

Changes To Time Limits For Aggrieved Public Contracts Bidders

The Public Procurement (Miscellaneous Amendments) Regulations 2011 (the 2011 Regulations) came into force on 1 October 2011, implementing significant changes to the time limits for aggrieved bidders to raise legal proceedings for a breach of the Public Contracts Regulations 2006 (PCR) and Utilities Contracts Regulations 2006 (UCR), both of which apply to public procurements in England, Wales and Northern Ireland.

What are the main changes?

- Reduction in time limits: the time limit for bringing proceedings is reduced from 3 months to only 30 days. Therefore, from 1 October a disgruntled party must bring a challenge within 30 days of when that party first knew, or ought to have known, that grounds for starting proceedings had arisen - the clock starts ticking from the date the challenger knew, or ought to have known, of a breach.
- Requirement to act promptly: the requirement for a procurement challenge to be brought "promptly" no longer applies, implementing the ECJ Uniplex judgment.
- Application: the new time limit applies to all claims (except proceedings for ineffectiveness) and took effect from 1 October 2011. If a breach was known, or ought to have been known, before 1 October the previous time limits apply - in such circumstances an aggrieved party will have a longer period of 3 months from the date they knew of the breach.
- Starting proceedings: proceedings commence from the date a claims form is issued at court. Provided the form is issued before the contract has been awarded, an automatic suspension preventing the authority from entering into a contract will take effect from the point the challenging party informs the authority that the claims form has been issued, and not from the date the form is actually served on the authority. The form must then be formally served on the authority within 7 days after the date of issue.
- Discretionary extension: the courts have discretion to extend the time limit up to a maximum of 3 months if there is a 'good reason' for doing so, but there is no guarantee, so treat the time limit as 30 days.
- Award decision notice: previously under PCR and UCR all candidates and bidders were to be given relevant debrief information at the start of the standstill period. The Amendment Regulations alter the position in that it will only be necessary for an award decision notice to be sent to bidders whose tenders have not been 'definitively excluded'.
- Criminal offences: PCR and UCR allowed a contracting authority to exclude a party from participating in a public procurement if certain grounds applied, for example where a party was found to have committed certain criminal offences. Those grounds are being extended to reflect changes in legislation and to include the criminal offences in the Bribery Act 2010 and Fraud Act 2006.

The time limit changes for bringing public procurement proceedings in the 2011 Regulations don't apply to Scotland, apart from in relation to the Defence and Security Public Contracts Regulations 2011, where the new 30 day time limit also

applies in Scotland. However, that's not to say contractors and contracting authorities based in Scotland can rest easy!

Firstly, the new time limits affect any contractors who tender for public contracts in England, Wales and Northern Ireland. Accordingly, if, when tendering for a contract governed by PCR or UCR, a contractor suspects a potential breach has occurred, it's now necessary to act very quickly to decide whether to issue legal proceedings. A contractor can no longer turn a blind eye to wait and see if they will be successful. Bidders must act as soon as they suspect a breach - including potentially during the procurement process before the outcome is known - to protect their rights. If not, there's a real risk any claim may be time barred.

Secondly, although there has been a delay in the Scottish Government issuing amending Regulations in respect of the Public Contracts (Scotland) Regulations 2006 and respective Utility Regulations, the Scottish Government concluded its consultation earlier this year and it's expected that Scotland will also recognise the general 30 day time limit.

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