
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 65

The Concession Contracts (Scotland) Regulations 2016

PART 2

SCOPE AND PRINCIPLES

CHAPTER 2

EXCLUSIONS

Exclusions: Concession contracts awarded to an affiliated undertaking

15.—(1) These Regulations do not apply to a concession contract—

- (a) awarded by a utility to an affiliated undertaking; or
- (b) awarded by a joint venture, formed exclusively of a number of utilities for the purpose of carrying out activities listed in Schedule 2, to an undertaking which is affiliated with one of those utilities,

provided that the conditions in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that—

- (a) in respect of a services concession contract, at least 80% of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the utility or other undertakings with which it is affiliated;
- (b) in respect of a works concession contract, at least 80% of the average total turnover of the affiliated undertaking over the preceding three years, taking into account all works provided by that undertaking, derives from the provision of works to the utility or other undertakings with which it is affiliated.

(3) If, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it shall be sufficient for that undertaking to show that the turnover referred to in paragraph (2) is credible, in particular by means of business projections.

(4) If more than one of a utility's affiliated undertakings provides the same or similar services or works, the percentages referred to in paragraph (2) must be calculated taking into account the total turnover deriving respectively from the provision of services or works by those affiliated undertakings.

(5) In this regulation, “affiliated undertaking”, in relation to a utility, means —

- (a) any undertaking whose annual accounts are consolidated with those of the utility in accordance with the requirements of [Directive 2013/34/EU](#) of the European Parliament and of the Council on the annual financial statements and related reports of certain types of undertaking⁽¹⁾;

(1) OJ L 182, 29.6.2013, p.19.

- (b) in the case of entities which are not subject to that Directive any undertaking that—
 - (i) may be, directly or indirectly, subject to a dominant influence by the utility;
 - (ii) may exercise a dominant influence over the utility; or
 - (iii) in common with the utility, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

(6) For the purposes of paragraph (5)(b), a dominant influence shall be presumed on the part of a utility or, as the case may be, an undertaking in the same circumstances in which it is, in accordance with regulation 5 (meaning of “utility”), presumed on the part of a contracting authority.

(7) This regulation applies despite the provisions of regulation 19 (exclusions: concession contracts between entities within the public sector).