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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 2**

**The Utilities Contracts (Scotland) Regulations 2006**

**PART 1**

**GENERAL**

**Exclusion of contracts awarded to affiliated undertakings or joint ventures**

7.—(1) For the purposes of this regulation—

“affiliated undertaking” means—

- (a) in respect of a utility which is subject to the seventh Council Directive [83/349/EC](#) on consolidated accounts <sup>M1</sup> as last amended by Directive [2003/15/EC](#) of the European Parliament and of the Council of 18th June 2003 <sup>M2</sup>, any undertaking the accounts of which are consolidated with those of that utility; or
- (b) in any other case, any undertaking which is either a parent undertaking, a subsidiary undertaking or a fellow subsidiary undertaking of the utility and—
  - (i) an undertaking is a parent undertaking of a utility if it exercises a dominant influence over it, directly or indirectly, and for these purposes an undertaking exercises a dominant influence over another if—
    - (aa) it possesses the greater part of the issued share capital of that undertaking or controls the majority of the voting power attached to the issued share capital of that undertaking; or
    - (bb) it may appoint more than half of the individuals who are ultimately responsible for managing the affairs of that company;and an undertaking is a subsidiary of a utility if the utility exercises such dominant influence over it; or
  - (ii) an undertaking is a fellow undertaking of a utility if both are subsidiary undertakings of the same parent undertaking; and

“joint venture” means an association formed exclusively by a number of utilities for the purpose of carrying out any of the activities specified in the second column of Schedule 1.

(2) Subject to paragraph (3), these Regulations do not apply to the seeking of offers in relation to contracts which—

- (a) a utility proposes to award to an affiliated undertaking; or
- (b) a joint venture proposes to award to an affiliated undertaking of one of its members.

(3) Paragraph (2) applies—

- (a) in relation to services contracts, provided that at least 80% of the average turnover of the affiliated undertaking in respect of services for the preceding 3 years derives from the provision of such services to one or more of its affiliated undertakings;

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- (b) in relation to supplies contracts, provided that at least 80% of the average turnover of the affiliated undertaking in respect of supplies for the preceding 3 years derives from the provision of such supplies to one or more of its affiliated undertakings; and
  - (c) in relation to works contracts, provided that at least 80% of the average turnover of the affiliated undertaking in respect of works for the preceding 3 years derives from the provision of such works to one or more of its affiliated undertakings.
- (4) Where more than one of its affiliated undertakings provides the same or similar services, supplies or works, a utility may calculate the percentages referred to in paragraph (3) by taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.
- (5) For the purposes of paragraph (3), when turnover amounts are not available for the preceding three years because of the date upon which a relevant affiliated undertaking was created or commenced activities, it is sufficient for that affiliated undertaking to show, particularly by means of business projections, that the turnover in respect of the provision of services, supplies or works is credible.
- (6) These Regulations do not apply to the seeking of offers in relation to contracts which—
- (a) a joint venture proposes to award to one of its members; or
  - (b) a utility proposes to award to a joint venture of which it is a member provided that—
    - (i) the joint venture has been set up in order to carry out the activity for which the contract is being sought over a period of at least 3 years; and
    - (ii) the instrument setting up the joint venture stipulates that its members will be part of the joint venture for at least the same period.
- (7) A utility which relies on the exclusions in paragraph (2) or (6) shall, if the Commission requests it, send to the Minister—
- (a) the names of the undertakings or joint ventures concerned;
  - (b) the value of the consideration and the type of—
    - (i) services to be provided under any services contract;
    - (ii) goods to be purchased or hired under any supply contract; or
    - (iii) work or works to be carried out under any works contracts;
 excluded in accordance with paragraph (2) or (6); and
  - (c) any information which is necessary to justify the use of the exclusion.

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**Marginal Citations**

**M1** O.J. No. L 193, 18.7.83, p.1.

**M2** O.J. No. L 178, 17.7.03, p.16.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- reg 7 am by [S.S.I. 2008/94 reg 3](#)
- Part 9 (regs 45 - 46) appl (mod) by [S.S.I. 2010/390 reg 6](#)
- 19 am (with transtl provns) by [S.S.I. 2009/428 regs 45](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Regulations revoked by [S.S.I. 2012/89 reg. 48Sch. 5 Pt. A](#)
- reg. 6(p) inserted by [S.I. 2011/1848 Sch. 4 para. 4\(4\)](#)
- reg. 34(5)(e)(iii)(aa) words substituted by [S.I. 2011/2053 reg. 30\(2\)\(d\)](#)
- regs 45A - 45C added (with transtl provns) by [S.S.I. 2009/428 regs 45](#)