



Procurement Act 2023

2023 CHAPTER 54

PART 9

REMEDIES FOR BREACH OF STATUTORY DUTY

PROSPECTIVE

104 Post-contractual remedies

- (1) This section applies if the court is satisfied that a decision made, or action taken, by a contracting authority breached the duty referred to in section 100(1) and—
 - (a) the contract in relation to which the breach occurred has already been entered into, or
 - (b) where the breach occurred in relation to a modification of a contract, the modification has already been made.
- (2) The court—
 - (a) must, if a set aside condition in section 105 is met, make an order setting aside the contract or modification, and
 - (b) may, in any case, make an order for the award of damages.
- (3) The duty in subsection (2)(a) does not apply if the court is satisfied that there is an overriding public interest in not setting aside the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services).
- (4) In which case, the court may make an order reducing—
 - (a) the term of the contract;
 - (b) the goods, services or works to be supplied under the contract.
- (5) In considering whether there is an overriding public interest in not setting aside a contract or modification, the court—

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, Section 104. (See end of Document for details)

- (a) may have regard to the financial consequences of setting aside the contract or modification only in exceptional circumstances, and
 - (b) must in any event disregard costs that are directly associated with—
 - (i) the contracting authority having to award another contract or enter into a contract to a different supplier,
 - (ii) a delay in the performance of the contract or the contract as modified, or
 - (iii) any legal obligations arising from setting aside the contract or modification.
- (6) If a contract or modification is set aside, it is to be treated as without effect from the date of the order.
- (7) An order setting aside a framework or modification of a framework may not operate to set aside contracts already awarded under the framework.
- (8) An order setting aside or reducing the term of, or supplies under, a contract may make provision for restitution and other consequential or supplementary matters.

Commencement Information

II S. 104 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Procurement Act 2023, Section 104.