

STATUTORY INSTRUMENTS

**2016 No. 274**

**The Utilities Contracts Regulations 2016**

**PART 1** **E+W+N.I.**

GENERAL

**CHAPTER 3** **E+W+N.I.**

MATERIAL SCOPE

*SECTION 2*

*Excluded contracts and design contests; special provisions  
for procurement involving defence and security aspects*

**SUB-SECTION 1** *Exclusions applicable to all utilities and special exclusions for the water and energy sectors*

**Contracts awarded for the purpose of resale or lease to third parties** **E+W+N.I.**

**18.**—(1) Subject to paragraph (3), these Regulations do not apply to contracts awarded for purposes of resale or lease to third parties, provided that the utility enjoys no special or exclusive right to sell or lease the subject-matter of such contracts, and other entities are free to sell or lease it under the same conditions as the utility.

<sup>F1</sup>(2) .....

(3) Paragraph (1) does not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities.

**Textual Amendments**

**F1** Reg. 18(2) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(9)** (with Sch. paras. 3-5)

**Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity** [<sup>F2</sup>outside the United Kingdom] **E+W+N.I.**

**19.**—(1) These Regulations do not apply to contracts awarded or design contests organised by utilities—

- (a) for purposes other than the pursuit of their activities as described in regulations 9 to 15; or
- (b) for the pursuit of such activities [<sup>F3</sup>outside the United Kingdom], in conditions not involving the physical use of a network or geographical area within the [<sup>F4</sup>United Kingdom].

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

<sup>F5</sup>(2) .....

Textual Amendments	
<b>F2</b>	Words in <a href="#">reg. 19 heading</a> substituted (31.12.2020) by <a href="#">The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319)</a> , regs. 1(2), <b>10(10)(a)</b> (with Sch. paras. 3-5)
<b>F3</b>	Words in <a href="#">reg. 19(1)(b)</a> substituted (31.12.2020) by <a href="#">The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319)</a> , regs. 1(2), <b>10(10)(b)(i)</b> (with Sch. paras. 3-5)
<b>F4</b>	Words in <a href="#">reg. 19(1)(b)</a> substituted (31.12.2020) by <a href="#">The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319)</a> , regs. 1(2), <b>10(10)(b)(ii)</b> (with Sch. paras. 3-5)
<b>F5</b>	<a href="#">Reg. 19(2)</a> omitted (31.12.2020) by virtue of <a href="#">The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319)</a> , regs. 1(2), <b>10(10)(c)</b> (with Sch. paras. 3-5)

**Contracts awarded and design contests organised pursuant to international rules** E+W  
+N.I.

**20.**—(1) These Regulations do not apply to contracts or design contests which the utility is obliged to award or organise in accordance with procurement procedures which are different from those laid down in these Regulations and are established by <sup>F6</sup>...—

(a) a legal instrument creating international law obligations, such as an international agreement<sup>F7</sup>... between [<sup>F8</sup>the United Kingdom and one or more other] countries (or subdivisions of such countries) and covering works, supplies or services intended for the joint implementation or exploitation of a project by its signatories;

<sup>F9</sup>(b) .....

[<sup>F10</sup>(2) These Regulations do not apply to a relevant international contract or design contest in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.]

[<sup>F10</sup>(2A) In the case of a relevant international contract or design contest where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies is regulation 43B (equal treatment of economic operators).]

<sup>F11</sup>(3) .....

(4) In the case of contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules, regulation 27 applies instead of <sup>F12</sup>... this regulation.

[<sup>F13</sup>(5) In this regulation, “relevant international contract or design contest” means a contract or design contest that—

- (a) the utility awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, and
- (b) is fully financed, or co-financed for the most part, by that organisation or institution.]

Textual Amendments	
<b>F6</b>	Words in <a href="#">reg. 20(1)</a> omitted (coming into force in accordance with s. 7(1) of the amending Act) by virtue of <a href="#">Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6)</a> , <b>Sch. para. 9(2)(a)</b> (with Sch. paras. 23-26)
<b>F7</b>	Words in <a href="#">reg. 20(1)(a)</a> omitted (1.3.2024) by virtue of <a href="#">The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (S.I. 2024/80)</a> , reg. 1(2), <b>Sch. para. 4(3)</b>

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

- F8** Words in reg. 20(1)(a) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(11)(b)** (with Sch. paras. 3-5)
- F9** Reg. 20(1)(b) omitted (coming into force in accordance with s. 7(1) of the amending Act) by virtue of Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6), **Sch. para. 9(2)(b)** (with Sch. paras. 23-26)
- F10** Reg. 20(2)(2A) substituted for reg. 20(2) (coming into force in accordance with s. 7(1) of the amending Act) by Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6), **Sch. para. 9(3)** (with Sch. paras. 23-26)
- F11** Reg. 20(3) omitted (coming into force in accordance with s. 7(1) of the amending Act) by virtue of Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6), **Sch. para. 9(4)** (with Sch. paras. 23-26)
- F12** Words in reg. 20(4) omitted (coming into force in accordance with s. 7(1) of the amending Act) by virtue of Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6), **Sch. para. 9(5)** (with Sch. paras. 23-26)
- F13** Reg. 20(5) inserted (coming into force in accordance with s. 7(1) of the amending Act) by Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024 (c. 6), **Sch. para. 9(6)** (with Sch. paras. 23-26)

### Specific exclusions for service contracts **E+W+N.I.**

- 21.—(1) These Regulations do not apply to service contracts—
- (a) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or which concern interests in or rights over any of them;
  - (b) for arbitration or conciliation services;
  - (c) for any of the following legal services—
    - (i) legal representation of a client by a lawyer <sup>F14</sup>..., in:—
      - (aa) an arbitration or conciliation held in [<sup>F15</sup>the United Kingdom, another] country or before an international arbitration or conciliation instance, or
      - (bb) judicial proceedings before the courts, tribunals or public authorities of [<sup>F16</sup>the United Kingdom or another] country or before international courts, tribunals or institutions;
    - (ii) legal advice given—
      - (aa) in preparation of any of the proceedings referred to in paragraph (i), or
      - (bb) where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer <sup>F17</sup>...;
    - (iii) document certification and authentication services which must be provided by notaries;
    - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the [<sup>F18</sup>United Kingdom] or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
    - (v) other legal services which in the [<sup>F19</sup>United Kingdom] are connected, even occasionally, with the exercise of official authority;
  - (d) for—

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

- (i) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council <sup>M1</sup> as amended from time to time, or
- (ii) operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- (e) for loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
- (f) which are employment contracts;
- (g) for public passenger transport services by rail or metro;
- (h) for civil defence, civil protection, and danger prevention that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services; or
- (i) for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers.

(2) In this regulation—

- [<sup>F20</sup>(za) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar;]
- (a) “media service providers” has the meaning given by Article 1(1)(d) of Directive 2010/13/EU of the European Parliament and of the Council <sup>M2</sup> as amended from time to time;
  - (b) “programme” has the meaning given by Article 1(1)(b) of that Directive as amended from time to time, but also includes radio programmes and radio programme materials; and
  - (c) “programme material” has the same meaning as “programme”.

#### Textual Amendments

- F14** Words in reg. 21(1)(c)(i) omitted (31.12.2020) by virtue of The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(i)(aa)** (with Sch. paras. 3-5)
- F15** Words in reg. 21(1)(c)(i)(aa) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(i)(bb)** (with Sch. paras. 3-5)
- F16** Words in reg. 21(1)(c)(i)(bb) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(i)(cc)** (with Sch. paras. 3-5)
- F17** Words in reg. 21(1)(c)(ii) omitted (31.12.2020) by virtue of The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(ii)** (with Sch. paras. 3-5)
- F18** Words in reg. 21(1)(c)(iv) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(iii)** (with Sch. paras. 3-5)
- F19** Words in reg. 21(1)(c)(v) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(a)(iii)** (with Sch. paras. 3-5)
- F20** Reg. 21(2)(za) inserted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(12)(b)** (with Sch. paras. 3-5)

#### Marginal Citations

- M1** OJ No L 145, 30.04.2004, p1, last amended by Directive 2010/78/EU of the European Parliament and of the Council (OJ No L 331, 15.12.2010, p120).
- M2** OJ No L 95, 15.4.2010, p1.

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

## Service contracts awarded on the basis of an exclusive right **E+W+N.I.**

**22.** These Regulations do not apply to service contracts awarded to a contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision <sup>F21</sup>....

### Textual Amendments

**F21** Words in [reg. 22](#) omitted (1.3.2024) by virtue of [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Provision\) Regulations 2024 \(S.I. 2024/80\)](#), [reg. 1\(2\)](#), [Sch. para. 4\(4\)](#)

## Contracts awarded by certain utilities for the purchase of water and for the supply of energy or of fuels for the production of energy **E+W+N.I.**

**23.** These Regulations do not apply to contracts—

- (a) for the purchase of water if awarded by utilities engaged in one or both of the activities relating to drinking water referred to in regulation 11(1);
- (b) awarded by utilities which are active in the energy sector by engaging in an activity referred to in regulation 9(1), regulation 10(1) or regulation 15 for the supply of—
  - (i) energy; or
  - (ii) fuels for the production of energy.

SUB-SECTION 2 *Procurement involving defence and security aspects*

## Defence and security **E+W+N.I.**

**24.—(1)** These Regulations do not apply to—

- (a) contracts falling within the scope of the Defence and Security Regulations;
- (b) contracts to which those Regulations do not apply by virtue of regulations 7 or 9 of those Regulations.

(2) These Regulations do not apply to contracts and design contests not otherwise exempted by paragraph (1) to the extent that—

- (a) the protection of the essential security interests of the United Kingdom <sup>F22</sup>... cannot be guaranteed by less intrusive measures, for example, by imposing requirements aimed at protecting the confidential nature of information which the utility makes available in a contract award procedure as provided for in these Regulations; or
- (b) the application of these Regulations would oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security.

(3) Where the procurement and performance of the contract or design contest are classified as secret or must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in any part of the United Kingdom, these Regulations do not apply provided that the United Kingdom has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraph (2)(a).

### Textual Amendments

**F22** Words in [reg. 24\(2\)\(a\)](#) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), [10\(14\)](#) (with [Sch. paras. 3-5](#))

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

## Mixed procurement covering the same activity and involving defence or security aspects **E** **+W+N.I.**

**25.**—(1) This regulation applies in the case of mixed contracts covering the same activity, which have as their subject-matter procurement covered by these Regulations and procurement or other elements covered by [<sup>F23</sup>regulation 3(2)] or the Defence and Security Regulations.

(2) Where the different parts of a given contract are objectively separable, utilities may choose to award separate contracts for the separate parts or to award a single contract.

(3) The decision to award a single contract shall not, however, be taken for the purpose of excluding contracts from the application of either these Regulations or the Defence and Security Regulations.

(4) Where utilities choose to award separate contracts for separate parts, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(5) Where utilities choose to award a single contract, the following criteria apply to determine the applicable legal regime—

- (a) where part of a given contract is covered by [<sup>F24</sup>regulation 3(2)], the contract may be awarded without applying these Regulations, provided that the award of a single contract is justified by objective reasons;
- (b) where part of a given contract is covered by the Defence and Security Regulations, the contract may be awarded in accordance with those Regulations provided that the award of a single contract is justified for objective reasons.

(6) Paragraph (5)(b) is without prejudice to the thresholds and exclusions for which the Defence and Security Regulations provide.

(7) Paragraph (5)(a) applies to mixed contracts to which both paragraphs (5)(a) and (b) could otherwise apply.

(8) Where the different parts of a given contract are objectively not separable, the contract may be awarded without applying these Regulations where it includes elements [<sup>F25</sup>covered by regulation 3(2)]; otherwise it may be awarded in accordance with the Defence and Security Regulations.

### Textual Amendments

- F23** Words in [reg. 25\(1\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(15)(a)** (with Sch. paras. 3-5)
- F24** Words in [reg. 25\(5\)\(a\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(15)(a)** (with Sch. paras. 3-5)
- F25** Words in [reg. 25\(8\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(15)(b)** (with Sch. paras. 3-5)

## Procurement covering several activities and involving defence or security aspects **E+W** **+N.I.**

**26.**—(1) This regulation applies in the case of contracts intended to cover several activities where one of those activities involves defence or security aspects.

(2) Utilities may choose to award separate contracts for the purposes of each separate activity or to award a single contract.

---

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

---

(3) Where utilities choose to award separate contracts for separate activities, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(4) The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of these Regulations or the Defence and Security Regulations.

(5) Where utilities choose to award a single contract, the following shall apply—

- (a) in the case of a contract intended to cover an activity which is covered by these Regulations and another which is covered by the Defence and Security Regulations, the utility may award the contract in accordance with the Defence and Security Regulations.
- (b) in the case of a contracts intended to cover an activity which is covered by these Regulations and another which is covered by [F26regulation 3(2)], the utility may award the contract without applying these Regulations.

(6) Paragraph (5)(a) is without prejudice to the thresholds and exclusions for which the Defence and Security Regulations provide.

(7) Contracts referred to in paragraph (5)(a), which also includes procurement or other elements which are covered by [F27regulation 3(2)] may be awarded without applying these Regulations.

(8) Paragraphs (5) to (7) apply provided that the award of a single contract is justified by objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these Regulations.

#### Textual Amendments

- F26** Words in reg. 26(5)(b) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(16)** (with Sch. paras. 3-5)
- F27** Words in reg. 26(7) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(16)** (with Sch. paras. 3-5)

### Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules **E+W+N.I.**

27.—(1) These Regulations do not apply to contracts or design contests involving defence or security aspects which the utility is obliged to award or organise in accordance with procurement procedures which are different from those laid down in these Regulations and are established by any of the following—

- (a) an international agreement or arrangement<sup>F28</sup>... between [F29the United Kingdom] and one or more [F30other] countries (or subdivisions of such countries) and covering works, supplies or services intended for the joint implementation or exploitation of a project by its signatories;
- (b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of [F31the United Kingdom or another] country;
- (c) an international organisation.

(2) These Regulations do not apply to contracts or design contests involving defence or security aspects which the utility awards or organises in accordance with procurement rules provided by an international organisation or international financing institution where the contracts or design contests concerned are fully financed by that organisation or institution.

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

(3) In the case of contracts or design contests co-financed for the most part by an international organisation or international financing institution the parties shall agree on applicable procurement procedures.

#### Textual Amendments

- F28** Words in reg. 27(1)(a) omitted (1.3.2024) by virtue of The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (S.I. 2024/80), reg. 1(2), **Sch. para. 4(5)**
- F29** Words in reg. 27(1)(a) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(17)(a)(ii)** (with Sch. paras. 3-5)
- F30** Word in reg. 27(1)(a) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(17)(a)(iii)** (with Sch. paras. 3-5)
- F31** Words in reg. 27(1)(b) substituted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(17)(b)** (with Sch. paras. 3-5)

SUB-SECTION 3 *Special relations (cooperation, affiliated undertakings and joint ventures)*

#### Contracts between contracting authorities **E+W+N.I.**

*Award of contracts to controlled persons*

*Award of contracts to controlled persons*

**28.**—(1) A contract awarded by a utility that is a contracting authority to a legal person falls outside the scope of these Regulations where all of the following conditions are fulfilled—

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions<sup>F32</sup>... which do not exert a decisive influence on the controlled legal person.

(2) A contract also falls outside the scope of these Regulations where a controlled legal person which is a contracting authority awards a contract to—

- (a) its controlling contracting authority, or
- (b) another legal person controlled by the same contracting authority,

provided that there is no direct private capital participation in the legal person being awarded the contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions<sup>F33</sup>..., which do not exert a decisive influence on the legal person being awarded the contract.

(3) A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of paragraph (1)(a) where—

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person; or
- (b) the control is exercised by another legal person which is itself controlled in the same way by the contracting authority,



and references to “control”, “controlled” and “controlling” in paragraphs (1) to (3) shall be interpreted accordingly.

*Award of contracts where there is joint control*

(4) A contracting authority which does not exercise over a legal person control within the meaning of paragraph (3) may nevertheless award a contract to that legal person without applying these Regulations where all of the following conditions are fulfilled—

- (a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
- (b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities; and
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions<sup>F34</sup>... which do not exert a decisive influence on the controlled legal person.

(5) For the purposes of paragraph (4)(a), contracting authorities shall be deemed to exercise joint control over a legal person where all of the following conditions are fulfilled—

- (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;
- (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; and
- (c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(6) For the purposes of paragraph (5)(a), individual representatives may represent several or all of the participating contracting authorities.

*Contracts which establish or implement co-operation between contracting authorities*

(7) A contract concluded exclusively between two or more contracting authorities falls outside the scope of these Regulations where all of the following conditions are fulfilled—

- (a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation.

*Determination of percentages*

(8) For the determination of the percentage of activities referred to in paragraph (1)(b), (4)(b) and (7)(c), the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the 3 years preceding the contract award shall be taken into consideration.

(9) Where, because of—

- (a) the date on which the relevant legal person was created or commenced activities, or
- (b) a reorganisation of its activities

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

the turnover, or alternative activity-based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

#### Textual Amendments

- F32** Words in reg. 28(1)(c) omitted (1.3.2024) by virtue of The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (S.I. 2024/80), reg. 1(2), **Sch. para. 4(6)(a)**
- F33** Words in reg. 28(2) omitted (1.3.2024) by virtue of The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (S.I. 2024/80), reg. 1(2), **Sch. para. 4(6)(b)**
- F34** Words in reg. 28(4)(c) omitted (1.3.2024) by virtue of The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (S.I. 2024/80), reg. 1(2), **Sch. para. 4(6)(c)**

#### Contracts awarded to an affiliated undertaking **E+W+N.I.**

**29.**—(1) These Regulations do not apply to contracts awarded—

- (a) by a utility to an affiliated undertaking; or
- (b) by a joint venture, formed exclusively by a number of utilities for the purpose of carrying out activities described in regulations 9 to 15, to an affiliated undertaking of one of its members,

provided that the conditions in paragraph (2) are fulfilled.

(2) The conditions are that—

- (a) in respect of service contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all services provided by that undertaking, derives from the provision of services to the utility or one or more of its affiliated undertakings;
- (b) in respect of supply contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all supplies provided by that undertaking, derives from the provision of supplies to the utility or one or more of its affiliated undertakings;
- (c) in respect of works contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all works provided by that undertaking, derives from the provision of works to the utility or one or more of its affiliated undertakings.

(3) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover referred to in paragraph (2) is not available for the preceding 3 years, it shall be sufficient for that undertaking to show that the turnover is credible, in particular by means of business projections.

(4) Where more than one undertaking affiliated with the utility with which they form an economic group provides the same or similar services, supplies or works, the percentages referred to in paragraph (2) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

(5) In this regulation, “affiliated undertaking” and any similar expression means—

- (a) any undertaking the annual accounts of which are consolidated with those of the utility in accordance with the requirements of [<sup>F35</sup>Part 15 of the Companies Act 2006]; and
- (b) in the case of an undertaking which is not subject to that [<sup>F36</sup>Part], any undertaking that:—
  - (i) may be, directly or indirectly, subject to a dominant influence by the utility;

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

- (ii) may exercise a dominant influence over the utility; or
- (iii) in common with the utility, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

(6) For the purposes of paragraph (5)(b), a “dominant influence” shall be presumed on the part of a utility or, as the case may be, an undertaking, in the same circumstances in which it is, in accordance with regulation 5(3), presumed on the part of a contracting authority.

(7) This regulation applies despite the provisions of regulation 28.

**Textual Amendments**

- F35** Words in [reg. 29\(5\)\(a\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), **10(19)(a)** (with [Sch. paras. 3-5](#))
- F36** Word in [reg. 29\(5\)\(b\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), **10(19)(b)** (with [Sch. paras. 3-5](#))

**Contracts awarded to a joint venture or to a utility forming part of a joint venture** **E+W+N.I.**

**30.**—(1) These Regulations do not apply to contracts awarded—

- (a) by a joint venture, formed exclusively by a number of utilities for the purpose of carrying out activities within the meaning of regulations 9 to 15, to one of those utilities; or
- (b) by a utility to such a joint venture of which it forms part,

provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least 3 years and the instrument setting up the joint venture stipulates that the utilities which form it will be part of the joint venture for at least the same period.

(2) This regulation applies despite the provisions of regulation 28.

**Notification of information** **E+W+N.I.**

<sup>F37</sup>**31.** .....

**Textual Amendments**

- F37** [Reg. 31](#) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), **10(20)** (with [Sch. paras. 3-5](#))

SUB-SECTION 4 *Specific situations*

**Research and development services** **E+W+N.I.**

**32.** These Regulations apply to service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 only if—

- (a) the benefits accrue exclusively to the utility for its use in the conduct of its own affairs; and
- (b) the service provided is wholly remunerated by the utility.

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

## Contracts subject to special arrangements **E+W+N.I.**

**33.** <sup>M3</sup>Without prejudice to regulation 34, a utility carrying out one or more of the activities referred to in Commission Decision [97/367/EC](#) relating to the exploitation of geographical areas for the purpose of extracting oil or gas in Northern Ireland shall—

- (a) observe the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the utility makes available to economic operators concerning its procurement intentions;
- (b) in respect of a contract it awards whose value (determined in accordance with Regulations 17) exceeds [<sup>F38</sup>£4,423,600, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)];
- (c) in respect of a contract it awards whose value (calculated in accordance with regulation 17) equals or exceeds [<sup>F39</sup>£353,890] but does not exceed [<sup>F40</sup>£4,423,600]—
  - (i) retain in respect of each contract [<sup>F41</sup>, for not less than 4 years from the date on which the contract is awarded, the information that would have been required to be included in a contract award notice if paragraph (b) had applied]; and
  - (ii) supply this information<sup>F42</sup> ... immediately upon request by the [<sup>F43</sup>Minister for the Cabinet Office].

### Textual Amendments

- F38** Words in [reg. 33\(b\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)](#) (with Sch. paras. 3-5)
- F39** Sum in [reg. 33\(c\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)\(b\)\(i\)\(aa\)](#) (with Sch. paras. 3-5)
- F40** Sum in [reg. 33\(c\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)\(b\)\(i\)\(bb\)](#) (with Sch. paras. 3-5)
- F41** Words in [reg. 33\(c\)\(i\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)\(b\)\(ii\)](#) (with Sch. paras. 3-5)
- F42** Word in [reg. 33\(c\)\(ii\)](#) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)\(b\)\(iii\)\(aa\)](#) (with Sch. paras. 3-5)
- F43** Words in [reg. 33\(c\)\(ii\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [10\(21\)\(b\)\(iii\)\(bb\)](#) (with Sch. paras. 3-5)

### Marginal Citations

- M3** OJ No L 156, 13.6.1997, p55.

## SUB-SECTION 5 *Activities directly exposed to competition and related procedural provisions*

### Activities directly exposed to competition **E+W+N.I.**

**34.**—(1) These Regulations do not apply to contracts or design contests intended to enable an activity mentioned in regulations 9 to 15 to be carried out where that activity is directly exposed to competition on markets to which access is not restricted.

(2) For the purposes of paragraph (1), the activity is directly exposed to competition on markets to which access is not restricted only if—

- (a) the activity is covered by the following Commission Decisions:—

---

**Changes to legislation:** The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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) View outstanding changes

---

- (i) Commission Decision [2006/211/EC](#)<sup>M4</sup> (electricity generation in England, Scotland and Wales);
- (ii) Commission Decision [2007/141/EC](#)<sup>M5</sup> (supply of electricity and gas in England, Scotland and Wales); and
- (iii) Commission Decision 2010/192/EU<sup>M6</sup> (exploration for and exploitation of oil and gas in England, Scotland and Wales)<sup>F44</sup> ...

<sup>F44</sup>(b) .....

(3) The activity referred to in paragraph (1) may form a part of a larger sector or be exercised only in certain parts of the United Kingdom.

**Textual Amendments**

**F44** [Reg. 34\(2\)\(b\)](#) and word omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(2)** (with Sch. paras. 3-5)

**Marginal Citations**

- M4** OJ No L 76, 15.3.2006, p6.
- M5** OJ No L 62, 1.3.2007, p23.
- M6** OJ No L 84, 31.3.2010, p52.

**Procedure for establishing whether regulation 34(2)(b) is applicable** **E+W+N.I.**

<sup>F45</sup>**35.** .....

**Textual Amendments**

**F45** [Reg. 35](#) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(23)** (with Sch. paras. 3-5)

**Changes to legislation:**

The Utilities Contracts Regulations 2016, Cross Heading: SECTION 2 is up to date with all changes known to be in force on or before 01 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.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- reg. 19 heading words substituted by [S.I. 2019/560 reg. 9\(10\)\(a\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- Regulations revoked by [2023 c. 54 Sch. 11 para. 7](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 21(1)(c)(i)(aa) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 21(1)(c)(i)(bb) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))