

## SCHEDULE 2

Regulations 2(1), 4, 5(1), 9(1)(b),15(1),  
16, 22(6), 23(2), 24(1),25(1), 46(1)(c)(iii)

### ACTIVITIES EXERCISED BY UTILITIES

The provisions of these Regulations governing concession contracts awarded by utilities (referred to in this Schedule as “the relevant provisions”) shall apply to the following activities.

#### **Gas and heat**

1.—(1) In the case of gas and heat, the relevant provisions shall apply to the following activities—

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat;
- (b) the supply of gas or heat to such networks.

(2) The supply by a utility referred to in regulation 5(1)(b) or (c) (meaning of “utility”) of gas or heat to fixed networks which provide a service to the public do not fall within the scope of this Schedule if all of the following conditions are met—

- (a) the production of gas or heat by that utility is the unavoidable consequence of carrying out an activity other than those referred to in this paragraph or in paragraphs 2 or 3;
- (b) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20% of that utility’s turnover on the basis of the average for the preceding three years, including the current year.

(3) In this paragraph, “supply” includes the generation/production, wholesale and retail sale of gas, other than the production of gas in the form of extraction which, instead, falls within the scope of paragraph 6.

#### **Electricity**

2.—(1) In the case of electricity, the relevant provisions shall apply to the following activities—

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity;
- (b) the supply of electricity to such networks.

(2) The supply by a utility referred to in regulation 5(1)(b) or (c) (meaning of “utility”) of electricity to fixed networks which provide a service to the public shall not fall within the scope of this Schedule if all of the following conditions are met—

- (a) the production of electricity by that utility takes place because its consumption is necessary for carrying out an activity other than those referred to in this paragraph or paragraphs 1 or 3;
- (b) the supply to the public network depends only on that utility’s own consumption and has not exceeded 30% of that utility’s total production of energy, on the basis of the average for the preceding three years, including the current year.

(3) In this paragraph, “supply” includes generation/production, wholesale and retail sale of electricity.

#### **Transport services**

3.—(1) The relevant provisions shall apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by—

- (a) railway;

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

- (b) automated systems;
- (c) tramway;
- (d) trolley bus;
- (e) bus; or
- (f) cable.

(2) For the purposes of this paragraph, a network shall be considered to exist if the service is provided under operating conditions laid down by a competent authority, such as—

- (a) conditions on the routes to be served;
- (b) the capacity to be made available; or
- (c) the frequency of the service.

### **Ports and airports**

4. The relevant provisions shall apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

### **Postal services activities**

5.—(1) The relevant provisions shall apply to activities relating to the provision of—

- (a) postal services;
- (b) services other than postal services, on condition that such services are provided by an entity which also provides postal services and provided that the postal services are not directly exposed to competition within the meaning of regulation 33(2) of the Utilities Contracts (Scotland) Regulations 2016.

(2) In this paragraph—

- (a) “postal item” means an item addressed in the final form in which it is to be carried, irrespective of weight, which includes—
  - (i) correspondence;
  - (ii) books;
  - (iii) catalogues;
  - (iv) newspapers;
  - (v) periodicals; and
  - (vi) postal packages containing merchandise with or without commercial value;
- (b) “postal services” means services consisting of the clearance, sorting, routing and delivery of postal items, including both services falling within as well as services falling outside the scope of the universal service set up in accordance with the Postal Services Act 2011(1);
- (c) “services other than postal services” means services provided in the following areas—
  - (i) mail service management services (services both preceding and subsequent to despatch, including mailroom management services),
  - (ii) services concerning postal items not included in the definition of “postal item” in paragraph (a), such as direct mail bearing no address.

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(1) 2011 c. 5.

## **Oil and gas**

6. The relevant provisions shall apply to activities relating to the exploitation of a geographical area for the purpose of—

- (a) extracting oil or gas;
- (b) exploring for, or extracting, coal or other solid fuels.