

**EXPLANATORY MEMORANDUM TO
THE PUBLIC CONTRACTS AND UTILITIES CONTRACTS (POSTAL SERVICES
AMENDMENTS) REGULATIONS 2008**

[Year] No. [XXXX]

1. This explanatory memorandum has been prepared by the Office of Government Commerce, which is an office of Her Majesty's Treasury, and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument contains amendments to the Public Contracts Regulations 2006 (SI 2006 No 5) ("the Public Contracts Regulations") and the Utilities Contracts Regulations 2006 (SI 2006 No 6) ("the Utilities Contracts Regulations"). These amendments implement article 6 of EU Council Directive 2004/18/EC ("the Public Sector Directive").
- 2.2 The amendments, which are minor, are:
 - 2.2.1 A change to the Public Contracts Regulations to remove the reference to the Postal Business of the Post Office; and
 - 2.2.2 The introduction of a new category called 'postal services' in the relevant Schedule to the Utilities Regulations. This names Royal Mail Group Limited as the entity covered, together with the usual catch-all phrase 'any other relevant person' in case of any potential change to the current situation. It also lists the procurement activities that are covered by the term 'postal services'.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 The Public Sector Directive and EU Council Directive 2004/17/EC ("the Utilities Directive") comprise parallel regimes, which impose different requirements on the procurement process according to which regime applies. They are mutually exclusive, and article 12 of the Public Sector Directive disapplies that Directive

where a procurement falls within the scope of the more specific Utilities Directive.

- 4.2 The Public Sector Directive and the Utilities Directive were, generally, implemented for England and Wales and Northern Ireland by the Public Contracts Regulations and the Utilities Contracts Regulations respectively. These Regulations came into force on 31 January 2006 following two extensive consultations.
- 4.3 Article 6 of The Utilities Procurement Directive applies procedural rules to procurement activities relating to the provision of postal services (eg sorting or delivery services) and certain related services when provided by a relevant person who provides postal services (collectively referred to in this Memorandum as 'postal services'). Although the Directive was, generally, implemented by the Utilities Contracts Regulations, article 72 of the Directive allowed Member States the option of deferring the transposition of Article 6 until the end of 2008, which the UK has chosen to do (except that the change is being implemented one month before the transposition deadline). Consequently, public procurement activities relating to postal services have, since 2006, been covered by the Public Contracts Regulations.
- 4.4 Postal services now need to be brought within the scope of the Utilities Contracts Regulations, to comply with the deadline in the Utilities Directive. The only postal services affected by the implementation of article 6 of the Utilities Directive will be those provided by Royal Mail plc.
- 4.5 The approach to implementation of this amendment involved a 6-week written consultation with stakeholders, including public sector, legal and industry representation. The consultation documents were also published publicly on OGC's website. The normal consultation timescale of 12 weeks was reduced to 6 weeks through agreement with HM Treasury, as the only existing business to be affected was Royal Mail. The consultation was straightforward: Royal Mail was content with the proposals and there was no interest from anyone else (except one simple query in Scotland, but Scotland are implementing separately).
- 4.6 A transposition note is attached as an Annex to this Explanatory Memorandum.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

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

7. Policy background

- 7.1 Overall, the main objective of this instrument is to ensure that procurement activities relating to Postal Services are covered by the appropriate legal regime, in line with the EU Procurement Directives. More specifically, this means:
- 7.1.1 Bringing Postal Services procurement within the scope of the Utilities Contracts Regulations 2006 in the circumstances required by the Utilities Directive.
 - 7.1.2 In line with the general approach taken when the rest of the Utilities Directive was implemented, the amending Regulation, for maximum transparency, names Royal Mail plc as a 'relevant person' to which the obligations apply. Although we do not believe that any other bodies providing postal services currently fall within the criteria laid down by the Utilities Directive and the Utilities Regulations for being a 'relevant person', the amendments insert a reference to 'any other relevant person' to cater for the possibility that changed circumstances might bring one or more other entities within the scope of the Directive. This also reflects the general approach that was taken in the rest of Schedule 1 to the Utilities Regulations when the main provisions of the Utilities Directive were implemented.
 - 7.1.3 The amendments also remove references to 'the Postal Business of the Post Office' from the Public Contracts Regulations. This is a purely consequential amendment to reflect the corresponding reduction in the scope of the Public Contracts Regulations, which is automatically produced by the implementation of article 6 of the Utilities Directive (by virtue of article 12 of the Public Sector Directive and regulation 6(1) of the Public Sector Regulations).
- 7.2 The size and scale of the issue being addressed is small. There is no expected impact.

8. Impact

- 8.1 A separate Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or the third sector. Furthermore, the impact assessment for Directive 2004/17/EC was published during consultations on the transposition of the main body of the Directive in 2004. The Office of Government Commerce will publicise the changes to interested parties using established communication channels.

9. Contact

- 9.1 The Service Desk at the Office of Government Commerce (Tel: 0845 000 4999 or e-mail: servicedesk@ogc.gsi.gov.uk) can answer any queries regarding the instrument.

TRANSPOSITION TABLE *

**DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 31st March 2004
THE PUBLIC CONTRACTS AND UTILITIES CONTRACTS (POSTAL SERVICES AMENDMENTS) REGULATIONS 2008**

Directive Article	Implementation
Article 6	Regulation 6(1) Schedule 1

* The original transposition table for Directive 2004/17/EC is published on the OGC website http://www.ogc.gov.uk/documents/Transposition_Table_for_the_draft_Utilities_Regulations.doc