
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 89

The Utilities Contracts (Scotland) Regulations 2012

PART 1

GENERAL

Exemption of contracts where activity is directly exposed to competition

9.—(1) These Regulations do not apply to the seeking of offers in relation to a contract awarded by a utility for the purpose of carrying out an activity specified in column 2 of Schedule 1 where that activity is directly exposed to competition on markets to which access is unrestricted and this will be the case if one of the following conditions is satisfied—

- (a) the Cabinet Office has notified the Commission in accordance with article 30 of the Utilities Directive of all the relevant facts and—
 - (i) the Commission has adopted a decision that an exemption should apply in response to such a notification; or
 - (ii) the Commission has not adopted a decision in relation to such a notification within the time limits specified in article 30(6) of the Utilities Directive;
- (b) the Commission has, on the application of a utility—
 - (i) adopted a decision that an exemption should apply to the activity concerned; or
 - (ii) has not adopted such a decision within the time limit specified in article 30(6) of the Utilities Directive; or
- (c) the Commission has, of its own initiative—
 - (i) adopted a decision that an exemption should apply to the activity concerned; or
 - (ii) has not adopted such a decision within the time limit specified in article 30(6) of the Utilities Directive and for the purposes of this sub-paragraph that time limit commences on the date that the Commission has informed the Cabinet Office in accordance with that article that the matter was under consideration.

(2) A utility may make an application to the Commission in accordance with article 30 of the Utilities Directive for a decision that an activity that utility carries out or is proposing to carry out which is specified in the second column of Schedule 1 is directly exposed to competition on markets to which access is not restricted.

(3) An application made by a utility in accordance with paragraph (2) must be in writing and must specify—

- (a) the activity in respect of which the notification or application is made;
- (b) the relevant facts and, in particular, any law, regulation, administrative provision or agreement concerning compliance with the conditions that the activity is not directly exposed to competition on markets to which access is not restricted; and

- (c) whether the activity concerned is subject to any of the EU legislation referred to in Annex XI to the Utilities Directive and where it is, the relevant implementing legislation in the UK.