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STATUTORY INSTRUMENTS

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**2016 No. 273**

**The Concession Contracts Regulations 2016**

**PART 2**

**Scope and principles**

**CHAPTER 3**

**General Provisions**

**Mixed contracts**

**20.**—(1) Concession contracts which have as their subject-matter both works and services shall be awarded in accordance with the provisions applicable to the type of concession contract that characterises the main subject-matter of the contract in question.

(2) In the case of mixed concession contracts consisting partly of social and other specific services listed in Schedule 3 and partly of other services, the main subject-matter shall be determined in accordance with which of the estimated values of the respective services is the highest.

(3) Where the different parts of a given contract are objectively separable—

- (a) in the case of contracts which have as their subject-matter elements covered by these Regulations as well as other elements, contracting authorities and utilities may choose to award separate contracts for the separate parts or to award a single contract;
- (b) where contracting authorities or utilities choose to award separate contracts for separate parts, the decision as to 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;
- (c) where contracting authorities or utilities choose to award a single contract, these Regulations, unless otherwise provided in sub-paragraph (d), apply to the ensuing mixed contract, irrespective of—
  - (i) the value of the parts that would otherwise fall under a different legal regime, and
  - (ii) which legal regime those parts would otherwise have been subject to;
- (d) in the case of a mixed contract containing elements of concession contracts as well as elements of public contracts covered by the Public Contracts Regulations 2015<sup>(1)</sup> or contracts covered by the Utilities Contracts Regulations 2016, the mixed contract shall be awarded in accordance with the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016, respectively.

(4) Where the different parts of a given contract are objectively not separable—

- (a) the applicable legal regime shall be determined on the basis of the main subject-matter of that contract; and

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<sup>(1)</sup> S.I. 2015/102, as amended by S.I. 2016/275.

- (b) where that contract involves both elements of a services concession contract and of a supply contract, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is the highest.
- (5) But where part of a given contract is covered by Article 346 of TFEU or the Defence and Security Regulations, regulation 21 applies instead of paragraphs (1) to (4).
- (6) In the case of contracts intended to cover several activities, one of them being an activity listed in Schedule 2 or subject to the Utilities Contracts Regulations 2016, the applicable provisions shall be established in accordance with regulation 22 of these Regulations and regulation 7 of the Utilities Contracts Regulations 2016, respectively.
- (7) This regulation is subject to regulation 22.