
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 1 Exclusions applicable to all utilities and special exclusions for the water and energy sectors

Exclusion: Specific exclusions for service contracts

20.—(1) These Regulations do not apply to procurement for the award of a service contract, framework agreement or dynamic purchasing system—

- (a) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or of any estate, right, servitude or other interest in or over such land, buildings or property;
- (b) to an audio-visual or radio media service provider, for broadcasting time or programme provision;
- (c) for arbitration or conciliation services;
- (d) for any of the following legal services—
 - (i) legal representation of a client by a lawyer within the meaning of Article 1 of the Lawyers' Services Directive⁽¹⁾ in—
 - (aa) arbitration or conciliation proceedings held in a member State, a third country or before an international arbitration or conciliation instance; or
 - (bb) judicial proceedings before the courts, tribunals or public authorities of a member State or a third country or before international courts, tribunals or institutions;
 - (ii) legal advice given by a lawyer within the meaning of Article 1 of the Lawyers' Services Directive—
 - (aa) in preparation of any proceedings referred to in paragraph (i); or
 - (bb) where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings;

(1) OJ L 78, 26.3.1977, p.17, last amended by Council Directive 2013/25/EU (OJ L 158, 10.6.2013, p.368).

- (iii) document certification or authentication services which must be provided by a notary public;
 - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
 - (v) other legal services which, in the member State concerned, are connected, even occasionally, with the exercise of official authority;
- (e) for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of [Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments amending Council Directives [85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing Council [Directive 93/22/EEC](#)(2) as amended from time to time;
 - (f) for operations conducted with the European Financial Stability Facility or the European Stability Mechanism;
 - (g) for loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
 - (h) which is an employment contract;
 - (i) for civil defence, civil protection or danger prevention services that are provided by non-profit organisations or associations and which are specified under CPV Codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services; or
 - (j) for public passenger transport services by rail or metro.
- (2) In this regulation—
- (a) “Audio-visual Media Services Directive” means [Directive 2010/13/EU](#) of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the provision of audio-visual media services(3) as amended from time to time;
 - (b) “Lawyers’ Services Directive” means Council [Directive 77/249/EEC](#) to facilitate the effective exercise by lawyers of freedom to provide services(4);
 - (c) “media service provider” has the meaning given by Article 1(1)(d) of the Audio-visual Media Services Directive; and
 - (d) “programme” has the meaning given by Article 1(1)(b) of the Audio-visual Media Services Directive but also includes radio programmes and radio programme materials, and “programme material” is to be construed accordingly.

(2) OJ L 145, 30.4.2004, p.1.

(3) OJ L 95, 15.4.2010, p.1.

(4) OJ L 78, 26.3.1977, p.17, last amended by Council [Directive 2013/25/EU](#) (OJ L 158, 10.6.2013, p.368).