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STATUTORY INSTRUMENTS

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**2011 No. 2053**

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

**PART 2**

**AMENDMENT OF THE PUBLIC CONTRACTS REGULATIONS 2006**

**Time limits and service of proceedings**

**12.**—(1) In regulation 47(2), omit “, except in regulation 47D(2),”(1).

(2) In regulation 47D(2)—

(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 47E) 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, proceedings are to be regarded as started when the claim form is issued.”.

(3) In regulation 47E, for paragraph (8) substitute—

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

(4) In regulation 47F, for paragraph (1) substitute—

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

**Standstill notices: definition of ‘tenderer’**

**13.** In regulation 32—

(a) in paragraph (17)(b)(3), for “offer” substitute “offer and has not been definitively excluded”; and

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(1) These words were substituted by [S.I. 2009/2992](#).

(2) Regulations 47D, 47E and 47F were inserted by [S.I. 2009/2992](#).

(3) Paragraph (17) was inserted by [S.I. 2009/2992](#).

(b) after paragraph (17) insert—

“(18) For the purposes of paragraph (17)(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 47D(4) and (5).”.

### **Criterion for suspension of contract-making**

**14.** In regulation 47G(4)—

(a) for paragraph (1) substitute—

“(1) Where—

- (a) a claim form is issued 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 and that it relates 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).

### **Criteria for the rejection of economic operators**

**15.** In regulation 23—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (2), a contracting authority shall treat as ineligible and shall not select an economic operator in accordance with these Regulations if the contracting authority has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences—

- (a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977<sup>(4)</sup> or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983<sup>(6)</sup> where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA<sup>(7)</sup>;

(4) Regulation 47G was inserted by [S.I. 2009/2992](#).

(5) [1977 c.45](#); section 1 was amended by section 5(1) of the Criminal Attempts Act 1981 ([c.47](#)), Part 2 of Schedules 1 and 2 to the Criminal Justice (Terrorism and Conspiracy) Act 1998 ([c.40](#)) and Schedule 1 to the Trade Union and Labour Relations (Consolidation) Act 1992 ([c.52](#)). Section 1A was inserted by section 5(1) of the Criminal Justice (Terrorism and Conspiracy) Act 1998 ([c.40](#)) and was amended by section 72(1)(a) of the Coroners and Justice Act 2009 ([c.25](#)).

(6) [S.I. 1983/1120 \(N.I.13\)](#); article 9 was amended by Part 2 of Schedules 1 and 2 to, and article 9A was inserted by section 6(1) of, the Criminal Justice (Terrorism and Conspiracy) Act 1998 ([c.40](#)). There are other amendments but none is relevant.

(7) OJ No L 300, 11.11.2008, p.42.

- (b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889<sup>(8)</sup> or section 1 of the Prevention of Corruption Act 1906<sup>(9)</sup>, where the offence relates to active corruption;
- (c) the offence of bribery, where the offence relates to active corruption;
- (ca) bribery within the meaning of section 1 or 6 of the Bribery Act 2010<sup>(10)</sup>;
- (d) fraud, where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities<sup>(11)</sup>, within the meaning of—
  - (i) the offence of cheating the Revenue;
  - (ii) the offence of conspiracy to defraud;
  - (iii) fraud or theft within the meaning of the Theft Act 1968<sup>(12)</sup>, the Theft Act (Northern Ireland) 1969<sup>(13)</sup>, the Theft Act 1978<sup>(14)</sup> or the Theft (Northern Ireland) Order 1978<sup>(15)</sup>;
  - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985<sup>(16)</sup>, article 451 of the Companies (Northern Ireland) Order 1986<sup>(17)</sup> or section 993 of the Companies Act 2006<sup>(18)</sup>;
  - (v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979<sup>(19)</sup> or section 72 of the Value Added Tax Act 1994<sup>(20)</sup>;
  - (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993<sup>(21)</sup>;
  - (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the

<sup>(8)</sup> 1889 c.69; this Act was repealed by Schedule 2 to the Bribery Act 2010 (c.23).

<sup>(9)</sup> 1906 c.34; section 1 was amended by section 108(2) of the Anti-terrorism, Crime and Security Act 2001 (c.24) and repealed by Schedule 2 to the Bribery Act 2010 (c.23).

<sup>(10)</sup> 2010 c.23.

<sup>(11)</sup> OJ No C 316, 27.11.1995, p.49.

<sup>(12)</sup> 1968 c.60; section 14(3) was repealed by Schedule 2 to the Postal Services Act 2000 (Consequential Modifications) Order 2003 (S.I. 2003/2908). Sections 15A and 15B were inserted by section 1(1) of the Theft (Amendment) Act 1996 (c.62) and section 15B was amended by article 278 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649). Section 16 was amended by section 5(5) of the Theft Act 1978 (c.31). Sections 15, 15A, 15B and 16 were repealed, and section 20 was amended, by Schedules 1 and 3 to the Fraud Act 2006 (c.35).

<sup>(13)</sup> 1969 c.16 (N.I.); section 14(3) was repealed by Schedule 2 to the Postal Services Act 2000 (Consequential Modifications) Order 2003 (S.I. 2003/2908). Sections 15A and 15B were inserted by article 3(1) of the Theft (Amendment) (Northern Ireland) Order 1997 (S.I. 1997/277 (N.I.3)). Section 15B was amended by article 279 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649). Sections 15, 15A, 15B and 16 were repealed, and sections 19 and 23 were amended, by Schedules 1 and 3 to the Fraud Act 2006 (c.35).

<sup>(14)</sup> 1978 c.31; section 1 was amended by section 4(1) of the Theft (Amendment) Act 1996 (c.62). Sections 1 and 2 were repealed by Schedules 1 and 3 to the Fraud Act 2006 (c.35). Section 5 was amended by Schedule 2 to the Extradition Act 1989 (c.33) and Schedules 1 and 3 to the Fraud Act 2006.

<sup>(15)</sup> S.I. 1978/1407 (N.I.23); article 3 was amended by article 6(1) of the Theft (Amendment) (Northern Ireland) Order 1997 (S.I. 1997/277 (N.I.3)). Articles 3, 4 and 7(1) were repealed by Schedules 1 and 3 to the Fraud Act 2006 (c.35). There are other amendments but none is relevant.

<sup>(16)</sup> 1985 c.6; section 458 was modified by regulation 4 of, and Part 1 of Schedule 2 to, the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) and repealed by Schedule 16 to the Companies Act 2006 (c.46).

<sup>(17)</sup> S.I. 1986/1032 (N.I.6); article 451 was modified by regulation 4 of, and Part 1 of Schedule 2 to, the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. (NI) 2004 No 307) and repealed by Schedule 16 to the Companies Act 2006 (c.46). There are other amendments but none is relevant.

<sup>(18)</sup> 2006 c.46; section 993 is applied (with modifications) by regulation 47 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804) and by regulation 3 of, and Schedule 1 to, the Unregistered Companies Regulations 2009 (S.I. 2009/2436).

<sup>(19)</sup> 1979 c.2.

<sup>(20)</sup> 1994 c.23; section 72 was amended by section 17 of the Finance Act 2003 (c.40).

<sup>(21)</sup> 1993 c.36.

- Theft Act 1968<sup>(22)</sup> or section 19 of the Theft Act (Northern Ireland) 1969<sup>(23)</sup>;
- (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006<sup>(24)</sup>; or
- (ix) making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of the Fraud Act 2006;
- (e) money laundering within the meaning of section 340(11) of the Proceeds of Crime Act 2002<sup>(25)</sup>;
- (ea) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988<sup>(26)</sup> or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(27)</sup>;
- (eb) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994<sup>(28)</sup>; or
- (f) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.
- (1A) In paragraph (1), “active corruption” means corruption as defined in Article 3 of the Council Act of 26 May 1997<sup>(29)</sup> or Article 3(1) of Council Joint Action 98/742/JHA.”<sup>(30)</sup>;
- (b) in paragraph (4)(a)—
- (i) after “individual” insert “is a person in respect of whom a debt relief order has been made or”; and
- (ii) after “bankruptcy restrictions order” insert “or a debt relief restrictions order”; and
- (c) for paragraph (4)(h) substitute—
- “(h) is guilty of serious misrepresentation in providing any information referred to within this regulation or regulation 24, 25, 26 or 27, or has not provided such information in response to a request by the contracting authority;”.

### Transfer of functions etc

- 16.—**(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 14(2);
- (b) regulation 30(9);
- (c) regulation 32(16);
- (d) regulation 40(1);
- (e) regulation 40(2) (in both places);
- (f) regulation 41(1) (in both places);

<sup>(22)</sup> 1968 c.60; section 20 was amended by Schedules 1 and 3 to the Fraud Act 2006 (c.35).

<sup>(23)</sup> 1969 c.16 (N.I.); section 19 was amended by Schedules 1 and 3 to the Fraud Act 2006 (c.35).

<sup>(24)</sup> 2006 c.35.

<sup>(25)</sup> 2002 c.29.

<sup>(26)</sup> 1988 c.33; sections 93A, 93B and 93C were respectively inserted by sections 29(1), 30 and 31 of the Criminal Justice Act 1993 (c.36) and repealed by Schedules 11 and 12 to the Proceeds of Crime Act 2002 (c.29).

<sup>(27)</sup> S.I. 1996/1299 (N.I.9); articles 45, 46 and 47 were repealed by Schedules 11 and 12 to the Proceeds of Crime Act 2002 (c.29). There are other amendments but none is relevant.

<sup>(28)</sup> 1994 c.37; sections 49, 50 and 51 were repealed by Schedules 11 and 12 to the Proceeds of Crime Act 2002 (c.29).

<sup>(29)</sup> OJ No C 195, 25.6.1997, p.2.

<sup>(30)</sup> OJ No L 358, 31.12.1998, p.2; repealed by Council Framework Decision 2003/568/JHA (OJ No L 192, 31.7.2003, p.54).

- (g) regulation 41(3).
- (3) In regulation 47N<sup>(31)</sup>—
  - (a) for paragraph (7) substitute—

“(7) Subject to paragraph (7A), where a contracting authority is ordered by the High Court of England and Wales to pay a civil financial penalty under this regulation—

    - (a) the Court’s order must state that the penalty is payable to the Minister for the Cabinet Office;
    - (b) the Court must send a copy of the order to the Minister;
    - (c) the contracting authority must pay the penalty to the Minister; and
    - (d) the Minister must, on receipt of the penalty, pay it into the Consolidated Fund.

(7A) Where the Minister for the Cabinet Office, or the Cabinet Office, is ordered to pay a civil financial penalty under this Part—

    - (a) paragraph (7) does not apply; and
    - (b) the Minister for the Cabinet Office must pay the penalty into the Consolidated Fund.”;
  - (b) in paragraph (8), for “Where” substitute “Subject to paragraph (8A), where”;
  - (c) after paragraph (8), insert—

“(8A) Where the Department of Finance and Personnel is ordered to pay a civil financial penalty under this Part—

    - (a) Paragraph (8) does not apply; and
    - (b) the Department must pay the penalty into the Consolidated Fund of Northern Ireland.”; and
  - (d) in paragraph (9)(a)—
    - (i) for “Treasury” substitute “Minister for the Cabinet Office”; and
    - (ii) for “them” substitute “the Minister”.
- (4) In Schedule 1, under the entry for “HM Treasury”, omit “Office of Government Commerce”.

### **Treaty references**

- 17.—(1) In regulation 2(1)—
  - (a) omit the definition of “EC Treaty”; and
  - (b) after the definition of “telecommunications services”, insert—

“TFEU” means the Treaty on the Functioning of the European Union”<sup>(32)</sup>.
- (2) In regulations 6(2)(c) and 36(6)(d), for “Article 296 of the EC Treaty” substitute “Article 346 of the TFEU”.
- (3) In each of the following provisions, for “EC Treaty” substitute “TFEU”:—
  - (a) regulation 6(2)(d)(i);
  - (b) regulation 6(2)(l);
  - (c) regulation 30(8)(b);
  - (d) regulation 36(6)(e)(i).

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<sup>(31)</sup> Regulation 47N was inserted by [S.I. 2009/2992](#).

<sup>(32)</sup> OJ No C 115, 9.5.2008, p.47.

### **Miscellaneous minor amendments**

**18.**—(1) In regulation 47D(3)(b)(**33**), for paragraph (i) substitute the following—

“(i) 15 days beginning with the day after the day on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision;”.

(2) In regulation 47E(2)(b), for “in any other case” substitute “in any event”.

(3) In regulation 47K(6)(c), for “exceeds” substitute “is equal to or exceeds”.