

Title: Energy Performance of Buildings Directive - Compliance and Enforcement Lead department or agency: Department for Communities and Local Government (DCLG) Other departments or agencies:	Impact Assessment (IA)
	IA No: 0034
	Date: 20/05/2011
	Stage: Enactment
	Source of intervention: EU
	Type of measure: Secondary legislation
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Summary: Intervention and Options

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

The Energy Performance of Buildings Regulations 2007 (the EPB Regulations), which transposed the EU Energy Performance of Buildings Directive (EPBD), requires an Energy Performance Certificate (EPC) to be made available by the owner or landlord of the building that is being sold or rented out to the prospective buyers or tenants in order to provide information about the energy efficiency of the building. Evidence suggests compliance is poor which means consumers are ill informed. Intervention is necessary to improve compliance and to meet our obligations under the EPBD. We also need to reduce our vulnerability to infraction proceedings and respond positively to recent enquiries made by the EU Commission.

What are the policy objectives and the intended effects?

To reduce the number of poor quality or fraudulent EPCs, improve compliance with the EPB Regulations and to reduce our vulnerability to challenge from the EU Commission and industry. By improving compliance potential buyers and tenants will be better informed about their decision on whether to buy or rent a property. Ensuring that the EPC is provided earlier in the process will increase the likelihood that owners will take steps to act on the EPC recommendations which identify cost effective savings. The EPB Regulations will be more consistent and coherent, which will result in improved compliance and make non compliance easier to detect. Improved compliance will provide better information to develop proposals to improve the energy performance of buildings and to monitor EPBD implementation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Do nothing. Maintain the current EPB Regulations which do not address the issues of non compliance and enforcement issues effectively.
 - Improve compliance by voluntary means including publicising the benefits of potential energy and cost savings by implementing the recommendations made on the EPC.
 - Amend the EPB Regulations in order to implement the EPBD more effectively, which will improve compliance and make enforcement easier.
- Option 3 is the preferred option. This should result in improved compliance and make non compliance easier to detect. Implementing these changes will enable us to respond positively to any complaints received on issues of compliance and enforcement.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 4/2012

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

Sign-off For enactment stage Impact Assessments:

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

Signed by the responsible Minister:

R A Stunell

Date:

10/10/2011

Summary: Analysis and Evidence

Policy Option 2

Description:

Option 2: Improve compliance by other means, including publicising the benefits of potential energy and cost savings by implementing the EPC recommendations.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -£4M

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			Optional
High			Optional
Best Estimate			£4M

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

Improving compliance through a large scale publicity campaign would be a costly option. The costs will be substantial and would fall to DCLG. Given the uncertainty of this approach it is not proportional to provide a more detailed analysis. Possible costs can be assessed by considering a previous publicity campaign in 2008/2009 which informed the public about the provisions of the EPBD which attracted a one-off cost of just over £4M (more detail below).

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

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

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

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

There is an assumption that compliance would improve as a consequence of the publicity campaign. We are, however, unable to quantify the benefits because we are unable to predict the level of improvement. Increased compliance would better inform prospective buyers and tenants about the energy performance of a building. This in turn, if the EPC recommendations were acted upon, would lead to reduced energy consumption and carbon emission and reduced cost to the building occupier.

Key assumptions/sensitivities/risks

Discount rate (%)

Analysis of information from a variety of sources indicates that the levels of non compliance reported across building types differ significantly.

The cost of initiating this option is excessive and is considered not to be the most cost effective way of using DCLG resources. From the limited information available it is assumed that the costs associated with a publicity campaign will have increased since 2008/2009. Any increase has not been taken into account in the above cost estimate.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		01/07/2011			
Which organisation(s) will enforce the policy?		Trading Standards			
What is the annual change in enforcement cost (£m)?		None			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: N/A		Benefits: N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	21
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	21
Small firms Small Firms Impact Test guidance	No	21
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	21
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	21
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	21
Human rights Human Rights Impact Test guidance	No	21
Justice system Justice Impact Test guidance	No	21
Rural proofing Rural Proofing Impact Test guidance	No	21
Sustainable development Sustainable Development Impact Test guidance	No	21

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3

Description:

Option 3: Amending the existing EPB Regulations to clarify requirements under EPBD this will improve compliance and make enforcement easier.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -£6.78M

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			Optional
High			Optional
Best Estimate		£0.816M	£6.78M

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

Option 3 (preferred option). Changes proposed will make the EPB regulations more consistent and coherent, which should result in improved compliance and the easier detection of non compliance. The costs associated with this option are over 10 years and only apply to attaching the EPC to the written particulars (the property details). A detailed analysis of this option has not been undertaken.
NB

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

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

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

If the EPC recommendations were implemented, the potential to save energy, reduce carbon and reduce costs would increase with improved compliance. We are unable to quantify the benefits of potential CO2 savings.

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

Improved data collection; monitoring and future policy development; provision of accurate data; reduced fraudulent EPCs; provision of data on energy consumed and energy saved; increased business activities for energy assessors (unable to quantify benefits at current time). Reduce risk of EU Commission infraction proceedings. Estimates show that if carbon emissions reduced by 918 tonnes per year (representing 0.02% of carbon emissions from domestic buildings) this would justify the costs over the lifetime of the policy.

Key assumptions/sensitivities/risks

Discount rate (%)

We have analysed a variety of information but no data exists which enables the accurate comparison of property listings with completed transactions. Comparisons of EPC data from the central Register and HM Land Registry data for domestic property transactions data shows similar figures; the closeness of these figures would suggest a significant number of properties are being marketed without an EPC (see paragraphs 55 and 65). There is an assumption that the non monetised benefits, if the EPC recommendations were implemented, would outweigh the costs for this option.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		01/07/2011			
Which organisation(s) will enforce the policy?		Trading Standards			
What is the annual change in enforcement cost (£m)?		None			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: N/A		Benefits: N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

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Human rights Human Rights Impact Test guidance	No	21
Justice system Justice Impact Test guidance	No	21
Rural proofing Rural Proofing Impact Test guidance	No	21
Sustainable development Sustainable Development Impact Test guidance	No	21

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Energy Performance Buildings Directive 2002/91/EC (http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2002&nu_doc=91)
2	The Energy Performance Building (Certificates and Inspections) (England and Wales) Regulations 2007 (http://www.legislation.gov.uk/ukxi/2007/991/contents/made)
3	Consultation – Making better use of Energy Performance Certificates and Data May 2010 (http://www.communities.gov.uk/publications/planningandbuilding/epceffectivenessconsult)
4	Meetings with industry groups, e.g. Property and Energy Professionals Association
5	Elmhurst Energy Systems: Non Domestic EPCs for Commercial Properties Market Analysis Report October 2010. (http://liveweb.elmhurstenergy.co.uk/systems/images/elmhurst%20energy%20commercial%20compliance%20report%20oct%202010.pdf)
6	NHER Commercial Property EPCs – Compliance on the High Street Research Report (June 2009) (http://www.nesltd.co.uk/sites/default/files/documents/news/EPC_Compliance_Final_5June09.pdf)
7	Sir Philip Hampton’s 2005 Review: ‘Reducing administrative burdens: effective inspection and enforcement’ considered how to reduce unnecessary administration for businesses, without compromising the UK’s regulatory regime’.
8	NHER Energy Performance Certificates Seizing the opportunity (December 2009). (http://www.nesltd.co.uk/sites/default/files/documents/news/Seizing_The_Opportunity_Marketed_Sales_Dec09.pdf)
9	AECOM: Evaluation of the Energy Performance of Buildings Directive: Phase 1 (October 2009). Unpublished.
10	Requiring Energy Performance Certificates (EPCs) for short term lets (March 2010) (http://www.communities.gov.uk/documents/planningandbuilding/pdf/1491226)
11	Summary of responses – Making better use of Energy Performance Certificates and Data May 2010 (http://www.communities.gov.uk/publications/planningandbuilding/epceffectivenessresponses)
12	Niche Communications – statistical analysis on EPC turn around times provided on 17/01/2011. Unpublished
13	Comparison between number of EPCs for domestic sales lodged on central Register between April 2009 and October 2010 and the number of new listing on Rightmove property portal. Unpublished.
14	Quidos Investigation into EPBD Enforcement (January 2011) (http://www.quidos.co.uk/documents/Quidos_EPBD_Enforcement_Investigaton.pdf)

Evidence Base

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

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

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

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Given the relatively low cost per year of implementing Option 3 it would not be prudent at this time to carry out a more detailed analysis given the small scale of the change being proposed.



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Background Information;

1. Under the Energy Performance of Buildings Directive (see Reference 1) a building is required to have an Energy Performance Certificate when the building is sold or let. An Energy Performance Certificate is valid for 10 years and is intended to inform a potential purchaser or tenant about the energy performance of the building, so they can consider energy efficiency and fuel costs as part of their decision on whether to buy or rent a property. An Energy Performance Certificate provides an energy rating for a building based on the fabric and its services (such as heating, ventilation and lighting). The Energy Performance Certificate is accompanied by a recommendations report (from this point forward both are referred to collectively as the Energy Performance Certificate), which provides recommendations on how the energy performance of the building could be enhanced, together with an indication of the payback period. Implementing the regulatory changes will increase the chances that more people will see the recommendations and act on them, therefore reducing carbon emissions and lowering the running costs for the building occupants.
2. The Energy Performance Certificate is broadly similar to the labels provided with domestic appliances such as refrigerators and washing machines. The energy efficiency rating is a measure of a property's overall efficiency. The rating of a property receives depends on the energy costs associated with space, heating, water heating, ventilation and lighting, less any cost savings from energy generation technology installed in the property. The rating scale is from A to G with A representing very energy efficient and low running costs and G representing not energy efficient and higher running costs. For non domestic Energy Performance Certificates the rating scale is from A + to G.
3. The only person who is able to conduct an energy assessment and produce the Energy Performance Certificate is an accredited energy assessor. The energy assessor is responsible for ensuring the latest version of the approved calculation methodology software is used to produce the Energy Performance Certificate and recommendation report. Once the Energy Performance Certificate has been produced the assessor's Accreditation Scheme is responsible for lodging the Energy Performance Certificate on the central Register and also for the quality of the Energy Performance Certificate. Approved Accreditation Schemes, who manage energy assessors, are responsible for ensuring that the energy assessor has the appropriate energy assessment skills and knowledge.

Problem under consideration;

4. There is evidence that compliance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (see Reference 2) which implemented the Energy Performance of Buildings Directive is poor. Research (see Reference 6) suggests the reasons for non compliance in the non domestic include agents not knowing when an Energy Performance Certificate was necessary or claiming they did not know when one was required. Further research by Quidos (see Reference 14) explains that compliance in the domestic sector has reduced following the suspension of Home Information Packs. The changes proposed will make the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 more consistent and coherent. The application to all transactions of the duty to either have, or to have commissioned, an Energy Performance Certificate before a building is advertised for sale or rent should result in improved compliance and make it easier to detect non compliance. There are a number of factors that may be contributing to poor compliance including:
 - a lack of clarity in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, leading to uncertainty about what is required. This uncertainty is shared by enforcement authorities as well as those who are subject to the duties and
 - the different treatment of domestic property sales compared to non domestic sales and rentals and domestic rentals.
5. For all types of transaction, there is a requirement on the seller or landlord (referred to as the 'relevant person' in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) to provide an Energy Performance Certificate to a potential buyer

or tenant as soon as possible and no later than when entering into a contract to sell or rent the property. The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 also specifies two trigger points when the relevant person should make an Energy Performance Certificate available. These are when he or she provides information in writing about the property in response to a request for it or, if earlier, when a pre-arranged viewing of the property takes place.

6. For domestic sales only, there is a duty on the seller to ensure that an Energy Performance Certificate is either available or has been commissioned before the property is put on the market and a complementary duty on the seller's estate agent to be satisfied that an Energy Performance Certificate exists or has been commissioned before they start marketing the property on the seller's behalf. In cases where marketing starts without an Energy Performance Certificate, currently both parties must use best efforts to ensure that the Energy Performance Certificate is obtained within 28 days of marketing. Once the Energy Performance Certificate is available, it should be attached to any written particulars produced for the property or, alternatively, the asset rating from the Energy Performance Certificate may be included in the written particulars.
7. These additional requirements applied to the sale of homes where a Home Information Pack was required and were retained (by amending the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations) 2007 when Home Information Packs were suspended in May 2010. There is currently no obligation for Energy Performance Certificates to be obtained at the marketing stage for non domestic sales and rentals, however, and no duties at all on estate agents or letting agents marketing these properties on behalf of the seller or landlord.
8. A comparison was made of all Energy Performance Certificates lodged on the central Register for a 6 month period before and 6 months after the suspension of Home Information Packs on 21 May 2010. A comparison of the number of Energy Performance Certificates which were produced before Home Information Packs (which were required at the marketing stage) were suspended and the number of Energy Performance Certificates which have been produced after Home Information Packs were suspended shows a higher number of Energy Performance Certificates before suspension by approximately 17%. We anticipate that the proposal to ensure the Energy Performance Certificate is either made available, or commissioned, at the point of marketing will increase compliance. We anticipate that we will see an increase in domestic sales compliance similar to the 67% achieved before the suspension of Home Information Packs and that compliance in the non domestic sector will reach a similar level.
9. Applying the same rules to all property transactions would improve compliance and enforcement and raise the profile of the Energy Performance Certificate. It is suggested that only 35% of non domestic properties have an Energy Performance Certificate in place at the marketing stage (see Reference 5) compared to 50% for domestic sales (see Reference 13). We anticipate that the proposed harmonisation of the Regulations should bring these compliance rates into line. If the measures in the Energy Performance Certificate recommendation reports were implemented this would lead to carbon reductions and reduced energy costs for property owners or landlords. These policy proposals are exempt from One In One Out policy as it falls under the exemption for Regulations and Directives from Europe and ensures measures to ensure compliance with European Directive.
10. Enforcement of the duties, under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, is a matter for Local Weights and Measures Authorities through Trading Standards Officers. The Department for Communities and Local Government provided the additional funding that Local Government Regulation, the body that represents Local Authority Trading Standards, said would be needed by Trading Standards Officers to carry out enforcement duties. In setting the formula grant paid to Local Authorities in England and Wales from 2008/2009 onwards this Department made available £3.4M in the first year and £1.9M thereafter for the enforcement of Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.
11. In addition, Trading Standards Officers retain the income derived from penalty charge notices served which should offset the cost of taking enforcement action in most cases. The amount of the penalty is £200 where the breach relates to a domestic property. For non domestic properties, the amount is a sum equivalent to 12.5% of the rateable value of the property – subject to a minimum of £500 and a maximum of £5,000.

Rationale for intervention

12. At present there are widespread problems with non compliance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 in both the domestic and non domestic sectors of the property market. There is an existing requirement for an Energy Performance Certificate to be made available where a building is to be sold or rented. The Energy Performance of Buildings Directive requires energy information to be made available to potential buyers and tenants in order to help inform their decisions on whether to buy or rent. However, industry reports and other anecdotal evidence (see Reference 4) that has been provided to the Department for Communities and Local Government show that the Energy Performance Certificate is not being made available at the beginning of the marketing process in many cases. The current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 are also seen as inconsistent and sellers, landlords, estate agents and enforcement authorities are unclear of the requirements under the current Regulations. We intend to change this by harmonising the regulations to ensure the Energy Performance Certificate is either available or has been commissioned whenever any property is put on the market for sale or rent. We also intend to clarify the requirement for sellers and landlords to provide an Energy Performance Certificate to potential buyers or tenants at the beginning of the process and to clarify the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 so that enforcement authorities are able to carry out their duties more effectively.
13. For non domestic sales and rentals, there is evidence from industry reports that the level of compliance is poor. A report published by Elmhurst Energy Services Ltd in October 2010 (see Reference 5) concluded that only 35% of commercial properties marketed for sale or rent had an Energy Performance Certificate which suggested that 65% of property vendors did not have an Energy Performance Certificate available at the point of marketing. Research by National Home Energy Rating in 2009 (see Reference 6) focused on 108 non domestic property agents. When questioned 88 (81%) did not have an Energy Performance Certificate available for properties that were being marketed. The reasons for this were as follows: 47% said they either believed that an Energy Performance Certificate was not necessary or they did not know that one was required, 36% said that they would only obtain an Energy Performance Certificate at the point of sale and 17% said they believed that the Energy Performance Certificate was in the process of being obtained.
14. A recent complaint made to the EU Commission about implementation of the original Energy Performance of Buildings Directive has resulted in a communication to the Department for Communities and Local Government from the EU Commission. Although the communication raises issues at the pre-infraction stage the EU Commission could take further action (i.e. begin infraction proceedings) if not satisfied with the UK's response to the complaint. The EU Commission received a complaint on 13 May 2010, claiming that Energy Performance Certificates were only issued in respect of 20% of non domestic buildings which are sold or rented. The Commission has subsequently made further enquiries which have referred to compliance and enforcement overall, i.e. for both domestic and non domestic sectors, in relation to the Department for Communities and Local Government's initial responses. This increases the likelihood of infraction proceedings.
15. If the EU Commission were to take further action resulting in successful infraction proceedings it could request the European Court to impose a daily penalty or a lump sum. There is a formula for working out the final sanctions that could be imposed on a Member State and although the Department for Communities and Local Government has not done detailed calculations, for the UK we estimate this would amount to approximately £10,000,000, in the case of the lump sum. There is also a formula for working out the daily penalty amount, based upon the following variables; the seriousness of the infringement, its duration and the need to ensure that the sanction itself is a deterrent to further infringements. It is not possible, however, to state what the daily penalty amount is likely to be. It will be for the EU Commission to advance the case for a daily penalty and an amount based upon the seriousness and duration of the breach.
16. Energy Performance Certificates are only valid if they are lodged on the central Register. Accreditation Schemes have provided anecdotal evidence that Energy Performance Certificates have been produced but not lodged on the central Register. Energy Performance Certificates may have been produced but not lodged in order for the energy assessor to avoid paying the lodgement and administration fee which Accreditation Schemes may charge for lodging the

reports on the central Register. The administration fee will cover the cost of the quality assurance audit regime, insurance and technical support services. A separate analysis by the Building Research Establishment (BRE) and the Register Operator (Landmark Information Group) on behalf of the Department for Communities and Local Government sampled 51,188 commercial Energy Performance Certificates. This process identified that approximately 17% of the Energy Performance Certificates analysed may not have been lodged on the central Register. The analysis undertaken is not publicly available, because only those persons authorised by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) 2007 can access information which will identify an individual building. If Energy Performance Certificates are not lodged then those consumers are placed at an unfair disadvantage in comparison to those consumers that do have their Energy Performance Certificates that are lodged. This enables consumers that have a lodged Energy Performance Certificate benefit from Accreditation Schemes continually monitoring the quality of the Energy Performance Certificate and the performance of approved energy assessors.

17. In addition, 94% of respondents to a recent Department for Communities and Local Government consultation exercise (see Reference 3) were in favour of the proposal that advertisements for the sale or rent of both domestic and non domestic properties should be required to include the energy performance rating. Of the respondents to the consultation 90% were from industry groups with an interest in the energy performance of buildings regime (see Reference 11).
18. Improved compliance will enable Department for Communities and Local Government to more easily identify whether we are meeting our obligations under the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. Compliance with the Energy Performance of Buildings Directive will also be crucial to non domestic buildings carbon reduction which is at the heart of the current proposals for the Green Deal non domestic policy.
19. Improved compliance will provide the Government with more accurate data on the energy performance of buildings in England and Wales and will enhance our ability to monitor the standard of the Energy Performance Certificates that are completed. Improvement to the energy efficiency of the building will contribute to a reduction in carbon emissions and the carbon footprint of the building, as well as lower running costs for building occupants.

Policy objective

20. To ensure that the requirements of the Energy Performance of Buildings Directive are met so that potential buyers and tenants are provided with an Energy Performance Certificate to inform their decision on whether to buy or rent the property in question and enable them to make comparisons.
21. Buildings account for almost 50 per cent of the UK's carbon emissions. The Climate Change Act 2008 commits the UK to a statutory target to reduce its carbon emissions (from all sources) by 80 per cent by 2050. The provision of better information to support policy making would be provided by the central Register, which would enable the future development of effective proposals to improve the energy performance of buildings and monitor the energy performance of buildings policy.
22. To reduce the risk of infraction following a recent complaint made to the EU Commission about implementation of the original Energy Performance of Buildings Directive has resulted in a communication to the Department for Communities and Local Government. These changes are intended to address the concerns the Commission have with the implementation of the Directive:
 - Rules to be harmonised so that an Energy Performance Certificates must either be available or have been commissioned before any property is put on the market for sale or rent (this rule currently only applies to the sale of domestic properties). The Commission has asked how the UK Government can ensure that the requirements of the Directive are met in view of article 7(1) which requires Member States to ensure, amongst others, that when buildings are sold or rented out, an energy performance certificate is made available. This proposal will improve compliance in the non domestic sector and our expectation is that the level of compliance will be raised to the level of domestic sales, which are expected to rise to 67%.
 - A person acting on behalf of the 'relevant person; (i.e. the seller or landlord) must be satisfied that an Energy Performance Certificate exists or has been commissioned before they start

marketing the property (this rule also only applies to sales of domestic properties at the moment). Our reasoning for this proposal is line with the reasoning above i.e. that it will improve compliance rates particularly in the non domestic sector; this is because the requirement will focus sellers and landlords attention earlier in the transaction on the need to obtain an Energy Performance Certificate.

- The relevant person or a person acting on their behalf must attach the Energy Performance Certificate to written particulars for the marketing of all properties (this rule only applies to domestic property sales currently, where there is also an option to include the asset rating instead. In addition to extending this rule to all sales and rentals, this option will be removed so that the Energy Performance Certificate itself must be attached in all cases). The option of attaching the Energy Performance Certificate to written particulars already exists for domestic sales. By requiring that an Energy Performance Certificate is attached to written particulars the policy will achieve two objectives. Firstly it will enable the consumer to be made aware of the detailed energy efficiency of the property immediately (rather than just a simple asset rating) and it can then inform their home buying decision making process. Secondly, it will make enforcement much easier for Trading Standards Officers as they will immediately be able to assess whether or not an Energy Performance Certificate has been commissioned and made available (because it would be attached to the written particulars). We are also providing Trading Standards Officers with the power to be able to require the production of evidence that the Energy Performance Certificate has been commissioned if it is not attached to the written particulars prior to marketing (see below). This proposal also has other beneficial links to wider Government policies including the Green Deal as the Energy Performance Certificate will be a mechanism for informing consumers about the benefits of the Green Deal.
- The relevant person to provide the Energy Performance Certificate earlier in the process by removing the option to delay providing an Energy Performance Certificate to a potential buyer or tenant until shortly before a binding contract of sale or rental is entered into. Again our reasoning for this is similar to the justification for the first two proposals and in particular to ensure that the Directive's aim of making it possible for consumers to compare and assess the energy performance of buildings is met coupled with the need for prospective owners to benefit from energy performance transparency in the EU property market.
- Both parties to use reasonable efforts to ensure that the Energy Performance Certificate is obtained within 7 days of marketing in cases where marketing starts without an EPC (a period of 28 days is currently specified in the Energy Performance of Buildings Regulations). A further 21 days is allowed and Trading Standards Officers may issue an automatic penalty notice if the building is still on the market. Again our reasoning for this is similar to the justification for the first two proposals.
- New powers for enforcement authorities to require production of evidence that an Energy Performance Certificate has been ordered. Again our reasoning for this is similar to the justification for the first two proposals.

Description of options considered (including do nothing)

Option 1: Do nothing.

23. No regulatory changes required. Maintain the current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 which do not address the issues of non compliance and enforcement issues effectively.

Option 2: Improve compliance by other means, including publicising the benefits of potential energy and cost savings by implementing the Energy Performance Certificate recommendations.

24. This option includes the following proposals:

- (a) encouraging Trading Standards Officers to be more proactive,
- (b) encouraging energy assessors and others to report examples of non compliance to Trading Standards Officers and
- (c) a publicity campaign aimed at consumers, landlords, estate agents and others to publicise benefits of Energy Performance Certificates and to remind them of their obligations under the

Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

25. Local Government Regulation, the body that represents the interests of Trading Standards Officers, has made the position clear with regard to demands for more proactive enforcement of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. They point out that individual councils set their own enforcement policies based on their own local priorities. Council trading standards services' work has to be Hampton compliant (see Reference 7) and enforcement action is risk based and action is taken where appropriate, proportionate and in the public interest. Local Government Regulation have also pointed out that resources are limited, that Trading Standards are responsible for dealing with a wide range of enforcement duties and that, for these reasons, most Trading Standards Officers will only respond to specific complaints. Finally, the Local Government Regulation complain that the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 as currently drafted do not enable them to carry out their enforcement duties effectively.
26. Energy assessors, accreditation schemes and concerned members of the general public have an important role to play in helping to identify cases of non compliance and bringing them to the attention of Trading Standards Officers. Direct action by concerned professionals and members of the public would raise the profile of Energy Performance Certificates and is likely to improve compliance levels. However it would not address the problems associated with the current drafting of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and overstretched Trading Standards Officers being unable to follow up every complaint.
27. A full scale, professionally mounted publicity campaign would be expensive to set up and run and is unlikely to bring about the improvements we are seeking to achieve on its own. The Department for Communities and Local Government has invested considerable sums in this area in recent years but still the challenges remain.

Option 3 (the preferred option): Amend the existing Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 to clarify the requirements under the Energy Performance of Buildings Directive, this will improve compliance and make enforcement easier.

28. The following regulatory changes being proposed will make the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 more consistent and coherent. The application to all transactions of the duty to either have or to have commissioned an Energy Performance Certificate before a property is advertised for sale or rent should result in improved compliance and the easier detection of non compliance.

Requirement to attach Energy Performance Certificate to written particulars

29. At present, for domestic sales only, the seller or the relevant person is required to either attach the Energy Performance Certificate to any written particulars for the property or to include the Energy Performance Certificate rating in the written particulars. We propose to change this so that, in future, the Energy Performance Certificate must be attached to the written particulars, i.e. just including the Energy Performance Certificate rating in the particulars will not be acceptable. As a consequence of other changes being proposed and described below, this requirement would also apply to domestic rentals and non domestic sales and rentals.
30. Recital 10 of the EU Directive 2002/91 (see Reference 1) for the Energy Performance of Buildings requires Member States to introduce transparency for prospective owners and users with regard to the energy performance in the Community property market. This would suggest that energy information needs to be made available earlier in the process rather than at the point of completion.
31. This requirement to attach the Energy Performance Certificate to the written particulars will affect on those businesses who advertise properties for sale or rent, e.g. estate agents or those organisations involved in the sale or rent of commercial properties. This change may also impact on those renting properties as holiday lets for 4 months using advertising materials. The costs associated with this regulatory change when spread over the number of properties is relatively small.

32. This change will make it more likely that potential buyers and tenants see the recommendations attached to the Energy Performance Certificate, rather than just the rating, and will therefore meet the objectives of the Energy Performance of Buildings Directive more effectively. The requirement will be to attach the certificate (not the full Energy Performance Certificate) which consists of one sheet of paper printed on both sides. The duty will only apply to written particulars as defined in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and not to ordinary property advertisements. In the case of domestic property sales, for example, written particulars are currently defined as a written description of the property that includes at least two of the following:

- (a) a photograph of the building or any room in the building;
- (b) a floor plan of the building; or
- (c) a description of the size of the rooms in the building.

NB - Following the clearance of this Impact Assessment by the Regulatory Policy Committee, the policy was modified so that only the first page of the EPC will now be required to be attached to written particulars. This will reduce the estimated costs of making this change that are described below,

Requirement for an Energy Performance Certificate to be obtained or commissioned before a property is marketed for sale or rent

33. There are clear benefits in applying the same rules to all types of transaction as this will provide a consistent legislative approach, improved compliance and easier enforcement. Under the current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, the requirement to have commissioned an Energy Performance Certificate before marketing starts only applies to sales for domestic properties. The policy objective of this change is to ensure that an Energy Performance Certificate is obtained before or shortly after a property is put on the market for sale or rent. This will ensure better compliance and increase the likelihood that potential buyers and tenants see the Energy Performance Certificate before they take decision on whether to buy or rent the property in question. The requirement to either have or to have commissioned an Energy Performance Certificate before marketing starts in all cases will also make non compliance easier to detect and enforcement less difficult.

Making the EPC available for marketed sales within 7 days

34. Regulation 5A of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 provides that, for domestic sales only, there is a duty on a person acting on behalf of the seller to ensure that an Energy Performance Certificate is either available or has been commissioned before the property is put on the market. There is also a complementary duty on the person acting on behalf of the seller to be satisfied that an Energy Performance Certificate exists or has been commissioned before they start marketing the property on the seller's behalf. In cases where marketing starts without an Energy Performance Certificate, both parties must use all reasonable efforts to ensure that the Energy Performance Certificate is obtained within 28 days of marketing.

35. These additional rules applied to the sale of homes where a HIP was required and were retained (by amending the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) when Home Information Packs were suspended in May 2010 year in order to provide continuity in the housing market. There is currently no obligation for Energy Performance Certificates to be obtained at the marketing stage for non domestic sales and rentals but as explained above it is proposed to extend the requirement to these as well, as part of this package of regulatory changes.

36. Where marketing starts without an Energy Performance Certificate, the seller or the person acting on behalf of the seller must use all reasonable efforts to ensure that the Energy Performance Certificate is available within 28 days of the start of marketing. This 28 day period was allowed for the production of a Home Information Packs and this period was retained following the suspension of the Home Information Packs. The 28 days may have been appropriate for the purposes of the Home Information Pack as some of the required documents could take a while to assemble (e.g. evidence of title for the sale of an unregistered property) but this does not apply to the production of the Energy Performance Certificate.

37. A survey of almost 13,000 Energy Performance Certificates provided by Niche Communications UK (see Reference 12) in the period June/December 2010 found that the average time to acquire an Energy Performance Certificate was 3.3 days.
38. Although the Energy Performance Certificate can usually be obtained quickly, there is evidence that the 28 days is seen by estate agents as the period that is allowed in which to get an Energy Performance Certificate. In cases where the Energy Performance Certificate is available earlier than 28 days there is evidence that agents believe that they have 28 days in which to include energy information derived from the Energy Performance Certificate in written particulars provided for the property.
39. A reduction of the period during which the Energy Performance Certificate is expected to be made available is therefore not unreasonable and will address the problems associated with the current 28 day period. The change being proposed will allow marketing to start without an Energy Performance Certificate where one has been commissioned. If the Energy Performance Certificate is not available after 7 days the parties must continue to make reasonable efforts to obtain it as soon as possible. Where an Energy Performance Certificate has not been obtained within 7 days there is a duty to obtain it within a further 21 days otherwise a penalty notice may be served.

Clarifying when an Energy Performance Certificate is required (Amendment to Regulation 5)

40. This amendment to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 will clarify when an Energy Performance Certificate is required. It will require the 'relevant person' to make the Energy Performance Certificate available to prospective buyers or tenants as early as possible and, in particular, when a prospective buyer or tenant requests information in writing or views the property in question. The amendment will counteract the erroneous belief that the provision of the Energy Performance Certificate can be delayed until shortly before the parties enter into a contract for sale or rent.
41. Regulation 5(2) of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 stipulates that, when selling or renting out a building, the 'relevant person' must make an Energy Performance Certificate available to prospective buyers or tenants at the earliest opportunity and in any event, 'before entering into a contract to sell or rent the building'. The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 also provides two trigger points for when the Energy Performance Certificate must be provided. These are when information is made available in writing at the request of a prospective buyer or tenant, or when a pre-arranged viewing of the property takes place.
42. The provision requiring the Energy Performance Certificate to be provided before entering into a contract is intended as a fallback. However, there is evidence that it is treated as the default option. As a result, many landlords and sellers defer provision of an Energy Performance Certificate until shortly before exchange of contracts, when it is clearly too late to be of value to a prospective buyer or tenant in terms of their decision about which building to buy or rent. The evidence suggests that the level of non compliance of this type may be as high as 65% in the non domestic sector. When questioned 36% of estate agents said they would only get an Energy Performance Certificate at the point of sale (see Reference 6). This is mainly due to a misinterpretation of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 to mean that it is acceptable for building owners not to make Energy Performance Certificates available to prospective buyers or tenants until exchange of contracts.
43. We propose to amend Regulation 5(2) so as to remove any doubt about the requirements set by the regulations by deleting the words 'and in any event before contracts are exchanged.' We have previously consulted on this issue (see Reference 3) under the previous Administration. More than 90% of respondents agreed that the words should be deleted from the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 in order to make it clear that the Energy Performance Certificates should be made available earlier in the process.
44. This measure will not impose any additional costs since the amendment will only clarify the existing requirements. The clarification will have the benefit of ensuring that prospective buyers

and tenants are provided with details of the building's energy rating and options for improving it at the earliest possible stage and before they commit themselves to a sale or tenancy.

Power to require production of documents

45. Regulation 39 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 gives Trading Standards Officers a power to require the 'relevant person' (i.e. a seller or landlord) to produce a copy of the Energy Performance Certificates and the associated recommendation report for inspection and to take copies if necessary. Under the amended Regulations these powers are extended in relation to the duty (under regulation 5A(3)) to ensure that the relevant person has commissioned an Energy Performance Certificate and that a person acting on their behalf (e.g. an estate agent) is satisfied that one has been commissioned. Estate agents are already under a duty to ensure that an Energy Performance Certificate is available or has been commissioned before they start marketing and to include energy information in the written particulars under Regulation 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. These duties are enforced by Trading Standards Officers who may serve a penalty notice in the case of a breach.
46. In cases where marketing starts before the Energy Performance Certificate has been obtained the seller, landlord or another person acting on their behalf should be able to demonstrate that an Energy Performance Certificate has been commissioned. The changes being proposed will amend regulation 39 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 to enable enforcement authorities to require the production of this evidence.

Costs and benefits of each option (including administrative burden);

Option1: Do nothing.

Maintain the current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 which are open to misinterpretation and do not address issues of non compliance.

47. There are no costs associated with this option apart from the continued costs associated with the low level of compliance, e.g. poor use of energy resources. These figures, however, are impossible to quantify and no cost estimate has been provided.

Option 2: Improve compliance by other means, e.g. publicising the benefits of potential energy and cost savings by implementing the Energy Performance Certificate recommendations.

48. Maintaining the current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 would not allow us to address the issues of non compliance and enforcement effectively. It would also have the potential to result in increased non compliance with the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. Improving compliance through publicity campaigns would be the most costly option. The costs associated with publicity campaigns are substantial and there would be no guarantees that these would result in improved compliance. Non compliance is still a significant issue which would suggest that the previous publicity campaign had little or no impact.
49. The Department's publicity campaign, which ran between June 2008 to March 2009, to inform the public (in particular homebuyers, sellers, landlords, tenant and estate agents) of the provisions of the Energy Performance of Buildings Directive and the financial and carbon reduction benefits that can be achieved through following the recommendations in the Energy Performance Certificate cost just over £4 million. A complementary campaign to promote the advice and information available to homebuyers through the Home Information Packs and the requirements on estate agents ran between February and April 2009. This campaign, which, included advertising in national, trade and regional media, cost £1.48 million.
50. No data is available to support the effectiveness of the previous publicity campaigns. We are, therefore, unable to provide evidence on whether these campaigns offered value for money and the impact on compliance. A monitoring exercise was commissioned to evaluate the effectiveness of Home Information Packs, but this was not progressed once Home Information Packs were suspended in May 2010. We believe undertaking an exercise to monitor the

effectiveness of any future publicity campaign or implementing Option 2 does not represent the most efficient use of resources.

51. A more detailed cost analysis of Option 2 would not be proportional given this option may not achieve the desired results.

Option 3 (Preferred Option): Amend the existing Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 to clarify and amend the requirements under the Energy Performance of Buildings Directive, this will improve compliance and make enforcement easier.

52. There is only one additional cost associated with the regulatory changes being proposed under this option – a requirement to attach the Energy Performance Certificate to the written particulars of the property for sale or rent. The other regulatory changes outlined above will not attract any additional costs.

53. It is difficult to estimate how many buildings have an Energy Performance Certificate at the point when the written particulars are made available. No accurate data exists for the number of buildings which have an Energy Performance Certificate at the marketing stage. Anecdotal evidence and published reports indicate that Energy Performance Certificates are being produced at the point when transactions have been completed. The costs per annum, associated with implementing this option, are shown in tables 1, 2 and 3 below and are, therefore, based on the number of buildings where an Energy Performance Certificate is available at the point at which the property transaction has been completed.

54. The cost scenarios below are based on; (a) full compliance (table 2) where all of those buildings that require an Energy Performance Certificate will obtain one at the marketing stage and (b) the current level of compliance (table 3), where 50% of domestic property sales and 35% of domestic rentals and non domestic sales and rentals have an Energy Performance Certificate on completion. We have looked at the scenario whereby compliance is 100% so that we can determine what the maximum cost is likely to be and to reflect our belief that the proposed measures are likely to improve compliance.

55. The best cost estimate (table 1) of £815,603 is the average between full compliance and the current levels of compliance of 50% for domestic sales, 35% for domestic rentals and 35% for non domestic sales and rentals.

Table 1: Costs of Option 3

Type of transaction	Property listings	Total cost per year (£)
Domestic sales	1,533,807	495,420
Domestic private rentals	1,753,066	566,,240
Non-Domestic sales and rentals	273,906	91,594
Total	3,560,779	1,153,254
Best cost estimate per annum (£)		815,603

Table 2: Sensitivity analysis of Option 3: upper bound costs

Total cost per annum (£)	1,153,254
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Table 3: Sensitivity analysis of Option 3: lower bound costs

Total cost per annum (£)	477,952
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56. The estimated costs in table 1, 2 and 3 are based on a number of assumptions these are as follows:

- estate agents catering for the high end of the property market are more likely to include the Energy Performance Certificate as part of a bespoke property brochure, whereas those catering for the much larger general property market are more likely to provide the Energy Performance Certificate as a single sheet of paper in colour or black and white. In these circumstances it is envisaged that many estate agents will photocopy or print the relevant page of the Energy Performance Certificate and include the page with the property details ('written particulars'). Industry has confirmed this approach;
- analysis of Her Majesty's Revenue and Customs data¹ shows that 5% of completed residential (domestic) and 24% of non residential (non-domestic) property transactions are at the high-end of the market. This assumption is based on the number of completed transactions in 2009 costing over £500,000;
- figures provided in confidence by a UK estate agent has estimated the cost of providing 200 copies of the property brochure for the high end market is: £269 for a 4 page document, £530 for a 6 page document and £600 for an 8 pages document. This equates to an average cost of 38 pence per sheet;
- for the remainder of the much larger general property market it is estimated that a single A4 sheet in colour would cost 26 pence and a black and white copy would cost 4 pence to produce². An assumption has been made that overall half of the copies produced will be in colour and half in black and white. There is, however, no obligation on the agent to produce a colour copy of the Energy Performance Certificate. We have also made an assumption on the average number of copies that will be produced (in colour and 3 black and white) for each property. We have estimated 2 colour and 3 black and white copies;
- listings for domestic sales have been estimated from new listings data provided by the Rightmove Property Portal (1 April 2009 to 31 March 2010). A 10% adjustment has been made for those properties not listed by Rightmove. These figures are likely to include an element of double counting for properties which have been listed by more than one agent. A comparison between the number of properties listed with Rightmove and the number of Energy Performance Certificates lodge on the central Register for domestic marketed sales, during the same time period, indicate that only 50% of properties had an Energy Performance Certificates during that period. The current level of compliance for domestic sales has, therefore, been assumed to be 50%;
- prior to the suspension of Home Information Packs in May 2010; compliance rates for domestic sales were 67%. The Home Information Pack required the availability of an Energy Performance Certificate early in the home buying and selling process. The proposals included in this Impact Assessment will in a similar way ensure that commissioning begins at the earliest opportunity so that the Energy Performance Certificate is made available before the property is marketed. Commissioning an Energy Performance Certificate involves the seller, landlord or the person acting on their behalf requesting an Energy Performance Certificate from an energy assessor. We therefore assume that we will see an increase in domestic sales compliance to a level similar to the level that was achieved prior to the suspension of Home Information Packs;
- listings for domestic private rentals have been estimated from the number of Energy Performance Certificates lodged on the central Register (1 April 2009 to 31 March 2010) with a transaction type equal to 'rented (private)'. Without any corroborating information an assumption has been made that compliance levels for the number of domestic private rented properties marketed without an Energy Performance Certificate are similar to those for non domestic sales and rentals. A 65% adjustment has been made to take this into account. The domestic private rentals figure also includes short term holiday lets, which are required to have an Energy Performance Certificate if they are rented out for a period of 4 months or more. A figure for the estimated number of short term holiday lets has been taken from the Impact Assessment, 'Requiring Energy Performance Certificates for short term holiday lets' (see Reference 10). No adjustment has been made to this figure;
- for non domestic sales and rentals, evidence suggests that 65% of commercial properties are sold or rented without an Energy Performance Certificate at all. Listings for non domestic properties have been estimated from the number of non domestic Energy Performance

¹ HM Revenue & Customs (http://www.hmrc.gov.uk/stats/survey_of_prop/table16-1.pdf)

² DCLG Reprographics Unit

Certificates lodged on the central Register (1 April 2009 to 31 March 2010). A 65% adjustment has been made to take into account those non domestic properties for sale or rent which do not have an Energy Performance Certificate and

- 57. The costs associated with Option 3 are relatively small. A more detailed analysis could be done but it would not be cost effective to do so.**

Other key benefits of implementing Option 3, include

58. Making the Energy Performance Certificate available to potential buyers and tenants at the beginning of the marketing process will ensure they have better information to inform their decision on whether to buy or rent a property. Consumers who are more informed and more aware are more likely to act on the recommendations. The Energy Performance Certificate will also ensure that owners and building managers are provided with information regarding the energy efficiency of the buildings that they own / control, together with advice on how the energy efficiency or effectiveness of these systems might be improved.
59. Another benefit is to ensure that the EPC is made available early enough in the process and before contracts have been exchanged as well as ensuring that the Directive's aim of making it possible for consumers to compare and assess the energy performance of buildings is met coupled with the need for prospective owners to benefit from energy performance transparency in the EU property market.
60. Research has suggested (Reference 9) that 31% of buyers thought that their property would be more attractive to future purchasers if they included some of the recommendations. Whereas 62% said they would be motivated to implement the recommendations to reduce the running costs. Acting on the advice in the Energy Performance Certificate recommendations report, rectifying faults or making appropriate improvements, where this is attractive and cost effective, may result in immediate improvements to the energy efficiency of the buildings and, therefore, reduce the operating cost. There is no statutory requirement for the recommendations in the Energy Performance Certificate to be implemented so we have not been able to quantify the benefits of implementing this proposal. Acting on the recommendations of the Energy Performance Certificate will, however, reduce costs and reduce carbon emissions. For example, it is estimated that implementing the recommendations in Energy Performance Certificates to bring homes up to their potential rating, would on average reduce each homes CO₂ emissions by 1.2 tonnes and reduce its fuel bills by £182 a year (see Reference 8) .
61. Based on the cost of 371,365, the Department for Energy and Climate Change estimates of the social cost of carbon (non tradable) of £52 per tonne in 2011³ and the current carbon emissions for domestic properties with Energy Performance Certificates lodged on the central Register, we have estimated the reductions in carbon emissions required to cover the policy costs. Our estimates show that if carbon emissions reduced by 7,100 tonnes (representing 0.1% of current carbon emissions from domestic buildings) this would justify the costs over the lifetime of the policy⁴.
62. The ability to provide more detailed evidence of compliance with the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. Compliance with the Energy Performance of Buildings Directive will be crucial to non domestic buildings carbon reduction which is at the heart of the current proposals for the Green Deal non domestic policy.
63. Improved data on the energy performance of buildings in England and Wales and the ability to monitor the standards of the Energy Performance Certificates that are completed. The condition and the energy efficiency of the buildings contribute to its energy consumption and operational cost. Improved energy efficiency of the building will contribute to a reduction in carbon emissions and the carbon footprint of the building as well as lower running costs for building occupants.
64. Improving compliance will enable the authenticity of most Energy Performance Certificates to be verified once the reports are lodged on the central Register.

³ 'Carbon Valuation in the UK Policy Appraisal: A Revised Approach' (DECC July 2009)

65. Improving compliance will improve the inspection process and ensure that a consistent approach is adopted when producing the reports. This approach would provide:

- better and more meaningful information on the energy efficiency of buildings, the amount of energy consumed by those buildings and the amount of energy which could be saved if the measures in the Energy Performance Certificate recommendations were implemented;
- that reports lodged on the central Register could be assessed for quality assurance purposes; this would also provide an indication of whether schemes were complying with current auditing requirements. Improved quality assurance would drive up standards which is important in terms of the context of the wider energy performance of buildings regime;
- generate more business opportunities and therefore provide more work for energy assessors, and
- better information to the energy industry: aggregated information about the energy assessments would help industry to assess the extent of the market for energy efficiency improvement products. This could lead to the development of new products and or more efficient marketing of existing products, again contributing to the achievement of energy and carbon reductions.

Risks and assumptions

66. Analysis of data from a variety of sources indicates that there is no clear discernable pattern between the numbers of Energy Performance Certificates lodged on the central Register when compared to the number of completed property transactions. However, the numbers indicate that the number of lodgements for domestic properties has decreased as a proportion of listings⁵ following the suspension of Home Information Packs. It is likely without taking any action that the levels of compliance will reduce even further over time. This is a high risk; the assumed costs and non monetised benefits of the changes to Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 are reasonable in relation to this risk. Energy Performance Certificates are also an essential part of the Government's Green Deal policy.

67. Analysis of data from various sources indicate that compliance levels are low for example, between October 2007 and September 2010, 2.6M domestic Energy Performance Certificates were lodged on the central Register when compared to 2.5M completed transactions recorded by Her Majesty's Revenue and Customs during the same period. This roughly equates to a 2% difference. Although this would suggest that compliance is good the Her Majesty's Revenue and Customs figure does not take into account property transactions that started but were not completed and is therefore an incomplete picture of the domestic sales market, where many sales fail before completion. The closeness of the two figures would also suggest that there are a significant number of domestic properties which have been marketed without an Energy Performance Certificate.

68. Landmark Information Group (the Register Operator) has compared data from the Land Registry on sales between January 2009 and December 2010 with information from the central Register. This showed that just over 87% of completed transactions have an Energy Performance Certificate lodged against them. The 87% refers to an Energy Performance Certificate at the point of a completed transaction not at the point of marketing. This also suggests that while an Energy Performance Certificate may be in place when most transactions are completed many properties are being marketed without an Energy Performance Certificate.

69. There is a risk if we do not take action that we could face further complaints being made to the EU Commission which could result in infraction proceedings. Please refer to paragraph 15 for more details.

70. Under the current Government policy it is considered that a sunset clause is not required; instead a review clause will be included. The purpose of the review is to consider whether the policy objectives that led to the introduction of these amended regulations are still valid and relevant, whether the amendments are still the best way of achieving those objectives and, if so, whether existing regulations can be improved so as to reduce burdens on business. This review is required every 5 years. In addition, Department for Communities and Local Government will review the policy on an annual basis using data from the central Register.

⁵ New listings data for domestic properties from Rightmove property portal (April 09 – Dec 10)

Direct costs and benefits to business calculations (following OIOO methodology);

N/A

Wider impacts

Statutory equalities duties

Statutory Equalities Duties Impact Test: an Equalities Impact Assessment screening has been completed, covering race, age, health, disability and gender equality issues. The proposals will not affect any equality issues.

Economic impacts

Competition Assessment Impact Test: amending the Energy Performance of Buildings Regulations will not produce any competition issues as it does not limit either directly or indirectly the number or range of suppliers of Energy Performance Certificate assessments or limit the ability of suppliers to compete or reduce suppliers' incentives to compete.

Small Firms Impact Test

These proposals have been discussed with the Accreditation Schemes and other industry bodies as part of the consultation process. Industry representatives including energy assessors also belong to four groups: the Technical Steering Groups and the Domestic and Non Domestic Energy Performance Certificate Convention Groups. Other energy assessors are able to feed comments and raise issues to both these groups through their Accreditation Scheme. The schemes have welcomed changes to these policy proposals. Increased compliance with the requirements of the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 will result in a rise in the number of assessments and therefore increased business for energy assessors.

Environmental Impacts

Greenhouse gas assessment: any increase in the efficiency of buildings would lead to an associated decrease in greenhouse gas emissions and increase in air quality. These impacts have not been quantified.

Wider Environmental Issues Impact Test: it is possible there would be an improvement to the heating, and mechanical ventilation if the energy efficiency of the recommendations in the Energy Performance Certificate were acted upon. Also, an improvement to the energy efficiency of the building means more efficient buildings would require less energy to run.

Social impacts

Health and well-being: we do not expect this policy to have any adverse effects on health. Energy Performance Certificate assessments under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 are not specifically designed to assess the risks to public health. Energy Performance Certificates are designed to assess the energy efficiency of the building.

Human Rights: the proposal does not have any impact on human rights.

Justice Impact: this policy does not create new offences and therefore does not have an impact on courts, tribunals, prisons and probation, the legal aid budget or the prosecuting bodies and judiciary.

Rural proofing: there are no expected impacts in rural areas which will be significantly different to urban areas.

Sustainable Development: there are no significant environmental impacts of the policy proposal.

Summary and preferred option with description of implementation plan.

Preferred option 3: Amend the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 in order to implement the Energy Performance of Buildings Directive more effectively, improve compliance and make enforcement easier. These would be implemented by making changes to the Energy Performance of Buildings Regulations that would place a duty on:

- sellers and landlords (referred to as the 'relevant person' in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007) to ensure that an Energy Performance Certificate is either available or has been commissioned before any property is put on the market for sale or rent (this rule currently only applies to sales of domestic properties);
- a person acting on behalf of the relevant person (e.g. their estate agent) to be satisfied that an Energy Performance Certificate exists or has been commissioned before they start marketing the property (this rule only applies to sales of domestic properties currently);
- the relevant person or a person acting on their behalf to attach the Energy Performance Certificate to written particulars for the marketing of all properties (this rule only applies to domestic property sales currently, where there is an option to include the asset rating instead. In addition to extending this rule to all sales and rentals, the option to include the asset rating only will be removed);
- the relevant person to provide the Energy Performance Certificate earlier in the process by removing the ability to delay providing an Energy Performance Certificate to a potential buyer or tenant until shortly before a binding contract of sale or rental is entered into;
- both parties to use best efforts to ensure that the Energy Performance Certificate is obtained within 7 days of marketing in cases where marketing starts without an Energy Performance Certificate (a period of 28 days is currently specified in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007). If the Energy Performance Certificate is not obtained within 28 days a penalty notice may be served; and
- Trading Standards Officers powers to require the production of documents to be extended to cover evidence that an Energy Performance Certificate has been commissioned.

We are intending to bring the Regulations into force on the 1st July 2011; except the Regulation which relates to the requirement to attach an Energy Performance Certificate to written particulars which will come into force on the 1st October 2011. This will enable our partners to inform their members and to allow sufficient time for them to make the necessary operational changes.

The analysis of the costs and benefits in the Impact Assessment has been signed-off by Carla Clifton on behalf of the Chief Economist.

NB - Following the clearance of this Impact Assessment by the Regulatory Policy Committee, this policy will now come into force on 6 April 2012.

Annexes

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

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>Duty to review. The first review will take place in October 2011 then annually thereafter.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>Proportionate check that the regulation is operating as expected; to confirm compliance with the EPBD.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The central Register will hold all Energy Performance Certificates which are lodged under the statutory requirement. The Register Operator will be able to provide a wide range of reports which will be able to demonstrate the number of lodgements that have taken place when compared to other data sources, e.g. Land Registry data. We are proposing to undertake a detailed analysis within 6 months to monitor the effectiveness of these proposals. A timeline plan is currently being developed. We are also proposing to review as part of One In One Out.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>Compliance rates for domestic property transactions, currently 87%, and non-domestic property transactions, currently reported to be 35%, would increase.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>A substantial increase in the number of Energy Performance Certificates lodged on the central Register and, if the Energy Performance Certificates recommendations were adopted, cost savings for the homeowner and reduced carbon emissions.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>The Register Operator will be able to provide standardised reports from data held on the central Register to monitoring purposes.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

Title: Energy Performance of Buildings Directive – Air Conditioning Lead department or agency: Department for Communities and Local Government (DCLG) Other departments or agencies:	Impact Assessment (IA)
	IA No: 0031
	Date: 30/03/2011
	Stage: Enactment
	Source of intervention: EU
	Type of measure: Secondary legislation
Contact for enquiries: phil.beschizza@communities.gsi.gov.uk	

Summary: Intervention and Options

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

To improve the implementation of the Energy Performance Buildings Directive (EPBD). There is currently a lack of information on the energy efficiency of air conditioning systems in England and Wales, uncertainty about whether or not inspections are carried out, an inability to confirm the identity of assessors or to check the quality of the inspections. Intervention is necessary as the current voluntary system has resulted in fewer inspections than anticipated and it is not possible to prove that the UK is meeting the requirements of the EPBD. In a recent consultation 84% of respondents agreed with statutory lodgements. A recent complaint to the EU Commission could result in formal infraction proceedings; intervention would enable us to respond positively to the Commission's concerns.

What are the policy objectives and the intended effects?

This is the first step in a series of measures to provide the evidence which is required to improve compliance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 which transposed the Energy Performance Buildings Directive. The aim is effective implementation of the Energy Performance of Buildings regime by making the lodgement of air conditioning reports on the central Register a statutory requirement. The Government also has a duty to protect consumers and ensure that only accredited assessors complete the inspections and produce the subsequent reports; at present consumers are not getting the level of protection they deserve.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Do nothing: continue the current voluntary lodgement of air conditioning reports on the central Register.
2. Make the lodgement of air conditioning reports a statutory requirement (this is the preferred option).
3. Stop the current voluntary lodgement process i.e. no reports to be lodged on the central Register.

Option 2 would provide improved data on the energy efficiency of air conditioning systems; provide a mechanism for collecting evidence to demonstrating compliance levels and quality of air conditioning inspection reports. Statutory lodgement is also the first step towards ensuring air conditioning inspections are undertaken and will improve consumer confidence in air conditioning inspections and reduce the amount of fraudulent air conditioning inspection reports. This option would also enable the harmonisation of air conditioning inspection reports with Energy Performance Certificates (EPCs) and Display Energy Certificates (DECs) which are already lodged on the central Register.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 4/2016

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes
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Sign-off For enactment stage Impact Assessments:

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

Signed by the responsible Minister:

R. A. Stunell

Date:

10/10/2011

Summary: Analysis and Evidence

Policy Option 2

Description: Make the lodgement of air conditioning inspection reports on the central Register a statutory requirement when the report is produced.

Price Base Year 2011	PV Base Year 2011	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: -£17m	High: -£0,021m	Best Estimate: -£1.1m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£0,003m	£0,021
High		£2.6m	£16.8m
Best Estimate		£0.17	£1.1

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

The current central Non Domestic EPC Register lodgement fee is £5.36. Each assessor may also be required to pay an administration fee costing on average £25 the best estimate calculation assumes half of the assessors will pay this fee. Inspection reports are valid for 5 years. Average costs are simply the undiscounted total costs divided by number of years of the policy. The best estimate of £1.1m is passed on to the building owners or managers of the system (although this may be paid by the assessor).

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

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

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

This policy will contribute to the realisation of benefits in the previous Impact Assessment for the EPBD as such costs for this intervention should be viewed in the context of wider costs and benefits of EPBD policy. If an inspection report was lost, no additional costs would be incurred because the existing report could be downloaded from the central Register. This policy will contribute to the realisation of benefits through better information for future enforcement. Additional business opportunities for energy assessors.

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

Improved data collection; improved monitoring and future policy development; provision of accurate information; reduction of fraud and provision for the simple verification of inspection reports and provision of information about the amount of energy consumed and energy saved. Reduction in our vulnerability to potential EU Commission infraction proceedings. Increased business opportunities for air conditioning assessors.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Following statutory lodgement it is assumed that Government will be able to cross check existing EPC/DECs lodgements and determine which of those buildings have an air conditioning system with the air conditioning reports that have been lodged to ensure all known systems have been inspected. On this basis it is assumed that all 34,000 air conditioning systems identified through EPC/DECs will also lodge an inspection report. The lodgement fee is based on current fee for lodging EPC/DECs on the central Register. Inspection reports are valid for 5 years. The costs are based on the 34,000 air conditioning systems that have been identified from data on the central Register and not on the assumption that all building owners will comply with the requirement of EPBD once statutory lodgement comes into force.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales			
From what date will the policy be implemented?			01/07/2011			
Which organisation(s) will enforce the policy?			Trading Standards			
What is the annual change in enforcement cost (£m)?			No change			
Does enforcement comply with Hampton principles?			Yes			
Does implementation go beyond minimum EU requirements?			No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A		
Does the proposal have an impact on competition?			No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)		Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	12
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	13
Small firms Small Firms Impact Test guidance	Yes	13
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	13
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	13
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	13
Human rights Human Rights Impact Test guidance	No	13
Justice system Justice Impact Test guidance	No	13
Rural proofing Rural Proofing Impact Test guidance	No	13
Sustainable development Sustainable Development Impact Test guidance	No	13

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Energy Performance Buildings Directive 2002/91/EC (http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2002&nu_doc=91)
2	The Energy Performance Building (Certificates and Inspections) (England and Wales) Regulations 2007 (http://www.legislation.gov.uk/uksi/2007/991/contents/made)
3	Consultation – Making better use of Energy Performance Certificates and Data May 2010 (http://www.communities.gov.uk/publications/planningandbuilding/epceffectivenessconsult)
4	BNCAC01: Central Air Conditioning Plant, Government Standards Evidence Base 2009: Key Inputs (http://efficient-products.defra.gov.uk/spm/download/document/id/871)
5	BNPAC01: Package Air Conditioning Units Government Standards Evidence Base 2009: Key Inputs (http://efficient-products.defra.gov.uk/spm/download/document/id/841)
6	Air Conditioning Inspections – the facts – Chartered Institute of Building Service Engineers (http://www.cibse.org/content/The%20facts%20on%20air%20conditioning%20inspections.pdf)
7	Summary of responses – Making better use of Energy Performance Certificates and Data May 2010 (http://www.communities.gov.uk/publications/planningandbuilding/epceffectivenessresponses)

+ Add another row

Evidence Base

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

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

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

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost	0.59	0	0	0	0.015	0.59	0	0	0	0
Total annual costs	0.59	0	0	0	0.015	0.59	0	0	0	0
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

Problem under consideration;

This policy change aims to improve the implementation of the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 by making the lodgement of air conditioning reports on the central Register a statutory requirement. The Energy Performance of Buildings Directive requires Member States to establish the necessary measures to establish a regular inspection of air conditioning systems of an effective rated output of more than 12kW. The inspection will include an assessment of the air conditioning efficiency and provide advice on ways in which the performance of the system could be improved.

At present we are unable to demonstrate UK compliance with the Energy Performance of Buildings Directive as we do not have the evidence to confirm that the regular inspection of air conditioning systems are being carried out. We are aware that approximately 2,500 air conditioning reports have been completed; this is a very low number when compared to the estimated 300,000 air conditioning systems in England and Wales. It could also be argued that we are currently failing to fulfil our obligations under Energy Performance of Buildings Directive by not providing for a mechanism for monitoring the requirement to ensure that regular inspection of air conditioning systems are being carried out. This would form part of the 'necessary measures' (required by Energy Performance of Buildings Directive) to ensure that the regular inspection of air conditioning systems is being maintained and would put monitoring of such systems on the same lines as that which already exists for Energy Performance Certificates and Display Energy Certificates.

Making lodgement statutory is the first step in a series of proposals to gather the data in order to improve compliance and therefore identify savings for users of air conditioning systems. This policy proposal is exempt from the One in One Out policy as it falls under the exemption for Regulations and Directives from Europe and includes measures designed to ensure compliance with European Directives.

Rationale for intervention:

- Intervention is necessary, as the trial period for voluntary lodgement of air conditioning inspection reports has not been effective and has resulted in fewer lodgements than anticipated. We are concerned about the current level of protection afforded to consumers of air conditioning inspection reports. The Government has a duty to protect consumers and to ensure that only accredited air conditioning energy assessors undertake inspections and prepare the subsequent reports; at present the identity of energy assessors can not be verified via the central Register nor can we monitor the standards of the reports carried out. Anecdotal evidence suggests that there is a growing market in unauthorised air conditioning inspection reports; this means that consumers are not provided with the intended advice in accordance with the agreed inspection procedures.
- Statutory lodgement is the first step in the process to provide better evidence to enable us to address non compliance. As a result of the current approach we are unable to confirm whether all air conditioning systems meet the requirements of the Energy Performance of Buildings Directive and we are not satisfied that we have an effective mechanism for providing the evidence we require in order for us to monitoring compliance. As a starting point, statutory lodgment will enable us to compare central Register data to more easily identify instances of non compliance. Our best estimate is that there are 300,000 air conditioning systems in comparison to the 2,500 inspection reports held by approved Accreditation Schemes which indicates a low level of compliance. The Chartered Institute of Building Services Engineers estimates that less than 5% of the systems that qualify for the inspections have been inspected. (See Reference 6).
- We are vulnerable to a challenge from the EU Commission as well as a challenge from industry as we have created a cadre of air conditioning inspectors who whilst having sought to be trained are without the work load that was envisaged due to the low number of inspection reports being commissioned. An example of our vulnerability is the recent complaint to the EU Commission about implementation of the original Energy Performance of Buildings Directive which has resulted in a communication from the EU Commission. Although the communication raises issues at the pre-infraction stage the EU Commission could take further action (i.e. begin infraction proceedings) if not satisfied with the UK's response to the complaint. The complainant has said that according to a 'recent survey' only 1% of air-conditioning systems had been inspected since 4 January 2009. The EU Commission has now responded to our initial reply and has asked for further information as to how we can ensure that the

requirements of the Energy Performance of Buildings Directive are being met if our system does not include reporting and / or monitoring. If the EU Commission were to take further action resulting in successful infraction proceedings it could request the European Court to impose a daily penalty or a lump sum. There is a formula for working out the final sanctions that could be imposed on a Member State and, although the Department for Communities and Local Government has not done detailed calculations, for the UK we estimate this would amount to approximately £10,000,000, in the case of the lump sum. There is also a formula for working out the daily penalty amount, but (as this depends upon some variables) it is not possible to state what this is likely to be. It will be for the EU Commission to advance the case for a daily penalty and an amount based upon the seriousness and duration of the breach.

- Introducing statutory lodgement will bring air conditioning inspection reports in line with the existing infrastructure arrangements for Energy Performance Certificates and Display Energy Certificates. This approach has demonstrated a much higher level of compliance than the current voluntary arrangements for air conditioning. Given the inefficiency of the current voluntary arrangements, it would seem sensible to now harmonise air conditioning inspection reports with the rest of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and for which the infrastructure already exists. An example of how this harmonisation will aid compliance is that statutory lodgement will provide Trading Standards Officers, who are employed by the Weights and Measures Authorities and are responsible for the enforcement of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, a mechanism for monitoring compliance. Statutory lodgement would enable Trading Standards Officers to determine if a building had the appropriate air conditioning report in place and, if not, take appropriate enforcement action. Department for Communities and Local Government provided additional funding that Local Government Regulation, the body that represents local authority trading standards, said would be needed for enforcement duties. In setting the formula grant paid to Local Authorities in England and Wales from 2008/09 onwards this Department made available £3.4M in the first year and £1.9M thereafter for the enforcement of Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. In addition, Trading Standards Officers retain the income derived from penalty charge notices served which should offset the cost of taking enforcement action in many cases. The amount of penalty charge is £300.00.
- As part of the Sustainable Operations on the Government Estate targets the Government has committed to reducing carbon emissions on 1999/2000 figures by 12.5% by 2010 and by 30% by 2020. The recommendations in the air conditioning inspection report are not mandatory; however if implemented would reduce carbon emissions. The potential electricity, carbon and cost savings identified in the previous Regulatory Impact Assessment for the Energy Performance of Buildings Directive (Articles 7 – 10), from the improved energy efficiency of air conditioning systems, were estimated to deliver a 5% average reduction in energy consumption and annual savings of £36,000,000. This benefit has not been realised because the level of compliance is poor, statutory lodgement should remedy this.
- A recent consultation 'Making better use of energy performance data' (March 2010) (see Reference 3) illustrated that 84% of respondents were in favour of the proposal to make lodgements a statutory requirement whilst 70% agreed with the proposed fee. An analysis of the responses received to the consultation shows that 90% of the respondents were from industry groups with an interest in the energy performance of buildings regime (see Reference 7 for a summary of responses). The change being proposed has been discussed with the Accreditation Schemes and other industry bodies as part of a wider engagement with our partners. Industry representatives have also discussed statutory lodgement at the Air Conditioning Technical Steering Groups and Convention Groups and have contributed to the development of the proposals. Other energy assessors are able to feed comments and raise issues to both these groups through their Accreditation Scheme. Industry believe that without statutory lodgement the important practice of air conditioning inspection reports being created and not filed with their Accreditation Scheme will continue and this will allow standards to fall and the quality of reports and assessors could deteriorate further. The majority of Accreditation Schemes support this proposal as they would like to see the same requirement applied to all schemes.
- Statutory lodgement will also enable us to notify industry with regards to renewal dates and when a building requires a new air conditioning inspection. Some Accreditation Schemes have stated that they will not lodge the air conditioning inspection reports unless it becomes a statutory requirement whilst others are lodging air conditioning inspection reports under the current voluntary scheme. Intervention in the form of statutory lodgement is therefore important in terms of creating consistency across all Accreditation Schemes.

Policy objective

- Providing consumers with the appropriate level of protection.
- There is currently no record of all air conditioning inspections carried out by accredited air conditioning energy assessors in accordance with the requirements of the Energy Performance of Buildings Directive. Making lodgement of air conditioning inspection reports a statutory requirement would be the first step in gathering the data needed in order to improve compliance.
- Air conditioning systems account for approximately one third of all energy consumed in buildings. By building up evidence we will be able in future to develop further proposals which will encourage owners of buildings which have air conditioning systems installed to improve the energy efficiency of the air conditioning systems which will lead to reduce carbon emissions, potentially energy costs and an improvement in the energy efficiency of buildings.

Description of options considered (including do nothing)

- Do nothing. Maintain the present voluntary approach whereby some Accreditation Schemes lodge air conditioning reports on the central Register.
- Statutory lodgement of air conditioning reports.
- Stop the current voluntary lodgement process i.e. no reports to be lodged on the central Register.

Costs and benefits of each option

Option 1: Do nothing

- There are no additional costs or benefits under the do nothing option included in the headline summary in this impact assessment. Any additional costs would relate to possible infraction proceedings brought by the European Court, which cannot be known with certainty, but are estimated as a lump sum £10,000,000. There may also be a daily penalty.

Option 2: Statutory lodgement of air conditioning reports

Assumptions

- Based on work conducted by Department for Environment, Food and Rural Affairs (see References 4 and 5), we estimate that there are approximately 300,000 air conditioning systems in England and Wales, all of which require an inspection under the current Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. When inspections are conducted, a report is produced and these can be lodged by inspectors on central Register. This lodgement is currently voluntary and only 843 reports have been lodged. The Department for Communities and Local Government is aware that Accreditation Schemes have an additional (approximately) 2,500 air conditioning inspection reports which have not been lodged under the voluntary system. The Government currently has no way of easily identifying whether the 299,157 air conditioning systems which we have estimated exists have an inspection report. There is no way of knowing whether the air conditioning systems have been inspected and whether the inspection has been carried out by an accredited inspector.
- When an Energy Performance Certificate or Display Energy Certificate is produced for a building, it is noted whether the building has an air conditioning system. Based on this, the Government knows the location of approximately 34,000 air conditioning systems. We do not know whether these are eligible for inspection (i.e. over 12KW) but given other estimates of 300,000 and no other forthcoming evidence at this point we feel it is reasonable to assume that these are eligible.
- Following statutory lodgement it is anticipated that the Government will be able to use the Energy Performance Certificates / Display Energy Certificates data (which is able to identify the number of air conditioning systems) to cross check with the number of air conditioning reports lodged (which identify those systems that have had inspections) on the central Register to ensure all known systems have been inspected. This process will be implemented by the Department for Communities and Local Government and the Register Operator (Landmark Information Group). On this basis it is assumed that all 34,000 air conditioning systems identified through Energy Performance Certificates / Display Energy Certificates will also lodge an inspection report. It has been assumed that the 843 inspection reports that have already been lodged on the central Register under the existing voluntary arrangements are already part of this 34,000. In the absence of any additional information we feel it

is also reasonable to assume that all of these systems will lodge reports in the first year of implementation, the only impact this will have will be to push forward the year in which the costs are incurred and therefore have a negative impact on the cost figures as a lower discount factor is used. In other words this is a pessimistic scenario.

- The statutory lodgement of air conditioning reports will enable the UK Government to provide evidence to the EU Commission of the extent of inspections of air conditioning systems in the UK. It is acknowledged that there is evidence to suggest the current number of inspections of air conditioning systems relative to the overall number of systems is low. It is also acknowledged that statutory lodgement along with Energy Performance Certificates / Display Energy Certificates data will only go so far to increasing compliance with the requirement for inspections. Statutory lodgement, however, is seen as a first step to enabling the UK Government to demonstrate its monitoring and enforcement of Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and the requirements for the inspection of air conditioning systems. Over time the coverage of Energy Performance Certificates and Display Energy Certificates will increase and so compliance with the statutory requirement for inspections is expected to increase as well. The cross checking of Energy Performance Certificates / Display Energy Certificates with lodged air conditioning reports will ensure this.
- Statutory lodgement will ensure that compliance can be enforced over time. Air conditioning systems with lodged reports on the central Register can be easily identified, which will show those systems in need of an updated report after 5 years. If no report is forthcoming action can be taken to ensure compliance.
- The lodgement fee of £5.36 is based on current fee for lodging Energy Performance Certificates and Display Energy Certificates on the central Register. This reflects an operational cost for developing and maintaining the central Register. The lodgement fee is subject to a service review every 3 years. The administration fee covers the cost of the quality assurance audit regime, insurance and technical support services. Costs vary from Scheme to Scheme; on average the cost is £25 per lodgement. As some Accreditation Schemes do not charge an explicit administrative fee (as it could already be included in the inspection cost and is not a requirement in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007), we have assumed that half charge an additional administration fee and half do not. The inspection reports are valid for 5 years after which a new inspection will need to be conducted and report lodged.

Costs and Benefits of Option 2

- The costs and benefits assessed in this Impact Assessment relate only to the lodgement of inspection reports as a result of it becoming statutory to do so. As no direct benefits arise as a result of the lodgement process itself only the costs have been assessed. Any additional inspections that arise and the costs and benefits of these are attributable to the previous Impact Assessment. Although compliance may rise as a result of lodgements, the act of inspection and the production of an inspection report will be what drives benefits (such as improved energy efficiency of air conditioning systems) and such benefits should therefore be designated to the policy which required such inspections to be undertaken. Nevertheless, the costs associated with this policy must be viewed in the context of the wider policy on the Energy Performance of Buildings regime and the costs and benefits thereof.
- Table 1 show how many additional lodgements are assumed to happen each year and the associated costs incurred. These result in an overall present value cost of £1.1m as shown in Table 1a.

Table 1: Costs of Option 2

Year	Number of additional lodgements	Lodgement fee costs (£)	Admin fee costs (£)	Discounted lodgement fee costs (£)	Discounted admin fee costs (£)
2011	33,157	177,722	414,463	177,722	414,463
2012	0	0	0	0	0
2013	0	0	0	0	0
2014	0	0	0	0	0
2015	843	4,518	10,538	3,938	9,183
2016	33,157	177,722	414,463	149,637	348,966
2017	0	0	0	0	0
2018	0	0	0	0	0

Table 1a: Present value of costs for Option 2

Present value of lodgement fee costs (£)	PV of admin fee costs (£)	PV Costs (£)
331,296	772,612	1,103,907

Sensitivity Analysis

Lower bound estimates of the costs of statutory lodgement take into account two variable elements. Firstly the uncertainty around the number of reports that will be lodged following statutory lodgements and secondly the proportion of lodgements incurring administrative fees. In a low cost scenario it has been assumed that no lodgements incur admin fees and that only the current number of air conditioning systems that comply with statutory inspections will also comply with statutory lodgement. The Government knows that approximately 2,500 inspection reports are currently held by Accreditation Schemes. Therefore, for the lower bound of costs it has been assumed that once adjusted for the current number of lodged reports, 1,657 newly lodged reports will emerge following statutory lodgement. As Table 2 shows, this gives a lower bound estimate of costs of £20,297.

Table 2: Sensitivity analysis of Option 2: lower bound costs

Present value of lodgement fee costs (£)	PV of admin fee costs (£)	PV Costs (£)
20,297	0	20,297

Higher bound estimates of costs of statutory lodgement assume that all lodgements incur administration fees and that the higher estimate of 300,000 systems, adjusted for the current number of lodged reports, all undertake inspections following statutory lodgement. As Table 3 shows this gives a higher bound estimate of £16.8m.

Table 3: Sensitivity analysis of Option 2: upper bound costs

Present value of lodgement fee costs (£)	PV of admin fee costs (£)	PV Costs (£)
2,957,508	13,794,345	16,751,852

It is worthwhile noting that the costs in Table 3 do not include the costs of inspection itself and the associated benefits. This is because such costs and benefits are included in the original Energy Performance of Buildings Directive Impact Assessment and, therefore, should be attributed to this Impact Assessment. Only the additional costs of lodgement are included in Table 3.

Non-monetised benefits

- This option would enable the harmonisation of the existing arrangements for Energy Performance Certificates and Display Energy Certificates which already require lodgement on the central Register. By bringing air conditioning inspection reports in line with the lodgement requirements for Energy Performance Certificates and Display Energy Certificates we would expect to see higher levels of compliance similar to those that exist for Energy Performance Certificates and Display Energy Certificates based on our existing experience.
- This option would also enable us to provide consumer protection to those who commission an air conditioning inspection report. Consumers will be better protected as only accredited air conditioning inspectors will be able to undertake inspections, prepare the subsequent reports and then lodge these reports. This will also enable the authenticity of the air conditioning reports to be verified thus providing additional consumer protection.

- This evidence would also enable us to decrease our vulnerability to challenge from the EU Commission. We would also decrease our risk of challenge from industry by increasing the number of air conditioning inspections required.
- This option would provide data which we could then use to develop policies to improve compliance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. Compliance with the Energy Performance of Buildings Directive - which includes air conditioning - will be crucial to non domestic buildings carbon reduction which is at the heart of the current proposals for the Green Deal non domestic policy. Obtaining a reliable estimate of air conditioning efficiency can be a very complex process which can make it difficult to produce reports in a standardised format. Statutory lodgement of the air conditioning reports would improve the inspection process and ensure that all reports contained the same information. This approach would provide:
 - meaningful information on the number of air conditioning systems, the amount of energy consumed by those air conditioning systems and the amount of energy which could be saved by operating those systems more efficiently;
 - ensure that reports lodged on the central Register could be assessed for quality assurance purposes; this would also provide an indication of whether Accreditation Schemes were complying with current auditing requirements. Improved quality assurance would drive up standards which is important in terms of the context of the wider energy performance of buildings regime;
 - a standard data collection model, which is relevant for the purposes set out above and includes a range of technical specifications for the types of air conditioning systems, has already been designed by industry; and
 - better information to the energy industry: aggregated information about the energy assessments of air conditioning systems would help industry to assess the extent of the market for energy efficiency improvement products. This could lead to the development of new products and / or more efficient marketing of existing products, again contributing to the achievement of energy and carbon reduction.
- The potential electricity, carbon and cost savings identified in the previous Regulatory Impact Assessment for the Energy Performance of Buildings Directive (Articles 7 – 10), from the improved energy efficiency of air conditioning systems, were estimated to deliver a 5% average reduction in energy consumption and annual savings of £36,000,000. This benefit has not been realised because the level of compliance is poor, statutory lodgement should remedy this.
- The air conditioning inspection report will ensure that building owners and managers are provided with information regarding the efficiency of the air conditioning systems that they control, together with advice on how the energy efficiency or effectiveness of these systems might be improved. Acting on the advice of the inspection report and rectifying faults or making appropriate improvements, where this is attractive and cost effective, may result in immediate improvements to the effectiveness of the air conditioning systems or reduce the operating cost as the both the condition and the efficiency of the system contribute to a reduction in carbon emissions and operational cost. There is no statutory requirement for the recommendations made in the air conditioning inspection report to be implemented; however acting on the recommendations will reduce costs and reduce carbon emissions. Efficient running of air conditioning systems will contribute to a reduction in carbon emissions and the carbon footprint of the building as well as lower running costs for building occupants.
- For example, a recent Air Conditioning Inspection undertaken on Department for Communities and Local Government headquarters, Eland House¹, identified potential savings to improve the performance by 11.2%. This equated to an energy saving of 619.633 kWh, a cost saving of £37K and a carbon reduction of 276 tonnes per year. An Air Conditioning Inspection undertaken at the London Fire Brigade HQ² identified recommendations, the majority of which were low or nil cost measures, which were actioned immediately after the report was submitted. An analysis undertaken

¹ Energy Performance of Buildings Directive 'Article 9' Air Conditioning Inspection Report (October 2008)

² CIBSE - The Case for Air Conditioning Inspection, Case Study 3. <http://www.cibse.org/content/Air%20conditioning%20case%20studies.pdf>

after the measures were implemented reported that 59,000 kWh of electricity was saved, giving £6,000 saving and payback in 3 months. The CO₂ saved was estimated to be approximately 32,000 kgCO₂ or a reduction of 12.6%.

Option 3: Stop the current voluntary lodgement process

- Stopping the current voluntary lodgement process i.e. no reports to be lodged on the central Register would potentially lead to lower compliance levels, which have been poor under the current voluntary lodgement process. We would also be unable to determine who had completed the air conditioning inspection report and whether the assessor was approved to carry out the inspection and complete the report which could reduce the existing level of consumer protection even further. We would also be unable to verify the authenticity of the air conditioning inspection reports and assess whether the air conditioning inspection reports were completed to the required quality standards. It would also be difficult to implement a long term monitoring system.
- Any additional costs would relate to possible infraction proceedings brought by the European Court, which cannot be known with certainty, but are estimated as a lump sum £10,000,000. There may also be a daily penalty. At present we are unable to demonstrate UK compliance with the Energy Performance of Buildings Directive as we do not have any evidence to confirm that the regular inspection of air conditioning systems is taking place. We would, therefore, still run the risk of infraction from the EU Commission, because we would be unable to monitor compliance. In terms of monetised benefits this option would mean that Accreditation Schemes would not be required to pay the £5.36 lodgement fee.
- The baseline is the current situation of voluntary lodgement continuing and the costs and benefits of Option 3 are appraised relative to this. The appraisal period chosen is 7 years so as to be representative of policy implementation in 2011 and a review after this period.
- The expected result of the policy to stop voluntary lodgement is that lodgements on the central Register will no longer be required. This would remove the costs of the lodgement as per the current number of voluntary lodgements of 843. There would have been required to lodge a new report after 5 years. In terms of cost savings therefore this option would mean that Accreditation Schemes would not be required to pay the £5.36 lodgement fee, we get cost savings of $843 * £5.36 = £4,518$.
- Assuming (as we have done in Option 2) that 50% of those undertaking voluntary lodgement have to pay administration fee for lodging an inspection report and 50% do not, we get further cost savings from Option 3 of: $421 * £25 = £10,525$. Central estimate of total cost savings = £15,034.

Central estimate of total cost savings in Present Value terms = £13,101

Sensitivity Analysis

- We have done some basic sensitivity around the cost savings associated with the removal of voluntary lodgement. Assuming all of those undertaking voluntary lodgement have to pay administration fee for lodging an inspection report, we get further cost savings from Option 3 of: £21,075

Higher estimate of total cost savings in Present Value terms = £18,366

- Assuming that none of those undertaking voluntary lodgement have to pay administration fee for lodging an inspection report, we are simply left with the lodgement fee itself of £4,518.

Lower estimate of cost savings in present value terms this is £3,937.

- However, there are also potential costs associated with the removal of the voluntary lodgement policy which is that without a lodged report, a lost report will require individuals to pay for another report. We have no basis on which to estimate the number of reports which have been lost but the cost of losing a report would result in an additional inspection, lodgement and administration fees. The net effect of Option 3 is therefore unclear but likely to be marginal cost saving.
- It would also have the potential to result in increased non compliance. We would also be unable to determine who had completed the air conditioning inspection report and whether the assessor was approved to carry out the inspection and complete the report which could reduce the existing level of consumer protection even further. We would also be unable to verify the authenticity of the air conditioning inspection reports and assess whether the air conditioning inspection reports were

completed to the required quality standards. It would also be difficult to implement a long term monitoring system.

- Any additional costs would relate to possible infraction proceedings brought by the European Court, which cannot be known with certainty, but are estimated as a lump sum £10,000,000. There may also be daily penalty charges.

Risks and assumptions;

- There is no exact record of the number of air conditioning systems in place, but it has been estimated that there are 300,000 systems over 12 kW in England and Wales; a small proportion of these will be air conditioning systems over 250kW. The estimate of the number of air conditioning systems is based on information provided by Department for Environment, Food and Rural Affairs (see References 4 and 5). There is anecdotal evidence to suggest that the figures could be much higher, but Department for Communities and Local Government has not received any information to substantiate these claims.
- The costs are based on the 34,000 air conditioning systems that have been identified from the Non Domestic Energy Performance Certificates and Display Energy Certificates lodged on the central Register and not on the assumption that all building owners will comply with the requirements of Energy Performance of Buildings Directive once statutory lodgement comes into force.
- We assume that the lodgement fee will remain at £5.36 in real terms. As explained earlier, the lodgement fee is based on the number of lodgements and the operational costs for developing and maintaining the central Register. The lodgement fee, which is subject to a service review every 3 years, can rise or fall. We have also assumed that not all air conditioning inspection reports lodged on the central Register will be subject to an administration fee in the first year. We believe that in order to attract customers and to build up a client base some Accreditation Schemes may waive this charge.
- Air conditioning inspection reports are valid for 5 years; therefore, the annual average costs have been calculated over a 5 year period.
- Air conditioning inspection reports cover the system components inspected and the key recommendations in terms of efficiency, capacity and cooling bands, improvement options, alternative solutions and other recommendations. It is assumed that that the information which becomes available for analysis will, over a period of time, will demonstrate that energy savings can be made quite easily by implementing the low-cost / no-cost measures recommended in the report.
- There is a risk if we do not take action that we could face further complaints being made to the European Commission which could result in infraction proceedings. At present we lack a strong evidence base which could prevent us from providing a robust response to the European Commission.
- Under the current Government policy it is considered that a sunset clause is not required because we are providing further implementation of our EU obligations. Instead a review clause will be included. The purpose of the review is to consider whether the policy objectives that led to the introduction of the regulation are still valid and relevant, whether regulation is still the best way of achieving those objectives and, if so, whether existing Regulations can be improved so as to reduce burdens on business. In addition, Department for Communities and Local Government will review the policy on an annual basis using data from the central Register.

Direct costs and benefits to business calculations (following One In One Out methodology).

N/A

Wider impacts

Statutory equalities duties

Statutory Equalities Duties Impact Test: an Equalities Impact Assessment screening has been completed, covering race, age, health, disability and gender equality issues. The proposals will not affect any equality issues.

Economic impacts

Competition Assessment Impact Test: lodging air conditioning reports on the central Register will not produce any competition issues as it does not limit either directly or indirectly the number or range of suppliers of air conditioning inspections or limit the ability of suppliers to compete or reduce suppliers' incentives to compete.

Small Firms Impact Test

The proposal has been discussed with the Accreditation Schemes as part of the consultation process. Industry representatives including energy assessors also belong to two groups: the Technical Steering Group for Air Conditioning and the Air Conditioning Conventions Group. Other energy assessors are able to feed comments and raise issues to both these groups through their Accreditation Scheme. The Accreditation Schemes have welcomed this policy proposal. Increased compliance with the requirements of the Energy Performance of Buildings Directive and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 will result in a rise in the number of inspections and therefore increased business for energy assessors.

Environmental Impacts

Greenhouse gas assessment: any increase in the efficiency in the usage of air conditioning systems would lead to an associated decrease in greenhouse gas emissions and increase in air quality. These impacts have not been quantified.

Wider Environmental Issues Impact Test: it is possible there would be an improvement in indoor air quality if air conditioning systems are better set-up and maintained. Also, an improvement in external air quality is possible if more efficient air conditioning systems require less energy to run.

Social impacts

Health and well-being: we do not expect this policy to have any adverse effects on health. Although air conditioning inspections under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 are not specifically designed to assess the risks to public health, the air conditioning energy assessor is required to confirm that the relevant person, normally the building owner or manager, has undertaken the necessary checks to ensure there is no Legionella risk as required by the Health (Legionella) Regulations 2001.

Human Rights: the proposal does not have any impact on human rights.

Justice Impact: this policy does not create new offences and therefore does not have an impact on courts, tribunals, prisons and probation, the legal aid budget or the prosecuting bodies and judiciary.

Rural proofing: there are no expected impacts in rural areas which will be significantly different to urban areas.

Sustainable Development: there are no significant environmental impacts of the policy proposal.

Summary and preferred option with description of implementation plan.

Preferred option

- Statutory lodgement is the first step in the process to provide better evidence to enable us to address non compliance. As a result of the current approach we are unable to confirm whether all air conditioning systems meet the requirements of the Energy Performance of Buildings Directive and we are not satisfied that we have an effective mechanism for providing the evidence we require in order for us to monitoring compliance. As a starting point, statutory lodgement will enable us to compare central Register data to more easily identify instances of non compliance.
- Introducing statutory lodgement will bring air conditioning inspection reports in line with the existing infrastructure arrangements Energy Performance Certificates and Display Energy Certificates. This approach has demonstrated a much higher level of compliance than the current voluntary arrangements for air conditioning. Given the inefficiency of the current voluntary arrangements, it would seem sensible to now harmonise air conditioning inspection reports with the rest of the Energy

Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and for which the infrastructure already exists.

- Address the concern about the current level of protection afforded to consumers of air conditioning inspection reports. The Government has a duty to protect consumers and to ensure that only accredited air conditioning energy assessors undertake inspections and prepare the subsequent reports; at present the identity of energy assessors can not be verified via the central Register nor can we monitor the standards of the reports carried out. Anecdotal evidence suggests that there is a growing market in unauthorised air conditioning inspection reports; this means that consumers are not provided with the intended advice in accordance with the agreed inspection procedures.
- We are vulnerable to a challenge from the EU Commission as well as a challenge from as we have created a cadre of air conditioning inspectors who whilst having sought to be trained are without the work load that was envisaged due to the low number of inspection reports being commissioned. An example of our vulnerability is the recent complaint to the EU Commission about implementation of the original Energy Performance of Buildings Directive which has resulted in a communication from the Commission. Although the communication raises issues at the pre-infringement stage the Commission could take further action (i.e. begin infraction proceedings) if not satisfied with the UK's response to the complaint.
- A recent consultation 'Making better use of energy performance data' (March 2010) (see Reference 3) illustrated that 84% of respondents were in favour of the proposal to make lodgements a statutory requirement whilst 70% agreed with the proposed fee. An analysis of the responses received to the consultation shows that 90% of the respondents were from industry groups with an interest in the energy performance of buildings regime (see Reference 7 for a summary of responses).
- Provision of better information about the energy efficiency of air conditioning systems and to enable the improvement of air conditioning systems which will contribute to a reduction in carbon emissions and the carbon footprint of the building.

Implementation plan

- We have recommended that the Regulations come into force on the 1st July 2011. In order to successfully implement this proposal, changes will be required to the air conditioning software to allow for statutory lodgement and formatting changes to the current 'voluntary' reports. A significant period of development and testing will be required by the Register Operator (Landmark Solutions) to ensure that the air conditioning software is fit for purpose and that the reports can be lodged and successfully retrieved. All changes to the software will require all air conditioning Accreditation Schemes to undergo a period of user acceptance testing and to have their software approved. Department for Communities and Local Government and the Register Operator will agree a software delivery plan to ensure implementation by 6 April 2011. The development, testing and approval process will require 6 months to implement and is already underway - the costs of which have already been accounted for as part of the existing contractual arrangements with the Register Operator. The software will be available free of charge to assessors and Accreditation Schemes.
- Proposals are in place to introduce an air conditioning quality assurance framework as there is for the Energy Performance Certificates and Display Energy Certificates. The Department for Communities and Local Government guidance advises that the appropriate methodology for the energy inspection of air conditioning systems is the Chartered Institute of Building Services Engineers TM44 guidance (or equivalent). The Chartered Institute of Building Services Engineers will be revising TM44 in 2011, which will provide the basis of the quality assurance framework for air conditioning which will be developed in parallel to the revision of the TM44 guidance. Both revisions are expected to be completed by early autumn 2011. Where appropriate the National Occupational Standard that references TM44 would also be revised. This will ensure a more consistent approach and make it easier to assess the quality of the air conditioning inspection process.
- Department for Communities and Local Government guidance, 'A guide to air conditioning inspections for buildings' will also be re-issued to take into account the statutory lodgement of air conditioning inspection reports.

This Impact Assessment has been read by a delegate of the Chief Economist who has said that given the available evidence, the IA represents a reasonable view of the likely costs, benefits and impact of the policy.

NB - Following the clearance of this Impact Assessment by the Regulatory Policy Committee, this policy will now come into force on 6 April 2012.

Annexes

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

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)]; Review of the statutory requirement to lodge air conditioning inspection reports.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] Proportionate check that the statutory requirement is operating as expected.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] The central Register will hold all the air conditioning reports which are lodged under the statutory requirement. The Register Operator will be able to provide a wide range of reports which will be able to demonstrate the number of lodgements that have taken place as well data on the recommendations made in relation to improving the efficiency of air conditioning systems.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The current number of lodged reports on the Register is currently 843.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] A substantial increase in the number of air conditioning reports that are lodged on the Register. We are considering setting up an automatic reminder system via the Register which will remind air conditioning owners that their five yearly inspection is due; this is, however, only at the development stage but could be used to help modify the existing policy in the future.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] The Register Operator will be able to provide standardised and customised reports from data held on the Register for monitoring purposes.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.