
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 1

GENERAL

CHAPTER 1

CITATION, COMMENCEMENT, EXTENT, DEFINITIONS AND SUBJECT-MATTER

Utilities

- 5.—(1) For the purpose of these Regulations, utilities are entities which—
- (a) are contracting authorities or public undertakings and which pursue one of the activities referred to in regulations 9 to 15;
 - (b) are not contracting authorities or public undertakings, but whose activities include an activity referred to in regulations 9 to 15 and operate on the basis of special or exclusive rights granted by a competent authority.

Public undertaking

(2) In this regulation, “public undertaking” means any undertaking over which contracting authorities may exercise directly or indirectly a dominant influence by virtue of—

- (a) their ownership of that undertaking;
- (b) their financial participation in that undertaking; or
- (c) the rules which govern that undertaking.

(3) For the purposes of paragraph (2), a dominant influence on the part of contracting authorities is presumed in any of the following cases in which those authorities, directly or indirectly—

- (a) hold the majority of the undertaking’s subscribed capital;
- (b) control the majority of the votes attaching to shares issued by the undertaking;
- (c) can appoint more than half of the undertaking’s administrative, management or supervisory body.

Special or exclusive rights

(4) In this regulation, “special or exclusive rights” mean rights granted by a competent authority by way of any legislative, regulatory or administrative provision, the effect of which is to limit the exercise of activities referred to in regulations 9 to 15 to one or more utilities, and which substantially affects the ability of other entities to carry out such activity.

(5) For the purposes of paragraph (4), rights which have been granted by means of a procedure in which—

- (a) adequate publicity has been ensured; and
- (b) where the granting of those rights was based on objective criteria

shall not constitute “special or exclusive rights”.

- (6) The procedures referred to in paragraph (5) include—
 - (a) procurement procedures with a prior call for competition in accordance with—
 - (i) these Regulations;
 - (ii) the Public Contracts Regulations;
 - (iii) the Concessions Contracts Regulations 2016⁽¹⁾; or
 - (iv) the Defence and Security Regulations;
 - (b) procedures pursuant to other legal acts of the EU listed in Annex II of the Utilities Contracts Directive as amended from time to time, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

⁽¹⁾ S.I. 2016/273