

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Ninth Delegated Legislation Committee

**DRAFT SINGLE SOURCE CONTRACT  
(AMENDMENT) REGULATIONS 2018**

*Tuesday 17 July 2018*

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**The Committee consisted of the following Members:**

*Chair:* MR ADRIAN BAILEY

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|--|--|
| † David, Wayne ( <i>Caerphilly</i> ) (Lab)   | McDonald, Stewart Malcolm ( <i>Glasgow South</i> ) (SNP)   |
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)   | Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)     |
| Ellman, Dame Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op)                    | † Moore, Damien ( <i>Southport</i> ) (Con)                 |
| † Ellwood, Mr Tobias ( <i>Parliamentary Under-Secretary of State for Defence</i> ) | † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)       |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab)  | † O'Brien, Neil ( <i>Harborough</i> ) (Con)                |
| † Hair, Kirstene ( <i>Angus</i> ) (Con)  | Robinson, Mr Geoffrey ( <i>Coventry North West</i> ) (Lab) |
| † Lamont, John ( <i>Berwickshire, Roxburgh and Selkirk</i> ) (Con)                 | † Shelbrooke, Alec ( <i>Elmet and Rothwell</i> ) (Con)     |
| † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)                         | † West, Catherine ( <i>Hornsey and Wood Green</i> ) (Lab)  |
| † McCarthy, Kerry ( <i>Bristol East</i> ) (Lab)                                    | Yohanna Sallberg, <i>Committee Clerk</i>                   |
|  | † <b>attended the Committee</b>                            |

# Ninth Delegated Legislation Committee

Tuesday 17 July 2018

[MR ADRIAN BAILEY *in the Chair*]

## Draft Single Source Contract (Amendment) Regulations 2018

2.30 pm

**The Parliamentary Under-Secretary of State for Defence (Mr Tobias Ellwood):** I beg to move,

That the Committee has considered the draft Single Source Contract (Amendment) Regulations 2018.

It is an unexpected pleasure, Mr Bailey, to be in the position of moving the motion, but it is nevertheless an honour.

The Ministry of Defence spends some £8 billion a year through contracts that are not competed. Given the lack of competitive pressure, the Government need to find alternative ways of ensuring that the MOD obtains value for money on those contracts while protecting the long-term future of the defence industry by ensuring that suppliers get a fair return on single source work.

Lord Currie produced an independent report on non-competitive defence procurement in 2011. He concluded that the arrangements then in place were simply unfit for purpose. The result was a weak negotiating position for the Department and poor value for money for the taxpayer. As a consequence, the Government introduced a new framework through the Defence Reform Act 2014. Our intention was clear: the new framework set out firm rules on pricing single source defence contracts and shifted the onus on to suppliers to demonstrate that their costs are “appropriate, attributable and reasonable”. Where there is a dispute, either party can refer the matter to an impartial adjudicator—the Single Source Regulations Office—for a binding decision.

Since coming into force in December 2014, the new framework has made significant progress. Contracts worth more than £19 billion have been brought under the framework and the benefits to the MOD have been considerable, including a reduction of the baseline profit rate from more than 10% in 2014 to 6.8% this year. However, any new regime of this complexity needs to be refined in light of experience. The 2014 Act therefore required the Secretary of State to carry out a thorough review of single source legislation within three years of it coming into force. The review was completed in December 2017, and it identified several potential improvements to the framework. We have incorporated the first of those into the regulations, and we plan to introduce further amendments to Parliament later this year.

The Joint Committee on Statutory Instruments has stated that the MOD has failed to comply with proper legislative practice by not offering the regulations under the free issue procedure. The Department had taken the view that the main purpose of the regulations was to introduce enhancements to the existing regulations by changing the definition of exclusions. It believed that the aspects of the regulations that clarify aspects of the

original regulations, and hence would cause them to be issued free of charge, would not have been sufficient to justify producing a new statutory instrument. However, in light of the Joint Committee’s views, we are happy to make the regulations free of charge when they are published.

The main amendments under consideration relate to the types of single source contracts, known as “exclusions”, that cannot become qualifying defence contracts. MOD policy remains to maximise the value of single source contracts covered by the framework to secure the highest level of benefits. For that reason, it is important that exclusions are defined as narrowly and precisely as possible to ensure that as many contracts as possible are eligible under the regulations.

However, experience in implementing the framework has shown that there is confusion about how to apply some of the exclusions and that contracts relating to intelligence and international co-operative programmes are being unnecessarily excluded. We are therefore proposing a clearer and more precise definition of the two categories. We estimate that that could result in up to a further 8% to 10% of single source spend coming under the regulations.

We are also adding a further category of exclusion to deal with situations where contracts are transferred from one legal entity to another, such as where an internal restructuring of an industry has taken place. In such cases, although the legal identity of the supplier may have changed, the contract has not otherwise changed in a material sense. We have engaged extensively with stakeholders in drafting these amendments and believe that the proposals will be welcomed by suppliers as offering greater clarity on definitions of exclusions and therefore reducing the degree of confusion. I hope the regulations will gain the Committee’s approval.

2.35 pm

**Wayne David (Caerphilly) (Lab):** It is a pleasure to serve under your chairmanship, Mr Bailey. May I say that I was surprised to hear the Minister say that it was a pleasure to be here? We all know he is here because the fellow who should have been—the Defence Procurement Minister—resigned last night. I am glad to see a very able stand-in, but I am a bit surprised, because this Minister had threatened to resign and instead it was a Minister who had not threatened to resign who did so. It is all a moveable feast; nevertheless, I welcome the Minister to the Committee.

**Catherine West (Hornsey and Wood Green) (Lab):** Does my hon. Friend agree that it is a little confusing who is a Minister these days?

**The Chair:** Order. The nature of the debate is straying some way from the regulations. I have indulged Mr David so far, but he must please confine his remarks to the business before us.

**Wayne David:** Indeed. I was simply taking my lead from what the Minister had said. I hope you will indulge me slightly more, Mr Bailey, as I pay tribute to the Minister who should have been here, because he did his homework meticulously well. He was a very good Defence Procurement Minister who put his constituents first. As he explained to me last night, he resigned because he was concerned about the situation of Airbus,

which employs many people in his constituency, and could not bring himself to support the Government on this occasion. I simply say that for information, but it is relevant because Airbus is referred to in the regulations. It would have been slightly embarrassing, to say the least, if the former Minister had been speaking now in this Committee knowing full well that his constituents would be adversely affected by legislation that the Government were pressing hard.

I have some sympathy with the Minister before us, but this is an important subject and I want to ask him some questions. If he cannot respond effectively, we will understand why, and I would be more than happy to have his replies in writing—in copious detail, I might add.

The Ministry of Defence has a 10-year equipment budget of £178 billion. For 2016-17, the budget for equipment and infrastructure is more than £8 billion. Members might be surprised to hear that some 40% of MOD contracts are single source—allocated without any competition—of which only 15% to 20% are subject to the Single Source Regulations Office.

I understand that the regulations make three changes, two of which expand the scope of the SSRO with regard to aspects of international co-operation and some intelligence activities—those that do not impinge upon the national security of this country. The third is about extending the exclusions to the regulations where there is a change of contract, which is perfectly understandable. What percentage of contracts that are currently not subject to the SSRO will now be brought under that office's responsibility? I ask that because when a Minister in the other place, where the regulations have already been dealt with, was asked the same question he was somewhat confused and thought that his notes were unclear. Might the Minister now, or in writing, clarify that, so that we have firmly on the record exactly what percentage we are talking about?

The second question about the two exclusions that are coming to an end. The regulations state that there should be a voluntary agreement between the MOD and the supplier. I find that strange, because as I understand it, a regulation is either in place or not in place; it either applies to people or does not apply. It seems strange that there is a process whereby there is a voluntary agreement on whether the regulations are to apply. I will quote exactly what the explanatory memorandum says, at paragraph 7.5:

“The proposed change is that contracts made within an international defence framework will be subject to the legislation if the MOD and the supplier agree.”

That is surely very uncommon. Legislation either applies or does not apply.

**Catherine West:** My hon. Friend is making a very important second point. Is he aware of whether the Department, in its public procurement principles, has a commitment to pay the living wage both outside and within London? I know that the Minister is aware of my questions in that regard. Also, is there any provision in defence contracts, given that this is public procurement, for the suppliers to employ apprentices? Could the Minister outline the situation in that regard in his response?

**Wayne David:** It will be interesting to hear the Minister's answer to those two points. I think I know what the reply will be. The fact is that the Government's so-called

defence industrial strategy is strong on rhetoric but very weak on substance. That is a leitmotif through all our criticisms of what the Government are doing on defence procurement.

Let me return to the point that I was making about the apparently voluntary nature of the legislation. Of course, that has implications, because, as the explanatory memorandum goes on to say:

“The need for agreement from both parties may limit increased take-up to an extent.”

How much is “to an extent”? It is so imprecise that it is almost vacuous. If all suppliers say, “Well, that's very interesting, but we've decided not to apply it,” will the Government's response be, “Well, fair enough. That's okay. It's voluntary anyhow”? That is my second question—will the Minister explain the logic, if there is some, behind that?

My third question is about the impact that the modified regulations will have on business. Common sense tells me that there is bound to be an impact on how businesses operate, how much they charge and how they relate to the Ministry of Defence, so I am surprised to see that the explanatory memorandum, under the heading “Impact”, says:

“There is no impact on business”.

Again, is that because this is voluntary and the anticipation is that everyone will ignore it, as it is not worth the paper it is written on? I will be interested to hear the Minister's explanation of that.

My fourth point is that, as the Minister said, the Government have conducted a review of the legislation, as they are obliged to do under the 2014 Act, but this explanatory memorandum says that they will bring forward a number of changes to be set out in some detail in the Command Paper in the autumn. If that is the case, why are we seeing these modest changes now? Would it not have been better to wait for the Command Paper to be published in the autumn? Then we could have dealt with all the changes that stem from that. It seems very much that this is a partial case of cart before horse. I ask the Minister for his response to that. If there are pressing reasons to bring these modest changes forward, what are those reasons? They are hinted at in the regulations, but the explanatory memorandum does not explain them.

My fifth and final question is on a contextual point. It is interesting that the papers that were circulated for this Committee are a little different from the papers that are at the bottom of the room today. One change that I have quickly noticed is to how the document, the explanatory memorandum and the amended legislation will be distributed, and how much the charge will be for the documents. The document circulated to Members—I ask them to listen carefully to this—states that

“the overriding purpose of this instrument is to give effect to the policy on exclusions, not to remedy the deficiencies, which were not identified in the consultation as matters which cause concern or confusion to users, and would not in themselves have warranted a separate instrument. Therefore it has been decided not to make the instrument free of charge to known recipients of the SSCRs.”

I challenge anyone to explain to me what on earth that means. I have heard of double Dutch, but that is convoluted in the extreme.

I am sure the ministerial team have read through all the documentation that the civil servants have sent out, but how on earth could something so convoluted have

[Wayne David]

been passed? I respectfully suggest that all those involved in writing legislation and explanatory memorandums be sent on a plain English course not only so that parliamentarians understand what is being said, but, more importantly, so that the people outside who have to adhere to the regulations understand what is being said. I am sure the Minister cannot hope to explain the quote I gave, because I do not think any reasonable person can, but may I ask for a reply in writing on the last point in particular? With that, I will be able to explain to constituents how much will be charged and how the document will be distributed in plain, intelligible English.

**The Chair:** I call Mr Ellwood.

2.46 pm

**Mr Ellwood:** Thank you, Mr Bailey—I was waiting for the deluge of other Back Benchers leaping to their feet to participate in this important debate.

I thank the hon. Member for Caerphilly for his comments and his perspective on the resignation of the former Minister, my hon. Friend the Member for Aberconwy (Guto Bebb). We all wish my hon. Friend well and thank him for his service and what he did. The hon. Member for Caerphilly sought perhaps to make fun of the fact that he had resigned, but the Government are yet to match the more than 100 resignations we have seen in the Opposition. There is one Member sitting on the Opposition Back Benches now who resigned. If we want to compare notes on resignations, Labour should perhaps keep quiet.

**Wayne David:** Will the Minister give way?

**Mr Ellwood:** This had better be really good.

**Wayne David:** As the Minister specifically referred to me, I thank him for giving me a chance to reply. Yes, I did threaten to resign, but I actually did resign, unlike the Minister, who has threatened to resign but has not done so. Nothing has changed—he is all talk.

**Mr Ellwood:** The hon. Gentleman says he resigned. As far as I can see, he is still on the Front Bench, so I do not know where his resignation took him. Obviously it did not have the impact he wished. Perhaps his services were desired again because so many others had resigned that the Opposition needed a chance to revisit some of them, saying, “Please come back, because we have got nobody else.” Before we go any further down that cul de sac, shall we return to the business at hand, Mr Bailey?

**The Chair:** I think that would be a good idea.

**Mr Ellwood:** I am pleased to gain your approval.

The hon. Member for Caerphilly wished me well in momentarily taking over this portfolio. Like many of us with a desire to see the best for defence, for our armed forces and for Britain, I take a huge interest in the procurement process. I certainly feel able, competent and enthusiastic to step into the shoes of the former Defence Procurement Minister.

The hon. Gentleman spoke about investment in procurement and touched on the fact that there is to be some £180 billion of investment over the next 10 years. That is an indication of the Government’s commitment. We want to see an advance in equipment for our armed forces to ensure that we remain a tier 1 nation when it comes to our defence posture. That is partly why we undertook a capability review and the defence modernisation programme, which is coming to its conclusion.

The hon. Gentleman asked a number of questions, particularly about why we have single source contracts. There are two principal reasons for that. First, some of the major procurement contracts, such as submarine build, simply go to a single contractor. There is only one that steps forward, perhaps for security reasons or otherwise, so there will be a single source in those cases. In other cases, perhaps at smaller levels, the economic supplies limit who steps forward, such as with our maritime patrol aircraft. Nevertheless, I hope he appreciates that there is not always the competition we want. If there is not the competition, we should have robust rules to ensure that taxpayers’ money is properly spent.

The hon. Gentleman talked about the impact on businesses. There are a number of impacts. First, there is value for money, where we have seen in the percentage drop in the baseline profit rate that I mentioned in my opening comments. We have more efficient procedure, and there is less confusion as to what the process is. There is no negative impact on business—that is what the guidelines were hinting at. The measure will not require any further red tape for business to be concerned about.

The hon. Gentleman talked about the Command Paper. We are preparing that now simply because it is part of the thoroughfare of business that we need to get through. We do not wish to wait until the autumn. I certainly hope that the Command Paper will be published as soon as possible. It is part of the wider timetable that we must honour, which is about joined-up Government and ensuring that we meet our responsibilities. That is why the regulations are being put forward today.

The hon. Gentleman put a couple of other detailed questions to me, on which he invited me to write to him. If I may, I will do exactly that. With that, I seek the Committee’s approval for the regulations.

*Question put and agreed to.*

2.51 pm

*Committee rose.*



