



Procurement Reform (Scotland) Act 2014

2014 asp 12

PART 4

REMEDIES

37 Actionable duties

- (1) This section applies to a regulated procurement (other than [^{F1}a higher value regulated procurement]).
- (2) A relevant person may bring proceedings against a contracting authority if—
- (a) the person sought, seeks, or would have wished, to be the person to whom the regulated contract is awarded,
 - (b) the contracting authority is not complying or has not complied with its duties imposed under or by virtue of section 8, 23, 27, 28, 29, 30, 31, 32 or, as the case may be, section 33, and
 - (c) in consequence of that failure the relevant person suffers, or risks suffering, loss or damage.

[^{F2}(3) A relevant person is an economic operator who is a national of, or is established in, the United Kingdom or Gibraltar.]

Textual Amendments

- F1** Words in s. 37(1) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **3(3)** (with sch. paras. 1-5)
- F2** S. 37(3) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **3(5)** (with sch. paras. 1-5)

Commencement Information

- I1** S. 37 in force at 18.4.2016 by [S.S.I. 2016/30](#), **art. 3** (with **art. 5**)

38 Procedure and time limits

- (1) Proceedings under section 37 may be brought in the sheriff court or the Court of Session.

Changes to legislation: Procurement Reform (Scotland) Act 2014, Part 4 is up to date with all changes known to be in force on or before 15 March 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) View outstanding changes

- (2) Before bringing proceedings under section 37, the relevant person must notify the contracting authority of—
 - (a) the failure by the contracting authority to comply with a duty mentioned in subsection (2)(b) of that section, and
 - (b) the relevant person's intention to bring proceedings in respect of that failure to comply.
- (3) The relevant person must bring proceedings under section 37 before the end of—
 - (a) the period of 30 days beginning with the day on which the relevant person first knew or ought to have known that grounds for beginning the proceedings had arisen, or
 - (b) such longer period of up to 3 months from that day as the court considers appropriate.
- (4) A longer period may be fixed under subsection (3)(b) only if the court considers that there is good reason for doing so.

Commencement Information

I2 S. 38 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

39 Determination by the court

- (1) This section applies to the court in determining proceedings brought under section 37.
- (2) The court may by interim order suspend—
 - (a) the procedure leading to the award of the regulated contract,
 - (b) the implementation of any decision or action taken by a contracting authority in relation to that procedure.
- (3) In deciding whether to grant an interim order under subsection (2), the court must decide whether the negative consequences of such an order are likely to outweigh the benefits, having regard to the following considerations—
 - (a) that decisions taken by a contracting authority must be reviewed effectively and, in particular, as rapidly as possible,
 - (b) the probable consequences of an interim order for all interests likely to be harmed, and
 - (c) the public interest.
- (4) The court may if satisfied that a decision or action of the contracting authority was in breach of a duty mentioned in section 37(2)(b), take one or more of the following steps—
 - (a) order the setting aside of that decision or action,
 - (b) order the contracting authority to amend any document,
 - (c) award damages to the relevant person who has suffered loss or damage in consequence of the failure of the contracting authority to comply with its duty.
- (5) If the breach of the duty by the contracting authority is in relation to a regulated contract which has been entered into, the court may only make an award under section (4)(c).

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- (6) Nothing in this section affects any power that the court may have by virtue of any other enactment or rule of law.

Commencement Information

I3 [S. 39](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

40 Transfer of forum for proceedings to First-tier Tribunal

The Scottish Ministers may by regulations modify sections 38 and 39 so that proceedings under section 37 may be brought before the First-tier Tribunal for Scotland instead of the sheriff court or Court of Session.

Commencement Information

I4 [S. 40](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

Changes to legislation:

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

- Act power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)

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

- sch. para. 40A inserted by [2023 asp 6 sch. 2 para. 5\(2\)](#)