

Procurement Policy Note – The Public Contracts (Amendment) Regulations 2009.



Information Note 12/09 18 November 2009

Issue

1. This PPN gives notification that amendments to the Public Contracts Regulations 2006, which implement the new EU Remedies Directive in the public sector, have now been made and published. The amending Regulations take effect in England, Wales and Northern Ireland on 20 December 2009. A similar set of amendments to the Utilities Contracts Regulations 2006 will follow later in November. Separate Scottish Regulations are being prepared by the Scottish Government.

Dissemination

2. Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible, drawing particular attention to those with a purchasing role.

Contact

3. Enquiries about this paper should be addressed to the OGC Service Desk 0845 000 4999 servicedesk@ogc.gsi.gov.uk.

Detail

4. The Public Contracts (Amendment) Regulations 2009 (SI 2009/2992 http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092992_en.pdf)¹ have been made to implement in the public sector the new Remedies Directive (Council Directive 2007/66/EC).
5. As the amendments to regulation 32 are 'fragmented', an unofficial consolidated version of that regulation is available on the OGC website at http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_uk_regulations.asp. The Explanatory Memorandum, and accompanying Transposition Note and Impact Assessment are also available from this page.

¹ NB as originally published, regulation 7 contains an error: "regulation 31(2)" should read "regulation 31(1) and (2)". This is being corrected by a corrections slip issued to those who bought a paper version containing the error, and a link to a PDF version of the correction slip will be displayed on the right-hand side of the OPSI webpage for the HTML version (http://www.opsi.gov.uk/si/si2009/uksi_20092992_en_1). However the pdf version of the Regulations on the OPSI website will not itself be amended as the Regulations do not require a re-print.

6. The new rules take effect on 20 December 2009, though they only affect **new procurement processes that start on or after 20 December 2009**. Procurement processes that began (either through advertising the contract or through less formal means) before then will still be subject to the 2006 rules on standstill and enforcement.
7. The amendments mainly affect the former Regulation 32 (the standstill period) and Regulation 47 (enforcement). There are many changes, some of a relatively straightforward procedural nature, but others with much more significant effects:
 - i) The changes to the standstill rules are largely procedural changes, but it is very important that changes are followed as failure to do so can trigger the now more serious penalties contained in the new remedies rules. The standstill changes include: a new obligation to release the full reasons for the award decision at the start of standstill, rather than upon request as is the case at present; and a new obligation to allow extra time for tenderers to receive the standstill notice in situations where the notice is sent using non-electronic means.
 - ii) The changes to the remedies rules include the new penalties of ineffectiveness (i.e. contract cancellation), civil financial penalties and contract shortening, which will be available for certain serious breaches of the procurement rules. There is also a mandatory new requirement for contracting authorities to suspend a procurement exercise whenever legal proceedings are brought in respect of a contract award decision.
8. Detailed guidance for procurement practitioners, which may also be of interest to other parties, is being prepared. The guidance will be published in the Policy and Standards Framework on OGC's website in due course. A PPN will be issued to alert stakeholders to the publication of this guidance.
9. Information on the consultations leading up to these changes is available at: http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_european_procurement_directives.asp.

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