

STATUTORY INSTRUMENTS

2011 No. 2053

PUBLIC PROCUREMENT

**The Public Procurement (Miscellaneous
Amendments) Regulations 2011**

Made - - - - 17th August 2011
Laid before Parliament 24th August 2011
Coming into force - - 1st October 2011

The Minister for the Cabinet Office is designated ^{M1} for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} in relation to public procurement and makes these Regulations in exercise of the powers conferred by that section.

Marginal Citations

M1 [S.I. 2010/2473](#).

M2 [1972 c.68](#).

PART 1

GENERAL AND TRANSITIONAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Public Procurement (Miscellaneous Amendments) Regulations 2011 and come into force on 1st October 2011.

(2) In these Regulations—

“the Public Contracts Regulations” means the Public Contracts Regulations 2006 ^{M3}; and

“the Utilities Contracts Regulations” means the Utilities Contracts Regulations 2006 ^{M4}.

Marginal Citations

M3 [S.I. 2006/5](#); amended by [S.I. 2007/2157](#), 2009/2992, 2011/1441; there are other amending instruments but none is relevant.

M4 S.I. 2006/6; amended by S.I. 2007/2157, 2009/3100, 2011/1441; there are other amending instruments but none is relevant.

Amendment of Regulations

2.—^{F1}(1)

^{F2}(2)

(3) The Defence and Security Public Contracts Regulations 2011 ^{M5} are amended in accordance with Part 4.

(4) The Public Contracts (Scotland) Regulations 2006 ^{M6} are amended in accordance with regulation 29.

(5) The Utilities Contracts (Scotland) Regulations 2006 ^{M7} are amended in accordance with regulation 30.

F1 Reg. 2(1) revoked (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

F2 Reg. 2(2) revoked (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Marginal Citations

M5 S.I. 2011/1848.

M6 S.I. 2006/1, to which there are amendments not relevant to these Regulations.

M7 S.S.I. 2006/2, to which there are amendments not relevant to these Regulations.

Meaning of “date of knowledge” in regulations 4 to 8

3. In regulations 4 to 8, “date of knowledge” means the date on which the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.

Time limits etc and the Public Contracts Regulations: saving with modification of the provisions as amended in 2009

4.—(1) Regulation 12 does not affect any proceedings where the date of knowledge has occurred before 1st October 2011.

(2) In those circumstances, regulation 47D of the Public Contracts Regulations shall have effect as if paragraph (2) provided—

“(2) Subject to paragraphs (3) and (4), such proceedings must be started within 3 months beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.”.

Time limits and the Public Contracts Regulations: modification of the existing saving of the original provisions

5.—(1) This regulation applies where, by virtue of regulation 11 of the 2009 Regulations, regulation 47(7) ^{M8} of the Public Contracts Regulations is not affected by regulation 10 of the 2009 Regulations.

(2) In those circumstances, that regulation 47(7) shall have effect as modified by the following provisions of this regulation.

(3) Where the date of knowledge has occurred before 1st October 2011, regulation 47(7) shall have effect as if paragraph (b) provided—

“(b) those proceedings are brought within 3 months from the date when the economic operator first knew or ought to have known that grounds for the bringing of the proceedings had arisen unless the Court considers that there is good reason for extending the period within which proceedings may be brought.”.

(4) Where the date of knowledge occurs on or after 1st October 2011, regulation 47(7) shall have effect—

(a) as if paragraph (b) provided—

“(b) those proceedings are brought within 30 days from the date of knowledge unless the Court considers that there is good reason for extending the period within which proceedings may be brought, in which case the Court may extend that period up to a maximum of 3 months from the date of knowledge.”; and

(b) as if “date of knowledge” were defined for that purpose as the date when the economic operator first knew or ought to have known that grounds for the bringing of the proceedings had arisen.

(5) In this regulation, “the 2009 Regulations” means the Public Contracts (Amendment) Regulations 2009^{M9}.

Marginal Citations

M8 Regulation 47(7), paragraph (b) of which addressed time limits in Part 9 of the Public Contracts Regulations as originally made in 2006, was omitted when a new Part 9 was substituted by regulation 10 of the 2009 Regulations, but its effect was preserved in relation to certain transitional cases by regulation 11 of the 2009 Regulations.

M9 S.I. 2009/2992.

Time Limits etc and the Utilities Contracts Regulations: saving with modification of the provisions as amended in 2009

6.—(1) Regulation 19 does not affect any proceedings where the date of knowledge has occurred before 1st October 2011.

(2) In those circumstances, regulation 45D of the Utilities Contracts Regulations shall have effect as if paragraph (2) provided—

“(2) Subject to paragraphs (3) and (4), such proceedings must be started within 3 months beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.”.

Time limits and the Utilities Contracts Regulations: modification of the existing saving of the original provisions

7.—(1) This regulation applies where, by virtue of regulation 13 of the 2009 Regulations, regulation 45(5)^{M10} of the Utilities Contracts Regulations is not affected by regulation 12 of the 2009 Regulations.

(2) In those circumstances, that regulation 45(5) shall have effect as modified by the following provisions of this regulation.

(3) Where the date of knowledge has occurred before 1st October 2011, regulation 45(5) shall have effect as if paragraph (b) provided—

“(b) those proceedings are brought within 3 months from the date when the economic operator first knew or ought to have known that grounds for the bringing of the proceedings had arisen unless the Court considers that there is good reason for extending the period within which proceedings may be brought.”.

(4) Where the date of knowledge occurs on or after 1st October 2011, regulation 45(5) shall have effect—

(a) as if paragraph (b) provided—

“(b) those proceedings are brought within 30 days from the date of knowledge unless the Court considers that there is good reason for extending the period within which proceedings may be brought, in which case the Court may extend that period up to a maximum of 3 months from the date of knowledge.”; and

(b) as if “date of knowledge” were defined for that purpose as the date when the economic operator first knew or ought to have known that grounds for the bringing of the proceedings had arisen.

(5) In this regulation, “the 2009 Regulations” means the Utilities Contracts (Amendment) Regulations 2009^{M11}.

Marginal Citations

M10 Regulation 45(5), paragraph (b) of which addressed time limits in Part 9 of the Utilities Contracts Regulations as originally made in 2006, was omitted when a new Part 9 was substituted by regulation 12 of the 2009 Regulations, but its effect was preserved in relation to certain transitional cases by regulation 13 of the 2009 Regulations.

M11 S.I. 2009/3100.

Time limits and service of proceedings: saving of Defence and Security Public Contracts Regulations 2011

8. Regulation 26 does not affect any proceedings where the date of knowledge has occurred before 1st October 2011.

Standstill notices and the definition of ‘tenderer’: modification of new provisions where certain transitional time limits apply

9.—(1) The new regulation 32(18) of the Public Contracts Regulations inserted by regulation 13 of these Regulations shall have effect as if sub-paragraph (b)(ii) were omitted where the time limit for starting the proceedings mentioned in that paragraph is a time limit which applies by virtue of—

(a) regulation 4; or

(b) regulation 5, but only where the limit is as modified by paragraph (3) of that regulation.

(2) The new regulation 33(15) of the Utilities Contracts Regulations inserted by regulation 20 of these Regulations shall have effect as if sub-paragraph (b)(ii) were omitted where the time limit for starting the proceedings mentioned in that paragraph is a time limit which applies by virtue of—

(a) regulation 6; or

(b) regulation 7, but only where the limit is as modified by paragraph (3) of that regulation.

(3) The new regulation 33(16) of the Defence and Security Public Contracts Regulations 2011 inserted by regulation 27 of these Regulations shall have effect as if sub-paragraph (b)(ii) were omitted where the time limit for starting the proceedings mentioned in that paragraph is a time limit which continues to apply by virtue of regulation 8 of these Regulations.

Transfer of functions etc: transitional provision

10.—(1) Anything done before 1st October 2011 by the Office of Government Commerce or the Treasury under, or which was otherwise material to, any provision amended by regulation 16 or 23 shall have effect as if done by the Cabinet Office or the Minister for the Cabinet Office respectively.

(2) Where the Court has made an order before 1st October 2011 in the terms then required by regulation 47N(7)(a) or (8)(a) of the Public Contracts Regulations, regulation 47N shall apply, in relation to anything done on or after that date, subject to the amendments made by regulation 16(3) of these Regulations.

(3) Where the Court has made an order before 1st October 2011 in the terms then required by regulation 45N(7)(a) or (8)(a) of the Utilities Contracts Regulations, regulation 45N shall apply, in relation to anything done on or after that date, subject to the amendments made by regulation 23(3) of these Regulations.

(4) This regulation is without prejudice to section 17(2) (read with section 23) of the Interpretation Act 1978 ^{M12}

Marginal Citations

M12 1978 c.30.

Treaty references: saving

11.—(1) Regulation 17 does not affect any provision of the Public Contracts Regulations in its application to things done before 1st December 2009.

(2) Regulation 24 does not affect any provision of the Utilities Contracts Regulations in its application to things done before 1st December 2009.

PART 2

AMENDMENT OF THE PUBLIC CONTRACTS REGULATIONS 2006

Time limits and service of proceedings

^{F3}12.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), Sch. 3 Pt. 2 (with reg. 5)

Standstill notices: definition of ‘tenderer’

^{F3}13.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), Sch. 3 Pt. 2 (with reg. 5)

Criterion for suspension of contract-making

^{F3}14.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Criteria for the rejection of economic operators

F315.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Transfer of functions etc

F316.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Treaty references

F317.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Miscellaneous minor amendments

F318.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

PART 3

AMENDMENT OF THE UTILITIES CONTRACTS REGULATIONS 2006

Time limits and service of proceedings

F319.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Standstill notices: definition of ‘tenderer’

F320.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Criterion for suspension of contract-making

F321.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Criteria for the rejection of economic operators

F322.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Transfer of functions etc

F323.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Treaty references

F324.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

Miscellaneous minor amendments

F325.

F3 Regs. 12-25 revoked (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 3 Pt. 2** (with reg. 5)

PART 4

**AMENDMENT OF THE DEFENCE AND SECURITY
PUBLIC CONTRACTS REGULATIONS 2011**

Time Limits and service of proceedings

26.—(1) In regulation 50(2), omit “, except in regulation 53(2),”.

(2) In regulation 53—

(a) for paragraph (2) substitute—

“(2) Subject to paragraphs (3) to (5), such proceedings must be started within 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.”; and

(b) for paragraphs (4) and (5) substitute—

“(4) Subject to paragraph (5), the Court may extend the time limit imposed by paragraph (2) (but not any of the limits imposed by regulation 54) where the Court considers that there is a good reason for doing so.

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

(6) For the purposes of this regulation, in England and Wales and in Northern Ireland, proceedings are to be regarded as started when the claim form is issued.”.

(3) In regulation 54, for paragraph (8) substitute—

“(8) For the purposes of this regulation, in England and Wales and in Northern Ireland, proceedings are to be regarded as started when the claim form is issued.”.

(4) In regulation 55, for paragraph (1) substitute—

“(1) Where proceedings are started, the economic operator must serve the claim form, or in Scotland the proceedings, on the contracting authority within 7 days after the date of issue.”.

Standstill notices: definition of ‘tenderer’

27. In regulation 33—

(a) in paragraph (15)(b), for “offer” substitute “ offer and has not been definitively excluded ”; and

(b) after paragraph (15) insert—

“(16) For the purposes of paragraph (15)(b)—

(a) a tenderer has been excluded if its offer has been excluded from consideration; and

(b) an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either—

(i) the exclusion has been held to be lawful in proceedings under Part 9; or

(ii) the time limit for starting such proceedings has expired even on the assumption that the Court would have granted the maximum extension permitted by regulation 53(4) and (5).”.

Criterion for suspension of contract-making

28. In regulation 56—

(a) for paragraph (1) substitute—

“(1) Where—

(a) a claim form is issued, or in Scotland proceedings are brought, in respect of a contracting authority's decision to award the contract;

- (b) the contracting authority has become aware that the claim form has been issued, or in Scotland the proceedings have been brought, and that the claim form relates, or the proceedings relate, to that decision; and
 - (c) the contract has not been entered into,
- the contracting authority is required to refrain from entering into the contract.”; and
- (b) omit paragraph (3).

PART 5

AMENDMENT OF SCOTTISH REGULATIONS

Transfer of functions: the Public Contracts (Scotland) Regulations 2006

- 29.**—(1) In regulation 2(1), omit the definition of “Office of Government Commerce”.
- (2) In regulation 41(1) and (3), for “Office of Government Commerce” substitute “ Cabinet Office ”.
- (3) In Schedule 1, under the entry for “HM Treasury”, omit “Office of Government Commerce”.

Transfer of functions: the Utilities Contracts (Scotland) Regulations 2006

- 30.**—(1) In regulation 2(1), omit the definition of “Office of Government Commerce”.
- (2) in each of the following provisions, for “Office of Government Commerce” substitute “ Cabinet Office ”:—
- (a) regulation 9(1)(a);
 - (b) regulation 9(1)(c)(ii);
 - (c) regulation 34(5)(e)(i);
 - (d) regulation 34(5)(e)(iii)(aa);
 - (e) regulation 39(3);
 - (f) regulation 39(5).

Mark Harper
Parliamentary Secretary, Cabinet Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend various statutory instruments relating to public procurement, namely the Public Contracts Regulations 2006 (“the PCR”), the Utilities Contracts Regulations 2006 (“the UCR”), the Defence and Security Public Contracts Regulations 2011 (“the DSPCR”), the Public Contracts (Scotland) Regulations 2006 (“the Scottish PCR”) and the Utilities Contracts (Scotland) Regulations 2006 (“the Scottish UCR”).

^{M13}The PCR (as previously amended) implemented, for England, Wales and Northern Ireland, and the Scottish PCR (as previously amended) implemented for Scotland, Directive [2004/18/EC](#) of the European Parliament and Council on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts (OJ L 134, 30.4.2004, p114) and Council Directive [89/665/EEC](#) on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ No L 395, 30.12.1989, p33) as amended .

^{M14}The UCR (as previously amended) implemented, for England, Wales and Northern Ireland, and the Scottish UCR implemented for Scotland, Directive [2004/17/EC](#) of the European Parliament and Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p1) and Council Directive [92/13/EEC](#) coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 76, 23.3.1992, p14) as amended .

The DSPCR implemented Directive [2009/81/EC](#) of the European Parliament and Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts in the field of defence and security (OJ No L 216, 20.8.2009, p.76). Regulations 12, 19 and 26 change the general time limit within which economic operators must start any Court proceedings which they wish to take under the PCR, UCR or DSPCR respectively. The new limit is 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen, but the Court may extend this to up to 3 months where it considers that there is a good reason for doing so. For these purposes (and also for the purposes of the special time limits applicable to proceedings for a declaration of ineffectiveness), proceedings are to be regarded as started when they are issued, and the economic operator must serve the claim form within 7 days after the date of issue. These changes result from the judgment of the Court of Justice of the European Union in Case C-406/08 (Uniplex) which held certain features of the limits formerly applicable under the PCR and UCR to be incompatible with EU Law.

Transitionally (by virtue of regulations 3 to 8), former time limits will continue to apply (subject to modification) where, before the commencement of these amendments, the economic operator already knew, or ought to have known, of the grounds for starting proceedings.

Regulations 13, 20 and 27 modify the requirement in the PCR, UCR and DSPCR respectively to send a standstill notice to tenderers, by excepting tenderers who have been excluded from the procurement process where the exclusion has been held to be lawful in proceedings under the Regulations or where the time limit for starting such proceedings has expired. Regulation 9 makes a transitional modification.

Regulations 14, 21 and 28 modify the requirement (imposed by the PCR, UCR and DSPCR respectively) on contracting authorities and utilities to refrain from entering into a contract the award of which is challenged by proceedings under the Regulations. The requirement will now arise when the authority or utility has become aware that a claim form has been issued.

Regulations 15 and 22 amend the list of criminal offences relevant to the rejection of economic operators under regulation 23(1) of the PCR or regulation 26(1) of the UCR respectively. These amendments include updating the list to include relevant offences created or consolidated since those Regulations were made, and inserting references to offences relevant to Northern Ireland. Also, regulation 23(4) of the PCR and regulation 26(5) of the UCR are amended to take account of debt relief orders and debt relief restriction orders, and to bring the provisions relating to misrepresentation closer into line with the wording of the applicable Directive.

Regulations 16, 23, 29 and 30 amend the PCR, UCR, Scottish PCR and Scottish UCR respectively, primarily to reflect machinery of Government changes. These amendments include replacing references to the Office of Government Commerce with references to the Cabinet Office, and references to the Treasury with references to the Minister for the Cabinet Office. Regulations 17 and 24 update certain treaty references to reflect changes made by the Treaty of Lisbon, subject to the saving made by regulation 11.

Regulations 18 and 25 make miscellaneous minor amendments to the PCR and UCR respectively. An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The Public Procurement (Miscellaneous Amendments) Regulations 2011.