



Procurement Act 2023

2023 CHAPTER 54

PART 1

KEY DEFINITIONS

6 Utilities contracts

- (1) In this Act, “utilities contract” means a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.
- (2) In this Act, “utility activity” means an activity that—
 - (a) is specified in Part 1 of Schedule 4,
 - (b) is not specified in Part 2 of Schedule 4,
 - (c) is not carried out wholly outside the United Kingdom, and
 - (d) in the case of an activity carried out by a person that is not a public authority or public undertaking, is carried out pursuant to a special or exclusive right.
- (3) A person carries out a utility activity pursuant to a “special or exclusive right” if—
 - (a) the person (whether alone or with others) has been granted a right to carry out the activity pursuant to any statutory, regulatory or administrative provision, and
 - (b) that provision also substantially limits the ability of persons not granted the right to carry on the activity.
- (4) But a right to carry out a utility activity is not a “special or exclusive right” if it is granted—
 - (a) following award under section 19 (competitive award), or
 - (b) otherwise pursuant to a procedure in which—
 - (i) the opportunity to be granted the right was publicised widely enough to avoid an artificial narrowing of competition, and
 - (ii) the grant of the right was based on criteria that did not favour or disadvantage certain persons.

Status: This is the original version (as it was originally enacted).

- (5) An appropriate authority may by regulations amend Part 2 of Schedule 4 for the purpose of—
 - (a) specifying an activity, or
 - (b) removing an activity.
- (6) Regulations under subsection (5) may not specify an activity unless the authority is satisfied that—
 - (a) the activity is carried out on a market that is subject to fair and effective competition, and
 - (b) entry to that market is unrestricted.
- (7) In this Act, a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.