



Ministry of Defence

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THE RT HON TOBIAS ELLWOOD MP
PARLIAMENTARY UNDER-SECRETARY OF STATE AND MINISTER
FOR DEFENCE PEOPLE AND VETERANS

MSU/4/8/1/1/is

6 September 2018

During the debate in the House on 17 July 2018 on amendments to Single Source Contract Regulations (SSCR), you raised several questions and I said that I would write with the answers.

You asked what percentage of single source contracts, currently not subject to the framework will now be brought under it by these amendments. In the last financial year, some £8 billion worth of single source contracts were placed by the Department. We estimate that, with the new definitions of these exclusions, around a further 8-10% (i.e. £650 million to £800 million) of annual single source spend would become eligible to become qualifying defence contracts, though this would require the consent of the suppliers.

You also asked about the requirement to seek the consent of the Ministry of Defence and suppliers, including Defence co-operative programmes, and whether this provision could limit uptake. The Department considered this option carefully before drafting the proposal and we recognise that the need for both parties to agree could limit increased take-up under the framework to an extent. However, insisting that all such contracts should come under the regulations could change the terms of the relevant international agreement and this would require the agreement of partner nations. As I am sure you appreciate, with major co-operative projects such as A400M or Typhoon, it would be challenging to obtain the agreement of our partners to submit the contracts to UK domestic legislation. We believe that including the element of consent into this proposal represents a pragmatic approach by giving the Department the option of bringing such contracts under the framework where it make sense. I note that you are sceptical that suppliers will give their consent but over £10 billion of spend has been brought under the regime with the supplier's consent.

You raised the issue of what impact the modified regulations will have on business. It should be noted that with the 2014 Act, we completed and published an extensive Impact Assessment to gauge, amongst other things, the likely impact on suppliers. As you will be aware, the Defence industry which holds contracts from the MOD is dominated by a small number of large suppliers. Most of these suppliers have already signed qualifying Defence

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contracts and therefore have already adapted themselves to the new regulations. As part of this, they can reclaim from the Department any reasonable costs incurred in this process.

We consulted with the Defence industry before making these changes. They did not raise concerns over additional bureaucratic burdens. As well as increasing the number of contracts that fall under the regime, these changes are intended to clarify existing provisions. For these two reasons, we assess that any additional impact arising from these proposed changes would be negligible and where it involved new suppliers, they can also claim back any reasonable costs.

In response to why are we implementing these changes now before the publication of the planned Command Paper, it might be helpful if I describe our approach overall. When the Secretary of State completed his review of single source legislation in December 2017, several proposals were identified which could potentially improve the operation of the framework. He asked his officials to carry out further work on how these might be implemented to avoid unintended consequences. Part of this included an extensive process of cross-Whitehall engagement to ensure a fully joined-up Government position, as well as additional engagement with the key stakeholders. This is nearing completion and we expect to publish our full response shortly. I can confirm that the proposals contained in this Statutory Instrument were supported by the Single Source Regulations Office as well as by suppliers. We therefore decided to implement this first step as soon as it was ready. I can assure you that we are seeking to publish the Command Paper as soon as we can.

Finally, with respect to the Instrument being free of charge to known recipients of the Single Source Contract Regulations, Parliamentary procedure is to offer this free of charge when the purpose of the Statutory Instrument is to correct errors in the original legislation. The Statutory Instrument addressed two technical points of clarification raised by the Joint Committee on Statutory Instruments in 2014 but the main purpose of this instrument is to enhance the regulations by changing the definition on exclusions. The Department's view was that these amendments were improvements and not rectifications and so would not have warranted making the instrument free of charge. However, we accept the Joint Committee on Statutory Instruments recommendations and proposed to issue the Statutory Instrument using the standard free of charge procedure.

I am placing a copy in the Library of the House and copying this letter to Catherine West MP who also asked questions during the debate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Ellwood', written in a cursive style.

THE RT HON TOBIAS ELLWOOD MP