
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 1

GENERAL

CHAPTER 3

MATERIAL SCOPE

SECTION 2

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

SUB-SECTION 2 Procurement involving defence and security aspects

Mixed procurement covering the same activity and involving defence and security aspects

24.—(1) This regulation applies where a procurement has as its subject different types of procurement all covering the same activity, any part of which is covered by Article 346 of the TFEU or the Defence and Security Regulations.

(2) Where different parts of a given contract are objectively separable, a utility may decide to undertake procurement for the award of—

- (a) separate contracts for the separate parts; or
- (b) a single contract.

(3) Any decision to undertake a procurement for the award of a single contract must not be made for the purpose of excluding the procurement from the application of these Regulations or the Defence and Security Regulations.

(4) Where a utility decides to undertake procurement for the award of separate contracts for separate parts the applicable law for the procurement of each separate part is to be determined by the characteristics of such part.

(5) Where a utility decides, in accordance with paragraph (6), to undertake a procurement for the award of a single contract and—

- (a) part of the contract is covered by Article 346 of the TFEU, the contract may be awarded without applying these Regulations; or
- (b) part of the contract is covered by the Defence and Security Regulations, the procurement may be undertaken in accordance with those Regulations, in which event these Regulations will not apply to such procurement.

(6) A utility may only decide to undertake a procurement for the award of a single contract of a kind referred to in paragraph (5) where—

- (a) different parts of such a contract are not objectively separable; or
- (b) such decision is justified by objective reasons.

(7) Paragraph (5)(b) is without prejudice to the thresholds and exclusions provided for by the Defence and Security Regulations.

(8) Paragraph (5)(a) applies to a mixed contract to which both paragraph (5)(a) and (5)(b) could otherwise apply.