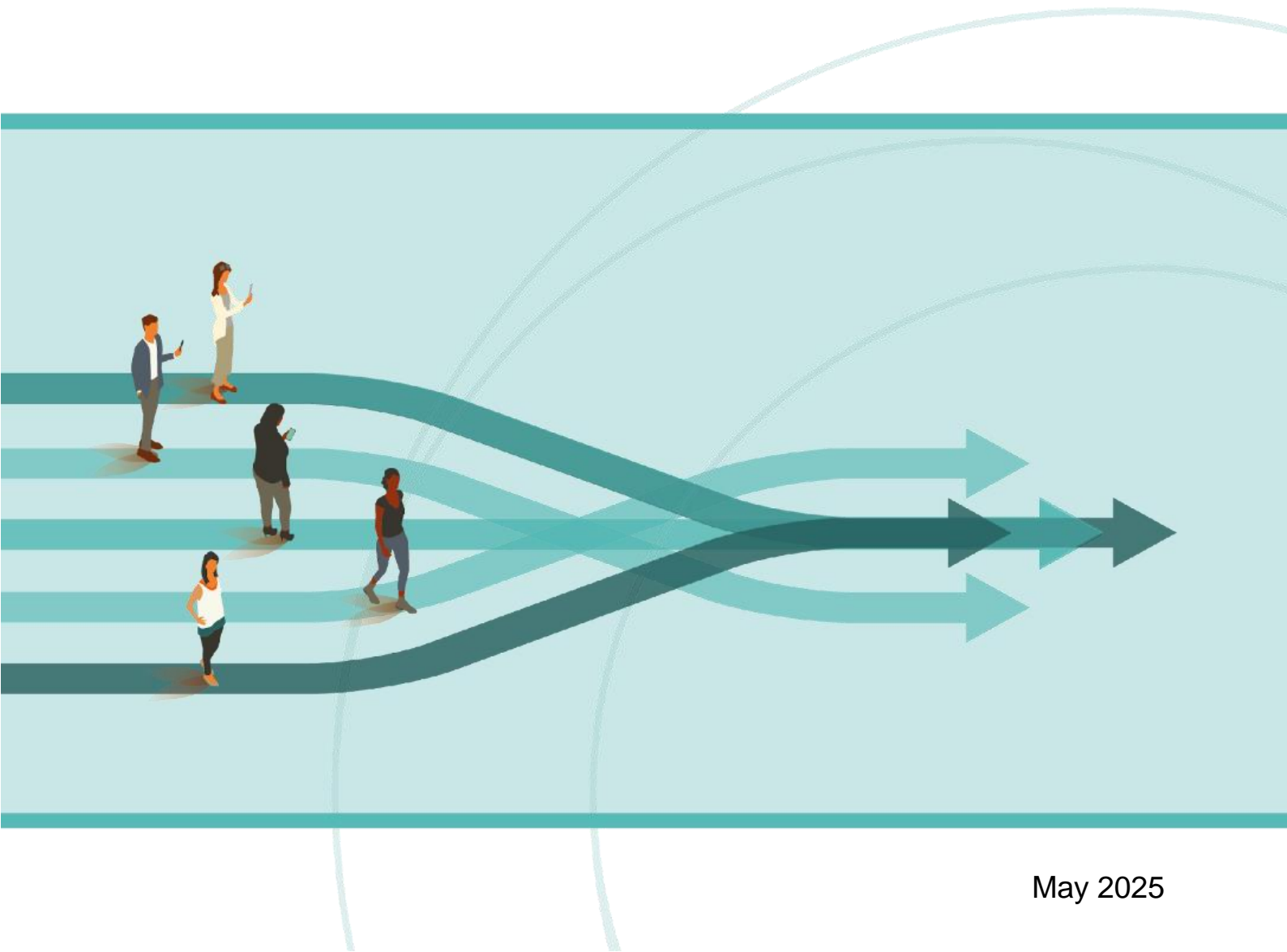




Government
Commercial
Function

Procurement Act 2023

Guidance: Utilities Contracts



May 2025

Guidance on Utilities Contracts

What are utilities and utilities contracts?

1. Utilities are public authorities, public undertakings or other entities ('private utilities') that carry out 'utility activities' in the energy, water and transport sectors. They are regulated by the [Procurement Act 2023 \(Act\)](#) when carrying out utility activities as they are not exposed to competitive forces in the market (but see [section 6\(5\) and 6\(6\)](#) of the Act and further below) and the UK is required by various international agreements to allow 'treaty state suppliers' with certain rights under relevant international agreements to participate in procurements for 'utilities contracts'.

What is the legal framework that governs utilities contracts?

2. The rules governing utilities procurement in the UK are contained in the Act and replace the repealed Utilities Contracts Regulations 2016 (UCR). Utility activities and utilities contracts are defined at [section 6](#), and utilities at [section 35](#) of the Act.
3. Contracting authorities awarding utilities contracts are generally governed by the provisions in the Act, just like any other contracting authority. This guidance provides an overview of the specific provisions in the Act that relate to utilities, and should be read alongside other guidance on the Act that applies to all contracting authorities and that will, unless otherwise set out, apply to utilities.
4. The general rule is that the Act will apply to utilities in the same way as it applies to other contracting authorities. However, there are exceptions to the general rule and some specific provisions provide additional flexibility for utilities. In some cases, these provisions apply to all utilities and in others they only apply to particular types of utilities, e.g. private utilities. These are set out at Annex A.
5. Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as those applicable to utilities contracts. [Section 10](#) provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract' as defined in [section 10](#)), or when they are to be treated as subject to the standard rules in the Act.

What has changed?

6. Whereas utilities contracts were previously regulated separately (under the UCR), the Act regulates utilities contracts and other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.
7. [Schedule 4](#) sets out the utility activities covered by the Act and aligns with the scope of utility activities covered by the previous legislation, with the exception of postal services which are not regulated under the Act. The exemptions at [Part 2 of Schedule 4](#) reflect the exemptions set out in three EU Commission Decisions ([2006/211/EC](#), [2007/141/EC](#) and [2010/192/EU](#)). The specific utility provisions provide flexibility for utilities that reflect their commercial nature. In particular, a utilities dynamic market established under a qualifying utilities dynamic market notice will replace qualification systems in the UCR to speed up utilities procurement.
8. Utilities are the same types of bodies under the Act as were covered under the UCR. Regarding the definition of a public undertaking, the express commercial operating

requirement at [section 2\(2\)\(b\)](#) is a change from the UCRs where there is a control (dominant influence) requirement, but there is no express requirement that the entity operates commercially, although many do so. The addition of this commercial operating requirement may mean some bodies classed as public undertakings in the UCRs may be classed as public authorities under the Act. There is generally no practical impact of this re-categorisation as the rules for public authorities and public undertakings in the Act are similar. The differences are highlighted at Annex A.

Key points and policy intent

Application

9. The utilities provisions in the Act apply to utilities contracts that are public contracts. A utilities contract is a public contract where:
 - a. the estimated value of the contract exceeds the relevant thresholds; and
 - b. the contract is not an exempted contract.

What is a utility ([section 35\(4\)](#))?

10. The Act regulates utilities procurement carried out by public authorities, public undertakings and private utilities, referred to as utilities in the definition at [section 35\(4\)](#).
11. It will be for utilities to determine whether they are a public authority, public undertaking or private utility, applying the definitions in [section 2\(2\)](#) of the Act, as it is not appropriate or possible to have a definitive list of entities as structures can be complex and change over time and entities leave and enter the sector. Utilities can range from, for example, private companies that operate electricity transmission networks to local authorities that own district heating networks.
guidance
12. Public authorities and undertakings Public authorities are funded wholly or mainly out of public funds or are subject to public authority oversight, and (in each case) do not operate on a commercial basis. Public undertakings are subject to public authority oversight although, unlike public authorities, they do operate commercially. Taking public authority oversight and operating commercially in turn:
 - a. Public authority oversight - public authority oversight applies equally to public authorities and public undertakings. The Act defines public authority oversight at [section 2\(3\)](#) as being subject to the management or control of one or more public authorities or a board of which more than half of the members are appointed by one or more public authorities. The principle of management and control is well established and understood in procurement law and analogous within existing UK company law. The Act does not change this interpretation.

Utility regulators, such as OFGEM and OFWAT, in performing their statutory duties, are not considered to manage or control a utility. Being subject to utility regulators is therefore, by itself, not sufficient to satisfy [section 2\(2\)\(a\)](#) for public undertakings. If a utility meets the definition of a private utility (see below) then it is a private utility covered by the Act.

- b. Operating commercially - public undertakings operate on a commercial basis. [Section 2\(4\)](#) sets out examples of the factors to be taken into account in determining whether

an entity operates on a commercial basis (this is not a definitive list and there may be other factors in the circumstances).

13. Private utilities Private utilities are other entities (i.e. not public authorities or public undertakings) that carry out a utility activity ([section 2\(2\)](#)). Private utilities only carry out utility activities that are regulated under the Act where they have been granted a special or exclusive right to do so (see [section 6\(2\)\(d\)](#)).
14. [Section 6\(3\)](#) provides that carrying out a utility activity pursuant to a special or exclusive right means that the person does so pursuant to a right granted by a statutory, regulatory or administrative provision that has the effect of substantially limiting other entities (who have not been granted such a right) from carrying out those activities. Private utilities which enjoy special or exclusive rights are, to an extent, in a monopoly position and therefore could, however unlikely it is, without regulation, engage in preferential treatment that, for example, favours their own affiliates or strategic partners and discriminates against other suppliers bidding for their contracts.
15. [Section 6\(4\)](#) provides that rights are not special or exclusive when they are granted following a competitive tendering procedure under the Act or where the opportunity was adequately publicised and the rights were granted on the basis of objective, non-discriminatory criteria. However, [section 6\(4\)](#) does not apply if an incumbent has an existing special or exclusive right that is renewed or replaced in a manner that does not comply with the section; in this case, the new grant or replacement of the right will mean that [section 6\(3\)](#) applies and the supplier is a private utility under the Act.
16. Similarly, where a contract is awarded following a procedure that complies with [section 6\(4\)](#) (whether before or after the entry into force of the Act), but the incumbent is subsequently directly awarded a new or replacement contract, that will also amount to the grant of a special or exclusive right. An example of this is where a direct award is made to an incumbent under the public service obligations regulations (as defined at [Schedule 2, paragraph 21\(2\)](#)) where the original contract had been awarded following a competitive process.

What is a utilities contract?

17. A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity' ([section 6\(1\)](#)).

What are utility activities?

18. Utility activities are defined in [section 6\(2\)](#) and are activities that are:
 - a. specified in [Part 1 of Schedule 4](#);
 - b. not specified in [Part 2 of Schedule 4](#);
 - c. not carried out wholly outside of the UK; and
 - d. in the case of private utilities, are carried out pursuant to a special or exclusive right (as explained above).
19. [Schedule 4](#) sets out the scope of utilities activities, and is made up of 2 parts. Part 1 sets out the activities that are utility activities (and therefore covered by the Act), and Part 2 sets out

the activities that are not utility activities (and are therefore not covered by the Act). In summary, utility activities are activities connected with the:

- a. provision or operation of gas and heat, electricity and water networks and the supply to those networks;
- b. provision or operation of public transport networks, ports and airports; or
- c. extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels.

20. [Paragraphs 1\(2\)\(c\), 2\(2\)\(d\) and 3\(4\)\(d\)](#) provide that in certain circumstances the supply of guidance gas or heat, electricity and drinking water (respectively) is not a utility activity. In order for this to be the case, conditions apply that require a calculation of the percentage of gas or heat, electricity and drinking water supplied. In each case, the Act provides that an 'appropriate authority' (a Minister of the Crown, Welsh Ministers or a Northern Ireland department) may make regulations about how to calculate the relevant percentage. This has been provided for in [regulations 42D-42F](#) of the Regulations¹.

21. The utility activities set out in [Part 2 of Schedule 4](#) are summarised in Annex B. An appropriate authority may specify activities to be included in [Part 2 of Schedule 4](#) if they are exposed to competition in open markets (see [sections 6\(5\) and 6\(6\)](#)). The effect of this is that those specified activities will not be utility activities and therefore will not be regulated by the Act. Any such activities will be set out in regulations and be added to Part 2.

What are the financial thresholds for utility contracts?

22. The threshold amounts are set out in [Schedule 1](#). The table below sets out the thresholds for utilities contracts that have applied since 1 January 2024. The thresholds in the Act reflect those in place at the time of Royal Assent and will be updated by secondary legislation prior to the Act coming into force.

Utilities contract	Threshold
Goods	£429,809
Services	£429,809
Works	£5,372,609
Light touch	£884,720

23. The thresholds reflect the thresholds in our international agreements and are revised on the first of January of every even year to reflect currency fluctuations and inflation.

24. The rules on estimating the contract value are set out in [Schedule 3](#). The overriding principle is that the estimate must reflect the total likely amount the contracting authority could expect to pay under the contract (inclusive of VAT (see [section 123\(2\)](#)). [Schedule 3](#) sets out a non-exhaustive list of what could be relevant when estimating the amount expected to be paid.

What exemptions are available to utilities?

¹ As inserted by [regulation 8 of the Procurement Act 2023 \(Consequential and Other Amendments\) Regulations 2025](#).

25. [Exempted Contracts Schedule 2](#) sets out the types of contracts ('exempted contracts') to which the rules on covered procurement do not apply. Provided the relevant conditions are met, they can all be used by utilities unless stated otherwise. The exemptions that apply specifically to utilities are summarised below; for other exemptions see guidance on [exempted contracts](#).
26. [Schedule 2, paragraph 5](#) exempts utilities contracts awarded by a 'relevant joint venture' to one of the joint venture members, and by a joint venture member to the relevant joint venture. A relevant joint venture is a joint venture formed for the purpose of carrying out a utility activity and comprised only of members that are utilities. Utilities may come together to form a relevant joint venture to deliver a particular utility activity, for example, operation of an integrated transport system, where different utilities bring different expertise or resources, for example, financial, technical, marketing or employee. This provision would exempt, for example, a contract under which a member utility provides specialised works to the relevant joint venture in order to deliver the contract. This ensures that these arrangements remain attractive and viable, which may not be the case if utilities are required to carry out the procurements under the Act.
27. [Schedule 2, paragraph 6](#) exempts utilities contracts awarded by a utility to a person 'affiliated' with the utility and by a utility that is a relevant joint venture to a person affiliated with any member of that joint venture. Utilities may be part of a group where it or a company at the top of the structure (the parent company) owns (either directly or indirectly) one or more subsidiaries beneath it.
28. [Schedule 2, paragraph 6](#) provides that a person is affiliated with another if the person falls within the definition of a 'group undertaking' of the other person, as that term is defined in [section 1161\(5\) of the Companies Act 2006](#). This is the case regardless of whether either of them is an 'undertaking' as defined in [section 1161\(1\)](#) of that Act. In summary, a relationship between affiliates arises where, in relation to an undertaking ('undertaking (A)'), another undertaking is:
- a. a parent undertaking or a subsidiary undertaking of undertaking (A); or
 - b. a subsidiary undertaking of any parent undertaking of undertaking (A).
29. The terms 'subsidiary undertaking' and 'parent undertaking' are defined in [section 1162 of the Companies Act 2006](#). By applying those terms when considering what is meant by a group undertaking under [section 1161\(5\)](#) of that Act, the affiliates exemption would be available (provided all of the relevant requirements are met), for example, to utilities contracts awarded by:
- a. a utility to its subsidiary;
 - b. a utility that is itself a subsidiary, to a fellow subsidiary controlled by the same parent (sometimes referred to as a 'sister' subsidiary); and
 - c. a utility ('utility A') to a subsidiary controlled by utility A's subsidiary (sometimes referred to as a 'grandchild' subsidiary).
30. The exemption applies only where the 'turnover test' at [Schedule 2, paragraph 6\(3\)](#) is met. The turnover test ensures that the exemption cannot be abused by providing that it applies only when the provision of goods, services or works to the utility and others affiliated with the

utility is a substantial part of the affiliated person's business. It ensures the affiliated person performs the essential part of its activities for its utility owner. The test therefore limits the ability of an affiliated person to trade for a profit with third parties when they are benefitting from direct awards of contracts that could distort the market.

31. The turnover test requires a calculation of the percentage of the relevant turnovers comprising the 'affiliated turnover amount' as a percentage of their total turnover amount. The Act provides that an appropriate authority may make regulations about how to calculate a person's affiliated turnover amount and total turnover amount. This is set out in [regulation 42C](#) of the Regulations² and requires that the turnover test be calculated using an affiliated person's entire affiliated turnover amount and entire total turnover amount generated over a specified relevant period.
32. The 'affiliated turnover amount' is the affiliated person's turnover³ derived from the supply of goods, services or - as the case may be - works to the parent undertaking utility and any other persons affiliated with that utility⁴.
33. The use of the phrase 'as the case may be' in respect of the affiliated turnover amount requires, in the case of mixed contracts, a separate calculation for each of goods, services or works as covered by the contract. All of these must pass the turnover test.
34. For example, if the contract to be awarded to the affiliated person is for services, only the turnover for services is taken into account, not goods or works. This would include all services, not just services that are similar to those that are the subject of the relevant contract. A mixed contract for goods and services would require separate calculations for the goods and the services.
35. Utilities need to carefully differentiate between works and goods or services. Works contracts generally have as their object building or civil engineering activities. 'Works', defined in [regulation 45](#), encompasses a list of activities set out in [Schedule 3](#) to the Regulations. If a utility is procuring items in connection with activities listed in [Schedule 3](#) of the Regulations these may be properly included in a works contract, however, it may not be appropriate to procure via a works contract the same items in isolation from [Schedule 3](#) building or civil engineering activities.
36. For example, procurement of plumbing supplies or electrical wiring required for building refurbishment works are likely to be considered 'works' for valuation purposes and relevant exempted contracts calculations. However, procurement of plumbing supplies or electrical wiring not required for building refurbishment or any other works activities listed in [Schedule 3](#) to the Regulations are unlikely to be considered 'works' and should instead be considered either a goods or services (depending on the reason for procuring) for valuation and exempted contracts calculation purposes.
37. The 'total turnover amount'⁵ is the affiliated person's entire total turnover amount deriving from the supply of goods, services or works; that is the amount comprising all the affiliated person's turnover derived from any source (not just the parent undertaking utility and any other persons affiliated with that utility). Again, the turnover test is calculated separately in respect of goods, services and works. So, for example, the total turnover amount when

² As inserted by [regulation 8 of the Procurement Act 2023 \(Consequential and Other Amendments\) Regulations 2025](#).

³ 'Turnover' is not defined and has its usual meaning in a commercial context, i.e. income or gross revenue received from the sale of goods, services or works.

⁴ See [paragraph 6\(3\) of Schedule 2](#) to the Act.

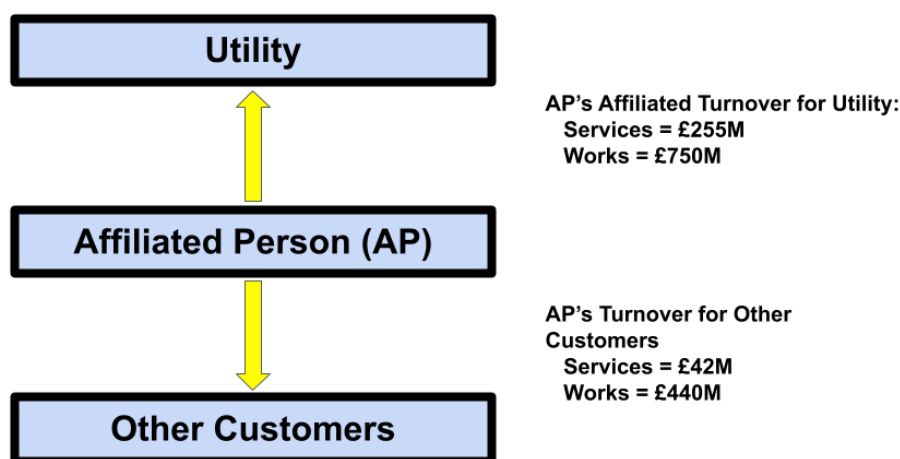
⁵ See [paragraph 6\(3\) of Schedule 2](#) to the Act.

carrying out the turnover test in respect of goods will be turnover derived from the supply of goods only.

38. [Regulation 42C](#) requires that the turnover used in the calculation (for both the affiliated turnover amount and the total turnover amount) is that generated over the 'relevant period'. The 'relevant period' is defined in [regulation 42C\(5\)](#) as:

- (a) the period of three years ending with the date of contract award⁶, or
- (b) where, due to the timing of the preparation of the affiliated person's accounts, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period⁷ before the date of contract award for which such information is available ends.

39. In accordance with the definition, the default relevant period is three years ending with the date of contract award, and the alternative relevant period provided for in sub-paragraph (b) should only be used where turnover information is not available up to the date of contract award. It should also be noted that the definition of relevant period means that the date at which the turnover test must be met for the contract to be an exempted contract is the date of contract award (under sub-paragraph (a) of the definition) or the date when the last accounting period before the date of contract award ends (under sub-paragraph (b) of the definition).
40. This method of calculating turnover smooths out such work done over a three-year period. So even if in one year the affiliated turnover amount is 80% or less of their total turnover amount, the test may still be satisfied, and the contract accordingly considered an exempted contract as long as over the three years the 80% threshold is exceeded.
41. The turnover test calculation is summarised below in an example of a mixed services and works contracts. The overall test failed solely on account of works.



⁶ [Regulation 42C\(5\)](#) defines 'date of contract award' as the date when the contracting authority decided to award the contract.

⁷ [Regulations 42C\(5\)](#) defines 'accounting period' as a period in respect of which accounts are prepared in relation to the affiliated person.

$$\begin{aligned}
 \text{Services Turnover \%} &= \left(\frac{\text{Affiliated Turnover}}{\text{Total Turnover}} \right) \times 100 \\
 &= \left(\frac{\text{Affiliated Turnover}}{\text{Affiliated + Customer Turnover}} \right) \times 100 \\
 &= \left(\frac{255}{255 + 42 = 297} \right) \times 100 \\
 &= 86\% - \text{Okay, for services}
 \end{aligned}$$

$$\begin{aligned}
 \text{Works Turnover \%} &= \left(\frac{\text{Affiliated Turnover}}{\text{Total Turnover}} \right) \times 100 \\
 &= \left(\frac{\text{Affiliated Turnover}}{\text{Affiliated + Customer Turnover}} \right) \times 100 \\
 &= \left(\frac{750}{750 + 440 = 1190} \right) \times 100 \\
 &= 63\% - \text{Fail for works, fail the test}
 \end{aligned}$$

42. The calculation of affiliated turnover amount and total turnover amount for an affiliated person (Affiliated Person A) would cover turnover attributable to the parent undertaking utility and any other persons affiliated to that utility. In addition, [regulation 42C](#) provides that any equivalent turnover of any person affiliated with Affiliated Person A (but who is not the utility), is to be treated as part of Affiliated Person A's turnover.
43. As set out in the definition in [regulation 42C\(5\)](#), 'equivalent turnover' is turnover for the same or similar goods, services or - as the case may be - works. For example, the parent undertaking utility may have set up a subsidiary - Affiliated Person A - to carry out financial accountancy support for its utility group. Affiliated Person A sets up its own subsidiary - Affiliated Person B - to look after tax compliance for the utility group. Affiliated Person B's activities for the utility owner and any other persons affiliated to that owner is sufficiently similar to Affiliated Person A's activities to be deemed equivalent turnover.
44. [Schedule 2, paragraph 21](#) exempts contracts for public passenger transport services that are awarded under separate legislation; the legislation is specified at [section 136\(11\) of the Railways Act 1993](#). The practical effect of this exemption is that the rules on covered procurement do not apply to the award of contracts for rail and metro, and rail and metro concessions, although they do apply to contracts for bus and tram that are not concessions.

45. [Schedule 2, paragraph 37](#) exempts concession contracts for public passenger transport services.
46. [Schedule 2, paragraph 31](#) exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open. The reason for this exemption is that the purpose of acquiring the goods, services or works is not for the utility to carry out a utility activity itself. This exemption is not available where the utility awarding the contract is acting as a central purchasing authority.
47. [Schedule 2, paragraph 32](#) exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in [Schedule 4, paragraph 3\(1\)](#) (provision or operation of a fixed network or the supply of drinking water to such a fixed network).
48. [Paragraph 33](#) exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in [Schedule 4, paragraphs 1, 2 or 6](#) (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.
49. [Paragraph 34](#) exempts contracts for the purpose of the activities set out in [Part 2 of Schedule 4](#), that would be utility activities if they were not set out in Part 2.

Carrying out utilities procurement, including under utilities dynamic markets

50. Excluding suppliers from a competitive tendering procedure With the exception of private utilities, the provisions in the Act relating to excluded and excludable suppliers apply to procurements carried out by utilities in the same way as they apply to other contracting authorities. For private utilities, any reference in the Act to excluded suppliers is treated as a reference to excludable suppliers and any reference to excludable suppliers is treated as including excluded suppliers ([section 57\(4\)](#)). This means that private utilities can treat suppliers subject to a mandatory exclusion ground as being subject to a discretionary exclusion ground.
51. Competitive tendering procedures Generally, contracting authorities awarding utilities contracts must use the same procurement procedures as are used by other contracting authorities. [Section 20](#) sets out the provisions relating to competitive tendering procedures. Please see the guidance on [competitive tendering procedures](#) for more information.
52. Direct award [Section 41](#) permits a contracting authority to award a contract directly, without first running a competitive tendering procedure when a direct award justification (set out in [Schedule 5](#)) applies. Please see the guidance on [direct award](#) for more information.
53. Utilities dynamic markets (see also guidance on [dynamic markets](#)) [Sections 34 and 35](#) provide that dynamic markets, including utilities dynamic markets, may be established and contracts may be awarded to suppliers on dynamic markets following a competitive flexible procedure. Dynamic markets are essentially up to date lists of suppliers that have met the conditions necessary to participate in procurements for the award of the types of contracts covered by the market. Suppliers must be able to apply at any time to be admitted to the market and if successful, be admitted as soon as reasonably practicable ([section 36\(6\)\(a\) and \(c\)](#)).

54. A utilities dynamic market is a dynamic market established solely for the award of utilities contracts by utilities ([section 35\(2\)](#)). This means that any reference in the Act to a dynamic market includes a utilities dynamic market, unless it is stated not to (but references to utilities dynamic markets do not include other dynamic markets). [Section 35\(3\)](#) allows utilities to award utilities contracts under a utilities dynamic market established by any person (which would include a person that is not a contracting authority under the Act, e.g. a private company who provides qualification services), provided the market has been established in accordance with the rules in the Act applicable to utilities dynamic markets established by private utilities.
55. [Section 36](#) sets out how suppliers can become members of dynamic markets. [Section 36\(1\)](#) allows contracting authorities to set conditions of membership that suppliers must meet in order to be admitted to a dynamic market. The conditions of membership must be a proportionate way of assessing suppliers' legal and financial capacity and technical ability to deliver contracts that might be awarded under the market.
56. [Section 38](#) allows contracting authorities to charge fees to suppliers. For utilities dynamic markets, fees can only be charged in connection with obtaining and maintaining membership of the market. (For other dynamic markets, fees can only be charged to suppliers that are awarded a contract under a dynamic market and not for membership.)
57. [Section 39](#) deals with various dynamic market notices. These apply to all contracting authorities, including utilities, except in the case of the notice required under [section 39\(5\)](#) relating to the market ceasing to operate. In this instance, private utilities are not required to publish a notice ([section 39\(6\)](#)).
58. Qualifying utilities dynamic market notice A utilities dynamic market established under a qualifying utilities dynamic market notice permits utilities to limit participation in competitive flexible procedures to suppliers that are registered on the market. Suppliers are able to apply to be admitted to the market at any time.
59. [Section 40](#) has the effect of speeding up procurements and reducing the burden for utilities procuring under a utilities dynamic market that has been established using a qualifying utilities dynamic market notice. Where this notice is used, utilities are required to provide tender notices for upcoming procurements to suppliers already on the utilities dynamic market, or appropriate part of the utilities dynamic market, instead of publishing the notice (which is the case for other dynamic markets). In practice, that means utilities can, for example, provide the tender notice to suppliers on the utilities dynamic market as part of the associated tender documents as each procurement under the utilities dynamic markets is commenced.
60. In order to take advantage of this flexibility, the qualifying utilities dynamic market notice must specify that only members of the utilities dynamic market will be provided with tender notices ([section 40\(6\)\(b\)\(i\)](#)) and meet minimum information requirements, which are set out in the Regulations. New members joining the utilities dynamic market are entitled to receive future tender notices.
61. Shorter time periods for procurements carried out by utilities (see [section 54\(4\) and \(5\)](#)) The Act allows shorter time periods for submission of tenders in procurements carried out by utilities where the suppliers are 'pre-selected suppliers'. Suppliers are pre-selected suppliers where they are invited to submit a tender after previously satisfying conditions of participation as part of a competitive tendering procedure or where they are on a utilities dynamic market and invited to submit a tender for a procurement under the utilities dynamic

market. Under [section 54](#), utilities can agree a suitable time period with all pre-selected suppliers (in which case there is no minimum time period) or, in the absence of agreement, set a time period that must be at least 10 days.

62. **Frameworks** [Section 47](#) sets out the maximum term for frameworks. It provides that the maximum term for a 'utilities framework' awarded by a public authority or public undertaking (or for a defence and security framework) is eight years ([section 47\(1\)\(a\)](#)). There is no maximum term for frameworks awarded by private utilities ([section 47\(5\)\(b\)](#)). [Section 47\(4\)\(b\)](#) defines a utilities framework as a framework that provides for the future award of public contracts that are utilities contracts and no other public contracts. The maximum term for frameworks that are not utilities frameworks (or defence and security frameworks) is four years. The longer term reflects the complexities of the defence and utilities markets, where longer terms are more appropriate. (In all cases, the maximum term may be longer if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded under the framework means a longer term is required.)
63. **Standstill** [Section 50](#) requires contracting authorities to publish a contract award notice before entering into a public contract. The notice will include details about the outcome of the procurement, alert the market to the fact that a contract is to be entered into and, where there is one, start the relevant standstill period. The standstill period is a mandatory pause before the contracting authority can enter into the contract, but it is not required in all cases ([section 51\(3\)](#)).
64. [Section 51](#) deals with the standstill period. The standstill period commences on the day the contract award notice is published and the minimum period (the 'mandatory standstill period') is eight working days ([section 51\(2\)](#)); the standstill period may be longer if a longer period is set out in the contract award notice ([section 51\(1\)](#)).
65. A standstill period is not required in the circumstances set out in [section 51\(3\)](#), which includes where a direct award is made by a private utility. Private utilities may, in these circumstances, choose to apply a voluntary standstill period by setting this out in the contract award notice. Where a voluntary standstill period is implemented, it must be fully observed, and the contract not entered into before the expiry of the period ([section 51\(4\)](#)). The voluntary standstill period is the same as the mandatory standstill period (not less than eight working days beginning on the day the contract award notice is published) ([section 51\(5\)](#)).

What are the primary notices linked to this aspect of the Act?

66. Utilities procurement is generally governed by the same notice requirements as other procurement under the Act including, for example, the publication of a contract award notice for contracts awarded under a utilities framework.
67. Particular rules apply when a utilities dynamic market is established by reference to a qualifying utilities dynamic market notice. There are further exemptions from certain provisions or publication requirements for utilities or private utilities which are set out below.

Tender notice

68. Utilities dynamic markets may be established using a:
- a. dynamic market notice, in the usual way (see [section 39](#)); or
 - b. qualifying utilities dynamic market notice ([section 40](#)).

69. [Section 40\(2\)](#) provides an exception to the duty to publish a tender notice (as part of an open procedure or competitive flexible procedure) under [section 21\(7\)](#) when contracts are procured under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. [Section 40\(2\)](#) provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or relevant part of the market, and provides discretion to provide a tender notice to suppliers that are still being considered for membership of the utilities dynamic market or part of the market.
70. The effect of [section 40\(4\)](#) is that in the case of a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, the tender notice provided to suppliers, associated tender documents or qualifying utilities dynamic market notice must contain the level of sufficiency of information required by [section 21\(5\)](#) in order to invite suppliers to submit a tender.
71. [Section 40\(5\)](#) provides that, for a dynamic market that has been established by reference to a qualifying utilities dynamic market notice, there is no obligation for contracting authorities to consider new applications for membership of a utilities dynamic market, or part of a market, before excluding suppliers or disregarding tenders because the supplier is not a member of the market.
72. SAs set out in [section 40\(7\)](#) provides that, references elsewhere in the Act to 'publication' of a tender notice' include the provision of a tender notice to suppliers on, or applying to be admitted to, a utilities dynamic market.

Qualifying utilities dynamic market notice

73. [Section 40\(6\)](#) provides that in the case of a qualifying utilities dynamic market notice, the notice must include a statement that only members of the market will be notified of a future intention to award a contract under the utilities dynamic market (because a tender notice is not published).
74. [Regulation 25\(2\)\(i\)](#) requires that the notice must include as much of the information as would be published in any tender notice under [regulation 21\(2\)](#), to the extent that this is available at the time the qualifying utilities dynamic market notice is published.
75. When providing a tender notice to the members of the dynamic market, only information that has not already been provided in the qualifying utilities dynamic market notice will need to be included in the tender notice.

Exemptions to publish notices for private utilities

76. Private utilities are not required to publish the following:
- a. preliminary market engagement notices ([section 17](#) will be amended by the [Procurement Regulations 2024](#) to disapply this section for private utilities);
 - b. a notice specifying that a dynamic market has ceased to operate ([section 39\(6\)](#));
 - c. key performance indicators: [section 52\(6\)\(b\)](#) provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility;

- d. contract details notices or contracts ([section 53\(6\)\(a\)](#));
- e. procurement termination notices ([section 55\(3\)](#));
- f. payments compliance notices ([section 69\(6\)\(b\)](#));
- g. information about payments under public contracts ([section 70\(4\)\(a\)](#));
- h. contract change notices: [section 75\(6\)\(c\)](#) provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (see [section 74\(1\)](#)) does not apply to a private utility;
- i. a copy of a modified contract or the relevant modification (only 'qualifying modifications' must be published and modifications to contracts awarded by private utilities do not fall within this definition because there is no requirement to publish a contract change notice) ([section 77](#));
- j. contract termination notices ([section 80\(4\)\(a\)](#)); and
- k. pipeline notices ([section 93\(6\)](#)).

[Procurement Regulations 2024](#)

77. The Regulations include provisions on the contents of the different procurement notices established under the Act. There are some differences in the notice contents for utilities contracts (and also private utilities). Details of these can be found in Annex A.

What other guidance is of particular relevance to this topic area?

Utilities will need to understand the whole of the Act, as, save for minor differences in the provisions, it applies equally to utilities and utility contracts as to contracting authorities awarding other types of contract.

Annex A

Summary of specific utility provisions in the [Procurement Act 2023 \(Act\)](#)

Legislative reference	Specific utilities provisions	Applicable utility
Section 2 : Contracting authority	<p>Section 2(1) sets out that a 'contracting authority' is a 'public authority'; or in relation to a utilities contract, a public authority, 'public undertaking' or 'private utility', other than (in each case) an excluded authority.</p> <p>Section 2(2) describes:</p> <p>'Public authority' as a person that is:</p> <ul style="list-style-type: none"> wholly or mainly publicly-funded; or subject to public authority oversight; <p>and does not operate on a commercial basis (but see subsections (9) and (10));</p> <p>'Public undertaking' is a person that is subject to public authority oversight and operates on a commercial basis; and</p> <p>'Private utility' as a person that is not a public authority or public undertaking and carries out a 'utility activity'.</p> <p>Section 2(7) provides that public undertakings and private utilities are to be treated as devolved Scottish authorities if they operate only in or as regards Scotland, and where:</p> <ul style="list-style-type: none"> none of its activities relate to reserved matters; or some of its activities relate to reserved matters and some do not. 	<p>All utilities</p> <p>Public authorities</p> <p>Public undertakings</p> <p>Private utilities</p> <p>Public undertakings and private utilities</p>
Section 6 : Utilities contracts	<p>Section 6(1) sets out the definition of a 'utilities contract', being a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity'.</p> <p>Section 6(2) defines a 'utility activity' as follows:</p> <p>Section 6(2)(a) and (b) - an activity listed in Part 1 but not Part 2 of Schedule 4 (utility activities);</p> <p>Section 6(2)(c) - an activity carried out wholly outside of the UK (e.g. not involving the use of a network or geographical area within the UK); and</p> <p>Section 6(2)(d) - for private utilities, any activity for which the utility has been granted a special or exclusive right (i.e. a procurement for which a private utility has not been granted such a right would not be covered by the Act).</p> <p>Section 6(3) provides that a person carries out a utility activity based on a 'special or exclusive right' if the right to carry out the activity has been granted by statutory, regulatory or administrative provision and the provision also substantially limits the ability of other persons not granted the right to carry out the activity.</p> <p>Section 6(4) provides that a right is not a 'special or exclusive right' if it has been granted following a competitive tendering procedure under section 19 of the Act or where the opportunity was adequately publicised and the grant of the right was based on non-discriminatory criteria.</p> <p>Section 6(5-6) work together and provide that an appropriate authority may amend Part 2 of Schedule 4, which sets out activities that are not utility activities, to specify or remove activities from that Part. An appropriate authority may only specify an activity in Part 2 where it is satisfied that the test at section 6(6) has been met: i.e. that the market for the activity</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>Private utilities</p> <p>Private utilities</p> <p>Private utilities</p> <p>All utilities</p>

	<p>specified is subject to fair and effective competition and entry to that market is unrestricted.</p> <p>Section 6(7) makes clear that a reference to a utilities contract includes a reference to a framework agreement where that framework is for the future award of utilities contracts.</p>	All utilities
Section 10 : Mixed procurement: special regime contracts	Section 10(6) provides that utilities contracts are a type of special regime contract subject to the rules in this section.	All utilities
Section 13 : The national procurement policy statement:	Section 13(10) provides that the obligation in section 13(9) to have regard to the national procurement policy statement does not apply to private utilities.	Private utilities
Section 14 : The Wales procurement policy statement	Section 14(9) provides that the obligation in section 14(8) to have regard to the Wales national procurement policy statement does not apply to private utilities.	Private utilities
Section 17 : Preliminary market engagement notices	Section 17 does not apply to private utilities: section 17 will be amended by the Procurement Regulations 2024 to disapply this section for private utilities	Private utilities
Section 21 : Tender notices and associated tender documents	Section 21(7) refers to section 40 (Qualifying utilities dynamic market notices: no duty to publish a tender notice) which provides an exception to the duty to publish a tender notice (as part of an open procedure or competitive flexible procedure) when contracts are awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. (Section 40 provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or relevant part of the market.)	All utilities
Section 34 : Competitive award by reference to dynamic markets	Section 34(7) means that concession contracts which are also utilities contracts can be procured under dynamic markets (but otherwise cannot).	All utilities
Section 35 : Dynamic markets: establishment	<p>Section 35(2) defines a utilities dynamic market as a dynamic market set up only for the purpose of the award of utilities contracts by utilities.</p> <p>Section 35(3) provides that, if 'any person⁸' sets up a utilities dynamic market which complies with the provisions of the Act applicable to utilities dynamic markets established by private utilities, that is to be treated as a utilities dynamic market established by a private utility and utilities can use them to award public contracts that are utilities contracts.</p> <p>Section 35(4) defines a 'utility' for the purpose of the Act as a public authority, or public undertaking, that carries out a utility activity; or a private utility.</p>	<p>All utilities</p> <p>N/A, provision relates to any person</p> <p>All utilities</p>
Section 38 : Dynamic markets: fees	<p>Section 38(1) and (2) relating to fees is not applicable to utilities dynamic markets.</p> <p>Section 38(3) applies only to utilities dynamic markets. It provides that fees set out in documents establishing a utilities dynamic market can only be charged to suppliers under a utilities dynamic market in connection to obtaining and</p>	<p>N/A</p> <p>All utilities (including where utilities dynamic market established by any person)</p>

⁸ "Any person" in this table means a person who is not a utility, and has set up and operates a utilities dynamic market.

	maintaining membership of the market. This, like other provisions relating to dynamic markets established by private utilities, is a requirement of utilities dynamic markets established by any person where the market is used by a contracting authority under the Act (section 35(3)).	
Section 39 : Dynamic market notices	Section 39(6) provides that private utilities do not have to publish a notice in accordance with section 39(5) once a dynamic market has ceased to operate.	Private utilities
Section 40 : Qualifying utilities dynamic market notices: no duty to publish a tender notice	<p>Utilities dynamic markets may be established using a:</p> <ul style="list-style-type: none"> dynamic market notice, in the usual way (see section 39); or qualifying utilities dynamic market notice, using different rules for tender notices explained in this section (section 40). <p>Section 40(1) provides that a contracting authority that procures a contract under a utilities dynamic market established using a qualifying utilities dynamic market notice must not, as part of the competitive flexible procedure, publish a tender notice for the purpose of inviting suppliers to submit a request to participate or, where relevant, a tender for a procurement (see section 21(1) (Tender notices and associated tender documents)).</p> <p>Section 40(2) provides that where tender notices must not be published (i.e. where section 40(1) applies), a contracting authority must, instead, provide a tender notice to members of the utilities dynamic market or appropriate part of the market.</p> <p>Section 40(3) allows a contracting authority the discretion to provide a tender notice to suppliers that are still being considered for membership of the utilities dynamic market, or part of the market.</p> <p>Section 40(4) incorporates a qualifying utilities dynamic market notice into section 21(5) (Tender notices and associated tender documents). This means that, in the case of a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, the tender notice provided to suppliers, associated tender documents or qualifying utilities dynamic market notice must contain the level of sufficiency of information required by section 21(5) in order to invite suppliers to submit a tender.</p> <p>Section 40(5) disapplies the requirement in section 34(4) (Competitive award by reference to dynamic markets), where a dynamic market has been established by reference to a qualifying dynamic market notice, for contracting authorities to consider applications for membership of a utilities dynamic market, or part of a market, before excluding suppliers or disregarding tenders because the supplier is not a member of the market.</p> <p>Section 40(6) defines a 'qualifying utilities dynamic market notice'. This notice must relate to the establishment of a utilities dynamic market and contain the information specified in section 40(6)(b).</p> <p>Section 40(7) provides that any references to 'publication of a tender notice' elsewhere in the Act include references to provision of a tender notice as described in section 40(2) and (3).</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p>
Section 47 : Frameworks: Maximum term	<p>Section 47(1) states the maximum term for a utilities framework is 8 years.</p> <p>Section 47(2) provides that the restriction does not apply if the contracting authority considers that a longer term is</p>	<p>Public authorities and public undertakings</p> <p>Public authorities and public undertakings</p>

	<p>required. Section 47(3) provides that the contracting authority must set out its reasons in the tender or transparency notice for the framework.</p> <p>Section 47(4)(b) defines 'a utilities framework' as a framework which does not provide for the future award of public contracts other than utilities contracts.</p> <p>Section 47(5)(b) provides that the maximum terms for frameworks set out at section 47(1) do not apply to private utilities.</p>	<p>All utilities</p> <p>Private utilities</p>
Section 51 : Standstill periods on award of contracts	Section 51(3)(c) provides that the prohibition on entering into a contract before the end of a standstill period does not apply to private utilities when the award is made under sections 41 or 43 (direct award and switching to direct award, respectively).	Private utilities
Section 52 : Key performance indicators	Section 52(6)(b) provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility.	Private utilities
Section 53 : Contract details notices and publication of contracts	Section 53(6)(a) provides that the requirement to publish a contract details notice following the award of a contract and, where relevant, a copy of the contract does not apply to private utilities (although details of the contract to be awarded must be included in the contract award notice under section 50 prior to entry into the contract).	Private utilities
Section 54 : Time limits	<p>Section 54(4) sets out in tables the minimum 'tendering periods' in different circumstances. For utilities, the following flexibilities apply:</p> <ul style="list-style-type: none"> • there is no minimum tendering period if the contract being awarded is a utilities contract that is subject to a 'negotiated tendering period'; and • the minimum tendering period is 10 days if the contract being awarded is a utilities contract and tenders may be submitted only by 'pre-selected suppliers' <p>The effect of these two provisions is that where the contract to be awarded is a utilities contract and tenders may only be submitted by pre-selected suppliers, the contracting authority and the suppliers may agree the time period or, in the absence of agreement, the minimum time period is 10 days. (Tendering period, negotiated tendering period and pre-selected supplier' are defined in section 54(5)).</p>	All utilities
Section 55 : Procurement termination notices	Section 55(3) provides that the requirement to publish a procurement termination notice if it terminates the procedure does not apply to private utilities.	Private utilities
Section 57 : Meaning of excluded and excludable supplier	Section 57(4) provides that for private utilities, any reference to excluded suppliers is to be regarded as excludable suppliers and that any reference in the Act to an excludable supplier includes an excluded supplier.	Private utilities
Section 68 : Implied payment terms in public contracts	Section 68(1) provides that the implied payment terms set out in this section do not apply to utilities contracts awarded by private utilities.	Private utilities
Section 69 : Payment compliance notices	Section 69(6)(b) provides that payments compliance notices do not apply to private utilities.	Private utilities

Section 70 : Information about payments under public contracts	Section 70(4)(a) provides that the requirement to publish specified information on payments over £30,000 under public contracts does not apply to a public contract that is a utilities contract awarded by a private utility.	Private utilities
Section 71 : Assessment of contract performance	Section 71(7) makes it clear that the requirement for contracting authorities to assess contract performance against key performance indicators set under section 52(1) and publish certain information is not applicable to private utilities.	Private utilities
Section 73 : Implied payment terms in sub-contracts	Section 73(6)(b) provides that the implied payment terms (relating to 'public sub-contracts') set out in this section do not apply to a public sub-contract that is for the purpose of performing (or contributing to the performance of) all or part of a utilities contract awarded by a private utility.	Private utilities
Section 75 : Contract change notices	Section 75(6)(c) provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (see section 74(1)) does not apply to a private utility.	Private utilities
Section 77 : Publication of modifications	Section 77(2)(a) and the definition of 'qualifying modification' means the requirement to publish a copy of a modified contract or the relevant modification does not apply to private utilities (because private utilities are not required to publish a contract change notice under section 75).	Private utilities
Section 80 : Contract termination notices	Section 80(4)(a) provides that the requirement to publish a contract termination notice when a contract is terminated does not apply to private utilities.	Private utilities
Section 83 : Conflicts assessments	Section 83(7) does not exempt private utilities from the section but does modify some terms when applying those terms to private utilities, otherwise the section would contain references that do not apply to private utilities. For example, section 83(7)(b) provides that a reference to a termination notice being published is a reference to the contract being terminated.	Private utilities
Section 93 : Pipeline notices	Section 93(6) provides that private utilities are not required to publish pipeline notices.	Private utilities
Section 96 : Electronic communications	Section 96(3)(b) provides that the requirement to use electronic communications systems as far as is practicable does not apply to procurements carried out under a utilities dynamic market.	All utilities
Section 108 : Procurement investigations	Section 108(5) provides that a private utility is not considered a 'relevant contracting authority' for the purposes of this section and as a result is not subject to procurement investigations under this section. (Private utilities are subject to any guidance published by an appropriate authority following a procurement investigation as provided for in section 110 , subject to the recommendation itself.)	Private utilities
Section 111 : Welsh Ministers: restrictions on the exercise of powers	Section 111(2) provides that contracting authorities that are public undertakings or private utilities operating wholly or mainly in relation to Wales, and whose activities are wholly or mainly activities that do not relate to reserved matters, are to be treated as devolved Welsh authorities.	Public undertakings and private utilities
Section 112 : Northern Ireland department: restrictions on the exercise of powers	Section 112(3) provides that contracting authorities that are public undertakings or private utilities operating only in or as regards Northern Ireland and whose activities are wholly or mainly activities that do not relate to excepted or reserved matters are to be treated as transferred Northern Ireland authorities.	Public undertakings and private utilities

	<p>relevant joint venture is a joint venture that was formed for the purpose of carrying out a utility activity and is comprised only of utilities.</p> <p>Paragraph 6(1) exempts utilities contracts awarded:</p> <ul style="list-style-type: none"> by a utility to a person affiliated with the utility; and by a utility that is a relevant joint venture to a person affiliated with any member of the joint venture, provided the turnover test is met when considering the affiliated person. <p>Paragraph 6(2) explains, by reference to the Companies Act 2006, what it means if a person is 'affiliated' with another. A person is affiliated with another if the person is in a 'group undertaking', as defined in section 1161(5) of that Act, with that person. Paragraph 6(2) provides that this would be the case even where one of them is not an 'undertaking' as defined in section 1161(1) of that Act: for example, where one is not a limited company.</p> <p>Paragraphs 6(3) and (5) provide that in order for the exemption to apply, the 'turnover test' must be met, with further details to be set out in regulations.</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p>
Schedule 2, paragraph 21 : Exempted contracts	<p><u>Public passenger transport services (subject-matter exempted contract)</u></p> <p>Paragraph 21 exempts contracts that are awarded under the 'public service obligations regulations' which are defined in section 136(11) of the Railways Act 1993. This provision operates to exempt from the Act certain public passenger transport services.</p>	All utilities
Schedule 2, paragraphs 31-34 : Exempted contracts	<p><u>Utilities contracts (subject-matter exempted contracts)</u></p> <p>Paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right (as defined in section 6(3)) to sell or lease the goods, services or works purchased and the market is open. This exemption is not available where the utility awarding the contract is acting as a centralised purchasing authority.</p> <p>Paragraph 32 exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in Schedule 4, paragraph 3(1)(a) or (b).</p> <p>Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in Schedule 4, paragraphs 1, 2 or 6 (gas and heat, electricity and extraction oil and gas and exploration for, or extraction, of coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.</p> <p>Paragraph 34 exempts contracts for the purpose of the activities set out in Part 2 of Schedule 4, that would be utility activities if they were not set out in Part 2.</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p>
Schedule 2, paragraph 35-37 : Exempted contracts	<p><u>Concession contracts (subject matter exempted contracts)</u></p> <p>Paragraph 35 exempts concession contracts for utility activities relating to water services described in Schedule 4 Paragraph 3(1) or (2).</p> <p>Paragraph 36 exempts concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements. These contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this regulation, the Secretary of State for</p>	<p>All utilities</p> <p>All utilities</p>

	<p>Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.</p> <p>Paragraph 37 exempts concession contracts for the provision of public passenger transport services.</p>	All utilities
Schedule 4, paragraph 1 : Utility activities: gas and heat	<p>Paragraph 1 sets out when activities associated with gas and heat are utilities activities.</p> <p>Paragraph 1(1) provides that 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 and the supply of gas or heat to such networks are utility activities.</p> <p>Paragraph 1(2) sets out circumstances where the supply of gas and heat to a network is not considered a utility activity, all of which must be met for the exemption to apply. These are: that the operator (i.e. the supplier of gas or heat) is a private utility or public undertaking; that the operator produces the gas or heat as an unavoidable by-product when carrying out an activity that is not a 'specified activity'; and the amount of gas or heat supplied to the network represents not more than 20% of the operator's turnover amount. The definition of specified activities (which are referred to in this paragraph and paragraphs 2 and 3) are set out in paragraph 7 of this Schedule.</p> <p>Paragraph 1(3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 1(2)(c) and set out a non-exhaustive list of provisions that may be included in those regulations.</p>	<p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utilities</p> <p>N/A</p>
Schedule 4, paragraph 2 : Utility activities: electricity	<p>Paragraph 2 sets out when activities associated with electricity are utilities activities.</p> <p>Paragraph 2(1) provides that 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 and the supply of electricity to such networks are utility activities.</p> <p>Paragraph 2(2) sets out circumstances where the supply of electricity to a network is not considered a utility activity, all of which must be met for the exemption to apply. These are: that the operator (i.e. the supplier of electricity) is a private utility or public undertaking; the operator produces electricity because it needs the electricity to do something other than a specified activity; the electricity supplied is only the excess from such production that the operator has not used itself; and the electricity supplied represents not more than 30% of all the energy produced by the operator.</p> <p>Paragraph 2(3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 2(2)(d) and sets out a non-</p>	<p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utility</p> <p>N/A</p>

	exhaustive list of provisions that may be included in those regulations.	
Schedule 4, paragraph 3 : Utility activities: water	<p>Paragraph 3 sets out when activities associated with water are utility activities.</p> <p>Paragraph 3(1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water and the supply of drinking water to such networks are utility activities.</p> <p>Paragraph 3(2) sets out further activities which, to the extent that they are carried out by a person that also carries out the activities referred to in paragraph 3(1), are also utility activities. These are: any activity connected with a hydraulic engineering project, irrigation or land drainage, provided the condition in paragraph 3(3) is met; and any activity connected with the disposal or treatment of sewage.</p> <p>Paragraph 3(3) sets out the condition referred to in paragraph 3(2), which is that a person carrying out the activity must reasonably expect that more than 20% of the total water made available under paragraph 3(2) is to be supplied as drinking water to a network within paragraph 3(1).</p> <p>Paragraph 3(4) sets out circumstances where the supply of drinking water is not considered a utility activity, all of which must be met in order for the exemption to apply. These are: that the operator (i.e. the supplier of drinking water) is a private utility or public undertaking; the operator produces drinking water because it needs the drinking water to do something other than a specified activity; the drinking water supplied is only the excess from such production that the operator has not used itself; and the drinking water supplied represents not more than 30% of all the drinking water produced by the operator.</p> <p>Paragraphs (5) and (6) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 4(d) and set out a non-exhaustive list of provisions that may be included in those regulations</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utilities</p> <p>N/A</p>
Schedule 4, paragraph 4 : Utility activities: Transport	Paragraph 4 sets out when activities associated with transport are utility activities and provides that the provision or operation of a network providing a service to the general public for transport is a utility activity. Such a network may be provided by any means, such as by rail, tram or bus.	All utilities
Schedule 4, paragraph 5 : Utility activities: Ports and airports	<p>Paragraph 5 sets out when activities associated with ports and airports are utility activities.</p> <p>Paragraph 5(1) specifies that an activity relating to the exploitation of a geographic area for particular purposes is a utility activity associated with ports and airports. Those purposes are: to provide an airport to carriers of passengers or goods by air; and to provide a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.</p> <p>Paragraph 5(2) defines 'airport' by reference to section 66 of the Civil Aviation Act 2012.</p>	All utilities
Schedule 4, paragraph 6 : Utility activities: Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Paragraph 6 provides that an activity relating to the exploitation of a geographic area for the extraction of oil or gas and exploration for, or extraction of, coal or other solid fuels are utility activities.	All utilities

Schedule 4, paragraph 7 : Utility activities: interpretation of Schedule	Paragraph 7 sets out the definitions of 'specified activity' and 'supply' which are used in this part of the Schedule	All utilities
Schedule 4, paragraphs 8-17 : Utility activities: Activities that are not utility activities	Part 2 of this Schedule specifies the activities which are not utility activities and therefore not covered by the Act. These exemptions reflect the exemptions set out in three EU Commission Decisions (2006/211/EC , 2007/141/EC and 2010/192/EU). The power in section 6(5) of the Act allows an appropriate authority to make regulations to amend Part 2.	All utilities
Schedule 8, paragraph 4 : Permitted contract modification	<u>Unforeseeable circumstances</u> Paragraph 4(2) provides that the 50% threshold for modifying contracts where the unforeseeable circumstances permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 8, paragraph 5 : Permitted contract modification	<u>Materialisation of a known risk</u> Paragraph 5(2) provides that the 50% threshold for modifying contracts where the materialisation of a known risk permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 8, paragraph 8 : Permitted contract modification	<u>Additional goods, services or works</u> Paragraph 8(2) provides that the 50% threshold where the modifying contracts for additional goods, services or works permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 11, Paragraph 7 : repeals and revocations	Paragraph 7 repeals The Utilities Contracts Regulations 2016 (S.I. 2016/274).	N/A

Appendix to Annex A

Regulation	Specific utilities rules in the Procurement Regulations 2024	Applicable utility types
Regulation 5 : Publication of notices etc on central digital platform	Regulation 5 sets out when a notice must be published on the central digital platform. The list of provisions referred to where notices must be published on the platform includes notices under section 39(2) (dynamic market notices: intention to establish a dynamic market), which includes qualifying utilities dynamic market notices (by virtue of section 40(6) of the Act).	All utilities
Regulation 7 : Core supplier information: platform not working, urgency, private utilities	Regulation 7 sets out an exemption to regulation 6 (Sharing core supplier information through central digital platform) for private utilities in the case of a directly awarded public contract pursuant to paragraphs 13 and 14 of Schedule 5 of the Act (urgency).	Private utilities
Regulation 18 : Tender notices: open procedure Regulation 19 : Tender notices: competitive flexible procedure Regulation 20 : Tender	Regulation 18 to 21 sets out the contents of the tender notices for the open procedure, competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets). Regulation 18 includes special provisions for utilities as follows: <ul style="list-style-type: none"> regulation 18(2)(e): requirement to identify the contract as a utilities contract in the tender notice; 	All utilities

<p>notices: frameworks</p> <p>Regulation 21: Tender notices: dynamic markets except qualifying utilities dynamic markets</p>	<p>and</p> <ul style="list-style-type: none"> • regulation 18(2)(g): exemption for utilities having to provide a reason for not dividing the contract into lots. <p>Regulations 19 to 21, by cascading the requirements to include the information in regulation 18(2), in effect create similar provisions that also apply to tender notices for the competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).</p>	
<p>Regulation 22: Tender notices: qualifying utilities dynamic market notices</p>	<p>Regulation 22 sets out the contents of the tender notices where they relate to procurements carried out under a utilities dynamic market established by way of a qualifying utilities dynamic markets notice - i.e. where tender notices are provided to members of the market, rather than published.</p> <p>This notice must include the information required to be included in the qualifying utilities dynamic market notice to which the tender notice relates where this has not been included (as permitted by regulation 25(2)(ii)) in that notice. Together a qualifying utilities dynamic market notice and the relevant tender notice and associated tender documents must provide all the information required for suppliers to be able to prepare a tender (sections 21(5) and 40(4)).</p>	All utilities
<p>Regulation 25: Dynamic market notices (including qualifying utilities dynamic market notices)</p>	<p>Regulation 25 sets out the details that the notice establishing a utilities dynamic market, including a qualifying utilities dynamic market, must contain, including the additional information that the notice must contain if it is a qualifying utilities dynamic market notice (see regulation 25(2)(ii)).</p>	All utilities, and third persons
<p>Regulation 26: Transparency notices</p>	<p>Regulation 26 sets out the details that the transparency notice, which a contracting authority is generally required to publish before directly awarding a contract under sections 41 or 43, must contain. Regulation 26(2)(g) sets out a requirement to identify the contract as a utilities contract in the transparency notice.</p>	All utilities
<p>Regulation 27: Contract award notices except those published by private utilities</p>	<p>Regulation 27 sets out the information required in the contract award notice, published prior to a contracting authority entering into a contract with a specified supplier or suppliers. Regulation 26(2)(k) sets out a requirement to identify the contract as a utilities contract in the contract award notice.</p> <p>Regulation 27(8) sets out that regulation 27 does not apply to a utilities contract awarded by a private utility.</p>	<p>Public authorities and public undertakings</p> <p>Private utilities</p>
<p>Regulation 28: Contract award notices published by private utilities</p> <p>Regulation 29: Contract award notices published by private utilities: direct awards</p> <p>Regulation 30: Contract award notices published by private utilities: frameworks</p>	<p>Regulations 28 to 30 set out the content of the contract award notices published by private utilities, reflecting the desire to minimise burdens on private utilities. As private utilities are not required to publish a contract details notice after a contract has been awarded, the contract award notice is used to capture certain information relating to the contract to be awarded.</p>	Private utilities
<p>Regulation 32: Contract details notices: open or competitive flexible</p>	<p>Regulations 32 to 35 set out the information required in the contract details notice, published after a contracting authority has entered into a contract.</p>	Public authorities and public undertakings

<p>procedure</p> <p>Regulation 33: Contract details notices: frameworks</p> <p>Regulation 34: Contract details notices: public contracts awarded in accordance with frameworks</p> <p>Regulation 35: Contract details notices: direct award</p>	<p>Regulation 32(2)(o) sets out a requirement to identify the contract as a utilities contract in the contract details notice for an open or competitive flexible procedure. Regulations 33 to 35, by cascading references to the relevant parts of regulation 32(2), extend this requirement to contract detail notices for frameworks, public contracts awarded in accordance with frameworks, and directly awarded contracts.</p>	
<p>Regulation 47: Regulation of procurement by devolved Scottish authorities</p>	<p>Regulation 47 amends the Act by adding section 115A which extends the application of the Act. The effect of this is that if a devolved Scottish authority participates in a joint procurement led by a reserved or transferred Northern Ireland contracting authority, uses a reserved or transferred Northern Ireland centralised procurement authority or uses a framework or dynamic market established by a reserved or transferred Northern Ireland contracting authority, it must follow the Act to the extent set out in new Schedule 9A. This includes where a contract is to be awarded by reference to a utilities dynamic market in any of these circumstances. In the utility context, it only applies to a devolved Scottish authority which is a utility within the meaning of regulation 4 of the Utilities Contracts (Scotland) Regulations 2016(32).</p>	<p>All utilities</p>
<p>Regulation 48: Preliminary market engagement in relation to private utilities</p>	<p>Regulation 48 provides, in exercise of the power in section 121 of the Act, that the requirement in section 17 of the Act to publish a preliminary market engagement notice does not apply to private utilities, other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement. The Procurement (Wales) Regulations 2024 will make an amendment to exempt devolved Welsh contracting authorities from section 17 (see regulation 47 of those regulations). The effect of the amendments in both sets of regulations is that section 17 will not apply to any private utilities.</p>	<p>Private utilities</p>

Summary of utilities activities

Sector	<u>Schedule 4</u> Utility activities	<u>Schedule 4 (Part 2)</u> Excluded activities or <u>Schedule 2</u> Exempted contracts
Gas and heat	Schedule 4, paragraph 1 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat, and the supply of gas or heat to such a network. This is likely to be relevant to gas and heat transmission and distribution network businesses that provide a service to the public	<p>Schedule 4, paragraph 1(2) - Supplies of gas or heat to a network that are not utility activities</p> <p>Schedule 4, paragraph 11 - Wholesale or retail sale of gas in England, Scotland or Wales</p> <p>Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy</p>
Electricity	Schedule 4, paragraph 2 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such a network. This is likely to be relevant to electricity transmission and distribution network businesses that provide a service to the public	<p>Schedule 4, paragraph 2(2) - Supplies of electricity to a network that are not utility activities</p> <p>Schedule 4, paragraphs 8 and 9 - Generation and production of electricity in England, Scotland or Wales</p> <p>Schedule 4, paragraph 10 - Wholesale or retail sale of electricity in England, Scotland or Wales</p> <p>Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy</p>
Water	Schedule 4, paragraph 3 - Provision or operation of a fixed network to provide a service to the public in connection with the production, transport or distribution of drinking water. This is likely to be relevant to regulated water and sewerage companies and regulated water companies]	<p>Schedule 2, paragraph 32 - Utilities contracts for the supply of water</p> <p>Schedule 2, paragraph 35 - Concession contracts for the carrying out of water services</p>
Transport	Schedule 4, paragraph 4 - Activities relating to the provision or operation of networks providing a service to the public in the field of transport by (i) railway; (ii) automated systems; (iii) tramway; (iv) trolley bus; (v) bus; or (vi) cable.	<p>Schedule 2, paragraph 21 - Rail and metro regulated by DfT legislation</p> <p>Schedule 2, paragraph 36 - Concession contracts for air services</p> <p>Schedule 2, paragraph 37 - Concession contracts for public passenger transport services</p>
Ports and airports	Schedule 4, paragraph 5 - Activities relating to the provision of airports to carriers of passengers or goods by air or of ports (which would include maritime or inland ports) or other terminal facilities to carriers by sea or inland waterway	
Oil and gas	Schedule 4, paragraph 6 - Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	<p>Schedule 4, paragraphs 12 and 13 - Exploration for oil and natural gas in England, Scotland or Wales</p> <p>Schedule 4, paragraphs 14 and 15 - Production of oil and natural gas in England, Scotland or Wales</p> <p>Schedule 4, paragraphs 16 and 17 - Development of infrastructure for production of oil and natural gas in England, Scotland or Wales</p> <p>Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy</p>

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