

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 2

EXEMPTED CONTRACTS

PART 1

COUNTERPARTY EXEMPTED CONTRACTS

PROSPECTIVE

General

- 1 A contract is an exempted contract if it is a contract of a kind listed in this Part of this Schedule.

Commencement Information

- II** Sch. 2 para. 1 not in force at Royal Assent, see [s. 127\(2\)](#)

Vertical arrangements

- 2 (1) A contract between a contracting authority and a person that is controlled by—
- (a) the contracting authority,
 - (b) the contracting authority acting jointly with one or more other contracting authorities,
 - (c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or
 - (d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).
- (2) A contracting authority, or a contracting authority acting jointly with one or more other contracting authorities, controls a person if—
- (a) the contracting authority is a parent undertaking, or the contracting authorities are parent undertakings, in relation to the person,
 - (b) no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly),
 - (c) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of—
 - (i) the contracting authority or authorities, or

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- (ii) another person that is, or other persons that are, controlled by the authority or the authorities acting jointly, and
- (d) in the case of joint control—
 - (i) each of the contracting authorities is represented on the person’s board, or equivalent decision-making body, and
 - (ii) the person does not carry out any activities that are contrary to the interests of one or more of the contracting authorities.
- (3) A person is not to be regarded as controlled by a contracting authority, or a contracting authority acting jointly with other contracting authorities, if any person that is not a public authority holds shares in the person.
- (4) In sub-paragraph (2)(a)—
 - “parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person;
 - “parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.
- (5) For the purposes of sub-paragraph (2)(b), a person does not exercise a decisive influence on the activities of a person only by reason of being a director, officer or manager of the person acting in that capacity.
- (6) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(c).
- (7) For the purposes of sub-paragraph (2)(d)(i), one representative may represent more than one contracting authority.
- (8) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Commencement Information

- I2** Sch. 2 para. 2 not in force at Royal Assent, see [s. 127\(2\)](#)
- I3** Sch. 2 para. 2(6) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(s\)](#)

Horizontal arrangements

- 3 (1) A contract between contracting authorities only that relates to a horizontal arrangement between those authorities.
- (2) A “horizontal arrangement” means an arrangement—
 - (a) entered into—
 - (i) with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions;
 - (ii) solely in the public interest;
 - (b) in which no more than 20 per cent of the activities contemplated by the arrangement are intended to be carried out other than for the purposes of the authorities’ public functions.

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- (3) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(b).
- (4) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Commencement Information

- I4** Sch. 2 para. 3 not in force at Royal Assent, see [s. 127\(2\)](#)
I5 [Sch. 2 para. 3\(3\)](#) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(s\)](#)

PROSPECTIVE

Defence and security contracts

- 4 (1) A defence and security contract where the supplier is the government of another state or territory.
- (2) In this Schedule “government” includes—
- (a) any governing authority;
 - (b) the government of a region or locality within a state or territory.

Commencement Information

- I6** Sch. 2 para. 4 not in force at Royal Assent, see [s. 127\(2\)](#)

Utilities contracts

- 5 (1) A utilities contract between a utility and a relevant joint venture to which that utility is party, where—
- (a) the joint venture was formed for the purpose of carrying out a utility activity for at least three years, and
 - (b) the parties to the joint venture are committed, by way of a written agreement, to continue to be parties to the joint venture for a period of three years following the date of that agreement.
- (2) In this Schedule, “relevant joint venture” means a joint venture—
- (a) formed for the purpose of carrying out a utility activity;
 - (b) where each party to the joint venture is a utility.

Commencement Information

- I7** Sch. 2 para. 5 not in force at Royal Assent, see [s. 127\(2\)](#)

- 6 (1) A utilities contract awarded for the supply of goods, services or works—
- (a) by a utility to a person affiliated with the utility, or

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- (b) where the utility in question is a relevant joint venture, by the utility to a person affiliated with any member of the joint venture,
 but only if the turnover test is met by the affiliated person in relation to goods, services or (as the case may be) works.
- (2) A person is “affiliated” with another if the person is in the position of a group undertaking of the other person, within the meaning given in section 1161(5) of the Companies Act 2006, whether or not either of them is an undertaking within the meaning given in section 1161(1) of that Act.
- (3) The “turnover test” is met in relation to goods, services or works if the affiliated person’s turnover deriving from the supply of goods, services or (as the case may be) works to the utility and other persons affiliated with the utility (their “affiliated turnover amount”) exceeds 80 per cent of their total turnover amount deriving from the supply of goods, services or works.
- (4) An appropriate authority may by regulations make provision about how to calculate a person’s affiliated turnover amount and total turnover amount for the purposes of sub-paragraph (3).
- (5) The regulations may, in particular, make provision—
- (a) for those amounts to be calculated by reference to—
 - (i) an average amount for a period specified in the regulations;
 - (ii) another reasonable method so specified;
 - (b) to secure that, in calculating those amounts in relation to a person (“A”), turnover of a person who is an affiliated person in relation to A is to be treated as part of A’s turnover.

Commencement Information

- I8** Sch. 2 para. 6 not in force at Royal Assent, see [s. 127\(2\)](#)
I9 [Sch. 2 para. 6\(4\)\(5\)](#) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(s\)](#)

Commencement Information

- I7** Sch. 2 para. 5 not in force at Royal Assent, see [s. 127\(2\)](#)
I8 Sch. 2 para. 6 not in force at Royal Assent, see [s. 127\(2\)](#)
I9 [Sch. 2 para. 6\(4\)\(5\)](#) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(s\)](#)

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