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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 65**

**The Concession Contracts (Scotland) Regulations 2016**

**PART 2**

**SCOPE AND PRINCIPLES**

**CHAPTER 3**

**GENERAL PROVISIONS**

**Mixed procurement involving defence or security aspects**

**23.**—(1) This regulation applies if a procurement has as its subject a mixed contract, the procurement of any part of which, if separated, would be covered by Article 346 of the Treaty or the Defence and Security Regulations.

(2) In the case of contracts intended to cover several activities, one of them being listed in Schedule 2 to these Regulations or covered by the Utilities Contracts (Scotland) Regulations 2016, and another being covered by Article 346 of the TFEU or the Defence and Security Regulations, the applicable provisions must be established in accordance with regulation 25 (contracts covering both activities listed in Schedule 2 and activities involving defence or security) of these Regulations and regulation 25 of the Utilities Contracts (Scotland) Regulations 2016, respectively.

(3) If different parts of a given contract are objectively separable, a contracting entity may decide to undertake procurement for the award of—

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

(4) The 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.

(5) If a contracting entity decides to undertake procurement for the award of separate contracts for separate parts the applicable law for the procurement of each separate contract will be determined by the characteristics of such contract.

(6) If a contracting entity decides, in accordance with paragraph (7), 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.

(7) A contracting entity may only decide to undertake a procurement for the award of a single contract of a kind referred to in paragraph (6) if—

- (a) different parts of such a contract are not objectively separable; or

(b) such decision is justified by objective reasons.

(8) Paragraph (6)(b) is without prejudice to the thresholds and exclusions provided for by the Defence and Security Regulations.

(9) Paragraph (6)(a) applies to a mixed contract to which both sub-paragraphs (a) and (b) of paragraph (6) could otherwise apply.