

EXPLANATORY MEMORANDUM TO
THE CLEANER ROAD TRANSPORT VEHICLES REGULATIONS 2011

2011 No. 1631

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations impose requirements on public authorities, utilities and some private sector providers of passenger transport services to take into account energy and environmental impacts, including energy consumption and emissions of carbon dioxide (CO₂) and certain other pollutants, when purchasing or leasing road transport vehicles.

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

None

4. Legislative Context

4.1 These Regulations are made under section 2(2) of the European Communities Act 1972 to implement Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles (“the Directive”).

4.2 Enforcement of these Regulations will be by way of the enforcement regime set out in Part 9 of the Public Contracts Regulations 2006 (as amended) and Part 9 of the Utilities Contracts Regulations 2006 (as amended).

Scrutiny history

4.3 The proposal which resulted in the Directive was the subject of Explanatory Memorandum (EM) 5130/06, submitted to Parliament by the Department for Transport on 30 January 2006. A revised proposal was the subject of a further EM 5113/08 submitted to Parliament by the Department for Transport on 30 January 2008. Scrutiny was cleared by the House of Commons European Scrutiny Committee on 8 October 2008 and by the House of Lords Select Committee on the European Union on 5 June 2008.

5. Territorial Extent and Application

This instrument applies to England and Wales, and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Directive aims to contribute to the EU objectives of increasing energy efficiency in the transport sector and protecting the environment by reducing emissions of carbon dioxide and air pollution from vehicles.

7.2 It is intended that the Directive will result in long-term benefits around stimulating the market for cleaner vehicles and helping to create economies of scale in their production thereby lowering the cost of these technologies and facilitating improvements in the emissions performance of the entire EU fleet.

7.3 The European Commission (EC) has highlighted the potential to increase energy efficiency and reduce emissions of carbon dioxide (CO₂) and air quality pollutants from road transport vehicles. It considers that green public procurement can play a part in realising this potential, by creating early markets and bringing down high initial costs of the technologies required. The EC considers that intervention is required to correct this market failure, and proposes to do so by requiring energy and environmental impacts to be taken into account when purchasing vehicles.

7.4 The EC's preferred option is regulatory action. This is justified on the basis that a study commissioned by the EC on the proposal found that this would generate the largest net benefit.

7.5 The UK is legally required to put in place legislation to implement the Directive. Placing the consideration of energy and environmental impacts on a legal basis should encourage more serious and more consistent consideration of those impacts.

- *Consolidation*

7.6 These are the first Regulations to implement the Directive so no consolidation is necessary.

8. Consultation outcome

8.1 A consultation was carried out on a draft of the Regulations and on technical guidance on how to comply with them. No major issues or concerns were raised during the consultation; however, stakeholders highlighted two types of cost increase that could result from implementing the Directive. These were: additional staff time required in incorporating environmental costs into procurement decisions; and potentially, higher purchase cost of vehicles with improved environmental performance, depending on the way in which those who are subject to the Regulations choose to take account of energy and environmental impacts in their procurement decisions.

9. Guidance

9.1 The guidance document which was consulted on included guidance about how to meet the requirements of the Regulations by setting technical specifications for energy and environmental performance - or including energy and environmental impacts in award criteria. It provided information and guidance on emissions and carbon performance requirements for new or used vehicles. This document is not mandatory and is for guidance purposes only. A final version will be published by 31st

July 2011 when the implementing Regulations come into force. This document will be regularly updated as vehicle standards are updated. Updates will be located at <http://www.dft.gov.uk/>.

9.2 The recommendations are designed to meet current and forthcoming legislative requirements and will be updated over time.

10. Impact

10.1 An impact assessment showing the impact of these Regulations on business is attached to this memorandum. These Regulations should have no impact on charities or voluntary bodies.

10.2 The impact on the public sector is that an additional procurement requirement will be imposed on public bodies which are under an obligation to comply with the procurement procedures set out in the Public Contracts Regulations 2006 and the Utilities Contracts Regulations 2006.

11. Regulating small business

11.1 The Regulations should not directly apply to very small businesses as the requirement to take into account the lifetime operational impacts will be imposed only on businesses which provide public passenger transport services under a public sector contract. A threshold provision has been added so that small procurements by public passenger transport service operators will be outside the scope of these Regulations

12. Monitoring and review

12.1 The implementation of the Directive is subject to scrutiny by the European Commission.

12.2 The Department for Transport will keep under review the impact of the policy.

13. Contact

13.1 Ranbir Nota at the Department for Transport (Tel: 020 7944 5315 or email: Ranbir.Nota@dft.gsi.gov.uk) can answer any queries regarding the instrument.

TRANSPOSITION NOTE

Provision	Requirements	Transposing provision
Article 1	Sets out the subject matter and objectives of the Directive. States that the Directive imposes requirements for impacts to be taken into account when purchasing road transport vehicles with the objective of stimulating the market for clean and energy efficient vehicles and improving the transport sector's contribution to Community policies on the environment, climate and energy.	No specific provision required for this Article.
Article 2	Permits certain exemptions from the imposed requirements regarding contracts for the purchase of road transport vehicles.	Regulation 3(2).
Article 3	Sets out the scope of application to contracts for the purchase of road transport vehicles by contracting authorities (i.e. public authorities), contracting entities (i.e. utilities) or certain private sector operators.	Regulations 3(1), (3) and (4). Definition of 'operator' in regulation 2.
Article 4	Sets out the definitions for contracting authorities, contracting entities and road transport vehicle.	Definitions of 'contracting authority', 'utility' and 'road transport vehicle' in regulation 2.
Article 5	Para 1 - Provides that account must be taken of certain operational lifetime energy and environmental impacts when purchasing road transport vehicles, and one of the options specified in paragraph 3 must be applied.	Regulations 4(1) and (4).

	<p>Para 2 - Sets out the operational lifetime energy and environmental impacts which must be taken into account. These are energy consumption, CO2 emissions and emissions of NOx, NMHC and particulate matter. Other environmental impacts may also be considered.</p> <p>Para 3 - Sets out the options referred to in paragraph 1:</p> <p>(a) setting technical specifications for each energy or environmental impact considered in the purchase documentation; or</p> <p>(b) including energy and environmental impacts in the purchasing decision.</p>	<p>Regulations 4(2) and (3).</p> <p>Regulation 4(5).</p> <p>Regulation 4(6) and (7).</p>
Article 6	Sets out the methodology for calculating operational lifetime costs for energy consumption, CO2 emissions and pollutant emissions.	Regulation 5.
Article 7	Provides for the Commission to adapt to inflation and to technical progress the data for the calculation of operational lifetime costs of road transport vehicles contained in the annex to the Directive.	Regulation 2(2) provides for changes to the annex to the directive to have automatic effect in the regulations.
Article 8	Requires the Commission to facilitate and structure the exchange of knowledge and best practices between Member States on practices for promoting the purchase of clean and energy-efficient vehicles.	No specific provision required.
Article 9	Provides for the Commission to be assisted by a Committee and for certain rules of	No transposition required.

	<p>procedure in respect of any changes to the annex to the Directive (which are to be made by comitology).</p>	
Article 10	<p>Para 1 - Requires the Commission to present a report every 2 years, with effect from 4 December 2010, on the application of the Directive and on actions taken by individual Member States to promote the purchase of clean and energy-efficient road transport vehicles.</p> <p>Para 2 - Requires the report to contain an assessment of the effects of the Directive and the need for further action, and include proposals as appropriate.</p> <p>Para 3 - Requires the Commission no later than the date of the first report to examine the options set out in article 5(3) of the Directive, evaluate the methodology for calculating the operational lifetime costs and propose any appropriate adjustments.</p>	No transposition required.
Article 11	<p>Para 1 - Requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 4 December 2010. Requires Member States to make reference to the Directive when adopting their transposing measures.</p> <p>Para 2 - Requires Member States to communicate to the Commission the text of the provisions of domestic law</p>	<p>No specific provision required. Reference is made to the Directive in the Explanatory Note and elsewhere.</p> <p>No transposition required.</p>

	which they adopt in the field covered by the Directive.	
Article 12	States Directive shall enter into force on 20th day following its publication in the Official Journal of the European Union.	No specific provision required.
Article 13	States the Directive is addressed to Member States.	No specific provision required.
Annex: data for calculating operational lifetime costs Table 1: energy content of motor fuels Table 2: emissions costs in road transport Table 3: lifetime mileage of road transport vehicles		Regulation 5.