



Department of  
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**CPD**

Procurement Guidance Note

**PGN 02/14**

(as amended)

# Implementation of Article 6 of the Energy Efficiency Directive

Reissued: 03 June 2016



## PROCUREMENT GUIDANCE NOTES

[Northern Ireland Public Procurement Policy \(NIPPP\)](#) was approved by the Northern Ireland Executive in 2002. In approving the policy, the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations complied with the policy. Instead, it considered that compliance could be achieved by means of administrative direction.

Procurement Guidance Notes (PGNs) are the administrative means by which Departments are advised of procurement policy and best practice developments. They apply to those bodies subject to NIPPP and also provide useful guidance for other public sector bodies.

PGNs are developed by the Central Procurement Directorate (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to the Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector. PGNs are also published on the [Department of Finance \(DoF\) website](#).

**The following PGN was endorsed by the Procurement Board with effect from 5 June 2014 for use by those bodies subject to NIPPP.**

### Revision History

First issued as Procurement Guidance Note PGN 02/14	11 July 2014
Revised to make reference to The Public Contracts Regulations 2015	27 February 2015
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### Definition of Terminology

In the preparation of this guide, the term **contractor/supplier** has been used to denote an organisation that contracts directly with a Department, whether it is a supplier, a service provider or a construction contractor.

The term **Department** has been used to refer to those bodies subject to Northern Ireland Public Procurement Policy including Departments, Non-Departmental Public Bodies and Public Corporations. A full list of such bodies is available in Annex A of the [Northern Ireland Public Procurement Policy \(NIPPP\)](#).

## 1 BACKGROUND

The Energy Efficiency Directive<sup>1</sup> (EED) was adopted by the European Union (EU) on the 25 October 2012. It establishes a common framework of measures for the promotion of energy efficiency within the EU. This is to ensure the achievement of the EU's 20% headline target on energy efficiency by 2020 and to pave the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy. It also provides for the establishment of indicative national energy efficiency targets for 2020.

Article 6 of the Directive requires *Central Government Departments* in EU member states to purchase only highly energy efficient products, services and buildings, with reference to a list of standards and benchmarks provided for in other EU legislation (as set out in Annex III of the Directive). 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. Article 6 of the EED comes into force on 5 June 2014.

## 2 DISSEMINATION AND SCOPE

This Procurement Guidance Note applies to all Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations. These are classified as *In Scope Organisations*.

*In Scope Organisations* should note that there is a secondary requirement to encourage other public bodies including local Government, not *in scope*, to act in accordance with Article 6 of the Directive. *In Scope Organisations*

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<sup>1</sup> 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.

should record measures they have taken to encourage other public bodies to comply with the requirements of Article 6.

### **3 APPLICATION**

*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 A of this Procurement Guidance Note which seeks to address ambiguities in the Directive. Annex B of this Procurement Guidance Note outlines related minimum energy efficiency standards of buildings.

The obligations in this Procurement Guidance Note only apply to contracts that have a value equal to or greater than the thresholds set out in Regulation 5 of the Public Contracts Regulations 2015.

### **4 TIMING**

*In Scope Organisations* must comply with the requirements set out in this Procurement Guidance Note in respect of purchases made on or after 5 June 2014.

## 5 FURTHER INFORMATION

Further information can be obtained from the European Commission's website at the following links:

- The text of the Energy Efficiency Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:EN:PDF>
- General information on the Energy Efficiency Directive: [http://ec.europa.eu/energy/efficiency/eed/eed\\_en.htm](http://ec.europa.eu/energy/efficiency/eed/eed_en.htm)
- EU Commission's guidance note to Member States on the application of Article 6: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013SC0446>

Any queries on this guide should be addressed to:

Construction Procurement Policy Branch

Central Procurement Directorate

2<sup>nd</sup> Floor East

Clare House

303 Airport Road West

Belfast, BT3 9ED

Phone: 028 9081 6366

Email: [ConstructionProcurementPolicy@finance-ni.gov.uk](mailto:ConstructionProcurementPolicy@finance-ni.gov.uk)

## **ANNEX A: 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 which have the highest energy efficiency class may be purchased.

#### **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, but that are listed in Schedule 1 of the Energy-Related Products Regulations 2010/SI/2617, only products that comply with the relevant energy efficiency benchmarks for that product and that are set out in those regulations may be purchased.

#### **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 may be purchased.

**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 the 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 B of this Procurement Guidance Note 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 apply to the purchase only of products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as 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 Procurement Guidance Note only apply to contracts that have a value equal to or greater than the thresholds set out in Regulation 5 of the Public Contracts Regulations 2015 as amended.
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 Procurement Guidance Note:
  - a. **energy efficiency** means the ratio of output of performance, service, goods or energy to input of energy;
  - b. **energy efficiency directive** means 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/EC<sup>2</sup>;
  - c. **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 parameters<sup>3</sup>;

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<sup>2</sup> OJ No L 315 14.02.2012 p.1

<sup>3</sup> OJ No L 342, 22.12.2009, p. 46

- d. **energy labelled product** means a product listed in Schedule 1 to the Energy Information Regulations 2011<sup>4</sup>;
- e. **energy-related product** means a product listed in the table at paragraph (4) to Schedule 1 to the Ecodesign for Energy-Related Product Regulations 2010<sup>5</sup>;
- f. **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 equipment<sup>6</sup>;
- g. **energy star product** means a product listed in Annex C of the energy star decision;
- h. **In Scope Organisation** means all Government Departments including their Agencies, Non-Departmental Public Bodies and Public Corporations;
- i. **listed building** means a building within the meaning of the Planning (Northern Ireland Order) 1991<sup>7</sup>;
- j. **product package** means a package of more than one energy labelled product;
- k. **rented and rental** includes the renewal or extension of a lease; and
- l. **references to any European or United Kingdom legislation** means a reference to that legislation as amended from time to time.

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<sup>4</sup> S.I. 2011/1524

<sup>5</sup> S.I.2010/2617

<sup>6</sup> OJ No L 281, 28.12.2006

<sup>7</sup> 1991/1220(N.I.11)

## ANNEX B: ENERGY EFFICIENCY THRESHOLD FOR BUILDINGS

In terms of the minimum energy efficiency standards for public buildings which are bought or let, the Building Research Establishment was commissioned to undertake detailed modelling work using the established national calculation methodologies, the results of which are set out in Table 1 below.

Minimum energy efficiency thresholds are set that take into account the different use and characteristics of buildings, expressed as Energy Performance Certificate (EPC) ratings. The EPC ratings in Table 1 prescribe the minimum standards of energy efficiency permissible under the Directive; that is, there is no gold plating. It should be noted that the minimum standards for the majority of building types are lower than those that have been required under the Climate Change Act in previous years.

### Notes:

- This Annex covers existing buildings (not new construction). It does not set maximum EPC ratings for newly constructed building purchased by an *In Scope Organisation*.
- 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 Table 1 is better than that required under Section 86, Subsection 2(b) of the Climate Change Act 2008, Government departments must comply with the higher energy efficiency standards contained in Table 1, subject to the caveats that apply.

Table 1:

Energy Efficiency Directive Article 6 Minimum Standards		
Building type	Principal fuel for space heating	EPC rating for Northern Ireland
<b>Court/Tribunal</b>	Fossil Fuel	72
	Electric	78
<b>Laboratory</b>	Fossil Fuel	134
	Electric	159
<b>Office (air conditioned<sup>8</sup>)</b>	Fossil Fuel	70
	Electric	75
<b>Office (no air conditioning<sup>8</sup>)</b>	Fossil Fuel	67
	Electric	72
<b>Museum</b>	Fossil Fuel	75
	Electric	84
<b>Mixed Use/Industrial</b>	Fossil Fuel	45
	Electric	56
<b>Prison</b>	Fossil Fuel	79
	Electric	103
<b>Residential<sup>9</sup> (house/bungalow)</b>	Fossil Fuel	74
	Electric	42
<b>Residential<sup>9</sup> (flat/apartment)</b>	Fossil Fuel	78
	Electric	61
<b>Storage</b>	Fossil Fuel	44
	Electric	56

<sup>8</sup> *Air conditioned* is defined as all of the office space is air-conditioned.

<sup>9</sup> Minimum standards for residential buildings are expressed as Domestic EPC ratings.