

## **EXECUTIVE NOTE**

### **THE PUBLIC CONTRACTS AND UTILITIES CONTRACTS (POSTAL SERVICES AND COMMON PROCUREMENT VOCABULARY CODES) AMENDMENT (SCOTLAND) REGULATIONS 2008 (S.S.I 2008/376)**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative resolution procedure.

#### **Policy Objectives**

The purpose of the instrument is to bring postal services and certain related services within the scope of the Utilities Contracts (Scotland) Regulations 2006 (S.S.I 2006/2).

Article 6 of Directive 2004/17/EC of the European Parliament and Council of 31<sup>st</sup> March 2004 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, requires Member States to bring postal services and certain related services within the scope of national legislation implementing the Directive by the end of December 2008. The Directive is implemented in Scots law by the Utilities Contracts (Scotland) Regulations 2006.

Procurement undertaken by the Postal Business of the Post Office is currently regulated by the Public Contracts (Scotland) Regulations 2006 (S.S.I 2006/1). It is therefore necessary for the instrument to remove the Postal Business of the Post Office from the scope of the Public Contracts (Scotland) Regulations 2006. In practice, this will allow Royal Mail greater flexibility in its procurement processes although it must still treat suppliers equally and without discrimination and act in a transparent and proportionate manner.

The instrument also corrects errors in Class 45.21 of Schedule 2 of the Public Contracts (Scotland) Regulations 2006 and Class 45.21 in Schedule 3 of the Utilities Contracts (Scotland) Regulations 2006 relating to the description of “Long-distance pipelines, communication and power lines” and “Urban pipelines, urban communication and power lines”.

A link to Directive 2004/17/EC of the European Parliament and Council of 31<sup>st</sup> March 2004 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, is attached below.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>

#### **Consultation**

We have drafted the amending regulations in consultation with colleagues at the Office for Government Commerce (OGC); the UK Government is making parallel amendments to its Public Contracts and Utilities Regulations. OGC has confirmed that Royal Mail is content with the terms of the amending regulations. We have also consulted publicly on the amending regulations via a Scottish Procurement Policy Note which was published on the Scottish Government’s website and distributed widely to stakeholders.

## **Financial Effects**

This instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Procurement Directorate  
Scottish Government  
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