

## Exclusive: MOD 11-month rule raises uproar with contractors and agencies

Uproar at the [Ministry of Defence](#): contractors are only allowed to work for 11 months! The result: contractors are being kept from their projects, and the projects are held up. And all this for legal reasons that are wholly spurious!

### An 11-Month Rule...

How is this possible? In an interview with ContractorCalculator, a Ministry spokesperson confirmed that: "Under current Departmental policy any individuals engaged by the MOD through commercial contract action are not expected work over 11 months - this is designed to mitigate against the risk of said individuals acquiring employment rights."

### ...That Ignores UK Law?

Now the fact is that you cannot "acquire employment rights" by working for more than 11 months under UK law. You do not, in fact, 'acquire' employment rights simply by working for a certain amount of time, as any regular reader of this website knows. The determination of employment rights is the result of the creation of a relationship of employment between the contractor and the end-client, and there are quite a few different factors that go into this, including [mutuality of obligation](#), and [relative control](#) of the project

"One thing is certain, in this complex area of law: the amount of time you spend working with a given client does not have any relationship to your employment status," insists Ann Fairweather, head of public policy at the London-based [Recruitment and Employment Confederation](#). "The 11-month rule thus makes no sense."

Should there have been any doubt remaining about this determination, the recent decision by the Court of Appeal in [James v. Greenwich](#), a landmark case in UK employment law, underlined that there is not any relationship between time spend on the job and employment status. Indeed, this decision makes the acquisition of employment rights by contractors considerably more difficult, as it obliges the contractor to show that there is an anomaly in the contractor's relationship to the agency and the client that is not accounted for by the agency-contractor relationship.

"Tribunals will look carefully at the written contracts in place between the parties, and will usually imply an employment contract with an end-user only where other circumstances are inconsistent with an agency arrangement," explains Michael McCartney, a lawyer with the London--based [Lovell Group](#).

The MoD spokesperson added that the Ministry is "reviewing" its policy in the light of James v. Greenwich, but no change is intended for the 11-month rule for the time being.

### The Result is Uproar

So as the Mod applies the rule, contractors and agencies are losing out. ContractorCalculator has learned of at least 12 contractors who are in conflict with their agency due to this MoD policy, a conflict that could result in delays to crucial defence projects.

What has happened is that the Mod has worked with contractors through a given agency for 11 months, then tried to contract directly with the contractors through their own limited companies after the supposed 11-month "deadline" ran out.

The agency in question has of course demanded that its contract be respected: like most agencies--and this is perfectly correct policy according to the REC-- the agency includes in its contract the right to fees for all contracts undertaken by the workers it brings to the client. The agency has the right to restrict workers from going to work directly with the client if the contract terms remain unchanged.

So the agency is now embroiled in a dispute with the MoD over fees for transfer of workers to direct contracts, and the contractors are prevented from working. As these are highly qualified defence engineers, most of whom have skills and experience that cannot easily be found elsewhere, the MoD could have difficulty pursuing these projects if it maintains the 11-month rule.

That a government department should be so ill-versed in the law as to endanger its projects raises should raise some serious questions? At least we think so.

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