



Llywodraeth Cymru
Welsh Government

Implementing Article 6 of the Energy Efficiency Directive (EED).

**Procurement Advice Note (PAN)
for the Public Sector in Wales**

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1. Issues Addressed

Article 6 of the Energy Efficiency Directive 2012/27/EU dated 25 October 2012 (“the Directive”) comes into force on 5th June 2014. The Welsh Ministers, through this Procurement Advice Note (PAN) formally notify ‘In Scope’ Organisations of the obligations that apply to them. The new Directive can be accessed via:-

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:EN:PDF>

2. Timing

In Scope Organisations must comply with the requirements set out in this PAN in respect of purchases made on or after 5th June.

3. Dissemination and Scope

The contents of this PAN apply to the Welsh Government and Welsh Government Sponsored Bodies controlled or mainly financed by the Welsh Government. These are the In Scope Organisations.

The UK Government and the Governments of Scotland and Northern Ireland will be issuing similar administrative directions.

This PAN should be disseminated within your organisation, drawn to the particular attention of those with a purchasing role.

4. Action

In Scope Organisations must, when purchasing products and services and purchasing or renting buildings, comply with the energy efficiency standards applicable as set out in Article 6 and Annex III to the Directive. The detailed requirements are set out in Annex I of this PAN which seeks to address ambiguities in the Directive, and include a schedule in relation to energy efficiency standards of buildings (Annex 2 of this PAN).

5. Promoting Compliance with the Directive

In Scope Organisations should note that the UK is required to encourage public bodies not in scope to act in accordance with Article 6 of the Directive. The Welsh Government will take such action through appropriate websites, but Welsh Government Public Sponsored Bodies are asked to support this in any way possible.

6. Contact Point

Enquiries about this PAN should be directed to vwpolicy@wales.gsi.gov.uk

7. Background

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amends Directives 2009/125/EC and 2010/30/EU and repeals Directives 2004/8/EC and 2006/32/EC.

Article 6 of the Directive requires “central government departments” in EU member states to purchase highly energy efficient products, services and buildings, as set out in Annex III. This is a qualified duty and authorities do not have to buy the default product, service or building where this is not cost effective or does not allow effective competition.

There is a secondary requirement to encourage other public bodies including local and regional government to follow the example of central Government.

Member States are required to put in place the necessary regulations and administrative measures by 5th June 2014. No further regulations are required to do so. This PAN makes it clear that In-Scope Organisations must comply with the Directive.

The Requirements of Article 6

The Requirements

1. In scope organisations must carry out their procurement in accordance with the following energy efficiency standards:

For products with Energy Labels:

2. Only those products listed in the Energy Information Regulations 2011/SI/1524 (link below) which have the highest energy efficiency class may be purchased.
<http://www.legislation.gov.uk/uksi/2011/1524/made>

For products listed in the Energy-Related Products Regulations (known as Eco-design Regulations):

3. When purchasing Energy Related Products that are not listed in the schedule 1 of the Energy Information Regulations 2011 (link above), but that are listed in schedule 1 of the Energy-Related Products Regulations 2010/SI/2617 (link below), only products that comply with the relevant energy efficiency benchmarks for that product and that are set out in those regulations may be purchased.
<http://www.legislation.gov.uk/uksi/2010/2617/schedule/1/made>

For Products Listed in the Energy Star Decision:

4. Only Energy Star Products that have energy efficiency requirements that are no less demanding than those listed in Annex C to the Agreement Annexed to the Energy Star Decision (attached below) may be purchased.

The EED refers to the Decision 2006/1005/EC (link below):-

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1402564591609&uri=CELEX:32006D1005>

However, this was updated by Decision 2009/489/EC (link below):-

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1402564759529&uri=CELEX:32009D0489>

Tyres:

5. Only tyres that have the highest fuel efficiency class, as defined by regulation EC 1222/2009 may be purchased (unless the purchase of tyres with the highest wet grip or external rolling noise class is justified in the interests of public safety or health).

Services:

6. When contracting for services, In Scope Organisations must require in the tender and the services contract that any new products purchased by service provider partially or wholly for the purpose of providing the services comply with the standards for products set out above.

Purchase or rental of Buildings:

7. Only buildings that comply with the minimum standards that are set out in Annex 2 of this PPN may be purchased or rented, except where buildings are purchased for deep renovation, demolition, or for resale without being used for an In Scope Organisation's purposes, or to preserve listed buildings.

Qualifications:

8. The requirements of Article 6 and Annex III of the Directive only apply where this is consistent with achieving value for money, economic feasibility, wider sustainability, technical suitability and ensuring sufficient competition.
9. For the armed forces, the requirements do not apply where they conflict with the objectives of the armed forces, or to the purchase of military equipment.
10. The obligations in this PPN only apply to contracts that have a value equal to or greater than the thresholds set out in regulation 8 of the Public Contracts Regulations 2006 and the Public Contracts (Scotland) Regulations 2012.
11. Procurers may require that the overall energy efficiency of product packages takes priority over the efficiency of individual Energy labelled Products.

Interpretation:

12. For the purposes of this PPN:

(a) “energy efficiency” means the ratio of output of performance, service, goods or energy to input of energy;

(b) “energy efficiency directive” means of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC¹;

“energy labelled tyre” means a tyre which carries a label as specified in Annex II to Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other parameters²;

“energy labelled product” means a product listed in Schedule 1 to the Energy Information Regulations 2011³;

“energy-related product” means a product listed in the table at paragraph (4) to Schedule 1 to the Ecodesign for Energy-Related Product Regulations 2010⁴;

“energy star decision” means Council Decision 2006/1005 of 18 December 2006 concerning the conclusion of the Agreement between the Government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment⁵;

“energy star product” means a product listed in Annex C of the energy star decision;

“In Scope Organisation” means the Welsh Government and Welsh Government Sponsored Bodies.

“listed building” means—

in England and Wales a building within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990⁶;

in Scotland a building within the meaning of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997⁷;

¹ OJ No L 315 14.02.2012 p.1
² OJ No L 342, 22.12.2009, p 46.
³ S.I. 2011/1524.
⁴ S.I.2010/2617.
⁵ OJ No L 281, 28.12.2006.
⁶ 1990. c 9.
⁷ 1997 c. 9.

in Northern Ireland a building within the meaning of the Planning (Northern Ireland Order) 1991⁽⁸⁾;

“product package” means a package of more than one energy labelled product;

“rented and rental” includes the renewal or extension of a lease;

references to any European or United Kingdom legislation means a reference to that legislation as amended from time to time.

Annex 2

EED Article 6 Minimum Standards		
Building Type	Principal fuel for space heating	EPC rating (for use in England, Wales & Northern Ireland)
Court/Tribunal	Fossil Fuel	72
	Electric	78
Laboratory	Fossil Fuel	134
	Electric	159
Office (air conditioned ¹)	Fossil Fuel	70
	Electric	75
Office (no air conditioning ¹)	Fossil Fuel	67
	Electric	72
Museum	Fossil Fuel	75
	Electric	84
Mixed Use / Industrial	Fossil Fuel	45
	Electric	56
Prison	Fossil Fuel	79
	Electric	103
Residential ² (house/bungalow)	Fossil Fuel	74
	Electric	42
Residential ² (flat/apartment)	Fossil Fuel	78
	Electric	61
Storage	Fossil Fuel	44
	Electric	56

¹ "Air conditioned" is defined as all of the office space is air-conditioned

² Minimum standards for residential buildings are expressed as Domestic EPC ratings

Notes:

- Annex 2 covers existing buildings (not new construction). It does not set EPC ratings for newly constructed building purchased by an In Scope Organisation.

⁽⁸⁾ 1991/1220(N.I.11)

- New buildings are subject to the building regulations and will therefore automatically comply with the minimum energy performance requirements under Article 5(1) of the Energy Efficiency Directive.

If the standard in Annex 2 is better than that required under section 86, sub-section 2(b) of the Climate Change Act 2008 central government departments must comply with the higher energy efficiency standards contained in Annex 2, subject to the caveats that apply.