

SCHEDULE 3

Decisions taken in accordance with paragraph 3 of Article 5 of Regulation (EC) No. 1370/2007

PART 3

Applications to the Court

18. Proceedings under this Part may be brought in the High Court by any person having or having had an interest in obtaining a particular public service contract and who has been or risks being harmed by an alleged infringement on the grounds that the decision has infringed European Union law.

General time limits for starting proceedings

19.—(1) This paragraph limits the time within which proceedings may be started.

(2) Subject to subparagraphs (3) to (5) such proceedings must be started within 30 days beginning with the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(3) Subparagraph (2) does not require proceedings to be started before the end of any of the following periods –

- (a) where the proceedings relate to a decision which is sent to the person by facsimile or electronic means, 10 days beginning with –
 - (i) the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;
 - (ii) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons.
- (b) where the proceedings relate to a decision which is sent to the person by other means, whichever of the following periods ends first –
 - (i) 15 days beginning with the day after the day on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;
 - (ii) 10 days beginning with –
 - (aa) the day after the date on which the decision is received, if the decision is accompanied by a summary of the reasons for the decision; or
 - (bb) if the decision is not so accompanied, the day after the date on which the person is informed of a summary of those reasons;
- (c) where heads (a) and (b) do not apply but the decision is published, 10 days beginning with the day on which the decision is published.

(4) Subject to subparagraph (5) the Court may extend the time limit imposed by subparagraph (2) where the Court considers that there is a good reason for doing so.

(5) The Court must not exercise its power under subparagraph (4) so as to permit proceedings to be started more than 3 months after the date when the person first knew or ought to have known that grounds for starting the proceedings had arisen.

(6) For the purposes of this Part, proceedings are to be regarded as started when the originating process is issued.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Starting proceedings

20.—(1) Where proceedings are started by a person he must serve the originating process on the Department within 7 days after the date of issue.

(2) Subparagraph (3) applies where proceedings are started alleging a breach of a requirement or suspension imposed by or under paragraph 21 or paragraph 22 where the contract has not been fully performed.

(3) In those circumstances the person must, as soon as practicable, send a copy of the originating process to any other person who is a party to the contract in question.

(4) The Department must, as soon as is practicable, comply with any request from the person who has started the proceedings for any information that he may reasonably require for the purpose of complying with subparagraph (3).

(5) In this paragraph “serve” means serve in accordance with rules of court and for the purposes of this paragraph an originating process is deemed to be served on the day on which it is deemed by rules of court to be served.

Contract-making suspended by challenge to award decision

21.—(1) Where –

- (a) an originating process is issued in respect of the Department’s decision to award the contract;
- (b) the Department has become aware that the originating process has been issued and that it relates to that decision; and
- (c) the contract has not been entered into,

the Department is required to refrain from entering into the contract.

(2) The requirement continues until any of the following occurs –

- (a) the Court brings the requirement to an end by interim order under paragraph 22(1)(a);
- (b) the proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).

Interim orders

22.—(1) In proceedings the Court may, where relevant, make an interim order –

- (a) bringing to an end the requirement imposed by paragraph 21(1);
- (b) restoring or modifying that requirement;
- (c) suspending the procedure leading to the award of the contract;
- (d) suspending the implementation of any decision or action taken by the Department in the course of following such a procedure.

(2) When deciding whether to make an order under subparagraph (1)(a) –

- (a) the Court must consider whether, if paragraph 21(1) were not applicable, it would be appropriate to make an interim order requiring the Department to refrain from entering into the contract; and
- (b) only if the Court considers that it would not be appropriate to make such an interim order may it make an order under subparagraph (1)(a).

(3) If the Court considers that it would not be appropriate to make an interim order of the kind mentioned in subparagraph (2)(a) in the absence of undertakings or conditions, it may require or impose such undertakings or conditions in relation to the requirement in paragraph 21(1).

(4) This paragraph does not prejudice any other powers of the Court.

Remedies where the contract has not been entered into

23.—(1) This paragraph applies where the Court is satisfied that a decision taken by the Department infringed European Union law and the contract has not yet been entered into.

(2) In those circumstances the Court may do one or more of the following –

- (a) order the setting aside of the decision concerned;
- (b) order the Department to amend any document;
- (c) award damages to a person who has suffered loss and damage as a result of the infringement.

(3) This paragraph does not prejudice any other powers of the Court.

Remedies where the contract has been entered into

24.—(1) Subparagraph (2) applies if the Court is satisfied that a decision taken by the Department infringed European Union law and the contract has already been entered into.

(2) In those circumstances the Court –

- (a) may award damages to the person who has suffered loss or damage as a consequence of the infringement;
- (b) must not order any other remedies.

Injunction against the Department

25. In proceedings against the Department the Court has power to grant an injunction despite section 21 of the Crown Proceedings Act 1947.

Interpretation of Schedule

26.—(1) In this Schedule –

- (a) “person” includes a body of persons corporate or unincorporated;
- (b) “paragraph 1 notice” means a notice given in accordance with paragraph 1 of Part 1; and
- (c) “relevant persons” means persons to whom paragraph 1 of Part 1 requires information to be given.

(2) For the purposes of this Schedule and notwithstanding section 39(2) of the Interpretation (Northern Ireland) Act 1954 where a period of time is expressed to begin on, or to be reckoned from a particular day, that day shall be included in the period.