

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: PUBLIC SECTOR PROCUREMENT

Section 40: Investigation of procurement functions

255. This section provides the Minister for the Cabinet Office and the Secretary of State with a power to investigate the exercise by a contracting authority of relevant functions relating to procurement. This puts on a statutory footing the Cabinet Office's existing "Mystery Shopper" service.
256. "Contracting authority" has the same meaning as it has under section 39, except that Ministers and other Government departments are excluded. Ministers and Government departments will continue to comply with the current Mystery Shopper service as a matter of interdepartmental co-operation.
257. Subsection (3) gives the Minister the power to request from contracting authorities information or documents relating to the matters being investigated, which must be provided within 30 days of a notice being given. It also requires a contracting authority to give the Minister reasonable assistance with the investigation.
258. For the purposes of this section, "relevant functions relating to procurement" are functions to which the [Public Contracts Regulations 2006 \(S.I. 2006/5\)](#), the [Defence and Security Public Contracts Regulations 2011 \(S.I. 2011/1848\)](#), the [Public Contracts \(Scotland\) Regulations 2012 \(S.S.I. 2012/88\)](#) or the [Public Contracts Regulations 2015 \(S.I. 2015/102\)](#) apply, or would have applied but for the fact that a financial threshold was not met. The power will not be available in relation to a procurement that is excluded from the application of the regulations because, for example, the proposed contract is for the acquisition of land, or the application of the regulations would have obliged the UK to disclose information contrary to its essential security interests.
259. Subsection (6) provides that an investigation may also cover preparatory steps and contract management. So, for example, the investigation could cover the timeliness of payments to suppliers.
260. Subsection (7) excludes from the scope of the section functions of school governing bodies and Academy proprietors, and functions already regulated by the [NHS \(Procurement, Patient Choice and Competition \(No.2\) Regulations 2013 \(S.I. 2013/500\)](#).
261. Subsection (8) allows the Minister to publish the results of an investigation.