

**EXPLANATORY MEMORANDUM TO**  
**THE ECODESIGN FOR ENERGY-USING PRODUCTS REGULATIONS 2007**  
**2007 No. 2037**

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

**2. Description**

- 2.1 The Ecodesign for Energy-Using Products Regulations 2007 ('the 2007 Regulations') transpose Directive 2005/32/EC ('the 2005 Directive') of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC ('the 1992 Directive') and Directives 96/57/EC ('the 1996 Directive') and 2000/55/EC ('the 2000 Directive') of the European Parliament and of the Council.
- 2.2 The 2005 Directive seeks to establish a framework for the development of ecodesign requirements for energy-consuming products. The framework to be established will involve the delegation of powers from the European Parliament and the Council to the European Commission, assisted by a committee of Member States, to adopt implementing measures relating to individual product types.

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

- 3.1 None.

**4. Legislative background**

- 4.1 The 1992 Directive, which was adopted on 21 May 1992, established energy efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels. It was transposed in the UK by the Boiler (Efficiency) Regulations 1993 ('the 1993 Regulations') as amended by the Boiler (Efficiency) (Amendment) Regulations 1994 ('the 1994 Regulations') and the Boiler (Efficiency) (Amendment) Regulations 2006 ('the 2006 Regulations').
- 4.2 The 1996 Directive, which was adopted on 3 September 1996, established energy efficiency requirements for household electric refrigerators, freezers and combinations thereof. It was transposed in the UK by the Energy Efficiency (Refrigerators and Freezers) Regulations 1997 ('the 1997 Regulations') as amended by the Energy Information and Energy Efficiency (Miscellaneous Amendments) Regulations 2001 ('the 2001 Amendment Regulations').
- 4.3 The 2000 Directive, which was adopted on 18 September 2000, established energy efficiency requirements for ballasts for fluorescent lighting. It was

transposed in the UK by the Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001 ('the 2001 Ballasts Regulations').

- 4.4 These existing energy efficiency requirements are regarded as implementing measures for the purposes of the 2005 Directive.
- 4.5 The 2007 Regulations consolidate the provisions of the 1993, 1994, 1997, 2001 Ballasts and 2006 Regulations, which are all being revoked as a result. They also consolidate the provisions of the 2001 Amendment Regulations, insofar as these relate to energy efficiency requirements for household electric refrigerators, freezers and combinations thereof.
- 4.6 The 2007 Regulations are made using the powers contained in section 2(2) of the European Communities Act 1972. They come into force on 11<sup>th</sup> August 2007.
- 4.7 The 2007 Regulations were the subject of a formal consultation exercise with UK stakeholders, including representatives of UK manufacturers of energy-using products, the Scottish Executive, the National Assembly for Wales and Northern Ireland Departments. 12 weeks were allowed for responses in accordance with current Cabinet Office Better Regulation Executive requirements.
- 4.8 A number of respondents to this consultation exercise expressed concern about the effectiveness of the enforcement arrangements for the existing implementing measures, in particular in connection with the measure relating to hot-water boilers. In the light of these comments, the Government has commissioned a fundamental review of the enforcement arrangements for both existing and new implementing measures. The outcome of this review will not be known by the 11<sup>th</sup> August deadline for the transposition of the 2005 Directive, since further discussions with relevant stakeholders will be needed.
- 4.9 The 2007 Regulations have, therefore, broadly replicated the existing enforcement arrangements set out in the 1993, 1997, and 2001 Ballasts Regulations as amended. Further Regulations may be made in due course when the outcome of the enforcement review has been determined.
- 4.10 Transposition Notes are attached at Annex A.

## **5. Extent**

- 5.1 The Regulations apply to the whole UK.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- 7.1 The 2005 Directive provides coherent European Union (EU)-wide rules for ecodesign and ensures that disparities among national regulations do not become obstacles to intra-EU trade. The ecodesign requirements to be developed through new implementing measures will address the environmental impacts of products resulting from their manufacture (processes and materials used), usage (energy/water consumption and emissions) and disposal (waste generation).
- 7.2 The 2005 Directive does not, in itself, create any additional legal obligations. This will only happen when new implementing measures are adopted. The Directive does, however, define conditions and criteria for setting, through subsequent implementing measures, requirements regarding environmentally relevant product characteristics (such as energy consumption) and allows them to be improved quickly and efficiently. Products that fulfil the requirements will benefit both businesses and consumers, by facilitating free movement of goods across the EU and by enhancing product quality and environmental protection.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment is attached at Annex B.

## **9. Contact**

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## EUP DIRECTIVE TRANSPOSITION NOTE

**TABLE A** SHOWING HOW ELEMENTS OF DIRECTIVE 2005/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 6 JULY 2005 ESTABLISHING A FRAMEWORK FOR THE SETTING OF ECODESIGN REQUIREMENTS OF ENERGY-USING PRODUCTS (THE EuP DIRECTIVE) HAVE BEEN IMPLEMENTED BY THE ECO-DESIGN FOR ENERGY-USING PRODUCTS REGULATIONS 2007 (S.I. 2007/\*\*\*\*\*)

**TABLES B TO D** SHOWING HOW THESE REGULATIONS IMPLEMENT ELEMENTS OF COUNCIL DIRECTIVE 92/42/EEC (BOILERS AND APPLIANCES), DIRECTIVE 96/57/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (REFRIGERATORS APPLIANCES), AND DIRECTIVE 2000/55/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (BALLASTS FOR FLUORESCENT LIGHTING). THESE DIRECTIVES ARE DEEMED TO BE IMPLEMENTING MEASURES UNDER DIRECTIVE 2005/32/EC.

### **TABLE A – DIRECTIVE 2005/32/EC**

<u>Provision of Directive</u>	<u>Provision of Regulations</u>	<u>Comment</u>
<b>Article 2</b> (definitions)	Regulation 2(3)(b)	
<b>Article 3(1)</b> (EuPs to comply with implementing measures and bear CE marking)	Regulations 3 to 6	
<b>Article 3(2)</b> (designation of the authorities responsible for market surveillance)	Regulation 2(1) Regulation 18 Schedule 9	Under regulation 2(1) the enforcing authorities are defined as local weights and measures authorities (GB) and the Department of Enterprise, Trade and Investment (NI). Those bodies are required to enforce these Regulations under regulation 18. The powers of those authorities are set out in Schedule 9.

<b><u>Provision of Directive</u></b>	<b><u>Provision of Regulations</u></b>	<b><u>Comment</u></b>
<b>Article 4</b> (responsibilities of the importer)	Regulation 5	
<b>Article 5(1)</b> (affixing CE conformity marking and declaration of conformity)	Regulation 4	
<b>Article 5(2)</b> (form of CE marking)	Schedule 6	
<b>Article 5(3)</b> (contents of declaration of conformity)	Schedule 5	
<b>Article 5(4)</b> (misleading markings)	Regulation 9	
<b>Article 6(3)</b> (display of EuPs)	Regulation 6	
<b>Article 7(1) and (2)</b> (action by Member States for non-compliance)	Regulation 18	Enforcement is carried out by the enforcing authorities described in relation to Article 3(2). If a notified body finds during a conformity assessment procedure that a product does not meet the product requirements, it may give a non-conformity notice under chapter 4 of Part 1 of Schedule 4
<b>Article 7(3)</b> (notification to the Commission of non-compliance)	Regulations 16(2) and 22(3)	
<b>Article 8(1)</b> (assessment of conformity)	Regulation 4	
<b>Article 8(2)(first paragraph)</b> (conformity assessment procedures and modules described in Decision 93/465/EEC)	Schedule 4	The modules described in Decision 93/465/EEC are implemented by Schedule 4 insofar as they apply to the products included in these Regulations. The application of those modules, with amendments, to particular products is set out in Schedule 3. Tables B-D deal with those products.

<b><u>Provision of Directive</u></b>	<b><u>Provision of Regulations</u></b>	<b><u>Comment</u></b>
		The notified bodies referred to in these modules and their functions are provided for in Part 4 of, and Schedule 7 to, these Regulations
<b>Article 8(3)</b> (keeping relevant documents)	Regulation 10	
<b>Article 9(1)</b> (presumption of conformity)	Regulation 7(1)	
<b>Article 9(2)</b> (harmonised standards and deemed compliance)	Regulation 7(2)	
<b>Article 9(3)</b> (ecodesign requirements and deemed compliance)	Regulation 7(3)	
<b>Article 20</b> (penalties)	Regulations 27 to 31	
<b>Article 21</b> (amendments)	Part 6 of these Regulations	<p>Council Directive 92/42/EEC (boilers and appliances), Directive 96/57/EC of the European Parliament and of the Council (refrigerators appliances), and Directive 2000/55/EC of the European Parliament and of the Council (ballasts for fluorescent lighting), are deemed to be implementing measures under Directive 2005/32/EC.</p> <p>Specific requirements of those Directives are implemented by these Regulations as set out in tables B to D.</p> <p>The existing legislation implementing those Directives is revoked.</p>

**TABLE B – DIRECTIVE 94/42/EEC**

<b>Provision of Directive</b>	<b>Provision of Regulations</b>	<b>Comment</b>
<b>Article 2 and 3</b> (definitions of boilers and appliances)	Part 2 of Schedule 1	
<b>Article 5</b> (useful energy requirements)	Part 2 of Schedule 2	
<b>Article 7(2)</b> (conformity assessment procedures)	Part 2 of Schedule 3	
<b>Article 4(3)</b> (back boilers and boilers in living spaces)	Paragraph 4 of Part 2 of Schedule 2	
<b>Article 8(1)</b> (notification of notified bodies)	Regulation 15(4)	These provisions in this Directive have general application to notified bodies under the conformity assessment procedures
<b>Article 8(2) and (3)</b> (appointment and removal of appointment of notified bodies)	Part 4 of and Schedule 7 to these Regulations	These provisions in this Directive have general application to notified bodies under the conformity assessment procedures

**TABLE C – DIRECTIVE 96/57/EC**

<b>Provision of Directive</b>	<b>Provision of Regulations</b>	<b>Comment</b>
<b>Article 1</b> (definition of refrigerator appliances)	Part 3 of Schedule 1	
<b>Article 2(1)</b> (useful energy requirements)	Part 3 of Schedule 2	
<b>Article 4</b> (conformity assessment procedures)	Part 3 of Schedule 3	

**TABLE D – DIRECTIVE 2000/55/EC**

<b><u>Provision of Directive</u></b>	<b><u>Provision of Regulations</u></b>	<b><u>Comment</u></b>
<b>Article 1</b> (definition of ballasts)	Part 4 of Schedule 1	
<b>Article 9(1)</b> (useful energy requirements)	Part 4 of Schedule 2	
<b>Article 4(1) and (2)</b> (conformity assessment procedures)	Part 4 of Schedule 3	

**REGULATORY IMPACT ASSESSMENT (FINAL)  
THE ECODESIGN FOR ENERGY-USING PRODUCTS  
REGULATIONS 2007**

**Title of proposal**

1. UK implementation of Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council (the “EUP Directive”), through a negative resolution statutory instrument made under section 2(2) of the European Communities Act 1972.

**Purpose and intended effect**

**(i) Objectives**

2. Through the EUP Directive, to establish a framework for the development of ecodesign requirements for energy-consuming products. The framework to be established will involve the delegation of powers from the European Parliament and the Council to the European Commission, assisted by a committee of Member States, to adopt implementing measures relating to individual product types. The ecodesign requirements to be developed will address the environmental impacts of products resulting from their manufacture (processes and materials used), usage (energy/water consumption and emissions) and end-of-life (waste generation).

3. To implement the EUP Directive in the UK by 11 August 2007 at the latest, as required by the Directive.

**(ii) Background**

4. In common with its predecessors, the current UK Government is committed to seeking cost-effective ways to achieve emissions reductions targets in support of Climate Change policy. It has already supported and implemented a range of related EU common and co-ordinated policy measures aimed at improving energy efficiency standards for traded goods.

5. To this end, the UK supported the adoption by the Council and (in the case of 96/57/EC and 2000/55/EC) the European Parliament of directives prescribing ecodesign requirements (specifically relating to energy efficiency) for hot water boilers (92/42/EEC), household refrigerators, freezers and their combinations (96/57/EC), and ballasts for fluorescent lighting (2000/55/EC). These 3 directives, which are to be regarded as implementing measures for the purpose of the EUP Directive, were implemented in the UK by the Boiler (Efficiency) Regulations 1993, as amended by the Boiler (Efficiency) (Amendment) Regulations 1994 and the Boiler (Efficiency) (Amendment) Regulations 2006; the Energy Efficiency (Refrigerators and Freezers) Regulations 1997, as amended by the Energy Information and Energy

Efficiency (Miscellaneous Amendments) Regulations 2001; and the Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001 respectively.

6. These 6 statutory instruments (but only insofar as it relates to energy efficiency requirements for household refrigerators, freezers and their combinations in the case of the Energy Information and Energy Efficiency (Miscellaneous Amendments) Regulations 2001) are being revoked since their provisions are being consolidated into the statutory instrument which is the subject of this regulatory impact assessment.

7. The statutory instrument which is the subject of this regulatory impact assessment does not, however, seek to anticipate any new mandatory implementing measures which the Commission might propose within the framework of the EUP Directive. Since each such measure would be subject to the new “regulatory procedure with scrutiny” as it was being developed, an impact assessment would be prepared as part of the corresponding UK scrutiny process, which would include an analysis of its costs and benefits. Therefore, the statutory instrument which is the subject of this regulatory impact assessment does not, in itself, create any new burdens.

8. In developing further implementing measures, the Commission will be advised by a Consultation Forum which will include representation from industry and individual Member States. This Forum will be additional to the committee of Member States referred to in paragraph 2.

9. While the Commission has not formally identified its priorities for implementing measures, it has commissioned scoping studies into the feasibility of implementation measures for the following 20 product types:

- boilers and combination-boilers (gas/oil/electric)
- water heaters (gas/oil/electric)
- personal computers (desktops and laptops)
- imaging equipment (copiers, faxes, printers, scanners, multifunctional devices)
- televisions (analogue, digital, all technologies)
- stand-by and off-mode losses
- battery chargers and external power supplies (except those in personal computers)
- office lighting
- street (public) lighting
- residential room conditioning (air conditioning and ventilation) appliances (plug-in and split)
- commercial refrigerators and freezers, including chillers, display cabinets and vending machines
- domestic refrigerators and freezers
- domestic dishwashers and washing machines

- solid fuel boilers
- laundry dryers
- domestic lighting
- simple set-top boxes
- complex set-top boxes
- vacuum cleaners
- electric motors 1-150kW, including
  - water pumps (in commercial buildings, drinking-water pumping, food industry, agriculture)
  - circulators for buildings
  - fans for ventilations (non-residential buildings)

10. It is therefore likely that initial implementing measures will cover one or more of these product types.

11. Since ecodesign requirements are a reserved matter, the EUP Directive can be implemented on a UK-wide basis.

### **(iii) Rationale for Government intervention**

12. The EUP Directive provides coherent EU-wide rules for ecodesign and ensures that disparities among national regulations do not become obstacles to intra-EU trade. The Directive does not, in itself, create any additional legal obligations for business or enforcement authorities. This will only happen when new implementing measures have been adopted by the European Commission. It does, however, define conditions and criteria for setting, through subsequent implementing measures, requirements regarding environmentally relevant product characteristics (such as energy consumption) and allows them to be improved quickly and efficiently. Products that fulfil the requirements will benefit both businesses and consumers, by facilitating free movement of goods across the EU and by enhancing product quality and environmental protection.

13. Action is required on the Government's part to implement the EUP Directive into UK legislation by 11 August 2007 (see paragraph 3). Otherwise, the UK would almost certainly be liable subsequently to infraction proceedings by the European Commission.

### **Consultation**

14. Representatives of UK manufacturers of energy-using products have been regularly kept informed, both during the development of the EUP Directive and on subsequent progress since adoption, through a joint Defra/DTI stakeholder group.

15. The Government also conducted a formal consultation exercise on the implementing statutory instrument and this regulatory impact assessment in draft. Organisations consulted included representatives of UK manufacturers of energy-

using products such as the Society of British Gas Industries (SBGI) and the Oil Firing Technical Association (OFTEC), together with the Scottish Executive, the National Assembly for Wales and Northern Ireland Departments.

16. A number of respondents expressed concern about the effectiveness of the enforcement arrangements for the existing implementing measures, in particular in connection with the measure relating to hot water boilers. In the light of these comments, the Government has commissioned a fundamental review of the enforcement arrangements for both existing and new implementing measures. The outcome of this review will not be known by the 11 August deadline for the implementation of the EUP Directive (see paragraph 13), since further discussions with relevant stakeholders will be needed.

17. The existing enforcement arrangements set out in the Boiler (Efficiency) Regulations 1993, the Energy Efficiency (Refrigerators and Freezers) Regulations 1997 and the Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001, as amended (see paragraph 29) are, therefore, broadly replicated in this statutory instrument. A further statutory instrument may be made in due course when the outcome of this enforcement review has been agreed in consultation with the relevant stakeholders.

### **Options**

18. In the absence of any suitable mandatory implementing measure, the UK could find itself out of kilter with other EU Member States which had implemented the EUP Directive on a mandatory basis, as required by the Directive. In theory, barriers to trade within the EU could arise and additional burdens fall on UK manufacturers of energy-using products as a result of the need to comply with ecodesign requirements in other Member States.

### **Costs and benefits**

19. For the purposes of this regulatory impact assessment, consideration has been given to possible additional or reduced costs or benefits to those already resulting from the existing 6 statutory instruments referred to in paragraph 5. Consideration has also been given to updating the estimated costs and benefits of the existing energy efficiency ecodesign requirements covering hot water boilers, household refrigerators, freezers and their combinations, and ballasts for fluorescent lighting, even though no fundamental changes will result from the statutory instrument which is the subject of this regulatory impact assessment..

#### **(i) Costs to business, charities and voluntary organisations**

20. Manufacturers of boilers, household refrigeration appliances and fluorescent lighting ballasts are, at present, required to produce products complying with ecodesign requirements which have been set in accordance with Directives 94/2/EEC, 96/57/EC and 2000/55/EC as amended by the EUP Directive. No responsibilities are, however, conferred on charities or voluntary organisations.

21. As stated in paragraph 7, the statutory instrument which is the subject of this regulatory impact assessment does not, in itself, create any new burdens for

manufacturers. And no new burdens for manufacturers were identified in the compliance cost assessment covering the Energy Efficiency (Refrigerators and Freezers) Regulations 1997, nor in the regulatory impact assessment covering the Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001. Since no similar assessment was produced for the Boiler (Efficiency) Regulations 1993 as amended by the Boiler (Efficiency) (Amendment) Regulations 1994, manufacturers' representatives (SBGI in the case of gas-fired boilers and OFTEC in the case of oil-fired boilers) were specifically asked, as part of the consultation exercise referred to in paragraph 15, whether the implementation of the mandatory standards required by Directive 94/2/EEC had imposed any specific burdens on manufacturers.

22. The response received from SBGI stated that manufacturers of gas-fired boilers had been faced with significant introductory costs, although it would appear from OFTEC's reply that manufacturers of oil-fired boilers had not been faced with similar costs. In any event, it is arguable that any such costs would have been minimised by the interval of 6 years between the adoption of Directive 92/42/EEC in May 1992 and its full implementation in January 1998, during which most manufacturers were responding to other market trends and would have been able to accommodate changes within their normal product model development cycle.

23. Although the statutory instrument which is the subject of this regulatory impact assessment also confers a number of obligations upon manufacturers of boilers, household refrigeration appliances and fluorescent lighting ballasts in the area of conformity assessment for their products (including affixing the CE conformity marking to compliant products), these obligations duplicate those which are already imposed upon manufacturers as a result of the Electromagnetic Compatibility, Low Voltage and Gas Appliances Directives. Hence there will be no additional costs to manufacturers of boilers, household refrigeration appliances and fluorescent lighting ballasts on this account.

#### **(ii) Environmental, social and economic benefits**

24. As noted in paragraphs 5 and 6, the statutory instrument which is the subject of this regulatory impact assessment will result in the revocation of 6 existing statutory instruments. However this consolidation is not, in itself, expected to result in any significant reductions in red tape burdens upon business because there is little commonality among manufacturers of gas & oil-fired boilers, household refrigeration appliances and fluorescent lighting ballasts. As noted in paragraph 20, these are the businesses which will be directly affected by the statutory instrument which is the subject of this regulatory impact assessment.

#### **Small Firms Impact Test**

25. The existing energy efficiency ecodesign requirements covering boilers, household refrigeration appliances and ballasts for fluorescent lighting have not impacted small businesses adversely. The impact of possible further mandatory ecodesign requirements on small businesses would be evaluated if and when specific proposals for regulatory action within the framework of the EUP Directive were tabled by the European Commission.

## **Competition assessment**

26. The EUP Directive is expected to be neutral in terms of its effect upon competition between UK manufacturers, retailers and other businesses insofar as the existing energy efficiency ecodesign requirements covering boilers, household refrigeration appliances and ballasts for fluorescent lighting are concerned. Furthermore, since all non-UK manufacturers of these product types also have to comply with these requirements insofar as products placed on the UK market are concerned, there is no effect on intra-EU trade. Conversely, UK manufacturers of these product types have to comply with similar requirements applying in other EU Member States where they offer their products for sale.

27. Further new mandatory implementing measures would be the subject of separate competition assessments if and when specific proposals within the framework of the EUP Directive were tabled by the European Commission.

## **Enforcement, sanctions and monitoring**

28. The existing energy efficiency ecodesign requirements covering boilers, household refrigeration appliances and ballasts for fluorescent lighting will continue to be enforced by local trading standards authorities in England, Wales and Scotland; and by the Department of Enterprise, Trade and Investment in Northern Ireland, pending the outcome of the fundamental review referred to in paragraph 16. Because there has, in practice, been very little enforcement of these requirements to date (a particular issue being addressed by this review), no significant enforcement costs have arisen.

## **Implementation and delivery plan**

29. To assist businesses and enforcement authorities in the implementation of the EUP Directive, guidance notes on the implementing statutory instrument were published on 8 May 2007. Hence there has been a full 12-week implementation period.

## **Post-implementation review**

30. The European Commission is required to review, by no later than 6 July 2010, the effectiveness of the EUP Directive and its implementing measures, in consultation with the Consultation Forum referred to in paragraph 8, which, as intimated, will include Government representation.

## **Summary and recommendation**

<b>Costs to business, charities and voluntary organisations</b>	None (see paragraphs 20-23)
<b>Environmental, social and economic benefits</b>	None (see paragraph 24)

31. It is recommended that the EUP Directive is implemented in the UK. At this stage, implementation will consolidate existing legislation in this area, and so

additional costs and benefits do not arise. Implementation will also pave the way for wider ecodesign requirements, complementing existing energy efficiency requirements, to be introduced for energy-using products marketed in the UK, to the overall benefit to the environment and reductions in energy use. While such measures have the potential to reduce carbon emissions in a cost-effective way, this will depend on implementing measures for specific product groups, which will be subject to individual impact assessments when they come forward.

**Ministerial Declaration**

I have read the Regulatory Impact Assessment, and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister: Joan Ruddock

Date: 14th July 2007

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