
STATUTORY INSTRUMENTS

2011 No. 2053

The Public Procurement (Miscellaneous
Amendments) Regulations 2011

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).