

SSRO

Single Source
Regulations Office

**Guidance on the SSRO's referrals procedures
for notice of cessation as a QSC under the
Defence Reform Act 2014**

Draft for consultation

Contents

1. Introduction and scope	1
2. General conduct of referrals	2
3. Summary of the stages in making a decision	3
4. Engaging with the SSRO before referring a notice of cessation	5
5. Assessing whether to accept the submitted notice of cessation	7
6. Setting a timeframe	9
7. Investigating the referral	10
8. Making and publishing a decision	12
9. Concluding the referral	13
Appendix 1 Statutory grounds for notices of cessation	14

1. Introduction and scope

- 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. A QSC must fulfil the requirements set out in either section 28(3) or 28(4) of the Act. These requirements include that the conditions in either Regulation 58(3) or 58(4) apply to the QSC. The sub-contractor may give notice to the SSRO that neither the condition in regulation 58(3) nor the condition in regulation 58(4) is now met in relation to the QSC, and that Part 2 of the Act, and these Regulations, should therefore cease to apply. The SSRO must consider the notice. A summary of the key provisions of the regulatory framework are set out in Appendix 1.
- 1.3 This document is a guide to the procedures the SSRO will follow when considering a notice of cessation that Part 2 of the Act, and these Regulations should cease to apply. The guidance applies to all notices of cessation accepted from the date of this guidance. The guidance sets out:
 - the regulatory framework and role of the Single Source Regulations Office (SSRO);
 - the requirements for submitting a notice of cessation to the SSRO;
 - the criteria that the SSRO will apply to determine whether to accept a referral to consider a notice of cessation;
 - the process the SSRO follows at each stage when considering a notice of cessation; 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:
 - determinations (s.16(2)(b), s.18(3), s.20(5) and (6), s.21(3)(b), s.32(8), s.35(1)(b), & s.35(7) of the Act);
 - opinions (s35(1)(a), s35(3), s 35(7) of the Act); or
 - appeals (s.29(5) of the Act).
- 1.6 Separate [guidance documents for opinions and determinations](#) are published on the SSRO website. Anyone seeking to submit a notice of cessation to the SSRO may contact us 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 considering notices of cessation, 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.

2. General conduct of referrals

- 2.1 The SSRO's decision 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 Framework](#). At least one member of the Committee will be an independent, i.e. neither a board member nor an employee of the SSRO¹. Potential conflicts of interest² will be considered before appointing the Committee.
- 2.2 The Referral Committee will be supported by a case team established for each notice of cessation (the Case Team). The composition of the Case Team will depend on the circumstances and grounds for the notice, with roles allocated as appropriate to reflect the skills and requirements of each case. All parties engaged with the referral 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 Secretary of State, and the people involved from the MOD will include senior staff engaged in the contract delivery. The Secretary of State or the other party to the QSC may make a submission to the SSRO in writing on any matters to which they wish the SSRO to have regard in considering the notice (regulation 63(3)).
- 2.4 The SSRO will treat all commercially sensitive information appropriately and has published [a statement on how it handles commercially sensitive information](#).
- 2.5 The SSRO will comply with the requirements of the Act when making a decision on a notice of cessation, and other public law requirements, including procedural fairness.
- 2.6 If at any stage of the referral 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 Policy](#). The SSRO aims to resolve all complaints within 20 working days of receipt. However, we understand that complaints regarding the notice of cessation 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.

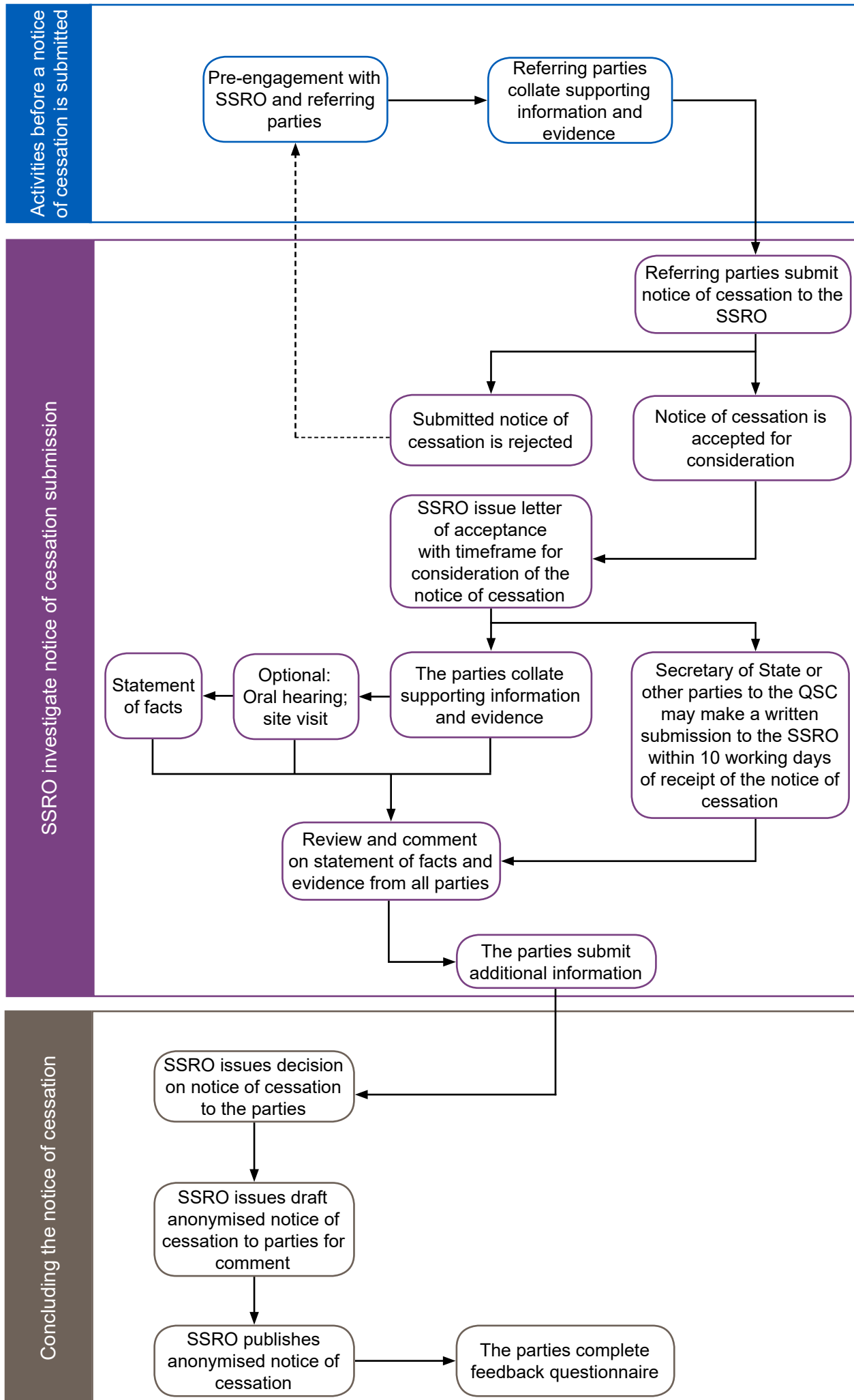
¹ Appointment to the Referral Committee is in accordance with the terms of reference set out in the SSRO Corporate Governance Framework. A profile of both independent members and non-Executive Members from which a Referral Committee may be drawn is available on the SSRO website.

² <https://www.gov.uk/government/publications/ssro-code-of-conduct>

3. Summary of the stages in making a decision

- 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 notice of cessation. The various stages are examined under the following headings:
- engaging with the SSRO before referring a notice of cessation (section 4);
 - assessing whether to accept the notice of cessation (section 5);
 - setting a timeframe (section 6);
 - investigating the referral (section 7);
 - making and publishing a final decision (section 8); and
 - concluding the referral (section 9).
- 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 referral (see section 6). The diagram below illustrates the process the SSRO will generally follow when More detail on each of the stages is set out in sections 4 - 9.

Notice of cessation



20 working days

20 working days

Consideration of notice of cessation complete within 40 working days of acceptance

4. Engaging with the SSRO before referring a notice of cessation

Early engagement with the SSRO

- 4.1 The SSRO encourages early engagement with the party or parties that are considering referring a notice of cessation. Early engagement should support the parties to:
- clarify whether the circumstances have been met to submit a notice of cessation and draft the referral;
 - outline any circumstances 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 likelihood of a notice of cessation being accepted and may prevent delays in making a decision.
- 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 decision.
- 4.3 The party considering requesting a notice of cessation 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:
- the date at which the sub-contractor believes that neither the condition in regulation 58(3) nor the condition in regulation 58(4) were met in relation to the qualifying sub-contract;
 - an outline of the reasons for the notice.

Contact with non-referring parties

- 4.4 Where a sole party proposes to submit a notice of cessation, 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. This will include the MOD.

Submitting a notice of cessation

- 4.5 To commence a notice of cessation process, the referring party must submit a written notice to the SSRO (a "notice of cessation") which must:
- be in writing;
 - state the date at which the sub-contractor believes that neither the condition in regulation 58(3) nor the condition in regulation 58(4) were met in relation to the qualifying sub-contract; and
 - explain the sub-contractor's reasons for that view.
- 4.6 The referring party or parties should provide submissions with relevant supporting information where possible. The notice of cessation must:
- be received by the SSRO no later than the contract completion date of the qualifying sub-contract; and
 - be copied to the other party to the qualifying sub-contract and to the Secretary of State at the time it is sent to the SSRO.

- 4.7 The SSRO does not prescribe the form of a notice of cessation 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 notice of cessation 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, the sub-contractor would be expected to submit information which demonstrates that the performance of less than 50 percent by value of the obligations under the sub-contract are required to enable the primary contractor to perform the qualifying defence contract (or to enable the combined performance of the qualifying defence contract or any other contract to which the primary contractor is or might become party).
- 4.9 Following early engagement, the referring party or parties should have clarity on the information that a party will need to provide in order for the SSRO to proceed to accept the notice of cessation for consideration. The SSRO will not be able to progress the matter until it has received a notice of cessation containing the information required by the Regulations.

5. Assessing whether to accept the submitted notice of cessation

Notification that the notice of cessation has been received

- 5.1 The SSRO will confirm receipt of the notice of cessation 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 notice of cessation falls within the SSRO's authority

- 5.2 The SSRO will assess whether the notice of cessation falls within the SSRO's jurisdiction under the Act and the Regulations. The key provisions are summarised in Appendix 1, but the procedural requirements are that:
- A notice of cessation must be provided to the SSRO, containing the information prescribed in regulation 63(2) (see paragraph 4.5 above).
 - The notice of cessation must be received by the SSRO no later than the contract completion date of the qualifying sub-contract (regulation 63(2)(a)).
 - The notice of cessation must have been copied to the Secretary of State and the other party to the qualifying sub-contract, at the same time that it is sent to the SSRO (regulation 63(2)(e)).

Assessing whether the notice of cessation contains the requisite information

- 5.3 The SSRO will assess whether the notice of cessation contains the requisite information set out in regulation 63(2) in order that the SSRO can proceed to deal with the request. Although the SSRO encourages the party or parties to discuss and agree what information will support the decision to accept the notice of cessation (see section 4), it recognises that a notice of cessation is likely to be a single party referral. If the SSRO does not have the requisite information, it will request this from the referring party.
- 5.4 The SSRO must take account of the statutory timescales set out in regulation 63(2)(a) which set out that the notice of cessation must have been received by the SSRO no later than the contract completion date of the qualifying sub-contract.
- 5.5 The SSRO may seek a meeting with the referring party to obtain clarification of the notice of cessation or supporting information. Such meetings may take place via conference call facilities or in person.

Accepting the submitted notice of cessation

- 5.6 When the SSRO has accepted a notice of cessation for consideration, it will notify all parties engaged in the referral setting out the basis for this decision. The timeframe for the SSRO to make a decision will start on the date of this notice.
- 5.7 The SSRO will also confirm the following to the parties:
- the regulation which the referring party states is no longer applicable to the QSC;
 - the timetable for the referral;
 - 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.

- 5.8 The SSRO will notify the parties of its decision whether a notice of cessation meets the requirements set out in the Regulations giving reasons where not. If dissatisfied, a party may raise its concerns under the SSRO's complaints policy. It is open to parties to request a court to review the lawfulness of the decision through a judicial review process.
- 5.9 Other issues may arise during the investigation, but the SSRO's consideration of the notice of cessation will be based on the grounds set out in the notice. If the referring parties agree that the notice of cessation 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 acceptance of a notice of cessation on the SSRO's website

- 5.10 Unless there are exceptional circumstances, the SSRO will publish the acceptance of a notice of cessation 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 a decision on all notices of cessation in a professional and timely manner. We will set a timeframe for each referral, taking into account the following:
- our general aim to make a decision within 40 working days 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 submitting a notice of cessation, or at the earliest opportunity.
- 6.3 The timetable set by the SSRO must allow for the Secretary of State and the other party to the QSC to make submissions to the SSRO about the notice of cessation. The Secretary of State or the other party to the QSC, within 10 working days of receipt of the notice of cessation, make a written submission to the SSRO on any matters to which they wish the SSRO to have regard in determining the matter.
- 6.4 The SSRO's ability to make a decision on the notice of cessation in a planned timeframe will depend on:
- effective communication of issues;
 - submission of the required supporting information; and
 - timely co-operation by both 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 the process, effectively stopping the clock on the referral timetable. It may be appropriate to consider a suspension if:
- 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 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.
- 6.8 If the SSRO suspends the 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 decision. 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 decision on a notice of cessation. 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 also be read in conjunction with paragraphs 4.6 to 4.8 of this guidance.
- 7.2 In reaching its decision, the SSRO may have regard to its own relevant data as well as any material which is required to be considered by the Act or the Regulations. 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 notice of cessation. 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 a party 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 can 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 reaching its decision.

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 decision. 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 decision. We will take a proportionate approach to the number, content and timing of information requests and 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 reach a decision. 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 referring party is required to circulate the notice of cessation and supporting papers to the other party to the QSC and the MOD, who each have up to 10 working days to provide written comments to the SSRO. We will share and seek comments 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 identifying the following at the time of submission to the SSRO:

- 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 reaching a decision, 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 will confirm its understanding of the facts with the parties before it reaches a decision. The SSRO will 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, if that would assist it to determine the issues raised in the notice of cessation. For example, if the performance by value of obligations under the contract to enable the primary contractor to perform the qualifying defence contract mentioned in section 28(3) a) was claimed to be below 50 percent, a site visit may help to clarify whether that is the case. The purpose of the site visit is for the SSRO to obtain a greater understanding of the context for the notice of cessation, 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 an oral hearing. The purpose of the 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.

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 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 and publishing a decision

Making a decision

- 8.1 The decision on the notice of cessation, which may have legal consequences for the affected parties, is given by the Referral Committee. The decision 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.

Publishing the decision

- 8.2 The SSRO's general approach is to publish a summary or redacted version of the decision on the notice of cessation 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 discharge of our functions, such as the development of guidance or the review of legislation. However, decisions on notices of cessation are contract-specific, and care should be taken before applying them to other circumstances and contractual arrangements.
- 8.3 The SSRO would not publish information about a notice of cessation if doing so would compromise UK operational security. The SSRO will give due consideration to representations made to this effect.
- 8.4 The SSRO's published version of the decision will be anonymised, unless there are exceptional circumstances that justify identifying a party. If the SSRO considers this to be likely, the SSRO will seek representations from the parties before reaching a decision.
- 8.5 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 referral. Parties will be given an opportunity to make representations on a draft publication version prior to publication.
- 8.6 A final version will be sent to the parties shortly before publication. The SSRO's Annual Report and Accounts will also include summary details of all notices of cessation completed in the financial year, upon which the SSRO will not seek representations.

9. Concluding the referral

Closing the referral

- 9.1 In exceptional cases, the SSRO will close a notice of cessation matter before a final decision is made, if:
- the legislation permits; and
 - it is satisfied in the circumstances that a decision should not be given.
- 9.2 This may be appropriate, for example, if all parties reach a settlement when the matter is in progress and seek to withdraw the referral.

Appealing against a decision

- 9.3 The SSRO's decision is final. Once the SSRO has made its decision, 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

- 9.4 The SSRO welcomes face to face or written feedback about the referrals process. We will use this information to help us improve our procedures and processes on an ongoing basis.
- 9.5 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.
- 9.6 On conclusion of the notice of cessation, the SSRO will contact the parties engaged to seek feedback on the processes followed. This will likely involve a short questionnaire and a meeting or telephone call to discuss feedback.

Appendix 1 Statutory grounds for notices of cessation

The table below summarises main regulatory provisions concerning a notice of cessation. It identifies the person or persons who may make a reference to the SSRO and any time limits which apply.

Ground	Function	Referring parties	Time limit
Cessation of application of Part 2 of the Act and the Regulations to qualifying sub-contracts (section 30(4) and Regulation 63)	The SSRO must decide to either overrule or uphold a notice of cessation, subject to whether the conditions in regulation 58(3) or 58(4) are met.	The sub-contractor to the qualifying sub-contract (reg 63(1)).	The notice must be received by the SSRO no later than the contract completion date of the qualifying sub-contract (reg 63(2) (a)).

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (1990-2000) (ONS 2001).

There is a growing awareness of the need to address the health care needs of the elderly population. The Department of Health (2000) has set out a strategy for the NHS to meet the needs of the elderly population. This strategy is based on the following principles:

- To ensure that the NHS is able to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.

The NHS is committed to providing a high quality of care for the elderly population. This commitment is reflected in the following objectives:

- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.

The NHS is committed to providing a high quality of care for the elderly population. This commitment is reflected in the following objectives:

- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.

The NHS is committed to providing a high quality of care for the elderly population. This commitment is reflected in the following objectives:

- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.

The NHS is committed to providing a high quality of care for the elderly population. This commitment is reflected in the following objectives:

- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.

The NHS is committed to providing a high quality of care for the elderly population. This commitment is reflected in the following objectives:

- To ensure that the NHS is able to provide a high quality of care for the elderly population.
- To ensure that the NHS is able to provide a range of services to meet the needs of the elderly population.
- To ensure that the NHS is able to provide a high quality of care for the elderly population.