

Remedies



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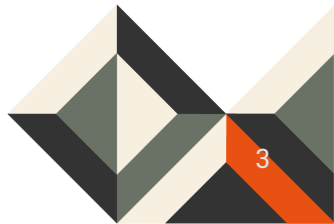
Remedies

- Largely the same as under the previous regime.
- No new tribunal system – procurement challenges must be brought before the Courts.
- Automatic suspension – triggered if claim is issued and authority is notified of the claim during the standstill period. New statutory criteria for lifting suspension.
- Ineffectiveness = “set aside”.
- Standstill letter = “assessment summary”.



Contract award notices and “assessment summaries” – s50

- Before entering into a contract, the contracting authority must publish a contract award notice – s50(1).
- The award notice must set out (a) that the authority intends to enter into a contract and (b) any other information specified in regulations – s50(2).
- Before publishing the notice (for an award of a contract following a competitive tendering procedure), the authority must provide an “assessment summary” to suppliers that submitted an “assessed tender” – s50(3).
- “Assessment summary” - standstill letter.



Contract change notices – s75

- Before modifying a contract, the authority must publish a “contract change notice” – s75(1).
- Unless the modification is a “permitted modification”, there is no need to publish a notice if the modification increases/decreases (a) the estimated value of the contract by 10% for goods/services or by 15% for works or (b) the term of the contract by 10% of the maximum term provided for on award – s75(2).
- A “contract change notice” must set out (a) that the authority intends to modify the contract and (b) any other information specified in regulations – s75(3).
- NB exemptions for modifications to certain contracts – s75(6).



Standstill periods on the award of contracts and modification of contracts – s51 and s76

- Authority cannot enter into a contract before (a) the end of the mandatory standstill period or (b) if later, the end of another standstill period provided for in the award notice – s51(1).
- “Mandatory standstill period” = 8 working days from publication of the award notice – s51(2).
- Certain contracts (e.g. direct awards) are exempt, but cannot be entered into until the end of any “voluntary standstill period” provided for in the award notice – s51(3)-(4).
- “Voluntary standstill period” cannot be less than 8 working days from publication of award notice – s51(4).
- Modifications have similar provisions in relation to voluntary standstill periods – s76.



Contract details notices and publication of contracts

– s53

- Contracting authority must publish a “contract details notice” (a) within 120 days if contract is a light touch contract or (b) within 30 days for other contracts – s53(1).
- “Contract details notice” must set out (a) that the authority has entered into a contract and (b) any other information specified in regulations – s53(2).
- If contract's value is more than £5m, copy of contract must be published (a) within 180 days if contract is light touch contract or (b) within 90 days for other contracts – s53(3).
- NB exceptions – s53(4) and (6).



Publication of modifications – s77

- Contracting authority must publish a copy of the contract as modified or the modification within 90 days from the date of the “qualifying modification” – s77(1).
- “Qualifying modification” = modification (a) for which authority was required to publish a “contract change notice” under s75 and (b) which modifies or results in a contract worth more than £5m – s77(2).
- NB exceptions – s77(3).



Actionable breaches and standing – s100

- Contracting authority's duty to comply with Parts 1 -5, 7 and 8 is enforceable in civil proceedings – s100(1).
- This does not extend to authority's duty to comply with s12(3), s13(9) or s14(8) – s100(5).
- An authority's duty is owed to any supplier that is a UK supplier or a "treaty state" supplier – s100(2).
- Proceedings can be brought by a UK or treaty state supplier which "has suffered, or is at risk of suffering, loss or damage in consequence of a breach of the duty" – s100(3).
- Similar statutory test to previous regime – see *IGT v Gambling Commission* [2023] EWHC 1961 for detailed consideration of standing under the CCR16.



Automatic suspension – s101

- Contracting authority cannot enter in a public contract – “or modify a public contract or convertible contract” – if “during any applicable standstill period”:
 - (a) proceedings are commenced in relation to the contract – and
 - (b) the authority “is notified of that fact”.

- Automatic suspension can be lifted by the Court by an order under s102 – s101(2).



Interim remedies – s102

- Court can make various orders including lifting an automatic suspension – s102(1).
- In doing so, Court must have regard to – s102(2):
 - (a) the public interest – see definition in s102(2)(a)
 - (b) the interests of suppliers – see s102(2)(b)
 - (c) any other matters that the Court considers appropriate – see 102(2)(c)



Pre-contractual remedies – s103

- If the Court is satisfied that an authority has breached the duty in s100(1) and the relevant contract/modification has not been entered into/made, then Court can make an order - s103(1)-(2):
 - (a) setting aside the decision or action;
 - (b) requiring the contracting authority to take any action;
 - (c) for the award of damages;
 - (d) that the court considers appropriate.



Post-contractual remedies and set aside conditions – s104 and s105

- If the Court is satisfied that an authority has breached the duty in s100(1) and the relevant contract/modification has been entered into/made, then Court – s104(1)-(2):
 - (a) must set aside the contract/modification if a “set aside condition in s105 is met” - and
 - (b) may make an award of damages.
- Obligation to make a set aside order does not apply if there is an “overriding public interest” in not doing so – s104(3). See considerations that apply in determining whether there is an “overriding public interest” - s104(5).
- If contract/modification is set aside, it is “without effect from the date of the order” – s104(6).
- Set aside conditions are contained in s105.



Time limits on claims – s106





- “Specified set aside proceedings” (defined in s106(5)) must be commenced before the earlier of – s106(1):
 - (a) the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;
 - (b) the end of the period of six months beginning with the day the contract was entered into or modified.
- Other proceedings must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim – s106(2).
- Court can extend 30-day period if there is a “good reason” – s106(3). Though see longstop in s106(4)(b).



Thank you

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