

PROCUREMENT REFORM (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Remedies

Section 37 – Actionable duties

76. **Section 37** applies only to regulated procurements which are not also EU-regulated procurements. This section describes the circumstance in which a “relevant person” can bring legal proceedings against a contracting authority which may not have complied or be complying with its duties under particular sections of this Act. In order to bring proceedings a relevant person must have sought to be awarded the contract and, as a result of the alleged breach, have suffered or is placed at risk of suffering loss or damage.

Section 38 – Procedure and time limits

77. Prior to a supplier bringing proceedings under section 37 which may be brought in the sheriff court or Court of Session, the supplier must notify the contracting authority of its intention to bring proceedings and the failure to comply with the duties referred to above. The time limit for bringing proceedings under section 38 is 30 days from the day on which the supplier knew or ought to have known that grounds for starting the proceedings had arisen, or such longer period of up to three months as the court considers appropriate. Extension of the period may be permitted by the court only if it considers that there is good reason for doing so.

Section 39 – Determination by the court

78. **Section 39** gives the court power to suspend the procedure leading to the award of a contract, and to suspend the implementation of any decision or action taken by a contracting authority in relation to that procedure. This section further details the considerations to be taken into account by the court in considering whether to make such a suspension and lists the remedies available to the court where a contracting authority is found to be in breach of its duties. The court must review the decisions taken by a contracting authority and must consider the balance of negative consequences against the benefits of its decision having regard to specified matters including public interest.
79. Where the breach of duty is in respect of a regulated contract which has already been entered into the only remedy available to the court is the award of damages. Section 39(6) specifies that nothing in section 39 affects any power that the court may have as a result of any other rule of law.

Section 40 – Transfer of forum to First-tier Tribunal

80. **Section 40** provides the Scottish Ministers with a power to make regulations to amend the forum for dispute resolution to the First-tier Tribunal for Scotland instead of the

*These notes relate to the Procurement Reform (Scotland) Act
2014 (asp 12) which received Royal Assent on 17 June 2014*

sheriff court or Court of Session. The power is subject to the affirmative procedure (see section 44(2)).