

EXECUTIVE NOTE

THE CLEANER ROAD TRANSPORT VEHICLES (SCOTLAND) REGULATIONS 2010

2010 No. 390

1. The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

Policy Objectives

2. This instrument transposes EU Directive 2009/33/EC on the promotion of clean and energy efficient vehicles. The purpose of the instrument is to stimulate the market for clean and energy efficient vehicles by introducing a requirement for contracting authorities, contracting entities and certain public passenger transport service operators to take in to account energy and environmental impacts when procuring road transport vehicles.

3. Stimulation of the market for these vehicles will help to create economies of scale, resulting in lower costs and, subsequently, a greater uptake of these vehicles in to both the public and private sector fleets in the longer term.

4. The energy and environmental impacts which must be taken in to account include energy consumption, emissions of carbon dioxide and certain pollutants. There is considerable flexibility for procuring bodies to take account of these impacts as three options are provided for compliance. It will be at the discretion of each procuring body which option to use, and what weightings and criteria to attach to that method.

Consultation

5. The public consultation was sent to organisations across both the public and private sectors, including those organisations who could be regarded as contracting bodies, contracting entities, operators and bidders for the purposes of this instrument. This distribution list included all Local Authorities and Regional Transport Partnerships, the major bus companies and the wider public sector, as well as equalities groups. Ten responses were submitted.

Financial Effects

6. A Business and Regulatory Impact Assessment is attached, this sets out the anticipated costs and benefits of this instrument. Examination of this assessment highlights that there are likely to be one-off costs to the procuring bodies, relating to the need to determine how they plan to implement the Instrument and amend existing procurement documentation.

7. This instrument should not impact on small operators as, firstly, it applies only to operators under a public service contract and, secondly, a provision has been made in the Directive so that very small procurements will not need to apply the Directive's provisions.

Transport Scotland
7 October 2010

Transposition Note for

Directive 2009/33/EC on clean and energy efficient road transport vehicles

This Directive will be transposed as a Scottish Statutory Instrument by 4 December 2010 to become the Cleaner Road Transport Vehicles (Scotland) Regulations 2010 (hereinafter referred to as “The Scottish Regulations”).

These Regulations do not go beyond what is necessary to implement the Directive.

Notes on the Articles which make up the most important elements of this Directive are set out below.

Article	Objectives	Implementation	Responsibility
<u>Article 3</u> Scope of the Directive	States the circumstances under which the Directive will apply – specifically what procurement exercises must comply with the terms of the Directive.	By Regulation 3 (1) of the Scottish Regulations. In practice this means that procurement exercises conducted by those bodies set out in Article 4 will be covered by the scope of this Directive, subject to relevant procurement thresholds.	Scottish Ministers
<u>Article 4</u> Definitions	States the procuring bodies who must comply with the Directive, and provides a cross reference for the definition of a road transport vehicle for the purposes of this Directive.	By Regulation 2 of the Scottish Regulations. As much of these definitions are already implemented through regulation 3 of both the Utilities Contracts (Scotland) Regulations 2006 and the Public Contracts (Scotland)	Scottish Ministers

		Regulations 2006, cross references are provided.	
<u>Article 5</u> Purchase of clean and energy efficient road transport vehicles	Requires Member States to ensure that those procuring bodies identified in Article 4 take in to account the appropriate energy and environmental impacts during a procurement exercise, and also ensure that they use one of the 3 identified options for taking those impacts in to account.	Regulation 6 of the Scottish Regulations sets out method for enforcement of the Directive, which ties in to existing procurement Regulations – namely the Public Contracts (Scotland) Regulations 2006 and the Utilities Contracts (Scotland) Regulations 2006. The minimum operational energy and environmental impacts to be taken in to account are imposed at Regulation 4 (2) of the Scottish Regulation, although procuring bodies are free to consider additional impacts if they wish. Regulation 4 (4) of the Scottish Regulations implement the requirement to use one of the 3 pre-determined options for procuring bodies to use in compliance. These options are set out	Scottish Ministers

		at Regulations 4 (5) (a) & (b) of the Scottish Regulations.	
<u>Article 6</u> Methodology for calculation of operational lifetime costs	Provides the methodology for monetising the lifetime costs of energy and environmental impacts, as is required to use the option set out at Regulation 4 (5) (b) (ii) of the Scottish Regulations in complying with the Directive.	By Regulation 5 of the Scottish Regulations, which refers to the Directive for relevant baseline data to be used in monetising these impacts.	Scottish Ministers

Business and Regulatory Impact Assessment

Title of Proposal

The Cleaner Road Transport Vehicles (Scotland) Regulations 2010

Purpose and intended effect

Objectives

To stimulate the market for clean and energy efficient vehicles by ensuring that lifetime energy and environmental impacts are considered when road transport vehicles are procured, ensuring a broad market introduction of cleaner vehicle types.

These Regulations will result, in the longer term, in a wider deployment of clean and energy efficient vehicles, with increased sales helping to reduce costs through economies of scale. Participating bodies will see progressive improvement in the energy and environmental performance of their fleet as a result of compliance with this Regulation.

Suppliers of low carbon vehicles in Scotland will benefit directly from increased sales potential, while progress in this area will also support Scottish Research and Development. As a result, these Regulations will contribute to our overarching purpose of sustainable economic growth.

The Regulations will also support the targets set out in the Scottish Government's ambitious Climate Change legislation, contributing towards lower emissions and improvements in air quality.

Background

These Regulations reflect Scotland's transposition of Directive 2009/33/EC ("the Directive") on the promotion of clean and energy efficient road transport vehicles, and will have effect from 4 December 2010.

The Regulations will apply to Contracting Authorities and Contracting Entities as defined in the Public Contracts (Scotland) Regulations 2006 and the Utilities Contracts (Scotland) Regulations 2006. Operators for the discharge of public service obligations under public service contracts will also need to comply with the Regulations. In practice this includes Central Government departments and Agencies as well as the wider public sector including Local Authorities and NHS Boards.

For the purposes of this assessment these Contracting Authorities and Contracting Entities will hereinafter be referred to as 'procuring body' or 'procuring bodies'.

The lifetime impacts to be taken in to consideration shall include at least energy consumption, emissions of carbon dioxide (CO₂) and certain pollutants. Procuring bodies are free to consider any additional environmental impacts if they deem it appropriate.

Three options are provided for procuring bodies to comply with the Regulations: setting technical specifications; using energy and environmental impacts as award criteria; and monetising the lifetime costs of energy and environmental impacts. The third option – monetising impacts during procurement decisions – is viewed as complex, and potentially requiring a high level of technical expertise for its use.

In all cases it will be entirely at the discretion of the procuring body to decide what weighting or minimum standards are attributed to energy and environmental impacts.

In practice this means that those procuring bodies who currently have to apply the provisions of the Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006 will also need to apply the requirements of this Regulation.

Private sector organisations which are not affected by the 2006 Procurement Regulations are under no obligation to follow the requirements of this Regulation, although vehicle suppliers should be aware of the scope of these Regulations as they can seek enforcement where appropriate.

Rationale for Government intervention

These Regulations are a response to the mandatory requirement for Member States to bring the Directive in to force by 4 December 2010.

Scotland is proceeding to transpose this Directive based on agreement that its subject matter is devolved to Scotland.

Consultation

Public consultation was open between 5 July and 27 September 2010, and responses were requested from a wide variety of organisations across the public and private sectors. During that time ten responses were submitted.

Respondents provided comments on a number of questions relevant to this assessment, most pertinent to this assessment are: Question 2 – if you are a potential bidder in this process, what impacts do you think this Directive will have on you?; Question 3 – do you think you will incur any additional costs in implementing the requirements of this Directive; Question 4 – what changes to procedure and documentation do you expect to make in implementing this Directive?; and Question 9 – what do you think the major impacts and/or benefits will be to organisations involved in complying with this Directive?

A short summary of the responses to each question is set out below.

Question 2 – If you are a potential bidder in this process, what impact do you think that this Directive will have on you?

There were four responses to this question, which included the following comments:

- there would little impact so long as the contracting authority specifies the minimum standards/weighting during the tender evaluation process;
- there is a limited range of low carbon vehicles currently available through many standard frameworks;
- additional work will be required by vehicle manufacturers and suppliers in demonstrating the energy and environmental impacts of some vehicle types.

Question 3 – Do you think you will incur any additional costs in implementing the requirements of this Directive?

There were five affirmative responses to this question, which included the following additional comments:

- there could be additional costs of testing vehicles to make them eligible for the purposes of the Regulation;
- the capital costs of purchasing clean and energy efficient vehicles is higher than conventional equivalents;
- to procuring bodies, it is feasible that procurement of these vehicles will result in an overall cost reduction given the potential lifetime cost savings associated with the use of more energy efficient vehicles.

Question 4 – What changes to procedure and documentation do you expect to make in implementing this Directive?

There were six responses to this question, which included the following comments:

- there would be no significant additional work required, only small changes to procedure and documentation;
- the associated training and changes to systems and documentation could take ‘significant time’.
- it is too difficult at this stage to assess the amount of additional time required.

Note: Feedback on the estimated amount time required to make this changes ranged from one to three working hours.

Question 9 – What do you think the major impacts and/or benefits will be to those involved in the procurement process as a result of this Directive?

There were eight responses to this question, which included the following comments:

Impacts

- some additional costs during the tendering process, and in gaining accurate information on vehicle performance;
- additional time will be required to detail specifications and evaluate responses;
- there could be short-term operational impacts caused by required changes to procurement methods.

Benefits

- we would see standardised procurement specifications which will enable market forces to meet demand;
- there would be higher levels of awareness of the varying levels of environmental impacts of vehicles, and accounting for these impacts;
- cleaner technologies will become more accessible;
- there would be improvements in local air quality management areas, as well as overall reductions in levels of co2.

Given that feedback from respondents suggests a low and short-term impact to procuring bodies, no amendments have been made to the Regulations as a result of these responses.

Options

There are two options which have been considered for implementation of the Directive:

Option 1: Do Nothing

Adopting this option would risk infraction proceedings, and is therefore not considered to be practical.

Option 2: Full implementation

This option will involve full implementation of the Directive by setting out a mandatory requirement for public authorities and their contractors to consider the lifetime energy and environmental impacts associated with vehicles during a procurement exercise.

The associated benefits and costs associated with Option 1 are explored below.

Benefits

- the potential for lower lifetime operating costs to procuring bodies, resulting from the lower fuel costs associated with clean and energy efficient vehicles;
- emissions reductions resulting from increased use of clean and energy efficient vehicles;
- improvements in air quality associated with the increased use of ultra low carbon vehicles, such as electric vehicles;

- stimulation of the market for clean and energy efficient vehicles, causing prices to further, thereby stimulating further demand and resulting in further cost savings for consumers.

It is not possible to effectively quantify the size of these benefits as they are largely dependant on the extent to which procurement behaviour is changed by these Regulations.

Costs

Discussions with stakeholders have highlighted two potential costs associated with the implementation of these Regulations. These costs are:

- Additional working hours required to make the relevant amendments to procurement processes;
- The increased capital costs currently associated with procuring low carbon vehicle technology.

These costs are explored in more detail below:

Additional working hours

The initial one-off costs of considering the impact of these Regulations and making adjustments to procurement procedures are not expected to be significant. The time spent making these adjustments will vary depending on the method of compliance chosen by the procuring body, but is likely to be small – reflecting the increased likelihood of procuring bodies choosing more straightforward options for compliance.

The ongoing costs associated with monitoring and compliance could be more significant, however it is difficult to determine how much more significant without again knowing the options the procuring bodies will use to ensure compliance. Again, this impact should be mitigated by the knowledge that most organisations are likely to use options which do not involve monetising the lifetime energy and environmental impacts.

Increased capital costs

Concerns exist about the higher capital costs associated with purchasing cleaner vehicles. It is widely acknowledged that increased sales of these vehicles will allow economies of scale to reduce prices, and start to bring them in line with conventional equivalents. A range of incentive schemes have recently been launched by both UK and Scottish Governments, and their implementation will begin to impact on prices. These schemes will be complimented by further policy – such as these Regulations – realising further economies of scale.

As the Directive provides freedom for organisations to identify and set the appropriate minimum requirements or criteria for their own procurement, there will be no need for them to purchase more expensive vehicles until that vehicle meets a range of their needs. As a result these Regulations will not force authorities to choose more expensive vehicles, as there is no specification of minimum weightings to be attributed to energy and environmental impacts.

Should authorities decide that a cleaner vehicle does meet a range of their criteria, then any higher purchase costs could well be offset by fuel and efficiency savings made in running that vehicle.

As with the benefits, exact costs are difficult to quantify without knowing which option the authorities will use in complying with the regulations, however 3 scenarios have been set out below which examine the potential Net Present Value (NPV) of the scheme:

Scenario 1: Procuring bodies comply with the Regulations, but give no significant weighting to environmental impacts in their procurement award criteria.

This could result in a negative NPV to the scheme, as the costs of complying with the Directive are unlikely to be offset by the modest savings from the increased operation of more efficient vehicles.

Scenario 2: Procuring bodies comply with the Regulations, and give some significant weighting to environmental impacts, while also making cost-effective purchasing decisions.

The NPV in this case could be either positive or negative, depending on the overall lifetime savings from operation of the vehicles.

Scenario 3: Procuring bodies comply with the Regulations, and give some significant weighting to environmental impacts, but do not make cost-effective purchasing decisions.

This scenario would result in negative NPV, however the scenario itself is highly unlikely as the Directive is clear that this is only a requirement to consider environmental criteria and not to buy green vehicles outright.

Responses to the consultation indicate that a combination of scenarios 1 and 2 are likely in the short and medium terms.

Guidance

Transport Scotland will prepare a guidance document in time for these regulations coming in to effect. This document will provide advice and examples to procuring bodies to assist their understanding and implementation of the requirements of these Regulations, and should limit the costs associated with misinterpretation of the Regulations

Scottish Firms Impact Test

Small Business Impact

These Regulations should not impact on small operators as it only applies to operators under a public sector contract. Additionally a threshold provision has been added within the Directive so that very small procurements by public passenger transport service operators do not need to apply it's provisions. As a result, the Directive will only apply to procurements in excess of this threshold but not exceeding the threshold values set out in Directives 2004/17/EC and 2004/18/EC.

Some vehicle manufacturers and suppliers will be required to provide information on the efficiency and environmental impact of their vehicles during the tender evaluation process, however this information should be generally available to them. As a result it is assumed at this stage that vehicle manufacturers and suppliers will not incur significant additional costs as a result of this Regulation.

Competition Impact

The Regulations will stimulate the market for clean and energy efficient vehicles by ensuring that environmental impacts are factored in to procurement decisions. While it does create an incentive for suppliers to take account of these impacts, it does not mandate the number or range of suppliers which can compete for contracts.

As a result, this Regulation is unlikely to have any significant impact on competition.

Support for affected bodies

As stated above, Transport Scotland will publish guidance to coincide with the implementation date of this Directive. This guidance will be aimed at helping contracting authorities, contracting entities and any affected businesses understand how they are affected, and will outline what they need to do to take account of these Regulations.

Legal Aid Impact Test

There are no Legal Aid implications for implementation of the Directive.

Enforcement, sanctions and monitoring

Enforcement will be incorporated in to existing public procurement regulations, specifically through the provisions contained in Part 9 of both the Public Contracts (Scotland) Regulations 2006 and the Utilities Contracts (Scotland) Regulations 2006. This will ensure consistency of enforcement in line with other types of procurement exercise.

Under this enforcement regime any bidder in a procurement process who feels that a procuring body has not taken account of these requirements, and has suffered or may suffer loss as a result, shall be entitled to bring a claim in the Sheriff Court or the Court of Session.

The Court would have the power in this situation to prevent the procuring body from making the contract, or suspend the procedure leading to the award of a contract. It could also suspend the implementation of any decision taken by the procuring body.

Every two years from the implementation date of 4 December 2010 the European Commissions will prepare a report which will assess the effects of the Directive, as well as the need for further action or proposals if necessary. In addition, the Commission will, no later than the date of the first report, examine the options for compliance and propose necessary amendments if necessary.

Transport Scotland are currently making arrangements for data capture and review, which will take place within ten years of the Regulation coming in to force.

Implementation and delivery plan

Ownership

Who is responsible for implementation? **Transport Scotland**

Who should enforce the policy? **Procuring bodies (as defined above)**

Implementation

Will implementation go beyond minimum EU Requirements? **No**

Aims of implementation

- To stimulate the market for clean and energy efficient vehicles by ensuring that energy and environmental impacts are factored in to procurement decisions;
- To help create economies of scale in production, lowering the cost of clean and energy efficient vehicles;
- To reduce emissions from road transport by increasing the number of low emission vehicles on the roads in Scotland; and
- Increase energy efficiency in the transport sector

Implementation milestones

The key implementation milestone for this Directive is 4 December 2010, the date by which all Member States must have full implementation of its content. This is also the date that Transport Scotland will publish guidance on the resultant Regulations

Summary and recommendation

As stated above the only appropriate option is for full implementation of this Directive. However, this transposition will go no further than the minimum requirements of the Directive as an extension of it's scope would create higher up-front costs for participating bodies, which would in turn result in significantly lower NPV's.

Three possible scenarios were identified, which set out the how the Directive could be adopted by participating bodies, and set out an associated NPV. It is not possible to predict which of these 3 outcomes will be realised, however responses to our consultation indicate that a combination of scenarios 1 and 2 is most likely.

There would be an initial one-off cost resulting from the need for participating bodies to change tender documents and guidance, while up-front capital costs are likely to be higher where significant weighting is given to energy and environmental impacts. Respondents indicated that these up-front capital costs could be offset by the lower operating costs associated with more efficient vehicles.

Stakeholders do support a requirement for energy and environmental impacts being factored in to procurement decisions, and responses to our consultation indicate that the transposition of this Directive does an effective job of bringing this requirement in to place.

Declaration and publication

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) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

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**STEWART STEVENSON
MINISTER FOR TRANSPORT, CLIMATE CHANGE AND
INFRASTRUCTURE**