

Title: Single Source Defence Contracts: Amendments to the Defence Reform Act 2014 IA No: MOD202201 RPC Reference No: N/a Lead department or agency: Ministry of Defence Other departments or agencies:	Impact Assessment (IA)			
	Date: 09/05/2022			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: steve.davies262@mod.gov.uk				

Summary: Intervention and Options	RPC Opinion: N/a
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Cost of Preferred (or more likely) Option (in 2019 prices)

Total Net Present Social Value £m	Business Net Present Value £m	Net cost to business per year £m	Business Impact Target Status Qualifying provision
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What is the problem under consideration? Why is government action or intervention necessary?

Part 2 of the Defence Reform Act 2014 introduced the Single Source Contract Regulations (SSCRs) to address long-standing issues with the £9bn per year that the MOD spends on non-competitive defence procurement. The regulations are expressly designed to provide value for money in public expenditure while ensuring fair prices are paid to industry. To continue to deliver full benefits under the changing defence procurement landscape delivered by the Defence and Security Industrial Strategy (DSIS), the Act as currently worded needs amending to create powers in the primary legislation to either create new, or amend existing, secondary legislation. The primary legislation this Impact Assessment relates to does not in itself result in any costs or benefits. All costs and benefits to the main affected groups will derive directly from the impact of the secondary legislation where the substance of the reforms will be enacted. The costs and benefits will be fully assessed and presented when the secondary legislation is introduced.

What are the policy objectives of the action or intervention and the intended effects?

The overall intent of the reforms is to ensure that we continue to be able to assure value for money and a fair price for industry across the full range of sectors and contract types when we single source. This primary legislation amending the Defence Reform Act will provide us with the powers we need to make changes to secondary legislation to improve its operation and deal with the changes brought about by DSIS. The costs and benefits of the reforms will only be realised when the secondary legislation itself is delivered.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do-nothing.

Do minimum - the option proposed – The recent statutory review of the regime identified areas where the SSCRs could be improved to ensure they continue to deliver against their objectives which were set out in a Command Paper published on 4 April 2022. The primary legislation proposed is the minimum needed to provide the powers to make the identified reforms to secondary legislation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: December 2027

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro No	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible official: _____ John Ogilvie _____ Date: _____ 9 May 2022 _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	N/A					
Description and scale of key monetised costs by 'main affected groups'						
<p>The primary legislation covered by this impact assessment provides powers to amend existing or create new secondary legislation. In itself there are no monetised costs associated with the primary legislation. We will provide an appropriate assessment of the monetised costs of the secondary legislation where possible when that is introduced.</p>						
Other key non-monetised costs by 'main affected groups'						
<p>The primary legislation covered by this impact assessment provides powers to amend existing or create new secondary legislation. In itself there are no non-monetised costs associated with the primary legislation. We will provide an appropriate full assessment of the non-monetised costs of the secondary legislation where possible when that is introduced.</p>						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	N/A					
Description and scale of key monetised benefits by 'main affected groups'						
<p>The primary legislation covered by this impact assessment provides powers to amend existing or create new secondary legislation. In itself there are no monetised benefits associated with the primary legislation. We will provide an appropriate assessment of the monetised benefits of the secondary legislation where possible when that is introduced.</p>						
Other key non-monetised benefits by 'main affected groups'						
<p>The primary legislation covered by this impact assessment provides powers to amend existing or create new secondary legislation. In itself there are no non-monetised benefits associated with the primary legislation. We will provide an appropriate assessment of the monetised benefits of the secondary legislation where possible when that is introduced.</p>						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
<p>Risk – That the legislation does not deliver the policy objective. This has been mitigated by extensive engagement with MOD practitioners, industry and the Single Source Regulations Office to ensure the primary legislation clauses provide the power necessary to deliver the detailed aspects of the reforms through secondary legislation and statutory guidance.</p> <p>Dependency – This legislation is part of the Procurement Bill. Our implementation timetable is dependent on the parliamentary timetable for the wider Bill.</p>						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

Problem under consideration and rationale for intervention

In 2014 the Single Source Contract Regulations were introduced to allow for defence contracts let without competition to be assessed on a case by case basis. There is a statutory requirement to review these regulations after three years and then every five years to account for changes in the defence procurement landscape. A series of reforms from the recent review were set out in a Command Paper published on 4 April 2022¹. These reforms will be delivered through amending existing or creating new secondary legislation, some of which is dependent on the powers being created in the primary legislation covered by this impact assessment.

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

The primary legislation in itself will not have a significant regulatory impact. However it is key to providing the powers to set out the detail of the proposed reforms in secondary legislation. We will provide a detailed impact assessment for the secondary legislation when it is introduced.

Description of options considered

Do nothing – This option would mean that we did not make changes to the primary legislation. We have agreed on a set of proposals that will make the single source procurement regime more effective (as set out in the Command Paper). These proposals will need to be delivered through changes to secondary legislation. In order to make many of these changes, we need the powers proposed in the primary legislation. Do nothing would mean the advantages of making the regime more effective would be lost.

Preferred Option Do minimum - The statutory review of the regime identified areas where the SSCRs could be improved to ensure they more effectively deliver against their objectives. The primary legislation proposed is the minimum needed to provide the powers to make the necessary reforms to secondary legislation to deliver to outcome of the review.

Policy objective

The overall intent of the reforms is to ensure that we are able to better assure value for money and a fair price for industry across the full range of sectors and contract types when we single source. This primary legislation amending the Defence Reform Act will provide us with the powers we need to make changes to secondary legislation. The costs and benefits of the reforms will only be realised when the secondary legislation itself is delivered.

Costs and Benefits

It is not possible to provide an assessment of the costs and benefits of these changes to the Defence Reform Act. The real-world impacts will only be clear once the detailed secondary legislation is developed. However, by way of context, since 2014 there have been 443 qualifying defence contracts or sub-contracts under the regulations, many of which are with a group of fewer than ten key suppliers with significant experience of working with the Regulations.

Summary and preferred option with description of implementation plan

This primary legislation is the first step necessary to deliver the full reform package for the SSCRs. The proposed reforms will be delivered through secondary legislation, statutory

¹ <https://www.gov.uk/government/publications/defence-and-security-industrial-strategy-reform-of-the-single-source-contract-regulations>

guidance or commercial policy. However, there are a number of reforms that we do not have the vires to introduce without making changes to the Defence Reform Act 2014.

We plan to develop those elements of secondary legislation that are required to give effect to the changes in primary legislation in parallel with the passage of this legislation. This will enable the full set of reforms to be delivered as soon as possible after the primary legislation receives Royal Assent.

Risks and assumptions

There is a risk that the legislation does not deliver the policy objective. This has been mitigated by extensive conversations with MOD practitioners, industry and the Single Source Regulations Office to ensure the primary legislation clauses do provide the power necessary to deliver the detailed aspects of the reforms through secondary legislation and statutory guidance.

These changes will be introduced as a standalone Schedule to the much wider Public Procurement Reform Bill. Timings are therefore dependent on the Parliamentary timetable for that Bill with potential implications for the implementation plan above.

Monitoring and Evaluation

Given the primary legislation in itself only delivers the powers needed to make changes to secondary legislation, we will not be monitoring or evaluating these changes. We will set out how we intend to monitor and evaluate the reforms as they are delivered through the secondary legislation for which this primary legislation provides the powers.