

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: PUBLIC SECTOR PROCUREMENT

Section 39: Regulations about procurement

250. This section provides the Minister for the Cabinet Office and the Secretary of State with an enabling power to make regulations that impose duties on “contracting authorities” in respect of functions relating to procurement. It also provides Ministers with a power to issue guidance relating to those regulations, to which contracting authorities must have regard.
251. Subsection (2) provides that the exercise of functions relating to procurement includes preparing for entering into contracts and the management of contracts. So, for example, the regulations could make provision about the acceptance of electronic invoices.
252. For these purposes, “contracting authority” has the same meaning as it does under the Public Contracts Regulations 2015 (see subsection (3)), except that authorities whose functions are wholly or mainly devolved functions are excluded (subsection (4)).
253. Subsection (5) provides that the power may in particular be used to make regulations which impose:
- i. duties to exercise functions relating to procurement in an efficient and timely manner;
 - ii. duties relating to the process by which contracts are entered into;
 - iii. duties to make available without charge information or documents, and processes (for example, accreditation) which are required to be completed in order to bid for a contract;
 - iv. duties relating to accepting electronic invoices (including any systems that must be used to accept these); and
 - v. duties to publish reports about compliance with the regulations.
254. An EU Directive on e-invoicing (2014/55/EU) will enable a harmonised e-invoicing standard to be adopted at EU level. Contracting authorities will be obliged to accept e-invoices conforming to that standard that are issued in relation to a contract that was subject to the EU Directives’ procurement processes. However, the Commission has up to three years (from April 2014) to create and adopt the standard and the transposition deadline is November 2018. The Government may use the power in the Act to mandate the acceptance of e-invoices by UK contracting authorities before the EU common standard is adopted.