
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 3

REMEDIES

CHAPTER 6

APPLICATIONS TO THE COURT

Duty owed to economic operators

87.—(1) The obligation on a contracting authority to comply with the provisions of these Regulations (except where otherwise specified), and with any [^{F1}retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018] in respect of a contract, framework agreement, dynamic purchasing system or design contest falling within the scope of these Regulations, is a duty owed to an economic operator from [^{F2}the United Kingdom or Gibraltar].

[^{F3}(2) The duty owed in accordance with paragraph (1) is a duty owed also to an economic operator from a country other than the United Kingdom, but only where Condition 1, Condition 2 or Condition 3 applies to the procurement concerned.]

[^{F4}(3) Condition 1 is that—

- (a) at the relevant time the economic operator is from a GPA state,
- (b) the procurement may result in the award of a contract of any description, and
- (c) immediately before IP completion day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(3A) Condition 2 is that—

- (a) at the relevant time the economic operator is from a country which, immediately before IP completion day, was a member State other than the United Kingdom,
- (b) the procurement may result in the award of a contract of any description, and
- (c) immediately before IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.]

(4) [^{F5}Condition 3 is that] —

- (a) [^{F6}immediately before IP completion day there was] an international agreement, other than the GPA, by which the EU [^{F7}was bound]; and
- (b) in accordance with that agreement, the economic operator is, in respect of the procurement concerned, to be accorded remedies no less favourable than those accorded to economic operators from the EU in respect of matters falling within the scope of the duty owed in accordance with paragraph (1).

[^{F8}(4A) Paragraph (4)(b) is to be applied as if the United Kingdom were a member State.]

Status: Point in time view as at 31/12/2020. This version of this provision has been superseded.

Changes to legislation: The Public Contracts (Scotland) Regulations 2015, Section 87 is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date.

Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) In this regulation—

except in paragraph (1), references to an “economic operator”, include a reference to a GPA economic operator;

“GPA economic operator” means a person from a GPA state who sought, who seeks, or would have wished, to be the person to whom the contract is awarded;

“GPA state” means any country [^{F9}which immediately before IP completion day was] a signatory to the GPA;

“relevant time” means the date on which the contracting authority [^{F10}submitted] a call for competition in respect of the contract to the [^{F11}UK e-notification service] or would have done so had it been required by these Regulations to do so.

Textual Amendments

- F1** Words in reg. 87(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(a)(i)** (with sch. paras. 1-5)
- F2** Words in reg. 87(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(a)(ii)** (with sch. paras. 1-5)
- F3** Reg. 87(2) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(b)** (with sch. paras. 1-5)
- F4** Reg. 87(3)(3A) substituted for reg. 87(3) (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(c)** (with sch. paras. 1-5)
- F5** Words in reg. 87(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(d)(i)** (with sch. paras. 1-5)
- F6** Words in reg. 87(4)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(d)(ii)(aa)** (with sch. paras. 1-5)
- F7** Words in reg. 87(4)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(d)(ii)(bb)** (with sch. paras. 1-5)
- F8** Reg. 87(4A) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(d)(iii)** (with sch. paras. 1-5)
- F9** Words in reg. 87(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(e)(i)** (with sch. paras. 1-5)
- F10** Word in reg. 87(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(e)(ii)(aa)** (with sch. paras. 1-5)
- F11** Words in reg. 87(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(58)(e)(ii)(bb)** (with sch. paras. 1-5)

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