

2011 No. 1631

PUBLIC PROCUREMENT, ENGLAND AND WALES

PUBLIC PROCUREMENT, NORTHERN IRELAND

The Cleaner Road Transport Vehicles Regulations 2011

<i>Made</i> - - - -	<i>30th June 2011</i>
<i>Laid before Parliament</i>	<i>6th July 2011</i>
<i>Coming into force</i> - -	<i>31st July 2011</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to public procurement.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Secretary of State that it is expedient for any reference in these Regulations to the Annex to Directive 2009/33/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of clean and energy-efficient road transport vehicles(c) to be construed as a reference to that Annex as amended from time to time.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of schedule 2 to, that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Cleaner Road Transport Vehicles Regulations 2011 and come into force on 31st July 2011.

(2) These Regulations do not extend to Scotland.

Interpretation

2.—(1) In these Regulations—

“contracting authority”, “established”, “national of a relevant State” and “relevant State” have the meaning given in regulation 2(1) of the Public Contracts Regulations 2006(d);

“contract documents” means the invitation to tender for or to negotiate a contract, the descriptive document (if any), the proposed conditions of contract, the specifications or

(a) S.I. 2009/2743.

(b) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1), and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the schedule. Paragraph 1A of schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and amended by the European Union (Amendment) Act 2008, section 3(3) and Part 1 of the schedule. There are other instruments amending section 2(2) or paragraph 1A of schedule 2 but none is relevant.

(c) OJ No L 120, 15.5.2009, p 5.

(d) S.I. 2006/5; relevant amending instruments are S.I. 2007/3542 and 2009/2992.

descriptions of the goods, services, work or works required and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto;

“contract notice” means a notice which is a contract notice within the meaning of the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006(a) (as applicable);

“declaration of ineffectiveness” has the meaning given in regulation 47(1) of the Public Contracts Regulations 2006;

“the Directive” means Directive 2009/33/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of clean and energy-efficient road transport vehicles;

“economic operator” means—

(a) a person who is an economic operator within the meaning of the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006(b);

(b) a person who—

(i) offers on the market road transport vehicles for purchase or leasing;

(ii) sought, seeks, or would have wished, to be the person with whom an operator enters into a contract for the purchase or leasing of road transport vehicles; and

(iii) is a national of and established in a relevant State;

“Official Journal” means the Official Journal of the European Union;

“operator” means a person required to perform public service obligations under a public service contract;

“procurement procedure” means—

(a) the competitive dialogue procedure, the negotiated procedure, the open procedure or the restricted procedure referred to in the Public Contracts Regulations 2006;

(b) the negotiated procedure, the open procedure or the restricted procedure referred to in the Utilities Contracts Regulations 2006;

(c) any procedure by means of which an operator advertises for, and considers, offers in relation to a proposed contract;

“public service contract” and “public service obligation” have the same meaning as in Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23rd October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70(c);

“road transport vehicle” has the meaning given in article 4(3) of the Directive;

“type approval requirement” has the meaning given in section 54(1) of the Road Traffic Act 1988(d);

“utility” has the meaning given in regulation 2(1) of the Utilities Contracts Regulations 2006.

(2) In these Regulations (including provisions of the Directive incorporated by reference), references to the Annex to the Directive are to be construed as references to that Annex as amended from time to time.

Scope of the Regulations

3.—(1) Subject to paragraphs (2) to (6), these Regulations apply to contracts for the purchase or leasing of road transport vehicles by contracting authorities, utilities or operators.

(a) S.I. 2006/6; relevant amending instruments are S.I. 2007/3542, 2008/2848 and 2009/3100. Definitions of “contract notice” are set out in regulation 2(1) of the Public Contracts Regulations 2006 and regulation 2(1) of the Utilities Contracts Regulations 2006.

(b) “Economic operator” is defined in regulation 2(1) of the Public Contracts Regulations 2006 and regulation 2(1) of the Utilities Contracts Regulations 2006.

(c) OJ No L 315, 3.12.2007, p 1.

(d) 1988 c 52.

(2) These Regulations do not apply to contracts for the purchase or leasing of road transport vehicles referred to in Article 2(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5th September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles^(a), provided that those vehicles are not subject to type approval requirements.

(3) These Regulations do not apply to any contract unless—

- (a) the Public Contracts Regulations 2006 apply in respect of that contract;
- (b) the Utilities Contracts Regulations 2006 apply in respect of that contract; or
- (c) that contract is to be entered into by an operator and the condition specified in paragraph (4) is satisfied.

(4) That condition is that—

- (a) if that operator were a contracting authority, that contract would not be excluded from the application of the Public Contracts Regulations 2006 by regulation 8 (thresholds) of those regulations (whether or not it would also be so excluded for any other reason); and
- (b) if that operator were a utility, that contract would not be excluded from the application of the Utilities Contracts Regulations 2006 by regulation 11 (thresholds) of those regulations (whether or not it would also be so excluded for any other reason).

(5) These Regulations do not apply to any contract entered into pursuant to a procurement procedure which began before 31st July 2011.

(6) For the purposes of paragraph (5), a procurement procedure began before 31st July 2011 if before that date and for the purposes of that procedure the contracting authority, utility or operator carrying out the procedure —

- (a) sent a contract notice to the Official Journal in accordance with the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006 in order to invite—
 - (i) offers; or
 - (ii) requests to be selected to tender or to negotiate;
- (b) published any form of advertisement seeking offers or expressions of interest; or
- (c) contacted any economic operator in order to seek offers or expressions of interest.

Purchase and leasing of clean and energy-efficient road transport vehicles

4.—(1) Any contracting authority, utility or operator when purchasing or leasing road transport vehicles must take into account the operational lifetime energy and environmental impacts referred to in paragraph (2) in respect of the vehicles to be purchased or leased.

(2) Those operational lifetime energy and environmental impacts are—

- (a) energy consumption;
- (b) carbon dioxide emissions; and
- (c) emissions of—
 - (i) oxides of nitrogen;
 - (ii) non-methane hydrocarbons; and
 - (iii) particulate matter.

(3) Such contracting authorities, utilities and operators may also take into account other relevant environmental impacts.

(4) In satisfying the requirement of paragraph (1) a contracting authority, utility or operator must apply at least one of the options set out in paragraphs (5) and (6).

(a) OJ No L 263, 9.10.2007, p 1.

(5) Technical specifications may be set out in the contract documents for the purchase or leasing of road transport vehicles in respect of the impacts listed in paragraph (2) together with any other environmental impacts being considered under paragraph (3).

(6) The impacts referred to in paragraph (5) (“the energy and environmental impacts”) may be taken account of in the purchasing or leasing decision.

(7) Where a contracting authority, utility or operator applies the option set out in paragraph (6) and—

- (a) a procurement procedure is employed, that contracting authority, utility or operator must use the energy and environmental impacts as award criteria;
- (b) operational lifetime costs are attributed to the energy and environmental impacts, that contracting authority, utility or operator must comply with regulation 5.

Methodology for the calculation of operational lifetime costs

5. Where regulation 4(7)(b) applies, the operational lifetime costs for—

- (a) energy consumption; and
- (b) carbon dioxide emissions and pollutant emissions set out in Table 2 in the Annex to the Directive,

are to be calculated using the methodology set out in Article 6 of the Directive.

Enforcement of duties

6.—(1) The obligation of a contracting authority, utility or operator to comply with these Regulations is a duty owed to an economic operator.

(2) Subject to paragraph (4), Part 9 of the Public Contracts Regulations 2006 has effect as if any reference in that Part to—

- (a) the duty owed in accordance with regulation 47A of those Regulations included reference to the duty owed in accordance with paragraph (1);
- (b) a contracting authority included reference to an operator;
- (c) an economic operator included any person who is an economic operator for the purposes of these Regulations.

(3) Part 9 of the Utilities Contracts Regulations 2006 has effect as if any reference in that Part to the duty owed in accordance with regulation 45A of those Regulations included reference to the duty owed in accordance with paragraph (1).

(4) Where Part 9 of the Public Contracts Regulations 2006 has effect in relation to an operator by virtue of paragraph (2)(b)—

- (a) the operator does not owe any duty under that Part to a person who is not a national of and established in a relevant State;
- (b) in proceedings against an operator under that Part the Court may not make a declaration of ineffectiveness, an order imposing a civil financial penalty or an order shortening the duration of a contract;
- (c) the operator is not required to refrain from entering into any contract by reason of any proceedings having been started under that Part.

30th June 2011

P. Hammond
Secretary of State for Transport
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, for England and Wales and Northern Ireland, Directive 2009/33/EC (“the Directive”) of the European Parliament and of the Council of 23rd April 2009 on the promotion of clean and energy-efficient road transport vehicles (OJ No L 120, 15.5.2009, p 5).

Regulation 3(1) specifies the persons to whom the Regulations apply when contracting to purchase or lease motor vehicles. *Regulation 3(2)* provides that the Regulations do not apply to certain categories of vehicle that are not subject to type approval. *Regulations 3(3) and (4)* provide that the Regulations do not apply to contracts entered into by a contracting authority or utility which are not subject to the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006, or contracts entered into by a private sector operator which would not meet the financial thresholds in those regulations if the operator were a contracting authority or utility. *Regulations 3(5) and (6)* provide that the Regulations do not apply to contracts entered into under a procurement process which began before the Regulations came into force.

Regulation 4 sets out the obligation imposed on persons to whom the Regulations apply in respect of the purchase or leasing of motor vehicles. Those persons are required to take into account operational lifetime energy and environmental impacts (set out in *regulation 4(2)*). They may do so by establishing technical specifications in respect of those impacts for the vehicles to be purchased or leased (*regulation 4(5)*), or by taking account of those impacts in the purchasing or leasing decision (*regulation 4(6)*). Where those impacts are taken account of in the purchasing or leasing decision, that may be done by way of award criteria (where a procurement procedure is used) or by applying a specified methodology to calculate the operational lifetime costs of the impacts (*regulation 4(7)*).

Regulation 5 specifies the methodology for the calculation of the operational lifetime costs by way of cross reference to Article 6 of the Directive. By virtue of *regulation 2(2)*, the cross reference will capture future changes to Article 6.

Regulation 6 cross-refers to Part 9 of the Public Contracts Regulations 2006 and Part 9 of the Utilities Contracts Regulations 2006 to ensure compliance with the requirements imposed under the Directive.

An impact assessment of the effect this instrument will have on the costs of the business, voluntary and public sectors has been produced and is available from the Office of Low Emission Vehicles, Department for Transport, Zone 1/33, Great Minster House, 76 Marsham Street, London SW1P 4DR or may be accessed via the Department’s website at www.dft.gov.uk. A copy has been placed in the library of each House of Parliament.

A Transposition Note is also available and may be accessed as above.

Both the impact assessment and the Transposition Note are annexed to the Explanatory Memorandum which is available alongside the instrument on the National Archives website (www.legislation.gov.uk).

A copy of Directive 2009/33/EC may be obtained from the Stationery Office or viewed in the Official Journal of the European Union via the EU website at <http://eur-lex.europa.eu>.

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STATUTORY INSTRUMENTS

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£4.00