



Defence Reform Act 2014

2014 CHAPTER 20

PART 1

DEFENCE PROCUREMENT

Defence procurement arrangements

1 Arrangements for providing defence procurement services

- (1) This Part applies if the Secretary of State makes arrangements—
- (a) for a company to provide defence procurement services to the Secretary of State under contract, and
 - (b) for that or another company—
 - (i) to acquire from the Secretary of State rights in or over premises and property used for the purposes of DE&S, and
 - (ii) to become the employer of some or all of the persons who are employed in the civil service of the State in or in connection with DE&S immediately before the time the company is to become their employer,with a view to those premises, that property and the services of those employees being made available for providing the defence procurement services.
- (2) This Part also applies if—
- (a) the Secretary of State makes arrangements (“the new arrangements”) for a company to provide defence procurement services to the Secretary of State under contract, which may include arrangements for another company to make premises, property and the services of employees available for providing the defence procurement services, and
 - (b) the new arrangements are the successor to arrangements mentioned in subsection (1) or other arrangements mentioned in this subsection (“the old arrangements”).

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- (3) The new arrangements are “the successor” to the old arrangements if—
- (a) a company mentioned in subsection (2)(a) is or was a contractor under the old arrangements, or
 - (b) for the purposes of the new arrangements, property, rights or liabilities of a company which is or was a contractor under the old arrangements are to be or have been transferred, by virtue of the old arrangements or by a transfer scheme under section 10, to a company mentioned in subsection (2)(a).
- (4) The new arrangements are also “the successor” to the old arrangements if—
- (a) property, rights or liabilities of a contractor under the old arrangements have been transferred, by virtue of those arrangements or by a transfer scheme under section 10, to the Secretary of State, and
 - (b) the new arrangements provide for a company mentioned in subsection (2)(a)—
 - (i) to acquire from the Secretary of State rights in or over premises and property used for the purposes of the departmental defence procurement undertaking, and
 - (ii) to become the employer of some or all of the persons who are employed in the civil service of the State in or in connection with that undertaking immediately before the time the company is to become their employer,
 with a view to those premises, that property and the services of those employees being made available for providing the defence procurement services.
- (5) Subsections (1)(b) and (4)(b) apply whether the arrangements provide for the company to acquire rights in or over premises and property, or to become the employer of persons, on one, or on more than one, occasion.
- (6) References to a company in subsection (2) include, in particular, a publicly owned company (and references to a company in the other provisions of this Part are to be read accordingly).
- (7) Arrangements mentioned in this section may provide for a contractor to exercise to any extent a discretion of the Secretary of State in connection with the exercise by the Secretary of State of a function involving defence procurement.
- (8) In this Part—
- “contractor” means—
- (a) a company—
 - (i) which provides defence procurement services to the Secretary of State under contract by virtue of arrangements mentioned in this section (“relevant arrangements”), or
 - (ii) in relation to which relevant arrangements have been made for it to provide defence procurement services but which is not yet doing so, or
 - (b) a company—
 - (i) which, by making premises, property and the services of employees available, enables defence procurement services to be provided to the Secretary of State under contract by virtue of relevant arrangements, or

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- (ii) in relation to which relevant arrangements have been made for it to make premises, property and the services of employees available for enabling defence procurement services to be provided but which is not yet making those things available;

“DE&S” means the undertaking carried on by the Secretary of State and known as Defence Equipment and Support;

“defence procurement” means—

- (a) the acquisition of anything (including support or logistics services) required for defence purposes,
- (b) the management, monitoring or enforcement of contracts entered into for the acquisition of anything so required, and
- (c) related support or logistics;

“defence procurement services” means services relating to defence procurement;

“defence purposes” means—

- (a) the purposes of defence (whether or not of the United Kingdom) or policing, or
- (b) related purposes;

“the departmental defence procurement undertaking” means any undertaking carried on by the Secretary of State for the purposes of defence procurement after arrangements mentioned in subsection (1) have come to an end.

2 Financial assistance

- (1) The Secretary of State may give financial assistance to a contractor.
- (2) The financial assistance may be given on terms and conditions that the Secretary of State thinks appropriate.
- (3) “Financial assistance” means loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent).

3 Financial claims against contractors or former contractors

- (1) If a financial claim is brought in a court in the United Kingdom or elsewhere against a company which is, or has been, a contractor, any liability of the company resulting from the claim is transferred to the Ministry of Defence.
- (2) The Secretary of State may make payments for the purpose of settling any liability of the Ministry of Defence that may arise, or has arisen, under this section.
- (3) A company which is, or has been, a contractor must provide the Secretary of State with any assistance that the Secretary of State reasonably requires in connection with a financial claim that may be, or has been, brought against the company (including in connection with any appeal or further appeal in relation to the claim).
- (4) The assistance that a company may be required to provide includes in particular—
 - (a) providing documents, other information or explanations;
 - (b) providing access to evidence;
 - (c) making employees available for the purposes of court proceedings.

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- (5) An obligation imposed on a company under subsection (3) is enforceable as if contained in a contract between the company and the Secretary of State.
- (6) For the purposes of this section, a claim is a “financial claim” to the extent that—
- (a) it is a claim for damages or any other claim for a sum of money,
 - (b) it is brought by a person other than an excluded person, and
 - (c) it is not an excluded claim.
- (7) In this section—
- “excluded person”, in relation to a claim against a company, means—
- (a) another company which is, or has been, a contractor, or
 - (b) a Minister of the Crown or Government department;
- “excluded claim”, in relation to a claim against a company, means a claim which relates to—
- (a) services provided by the company otherwise than to the Secretary of State for Defence,
 - (b) a contract of employment to which the company is party,
 - (c) any contract (other than a contract of employment) entered into by the company for the purpose of enabling it to provide services,
 - (d) any health and safety obligation of the company, or
 - (e) anything done or omitted to be done by the company before it became, or after it ceased to be, a contractor;
- “health and safety obligation”, in relation to a company, means an obligation (whether or not imposed by legislation)—
- (a) relating to the health, safety or welfare at work of the company’s employees, or
 - (b) relating to risks to the health or safety of other persons arising out of or in connection with the company’s activities.
- (8) Nothing in this section affects any arrangements between the Secretary of State and a company which is, or has been, a contractor under which the company is to compensate the Secretary of State in respect of—
- (a) any liability under subsection (1), or
 - (b) any payment made under subsection (2).

4 Exemptions relating to premises used by a contractor

Schedule 1 (exemptions relating to premises used by a contractor) has effect.

5 Jurisdiction of Ministry of Defence Police

- (1) The places to which section 2(2) of the Ministry of Defence Police Act 1987 (jurisdiction) applies include land, vehicles, vessels, aircraft and hovercraft which are—
- (a) in the possession, under the control or used for the purposes of a contractor, and
 - (b) used for the purposes of, or for purposes which include, the provision of defence procurement services to the Secretary of State by virtue of arrangements mentioned in section 1.

- (2) Section 2(3) of that Act has effect as if the reference to Crown property included a reference to property which—
- (a) belongs to a contractor, is in its possession or under its control or has been unlawfully removed from its possession or control, and
 - (b) is, or was immediately before its removal, used to any extent for the purpose of the provision of defence procurement services as mentioned in subsection (1)(b).
- (3) Section 2(3) of that Act also has effect as if the reference to a contract entered into by the Secretary of State for Defence for the purposes of his Department or the Defence Council included a reference to a contract entered into by a contractor for the purposes of, or for purposes which include, the provision of defence procurement services as mentioned in subsection (1)(b).

6 Status of contractor

- (1) This section applies where arrangements mentioned in section 1 provide for a contractor to act on behalf of the Secretary of State for the purposes of a provision of a contract entered into by the Secretary of State at any time before the vesting date for the purposes of defence procurement.
- (2) Any right or power of the Secretary of State under the provision of the contract may be exercised by the contractor on behalf of the Secretary of State.
- (3) Any duty or liability of the Secretary of State under the provision of the contract may be discharged by the contractor on behalf of the Secretary of State.
- (4) Nothing in the contract or otherwise prevents or penalises the exercise of a right or power of the Secretary of State, or the discharge of a duty or liability of the Secretary of State, in the way mentioned in subsection (2) or (3).

7 Restrictions on disclosure or use of information

Schedule 2 (restrictions on disclosure or use of information) has effect.

8 Intellectual property rights

- (1) The Secretary of State may provide a protected work to a contractor or a service provider to a contractor, without infringing copyright or database right, if—
- (a) the Secretary of State acquired (whether before or after the coming into force of this section) a right to use the work under or in connection with a relevant contract, and
 - (b) the provision of the work is necessary or expedient for the purposes of arrangements mentioned in section 1.
- (2) A contractor or former contractor, or a service provider to a contractor or former contractor, may, without infringing copyright or database right, provide a protected work provided to it under subsection (1) or this subsection—
- (a) to a contractor or service provider to a contractor, or
 - (b) to the Secretary of State,
- if the provision of the work by the contractor, former contractor or service provider is necessary or expedient for the purposes of arrangements mentioned in section 1.

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- (3) A contractor or service provider to which a protected work has been provided under subsection (1) or (2) may, without infringing copyright or database right, make any use of the work that the Secretary of State could make as a result of the Secretary of State’s right to use the work if the use of the work by the contractor or service provider is necessary or expedient for the purposes of arrangements mentioned in section 1.
- (4) In this section—
- “ancillary services” means services certified by the Secretary of State to be services appearing to the Secretary of State to be calculated to facilitate, or to be conducive or incidental to, arrangements mentioned in section 1;
 - “copyright work” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 1(2) of that Act);
 - “database” has the meaning given by section 3A of that Act;
 - “database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);
 - “former contractor” means a company which has been a contractor;
 - “protected work” means—
 - (a) a copyright work, or
 - (b) a database in which database right subsists;
 - “relevant contract” means a contract entered into by the Secretary of State at any time before the vesting date for the purposes of defence procurement;
 - “service provider”, in relation to a contractor or former contractor, means a person who performs ancillary services for that contractor.
- (5) In this section a reference to providing a protected work to a person includes a reference to the making of a copy of the work for the purposes of providing it to the person.
- (6) In this section a reference to the right to use a protected work—
- (a) in relation to a copyright work, is a reference to a licence to exercise a right which would otherwise be exercisable by the owner of the copyright in the work;
 - (b) in relation to a database, is a reference to a right to use the database under a licence to do an act restricted by database right in the database.

Transfers

9 Transfer of employees: application of TUPE regulations

- (1) The TUPE regulations apply to the transfer of a relevant undertaking or any part of it by virtue of arrangements mentioned in section 1 whether or not the relevant undertaking would otherwise be treated as an undertaking to whose transfer the regulations apply.
- (2) For the purposes of the TUPE regulations, the services of the relevant employees are to be treated as a part of that undertaking to whose transfer the regulations apply whether or not the company which is to become their employer also provides defence procurement services by virtue of arrangements mentioned in section 1.
- (3) In this section—
- “relevant undertaking”—
 - (a) in relation to arrangements mentioned in section 1(1)(b), means DE&S;

- (b) in relation to arrangements mentioned in section 1(4)(b), means the departmental defence procurement undertaking;
“relevant employees”—
- (a) in relation to arrangements mentioned in section 1(1)(b), means the persons employed in the civil service of the State mentioned in section 1(1)(b);
- (b) in relation to arrangements mentioned in section 1(4)(b), means the persons employed in the civil service of the State mentioned in section 1(4)(b).

10 Transfer schemes

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities (a “transfer scheme”) if—
 - (a) a relevant contractor is in breach of a services contract and the breach occurs in specified circumstances or is of a specified kind, or
 - (b) a services contract has come to an end, whether by the expiry of the period for which it was in force or otherwise.
- (2) A transfer scheme may provide for the transfer of property, rights and liabilities to—
 - (a) the Crown,
 - (b) the Secretary of State, or
 - (c) a company mentioned in section 1(2)(a).
- (3) The property, rights and liabilities that may be transferred by a transfer scheme are—
 - (a) property, rights and liabilities of a relevant contractor;
 - (b) securities in a relevant contractor;
 - (c) any property or rights of a third party that was or were acquired from a relevant contractor and any liabilities of a third party so far as relating to any such property or rights.
- (4) Subsection (3) does not apply to property, rights or liabilities to the extent that an agreement between the Secretary of State and the person entitled to or subject to them provides that they are not to be transferred by a transfer scheme.
- (5) Schedule 3 makes further provision about transfer schemes under this section.
- (6) In this section—
 - “relevant contractor”, in relation to a services contract, means a company which is or was a contractor in relation to the arrangements to which that contract relates;
 - “services contract” means a contract for a company to provide defence procurement services to the Secretary of State entered into by virtue of arrangements mentioned in section 1;
 - “specified”, in relation to a services contract, means specified in the contract for the purposes of this section;
 - “third party” means a person other than a relevant contractor.

General

11 Financial provisions

There is to be paid out of money provided by Parliament any expenditure of the Secretary of State incurred—

- (a) in connection with the formation of any company formed with a view to, or for any purpose of, the provision of defence procurement services or otherwise in connection with the establishment of arrangements mentioned in section 1;
- (b) in assuming responsibility for any liabilities of a company which is or has been concerned in or in connection with the provision of defence procurement services which are liabilities arising out of the provision of such services or liabilities to or in respect of persons employed or formerly employed in or in connection with the provision of such services.

12 Interpretation of this Part

(1) In this Part—

“company” means a company as defined in section 1(1) of the Companies Act 2006;

“contractor” has the meaning given by section 1(8);

“DE&S” has the meaning given by section 1(8);

“defence procurement” has the meaning given by section 1(8);

“defence procurement services” has the meaning given by section 1(8);

“defence purposes” has the meaning given by section 1(8);

“the departmental defence procurement undertaking” has the meaning given by section 1(8);

“formed”, in relation to a company, includes the alteration of the company’s articles so as to add, remove or alter a statement of the company’s objects;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“property” includes interests of any description;

“publicly owned company” means a company which is—

- (a) a company limited by shares in which no one other than a relevant person holds any of the shares, or
- (b) a company limited by guarantee of which no one other than a relevant person is a member;

the “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);

“the vesting date” means a day appointed by the Secretary of State by order made by statutory instrument.

(2) In the definition of “publicly owned company” in subsection (1), “relevant person” means—

- (a) a Minister of the Crown,
- (b) a publicly owned company, or
- (c) a nominee of a person falling within paragraph (a) or (b).