

EXECUTIVE NOTE

The Utilities Contracts (Scotland) Regulations 2006 S.S.I. 2006/2

1. Background

The Utilities Contracts (Scotland) Regulations 2006 gives effect in Scots law to the European Directive on procurement in the utilities sector (Directive 2004/17/EC). Directive 2004/17/EC was adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. It came into force on the day it was published in the Official Journal of the European Union on 30 April 2004 and must be implemented within 21 months of that date, which means it must be fully implemented in the UK by 31 January 2006. We propose to achieve this by the making of Regulations under section 2(2) of the European Communities Act 1972, as amended by Schedule 8 paragraph 15 of the Scotland Act 1998. This instrument is subject to the negative resolution procedures.

2. Policy Objectives

Public procurement legislation seeks to ensure that utilities sector bodies award contracts in an efficient and non-discriminatory manner. Directive 2004/17/EC promotes the single European market and facilitates the achievement of value for money for the taxpayer.

The Regulation sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain financial thresholds for procurements in the utilities sector. This Instrument replaces and updates the existing UK Statutory Instrument on utilities procurement as well as re-enacting the provisions of Council Directive 89/665/EEC on remedies. To take account of modern procurement techniques, the Regulation makes provision for facilitating the use of e-procurement, provides an exclusion mechanism for activities which are fully exposed to competition and where the market access is open, and clarifies the extent to which social and environmental issues can be considered during the procurement process.

3. Consultation

In developing policy and negotiating lines leading up to the agreement of the new Directive, there was wide consultation led by the Office of Government Commerce ("OGC"), the part of HM Treasury which was responsible for the negotiation of the directive at a UK level. Those consulted included the Chartered Institute of Purchasing and Supply, Confederation of British Industry, Department for Environment, Food and Rural Affairs, the Welsh Assembly Government, Northern Ireland, Heads of Procurement in other Government Departments, Office of the Deputy Prime Minister, Small Business Service, Trade Union Congress and, of course, the Scottish Ministers.

Once the Directive was adopted at European level, Scottish Ministers consulted, independently from OGC, on the policy approach to implementation in Scotland. This consultation process ended in October 2004, and resulted in only 4 responses being received.

Further to this, Scottish Ministers undertook a second round of public consultation, seeking views on the text of the draft Scottish Statutory Instrument. On this occasion, 9 responses were received.

4. Financial Effects

As the Regulation clarifies, simplifies and modernises legislation that already exists, it should not cause any additional costs for utility bodies, nor should it affect front line delivery of services. Similarly, there is unlikely to be any compliance costs for businesses.