
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 3

REMEDIES

CHAPTER 6

APPLICATIONS TO THE COURT

Enforcement of duties through the courts

88.—(1) A breach of the duty owed in accordance with regulation 87 (duty owed to economic operators) is actionable by any economic operator which, in consequence of the breach, suffers, or risks suffering, loss or damage.

(2) Any proceedings for the purposes of paragraph (1) must be brought in the Sheriff Court or the Court of Session.

(3) Proceedings under this regulation may not be brought unless—

(a) the economic operator bringing the proceedings has informed the contracting authority of—

(i) the breach or apprehended breach of the duty owed to it in accordance with regulation 87 (duty owed to economic operators); and

(ii) of its intention to bring proceedings under this Part in respect of that breach or apprehended breach; and

(b) the proceedings are brought in accordance with paragraph (4).

(4) For the purpose of paragraph (3)(b), proceedings must be brought—

(a) in the case of proceedings seeking an ineffectiveness order (as defined in regulation 91 (ineffectiveness orders))—

(i) where paragraph (5) applies, within 30 days from the relevant date referred to in that paragraph; and

(ii) in any other case, within 6 months from the date of the contract being entered into or the date of conclusion of the framework agreement; and

(b) in any other case, 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 unless the court considers that there is a 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 that date.

(5) For the purpose of paragraph (4)(a)(i), this paragraph applies where—

(a) the contracting authority has [^{F1}submitted] a contract award notice to the [^{F2}UK e-notification service] in accordance with regulation 52 ([^{F3}publication on the UK e-notification service]), including reasons for its decision to enter into the contract or

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conclude the framework agreement without prior publication of a contract notice, in which case the relevant date is the date of [F4 submission to the UK e-notification service]; or

- (b) the contracting authority has by notice in writing informed all tenderers concerned and all candidates concerned (if any) of its decision in relation to the award of the contract or the conclusion of the framework agreement, and the notice includes the information referred to in regulation 85(2)(d)(i), or as the case may be, (e)(notices of decisions to award a contract or conclude a framework agreement), in which case the relevant date is the date of sending of the notice.

Textual Amendments

- F1** Word in reg. 88(5)(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(59)(a)** (with sch. paras. 1-5)
- F2** Words in reg. 88(5)(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(59)(b)** (with sch. paras. 1-5)
- F3** Words in reg. 88(5)(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(59)(c)** (with sch. paras. 1-5)
- F4** Words in reg. 88(5)(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(59)(d)** (with sch. paras. 1-5)

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Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(a\)](#)
- reg. 88(5)(a) word substituted by [S.S.I. 2019/112 reg. 3\(58\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 88(5)(a) words substituted by [S.S.I. 2019/112 reg. 3\(58\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 88(5)(a) words substituted by [S.S.I. 2019/112 reg. 3\(58\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 88(5)(a) words substituted by [S.S.I. 2019/112 reg. 3\(58\)\(d\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 11(1)(e)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 11(1)(e)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 78(1)(i)(ii) and words inserted by [S.S.I. 2019/112 reg. 3\(52\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))