanctioned companies, the NMRO and consumer groups were also sought through semi-structured interviews, a series of emails and telephone conversations.

⁴⁵ <http://www.ecoplant.eu/wp-content/uploads/2013/10/D1.0-Introduction-to-Ecodesign-Market-Surveillance-and-Ecoplant.pdf>

6. Results

Detailed results of the semi-structured interviews with industry trade bodies, sanctioned companies and non-sanctioned companies can be found in the separate findings report.⁴⁶ The findings report also outlines the views of the NMRO following a series of emails and telephone conversations. However, the key pieces of evidence against the key research questions have been summarised below.

Have civil sanctions helped companies to comply with applicable implementing measures?

The semi-structured interviews give examples of the NMRO's implementation of the Regulations improving the behaviours of those companies it had sanctioned. This is good evidence that civil sanctions have helped companies to comply with applicable implementing measures.

This view was supported by the EST. The EST said that *"the level of compliance appears to have increased during the last 5 years"*. The EST suggested that the deterrent of civil sanctions is an important factor in the increased culture of compliance seen recently with energy using domestic products. The EST also said *"fines levied also appeared effective and the option to use variable monetary penalties enabled sanctions to be proportionate, and ensured the correct environmental burden of non-compliance was established"*.

The semi-structured interviews also showed that some stakeholders, including a sanctioned company, felt that civil sanctions act as a deterrent to non-compliance. In cases where stakeholders suggested that civil-sanctions did not act as compliance driver, stakeholders suggested they achieved 100% compliance in any case. This was driven primarily by reputational reasons.

The NMRO's monitoring data gives information on the number of products that have been found to be non-compliant. In 2014/15 the NMRO tested 80 products. Of those 80 products, 17 (21%) were found to be non-compliant. This does not mean that 21% of all products are not compliant. The NMRO has taken an evidence based approach when deciding whether or not to test if products are compliant. Products are targeted according to the perceived risk of non-compliance, based on a number of factors such as company history. Therefore, this suggests that the level of non-compliance will be lower than 21%.

How have the Regulations affected companies manufacturing and importing energy-related products?

The semi-structured interviews show that stakeholders viewed the Regulations and the way they are implemented as being reasonable and fair. This view was held by all three of the sanctioned companies that were interviewed.

The semi-structured interviews showed examples of companies changing their behaviour following civil sanctions. For example, one sanctioned company said that it now requested a

⁴⁶ The methodology and findings of the semi structured interviews have been published in a separate findings report <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

greater level of certification and assurance from suppliers, and undertook more rigorous checks than it had done previously.

Costs of civil sanctions

The semi-structured interviews also give evidence on the costs of the Regulations. The semi-structured interviews suggested that the Regulations have not resulted in any additional costs for non-sanctioned companies.

For sanctioned companies, the semi-structured interviews suggest that civil sanctions do have direct costs. For all the sanctioned companies there was a direct cost of removing the non-compliant product from sale and disposing of it. All of the sanctioned companies said the non-compliant products were not significant product lines in terms of sales or number of items they had in stock. One importer, for example, reported to disposing a few thousand items, via a waste electrical and electronic equipment recycler, costing approximately £9,000 altogether.

Companies gave mixed responses in terms of the impact on sales. One importer reported that the sanctions had had little impact on sales as they had been able to source a compliant alternative quickly. Whereas another importer said that there was a period of over six months when the product was removed from sale, resulting in a loss of sales during this time. A manufacturer also reported a loss of sales as a result of the civil sanction. In addition, the semi-structured interviews suggested a time cost associated with companies responding to the civil sanction.

All of the sanctioned companies indicated either that the costs of the sanctions were relatively small compared to their overall turnover or that the revenue from the product sanctioned was a relatively small part of their overall company turnover. One of the importers, for example, described the cost of responding to the sanctions as a 'drop in the ocean'. They estimated the costs of the sanctions to be in the low thousands of pounds, compared with a multi-million pound turnover, describing the cost as "0.0000 of a percentage of our turnover". The other importer said the product affected by the sanctions represented "maybe 0.1% or 0.2%" as a proportion of its business.

Whilst the costs were perceived to be relatively small across all three companies, there was a variation in the total costs they each estimated the sanctions resulted in, from around £10,000 to £400,000. A manufacturer estimated that the overall cost to the business of the sanctions, taking into account the internal business costs (staff time, etc.) and loss of sales, was approximately twice as much as the direct cost of the sanction itself (the compensation it paid to customers).

The NMRO suggested that the Regulations have reduced legal costs to both itself and businesses. The NMRO said "*the cost of using civil sanctions is consistently less than criminal sanctions to UK business, the environment, consumers and the NMRO. Civil sanctions provide other options than taking a business to court, meaning legal costs are incurred to a lesser degree in a number of cases*". The NMRO also suggested that the Regulations have reduced administrative costs. The NMRO said "*the resource used by the NMRO to construct extensive legal files and explain complex legislation to legal professionals is also saved where civil sanctions are used*". It is difficult to say what costs would be in the counterfactual, where civil sanctions do not exist. In order to estimate costs in the counterfactual it would be necessary to estimate the number of occasions where criminal sanctions would have been applied in the counterfactual and the average cost of a criminal sanction.

Ten companies have undergone sanctions. Nine of those companies have undergone civil sanctions, with one company undergoing criminal sanctions. There are no cases of a company undergoing sanctions more than once. Therefore, there are nine cases of civil sanctions being

applied. It is likely that, in the counterfactual, many of those nine companies would have undergone criminal sanctions. However, it is uncertain exactly how many of the companies would have undergone criminal sanctions in the counterfactual.

There is also a lack of evidence on what the average cost of criminal sanctions would be in the counterfactual. The NMRO suggested that the cost of applying a criminal sanction is likely to be higher than the cost of applying a civil sanction. However, there is only one example of criminal sanctions being applied. Therefore, there is little evidence on which to estimate the costs of criminal sanctions. The one criminal sanction that has been applied was applied before civil sanctions were available. In that case the company was fined £12,000 and told to pay £28,000 to cover the NMRO's legal costs. The NMRO also suggested that the company faced other costs associated with the criminal sanction. The company faced other legal costs, travel costs and costs associated with developing testing facilities. These costs mean the costs to the company were much higher than the £12,000 fine and £28,000 to cover the NMRO's legal costs.

What are the barriers to cost sharing?

The NMRO was asked for their views on cost sharing through a series of emails and telephone conversations. The NMRO's view was that as an executive agency of BIS, one of their aims is to support businesses that are doing their utmost to comply with applicable implementing measures. Investigations to date have shown the regulated market to be largely co-operative and proactive in working with the NMRO to address any detriment caused to consumers or the environment. To date, the NMRO has not used its cost-recovery powers, viewing them as further penalising businesses where this has not been deemed proportionate, but it does not rule out using cost-recovery provisions in future when such action is proportionate.

The NMRO also highlighted that there would be costs associated with cost sharing, such as chasing payments and invoices. These costs are likely to be small. However, given that cost sharing has not been applied in practice, these costs are uncertain.

However, the views expressed in the semi-structured interviews were different. Interviewees were asked for their views on cost sharing. No interviewees identified any barriers to cost sharing. Conversely, all those that responded said that they supported the provision and indicated that it would be fair for the NMRO to make use of it. This included companies (sanctioned and non-sanctioned) and a trade association.

While cost sharing would increase the burden on business, cost sharing should also help reduce the burden to government. Cost sharing would either reduce the cost to government of carrying out enforcement activity or allow government to carry out more enforcement activity. The NMRO pointed out that it budgets its testing programme for a given financial year. The testing process involves a tendering process and two rounds of testing, which can take several months. Therefore, it may be difficult to use money returned by civil sanctions in order to carry out more testing. However, in those cases money would be returned to DECC or HM Treasury. That money could then be used to fund other public services.

In the absence of cost sharing, testing costs fall on the public sector. Implementing cost sharing would pass much of this cost onto manufacturers and importers of non-compliant products. Therefore, cost sharing should also act as a disincentive to manufacturing or importing products which are not compliant with applicable implementing measures. Therefore, implementing cost sharing is likely to have a positive influence on compliance rates.

Have there been any unintended consequences as a result of the Regulations?

In the semi-structured interviews, the interviewees were asked directly whether they thought there had been any unintended consequences of the Regulations. However, no interviewees were able to explicitly identify any unintended consequences. Equally, it was not apparent from the analysis of the interview data that there were any unintended consequences that were implicitly expressed.

The EST could also not identify any unintended consequences. The EST said *“no examples were seen where a negative effect on energy consumption resulted from companies subjected to civil sanctions”*.

Are the Regulations and the way they are implemented the most appropriate approach?

The semi-structured interviews suggest that stakeholders are very positive about the Regulations and the way they have been implemented. This view was held amongst sanctioned and non-sanctioned companies as well as trade associations. Stakeholders gave their views on how the NMRO had implemented the Regulations. Typical words used to describe the NMRO's approach included 'credible', 'pragmatic' and 'pro-active'.

Perceived strengths of the implementation of the Regulations

The perceived strengths of the NMRO's approach were; clear and structured processes, pragmatism, proactive industry engagement, the fact that there was only one national enforcement authority and the NMRO's EU leadership role. Some stakeholders also suggested the NMRO has a collaborative approach to enforcement, which was welcomed.

Perceived weaknesses of the implementation of the Regulations

One perceived weakness of the way the Regulations have been implemented was a lack of visibility of market surveillance and enforcement activity. The findings from the semi-structured interviews suggest that this perceived lack of transparency could undermine the NMRO's credibility to some degree and could even promote non-compliance. This may have been exacerbated recently. The NMRO's activity used to be published on a single internet page. However, following the introduction of the gov.uk website the information has been archived.

Several of the interviewees also highlighted what they perceived to be inconsistent approaches to market surveillance and enforcement of applicable implementing measures across the EU. Some interviewees commented that this led to higher costs to business.

Some interviewees raised a concern around budget limitations. They felt the NMRO did an effective job as far as their budget stretched, but they felt that the NMRO had to be selective about how they were operating, which meant that not all non-compliance issues were being picked up as a result.

Some interviewees raised a potential issue around selective and reactive enforcement. However, the NMRO responded that they have taken an evidence based approach when deciding whether or not to test if products are compliant with applicable implementing measures. Products are targeted according to the perceived risk of non-compliance, based on a number of factors such as company history. This is consistent with a selective and reactive testing regime; targeting products that the NMRO believe are most likely to fail testing.

Some interviewees also raised concerns about the consistency of the results of test houses for products being tested under applicable implementing measures. However, the NMRO responded that they always choose a test house that is certified. Only using test houses that are certified will reduce the variability of results. The NMRO commented that a test house may be certified for one product but not for another product. The NMRO also commented that they choose the certified test house that is the best value for money.⁴⁷ Therefore, it is not possible to use the same test house for every single test without reducing value for money for the taxpayer.

The EST has been involved in market surveillance projects across the EU. The EST commented that the UK is implementing the Regulations effectively. However, possible improvements could be made by improving collaboration between organisations and projects in this area, in particular to share product testing results.

“The UK is seen to be implementing the Ecodesign regulations effectively and appears to be one of more active market surveillance authorities (MSAs) in Europe regarding testing. The EST is privy to this insight as the recent former chair of the EnR Standards and Labelling group. Other MSAs active in testing include those in Sweden and Denmark; in Denmark, strong collaboration is seen between the MSA and civil society organisations to increase the reach and speed of sanctions, uncover further non-compliance and share more intelligence.

There remains further scope for collaboration between organisations and projects in this area, in particular to share product test results. The Marketwatch project is analysing consumer product testing results to identify suspicious products that will be checked under full Ecodesign testing, with results to be passed to MSAs to take action. Greater collaboration should lead to a wider intelligence base and therefore cost and resource savings.”

The responses to the ECOPLIANT questionnaires supported EST’s view that there remains scope for better collaboration, in particular around the sharing of testing results.⁴⁸ The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have exchanged their market surveillance plans. This has allowed those countries to identify common testing areas at an early stage. This helps to remove duplication. When tests are carried out, the results are also shared. Given that the Nordic market is fairly homogenous, there have been cases where a non-compliant product has been withdrawn in several Nordic countries based on a test result from one country.

The NMRO highlighted that they do share information through the Information and Communication System on Market Surveillance (ICSMS).⁴⁹ The ICSMS is an IT platform to facilitate communication between market surveillance bodies in the EU. However, in future more information will be shared through this route.

⁴⁷ The tendering exercise is partly run by UK Shared Business Services
<http://www.ukpbs.co.uk/Pages/default.aspx>

⁴⁸ ECOPLIANT was delivered by a consortium of National Government policy leads and Market Surveillance Authorities from ten different countries, led by the UK. It established a framework for the coordination of the monitoring, verification and enforcement of the Ecodesign Directive that is suitable for use across the whole European Economic Area.

⁴⁹ http://ec.europa.eu/growth/single-market/goods/building-blocks/icsms/index_en.htm

7. Conclusion

The evidence gathered suggests that the civil sanctions power has met its objectives. The semi-structured interviews with stakeholders⁵⁰ and consultation with the EST suggested that civil sanctions have helped to achieve a high level of compliance. Stakeholder views, including sanctioned companies and the NMRO, also suggest that civil sanctions have reduced cost to business, when compared to a counterfactual where only criminal sanctions are available.

The cost sharing power has not been applied in practice and there is no evidence of a deterrent effect. Therefore, the intended effect, of improved compliance as a result of cost sharing, has not been achieved. Given that cost sharing has not been applied in practice, there has also not been a related reduction in burden to government. Therefore, the cost sharing power has not met either of its objectives.

The semi-structured interviews and consultations with the NMRO aimed to understand whether there were any barriers to implementing cost sharing. Some issues around difficulty for the NMRO to use money recovered through cost sharing were highlighted. However, no significant issues were raised which suggested that cost sharing could not be successfully applied in future.

The research aimed to identify examples of unintended consequences through consultation with stakeholders. No unintended consequences were identified. It is not possible to conclude that there are no unintended consequences. However, the research suggests that it is unlikely that there have been any major unintended consequences.

8. Recommendations

The evidence collected through the semi-structured interviews⁵¹, the ECOPLIANT work and consultation with the NMRO and the EST suggest that the civil sanctions power does meet its objectives. Civil sanctions do appear to maintain a high level of compliance with applicable implementing measures. There is also evidence of the Regulations reducing the burden on business. However, the cost sharing power has not been applied in practice. The semi-structured interviews also highlighted other areas where the implementation of the Regulations could be improved.

The semi-structured interviews suggested that there was a lack of visibility of the NMRO's market surveillance and enforcement activities. This PIR recommends that DECC could work

⁵⁰ The methodology and findings of the semi structured interviews have been published in a separate findings report at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

⁵¹ The methodology and findings of the semi structured interviews have been published in a separate findings report at <https://www.gov.uk/government/publications/post-implementation-review-of-the-ecodesign-for-energy-related-products-regulations-2010>

with the MSA to ensure greater visibility of testing and enforcement activities. In particular all published information should be made available on a single internet page.

The semi-structured interviews suggested an inconsistent approach to enforcement across the EU. Therefore, this PIR recommends DECC continues to work with the European Commission and other Member States in order to better harmonise enforcement regimes, while recognising that enforcement regimes are a Member State competence. There has already been significant work to harmonise enforcement regimes through ECOPLIANT. Future work should focus on further developing a database to ensure MSAs can share information efficiently and effectively.

Some stakeholders suggested that the NMRO's effectiveness may be limited by its budget. Cost sharing may allow the NMRO to increase the amount of testing it carries out. Therefore, this PIR recommends DECC works with the MSA to ensure cost sharing is applied wherever appropriate.

ISBN 978-1-4741-2729-5



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