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## STATUTORY INSTRUMENTS

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# 2011 No. 2053

## The Public Procurement (Miscellaneous Amendments) Regulations 2011

### 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<sup>M1</sup>; and

“the Utilities Contracts Regulations” means the Utilities Contracts Regulations 2006<sup>M2</sup>.

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##### Marginal Citations

**M1** [S.I. 2006/5](#); amended by [S.I. 2007/2157](#), 2009/2992, 2011/1441; there are other amending instruments but none is relevant.

**M2** [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.—(1) The Public Contracts Regulations are amended in accordance with Part 2.

(2) The Utilities Contracts Regulations are amended in accordance with Part 3.

(3) The Defence and Security Public Contracts Regulations 2011<sup>M3</sup> are amended in accordance with Part 4.

(4) The Public Contracts (Scotland) Regulations 2006<sup>M4</sup> are amended in accordance with regulation 29.

(5) The Utilities Contracts (Scotland) Regulations 2006<sup>M5</sup> are amended in accordance with regulation 30.

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##### Marginal Citations

**M3** [S.I. 2011/1848](#).

**M4** [S.I. 2006/1](#), to which there are amendments not relevant to these Regulations.

**M5** [S.S.I. 2006/2](#), to which there are amendments not relevant to these Regulations.

*Status: Point in time view as at 01/10/2011.*

*Changes to legislation: There are currently no known outstanding effects for the The Public Procurement (Miscellaneous Amendments) Regulations 2011, PART 1. (See end of Document for details)*

### 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)<sup>M6</sup> 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<sup>M7</sup>.

#### Marginal Citations

**M6** 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.

M7 [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)<sup>M8</sup> 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<sup>M9</sup>.

#### **Marginal Citations**

**M8** [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.

**M9** [S.I. 2009/3100](#).

*Status: Point in time view as at 01/10/2011.*

*Changes to legislation: There are currently no known outstanding effects for the The Public Procurement (Miscellaneous Amendments) Regulations 2011, PART 1. (See end of Document for details)*

## **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<sup>M10</sup>

### **Marginal Citations**

M10 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.

**Status:**

Point in time view as at 01/10/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the The Public Procurement (Miscellaneous Amendments) Regulations 2011, PART 1.