



Department
of Energy &
Climate Change

Qualitative research on the Ecodesign for Energy-Related Products Regulations 2010: findings report



© Crown copyright 2016

URN 16D/022

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at alex.parker@decc.gsi.gov.uk.

Contents

1. Introduction	5
Research background	5
Research aims	6
Report structure.....	6
2. Methodology	7
Scoping	7
Interviews	7
Scope.....	7
Sampling.....	8
Recruitment	8
Process.....	9
Analysis	9
Research limitations	10
3. Findings	11
NMRO’s approach to implementation.....	11
Perceived strengths and weaknesses of the NMRO’s approach	11
Sanctions and cost-sharing provisions: experiences and views	17
Experiences of sanctioned companies.....	17
Industry views on civil sanctions	19
Wider implementation issues.....	21
Enforcement across the EU	21
Consistency of enforcement	21
Cross-EU enforcement cooperation.....	21
Test houses	22
Unintended consequences	22
Wider comments about the EU Ecodesign Directive	22
4. Conclusions	23
How does industry view the Regulations?	23
Does industry support the Regulations?	23
What has been the impact on business of the Regulations and their implementation?	23

1. Introduction

How effectively have the Regulations been implemented?	24
The role of the NMRO	24
Visibility	24
Consistency	24
Have the Regulations and their implementation encouraged compliance?	25
Glossary	26
References	28
Appendix A. Topic guides	29
Appendix B. Coding framework	40
Initial coding template	40
Modified coding template	41

1. Introduction

CAG Consultants were commissioned by the Department of Energy and Climate Change (DECC) to undertake qualitative research on the implementation of the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011. The findings from the research will inform Post Implementation Reviews (PIRs) of both sets of regulations.

This report presents the findings and conclusions from the research in relation to the Ecodesign for Energy-Related Products Regulations 2010. The fieldwork and analysis for this part of the research commenced in August 2015 and was completed in October 2015. The findings in relation to Energy Information Regulations 2011 will be provided in a separate research report.

Research background

The 2009 EU [Ecodesign of Energy Related Products Framework Directive](#) allows for the development of minimum standards for specified energy-using and energy-related products, banning the worst performing products from either production for the EU market or import into the EU. For products covered by the requirements, the manufacturer or importer must meet the product specific requirements and use the CE mark to denote compliance¹.

The requirements of the Directive are transposed into UK law by the [Ecodesign for Energy Related Products Regulations 2010](#), which set out the enforcement and penalty regime. These Regulations replaced an earlier set relating to a previous Directive covering only energy-using products.

The 2010 Regulations introduced a set of civil sanctions which the market surveillance authority may impose as an alternative to criminal sanctions for offences related to the placing on the market of non-compliant products. The civil sanctions are: a compliance notice, a variable monetary penalty, a stop notice and an enforcement undertaking. The National Measurement and Regulations Office (NMRO) has been appointed by the UK Government to act as the market surveillance authority and operates across the UK.

The Regulations also allow for the recovery of product testing costs by the NMRO. Generally, compliance is tested on a single example of a given model, at the NMRO's expense. Where that test suggests non-compliance then the NMRO tests further samples (typically three) and is able to claim the associated costs from the manufacturer or importer in question. In practice, however, cost recovery has not happened.

The EU ecodesign 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. These amendments apply in the UK automatically. The UK regulations themselves do not specify what standards are to be met.

¹ For a list of products covered by specific requirements, see https://ec.europa.eu/energy/sites/ener/files/documents/list_of_ecodesign_measures.pdf.

Research aims

DECC commissioned the qualitative research on the Regulations in order to inform its PIR. PIRs are a legal obligation to review regulations that must be completed within five years of the regulations being made. The overall questions that must be answered for the PIR are:

- Have the Regulations achieved their original objectives?
- Are these objectives still valid?
- Are the regulations still required? Do they remain the best option for achieving those objectives?
- Can the Regulations be improved to reduce the burden on business and its overall costs?

The qualitative research was commissioned to inform the PIR by:

- Consulting with a variety of external stakeholders on the effects of the Regulations and their implementation on business;
- Establishing whether there had been any unintended consequences of the Regulations or scope for improvement in their implementation; and
- Reporting stakeholders' views on what lessons can be learned about the implementation of these regulations.

Report structure

The remainder of this report is split into the following key sections:

- Section 2 presents the methodology for the research;
- Section 3 presents the research findings;
- Section 4 presents overall conclusions;
- The Glossary provides definitions of key terms used within the report;
- Appendix A sets out the topic guides used for the research interviews; and
- Appendix B sets out the coding framework used to analyse the interview findings.

2. Methodology

This chapter sets out the methodology used for the research. It describes:

- the activity that was undertaken during the **scoping** phase of the research;
- the approach taken for the qualitative **interviews**;
- how the **analysis** was conducted; and
- the main **research limitations**.

Scoping

The research began with a short scoping exercise. This was designed to provide context for the research and to help inform the research tools and content. This involved engagement with DECC officials, the NMRO and representatives from three trade associations (covering the main industries affected by the Regulations). The scoping work also included a review of relevant literature, including briefing material provided by DECC, the Regulations themselves, an industry presentation on the Regulations and NMRO guidance on the use of civil sanctions and recovery of testing costs.

Interviews

The research fieldwork comprised 11 telephone interviews on the implementation and impacts of the Regulations.

Scope

The interviews were focused on the implementation and impacts of the Regulations (rather than the product specific requirements set at EU level). The interviews were semi-structured², framed by a set of topic guides developed by DECC with input from CAG. The scope of each guide was designed to inform DECC's PIR of the Regulations.

The topic guides were tailored to each of the main stakeholder types interviewed (see 'Sampling' below) but all guides covered broadly the same issues. These can be summarised as follows:

1. Industry experiences of the Regulations as a whole.
2. Industry views on:
 - a. The civil sanctions.
 - b. The provision for recovery of the costs of market testing.
3. Industry views on the costs [direct or indirect, financial or non-financial] incurred through sanctions imposed as a result of the regulations.

² Semi-structured interviewing is a flexible form of interviewing. The interviewer uses a standardised topic guide and questions will tend to be asked in a similar order and format so that comparison between answers is possible. However, the interviewer also has scope to pursue and probe for additional relevant information through impromptu questions in response to the interviewee's answers.

2. Methodology

4. Industry views on how the National Measurement and Regulation Office have implemented the Regulations.
5. The extent to which the Regulations have helped companies to comply with the requirements to manufacture products that meet minimum performance standards.
6. Whether the Regulations have had any unintended consequences.
7. In what way, if any, could the sanctions and the way they are implemented be improved.

Appendix A sets out the topic guides in full.

Sampling

Interviewees were selected purposively, with the aim of eliciting a variety of organisational views and experiences in relation to the Regulations. This approach was chosen to ensure that participants had direct experience of the Regulations and represented a variety of different experiences and perspectives (for example by ensuring a spread of interviewees by industry, by sanction-type, by organisational size, etc.). As this approach did not involve probability sampling, no statistical inferences can be made from the findings.

The initial aim was to conduct 10 interviews, split across three main stakeholder types:

- 3 with different manufacturers' trade associations;
- 4 with companies (manufacturers and/or importers) who had experienced sanctions under the Regulations:
 - 2 of which who had experienced sanctions only in relation to the Ecodesign for Energy-Related Products Regulations 2010; and
 - 2 of which who had experienced sanctions under both the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011;
- 3 with non-sanctioned companies, 1 per each of the three trade associations interviewed.

Recruitment

Recruitment was conducted partially through 'gateway' organisations. In the case of the three manufacturers' trade associations, DECC provided introductions to these, which led to the research interviews. In turn, the trade associations helped to recruit non-sanctioned companies by identifying potential companies for interview and requesting their assistance with the research.

For the sanctioned companies, CAG were provided with a list of the 10 organisations that had been sanctioned under the Regulations at the time of the research. Of these, one company had been liquidated and another had no publically available contact details. This meant that recruitment began with a sample population of 8 companies, meaning a response rate of 50% was required to meet the desired sample of 4 sanctioned companies. Securing the involvement of these companies was challenging:

- Some said they were not able to be interviewed within the research timeframe (see research limitations below);
- Some did not respond at all; and
- Others were not able to put forward someone who they felt could represent the company in relation to the Regulations.

In total, 3 (rather than the target of 4) interviews were secured with companies sanctioned under the Regulations. As such, 2 extra interviews were conducted with non-sanctioned companies, in order to provide additional company perspectives on the Regulations. The final interview numbers by stakeholder type were therefore:

- 3 with different manufacturers' trade associations;
- 3 with companies (manufacturers and/or importers) who had experienced sanctions under the Regulations:
 - 2 of which who had experienced sanctions only in relation to the Ecodesign for Energy-Related Products Regulations 2010; and
 - 1 of which who had experienced sanctions under both the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011;
- 5 with non-sanctioned companies from across the three trade associations interviewed.

Process

The interviews were conducted by telephone. Each participant was provided with a briefing sheet ahead of the interview, detailing the research background, the interview process and the key topics that would be covered in the interview. Interviewees were screened to ensure they were the most appropriate person to represent their company. They were also asked to provide an organisational view where possible, rather than their own personal view. To this end, each participant was asked to consult with relevant colleagues ahead of the interview to ensure the interviewee could provide an organisational perspective.

Participants were asked specifically to focus on the implementation of the enforcement and penalty regime as set out in the [Ecodesign for Energy Related Products Regulations 2010](#), where possible, rather than the 2009 EU [Ecodesign of Energy Related Products Framework Directive](#).

The participants were encouraged to be as open and honest as possible during the interview. As such, the interviews were conducted with a commitment to maintain their confidentiality in published outputs by ensuring that any data used from the interviews were anonymised before publication. Interviews were digitally recorded and transcribed for analysis purposes.

Analysis

The interviews were analysed using a form of 'template analysis'. This involved the development of a coding 'template' before the analysis began. The template set out the themes identified by the research team as important. This included a focus on the key research questions as well as themes identified as being of interest to the research team following an initial review of the interview transcripts.

Hierarchical coding was employed, using broad themes such as 'enforcement and implementation' and 'unintended consequences of the Regulations', encompassing successively narrower, more specific ones such as 'business experiences of sanctions' and 'the costs of sanctions to businesses'. These codes were then modified as the transcript data was examined more closely. The final version of the coding template was used as the basis for the research team's interpretation of the data set and the writing up of findings. Nvivo software was used to undertake this analysis.

Research limitations

The key limitation of the research was securing access to companies sanctioned under the Regulations. Practical factors resulted in a slightly lower response rate than initially aimed for (three sanctioned companies rather than four). Nevertheless, the eventual response rate of three out of a population of eight sanctioned companies is still a good result and consistent with response rates for similar population types in other research of this nature.

3. Findings

This chapter presents the findings from the research, setting out participants' experiences and views under the following headings:

- The NMRO's approach to implementing the Regulations;
- The civil sanctions and the cost-recovery provisions;
- Other implementation issues;
- Unintended consequences of the Regulations; and
- The EU Ecodesign Directive.

NMRO's approach to implementation

This section summarises the findings in relation to interviewees' perceptions of the effectiveness of the NMRO in enforcing the Regulations. It begins by providing an overview of the key strengths and weaknesses of the NMRO's approach to enforcement and then explores a number of specific issues arising from the interviews: cross-EU enforcement issues, industry engagement, communications and market surveillance.

Perceived strengths and weaknesses of the NMRO's approach

Overall perceptions

On the whole, those interviewed were very positive about the NMRO's approach to enforcement. This view was held amongst sanctioned and non-sanctioned companies as well as trade associations. Typical words used to describe the NMRO's approach included 'credible', 'pragmatic' and 'pro-active'.

Perceived strengths

Other than the general positivity about the NMRO's approach highlighted above, there were a number of specific strengths highlighted by interviewees. The key ones are summarised below.

Clear, structured processes

Several interviewees felt that the NMRO took a clear, structured approach to its enforcement. This was particularly the case for those companies that had experienced sanctions. They conveyed the view that the NMRO had been clear about what was required from them and reported that the timescales they were asked to work to were reasonable.

Yes. I think it was very structured. We were given information. We were given time to investigate and come back with our reasoning.

Company 1

Open, collaborative approach to enforcement

Several of the interviewees felt that the NMRO's approach was one of working with companies to help them comply rather than using a 'stick' approach to enforcement.

3. Findings

I think their approach, perhaps in contrast with some other European market surveillance authorities, is one of leading manufacturers or suppliers by the hand and encouraging them to comply rather than beating them with a stick.

Trade association 1

The reported experiences of two sanctioned companies supported this wider view. They described the NMRO as being open and collaborative, willing to discuss various proposals for enforcement undertakings, maintaining a good dialogue and as understanding of the non-compliance issues the company was facing.

They said obviously they could take action, but they would rather try to avoid it if necessary. So they came to us with these various proposals, which we discussed in and around the business. We went back to them and we always had some very, very good dialogue.

Company 3

This view was not entirely shared by the third sanctioned company, who were more critical of the NMRO. One of the main criticisms from this company was the perception that there was a long time gap between the company putting forward its proposals for action for the enforcement and the NMRO then responding to these. The interviewee reported being very stressed during this period and felt the NMRO had 'made them sweat'. They also felt that communications from the NMRO involved spelling out the maximum penalties for non-compliance, which they described as 'heavy-handed' as it gave them the impression that their offence was a lot more serious than they felt it actually was. These comments suggested that they experienced a more formal, more adversarial approach by the NMRO, in contrast to the collaborative approach reported by the other two sanctioned companies.

One of the trade associations also said that whilst they had generally felt that the NMRO's approach was helpful, they had also had reports from several of their members suggesting that they had had letters from the NMRO about non-compliance issues which had been perceived as 'threatening'. It is not possible from the interview data to understand the nature of these perceived threats. It may simply be to do with the letters mentioning the 'worst case' consequences of non-compliance (e.g. criminal sanctions), as this was an issue raised by one of the sanctioned companies interviewed (see below).

Pragmatism

Many of the interviewees (from all stakeholder types) valued what they felt was a pragmatic approach taken by the NMRO to enforcement. They felt that the NMRO had been reflexive and adaptable, using their experience and judgement to reach decisions about compliance and enforcement. This approach was felt to have become more prevalent over time as the NMRO's experience has grown.

The pragmatism has come from the experience of actually implementing the compliance. It has given them more experience to make judgement calls and opinion to industry on the questions of grey areas that we had.

Trade association 3

Promoting compliance and improved behaviours

There were examples of the NMRO improving the behaviours of those companies it had sanctioned, thereby potentially improving future compliance rates. Two of the sanctioned companies in particular reported that the sanctions had led to significant internal reviews of their compliance procedures. One, for example, said that it now requested a greater level of certification and assurance from suppliers, and undertook more rigorous checks than it had done previously.

Definitely, any new product now we get, we check and double check, we don't trust anybody at their word anymore. We need certification for everything from components that go into some of the electrical products to not just CE approval, but also EU design approval. If that means a company that we buy [x] from for example is saying, "I don't know, I just buy this from China." "Well no, you've got to go back to China and you've got to get us that certificate or else we don't stock it." So yes, it has certainly made our controls tighter.

Company 2

Proactive industry engagement

Several interviewees felt that the NMRO had been proactive as a market surveillance authority and gave examples where they actively engaged with industry. One trade association described a two-way process of knowledge-sharing with the NMRO, whereby the NMRO had attended a meeting with its members, listened to issues raised and initiated an ongoing dialogue with the trade association. Another trade association reported working with the NMRO on an industry-wide market surveillance testing exercise.

One national enforcement authority

A few of the interviewees welcomed that the UK has one single market surveillance authority for ecodesign regulations, and reported that they felt it promoted a clear and consistent enforcement approach. One company contrasted this with other EU member states such as Germany, where there is a local system of market surveillance, resulting in multiple approaches (from different local market surveillance authorities), less consistency and less coordination.

EU leadership role

Several interviewees thought that the NMRO played a leadership role in the EU, pro-actively engaging with other market surveillance authorities.

I think the positive thing is that the UK has been leading the work to liaise with the other member states on market surveillance, and I think that's very positive.

Company 4

A trade association, for example, highlighted that the NMRO chairs a cross-EU group of market surveillance authorities. Whilst a sanctioned company thought that the NMRO had been very pro-active about engaging with other market surveillance authorities to ascertain whether Christmas lights and lighting chains were in the scope of the EU Ecodesign requirements.

The NMRO were very good... they contacted all their counterparts in Europe to say, "Well what do you think about this?"

Company 3

However, several interviewees felt that more could be done to promote greater consistency and intelligence-sharing between different EU market surveillance authorities.

Perceived weaknesses or issues

As already described above, the overall impression from the interviews was that the NMRO is well-regarded by the industry in its approach to compliance and enforcement. Nevertheless, the interviews also raised a number of issues in relation to this approach. Issues of some kind were raised by all interviewee types, although some concerns appeared more prevalent for some types than others (as highlighted below). The section below therefore highlights the key areas where interviewees perceived there to be weaknesses or other issues.

3. Findings

Enforcement visibility

A recurring theme from the interviews was a reported lack of visibility about how or when the NMRO conducts its market surveillance and what enforcement action it has taken. This was an issue raised by interviewees from all stakeholder types.

It's not very public. If you ask many of our members, not many of them would be aware of an enforcement going on, but they'd like to see a lot more.

Trade association 1

Several of the interviewees recognised that there needs to be some level of confidentiality about the NMRO's enforcement work, but there was an indication by many that they would like greater visibility of the activity that the NMRO carries out. Without this, interviewees implied that they could not trust that the system was working effectively or that non-compliant companies were being caught.

This lack of visibility seems to have been the source of at least some of the other concerns expressed by interviewees. These included a perceived lack of enforcement action, a concern that market surveillance activity is reactive or selective, and that the NMRO's budget limits its effectiveness in market surveillance. These issues are discussed further below.

Visibility of market surveillance activity

Several interviewees explicitly or implicitly said they wanted the NMRO's market surveillance activity to be more visible. This was partly so they could have greater assurance that the activity was taking place and was effective.

A few interviewees also said they would like to have feedback in cases where their products were found to be compliant.

It would be nice to get positive as well as negative responses. What we don't know is if any of our products have been tested and haven't been flagged up as non-compliant. If our products have been tested and have been found compliant it would be nice to know that.

Company 5

One trade association suggested that this could be publicised to provide greater assurance to consumers that products were compliant.

I think that might then be seen as credible. Even if it was, like, a [Trade association 2]-approved tick on their website if consumers wanted to go and check if their [products] were compliant with a particular standard.

Trade association 2

A representative of the NMRO reported that they did not consider it appropriate to inform companies when their products had been found to be compliant as it could be used as a defence by that company in the event that the NMRO later pursued sanctions with the company for non-compliance.

Two trade associations did report that the NMRO had at times told them what their projects have been or are going to be and that they had found this to be very helpful. A representative of the NMRO mentioned that, following an initial test where a product fails, companies are often told that further test will be carried out. The NMRO also reported that they carried out engagement activity with industry trade associations to provide overviews of their market surveillance and enforcement activity.

Visibility of enforcement activity

There were mixed views on whether there should be greater publicity of enforcement activity. Several interviewees argued there should be greater visibility. First, this would provide greater assurance to the industry that action was being taken. Second, it would act as a deterrent to non-compliance and help raise the profile of compliance within companies.

I think there is a feeling that enforcement maybe isn't as visible as perhaps would be beneficial. The best way to sway people from doing something they shouldn't is to make it evident that it is being checked up and there is something happening. From an organisational point of view we like to dot our I's and cross our T's. When you don't see it ... people, say my sales reps for example, will come back to me and say, "Well nobody else seems to be doing it, why are we putting ourselves at a commercial disadvantage."

Company 6

I wouldn't say that the enforcement side has helped at all because, as I say, it's not very public. If you ask many of our members, not many of them would be aware of an enforcement going on, but they'd like to see a lot more.

Trade association 1

Several interviewees said that they were aware of situations where the NMRO had been made aware of non-compliance but were unsure if any action had been taken as a result. This helped to reinforce the perception amongst some that their enforcement is not as rigorous as it could be (see section below).

However, there was also recognition by a few interviewees that publicising sanctions would go against the spirit of civil sanctions, which are intended to provide a softer-edged means to achieving compliance. In addition, they felt that the publicity would serve as a double sanction in effect, because as well as the civil sanction, the company would also suffer from reputational damage.

A representative of the NMRO reported that they did generally issue a press release on their website when sanctions had been applied, although in some cases they did not feel this was appropriate. The decision on whether or not to issue a press release is based on a consideration of the impact of the press release on the company concerned. The NMRO representative also felt that publicly promoting sanctions risked creating an additional sanction (reputational damage) for the companies concerned (a view shared by a few interviewees, as highlighted below).

The research team carried out an online search for these notices during the scoping phase on the gov.uk website, but none were immediately apparent. Follow-up discussions with DECC and NMRO revealed that the notices were removed from the gov.uk website and archived due to UK Government changes in content guidance³. The removal of these notices may have contributed to the perceived lack of visibility of enforcement activity.

Lack of enforcement

All of the trade associations and a few of the companies raised concerns that there has been a lack of enforcement activity carried out by the NMRO. They felt that there were non-compliant products in the market but that there was no evidence that the NMRO was carrying out any enforcement activity.

³ Notices can be found for example on the following archived links:
http://webarchive.nationalarchives.gov.uk/*/http://www.bis.gov.uk/nmo and
http://webarchive.nationalarchives.gov.uk/*/http://www.nmo.bis.gov.uk/.

3. Findings

To be honest I haven't read anything or seen anything that gives me any evidence that there was any enforcement activity ongoing.

Trade association 3

I suppose our experience was that there wasn't enough policing going on. We were aware of the increasing number of non-compliant products in the marketplace and yet there seemed to be very, very limited actions happening. If there were actions, we weren't aware of it.

Trade association 1

Some participants (non-sanctioned manufacturers and a trade association) expressed concerns that non-compliance was happening despite the Regulations and the work of the NMRO.

[We] see so many non-compliant products in the market, I'd say they're not doing a good enough job to threaten or police.

Company 4

Two of the lighting industry participants felt particularly strongly that non-compliance was fairly widespread amongst what they saw as 'disreputable' companies.

One non-sanctioned company interviewed reported 'self-policing' (carrying out its own testing and taking companies to court) as it felt that market surveillance across Europe (not just in the UK) was not effective enough.

Again, the lack of visibility about what has actually taken place meant that the interviewees were not able to take an informed view on the extent of enforcement action, but it had at least in part created the perception in some interviewees that insufficient action was taking place, particularly amongst those who felt that non-compliance remained common.

Selective or reactive enforcement

A related concern (expressed by interviewees from all stakeholder types) was that the NMRO's enforcement approach appeared to be selective or reactive, rather than whole market and proactive.

A few of the interviewees felt that there was a perception that the NMRO might be focusing its activities on 'easy wins', in other words engaging with larger companies and those that are accessible or visible, with this being at least partly driven by a limited budget. This raised a concern that there was an inherent bias in its market surveillance activity and that some major non-compliance issues may be missed as a result.

[There is] an impression that it's very easy to just ask the major companies for some information that they will be able to provide, they will cooperate. To what extent are they actually really going for what might be on sale that's seriously non-compliant?

Trade association 2

One sanctioned company also expressed concern that enforcement activity had been reactive (a response to an industry tip-off) rather than focused on more strategic activity based on the most severe instances of non-compliance.

A representative of the NMRO gave a different view, reporting that it took a risk-based approach to market surveillance. It said that it targeted market sectors based on the likelihood of products failing (for example it said that freezers failed more often than other products). When it carried out market testing, it would purchase 'as broad a sweep of market as possible', including low end and high end products.

Budget limitations

As noted several times in points made above, the trade associations and one or two companies felt that the NMRO had insufficient budget to be sufficiently effective. They felt the NMRO did an effective job as far as their budget stretched, but they felt that they had to be selective about how they were operating, which meant that not all non-compliance issues were being picked up as a result.

It always seems to me that NMRO's budget is so limited, or certainly limited in the field that we're talking about here from our point of view... that we just simply don't get enough market surveillance. We'd like to see a lot more.

Trade association 1

As highlighted above, the Regulations do allow the NMRO to recover the costs of market testing in instances where products are found to be non-compliant. However, this hasn't happened to date. A representative of the NMRO explained that it has not happened for a combination of practical procurement and accounting reasons, as well as a desire not to add to the enforcement penalties that non-compliant companies face.

In response to the wider question of whether the NMRO has sufficient budget for its market surveillance activities, a representative of the NMRO noted that it operates under a memorandum of understanding with DECC and carefully negotiates the activities and programs it will undertake each year. It explained that overall, the picture is one of increasing obligations in new and more complex product areas which requires ever more sophisticated prioritization to ensure sufficient market surveillance is being undertaken.

The representative did feel, however, that there are areas of business and consumer awareness that would see positive benefits from higher levels of engagement; product testing is a challenging area where the resources necessary are dependent on the first phase of testing so it is difficult to be certain there is sufficient testing for a full range of products at the start of the process.

Sanctions and cost-sharing provisions: experiences and views

Experiences of sanctioned companies

Types of sanctions

Of the three sanctioned companies interviewed for the research, two of the companies were importers and had both been sanctioned for non-compliant external power supply (EPS) products. The other was a manufacturer and had been sanctioned for a non-compliant refrigeration unit.

All three were sanctioned with an 'enforcement undertaking'. This is a voluntary agreement whereby the company agrees to undertake specific actions (such as making a donation to charity or compensating customers) to make amends for non-compliance and its effects within a specific timeframe (see Glossary for further explanation).

9 of the 10 companies that have been subject to civil sanctions under the Regulations have been subject to enforcement undertakings, so it is by far the most common type of civil sanction used. The other company received a variable monetary penalty (see Glossary for definitions). 2 undertakings have involved donations to charities. These can be financial donations (the two donations for these Regulations have been £11000 in one case and £15000 in the other) or physical donations (such as tree-planting or the donation of a wind turbine). An NMRO representative also reported that where customers can be traced then manufacturers may use customer restitution as a component of an enforcement undertaking.

3. Findings

For the three sanctioned companies interviewed, the nature of the enforcement undertakings varied. For all of them, the enforcement undertaking involved withdrawing their product from sale. In two cases, the companies reported this also involved destroying the non-compliant products. An NMRO representative reported that they cannot allow companies to knowingly break the law so it is common for items that remain in the stocks of the manufacturer to be disposed of or destroyed. In one case, the sanction also involved some form of customer compensation.

Costs of sanctions

The sanctioned companies were asked to describe the costs of their sanctions, not just in terms of any direct financial cost, but also the wider costs to the business, which could also involve non-financial costs.

The NMRO reported that in all sanctions the company incurs costs through making corrective actions, both to the product and to its processes. This could include but is not limited to: hiring competent staff and consultants, reworking models to be re-placed on the market or disposing of non-compliant goods. As highlighted above, some enforcement undertakings have also involved charitable donations or customer compensation.

All of the companies experienced costs in relation to their enforcement undertakings. The costs described are relative to a situation where no sanctions had been applied to these companies.

Direct financial costs of the undertaking

All of the sanctioned companies reported direct costs of carrying out the enforcement undertakings. These varied depending on the nature of the non-compliance, the number of units involved and the product type.

For all the companies there was the 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 the 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 Directive (WEEE) recycling company⁴, at an approximate total cost of £9000.

For the manufacturer there was also the cost of compensating customers. In this case, the amount of compensation was determined by the cost of a unit of electricity, the variance between the claim on the label and the measured value and the volume of units placed on the market.

Other direct costs mentioned by the interviewees included the costs involved in either developing a new model (for the manufacturer) or sourcing alternative products or parts (for the importers), and the costs of recertifying the replacement products.

Loss of 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 the other 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. The manufacturer also reported a loss of sales as a result of the civil sanction.

Staff time

⁴ The [Waste Electrical and Electronic Equipment \(WEEE\) Regulations 2013](#) set collection, recycling and recovery targets for all types of electrical goods.

The enforcement activity resulted in all of the companies spending staff time to respond to the action and proceed with the undertaking. This involved activities such as researching the regulations, re-testing the products in question, liaising with the NMRO, collating and verifying product certification documentation, managing supplier relationships and sourcing alternative products or parts.

Total and relative costs

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. The range was from around £10,000 to £400,000. The 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).

Views on the sanctions applied

All three of the sanctioned companies agreed that the sanctions applied by the NMRO were reasonable and fair. They all agreed that a sanction had been necessary and that the NMRO had taken into account the particular circumstances of the non-compliance in undertaking its enforcement action.

I think they did sympathise with us in the sense that we had taken some steps, but ultimately it didn't pass the regulations and therefore there had to be a punishment. So I think it was a fair resolution.

Company 2

Industry views on civil sanctions

All of the stakeholders interviewed were asked their views on the civil sanctions available under the Regulations.

The civil sanctions available

Nearly all of the interviewees expressed support for the civil sanctions introduced by the Regulations. Interviewees used terms such as 'clear', 'reasonable' and 'balanced' to describe the suite of civil sanctions.

The most common reason for this support was that they offered a 'middle ground' between taking no action and going to court, which allowed non-compliance issues to be resolved in a 'softer', more proportionate manner than was previously possible.

We were very supportive of the civil sanctions approach. I think everybody is really, rather than everybody spend a fortune on going to court from something, particularly with something that is a mistake and can be resolved.

Trade association 2

3. Findings

Several interviewees (predominantly the trade associations) felt this was important given that the EU ecodesign requirements were complicated and non-compliance could therefore happen mistakenly rather than through any deliberate attempt to mislead consumers.

A few interviewees raised concerns about the consistency of sanctions across the EU. One noted that other countries do not have such a clear set of sanctions available, while another was concerned that sanctions differed between member states and wanted to see more consistency across the EU.

The civil sanctions as a deterrent

There were mixed views on whether the civil sanctions acted as a deterrent to non-compliance. A few of the interviewees explicitly said that they felt the sanctions were a deterrent, whilst others implied that they in some way encouraged companies to comply.

By contrast, some interviewees, including a sanctioned company, felt that the civil sanctions were not a compliance driver for them. They reported that they aimed to achieve 100% compliance for reputational reasons, rather than because of the threat of sanctions.

We do it because we're a responsible company. I know that sounds a bit naff and possibly a little clichéd but actually it's very much how we're driven as a business. So we don't actually look at the penalties. The penalties aren't an incentive for action.

Company 8

The application of the civil sanctions

The non-sanctioned companies and the trade associations generally found it difficult to comment on the application and use of civil sanctions by the NMRO, as they were not aware of any cases where they had been applied.

How it actually works in practice, I can't really comment because I've not seen any evidence of it.

Company 6

This relates to a wider issue about how transparent the NMRO could and should be about the way it works and is picked up in more detail below.

Views on recovery of testing costs

As described in section 1, the Regulations allow the NMRO to recover the costs associated with testing a product that fails to comply with an applicable implementing measure. To date this provision has not been used by the NMRO due to procurement and accounting issues, as highlighted above.

Interviewees were asked their views on this provision to recover testing costs. 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.

I think it's completely valid that if somebody has fallen short of the mark that they should, effectively, have to pay for the necessary testing that goes on as part of that.

Company 7

Several viewed the provision as similar to recovering court costs after a successful prosecution, so felt it was consistent with what already happens in criminal proceedings.

Interviewee responses suggested that there was a very low level knowledge of the potential cost recovery provisions. It is unlikely that they have acted as any kind of deterrent, therefore, if the same was the case across for industry as a whole.

Wider implementation issues

Enforcement across the EU

The interviewees raised issues in relation to the enforcement of ecodesign requirements across the EU. Whilst the research is concerned with the UK Regulations and enforcement regime in particular, the issues highlighted below raise the question of whether more could be done to ensure that the UK approach is aligned more closely with those of other EU member states or vice versa.

Consistency of enforcement

Several of the interviewees (non-sanctioned companies and trade associations) highlighted what they perceived to be inconsistent approaches to market surveillance and enforcement of ecodesign requirements across the EU. This raised two concerns.

The first was that a few of the companies interviewed felt that this put them at a competitive disadvantage, although there was no consensus about who the disadvantage applied to. One non-sanctioned company, for example, felt that the UK had a more lenient approach compared to some other EU states. As a company working across Europe, they reported that they had to adhere to what they felt to be the stricter requirements of some other member states' enforcement regimes, whereas companies operating in the UK-only benefitted from a more lenient regime.

I suppose that does put us at a disadvantage when it comes to the UK, say, because some of our competitors will be UK-only and can, to some extent, get away with a bit more in the UK; whereas, we have to make sure that we're consistent across the board.

Company 4

In contrast, another non-sanctioned company thought the opposite was true and that the UK enforcement regime was more stringent, thereby disadvantaging companies competing in other member states against companies that did not also operate in the UK.

The second area of concern was that inconsistent approaches to market surveillance and enforcement adds to the costs of companies operating across the EU, as they have to be aware of each enforcement system and how they comply.

[We have] always been very vocal on it about the need for it to be consistent across member states because of course if our members operate in all the member states or at least a range of them, the different approaches mean that they've got to be aware of those. That adds to the cost for them dealing in the different member states.

Trade association 2

Cross-EU enforcement cooperation

As highlighted above, one of the perceived strengths of the NMRO is their leadership work with other EU market surveillance authorities. However, one or two interviewees felt that more could still be done to join-up market surveillance and enforcement across the EU. One trade association, for example, whilst recognising that the NMRO already coordinated cross-EU working, felt that more could be done to share intelligence between market surveillance authorities in the EU, which could reduce costs and reduce duplication.

3. Findings

Test houses

A few interviewees raised concerns about the consistency of the results of test houses for products under the ecodesign requirements (interviewees were not always clear whether these were certified test houses or not). They had experienced different test houses reporting differing results for the same products. This was a concern because it meant that companies could test products internally or even externally but then still potentially be caught for non-compliance if the NMRO used a different test house, even allowing for tolerances.

We spent millions of pounds confirming that every product that came off our production line was giving, basically, identical results or within a small tolerance and within a managed tolerance. However, when we send those machines to three different labs, they get three different grades.

Company 4

Unintended consequences

The interviewees were asked directly whether they thought there had been any unintended consequences of the Regulations. Understanding any unintended consequences of the Regulations is an important focus of DECC's PIR, which this research will inform. No interviewees, however, were able to identify any explicitly. Equally, it is not apparent from the analysis of the interview data that there were any unintended consequences that were implicitly expressed.

Wider comments about the EU Ecodesign Directive

Participants were not asked directly about the 2009 EU [Ecodesign of Energy Related Products Framework Directive](#). Indeed, they were asked specifically to focus on the implementation of the enforcement and penalty regime for Directive as set out in the [Ecodesign for Energy Related Products Regulations 2010](#). Nevertheless, many participants raised issues in relation to the Directive itself given its symbiotic relationship with the UK Regulations. So whilst the Directive was not a focus of the research, some key points made in relation to it are summarised below.

A few companies reported that when the EU Directive first came into force, it was a challenge to put procedures in place and to source and develop compliant products within the necessary timescales. One non-sanctioned company, for example, described a 'highly pressured' time in the two months before the regulations came into force to ensure that their products were compliant. Sourcing new parts was challenging as a result of a shortage of supply.

One non-sanctioned company interviewee explained that a lot of work was involved in retesting products, both in-house and then through a third party to provide extra reassurance. This entailed 'quite a large cost'. Testing products has also resulted in ongoing costs for companies. One company, for example, described undertaking repeat testing of appliances and taking on an extra staff member in order to cover the extra testing that was required.

Another non-sanctioned company reported that there was substantial staff time involved in fully understanding the regulations, including training and awareness-raising for staff. This was now an on-going process for the company.

Some companies also described costs involved in setting up and maintaining a website or web pages in order to display the information required under the Regulations.

4. Conclusions

This final section of the report synthesises the research findings under four main headings:

- How does the industry view the Regulations?
- What has been the impact on business of the Regulations and their implementation?
- How effectively have the Regulations been implemented?
- Have the Regulations encouraged compliance?

It also identified areas where the Regulations or their implementation might be improved.

How does industry view the Regulations?

Does industry support the Regulations?

The findings from this research indicate that industry is broadly supportive of the Regulations. There was near-universal support from the research participants for the civil sanctions introduced by the Regulations, with respondents describing them as clear, reasonable and balanced. Many participants felt the civil sanctions offered a valuable 'middle ground' between informal warnings and criminal sanctions, enabling a proportionate approach to enforcement activity.

There was also 'in principle' support for provision in the Regulations for recovering the costs associated with testing a product that fails testing. Participants described it as a fair measure. The NMRO has not used this provision to date, however, as a result of reported accountancy and procurement barriers (as well as the NMRO's desire to minimise compliance costs). Addressing these might be one area where Government could make improvements to the implementation of the Regulations as this would enable the NMRO to make full use of the Regulations and potentially supplement their budget for market surveillance and enforcement activity.

What has been the impact on business of the Regulations and their implementation?

The interviews yielded relatively little information about the impact of the Regulations on businesses in general. The impression from the interviews, however, is that for non-sanctioned businesses, the Regulations themselves have not resulted in any additional costs or had any other direct impacts. For these companies, the costs of compliance originate from the EU Ecodesign Framework Directive rather than the UK Regulations.

Unsurprisingly, the story is different for the sanctioned companies. There have been direct cost impacts for all companies sanctioned (mainly disposal of products, charitable donations or customer compensation). Whilst the exact nature of the costs and other impacts of the sanctions have varied, those interviewed suggested that they felt the costs were proportionate and indicated that they were only a fraction of their overall turnover. All of the companies indicated that there were also non-direct financial costs involved in complying (notably staff time and loss of sales) and in one case this was twice as much as the direct cost of the sanction itself.

How effectively have the Regulations been implemented?

The role of the NMRO

The research findings suggest that the NMRO is well-regarded by the industry in terms of its approach to implementing the Regulations. Participants highlighted a number of perceived strengths of the NMRO's approach. These were the NMRO's:

- Clear and structured enforcement processes;
- Open and collaborative approach to enforcement;
- Pragmatism;
- Proactive industry engagement; and
- Leadership role with other EU market surveillance authorities

In addition, a few interviewees welcomed that the UK has one single market surveillance authority for ecodesign regulations, suggesting that this enabled a clear and consistent enforcement approach (in contrast to some other EU nations).

Visibility

A recurring theme of the research was visibility. Interviewees felt that there was a lack of visibility about how or when the NMRO conducts activity, both in terms of conducting its market surveillance activity and in carrying out enforcement action.

However, as several interviewees recognised, some level of confidentiality and independence is required if the NMRO is to be able to undertake its work effectively. And being 'too' public about enforcement activity it has carried out could act as a 'double' sanction on companies. It is also apparent from the interviews that the NMRO already engages with the industry to outline its market surveillance approach.

Nonetheless, the findings suggest that this perceived lack of transparency could undermine the NMRO's credibility to some degree and could even promote non-compliance. On the other hand, increased visibility about its operation might provide the industry with:

- greater assurance that the NMRO's market surveillance is rigorous and systematic enough to be effective in identifying non-compliance;
- greater assurance that action is being taken against non-compliant companies;
- a greater incentive to comply, knowing that effective market surveillance activity is taking place.

This suggests that implementation might be improved if the Government and the NMRO could give greater thought to how market surveillance activity could be made more visible, or promoted more widely, whilst at the same time enabling the NMRO to undertake its role effectively and avoiding potential negative impacts such as 'double sanctions'.

Consistency

Another theme from the research was that of consistency of the Regulations and their implementation compared with other EU countries. In terms of the Regulations themselves, a few interviewees were concerned that there was no consistency of sanctions across the EU. And in terms of their implementation several of the interviewees felt there were inconsistent approaches to market surveillance and enforcement across the EU. This raised concerns about competitive advantage and inconsistency about the costs of complying. Concerns were also

raised about the extent to which market surveillance and enforcement activity is coordinated across the EU. These issues suggest that there might be more that could be done to ensure a more consistent approach to market surveillance and enforcement across the EU.

Have the Regulations and their implementation encouraged compliance?

It is difficult to draw any firm conclusions about the extent to which the Regulations and their implementation have encouraged compliance. What is known is that the NMRO has taken enforcement action in ten cases to directly promote compliance. Furthermore, there were examples from the interviews of sanctioned companies improving their internal compliance procedures as a result of the NMRO's intervention, potentially improving future compliance rates.

There was no clear consensus about the extent to which the Regulations and their implementation may have prevented non-compliance more widely. Some interviewees reported that the Regulations promoted compliance. For others, the Regulations appeared to make no material difference to compliance levels as they claimed there was a reputational driver for them to comply anyway.

However, there was also a perception (unverifiable within the scope of this research) that non-compliance still occurs despite the Regulations. This issue also relates back to the visibility issue. The lack of industry awareness of the NMRO's enforcement activity could mean that the Regulations do not act as much as a deterrent as they might. Interviewees also expressed concerns about how systematic and robust the NMRO's market surveillance activity is, but were arguably not sighted enough on this to provide a realistically informed view.

Glossary

Civil sanction

A **sanction imposed by the NMRO and enabled by the** Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 enforceable without recourse to criminal courts. There are four types of sanctions available to the NMRO under the regulations: a compliance notice, a variable monetary penalty, a stop notice and an enforcement undertaking (National Measurement Office, 2011).

Compliance notice

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. For example, an economic operator could be required to take steps to re-label appliances or make minor adjustments to its design manufacturing or product testing processes (National Measurement Office, 2011).

Ecodesign for Energy-Related Products Regulations 2010

The [Energy Related Products Directive](#) framework is transposed into UK law under the [Energy Related Products Regulations 2010 SI 2010 No. 2617](#). The regulations provide the NMRO with the power to impose civil sanctions and to recover testing costs where appropriate.

Energy Information Regulations 2011

The [Energy Labelling Framework Directive](#) framework is transposed into UK law under the [Energy Information Regulations 2011 SI 2011 No. 1524](#). The regulations provide the NMRO with the power to impose civil sanctions and to recover testing costs where appropriate.

Enforcement undertaking

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. Each enforcement undertaking is assessed on a case by case basis and may be offered as a discretionary alternative to other enforcement actions. No other civil sanction may be imposed or prosecution brought if the NMRO accepts the enforcement undertaking and the undertaking is carried out.

National Measurement and Regulations Office

The aim of the National Measurement and Regulation Office (NMRO) is to simplify technical regulation for the benefit of British business. It is responsible for:

- ensuring the UK's system of weights and measures, hallmarking and utility metering is fair for businesses and consumers;
- providing policy support to ministers about measurement issues;
- providing technical, legal and commercial certification services to support manufacturers and local authorities; and
- enforcing technical legislation in the UK, carried out by the enforcement authority.

Stop notice

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. It can be used to either prohibit or restrict non-compliant products being made available on the market, or it may be issued where the NMRO thinks the company may be likely to put a non-compliant product onto the market (National Measurement Office, 2011).

Variable monetary penalty

A monetary penalty designed to eliminate financial gain or benefit which the NMRO may impose for moderate to serious offences. It can be issued in conjunction with a compliance notice or a stop notice (National Measurement Office, 2011).

References

Energy Information Regulations 2011 SI 2011 No. 1524. Available from:
<http://www.legislation.gov.uk/uksi/2011/1524/made> [Accessed 22 October 2015]

Energy Related Products Regulations 2010 SI 2010 No. 2617. Available from:
<http://www.legislation.gov.uk/uksi/2010/2617/contents/made> [Accessed 22 October 2015]

National Measurement Office (2011), *Civil sanctions and recovery of testing costs – guidance*. Available from:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302430/ERP_and_ELF_Combined_Civil_Sanctions_Guidance_5_March_2014.pdf [Accessed 29 September 2015]

Appendix A. Topic guides

An initial draft of the topic guides was developed by DECC. CAG then reviewed and updated the guides in conjunction with DECC following the scoping phase of the research.

Guides were developed for the following stakeholder types:

- Manufacturer trade associations;
- Manufacturers that had experienced sanctions under both The Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011;
- Manufacturers that had experienced sanctions under The Ecodesign for Energy-Related Products Regulations 2010 only; and
- Manufacturers that had not experienced sanctions under The Ecodesign for Energy-Related Products Regulations 2010 or the Energy Information Regulations 2011.

Manufacturer Trade Associations

Good morning/afternoon. My name is XXXX and I am calling from an organisation called CAG Consultants on behalf of the Department of Energy and Climate Change (DECC). Thank you for making the time to talk to me today.

Background to the project

Hopefully you will have seen, and had an opportunity to read, the briefing note that you should have received prior to this interview?

[If interviewee has not read the briefing note, pause, and ask them to review the questions set out in the briefing note. Check before beginning the interview whether they are able to answer the questions now – do they have the information they need - or whether it would be better to rearrange the interview (or at least follow-up unanswered questions) for another time]

In either event it is probably worth stating that this interview is part of a set of interviews we are undertaking with trade associations, manufacturers, trading standards organisations and retailers in relation to both the Ecodesign for Energy Related Products Regulations 2010 and the Energy Information Regulations 2011.

The results will be used by DECC to inform Post Implementation Reviews of both regulations.

Did you have any questions about the research?

About the interview

This interview covers both regulations. As you will probably know, they introduced a new set of civil sanctions alongside the criminal penalties that existed before. As the briefing note says, the regulations also provide for cost-sharing of product testing, although this has not happened in practice.

Feel free to touch upon other regulations where relevant, but for the purposes of this research we are only interested in the implementation and impacts of the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 (rather than the product specific requirements set in EU law). In particular, we want to focus on the compliance and enforcement regime that the regulations have put in place (i.e. sanctions and how they have been implemented), but not the Directives themselves.

Before I begin with the questions, there are a few important points to note...

First of all, unless otherwise stated, we are interested in your **organisation's views** in relation to the questions we cover, so it would be helpful if you could highlight where you are answering questions from a personal viewpoint only.

Second, we would like you to be as open and honest as possible during the interview. This will help improve our understanding of the effects of the regulations and their implementation on business. As such, we will maintain your confidentiality in published outputs by ensuring that any data used from the interview is anonymised before publication; neither you or your organisation will be named in any published outputs. We will keep any information that you share with us confidential and store it securely, in accordance with the Data Protection Act.

Finally, are you happy for me to record this interview? The interview recording will only be used by CAG and will not be shared beyond CAG without your prior consent; DECC will not have access to the interview recordings and transcripts.

Before we go on can you just confirm your role in the organisation?

And how familiar would you say you are of:

(a) The Ecodesign for Energy-Related Products Regulations 2010?

(b) The Energy Information Regulations 2011?

[ask interviewee to explain their answer]

1. Please tell me the experience of these regulations for companies in your membership

[[note to interviewer: throughout the interview, ensure the interviewee is explicit about which regulation they are talking about, and ensure they are talking about the regulations (the compliance and enforcement regime), rather than the EU Directives]

a. What happened when they first came into effect?

b. Where sanctions have been used, can you describe the overall response of your membership?

2. To what extent, if any, have the Ecodesign for Energy-Related Products regulations helped your member companies to comply with the requirements to manufacture products that meet minimum performance standards?

[interviewer note: we are interested in understanding how the compliance and enforcement regime helped the company to meet the requirements of the eco design directive]

- a. In what ways have they helped?
 - b. In what ways have they not helped?
3. To what extent, if any, have the Energy Information Regulations 2011 helped companies to comply with the energy labelling requirements?
[interviewer note: we are interested in understanding how the compliance and enforcement regime helped the company to meet the requirements of the Directive]
 - a. In what ways have they helped?
 - b. In what ways have they not helped?
4. How has the implementation of the regulations affected companies manufacturing and importing energy using products?
 - a. Have the sanctions had any impact on companies? If so what was this impact?
 - b. To what extent has the approach to enforcement been fair and proportionate?
[note to interviewer: ensure they explain their answer]
5. Thinking of your role in representing the interests of manufacturers and importers, what are your views on the costs [direct or indirect, financial or non-financial] incurred through sanctions imposed as a result of the regulations?
[note to interviewer: ensure the interviewee is explicit about which regulation they are talking about]
 - a. To what extent were they fair or reasonable? *[note to interviewer: ensure they explain their answer]*
 - b. What do you think the overall cost impact of the sanctions has been on your membership?
 - c. How are you defining these costs (i.e. direct costs, or indirect costs like loss of business)?
 - d. How does compliance with Ecodesign and Energy Information regulations impact on your members more generally?
6. What are your views on how the National Measurement and Regulation Office have implemented these regulations?
7. In what way, if any, could the sanctions and the way they are implemented, be improved?
8. Have the regulations and their implementation had any unintended consequences on the companies you represent?
[note to interviewer: the intended consequence of the regulations is to help companies comply with the EU Directives]
9. Finally, is there anything else you would like to mention about these regulations and the way they have been implemented that we have not covered?

Before we wrap up, would you be happy to be re-contacted if needed later in this research?

Many thanks for your time.

Manufacturers that have experienced sanctions under both The Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011

Good morning/afternoon. My name is XXXX and I am calling from an organisation called CAG Consultants on behalf of the Department of Energy and Climate Change (DECC). Thank you for making the time to talk to me today.

Background to the project

Hopefully you will have seen, and had an opportunity to read, the briefing note that you should have received prior to this interview?

[If interviewee has not read the briefing note, pause, and ask them to review the questions set out in the briefing note. Check before beginning the interview whether they are able to answer the questions now – do they have the information they need - or whether it would be better to rearrange the interview (or at least follow-up unanswered questions) for another time]

In either event it is probably worth stating that this interview is part of a set of interviews we are undertaking with trade associations, manufacturers, trading standards organisations and retailers in relation to both the Ecodesign for Energy Related Products Regulations 2010 and the Energy Information Regulations 2011.

The results will be used by DECC to inform Post Implementation Reviews of both regulations.

Did you have any questions about the research?

About the interview

This interview covers both regulations. As you will probably know, they introduced a new set of civil sanctions alongside the criminal penalties that existed before. As the briefing note says, the regulations also provide for cost-sharing of product testing, although this has not happened in practice.

Feel free to touch upon other regulations where relevant, but for the purposes of this research we are only interested in the implementation and impacts of the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 (rather than the product specific requirements set in EU law). In particular, we want to focus on the compliance and enforcement regime that the regulations have put in place (i.e. sanctions and how they have been implemented), but not the Directives themselves.

Before I begin with the questions, there are a few important points to note...

First of all, unless otherwise stated, we are interested in your **organisation's views** in relation to the questions we cover, so it would be helpful if you could highlight where you are answering questions from a personal viewpoint only.

Second, we would like you to be as open and honest as possible during the interview. This will help improve our understanding of the effects of the regulations and their implementation on business. As such, we will maintain your confidentiality in published outputs by ensuring that

any data used from the interview is anonymised before publication; neither you or your organisation will be named in any published outputs. We will keep any information that you share with us confidential and store it securely, in accordance with the Data Protection Act.

Finally, are you are happy for me to record this interview? The interview recording will only be used by CAG and will not be shared beyond CAG without your prior consent; DECC will not have access to the interview recordings and transcripts.

Before we go on can you just confirm your role in the organisation?

And how familiar would you say you are of:

(a) The Ecodesign for Energy-Related Products Regulations 2010?

(b) The Energy Information Regulations 2011?

[ask interviewee to explain their answer]

1. In turn, please tell me your company's experience of both the Ecodesign for Energy-Related Products and the Energy Information regulations.

[note to interviewer: throughout the interview, ensure the interviewee is explicit about which regulation they are talking about, and ensure they are talking about the regulations (the compliance and enforcement regime), rather than the EU Directives]

- a. What was your company's experience of the regulations when they first came into effect?
 - b. Can you say what triggered the use of civil sanctions against your company?
 - i. What was the offence/what were the offences?
 - ii. How many units sold?
 - iii. Company annual turnover?
 - c. Please describe what sanctions were applied to your company. What did they involve your company doing?
2. Could you tell me about your experience of how the NMRO implemented the regulations?
 - a. How well have they implemented the sanctions that your company was subject to?
 - b. Did the civil sanctions used seem proportionate to the offence? Why/why not?
 - c. How could they have improved implementation (if at all)?
 3. What were the costs (both direct – e.g. financial – and indirect - e.g. time, staff resources) to your company of the sanctions?
 - a. I would like to remind you that your responses will be made anonymous - could you tell me the costs of the sanctions to your firm?
 - b. How are you defining these costs - just direct costs, or indirect costs like loss of business?
 - c. What are your views on these costs?
[To extent were they fair and proportionate?]
 - d. What have been the broader costs, if any, of complying?

4. How have the regulations affected your company more widely?
 - a. Other than costs, have the sanctions had any impact on your company, If so what was this impact?
 - b. Have the sanctions affected sales or business?
 - c. Have the sanctions led to your company to conducting its businesses any differently? If so, how?

5. To what extent, if any, did the sanctions (and the way they were implemented) help your company to comply with the requirements to manufacture products that meet minimum performance standards and meet the energy labelling requirements?

[interviewer note: we are interested in understanding how the compliance and enforcement regime helped the company to meet the requirements of the Directives]

- a. In what ways have they helped?
- b. In what ways have they not helped?

6. In what way, if any, could the implementation of the regulations, be improved?

[note to interviewer: if respondent has already talked about improvements in relation to NMRO's implementation of the regulations, then ask if there are any wider improvements that could be made to the regulations]

- a. How could the implementation of civil sanctions be improved?
- b. What are your views of the cost-sharing provisions in the regulations?

[interviewer note: if the respondent is not aware of cost-sharing provisions, explain them briefly and then ask them for their views on these in principle, even if they have no direct experience]

7. Have the regulations and their implementation had any unintended consequences for your company?

[note to interviewer: the intended consequence of the regulations is to help companies comply with the EU Directives]

8. Finally, is there anything else you would like to mention about these regulations and the way they have been implemented that we have not covered?

Before we wrap up, would you be happy to be re-contacted if needed later in this research?

Many thanks for your time.

Manufacturers that have experienced sanctions under The Ecodesign for Energy-Related Products Regulations 2010 only

Good morning/afternoon. My name is XXXX and I am calling from an organisation called CAG Consultants on behalf of the Department of Energy and Climate Change (DECC). Thank you for making the time to talk to me today.

Background to the project

Hopefully you will have seen, and had an opportunity to read, the briefing note that you should have received prior to this interview?

[If interviewee has not read the briefing note, pause, and ask them to review the questions set out in the briefing note. Check before beginning the interview whether they are able to answer the questions now – do they have the information they need - or whether it would be better to rearrange the interview (or at least follow-up unanswered questions) for another time]

In either event it is probably worth stating that this interview is part of a set of interviews we are undertaking with trade associations, manufacturers, trading standards organisations and retailers in relation to both the Ecodesign for Energy Related Products Regulations 2010 and the Energy Information Regulations 2011.

The results will be used by DECC to inform Post Implementation Reviews of both regulations.

Did you have any questions about the research?

About the interview

This interview covers focuses on the Ecodesign for Energy Related Products Regulations 2010. As you will probably know, they introduced a new set of civil sanctions alongside the criminal penalties that existed before. As the briefing note says, the regulations also provide for cost-sharing of product testing, although this has not happened in practice.

Feel free to touch upon other regulations where relevant, but for the purposes of this research we are only interested in the implementation and impacts of the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 (rather than the product specific requirements set in EU law). In particular, we want to focus on the compliance and enforcement regime that the regulations have put in place (i.e. sanctions and how they have been implemented), but not the Directives themselves.

Before I begin with the questions, there are a few important points to note...

First of all, unless otherwise stated, we are interested in your **organisation's views** in relation to the questions we cover, so it would be helpful if you could highlight where you are answering questions from a personal viewpoint only.

Second, we would like you to be as open and honest as possible during the interview. This will help improve our understanding of the effects of the regulations and their implementation on business. As such, we will maintain your confidentiality in published outputs by ensuring that any data used from the interview is anonymised before publication; neither you or your

organisation will be named in any published outputs. We will keep any information that you share with us confidential and store it securely, in accordance with the Data Protection Act.

Finally, are you are happy for me to record this interview? The interview recording will only be used by CAG and will not be shared beyond CAG without your prior consent; DECC will not have access to the interview recordings and transcripts.

Before we go on can you just confirm your role in the organisation?

And how familiar would you say you are of the Ecodesign for Energy-Related Products Regulations 2010? [ask interviewee to explain their answer]

1. Please tell me your company's experience of these regulations.

[note to interviewer: ensure they are talking about the regulations (the compliance and enforcement regime), rather than the EU Directive]

- a. What was your company's experience of the regulations when they first came into effect?
 - b. Can you say what triggered the use of civil sanctions against your company?
 - i. What was the offence/what were the offences?
 - ii. How many units sold?
 - iii. Company annual turnover?
 - c. Please describe what sanctions were applied to your company. What did they involve your company doing?
2. Could you tell me about your experience of how the NMRO implemented the regulations?
 - a. How well have they implemented the sanctions that your company was subject to?
 - b. Did the civil sanctions used seem proportionate to the offence? Why/why not?
 - c. How could they have improved implementation (if at all)?
 3. What were the costs (both direct – e.g. financial – and indirect - e.g. time, staff resources) to your company of the sanctions?
 - a. I would like to remind you that your responses will be made anonymous - could you tell me the costs of the sanctions to your firm?
 - b. How are you defining these costs - just direct costs, or indirect costs like loss of business?
 - c. What are your views on these costs?
[To extent were they fair and proportionate?]
 - d. What have been the broader costs, if any, of complying?
 4. How have the regulations affected your company more widely?
 - a. Other than costs, have the sanctions had any impact on your company, If so what was this impact?
 - b. Have the sanctions affected sales or business?
 - c. Have the sanctions led to your company to conducting its businesses any differently? If so, how?

5. To what extent, if any, did the sanctions (and the way they were implemented) help your company to comply with the requirements to manufacture products that meet minimum performance standards?

[interviewer note: we are interested in understanding how the compliance and enforcement regime helped the company to meet the requirements of the Directive]

- a. In what ways have they helped?
- b. In what ways have they not helped?

6. In what way, if any, could the implementation of the regulations, be improved?

[note to interviewer: if respondent has already talked about improvements in relation to NMRO's implementation of the regulations, then ask if there are any wider improvements that could be made to the regulations]

- c. How could the implementation of civil sanctions be improved?
- d. What are your views of the cost-sharing provisions in the regulations?

[interviewer note: if the respondent is not aware of cost-sharing provisions, explain them briefly and then ask them for their views on these in principle, even if they have no direct experience]

7. Have the regulations and their implementation had any unintended consequences for your company?

[note to interviewer: the intended consequence of the regulations is to help companies comply with the EU Directive]

8. Finally, is there anything else you would like to mention about these regulations and the way they have been implemented that we have not covered?

Before we wrap up, would you be happy to be re-contacted if needed later in this research?

Many thanks for your time.

Manufacturers that have not experienced sanctions under The Ecodesign for Energy-Related Products Regulations 2010 or the Energy Information Regulations 2011

Good morning/afternoon. My name is XXXX and I am calling from an organisation called CAG Consultants on behalf of the Department of Energy and Climate Change (DECC). Thank you for making the time to talk to me today.

Background to the project

Hopefully you will have seen, and had an opportunity to read, the briefing note that you should have received prior to this interview?

[If interviewee has not read the briefing note, pause, and ask them to review the questions set out in the briefing note. Check before beginning the interview whether they are able to answer the questions now – do they have the information they need - or whether it would be better to rearrange the interview (or at least follow-up unanswered questions) for another time]

In either event it is probably worth stating that this interview is part of a set of interviews we are undertaking with trade associations, manufacturers, trading standards organisations and retailers in relation to both the Ecodesign for Energy Related Products Regulations 2010 and the Energy Information Regulations 2011.

The results will be used by DECC to inform Post Implementation Reviews of both regulations.

Did you have any questions about the research?

About the interview

This interview covers both regulations. As you will probably know, they introduced a new set of civil sanctions alongside the criminal penalties that existed before. As the briefing note says, the regulations also provide for cost-sharing of product testing, although this has not happened in practice.

Feel free to touch upon other regulations where relevant, but for the purposes of this research we are only interested in the implementation and impacts of the Ecodesign for Energy-Related Products Regulations 2010 and the Energy Information Regulations 2011 (rather than the product specific requirements set in EU law). In particular, we want to focus on the compliance and enforcement regime that the regulations have put in place (i.e. sanctions and how they have been implemented), but not the Directives themselves.

Before I begin with the questions, there are a few important points to note...

First of all, unless otherwise stated, we are interested in your **organisation's views** in relation to the questions we cover, so it would be helpful if you could highlight where you are answering questions from a personal viewpoint only.

Second, we would like you to be as open and honest as possible during the interview. This will help improve our understanding of the effects of the regulations and their implementation on

business. As such, we will maintain your confidentiality in published outputs by ensuring that any data used from the interview is anonymised before publication; neither you or your organisation will be named in any published outputs. We will keep any information that you share with us confidential and store it securely, in accordance with the Data Protection Act.

Finally, are you happy for me to record this interview? The interview recording will only be used by CAG and will not be shared beyond CAG without your prior consent; DECC will not have access to the interview recordings and transcripts.

Before we go on can you just confirm your role in the organisation?

And how familiar would you say you are of:

- (a) The Ecodesign for Energy-Related Products Regulations 2010?
- (b) The Energy Information Regulations 2011?

[ask interviewee to explain their answer]

1. In turn, please tell me your company's experience in complying with (a) the Ecodesign Energy-Related Products Regulations, and (b) the Energy Information Regulations

[[note to interviewer: throughout the interview, ensure the interviewee is explicit about which regulation they are talking about, and ensure they are talking about the regulations (the compliance and enforcement regime), rather than the EU Directives]

- a. Can you describe the effects of the regulation when it was first implemented?
 - b. What are the effects currently?
 - c. Are there any costs, direct or indirect, of complying? If so, please explain.
2. What is the perception in your firm of the two sets of regulations?
 - a. To what extent are civil sanctions seen as credible?
 - b. To what extent are civil sanctions seen as a threat, or as a way of helping companies to comply?
 - c. From the point of view of someone in a firm that has not experienced them, to what extent do the civil sanctions seem reasonable and proportionate?
 - d. What are your views in relation to the provision in the regulations for cost-sharing?
 3. Finally, is there anything else you would like to mention about these regulations and the way they have been implemented that we have not covered?

Before we wrap up, would you be happy to be re-contacted if needed later in this research?

Many thanks for your time.

Appendix B. Coding framework

The interviews were analysed using a form of ‘template analysis’. This involved development of a coding ‘template’ before the analysis began (see ‘initial coding template’ below). The template set out the themes identified by the research team as important, including the key research questions as well as themes identified by the research team following an initial review of the interview transcripts.

Hierarchical coding was employed, using broad themes such as ‘enforcement and implementation’ and ‘unintended consequences of the Regulations’, encompassing successively narrower, more specific ones such as ‘business experiences of sanctions’ and ‘the costs of sanctions to businesses’. These codes were then modified as the transcript data was examined more closely (see ‘modified coding template’ below). The final version of the coding template was used as the basis for the researcher team’s interpretation of the data set and the writing up of findings. Nvivo software was used to undertake this analysis.

Initial coding template

1. The effects of the regulations and their implementation on business
 - a. Business engagement with, and knowledge, of regulations
 - b. What happened when they first came into effect
 - c. Impact of complying with regulations on businesses overall (e.g. on competitiveness, burden on business etc.)
2. Enforcement
 - a. Business experiences of sanctions
 - i. Types of sanctions applied/offences
 - ii. Costs (direct and indirect, financial and non-financial)
 - iii. Views on costs
 - b. Business views on approach of the NMRO
 - i. What have they done well?
 - ii. What have they done less well?
 - iii. How could they improve their implementation of the regulations?
 - c. Business views on sanctions
 - d. Business views on cost-sharing
3. The degree to the regulations and their implementation have encouraged compliance (how have they helped or hindered?)
4. Unintended consequences of the regulations
5. Lessons learned and suggestions for improving the regulations

Modified coding template

Added codes shown in bold.

1. **Background information on participants**

- a. **Type of business**
- b. **Role in organisation on interviewee(s)**

2. The effects of the regulations and their implementation on business

- a. Business engagement with, and knowledge, of regulations
- b. What happened when they first came into effect
- c. Impact of complying with regulations on businesses overall (e.g. on competitiveness, burden on business etc.)

3. Enforcement

- a. Business experiences of sanctions
 - i. Types of sanctions applied/offences
 - ii. Costs (direct and indirect, financial and non-financial)
 - iii. Views on costs
- b. Business views on approach of the NMRO
 - i. What have they done well?
 - ii. What have they done less well?
 - iii. How could they improve their implementation of the regulations?
 - iv. NMRO and collaboration across the EU**
 - v. Industry engagement by the NMRO**
 - vi. Market surveillance performance**
 - vii. Communication of market surveillance and sanctions activity**
 - viii. NMRO budget**
- c. Business views on sanctions
- d. Business views on cost-sharing

4. The degree to the regulations and their implementation have encouraged compliance (how have they helped or hindered?)

5. Unintended consequences of the regulations

6. **Other issues**

- a. **Test houses**
- b. **Industry-led activity on market surveillance**
- c. **Role of Government**

7. Lessons learned and suggestions for improving the regulations.

© Crown copyright 2016

Department of Energy & Climate Change

3 Whitehall Place

London SW1A 2AW

www.gov.uk/decc

URN 16D/022