
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 65

The Concession Contracts (Scotland) Regulations 2016

PART 1

GENERAL

Meaning of “concession contract”

3.—(1) In these Regulations, “concession contract” means a works concession contract or a services concession contract as defined within this regulation.

(2) A “works concession contract” means a contract—

- (a) for pecuniary interest concluded in writing by means of which one or more contracting entities entrust the execution of works to one or more economic operators, the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; and
- (b) that meets the requirements of paragraph (4).

(3) A “services concession contract” means a contract—

- (a) for pecuniary interest concluded in writing by means of which one or more contracting entities entrust the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment; and
- (b) that meets the requirements of paragraph (4).

(4) The requirements referred to in paragraphs (2)(b) and (3)(b) are—

- (a) the award of the contract involves the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both; and
- (b) the part of the risk transferred to the concessionaire involves real exposure to changing market conditions, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.

(5) For the purposes of paragraph (4)(a) the concessionaire shall be deemed to assume operating risk if, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession contract.