

**SSRO**

Single Source  
Regulations Office

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

Issued: 8 April 2024

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## Versions of this guidance

This is version 1.2 of the SSRO's guidance on its procedures for determinations under the Defence Reform Act 2014. It applies to referrals received by the SSRO on or after 8 April 2024.

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

Version	Date published	Applies to referrals received on or after	Changes from previous version
1.2	08 April 2024	08 April 2024	<ul style="list-style-type: none"> <li>To update the matters on which referrals may be made to the SSRO.</li> <li>To note additional factors that may influence the timeframe for a determination and reduce the general target for making a determination from five months to four.</li> <li>To include details of the SSRO's non-referral advice service.</li> <li>To provide a link to the SSRO's referral submission template.</li> <li>To include additional transparency measures during investigation stage.</li> <li>Minor changes to improve clarity and consistency with other procedural guidance.</li> </ul>
1.1	27 October 2021	1 November 2021	Minor changes to reflect publication of the SSRO's procedures on requiring the payment of referral-related costs.
1.0	1 April 2019	1 April 2019	First publication.

# 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). When carrying out its statutory functions, the SSRO aims to ensure that good value for money is obtained for the UK taxpayer in MOD expenditure on QDCs, and that single source suppliers are paid a fair and reasonable price under those contracts.
- 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 received from the date of this guidance. The guidance sets out:
- the regulatory framework and role of the SSRO;
  - the requirements for making a referral to the SSRO for a determination;
  - the criteria that the SSRO will apply to determine whether to accept a referral for a determination;
  - 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 Anyone intending to make a referral to the SSRO for a determination may contact us via [referrals@ssro.gov.uk](mailto:referrals@ssro.gov.uk) or **020 3771 4785** to discuss the requirements.
- 1.5 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 the parties to referrals.
- 1.6 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.
- 1.7 There are additional matters that may be referred to the SSRO for a decision to which this guidance does not apply, these are:
- opinions (sections 35(1)(a), 35(3) and 35(7) of the Act);
  - appeals against assessment as a QSC (section 29(5) of the Act); or
  - notices of cessation as QSC (section 30(4)(b) of the Act).
- 1.8 Separate guidance documents for opinions, appeals against assessment as a QSC and notices of cessation as a QSC are published on [the SSRO website](#).
- 1.9 The SSRO can provide independent and authoritative advice on the application of the regulatory framework to inform contract negotiations or help contracting parties to decide whether to seek an SSRO opinion or determination when permitted. Either party to a current or proposed qualifying contract may seek non-referral advice. All requests are treated in confidence. Further information on the SSRO's non-referral advice service is available on [the SSRO's website](#). Requests for non-referral advice must be made in writing to [helpdesk@ssro.gov.uk](mailto:helpdesk@ssro.gov.uk).

## 2. General conduct of referrals

- 2.1 The SSRO's determination will be made 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 SSRO.<sup>1</sup> Potential conflicts of interest<sup>2</sup> 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 knowledge requirements of each case. 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](#).
- 2.5 When making a determination the SSRO will comply with the requirements of the Act and other public law requirements, including procedural fairness.
- 2.6 If at any stage of the consideration of the referral a party feels that the SSRO is acting unfairly or has not complied with a legal requirement, it should raise its concerns 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 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.

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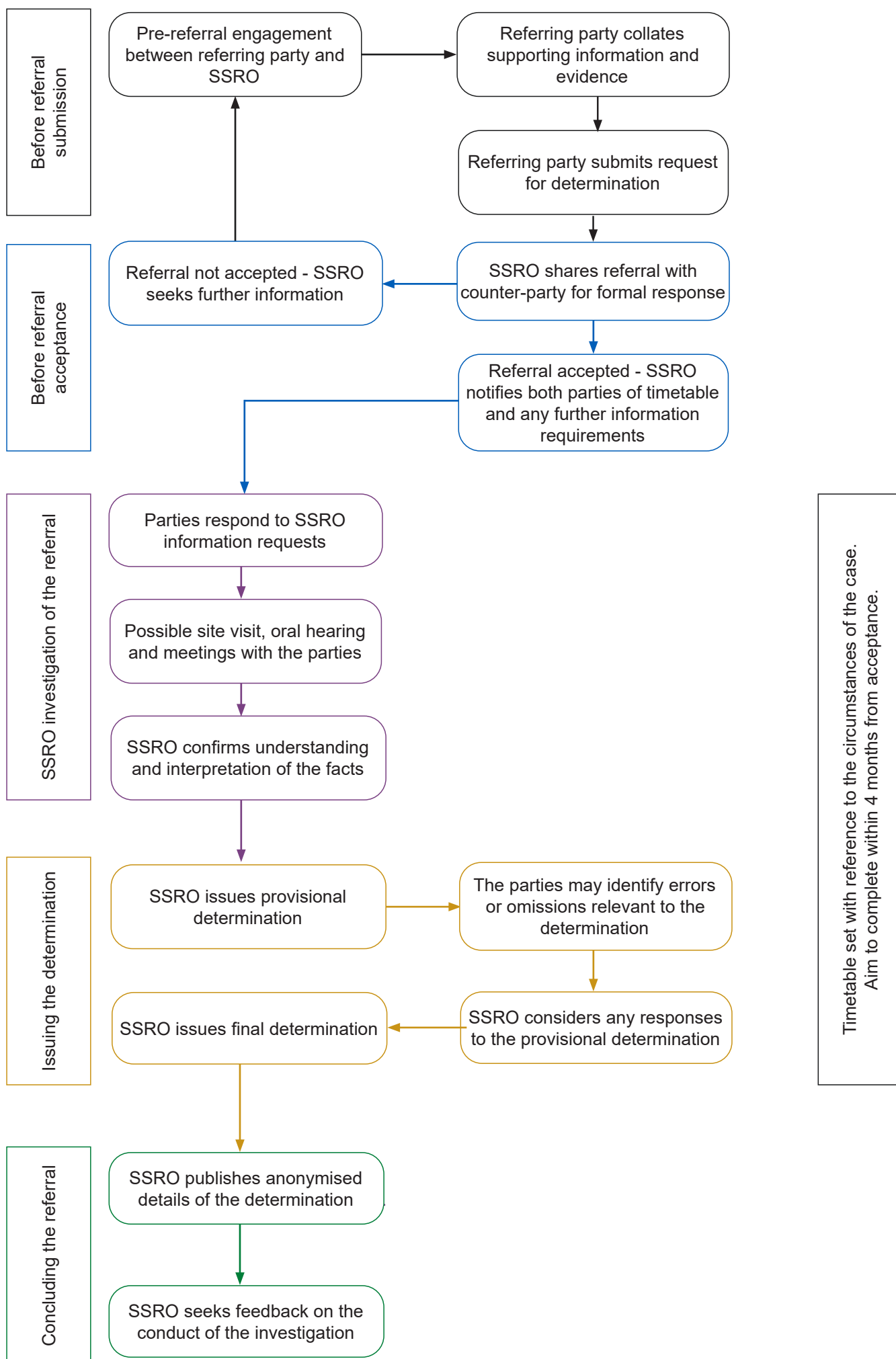
1 Appointment to the Referral Committee is in accordance with the terms of reference set out in the [SSRO Corporate Governance Framework](#). A profile of both independent members and non-Executive Members from whom a Referral Committee may be drawn is available on the SSRO website.

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

## 3. Summary of the stages in making a 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 4 to 10.

## Indicative process for SSRO determination



## 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 referral for a determination. Early engagement should support the parties to:
- clarify the question and confirm whether it is within the SSRO's jurisdiction;
  - 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 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](mailto: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 referral 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 determination.<sup>3</sup> For example, "The referral is made under section 35(1)(b) of the Defence Reform Act 2014 and Regulation 52(1)(a) 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.

<sup>3</sup> Appendix 1 sets out the grounds under the Act and the Regulations for which a determination may be sought and made.



- 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, the SSRO has published a [referral submission template](#) which will assist the referring party or parties to provide the information necessary for the SSRO to consider a referral. All information provided with the referral submission should be relevant to the referral and clearly referenced in the submission.
- 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 sufficient<sup>4</sup> information is provided.

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<sup>4</sup> 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 a 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 make a determination or whether the Act 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:
- the efforts made by the parties to the matter to resolve any dispute giving rise to the referral;
  - 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 sufficient<sup>5</sup> 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 may seek a meeting with the referring party or parties to clarify the question for determination or supporting information. Such meetings may take place via conference call facilities or in person.
- 5.6 The SSRO will share the referring party's initial submission, including any supporting information, with the other party or parties to the referral and will invite them to provide a formal written response within a reasonable time period. Any response provided will be shared with the referring party.

### Accepting the request for determination

- 5.7 The SSRO will notify all the parties engaged in the referral of its decision to accept or reject the referral, giving reasons. If dissatisfied with the SSRO's decision, a party may raise its concerns under the SSRO's complaints policy.<sup>6</sup> It is open to parties to request a court to review the lawfulness of the decision through a judicial review process.
- 5.8 When the SSRO notifies the parties it has accepted a request for a determination, the timeframe for the SSRO to give the determination will start on the date of this notice.

<sup>5</sup> See footnote 4.

<sup>6</sup> <https://www.gov.uk/government/publications/ssro-complaints-policy>.

5.9 The SSRO will also confirm the following to the parties:

- the question accepted;
- the timetable for making the determination;
- expectations during the referral process;
- contact details and composition of the Case Team;
- the composition of the Referral Committee; and
- measures for communicating securely with the parties.

5.10 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 acceptance of a referral on the SSRO's website**

5.11 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 parties engaged in the matter referred. 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 four months of acceptance;
  - the circumstances of the case, including the complexity, scope and urgency of the matter referred;
  - the clarity and completeness of the evidence and representations submitted by the parties and their relevance to the matter referred;
  - the extent of agreement between the parties to the referral as to the facts of the case; and
  - the need for the SSRO to undertake a site visit or hold an oral hearing to understand the matter referred and the circumstances giving rise to the referral.
- 6.2 If there is a commercial imperative which affects the timeframe for making a determination this should be made known to the SSRO when requesting the determination or at the earliest opportunity thereafter.
- 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 make a determination within a planned timeframe will depend on:
- effective communication of issues;
  - submission of the required supporting information; and
  - timely engagement and 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 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 (which will be made available to the parties) 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.
- 7.3 The SSRO uses a number of methods to obtain information, not all of which will be applicable to each investigation of a referral for a determination. The SSRO has set out below the most common ways in which information is likely to be obtained.

### Meeting with the parties to the referral (if necessary)

- 7.4 The SSRO may arrange to meet with a party to the referral at any time 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 to make its determination.

### Input from relevant third parties

- 7.5 The SSRO may seek input to its investigation from relevant third parties including subject matter experts that it may engage to provide advice on matters relevant to the referral. Where information or advice is provided to the SSRO by third parties, the SSRO will provide the parties to the referral with a written summary of points of relevance to the determination.

### Information gathering

- 7.6 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.
- 7.7 It may be that multiple requests for information will be required before the SSRO can give a determination. 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.
- 7.8 The SSRO will set a date by which parties are expected to respond to information requests. At times, this may require a short turnaround. Parties will be invited to notify the SSRO in case of difficulty.

- 7.9 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**

- 7.10 We will share and seek comments on other submissions made by the parties, as necessary to ensure a fair process.
- 7.11 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, 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.
- 7.12 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**

- 7.13 The SSRO will confirm its understanding and interpretation of the facts of the case with the parties during its investigation of the referral. 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**

- 7.14 The SSRO may organise a site visit to the contractor's facilities related to the referral if that would assist it to make a determination on the matter referred. 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.
- 7.15 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.
- 7.16 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.
- 7.17 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

- 7.18 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 questions of both parties.
- 7.19 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.
- 7.20 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(s) 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 to the referral 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). The SSRO has published separate [guidance](#) on the approach it will follow when considering, following a request, whether to require the payment of costs by one party to another when making a determination.

### 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 interests 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 shortly 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 made 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

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
<b>Adjustment to the price payable under a target price contract (section 16(2)(b))</b>	The SSRO <b>must</b> determine the amount of any adjustment to the total price payable under a target price contract.	The Secretary of State, an authorised person or the primary contractor	—	—
<b>Contract pricing method (section 16(4)(a))</b>	The SSRO <b>must</b> determine whether the method used to determine the price payable under a qualifying defence contract or a component of that contract was appropriate.	The Secretary of State, an authorised person or the primary contractor	Within two years of the contract completion date or, if the application relates to a component, within two years of the component completion date.	The Secretary of State may not make a reference unless - <ol style="list-style-type: none"> <li>a. the Secretary of State has sent the primary contractor a written notice requiring the primary contractor to show that the requirements in relation to which the proposed application is to be made have been met;</li> <li>b. at least 20 working days have elapsed since the date of that notice; and</li> <li>c. no response, or no response which the Secretary of State considers to be satisfactory, has been received.</li> </ol>

Ground	Function	Referring parties	Time limit	Procedural requirements
<p><b>Contract profit rate adjustments (section 18(3) and regulation 18)</b></p>	<p>The SSRO <b>may</b> determine the following matters in relation to a contract or component of contract which uses a default pricing method:</p> <ul style="list-style-type: none"> <li>a. whether any baseline profit rate identified under step 1 of regulation 11 is correct in relation to the contract or component;</li> <li>b. whether the amount of any adjustment agreed under step 2 or 4 of regulation 11 (including an adjustment agreed on a group basis under regulation 13) is appropriate; and</li> <li>c. whether any adjustment agreed under step 3 of regulation 11 is in accordance with the Regulations.</li> </ul> <p>If the SSRO determines that:</p> <ul style="list-style-type: none"> <li>a. the baseline profit rate mentioned in paragraph (1)(a) is incorrect;</li> <li>b. any adjustment mentioned in paragraph (1)(b) is inappropriate; or</li> <li>c. the adjustment mentioned in paragraph (1)(c) is not in accordance with these Regulations,</li> </ul> <p>it may determine that the contract price is to be adjusted by a specified amount.</p>	<p>Secretary of State, an authorised person or the primary contractor</p>	<p>Within two years after the contract completion date or, where the application is made in respect of a component, the component completion date.</p>	<p>—</p>

Ground	Function	Referring parties	Time limit	Procedural requirements
<p><b>Allowable Costs (sections 20(5)(a), 20(6) and regulation 19)</b></p>	<p>The SSRO <b>must</b> determine the extent to which a cost is or would be an Allowable Cost under a qualifying defence contract or a component of such a contract.</p> <p>Consequent to such a determination, the SSRO <b>may</b> determine that the price payable under a qualifying defence contract is to be adjusted by an amount specified by the SSRO.</p>	<p>The Secretary of State, an authorised person, a primary contractor under a qualifying defence contract, or a potential primary contractor</p>	<p>Within two years after the contract completion date or, where the application is made in respect of a component, the component completion date.</p>	<p>The Secretary of State may not make an application under section 20(5) for a determination on the extent to which a particular cost is an allowable cost unless—</p> <ul style="list-style-type: none"> <li>a. the Secretary of State has sent the primary contractor a written notice requiring the primary contractor to show that the requirements set out in section 20(2)(a) to (c) are met in relation to that cost;</li> <li>b. at least 20 working days have elapsed since the date of that notice; and</li> <li>c. no response, or no response which the Secretary of State considers to be satisfactory, has been received.</li> </ul>
<p><b>Method used to determine an allowable cost (sections 20(5)(b), 20(6) and regulation 19)</b></p>	<p>The SSRO <b>must</b> determine the extent to which a method which is used or may be used to determine a cost under a qualifying defence contract or a component of such a contract would result in that cost being an allowable cost under such a contract or component.</p>	<p>The Secretary of State, an authorised person, a primary contractor under a qualifying defence contract, or a potential primary contractor</p>	<p>Within two years after the contract completion date or, where the application is made in respect of a component, the component completion date.</p>	

Ground	Function	Referring parties	Time limit	Procedural requirements
<p><b>Final Price Adjustment (section 21(3)(b) and regulation 16)</b></p>	<p>The SSRO <b>may</b> determine the amount of a final price adjustment under a qualifying defence contract or a component of such a contract where the Secretary of State and the primary contractor are unable to agree the amount.</p>	<p>The Secretary of State, an authorised person or the primary contractor</p>	<p>After the contract completion date or, where the reference relates to a component, after the component completion date.</p> <p>No later than two years after the contract completion date or, where the reference relates to a component, after the component completion date.</p>	<p>The Secretary of State may notify the primary contractor of their intention to make a final price adjustment within 3 months of receiving a contract costs statement or 15 months after the contract completion date, whichever is the sooner.</p> <p>The primary contractor may notify the Secretary of State that it intends to make a final price adjustment within 3 months after providing a contract costs statement.</p> <p>Where a notice is given by either party, the parties must attempt to agree the amount of the final price adjustment prior to a referral to the SSRO.</p>
<p><b>Penalty notice matters (section 32(8))</b></p>	<p>The SSRO <b>must</b> make a determination, on receipt of an application, as to:</p> <ol style="list-style-type: none"> <li>a. whether the person has contravened section 31 or failed to take the steps specified in a compliance notice (or both);</li> <li>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</li> <li>c. the amount of the penalty.</li> </ol>	<p>A person in receipt of a penalty notice from the Secretary of State</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
<b>Penalty notice matters (section 32(8))</b>	Consequent to such a determination, the SSRO <b>may</b> : <ol style="list-style-type: none"> <li>a. vary the amount of the penalty or cancel the penalty notice; and</li> <li>b. state the date by which the penalty must be paid (if not cancelled).</li> </ol>			
<b>Prescribed matters (section 35(1)(b) and regulation 52(1)(a))</b>	The SSRO <b>must</b> make a determination on the following matters relating to a qualifying defence contract: <ol style="list-style-type: none"> <li>a. the defined pricing structure; and</li> <li>b. output metrics that the contractor must use in all reports provided under Part 5 of the Regulations for that contract.</li> </ol>	The Secretary of State, an authorised person, or the primary contractor.	<p><b>For QDCs by virtue of section 14(3) of the Act</b></p> No later than 6 months after: <ol style="list-style-type: none"> <li>a. the date the QDC is entered into; or</li> <li>b. the date the QDC is subsequently amended, if so, in a way that affects the prescribed matters.</li> </ol> <p><b>For QDCs by virtue of section 14(4) or 14(5) of the Act</b></p> No later than 6 months after: <ol style="list-style-type: none"> <li>a. the date the contract became a QDC; or</li> <li>b. if the QDC is subsequently amended and that amendment affects the prescribed matters, the date of the amendment.</li> </ol>	The Secretary of State may not make a reference unless: <ol style="list-style-type: none"> <li>a. the Secretary of State has sent the primary contractor a written notice requiring the primary contractor to show that the requirements in relation to which the proposed reference is to be made have been met;</li> <li>b. at least 20 working days have elapsed since the date of that notice; and</li> <li>c. no response, or no response which the Secretary of State considers to be satisfactory, has been received.</li> </ol>

Ground	Function	Referring parties	Time limit	Procedural requirements
<p><b>Prescribed matters (section 35(1)(b) and regulation 52(1)(b))</b></p>	<p>The SSRO <b>must</b> make a determination on the following matter relating to a qualifying defence contract:</p> <ul style="list-style-type: none"> <li>a. whether any part of the contract should be treated as a component of the contract because the conditions in regulation 9A(1) are met in relation to that part.</li> </ul>	<p>The Secretary of State, an authorised person, or the primary contractor.</p>	<p>Within two years of the contract completion date or, if the reference is made in respect of a component, within two years of the component completion date.</p>	<p>The Secretary of State may not make a reference unless:</p> <ul style="list-style-type: none"> <li>a. the Secretary of State has sent the primary contractor a written notice requiring the primary contractor to show that the requirements in relation to which the proposed reference is to be made have been met;</li> <li>b. at least 20 working days have elapsed since the date of that notice; and</li> <li>c. no response, or no response which the Secretary of State considers to be satisfactory, has been received.</li> </ul>
<p><b>Matters related to a pre-regime contract (section 35(7) and regulation 55)</b></p>	<p>The SSRO <b>must</b> give a determination in relation to any matter referred to it where:</p> <ul style="list-style-type: none"> <li>a. a contract was entered into before 18 December 2014;</li> <li>b. the contract required the Review Board for Government Contracts to make a determination in relation to any matter referred to it; and</li> <li>c. a party to the contract refers the matter for determination after 18 December 2014.</li> </ul>	<p>A party to the contract</p>	<p>No later than 2 years after:</p> <ul style="list-style-type: none"> <li>a. the date described in the contract as the contract completion date; or</li> <li>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</li> <li>c. if the contract is terminated before either of the dates described in (a) or (b), the date that the contract is terminated.</li> </ul>	<p>—</p>



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:

- with respect to the **Adjustment of price payable in a target price contract**, the referring parties include the contracting authority and the sub-contractor, instead of the primary contractor;
- with respect to the **Prescribed matters**, 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 **Contract profit rate adjustments**, the referring parties include the contracting authority or the sub-contractor, instead of the primary contractor. 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
<b>Conduct in accessing records (section 23(6) and regulation 21)</b>	The SSRO <b>may</b> , on an application by a person who is required by the Regulations to keep relevant records 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.	A person required to keep relevant records	No later than 3 months after the duty to keep the relevant records ends
<b>Obligation of confidentiality (section 27(3) and regulation 47(3))</b>	In circumstances where: <ol style="list-style-type: none"> <li>a person notifies the Secretary of State that intends not to comply with a requirement to permit examination of records, to make reports or to notify relevant events, circumstances or information owing to an obligation of confidentiality; and</li> <li>the Secretary of State reasonably suspects that an obligation of confidentiality has been entered into otherwise than for genuine commercial reasons,</li> </ol> the Secretary of State may refer the matter to the SSRO for investigation and the SSRO <b>must</b> investigate whether the obligation has been entered into 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 with a relevant requirement

