

2008 No. 2848

PUBLIC PROCUREMENT, ENGLAND AND WALES

PUBLIC PROCUREMENT, NORTHERN IRELAND

**The Public Contracts and Utilities Contracts (Postal Services
Amendments) Regulations 2008**

<i>Made</i> - - - -	<i>3rd November 2008</i>
<i>Laid before Parliament</i>	<i>4th November 2008</i>
<i>Coming into force</i> - -	<i>1st December 2008</i>

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to public procurement.

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and commencement

1. These Regulations may be cited as the Public Contracts and Utilities Contracts (Postal Services Amendments) Regulations 2008 and come into force on 1st December 2008.

Amendment of the Public Contracts Regulations

2. Schedule 1 to the Public Contracts Regulations 2006^(c) is amended by omitting the words “Postal Business of the Post Office”.

Amendment of the Utilities Contracts Regulations

3. The Utilities Contracts Regulations 2006^(d) are amended—

- (a) in regulation 6(1), by inserting at the end the words “, except where these Regulations apply by virtue of Part T of Schedule 1 (see paragraph 23(d) in the second column of that Schedule)”.
- (b) in Schedule 1, by inserting after the tables relating to category 7 the table contained in the Schedule to these Regulations.

(a) S.I. 1991/755.

(b) 1972 c.68.

(c) S.I. 2006/5, to which there are amendments not relevant to these Regulations.

(d) S.I. 2006/6, to which there are amendments not relevant to these Regulations.

Transitional provision

4.—(1) Nothing in these Regulations affects any contract award procedure or design contest commenced in accordance with the Public Contracts Regulations 2006 before 1st December 2008.

(2) For that purpose, a procedure or contest has been commenced before 1st December 2008 if, before that date-

- (a) a contract notice has been sent to the Official Journal in accordance with those Regulations in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed public contract;
- (b) in any case where there is no requirement to send a contract notice to the Official Journal in accordance with those Regulations, the contracting authority has despatched any form of advertisement seeking offers or expressions of interest in a proposed public contract;
- (c) where there is no such advertising, the contracting authority has contacted any economic operator in order to seek expressions of interest or offers in respect of a proposed public contract; or
- (d) the contracting authority has sent a notice to the Official Journal in accordance with those Regulations in order to hold a design contest.

(3) Where a framework agreement has been concluded under the Public Contracts Regulations 2006 before 1st December 2008, nothing in these Regulations affects the award of any specific contract under that framework agreement.

Dave Watts
Tony Cunningham

3rd November 2008

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 3(b)

“CATEGORY 8 – POSTAL SERVICES	
PART T	
<p>Royal Mail Group Limited.</p> <p>Any other relevant person.</p>	<p>22. Activities relating to the provision of postal services. For the purposes of this paragraph:</p> <ul style="list-style-type: none"> (a) ‘postal services’ means services consisting of the clearance, sorting, routing and delivery of postal items; and (b) ‘postal items’ means items addressed in the final form in which they are to be carried, irrespective of weight. In addition to items of correspondence, such items also include books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight. <p>23. Activities relating to the provision of the following services, but only where the conditions specified in paragraph 24 are satisfied:</p> <ul style="list-style-type: none"> (a) mail service management services (services both preceding and subsequent to despatch, such as ‘mailroom management services’), (b) added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail), (c) services concerning postal items not included in paragraph 22, such as direct mail bearing no address, (d) financial services which are — <ul style="list-style-type: none"> (i) specified in category 6 of Part A of Schedule 3 or (ii) referred to in regulation 6(l) including in particular postal money orders and postal giro transfers. (e) Philatelic services,

	<p>(f) logistics services (services combining physical delivery and/or warehousing with other non-postal functions).</p> <p>24. In relation to any service described in paragraph 23, the conditions are -</p> <p>(a) that the service is provided by a relevant person which also provides services within paragraph 22, and</p> <p>(b) the conditions set out in Article 30(1) of the Utilities Directive are not satisfied in respect of the services within paragraph 22 which the relevant person is providing.”</p>
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Contracts Regulations 2006 (SI 2006/05) (“the Public Contracts Regulations”) and the Utilities Contracts Regulations 2006 (SI 2006/06) (“the Utilities Contracts Regulations”).

Regulation 3 and the Schedule amend the Utilities Contracts Regulations to bring within the scope of those Regulations Royal Mail Group Limited and any other ‘relevant person’ (as defined by regulation 3(2) of those Regulations) carrying out activities relating to the provision of postal and certain related services. This implements article 6 of Council Directive 2004/17/EC (OJ L134, 30.4.2004, p.1) concerning the co-ordination of procurement procedures of entities operating in the water, energy, transport and postal service sectors. Most of the provisions of that Directive are already implemented by the Utilities Contracts Regulations. Article 71 of the Directive allowed an additional period for the implementation of article 6.

Regulation 2 amends the Public Contracts Regulations to remove the Postal Business of the Post Office from the list of ‘Schedule 1 entities’ for the purposes of those Regulations. Those Regulations implement (for England, Wales and Northern Ireland) Council Directive 2004/18/EC (OJ L134, 30.4.2004, p.114) (“the Public Sector Directive”) concerning the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts. This amendment reflects the extension of the scope of the Utilities Contracts Regulations and the corresponding reduction in the scope of the Public Contracts Regulations (by virtue of regulation 6(1) of the latter Regulations, implementing article 12 of the Public Sector Directive).

An impact assessment has not been produced for this instrument as no impact on the private and voluntary sectors is foreseen.

A Transposition Note is attached to the Explanatory Memorandum which is available alongside this instrument on the OPSI website (www.opsi.gov.uk).