

SSRO

Single Source
Regulations Office

**Guidance on the SSRO's referrals
procedures for determinations under the
Defence Reform Act 2014**

Issued: 27 October 2021

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Versions of this guidance

This is version 1.1 of the SSRO's guidance on the SSRO's referrals procedures for determinations under the Defence Reform Act 2014. It applies to referrals received by the SSRO on or after 1 November 2021.

The publication and application dates of versions of this guidance are shown below.

Version	Date published	Applies to referrals received on or after
1.0	1 April 2019	1 April 2019
1.1	27 October 2021	1 November 2021

1. Scope of the guidance

- 1.1 The Single Source Regulations Office (SSRO) is an executive non-departmental public body, sponsored by the Ministry of Defence (MOD), and plays a key role in supporting the regulatory framework for single source defence contracts established by Part 2 of the Defence Reform Act 2014 (the Act) and the Single Source Contract Regulations 2014 (the Regulations).
- 1.2 The regulatory framework specifies how contracts that meet the requirements for being qualifying defence contracts (QDCs) or qualifying sub-contracts (QSCs) must be priced and requires transparency about those contracts and the contractors who hold them. The SSRO may be asked to make a determination on matters related to the regulatory framework in circumstances set out in the Act and Regulations and summarised in Appendix 1.
- 1.3 This document is a guide to the procedures the SSRO will follow when making a determination under the Act and the Regulations. It applies to all referrals for determinations accepted from the date of this guidance. The guidance sets out:
 - the regulatory framework and role of the SSRO;
 - the requirements for referring matters to request a determination to the SSRO;
 - the criteria that the SSRO will apply to determine whether to accept a determination referral;
 - the process the SSRO follows at each stage when making a determination; and
 - the roles and expectations of all parties throughout the process.
- 1.4 When carrying out its statutory functions, the SSRO aims to ensure that good value for money is obtained for the UK taxpayer in Ministry of Defence (MOD) expenditure on QDCs, and that single source suppliers are paid a fair and reasonable price under those contracts.
- 1.5 There are additional matters that may be referred to the SSRO for a decision to which this guidance does not apply, these are:
 - opinions (s.35(1)(a), s.35(3), s.35(7) of the Act);
 - appeals (s.29(5)); or
 - notices of cessation (s.30(4)(b)).
- 1.6 A separate guidance document relates to opinions and is published on the SSRO website¹. Anyone seeking to appeal to the SSRO or provide it with a notice of cessation may contact the SSRO via referrals@ssro.gov.uk or 020 3771 4785 to discuss the requirements.
- 1.7 The guidance is not intended to be exhaustive but reflects the SSRO's principal practice and procedures at the date of publication. The SSRO may depart from the guidance as it considers necessary or appropriate. The guidance may be revised from time to time to reflect changes in the law, good practice, or learning obtained from making determinations, including as a result of feedback received from parties.
- 1.8 The guidance refers to legal requirements but should not be used in substitution for the requirements themselves. Parties to a referral should rely on their own legal advice as to the application of any legal requirement.

¹ <https://www.gov.uk/government/publications/guidance-on-the-ssros-referrals-procedures-under-the-defence-reform-act-2014-and-single-source-contract-regulations-2014>

2. General conduct of referrals

- 2.1 The SSRO's determination will be given by a three-person Referral Committee appointed on a case by case basis in accordance with the Act and the SSRO's Corporate Governance Framework². At least one member of the Committee will be an independent, i.e. neither a board member nor an employee of the SSRO³. Potential conflicts of interest⁴ will be considered before appointing the Committee.
- 2.2 The Referral Committee will be supported by a case team established for each determination (the Case Team). The composition of the Case Team will depend on the matter for determination with roles allocated as appropriate to reflect the skills and requirements of each determination. All parties engaged with the determination will be provided with the contact details for the SSRO's Case Team and should use those details to communicate with the SSRO during the process.
- 2.3 The SSRO will share agreed contact details with the parties. In most cases, one of these parties will be the Ministry of Defence, which will include senior staff involved in the contract delivery.
- 2.4 The SSRO will treat all commercially sensitive information appropriately and has published a statement on how it handles commercially sensitive information. You can read more information about this below:
<https://www.gov.uk/government/news/handling-commercially-sensitive-information>
- 2.5 The SSRO will comply with the requirements of the Act when making a determination and other public law requirements, including procedural fairness.
- 2.6 If at any stage of the determination a party feels that the SSRO is acting unfairly or has not complied with a legal requirement, then any concerns should be raised with the Case Team at the earliest opportunity. The SSRO will deal promptly with such concerns.
- 2.7 A party who is dissatisfied with the SSRO's response to an initial concern may raise a formal complaint with the SSRO through the SSRO Complaints Policy⁵. The SSRO aims to resolve all complaints within 20 working days of receipt. However, we understand that complaints regarding the determination process may be time-sensitive and require a quicker conclusion. In such cases, we will set out an alternative appropriate timeframe for dealing with such complaints.

² <https://www.gov.uk/government/publications/ssro-corporate-governance-framework>

³ Appointment to the Referral Committee is in accordance with the terms of reference set out in the SSRO Corporate Governance Framework. A profile of both independent members and non-Executive Members from whom a Referral Committee may be drawn is available on the SSRO website.

⁴ <https://www.gov.uk/government/publications/ssro-code-of-conduct>

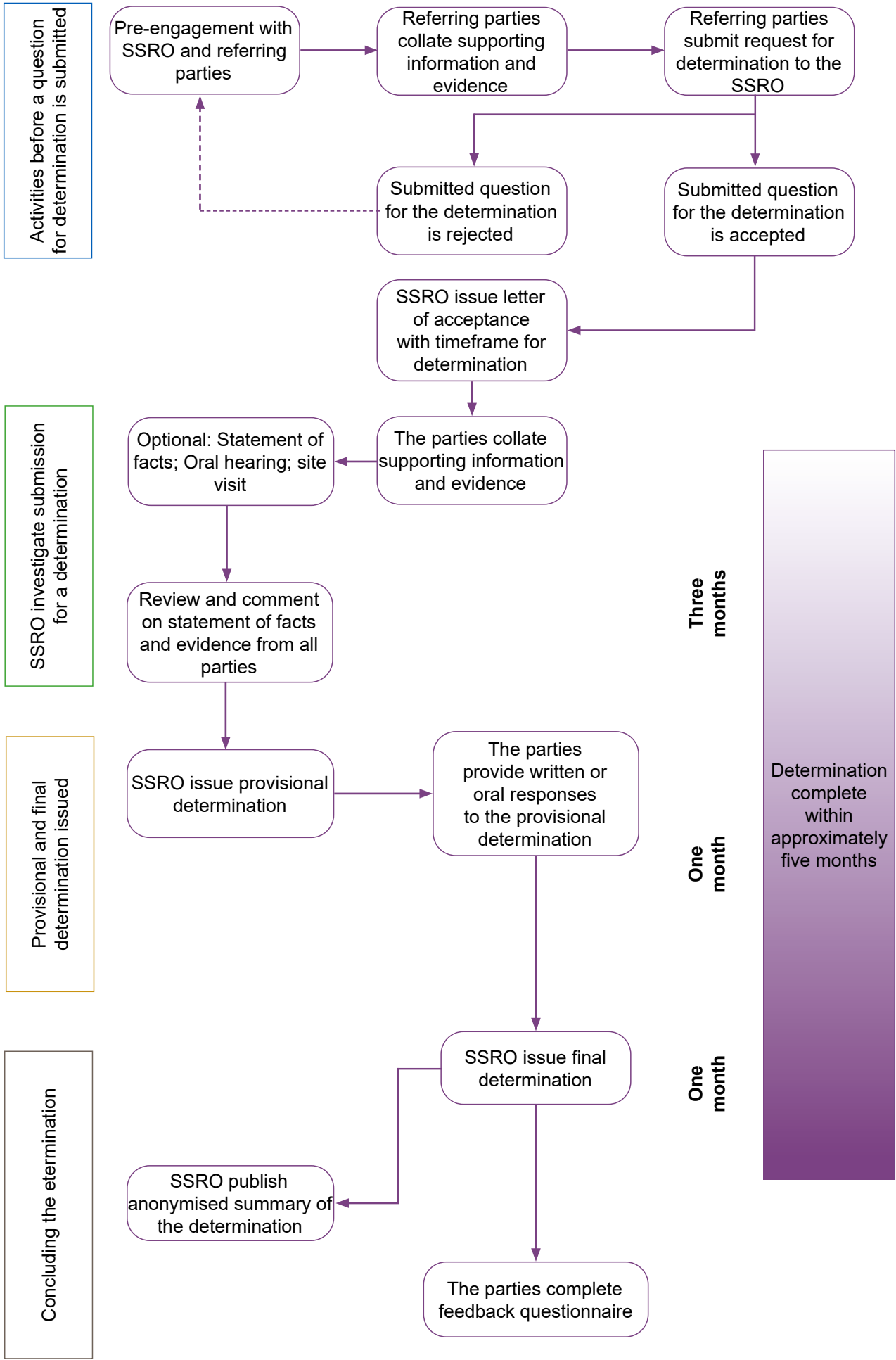
⁵ <https://www.gov.uk/government/publications/ssro-complaints-policy>

3. Summary of the stages in making a determination

3.1 The following sections of the guidance look at the key stages in the process, from prior to a submission being made to concluding the determination. The various stages are examined under the following headings:

- engaging with the SSRO before referring matters for determination (section 4);
- assessing whether to accept the request for a determination (section 5);
- setting a timeframe (section 6);
- investigating the referral (section 7);
- making a provisional determination (section 8);
- making and publishing a final determination (section 9); and
- concluding the referral (section 10).

3.2 This guidance sets out a broad outline of the activities in each stage. The stages and corresponding activities should be viewed as indicative, as the process may need to be adapted for the circumstances of each determination (see section 6). The diagram below illustrates the process the SSRO will generally follow when making a determination. More detail on each of the stages is set out in sections 6 - 10.



4. Engaging with the SSRO before referring matters for determination

Early engagement with the SSRO

- 4.1 The SSRO encourages early engagement with the party or parties considering making a submission for a determination. Early engagement should support the parties to:
- clarify the question and confirm whether it is within the SSRO's functions;
 - outline the issues for consideration by the SSRO when setting a timescale;
 - understand requirements and expectations for each stage of the process;
 - ensure engagement at the appropriate organisational level from all parties; and
 - identify information to be provided in support of a submission. This will increase the likelihood of the request for a determination being accepted and may prevent delays in making the determination.
- 4.2 Where appropriate, the SSRO will encourage the parties to agree on the issues set out above. Early engagement should also assist the SSRO to plan and conduct an efficient process and deliver a timely determination.
- 4.3 The party or parties considering requesting a determination should contact the SSRO via referrals@ssro.gov.uk or 020 3771 4785. It is recommended that parties contacting the SSRO have the following information to hand:
- a description of the issues; and
 - an outline of the question which may be asked of the SSRO.

Contact with non-referring parties

- 4.4 Where a sole party proposes to seek the SSRO's determination, the SSRO may, with permission, also engage with the other party or parties to the contract or proposed contract, who may need to be involved in the referral.

Making a submission for a determination

- 4.5 In making a referral for a determination, the referring party or parties should set out clearly:
- the question on which the SSRO is asked to make a determination;
 - representations as to how the matter should be determined, together with reasons;
 - the provision within the legislation under which the SSRO is being requested to make a determination⁶. For example, "The referral is made under section 35(1)(b) of the Defence Reform Act 2014 and Regulation 52(1) of the Single Source Contract Regulations 2014"; and
 - background context to the request for the determination including relevant statutory reports, previous measures taken to address or reach agreement on the matter referred, such as a description of any negotiations which have taken place between the parties or, in the event the other party was unwilling to enter into negotiations, information about the steps taken by the referring party to enter into good faith negotiations.

⁶ Appendix 1 sets out the grounds under the Act and the Regulations for which a determination may be sought and given.

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- 4.6 The referring party or parties should provide submissions with relevant supporting information where possible.
- 4.7 The SSRO does not prescribe the form of a request for a determination or the form of any accompanying submissions. However, all information submitted to the SSRO should be relevant to the referral and clearly referenced to arguments laid out in the request for a determination and accompanying submissions.
- 4.8 The nature of the information required to support the referral will vary according to the circumstances of each referral. For example, if the SSRO is asked to assess the extent to which a cost is Allowable, examples of required information may include, but are not limited to:
- an analysis or breakdown of the cost(s);
 - a copy of the qualifying contract or proposed qualifying contract (if there are relevant provisions);
 - relevant documentation concerning the commercial negotiations or correspondence between the parties; and
 - an explanation of how it has been considered that a cost is appropriate, attributable to the contract and reasonable in the circumstances (AAR).
- 4.9 Following early engagement, the referring party or parties should have clarity on the information that each party will need to provide in order for the SSRO to proceed to accept the request for a determination. The SSRO will not be able to progress the matter until sufficient⁷ information is provided.

⁷ Whilst the SSRO cannot specify information applicable to all referrals in general guidance, information provided should be enough for the SSRO to understand the issue.

5. Assessing whether to accept the request for a determination

Notification that the request for a determination has been received

- 5.1 The SSRO will confirm receipt of the request for a determination in writing within one working day. Confirmation of receipt does not indicate a formal acceptance of the referral and the timeline begins only once the referral has been accepted.

Assessing whether the request for a determination falls within the SSRO's authority

- 5.2 The SSRO will assess whether a request for a determination falls within the SSRO's jurisdiction under the Act and the Regulations. The relevant provisions are summarised in Appendix 1.

Exercising the SSRO's discretion

- 5.3 The SSRO will consider whether it must give a determination or whether the legislation and regulations give the SSRO discretion to do so. If the SSRO has discretion, it will consider whether to accept or refuse the referral in the circumstances and, in doing so, may take the following into account:
- any direct and indirect benefits for the parties to qualifying contracts;
 - the strategic significance of the matter referred; and
 - the resources required to carry out the investigation.

Assessing whether the request for a determination contains the requisite information

- 5.4 The SSRO will assess whether the request for a determination contains sufficient⁸ information on which it can proceed to deal with the request. The SSRO encourages the party or parties to discuss and agree what information will support the decision to accept the request for a determination (see section 4). If the SSRO does not have the requisite information, it will request this from the referring party. If the referral is one in respect of which the SSRO has discretion to make a determination, inadequate information may be a reason for the SSRO to delay acceptance or possibly even decline to accept.
- 5.5 The SSRO will notify the parties of its decision to accept or reject a referral, giving reasons. If dissatisfied, a party may raise its concerns under the SSRO's complaints policy⁹. It is open to parties to request a court to review the lawfulness of the decision through a judicial review process.
- 5.6 The SSRO may seek a meeting with the referring party or parties to obtain clarification of the question for determination or supporting information. Such meetings may take place via conference call facilities or in person.

⁸ See footnote 7.

⁹ See footnote 5.

Accepting the request for determination

- 5.7 When the SSRO has accepted a request for a determination, it will notify all parties engaged in the referral, setting out the basis for this decision. The timeframe for the SSRO to give the determination will start on the date of this notice.
- 5.8 The SSRO will also communicate confirm the following to the parties:
- the question accepted;
 - the timetable;
 - expectations during the referral process;
 - contact details and composition for the Case Team;
 - the composition of the Referral Committee; and
 - security measures for communicating with the parties.
- 5.9 Other issues may arise during the investigation, but the determination will be based on the question the SSRO has accepted. If the referring parties agree that the question for the determination should be revised significantly, the SSRO will consider that request by reference to similar considerations as would apply to the receipt of a new referral. If a significant revision is made, then consideration will be given to re-setting the timeframe for the referral which may involve amending or re-starting the timetable (see section 6).

Publishing the opening of a case on the SSRO's website

- 5.10 Unless there are exceptional circumstances, the SSRO will publish the acceptance of a referral on the SSRO website setting out a brief summary of the issue. In doing so, the SSRO will anonymise the information and protect the confidentiality of the referring parties. This should promote greater understanding of the regime and facilitate engagement with the SSRO and the discharge of its functions.

6. Setting a timeframe

- 6.1 The SSRO is committed to making all determinations in a professional and timely manner. A timeframe will be set for each referral, taking into account the following:
- our general aim to give determinations within five months of acceptance;
 - the circumstances of the case, including complexity, scope and urgency; and
 - the clarity and completeness of the information submitted, including the submissions, supporting information and any agreed statement of facts.
- 6.2 If there is a commercial imperative which affects the timeframe, this should be made known to the SSRO when making a submission for a determination or at the earliest opportunity.
- 6.3 It may shorten the investigation phase required for a determination if all parties agree a statement of the relevant facts and provide this with the original submission together with any supporting information. When setting a timeframe for the referral, the SSRO will consider how such a statement affects the extent of any required investigation.
- 6.4 The SSRO's ability to give a determination within a planned timeframe will depend on:
- effective communication of issues;
 - submission of the required supporting information; and
 - timely co-operation by the parties throughout the process.
- 6.5 The timeframe may have to be adjusted if these expectations are not met.
- 6.6 In exceptional cases, the SSRO may 'suspend' or halt the determination process, effectively stopping the clock on the determination timetable. It may be appropriate to consider a suspension if for example:
- negotiations are taking place that may resolve issues between the parties; or
 - significant unforeseen events prevent the SSRO from proceeding.
- 6.7 The SSRO may suspend the determination process on its own initiative or in response to an application by a party to the referral. It is for the SSRO to decide whether to suspend the process and its decision is final, although it may consult with the parties in reaching that decision.
- 6.8 If the SSRO suspends the determination process, it will usually set a time limit after which the suspension will end and the clock will start again on the timetable for making a determination. An overall adjustment to the timetable may or may not be required as a result.

7. Investigating the referral

- 7.1 The SSRO will investigate before making a determination. The purpose of the investigation is to assist the SSRO in clarifying and understanding the matter referred. The extent of investigation will depend on the matter under consideration and the information already submitted by the referring party. This section should be read in conjunction with paragraphs 4.6 to 4.8 of this guidance.
- 7.2 In making a determination, the SSRO will have regard to its own relevant data as well as any material which is required to be considered by the Act or the Regulations. For example, when making a determination in relation to Allowable Costs, the SSRO must have regard to:
- the information that was available to each party at the time of the agreement;
 - the statutory guidance in place at the time of the agreement;
 - any provisions of the contract providing for a target cost incentive fee adjustment; and
 - whether the parties disclosed, in a timely manner, the facts and assumptions they used to determine the allowable costs or the contract profit rate.

Where the SSRO has regard to its own data, this will be made available to the parties.

- 7.3 The SSRO uses a number of methods to obtain information, not all of which will be applicable to each determination. The SSRO has set out below the most common ways in which information is likely to be obtained.

Meeting with parties (if necessary)

- 7.4 The SSRO may arrange to meet with either party or both parties anytime during the process if it would be beneficial to the investigation. For example, a meeting may be held for the purposes of clarification or explanation of some aspect of the referral. These meetings may take place either in person or via conference call facilities and should assist the SSRO to gain a detailed understanding of the matters referred. A party to the referral may propose a meeting if it considers this will assist the SSRO in making its determination.

Information gathering

- 7.5 The SSRO may make requests for information to the referring party, another party to the contract participating in the referral or an interested third party. An example of an interested party is the Secretary of State in relation to a qualifying sub-contract. Parties should provide prompt, complete responses to the SSRO's requests, as failure to do so may affect the timeliness and content of the SSRO's determination. The SSRO will take the approach outlined in paragraph 2.4 to any commercially sensitive information provided.
- 7.6 It may be that multiple requests for information will be required before the SSRO can give a determination. A proportionate approach to the number, content and timing of information requests will be taken and the SSRO may liaise with the relevant party when preparing a request.
- 7.7 The SSRO will set a date by which parties are expected to respond. At times, this may require a short turnaround. Parties will be invited to notify the SSRO in case of difficulty.
- 7.8 If a party is concerned about the content of an information request, it should contact the Case Team. The SSRO may modify an information request if it considers there is a more efficient way to obtain the information it requires to make a determination. The final decision on whether information is required rests with the SSRO.

Circulation of the submission and other written representations to the other party where permitted and appropriate

- 7.9 The SSRO will share the referring party's submission, including any supporting information, with the other party or parties to the referral and will invite comments. It will share and seek comment on other submissions made by the parties, as necessary to ensure a fair process.
- 7.10 There will be a presumption that parties are content for the information they provide to be shared with the other party or parties participating in the referral. If a party does not want some information to be shared, then it should provide a clear written statement at the time of submission to the SSRO, identifying:
- the information that it asks the SSRO not to share;
 - the reasons why it considers the information should not be shared;
 - whether a redacted or summarised version may be shared, in which case both the original and the redacted or summarised versions should be provided; and
 - the basis on which the party considers that the SSRO may fairly consider the submitted information if it has not been seen by all parties engaged in the process.
- 7.11 When making a determination, the SSRO will generally only rely upon information that has been made available to all parties. The SSRO will be guided by fairness in deciding whether to accept or consider information that has not been made available to one of the parties.

Statement of facts

- 7.12 The SSRO is likely to confirm its understanding of the facts with the parties before it makes a determination. The SSRO may share its own statement of facts with the parties and ask them to comment on its accuracy.

Site visit

- 7.13 The SSRO may organise a site visit to the contractor's facilities related to the referral. The purpose of the site visit is for the SSRO to obtain a greater understanding of the context for the request for a determination, for example by visiting key facilities, hearing a presentation outlining the nature of the business or a relevant process.
- 7.14 A site visit is not intended to be an evidence-gathering exercise. With this in mind, a formal record will not usually be made of a site visit. Attendees may take their own informal notes to aid their understanding. The parties should not seek to argue their respective cases or make submissions at the site visit.
- 7.15 Site visits are not expected to last more than one day. The SSRO will agree an agenda with the host party prior to the site visit.
- 7.16 The site visit will be attended by members of the Referral Committee and Case Team. It is expected that all parties will attend the site visit and assist the SSRO by showing key facilities and processes and responding to queries. The SSRO may request named representatives from all parties engaged in the process to be in attendance.

Oral hearing

- 7.17 The SSRO may hold one or more oral hearings. The purpose of an oral hearing is for both parties to present their views to the SSRO on the matters referred, and to clarify existing information. The oral hearing also provides an opportunity for the SSRO Referral Committee to ask both parties questions.

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- 7.18 The parties are expected to send representatives to the oral hearing who are familiar with the matters in issue and authorised to speak for the party. The SSRO may request that specific representatives attend. Legal advisors may attend but the Referral Committee's questions should be answered by persons with direct knowledge of the facts.
- 7.19 The SSRO will generally record the oral hearing(s) and arrange a transcript, a copy of which will be provided to the parties. If a party considers there are issues of inaccuracy in respect of what was said at the oral hearing, these should be raised with the Case Team.

8. Making a provisional determination

- 8.1 On the basis of evidence and information gathered by the SSRO, including that made available at the oral hearing, the SSRO will produce a provisional determination. Provisional determinations issued by the SSRO should set out:
- the facts of the determination in reasonable detail;
 - assessments and findings; and
 - any action the SSRO proposes to take.
- 8.2 The SSRO will issue a provisional determination to the parties and provide an opportunity for them to comment on matters of factual accuracy or completeness. This provisional determination will not be published. Parties may respond in writing or request an oral hearing. If a party does not provide a written response, the SSRO may interpret this as an acceptance of the SSRO's views and reasoning as set out in the provisional determination.
- 8.3 The SSRO does not normally expect the representations to include new evidence at this stage. If a party wishes to submit new information, the covering submission should explain the reasons for doing so.

Written responses to the provisional determination from parties

- 8.4 The SSRO will provide a deadline by which responses must be received. Written responses to the provisional determination will be circulated by the SSRO to the other party to the determination.

Oral responses to the provisional determination from parties

- 8.5 Parties wishing to make oral representations on the provisional determination must request an oral hearing with the SSRO stating the reasons for making the request. The SSRO will decide whether an oral hearing at this stage is necessary or not. The deadline for requesting an oral hearing will be specified by the SSRO in the provisional determination. The arrangements for recording and transcription of oral hearings, set out in paragraph 7.19, shall continue to apply. The SSRO will carefully consider written and oral responses to the provisional determination. The final determination will take into account the representations made and received in response to the provisional determination.

9. Making and publishing a final determination

Making a determination

- 9.1 The determination contains the decision of the Referral Committee. The final determination will normally be sent to the referring parties as a final document without opportunity for comment. The SSRO would not generally expect to engage further with any party after the decision is given.
- 9.2 Determinations made by the SSRO have legal consequences for the affected parties.
- 9.3 When making a determination in relation to a QDC or proposed QDC the SSRO can require the payment of appropriate costs by one party to the other or by one proposed party to the other (section 35(4) and (5) of the Act) and this requirement will be binding on those parties. Where a determination relates to a QSC or proposed QSC, the payment of costs may be required by the sub-contractor (or proposed sub-contractor) to the Secretary of State or by the Secretary of State to the sub-contractor (or proposed sub-contractor).

Publishing the final determination

- 9.4 The SSRO's general approach is to publish a summary or redacted version of the determination on the SSRO's website. The SSRO publishes this information to contribute to the evidence base as to the operation of the regulatory framework established by Part 2 of the Act and the Regulations. This should promote greater understanding of the regime, facilitate engagement with the SSRO and inform the discharge of its functions, such as the development of guidance or the review of legislation. However, determinations are contract-specific and care should be taken before applying them to other circumstances and contractual arrangements.
- 9.5 The SSRO would not publish information about a determination if doing so would compromise UK operational security. The SSRO will give due consideration to representations made to this effect.
- 9.6 The SSRO's published version of the determination will be anonymised, unless there are exceptional circumstances that justify identifying a party. If the SSRO considers such circumstances may apply, it will seek representations from the parties before reaching a decision.
- 9.7 The SSRO will exclude from the published version any information that would be likely to cause significant prejudice to the commercial interest of one or more parties engaged in the determination. Parties will be given an opportunity to make representations on a draft publication version prior to publication.
- 9.8 A final version will be sent to the parties before publication. The SSRO's Annual Report and Accounts will also include summary details of all determinations completed in the financial year, upon which the SSRO will not seek representations.

10. Concluding the referral

Closing the referral

- 10.1 In exceptional cases, the SSRO will close a request for a determination before a final decision is made, if:
- the legislation permits; and
 - it is satisfied in the circumstances that a determination should not be given.
- 10.2 This may be appropriate, for example, if all parties reach a settlement when the matter is in progress and seek to withdraw the referral or where a suspended process (referred to in paragraph 6.6) becomes frustrated and the SSRO has a discretionary power as to whether to make a determination.
- 10.3 In considering whether to close its investigation of a referral, the SSRO will take account of any claims made by either party to the referral for the payment of its referral-related costs.

Appealing against a decision

- 10.4 The SSRO's decision is final. Once the SSRO has given its determination, there is no appeal mechanism in the Act or the Regulations. It is open to parties to request a court to review the lawfulness of the decision through a judicial review process.

Feedback

- 10.5 The SSRO welcomes face to face or written feedback about the referrals process. This information will be used to help improve procedures and processes on an ongoing basis.
- 10.6 Feedback can be provided during the referral process. Should any issues or concerns arise, they may be communicated to the Case Team at any point in the process.
- 10.7 On conclusion of the determination, the SSRO will contact parties engaged to seek feedback on the processes followed in making the determination. This will likely involve a short questionnaire and a meeting or telephone call to discuss feedback.

Appendix 1 Statutory Grounds for Determinations

1. Table 1 below summarises the matters the SSRO may be asked to determine and whether it has a power or a duty to do so. It identifies the person or persons who may make a reference to the SSRO and any time limits which apply. If there are any procedural requirements that apply to a ground, these are also identified.

Table 1: Matters on which the SSRO may be asked to make a determination

Ground	Function	Referring parties	Time limit	Procedural requirements
Adjustment of price payable in a target price contract (section 16(2)(b))	The SSRO must determine the amount of any adjustment	Secretary of State, authorised person or primary contractor	—	—
Adjustment under step 2, 3 or 6 of Contract Profit Rate calculation (section 18(3) and regulation 18)	The SSRO may determine the amount of the adjustment in section 17(2) (contract profit rate) and in consequence may determine that the contract price is to be adjusted by a specified amount.	Secretary of State or primary contractor	Within two years after the contract completion date	—
Extent to which a cost is an Allowable Cost (sections 20(5), 20(6) and regulation 19)	The SSRO may determine the extent to which a particular cost is an Allowable Cost under a qualifying defence contract. Consequent to such a determination, the SSRO may determine an adjustment to the contract price	Secretary of State, authorised person or primary contractor	20 working days from date of written notice	Before a reference is made by the Secretary of State to the SSRO, a written notice must be sent to the primary contractor requiring it to show that the costs are AAR. The Secretary of State must allow at least 20 working days to elapse from the date of the notice and there must have been no response or no satisfactory response from the primary contractor. The same pre-conditions do not apply to a reference made by the primary contractor

Ground	Function	Referring parties	Time limit	Procedural requirements
<p>Final Price Adjustment (section 21(3)(b) and regulation 16)</p>	<p>The SSRO must determine the total price payable where the Secretary of State and the primary contractor are unable to agree the final price adjustment</p>	<p>Secretary of State, authorised person or primary contractor</p>	<p>After the contract completion date, but no later than 2 years after the contract completion date</p>	<p>Reference should only be made to the SSRO where the parties have been unable to agree the final price adjustment. One of the parties must have notified an intention to make a final price adjustment, which should be within 3 months of a contract costs statement being provided. The Secretary of State may have to notify a final price adjustment within 15 months of the contract completion date if that date is sooner than 3 months from provision of the contract costs statement</p>
<p>Penalty notice matters (section 32(8))</p>	<p>The SSRO must make a determination, on receipt of an application, as to:</p> <p>(a) whether the person has contravened section 31 or failed to take the steps specified in a compliance notice (or both); (b) whether the person had a reasonable excuse for contravening section 31 or failing to take the steps specified in the compliance notice (or both); and (c) the amount of the penalty.</p>	<p>Recipient of the penalty notice</p>	<p>Before the end of the period of 6 months from the date the penalty notice is given (section 32(6)(f))</p>	<p>—</p>

Ground	Function	Referring parties	Time limit	Procedural requirements
<p>Prescribed matters (section 35(1)(b) and regulation 52)</p>	<p>The SSRO must make a determination on matters prescribed in the Regulations in relation to a qualifying contract, being the defined pricing structure and output metrics that the contractor must use in all reports provided under Part 5 of the Regulations for that contract</p>	<p>Secretary of State, authorised person, primary contractor (in the case of a QDC), or the person who proposes to enter into the contract with the Secretary of State (in the case of a proposed contract)</p>	<p>For QDCs by virtue of section 14(3) of the Act</p> <p>No later than 6 months after:</p> <p>(a) the date the QDC is entered into; or</p> <p>(b) the date the QDC is subsequently amended, where that amendment affects the prescribed matters.</p> <p>For QDCs by virtue of section 14(4) or 14(5) of the Act</p> <p>No later than 6 months after:</p> <p>(a) the date the contract became a QDC; or</p> <p>(b) the date the QDC is subsequently amended, where that amendment affects the prescribed matters.</p>	<p>—</p>

Ground	Function	Referring parties	Time limit	Procedural requirements
Pre-scheme referral (section 35(7) and regulation 55)	The SSRO must give a determination if (i) a contract was entered into before 18 December 2014 and the contract required the Review Board for Government Contracts to make a determination in relation to any matter referred to it; and (ii) a party to the contract refers the matter for determination after 18 December 2014.	A party to the contract	No later than 2 years after: (a) the date described in the contract as the contract completion date; (b) if no such date is described in the contract, the date on which the contractor completes all obligations which entitle it to final payment under the contract; or (c) if the contract is terminated before either of the dates described in (a) or (b), the date that the contract is terminated.	—

2. This guidance and the grounds summarised in Table 1 apply to qualifying sub-contracts (and sub-contractors) as they apply to qualifying defence contracts (and primary contractors), but subject to the modifications set out in Regulation 64, which include that:
- In respect to the **Adjustment of price payable in a target price contract** ground, the referring parties include the contracting authority and the sub-contractor, instead of the primary contractor;
 - In respect to the **Prescribed Matters** ground, the referring parties include the Contracting Authority (in the case of a qualifying sub-contract) and the person who proposes to enter into the qualifying sub-contract (in the case of a proposed qualifying sub-contract). In this regard “Contracting Authority) means the party which is, or would be, liable to pay the contract price under a qualifying sub-contract; and
 - In respect to the **Adjustment under step 2, 3 or 6 of Contract Profit Rate calculation** ground, the effect of the referral is that the SSRO may determine that a payment of a specified amount must be made to or by the Secretary of State.

In addition to determinations, there are two other types of referral covered by this guidance, which are summarised in table 2 below. These are covered within the guidance because the determinations process is considered to be broadly applicable. The SSRO will apply the guidance to such referrals, subject to modification where appropriate.

Table 2: Other grounds for a determination

Grounds	Function	Referring parties	Time limit
Conduct in accessing records (section 23(6) and regulation 21)	The SSRO may on an application by the record-keeper in relation to a qualifying contract review the way in which the Secretary of State or an authorised person has acted in examining records, requiring copies of records or requesting further information or explanation relating to relevant records.	Record-keeper	No later than 3 months after the duty to keep the relevant records ends
Disapplication of requirements to give information for confidentiality (section 27(3) and regulation 47(3))	In circumstances where a person intends not to comply with a requirement to permit examination of records, to make reports or to notify relevant events, circumstances or information, the Secretary of State may refer the matter to the SSRO and the SSRO must investigate whether an obligation of confidentiality (which has been relied upon to support the non-compliance) has been entered into otherwise than for genuine commercial reasons.	Secretary of State or an authorised person	Within 40 working days of receiving the person's notice that they intend not to comply

