



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 3

PUBLIC SECTOR PROCUREMENT

39 Regulations about procurement

- (1) The Minister for the Cabinet Office or the Secretary of State may by regulations impose on a contracting authority duties in respect of the exercise of its functions relating to procurement.
- (2) For the purposes of this section “the exercise of functions relating to procurement” includes the exercise of functions in preparation for entering into contracts and in the management of contracts.
- (3) Subject to subsection (4), “contracting authority” has the same meaning as in regulation 2 of the Public Contracts Regulations 2015 (S.I. 2015/102), or any regulation replacing that regulation, as from time to time amended.
- (4) But such an authority is not a contracting authority for the purposes of this section if its functions are wholly or mainly devolved functions, namely—
 - (a) Scottish devolved functions, that is to say functions the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);
 - (b) Northern Ireland devolved functions, that is to say functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998), or
 - (c) Welsh devolved functions, that is to say functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).

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- (5) Regulations under this section may, in particular, impose—
- (a) duties to exercise functions relating to procurement in an efficient and timely manner;
 - (b) duties relating to the process by which contracts are entered into (including timescales and the extent and manner of engagement with potential parties to a contract);
 - (c) duties to make available without charge—
 - (i) information or documents;
 - (ii) any process required to be completed in order to bid for a contract;
 - (d) duties relating to the acceptance of invoices by electronic means (including a prohibition on the charging of fees for processing such invoices, the publication of reports relating to the number of such invoices received or the electronic systems that must be used by a contracting authority);
 - (e) duties to publish reports about compliance with the regulations.
- (6) A person making regulations under this section must before making the regulations undertake such consultation as the person considers appropriate.
- (7) The Minister for the Cabinet Office or the Secretary of State may issue guidance relating to regulations under this section.
- (8) A contracting authority must have regard to any guidance for the time being in force under this section.
- (9) Guidance or revised guidance given under this section must be published.
- (10) Regulations under this section are subject to affirmative resolution procedure.

40 Investigation of procurement functions

- (1) In this section “a Minister” means the Minister for the Cabinet Office or the Secretary of State.
- (2) A Minister may investigate the exercise by a contracting authority of relevant functions relating to procurement.
- (3) A Minister may by notice require a contracting authority to provide such documents or other information, in such form or manner as the Minister may direct, as the Minister may require for the purposes of an investigation under this section.
- (4) A contracting authority must—
 - (a) give a Minister such assistance with an investigation as is reasonable in all the circumstances of the case;
 - (b) comply with a notice under subsection (3) before the end of the period of 30 days beginning with the day on which the notice is given.
- (5) In this section—

“contracting authority” has the same meaning as in section 39, but does not include a Minister of the Crown or a government department;

“a relevant function relating to procurement” is a function to which—

 - (a) the Public Contracts Regulations 2006 (S.I. 2006/5) apply, disregarding for this purpose the operation of regulation 8 (thresholds),

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- (b) the Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848) apply, disregarding for this purpose the operation of regulation 9 (thresholds),
- (c) the [^{F1}Public Contracts (Scotland) Regulations 2015] apply, disregarding for this purpose the operation of [^{F2}regulation 5] (thresholds), or
- (d) the Public Contracts Regulations 2015 (S.I. 2015/102) apply, disregarding for this purpose the operation of any financial threshold provided for by those regulations;

a reference to regulations includes a reference to any regulations replacing those regulations, as from time to time amended.

- (6) An investigation under this section may also include an investigation of—
 - (a) preparations for the exercise of a relevant function relating to procurement, and
 - (b) the management of a contract entered into in the exercise of such a function.
- (7) But the exercise of a function—
 - (a) by—
 - (i) the governing body of a maintained school (see section 19 of the of the Education Act 2002), or
 - (ii) a person who is the proprietor of an Academy (see section 17(4) of the Academies Act 2010 and section 579(1) of the Education Act 1996), or
 - (b) which is regulated by the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500) (functions relating to the procurement of health care services for the purposes of the NHS),may not be investigated under this section.
- (8) A person conducting an investigation under this section may publish the results of the investigation.

Textual Amendments

- F1** Words in s. 40(5) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Regulations 2015 \(S.S.I. 2015/446\)](#), reg. 1(2), **Sch. 6 para. 3(2)(a)** (with regs. 3-18, 99-101)
- F2** Words in s. 40(5) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Regulations 2015 \(S.S.I. 2015/446\)](#), reg. 1(2), **Sch. 6 para. 3(2)(b)** (with regs. 3-18, 99-101)

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