

**EXPLANATORY MEMORANDUM TO
THE PUBLIC CONTRACTS AND UTILITIES CONTRACTS (CPV CODE
AMENDMENTS) REGULATIONS 2008**

2008 No. 2256

1. This explanatory memorandum has been prepared by the Office of Government Commerce 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 and the Utilities Contracts Regulations 2006. These amendments are needed to incorporate changes to the European Commission's Common Procurement Vocabulary (CPV) coding system, which are to have effect from 15 September 2008.

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

3.1 None

4. **Legislative Background**

4.1 The EU Public Procurement Directive (2004/18/EC) and the Utilities Procurement Directive (2004/17/EC) ("the Directives") were implemented by the Public Contracts Regulations 2006 (SI 2006 No 5) and the Utilities Contracts Regulations 2006 (SI 2006 No 6) (together "the principal implementing Regulations"). The Directives contain CPV codes, which are used to classify public procurements, and these codes in turn are used in the principal implementing Regulations.

4.2 The Commission has made a Regulation ((EC) 213/2008) promulgating revised CPV codes, with effect from 15 September 2008. It also amends the relevant annexes of the Directives to incorporate the revised codes. The main objective of this Instrument is to update the references to the CPV codes in the principal implementing Regulations to reflect those amendments. Those Regulations, which apply to public authorities and certain utilities when they procure goods, works and services above certain thresholds, came into force on 31 January 2006, following two extensive consultation exercises.

4.3 A Transposition Note is attached to this 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 Public authorities and utilities, when advertising requirements in accordance with the principal implementing Regulations, are required to use CPV codes that relate to the procurement in question. In this respect the CPV codes serve two purposes. They can be used by potential suppliers to search for the products or services that they may be interested in and they aid the European Commission with translating the contract notice into other languages. CPV codes are also used for classification purposes and for the annual statistical reporting exercise that all authorities have to undertake.

7.2 The Commission updates CPV codes from time to time. On this occasion, it has made changes in the light of developments in the market and users' needs, and also to increase the codes' user-friendliness and the coherence and logic of their structure. The changes do not affect the material scope of the Directives.

7.3 The amendments to the principal implementing Regulations made by this Instrument are purely technical in nature and involve no substantial element of choice on the UK's part: they reflect the Commission Regulation's amendment of the Directives by replacing the old CPV codes by the new ones

7.4 This amending Instrument also amends regulation 38(4)(b) of the Utilities Contracts Regulations 2006. This regulation had previously imprecisely specified the CPV codes corresponding to the Central Product Classification codes listed in Article 67 of the Utilities Procurement Directive which describes certain telecommunication services about which information need not be included in the annual reports that utilities are required to make to the relevant minister.

7.5 These changes to the principal implementing Regulations are neither material nor contentious.

7.6 The Commission consulted interested parties before amending the CPV codes. The OGC has not undertaken any further consultation in view of the purely technical and consequential nature of reflecting these changes at national level, an exercise which gives rise to no substantive discretion on the part of the UK.

7.7 Guidance is not required. Information has been put on the OGC website to notify the revised CPV codes to users. Organisations that facilitate the sending of contract notices to the Official Journal of the European Union are changing their systems to accommodate the new codes from 15 September 2008.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is limited to the extent that they will have to use the revised CPV codes when advertising requirements in the Official Journal.

9. Contact

9.1 Kevin Harrison at the Office of Government Commerce Tel: 01603 704729 or e-mail: Kevin.Harrison@ogc.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

Annexes XII, XVIIIA and XVIIIB of Council Directive 2004/17/EC and Annexes I, IIA and IIB of Council Directive 2004/18/EC as substituted by Regulation (EC) No 213/2008

This transposition note sets out how the Treasury has implemented the amendments to Council Directives 2004/17/EC and 2004/18/EC introduced by Regulation (EC) No 213/2008 (“the CPV Regulation”). The amendments are implemented into domestic legislation by the Public Contracts and Utilities Contracts (CPV Code Amendments) Regulations 2008 (“the 2008 Regulations”).

The 2008 Regulations do what is necessary to implement the amended directives, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Full transposition notes for the directives were prepared and attached to the Explanatory Memoranda for the PCR and UCR.

Council Directive 2004/17/EC

Council Directive 2004/17/EC (“the Utilities Directive”) has been previously implemented by the Utilities Contracts Regulations 2006 (“the UCR”).

Article 2 of the CPV Regulation replaces Annexes XII, XVIIIA and XVIIIB to the Utilities Directive. Regulation 3 of the 2008 Regulations amends the UCR to implement those replacements.

Council Directive 2004/18/EC

Council Directive 2004/18/EC (“the Public Sector Directive”) has been previously implemented by the Public Contracts Regulations 2006 (“the PCR”).

Article 3 of the CPV Regulation replaces Annexes I, IIA and IIB to the Public Sector Directive. Regulation 2 of the 2008 Regulations amends the PCR to implement those revisions.