
STATUTORY INSTRUMENTS

2016 No. 273

The Concession Contracts Regulations 2016

PART 5

Remedies

CHAPTER 2

Applications to the court

Remedies where the concession contract has not been entered into

58.—(1) Paragraph (2) applies where—

- (a) the Court is satisfied that a decision or action taken by a contracting authority or utility was in breach of the duty owed in accordance with regulation 50 or 51; and
- (b) the concession contract has not yet been entered into.

(2) In those circumstances, the Court may do one or more of the following—

- (a) order the setting aside of the decision or action concerned;
- (b) order the contracting authority or utility to amend any document;
- (c) award damages to an economic operator which has suffered loss or damage as a consequence of the breach.

(3) Where the Court is satisfied that the economic operator would have had a real chance of being awarded the contract if that chance had not been affected by the breach mentioned in paragraph (1)(a), the economic operator is entitled to damages amounting to its costs in preparing its tender and in participating in the procedure leading to the award of the contract.

(4) Paragraph (3)—

- (a) only applies in the case of a breach mentioned in paragraph (1)(a) by a utility;
- (b) does not affect a claim by an economic operator that it has suffered other loss or damage or that it is entitled to relief other than damages; and
- (c) is without prejudice to the matters on which an economic operator may be required to satisfy the Court in respect of any such other claim.

(5) This regulation does not prejudice any other powers of the Court.