



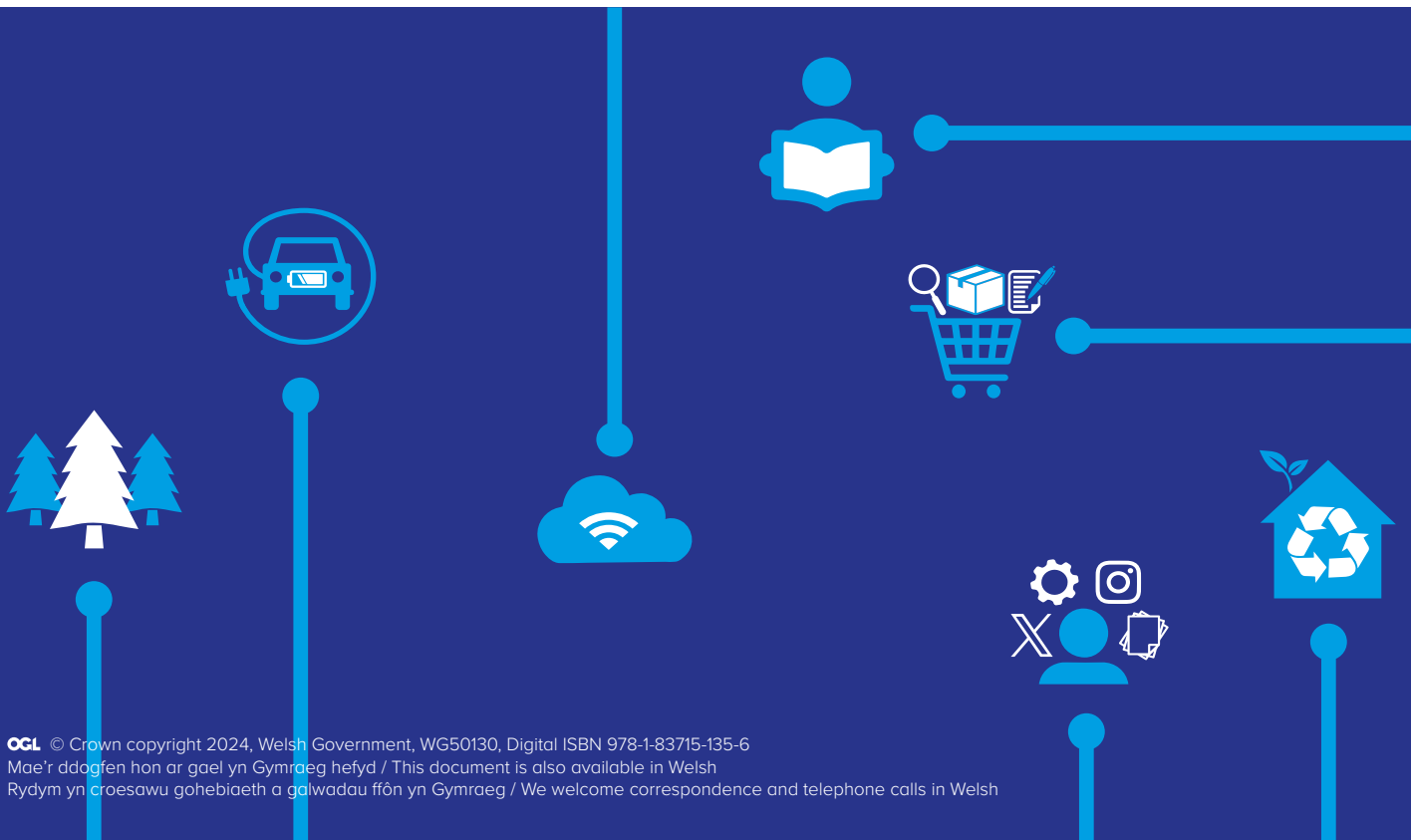
Llywodraeth Cymru
Welsh Government

Guidance

Utilities Contracts

Annex A: Summary of specific utility provisions
in the Procurement Act 2023 (the Act)

December 2024





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Annex A: Summary of specific utility provisions in the Procurement Act 2023 (the Act)

Legislative reference	Specific utilities provisions	Applicable utility
Section 2: Contracting authority	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.	All utilities
	Section 2 (2) describes: 'Public authority' as a person that is: <ul style="list-style-type: none">• wholly or mainly publicly funded; or• subject to public authority oversight; and does not operate on a commercial basis (but refer also to subsections (9) and (10) of the Act);	Public authorities
	'Public undertaking' is a person that is subject to public authority oversight and operates on a commercial basis; and	Public undertakings
	'Private utility' as a person that is not a public authority or public undertaking and carries out a 'utility activity'.	Private utilities
	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: <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.	Public undertakings and private utilities
Section 6: Utilities contracts	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'.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	<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>	All utilities
	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).	Private utilities
	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.	Private utilities
	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.	Private utilities
	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 specified is	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	subject to fair and effective competition and entry to that market is unrestricted.	
	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.	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 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 has been amended by the Procurement (Wales) 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	Section 34 (7) means that concession contracts which are also utilities contracts	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
award by reference to dynamic markets	can be procured under dynamic markets (but otherwise cannot).	
Section 35: Dynamic markets: establishment	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.	All utilities
	Section 35 (3) provides that, if ‘any person ¹ ’ 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.	N/A, provision relates to any person
	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.	All utilities
Section 38: Dynamic markets: fees	Section 38 (1) and (2) relating to fees is not applicable to utilities dynamic markets.	Not applicable
	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 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)).	All utilities (including where utilities dynamic market established by any person)

¹ “Any person” in this table means a person who is not a utility and has set up and operates a utilities dynamic market.





Legislative reference	Specific utilities provisions	Applicable utility
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	Utilities dynamic markets may be established using a: <ul style="list-style-type: none">• dynamic market notice, in the usual way (refer to section 39); or• qualifying utilities dynamic market notice, using different rules for tender notices explained in this section (section 40).	All utilities
	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 (refer to section 21 (1) (Tender notices and associated tender documents)).	All utilities
	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.	All utilities
	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.	All utilities
	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	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	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.	
	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.	All utilities
	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)	All utilities
	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).	All utilities
Section 47: Frameworks: Maximum term	Section 47 (1) states the maximum term for a utilities framework is 8 years. Section 47 (2) provides that the restriction does not apply if the contracting authority considers that a longer term is required. Section 47 (3) provides that the contracting authority must set out its reasons in the tender or transparency notice for the framework.	Public authorities and public undertakings
	Section 47 (4) (b) defines 'a utilities framework' as a framework which does not	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	provide for the future award of public contracts other than utilities contracts.	
	Section 47 (5) (b) provides that the maximum terms for frameworks set out at section 47 (1) do not apply to private utilities.	Private utilities
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	Section 54 (4) sets out in tables the minimum 'tendering periods' in different circumstances. For utilities, the following flexibilities apply: <ul data-bbox="485 1621 1091 1944" 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'	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	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 preselected supplier' are defined in section 54 (5)).	
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





Legislative reference	Specific utilities provisions	Applicable utility
Section 73: Implied payment terms in subcontracts	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' (refer to 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





Legislative reference	Specific utilities provisions	Applicable utility
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
Section 115: Powers relating to procurement arrangements	Section 115 (4) (c) provides that the meaning of 'Scottish procurement legislation' in the Act includes the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49).	All utilities
Section 119: Repeals etc	Section 119 (2) (b) provides that the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) applies only in relation to devolved Scottish authorities.	All utilities
Section 121: Power to amend this Act in relation to private	Section 121 (1) provides a power for an appropriate authority to make regulations to reduce the regulation of private utilities under the Act.	Private utilities





Legislative reference	Specific utilities provisions	Applicable utility
utilities		
	Section 121 (2) provides a non-exhaustive list of what the regulations may do, for example disapply requirements; or modify requirements so as to reduce a particular burden or the overall burden.	Private utilities
	Section 121 (3) provides that an appropriate authority must consult with certain persons before making regulations.	Private utilities
	Section 121 (4) sets out a non-exhaustive list of provisions that might be considered to be a 'burden', such as those that result in financial cost, administrative inconvenience or obstacles to profitability, productivity or efficiency. This is not an exhaustive list.	Private utilities
Section 124: Index of defined expressions	This section provides a table which cross-references expressions used elsewhere in the Act to the relevant provisions where they are defined, including the terms private utility, public undertaking, utilities contract, utilities dynamic market, utility and utility activity.	All utilities
Schedule 1, paragraph 1: Threshold amounts (as to be updated by the Procurement (Miscellaneous Amendments) (Wales) Regulations (to be laid in September))	Thresholds for utilities are: Utilities contract that is not a works contract or light touch contract e.g. goods or service contract (Row 6): £429,809; Utilities contract that is a works contract (Row 4): £5,372,609; Utilities contract that is a light touch contract (Row 5): £884,720.	All utilities
Schedule 1, paragraph 5: Threshold amounts	Schedule 1, paragraph 5 (1) (b) exempts private utilities or public undertakings from the definition of 'sub-central government authority'.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
Schedule 2, paragraphs 2-3: Exempted contracts	<p><u>Vertical arrangements</u></p> <p>Paragraph 2 (8) provides that the vertical arrangements exemption in this paragraph does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).</p>	Public authorities
	<p><u>Horizontal arrangements</u></p> <p>Paragraph 3 (4) provides that the horizontal arrangements exemption does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).</p>	Public authorities
Schedule 2, paragraphs 5-6: Exempted contracts	<p><u>Utilities contracts (counterparty exempted contracts)</u></p> <p>Paragraph 5(1) 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 formed for the purpose of carrying out a utility activity and is committed to doing so for a period of at least three years. In addition, the utilities forming the joint venture must remain members of the joint venture for a minimum of three years after the date of the agreement.</p>	All utilities
	<p>Paragraph 5 (2) defines a 'relevant joint venture', which is used in paragraphs 5 (1) and (2) and 6 (1) of this Schedule. A 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>	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	<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. 	All utilities
	<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>	All utilities
	<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>	All utilities
<p>Schedule 2, paragraph 21: Exempted contracts</p>	<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
<p>Schedule 2, paragraphs 31-34: Exempted contracts</p>	<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</p>	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	(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.	
	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).	All utilities
	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.	All utilities
	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.	All utilities
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</p>	<p>All utilities</p> <p>All utilities</p>





Legislative reference	Specific utilities provisions	Applicable utility
	<p>contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008.</p> <p>Under this regulation, the Secretary of State for 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.</p> <p>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.</p> <p>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>	
	Paragraph 37 exempts concession contracts for the provision of public passenger transport services.	All utilities
Schedule 4, paragraph 1: Utility activities: gas and heat	Paragraph 1 sets out when activities associated with gas and heat are utilities activities.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	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.	All utilities
	<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.</p> <p>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>	Public undertakings and private utilities
	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.	N/A
Schedule 4, paragraph 2: Utility activities: electricity	Paragraph 2 sets out when activities associated with electricity are utilities activities.	All utilities
	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	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	the supply of electricity to such networks are utility activities.	
	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.	Public undertakings and private utility
	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-exhaustive list of provisions that may be included in those regulations.	N/A
Schedule 4, paragraph 3: Utility activities: water	Paragraph 3 sets out when activities associated with water are utility activities.	All utilities
	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.	All utilities
	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	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	the condition in paragraph 3 (3) is met; and any activity connected with the disposal or treatment of sewage.	
	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).	All utilities
	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.	Public undertakings and private utilities
	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.	N/A
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





Legislative reference	Specific utilities provisions	Applicable utility
Schedule 4, paragraph 5: Utility activities: Ports and airports	Paragraph 5 sets out when activities associated with ports and airports are utility activities.	All utilities
	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.	All utilities
	Paragraph 5 (2) defines 'airport' by reference to section 66 of the Civil Aviation Act 2012.	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	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	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
are not utility activities	the Act allows an appropriate authority to make regulations to amend Part 2.	
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: Summary of specific rules in the Procurement (Wales) Regulations 2024

Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
Regulation 5: Publication of notices 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) of the Regulations (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 8: Core supplier information: platform not working, urgency, private utilities	Regulation 8 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
Regulations 19 to 22: Tender Notices	Regulations 19 to 22 set out the contents of the tender notices for the open procedure, competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).	All utilities
Regulation 19: Tender notices: open procedure	Regulation 19 includes special provisions for utilities as follows: <ul style="list-style-type: none">• regulation 19 (2) (e): requirement to identify the contract as a utilities contract in the tender notice; and• regulation 19 (2) (q): exemption for utilities having to provide a reason for not dividing the contract into lots.	All utilities
Regulation 20: Tender notices: competitive flexible procedure Regulation 21: Tender	Regulations 20 to 22, by cascading the requirements to include the information in regulation 19 (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).	





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
notices: frameworks Regulation 22: Tender notices: dynamic markets except qualifying utilities dynamic markets		
Regulation 23: Tender notices: qualifying utilities dynamic market notices	<p>Regulation 23 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 26 (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) of the Act).</p>	All utilities
Regulation 26: Dynamic market notices (including qualifying utilities dynamic market notices)	Regulation 26 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 (refer to regulation 25 (2) (h) (ii)).	All utilities, and third persons
Regulation 27: Transparency notices	Regulation 27 sets out the details that the transparency notice, which a contracting authority is generally required to publish before directly awarding a contract under	All utilities





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
	sections 41 or 43 of the Act, must contain. Regulation 27 (2) (g) sets out a requirement to identify the contract as a utilities contract in the transparency notice.	
Regulation 28: Contract award notices except those published by private utilities	<p>Regulation 28 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 28 (2) (k) sets out a requirement to identify the contract as a utilities contract in the contract award notice.</p> <p>Regulation 28 (8) sets out that regulation 28 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 29: Contract award notices published by private utilities</p> <p>Regulation 30: Contract award notices published by private utilities: direct awards</p> <p>Regulation 31: Contract award notices published by private utilities: frameworks</p>	Regulations 29 to 31 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.	Private utilities
Regulation 33: Contract details notices: open or competitive flexible procedure	Regulations 33 to 36 set out the information required in the contract details notice, published after a contracting authority has entered into a contract.	Public authorities and public undertakings





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
<p>Regulation 34: Contract details notices: frameworks</p> <p>Regulation 35: Contract details notices: public contracts awarded in accordance with frameworks</p> <p>Regulation 36: Contract details notices: direct award</p>	<p>Regulation 33 (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.</p> <p>Regulations 34 to 36, by cascading references to the relevant parts of regulation 33 (2), extend this requirement to contract detail notices for frameworks, public contracts awarded in accordance with frameworks, and directly awarded contracts.</p>	
<p>Regulation 49: Preliminary market engagement in relation to private utilities</p>	<p>Regulation 49 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.</p> <p>The Procurement (Wales) Regulations 2024 have made an amendment to exempt devolved Welsh contracting authorities from section 17 in relation to private utilities (refer to regulation 47 of those regulations).</p> <p>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>

