
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 5

REMEDIES

CHAPTER 2

APPLICATIONS TO THE COURT

Duty owed to economic operators

100.—(1) The obligation on a utility to comply with the provisions of these Regulations (except where otherwise specified), and with any enforceable EU obligation in respect of a contract, framework agreement, dynamic purchasing system or design contest falling within the scope of these Regulations, is a duty owed to an economic operator from an EEA state.

- (2) The duty owed in accordance with paragraph (1) is a duty owed also to—
- (a) an economic operator from a GPA state, but only where the GPA applies to the procurement concerned; and
 - (b) an economic operator which is not from an EEA state or a GPA state, but only if a relevant bilateral agreement applies.
- (3) For the purposes of paragraph (2)(a), the GPA applies to a procurement if—
- (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA state has agreed with the EU that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA state.
- (4) For the purposes of paragraph (2)(b), a relevant bilateral agreement applies if—
- (a) there is an international agreement, other than the GPA, by which the EU is bound; and
 - (b) in accordance with that agreement, the economic operator is, in respect of the procurement concerned, to be accorded remedies no less favourable than those accorded to economic operators from the EU in respect of matters falling within the scope of the duty owed in accordance with paragraph (1).
- (5) In this regulation—
- except in paragraph (1), references to an “economic operator”, include a reference to a GPA economic operator;
- “GPA economic operator” means a person from a GPA state who sought, who seeks, or would have wished, to be the person to whom the contract is awarded;
- “GPA state” means any country, other than an EEA state, which at the relevant time is a signatory to the GPA;

“relevant time” means the date on which the utility sent a call for competition in respect of the contract to the EU Publications Office or would have done so had it been required by these Regulations to do so.