



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 3

#### PUBLIC SECTOR PROCUREMENT

#### **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),
    - (b) the Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848) apply, disregarding for this purpose the operation of regulation 9 (thresholds),

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*Changes to legislation: Small Business, Enterprise and Employment Act 2015, Section 40 is up to date with all changes known to be in force on or before 20 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (c) the [<sup>F1</sup>Public Contracts (Scotland) Regulations 2015] apply, disregarding for this purpose the operation of [<sup>F2</sup>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),  
<sup>F3</sup> ...
  - <sup>F3</sup>(b) .....  
 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)
- F3** S. 40(7)(b) and word omitted (1.1.2024) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 80(3)**, 186(6); S.I. 2023/1431, reg. 3(c)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 40 repealed by [2023 c. 54 Sch. 11 para. 2](#)