



Procurement Act 2023

2023 CHAPTER 54

PART 1

KEY DEFINITIONS

2 Contracting authorities

- (1) In this Act “contracting authority” means—
- a public authority, or
 - in the case of a utilities contract, a public authority, public undertaking or private utility,
- other than an excluded authority.
- (2) In this Act—
- “public authority” means a person that is—
- wholly or mainly funded out of public funds, or
 - subject to public authority oversight,
- and does not operate on a commercial basis (but see subsections (9) and (10));
- “public undertaking” means a person that—
- is subject to public authority oversight, and
 - operates on a commercial basis;
- “private utility” means a person that—
- is not a public authority or public undertaking, and
 - carries out a utility activity.
- (3) A person is subject to public authority oversight if the person is subject to the management or control of—
- one or more public authorities, or
 - a board more than half of the members of which are appointed by one or more public authorities.

Status: This is the original version (as it was originally enacted).

- (4) The following are examples of factors to be taken into account in determining whether a person operates on a commercial basis—
- (a) whether the person operates on the basis that its losses would be borne, or its continued operation secured, by a public authority (whether directly or indirectly);
 - (b) whether the person contracts on terms more favourable than those that might reasonably have been available to it had it not been associated with a public authority;
 - (c) whether the person operates on a market that is subject to fair and effective competition.
- (5) The following authorities are excluded authorities—
- (a) a devolved Scottish authority;
 - (b) the Security Service, the Secret Intelligence Service and the Government Communications Headquarters;
 - (c) the Advanced Research and Invention Agency;
 - (d) any person that is subject to public authority oversight—
 - (i) only by reference to a devolved Scottish authority, or
 - (ii) by reference to an authority mentioned in paragraph (b) or (c).
- (6) An authority is a “devolved Scottish authority” if its functions are exercisable only in or as regards Scotland, and—
- (a) none of its functions relate to reserved matters, or
 - (b) some of its functions relate to reserved matters and some do not.
- (7) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Scottish authority for the purposes of this Act if it operates only in or as regards Scotland, and—
- (a) none of its activities relate to reserved matters, or
 - (b) some of its activities relate to reserved matters and some do not.
- (8) In this Act, a reference to a devolved Scottish authority includes a reference to an authority that is to be treated as a devolved Scottish authority for the purposes of this Act.
- (9) In this Act, a reference to a public authority includes a reference to the Common Council of the City of London.
- (10) For the purposes of this Act, a person that operates on a commercial basis but is, as a controlled person, awarded an exempted contract by a public authority in reliance on paragraph 2 of Schedule 2 (vertical arrangements) is to be treated as a public authority in relation to any relevant sub-contract.
- (11) This Act does not apply to His Majesty acting in his private capacity.
- (12) In this section—
- “relevant sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of the exempted contract;
 - “reserved matters” has the same meaning as in the Scotland Act 1998.