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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 3**

**CONDUCT OF THE PROCEDURE**

*SECTION 1*

*Preparation*

**Prior involvement of candidates or tenderers**

**57.**—(1) A utility must take appropriate measures to ensure that competition is not distorted by the participation of a candidate or tenderer where that candidate or tenderer, or an undertaking related to that candidate or tenderer—

- (a) has advised the utility, whether in the context of regulation 56 (preliminary market consultation) or not; or
- (b) has otherwise been involved in the preparation of the procurement.

(2) Such measures must include—

- (a) the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement; and
- (b) the fixing of adequate time limits for the receipt of tenders.

(3) A candidate or tenderer in a situation referred to in paragraph (1) may only be excluded from the procedure for the purposes of paragraph (1) where there are no other means to ensure compliance with the duty referred to in regulation 34(1) (principles of procurement).

(4) Prior to any such exclusion, a candidate or tenderer must be given the opportunity to prove that their involvement in preparing the procurement is not capable of distorting competition.

(5) The measures taken must be documented in the report referred to in regulation 96 (reporting and documentation requirements).

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**Commencement Information**

**II** [Reg. 57](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

### Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Utilities Contracts (Scotland) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

### Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(b\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)

### Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Pt. 5A inserted by [S.S.I. 2019/112 reg. 5\(61\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 3(2)-(2C) substituted for reg. 3(2) by [S.S.I. 2019/112 reg. 5\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 15A inserted by [S.S.I. 2019/112 reg. 5\(7\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 38A inserted by [S.S.I. 2019/112 reg. 5\(26\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) reg. 41 renumbered as reg. 41(1) by [S.S.I. 2019/112 reg. 5\(27\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words omitted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(i) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(aa) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(ii) omitted by virtue of S.S.I. 2019/114, reg. 2(5)(a)(ii)(bb))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(iii) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(cc) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(i) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(iii) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))

- reg. 41(2) inserted by [S.S.I. 2019/112 reg. 5\(27\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 50(25)(25A) substituted for reg. 50(25) by [S.S.I. 2019/112 reg. 5\(33\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 66(2A) inserted by [S.S.I. 2019/112 reg. 5\(38\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 69(5)(6) inserted by [S.S.I. 2019/112 reg. 5\(41\)\(f\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 74(6A)-(6C) inserted by [S.S.I. 2019/112 reg. 5\(44\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(3)(3A) substituted for reg. 100(3) by [S.S.I. 2019/112 reg. 5\(58\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(4A) inserted by S.S.I. 2019/112, reg. 5(58)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(c\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))