

Status: Point in time view as at 12/03/2024. This version of this schedule contains provisions that are prospective.

Changes to legislation: Procurement Act 2023, SCHEDULE 4 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 6

UTILITY ACTIVITIES

PART 1

ACTIVITIES THAT ARE UTILITY ACTIVITIES

Gas and heat

- 1 (1) The following are utility activities—
 - (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat;
 - (b) the supply of gas or heat to such a network.
- (2) But the supply of gas or heat to a network is not a utility activity if—
 - (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the production of gas or heat by the operator is a necessary consequence of carrying out an activity other than a specified activity, and
 - (c) the amount of gas or heat supplied to the network represents not more than 20 per cent of the operator’s turnover amount.
- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2)(c).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
 - (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Commencement Information

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|-----------|---|
| I1 | Sch. 4 para. 1 not in force at Royal Assent, see s. 127(2) |
| I2 | Sch. 4 para. 1(3)(4) in force at 12.3.2024 by S.I. 2024/361, reg. 2(t) |

Electricity

- 2 (1) The following are utility activities—
 - (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity;

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- (b) the supply of electricity to such a network.
- (2) But the supply of electricity to a network is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces electricity because it needs electricity to carry out an activity other than a specified activity,
 - (c) the supply consists only of electricity that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
 - (d) the amount of electricity supplied represents not more than 30 per cent of the amount of energy produced by the operator.
- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
- (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Commencement Information

I3 Sch. 4 para. 2 not in force at Royal Assent, see [s. 127\(2\)](#)

I4 Sch. 4 para. 2(3)(4) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(f\)](#)

Water

- 3 (1) The following are utility activities—
- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of drinking water;
 - (b) the supply of drinking water to such a network.
- (2) The following are utility activities to the extent that they are carried out by a person who also carries out activities within sub-paragraph (1)—
- (a) any activity connected with a hydraulic engineering project, irrigation or land drainage in circumstances where the condition in sub-paragraph (3) is met;
 - (b) any activity connected with the disposal or treatment of sewage.
- (3) The condition is that a person carrying out the activity would reasonably expect that more than 20 per cent of the water made available by the project, irrigation or land drainage is to be supplied as drinking water to a network within sub-paragraph (1)(a).
- (4) The supply of drinking water as mentioned in sub-paragraph (1)(b) is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces drinking water because it needs drinking water to carry out an activity that is not a specified activity,
 - (c) the supply consists only of drinking water that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and

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- (d) the amount of drinking water supplied represents not more than 30 per cent of the amount of drinking water produced by the operator.
- (5) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (4).
- (6) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
 - (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Commencement Information

I5 Sch. 4 para. 3 not in force at Royal Assent, see [s. 127\(2\)](#)

I6 Sch. 4 para. 3(5)(6) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(t\)](#)

PROSPECTIVE

Transport

- 4 An activity is a utility activity if it relates to the provision or operation of a network for the provision of a service to the general public for transport, whether by rail, tram, bus or other means.

Commencement Information

I7 Sch. 4 para. 4 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

Ports and airports

- 5 (1) An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
 - (a) the provision of an airport to carriers of passengers or goods by air;
 - (b) the provision of a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.
- (2) In this paragraph “airport” has the same meaning as in Part 1 of the Civil Aviation Act 2012 (see section 66 of that Act).

Commencement Information

I8 Sch. 4 para. 5 not in force at Royal Assent, see [s. 127\(2\)](#)

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PROSPECTIVE

Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

- 6 An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
- (a) extracting oil or gas;
 - (b) searching for or extracting coal or other solid fuels.

Commencement Information

I9 Sch. 4 para. 6 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

Interpretation of Schedule

- 7 In this Part of this Schedule—
- “specified activity” means an activity specified in paragraph [1\(1\)](#), [2\(1\)](#), [3\(1\)](#) or [4](#);
 - “supply” includes—
 - (a) production, but not the production of gas in the form of extraction (as to which, see paragraph [6](#)), and
 - (b) generation and wholesale or retail sale.

Commencement Information

I10 Sch. 4 para. 7 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

PART 2

ACTIVITIES THAT ARE NOT UTILITY ACTIVITIES

- 8 Generation of electricity in England, Scotland or Wales.

Commencement Information

I11 Sch. 4 para. 8 not in force at Royal Assent, see [s. 127\(2\)](#)

- 9 Production of electricity in England, Scotland or Wales.

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Commencement Information

I12 Sch. 4 para. 9 not in force at Royal Assent, see [s. 127\(2\)](#)

10 Wholesale or retail sale of electricity in England, Scotland or Wales.

Commencement Information

I13 Sch. 4 para. 10 not in force at Royal Assent, see [s. 127\(2\)](#)

11 Wholesale or retail sale of gas in England, Scotland or Wales.

Commencement Information

I14 Sch. 4 para. 11 not in force at Royal Assent, see [s. 127\(2\)](#)

12 Exploration for oil in England, Scotland or Wales.

Commencement Information

I15 Sch. 4 para. 12 not in force at Royal Assent, see [s. 127\(2\)](#)

13 Exploration for natural gas in England, Scotland or Wales.

Commencement Information

I16 Sch. 4 para. 13 not in force at Royal Assent, see [s. 127\(2\)](#)

14 Production of oil in England, Scotland or Wales.

Commencement Information

I17 Sch. 4 para. 14 not in force at Royal Assent, see [s. 127\(2\)](#)

15 Production of natural gas in England, Scotland or Wales.

Commencement Information

I18 Sch. 4 para. 15 not in force at Royal Assent, see [s. 127\(2\)](#)

16 Development of infrastructure for production of oil in England, Scotland or Wales.

Commencement Information

I19 Sch. 4 para. 16 not in force at Royal Assent, see [s. 127\(2\)](#)

17 Development of infrastructure for production of natural gas in England, Scotland or Wales.

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I20 Sch. 4 para. 17 not in force at Royal Assent, see [s. 127\(2\)](#)

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