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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

**The Utilities Contracts (Scotland) Regulations 2016**

**PART 2**

**RULES APPLICABLE TO CONTRACTS**

**CHAPTER 4**

**CONTRACT PERFORMANCE**

**Termination of contracts**

**87.**—(1) A utility must ensure that every works, supply or service contract or framework which the utility awards contains provisions enabling the utility to terminate the contract or framework where—

- (a) the contract or framework has been subject to a substantial modification which would have required a new procurement in accordance with regulation 86(8) (modification of contracts during their term);
- (b) the contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations, including as a result of the application of regulation 58(2) of those Regulations, and should have been excluded from the procurement as a result of the application of rules and criteria referred to in regulation 78(3) (use of exclusion grounds and selection criteria provided for under the Public Contracts (Scotland) Regulations) of these Regulations; or
- (c) the contract or framework should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Utilities Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

(2) Those provisions may address the basis on which the power is to be exercisable in those circumstances, for example by providing for notice of termination to be given and by addressing consequential matters that will or might arise from the termination.

(3) To the extent that a contract or framework does not contain provisions enabling the utility to terminate the contract or framework on any of the grounds mentioned in paragraph (1), a power for the utility to do so on giving notice to the contractor shall be an implied term of that contract or framework.