
Committee Stage: Wednesday 25 January 2023

Procurement Bill [Lords] (Amendment Paper)

This document lists all amendments tabled to the Procurement Bill [Lords]. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

★ New Amendments.

☆ Amendments which will comply with the required notice period at their next appearance.

New Amendments: 25 to 88 and NC9 to NC13

Alex Burghart

27

★ Clause 2, page 2, line 13, leave out “including the NHS”

Member’s explanatory statement

This amendment would remove the specific reference to the NHS because the NHS falls within the definition of “public authority” regardless.

Florence Eshalomi

9

Clause 12, page 9, line 24, after “money” insert “, including value that is social value within the meaning of the Public Services (Social Value) Act 2012, overall providing the optimum balance of economy, efficiency, effectiveness and equity”

Member’s explanatory statement

This amendment would require social value to be considered in the procurement objectives.

Florence Eshalomi

10

Clause 12, page 9, line 25, after “benefit” insert “and public value, including in relation to benefits and value contributing to socio-economic development, to be realised over time and in relation to areas of public responsibility of other contracting authorities”

Member’s explanatory statement

This amendment would require public value to be considered in the procurement objectives.

Florence Eshalomi

1

Clause 12, page 9, line 36, after “enterprises” insert “and co-operative societies”

Member’s explanatory statement

This amendment, together with Amendments 2 and 3, would ensure that the barriers to cooperative societies are considered by contracting authorities during the procurement process.

Florence Eshalomi

22

☆ Clause 13, page 10, line 2, leave out “may” and insert “must”

Member’s explanatory statement

This amendment would require a Minister to publish a National Procurement Policy Statement.

Alex Burghart

28

★ Clause 13, page 10, line 9, leave out paragraph (b)

Member’s explanatory statement

This amendment would remove the requirement for a Minister of the Crown to give due regard to certain principles before publishing the national procurement policy statement.

Florence Eshalomi

7

Clause 13, page 10, line 12, after “environmental” insert “, cyber security”

Member’s explanatory statement

This amendment would make cyber security one of the strategic national priorities for procurement.

Florence Eshalomi

11

Clause 13, page 10, line 12, after “environmental” insert “, national security”

Member’s explanatory statement

This amendment would add national security as part of procurement principles.

Alex Burghart

29

- ★ Clause 13, page 10, line 29, leave out subsection (4)

Member's explanatory statement

This amendment would remove the requirement for a Minister of the Crown to include particular strategic priorities in the national procurement policy statement.

Florence Eshalomi

20

- ☆ Clause 16, page 12, line 35, after "suppliers" insert ", especially small and medium-sized enterprises,"

Member's explanatory statement

This amendment, with Amendment 21, seeks to ensure preliminary engagement explicitly refers to SMEs.

Florence Eshalomi

21

- ☆ Clause 16, page 12, line 38, after "suppliers" insert ", especially among small and medium-sized enterprises,"

Member's explanatory statement

This amendment, with Amendment 20, seeks to ensure preliminary engagement explicitly refers to SMEs.

Alex Burghart

30

- ★ Clause 19, page 14, line 21, at end insert—

"(ba) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;"

Member's explanatory statement

This amendment would allow contracting authorities to disregard tenders offering an abnormally low price.

Alex Burghart

31

★ Clause 19, page 14, line 23, at end insert—

- “(3A) Before disregarding a tender under subsection (3)(ba) (abnormally low price), a contracting authority must—
- (a) notify the supplier that the authority considers the price to be abnormally low, and
 - (b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.
- (3B) If the supplier demonstrates to the contracting authority’s satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(ba) (abnormally low price).”

Member’s explanatory statement

This amendment would require contracting authorities to notify suppliers of the fact that the contracting authority considers the price to be abnormally low and give suppliers reasonable opportunity to demonstrate that it is workable before disregarding their tender.

Florence Eshalomi

25

★ Clause 21, page 16, line 29, at end insert—

- “(6A) Subject to subsection (6D), subsection (6B) applies where a tender notice or associated tender document indicates that a public contract is suitable for small and medium-sized enterprises.
- (6B) If no small or medium-sized enterprise submits a tender, the contracting authority must withdraw the tender notice, and may not republish the tender notice until it has fulfilled the condition in subsection (6C).
- (6C) The condition is that the contracting authority has conducted preliminary market engagement (see section 16) with a view to engaging with suppliers who are small and medium-sized enterprises.
- (6D) Subsection (6B) does not apply if the contracting authority can demonstrate that it fulfilled the condition in subsection (6C) before the tender notice was published.”

Member’s explanatory statement

This amendment would require contracting authorities to engage with small and medium-sized enterprises before describing a contract as suitable for SMEs. The requirement would only apply if no SME submits a tender.

Florence Eshalomi 12
Chris Evans

Clause 23, page 18, line 4, at end insert—

“(3A) Where—

- (a) the contracting authority is the Ministry of Defence, and
 - (b) the contract concerns defence or security,
- the award criteria must be weighted so as to advantage United Kingdom suppliers.”

Member’s explanatory statement

This amendment would give advantage to UK based suppliers in the case of defence or security contracts under the Ministry of Defence.

Florence Eshalomi 18

Clause 29, page 20, line 42, leave out “paragraph 14 of Schedule 7” and insert “paragraph 42A of Schedule 6”

Member’s explanatory statement

This amendment is consequential on Amendment 15.

Alex Burghart 32

★ Clause 32, page 23, line 22, after “operates” insert “wholly or partly”

Member’s explanatory statement

This amendment would mean that an organisation could meet the test of being a “supported employment provider” if it only partly has the purpose of providing employment or support to disabled or disadvantaged individuals.

Alex Burghart 33

★ Clause 32, page 23, line 24, leave out from “individuals” to end of line 26 and insert “where—

- (a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,

- (b) if a particular part of the organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or
- (c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of—
 - (i) those organisations,
 - (ii) where a particular part of each organisation is to perform the contract, those parts, or
 - (iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.”

Member’s explanatory statement

This amendment would mean that an organisation could meet the test of being a “supported employment provider” if part of the organisation meets that test and that part is to perform the contract, or the test is met by the combined workforce of organisations or parts of organisations that will together perform the contract.

Florence Eshalomi

13

Clause 41, page 28, line 27, at beginning insert “Subject to subsection (4A),”

Member’s explanatory statement

This is a paving amendment for Amendment 14, which would prevent the award of direct contracts to excludable suppliers when the supplier was excluded as a threat to national security.

Florence Eshalomi

14

Clause 41, page 28, line 38, at end insert—

“(4A) If the supplier is an excludable supplier by virtue of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security), the contracting authority may not award the contract to that supplier.”

Member’s explanatory statement

This amendment would prevent the award of direct contracts to excludable suppliers when the supplier was excluded as a threat to national security.

Florence Eshalomi

5

Clause 44, page 30, line 25, at end insert—

“(4) Any Minister, peer or senior civil servant involved in recommending a supplier for a contract under section 41 or 43 must make a public declaration to the Cabinet Office of any private interest in that supplier.”

Member’s explanatory statement

This amendment would implement the recommendation of the National Audit Office that any contracts awarded under emergency provisions or direct awards should include transparency declarations.

Florence Eshalomi

4

Clause 52, page 35, line 23, leave out “£5 million” and insert “£2 million”

Member’s explanatory statement

This amendment would reinstate the threshold for the setting and publication of key performance indicators for major projects at £2m.

Florence Eshalomi

26

★ Clause 53, page 36, line 9, leave out “£5 million” and insert “£2 million”

Member’s explanatory statement

This amendment would reinstate the threshold for publishing the contracts in major projects at £2m.

Alex Burghart

34

★ Clause 54, page 37, line 14, at end insert—

<p>“The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and is subject to a negotiated tendering period</p>	<p>No minimum period</p>
<p>The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and tenders may be submitted only by pre-selected suppliers</p>	<p>10 days”</p>

Member’s explanatory statement

This amendment would set different minimum tendering periods where tenders may only be submitted by pre-selected suppliers (depending on whether the contracting authority and suppliers agree on a tendering period or not).

Alex Burghart

35

★ Clause 54, page 37, line 35, at end insert—

““central government authority” has the meaning given in paragraph 5 of Schedule 1 (threshold amounts);

“negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers;”

Member’s explanatory statement

This amendment would define terms used in Amendment 34.

Alex Burghart

36

★ Clause 54, page 38, line 2, at end insert—

““pre-selected supplier” means a supplier that—

- (a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or
- (b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market;”

Member's explanatory statement

This amendment would define a term used in Amendment 34.

Alex Burghart

37

★ Clause 56, page 38, line 24, at end insert—

“(za) the standard adopts an internationally-recognised equivalent,
or”

Member's explanatory statement

This amendment would allow procurement documents to refer to a UK standard if the standard adopts an internationally-recognised equivalent.

Alex Burghart

38

★ Clause 56, page 38, line 26, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on equivalent provision being made by the new subsections inserted by Amendment 39.

Alex Burghart

39

★ Clause 56, page 38, line 29, at end insert—

“(3A) If the procurement documents refer to a United Kingdom standard, they must provide that tenders, proposals or applications that the contracting authority considers satisfy an equivalent standard from another state, territory or organisation of states or territories will be treated as having satisfied the United Kingdom standard.

(3B) In considering whether a standard is equivalent to a United Kingdom standard for the purposes of subsection (3A), a contracting authority may have regard to the authority's purpose in referring to the standard.

(3C) A contracting authority may require certification, or other evidence, for the purpose of satisfying itself that a standard is satisfied or equivalent.”

Member's explanatory statement

This amendment would clarify how a contracting authority is to assess whether tenders, proposals or applications satisfy equivalent standards to United Kingdom standards (including that it may require evidence).

Alex Burghart

40

- ★ Clause 56, page 38, line 36, leave out “such matters” and insert “the matters mentioned in subsection (4)”

Member’s explanatory statement

This amendment would clarify that the requirement in subsection (5) only applies where the matters mentioned in subsection (4) are referred to in the procurement documents.

Marsha De Cordova

8

Charlotte Nichols

Kim Johnson

Marion Fellows

Apsana Begum

Mick Whitley

Dawn Butler

Sarah Champion

Margaret Ferrier

Claudia Webbe

John McDonnell

Valerie Vaz

Debbie Abrahams

Jon Trickett

Clause 56, page 38, line 38, at end insert—

- “(5A) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications in the procurement documents must, except in duly justified cases, be drawn up so as to take into account accessibility criteria for disabled persons or design for all users.”

Member’s explanatory statement

This amendment would reproduce on the face of the Bill requirements for accessibility criteria for disabled persons which are included in the Public Contracts Regulations 2015, which this Bill will replace.

Alex Burghart

41

- ★ Clause 56, page 39, leave out lines 9 to 12 and insert—

- “(b) are primarily developed for use in the United Kingdom, or part of the United Kingdom.”

Member’s explanatory statement

This amendment would remove the definition of “standards” and clarify the definition of “United Kingdom standards”.

Florence Eshalomi

23

- ☆ Clause 57, page 39, line 22, after “mandatory” insert “or discretionary”

Member’s explanatory statement

This amendment would make a supplier or an associated person on the debarment list for a discretionary ground an excluded supplier.

Florence Eshalomi

24

- ☆ Clause 57, page 39, line 29, leave out subsection (b)

Member’s explanatory statement

This amendment is consequential on Amendment 23.

Alex Burghart

42

- ★ Clause 62, page 43, line 30, leave out from “section” to end of line 39 and insert “and, as part of that entry, must—

- (a) state the exclusion ground to which the entry relates, and whether it is a mandatory exclusion ground or a discretionary exclusion ground, and
- (b) indicate the date on which the Minister expects the supplier to cease to be an excluded or excludable supplier by virtue of the stated exclusion ground (and, accordingly, expects the entry to be removed from the list).

- (4) A list kept for the purposes of this section is the “debarment list”.

Member’s explanatory statement

This amendment would make it clearer that each entry will relate to one exclusion ground and, as such, could be challenged individually.

Alex Burghart

43

- ★ Clause 62, page 43, line 44, at end insert—

“(5A) The Minister may not enter a supplier’s name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the “debarment standstill period”).

- (5B) The Minister may not enter a supplier’s name on the debarment list if—
- (a) during the debarment standstill period—

- (i) proceedings under section (*Debarment decisions: interim relief*)(1) (interim relief) are commenced, and
- (ii) the Minister is notified of that fact, and
- (b) the proceedings have not been determined, discontinued or otherwise disposed of.”

Member’s explanatory statement

This amendment would ensure that an application for interim relief under the new clause inserted by NC9 would suspend the Minister’s decision to add a supplier’s name to the debarment list.

Alex Burghart

44

- ★ Clause 62, page 44, line 1, leave out from “review” to end of line 5 and insert—
 - “(b) may remove an entry from the debarment list at any time, and
 - (c) may revise a date indicated under subsection (3)(b).
- (7) If a Minister of the Crown voluntarily removes an entry from the debarment list in connection with proceedings under section 64 (*debarment decisions: appeals*), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.
- (7A) A Minister of the Crown must remove an entry from the debarment list if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry.”

Member’s explanatory statement

This amendment would restrict modifications that could be made to the debarment list, provide for the Minister to voluntarily suspend a decision to add an entry to the debarment list in connection with proceedings, and clarify that the Minister must remove an entry where a particular ground no longer applies.

Alex Burghart

45

- ★ Clause 63, page 44, line 16, leave out from “for” to end of line 17 and insert—
 - “(a) the removal of an entry in respect of the supplier from the debarment list, or
 - (b) the revision of the date indicated as part of such an entry under section 62(3)(b).”

Member’s explanatory statement

This amendment would ensure that a supplier can apply to change the date indicating when it will cease to be an excluded or excludable supplier.

Alex Burghart

46

- ★ Clause 63, page 44, line 21, leave out from “since” to “, or” and insert “the entry was made or, where relevant, revised”

Member’s explanatory statement

This amendment would allow for the fact that a supplier may make different applications in respect of the same or different entries.

Alex Burghart

47

- ★ Clause 63, page 44, line 23, after “subsection (1)” insert “in relation to the entry or, where relevant, revision”

Member’s explanatory statement

This amendment is consequential on Amendment 45.

Alex Burghart

48

- ★ Clause 64, page 44, line 28, leave out subsections (1) and (2) and insert—

“(1) A supplier may appeal to the court against a decision of a Minister of the Crown—

- (a) to enter the supplier’s name on the debarment list,
- (b) to indicate a particular date as part of an entry in respect of the supplier under section 62(3)(b), or
- (c) not to remove an entry in respect of the supplier from the debarment list, or revise a date indicated as part of such an entry, following an application under section 63 (application for removal).

(2) Proceedings under subsection (1)—

- (a) may only be brought by a United Kingdom supplier or a treaty state supplier,
- (b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and
- (c) must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the Minister’s decision.

(3) Subsection (4) applies if, in proceedings under subsection (1)(a), the court is satisfied that—

- (a) the Minister made a material mistake of law, and
- (b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering

procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).

- (4) The court may make one or more of the following orders—
- (a) an order setting aside the Minister’s decision;
 - (b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).
- (5) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister’s decision.
- (6) In this section—

“the court” has the meaning given in section (*Debarment decisions: interim relief*) (interim relief);

the reference to a supplier being excluded includes a reference to—

- (a) the supplier’s tender being disregarded under section 26;
- (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).”

Member’s explanatory statement

This amendment would replace a power to make provision about appeals with detailed provision for their operation.

Alex Burghart

49

★ Page 44, line 34, leave out Clause 65

Member’s explanatory statement

This amendment indicates the Government’s intention to oppose the Question that clause 65 stand part of the Bill.

Alex Burghart

50

★ Clause 66, page 45, line 30, at end insert—

- “(5A) The implied term does not prevent a contracting authority—
- (a) requiring the use of a particular system in relation to electronic invoices;

- (b) in the case of a defence authority (as defined in section 7(5)), requiring the use of a system that requires the payment of fees by the supplier.”

Member’s explanatory statement

This amendment would ensure that a contracting authority can require the use of a particular system in relation to electronic invoices, and that a contracting authority that is a defence authority can require that the system is one that requires the payment of fees by the supplier.

Alex Burghart

51

- ★ Clause 67, page 46, line 33, at end insert—

“(za) “electronic invoice” and “required electronic form” have the meanings given in section 66(3);”

Member’s explanatory statement

This amendment would clarify that “electronic invoice” and “required electronic form” in clause 67(8) have the same meanings as in clause 66(3).

Alex Burghart

52

- ★ Clause 67, page 46, line 36, after “address” insert “, or through an electronic invoicing system,”

Member’s explanatory statement

This amendment would clarify that a reference to a contracting authority receiving an invoice for the purposes of clause 67 includes receiving an electronic invoice through a system specified in the contract.

Alex Burghart

53

- ★ Clause 68, page 47, line 18, at end insert “, or
(d) in relation to a concession contract.”

Member’s explanatory statement

This amendment would exempt contracting authorities from the requirement to publish a payments compliance notice in relation to a concession contract.

Alex Burghart

54

- ★ Clause 74, page 51, line 5, leave out paragraph (c)

Member’s explanatory statement

This amendment would remove unnecessary provision, as light touch contracts are excluded from the whole clause under subsection (6)(b).

Alex Burghart

55

- ★ Clause 76, page 51, line 40, after “modification” insert “—
(a) in respect of which the contracting authority is required to
publish a contract change notice under section 74, and”

Member’s explanatory statement

This amendment would limit the requirement to publish a copy of a contract as modified or a modification to those modifications in respect of which the contracting authority was required to publish a contract change notice.

Alex Burghart

56

- ★ Clause 76, page 51, line 43, leave out paragraphs (a) to (c)

Member’s explanatory statement

This amendment is consequential on Amendment 55.

Alex Burghart

57

- ★ Clause 76, page 52, line 3, leave out “or a transferred Northern Ireland authority”

Member's explanatory statement

This amendment is consequential on Amendment 55.

Alex Burghart

58

- ★ Clause 76, page 52, line 7, leave out "or a transferred Northern Ireland procurement arrangement"

Member's explanatory statement

This amendment is consequential on Amendment 55.

Florence Eshalomi

19

Clause 78, page 53, line 38, leave out "paragraph 14 of Schedule 7" and insert "paragraph 42A of Schedule 6"

Member's explanatory statement

This amendment is consequential on Amendment 15.

Florence Eshalomi

2

Clause 85, page 57, line 27, after "enterprises" insert "and co-operative societies"

Member's explanatory statement

See explanatory statement to Amendment 1.

Alex Burghart

59

- ★ Clause 90, page 60, line 32, at end insert—

"(1A) Regulations under subsection (1) may only include provision that is equivalent to provision in—

- (a) subsection (1), (2), (5) or (6) of section 88 (treaty state suppliers),
- (b) section 89 (treaty state suppliers: non-discrimination), or
- (c) Schedule 9 (specified international agreements).

- (1B) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.
- (1C) In subsection (1B), the reference to being a signatory to an international agreement includes a reference to having—
- (a) exchanged instruments, where the exchange constitutes the agreement;
 - (b) acceded to the agreement.”

Member’s explanatory statement

This amendment would mean that a Minister of the Crown or Scottish Ministers, in making regulations under clause 90, may only make provision equivalent to provision in Part 7 and if the Minister considers, or Scottish Ministers, consider it necessary in order to ratify or comply with an international agreement.

Alex Burghart

60

★ Clause 90, page 60, line 34, at end insert—

- “(b) a reference to discrimination is a reference to discrimination as defined in section 89.”

Member’s explanatory statement

This amendment would make clear that “discrimination” has the same meaning as in clause 89.

Alex Burghart

61

★ Clause 94, page 62, line 37, after first “a” insert “covered”

Member’s explanatory statement

This amendment would restrict the requirements in respect of electronic communications systems to covered procurements.

Alex Burghart

62

★ Clause 94, page 62, line 42, at end insert—

- “(2A) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used—
- (a) after the award of the public contract, or
 - (b) in relation to a utilities dynamic market.”

Member's explanatory statement

This amendment would create an exception to the requirement for electronic communications systems to be free of charge and readily accessible to suppliers where those systems are used after award of a public contract or in relation to a utilities dynamic market.

Alex Burghart

63

- ★ Clause 94, page 63, line 1, leave out "Subsection (1)" and insert "This section"

Member's explanatory statement

This amendment and Amendment 64 would extend the exception in subsection (3) to any requirement in clause 94 the contracting authority considers poses a security risk.

Alex Burghart

64

- ★ Clause 94, page 63, line 2, after "communication" insert ", or the use of an electronic communication system meeting the requirements of subsection (2),"

Member's explanatory statement

This amendment and Amendment 63 would extend the exception in subsection (3) to any requirement in clause 94 the contracting authority considers poses a security risk.

Alex Burghart

65

- ★ Clause 97, page 64, line 6, at end insert—

"(6A) A supplier may not bring proceedings under this Part on the grounds that one or more of the following decisions of a Minister of the Crown was unlawful—

- (a) a decision to enter a supplier's name on the debarment list;
- (b) a decision relating to the information included in an entry on the debarment list;
- (c) a decision not to remove an entry from the debarment list, or revise information included in such an entry,

(see section 64 (debarment decisions: appeals))."

Member's explanatory statement

This amendment would ensure that challenges to debarment decisions are all dealt with under clause 64 (debarment decisions: appeals).

Alex Burghart

66

- ★ Clause 107, page 70, line 3, leave out “only” and insert “wholly or mainly”

Member’s explanatory statement

This amendment would mean that a public undertaking or private utility that operates “wholly or mainly in relation to Wales” will be treated as a devolved Welsh authority.

Alex Burghart

67

- ★ Clause 107, page 70, line 12, leave out paragraph (b)

Member’s explanatory statement

This amendment would mean that a contracting authority whose functions are exercisable “wholly or mainly in relation to Wales” will be treated as a devolved Welsh authority regardless of the subject-matter of a particular procurement.

Alex Burghart

68

- ★ Clause 109, page 71, line 12, after “section 66” insert “or section 121”

Member’s explanatory statement

This amendment would mean that a Minister of the Crown could not make consequential provision for the purpose of regulating a devolved Welsh authority without the consent of Welsh Ministers.

Alex Burghart

69

- ★ Clause 109, page 71, line 32, at end insert—
“(ba) section (*Trade disputes*) (trade disputes);”

Member’s explanatory statement

This amendment would allow a Minister of the Crown to exercise the trade dispute power under NC11 in relation to devolved Welsh authorities and transferred Northern Ireland authorities.

Alex Burghart

70

- ★ Clause 111, page 73, line 4, leave out “A Minister of the Crown or”

Member’s explanatory statement

This amendment would remove the power of a Minister of the Crown to amend Scottish procurement legislation to apply it to procurement under devolved Scottish procurement arrangements by contracting authorities.

Alex Burghart

71

- ★ Clause 111, page 73, line 5, leave out from “of” to end of line 7 and insert—

- “(a) applying it in relation to procurement carried out by contracting authorities under devolved Scottish procurement arrangements;
- (a) disapplying it in relation to procurement carried out by devolved Scottish authorities under—
- (i) reserved procurement arrangements,
 - (ii) devolved Welsh procurement arrangements, or
 - (iii) transferred Northern Ireland procurement arrangements.”

Member’s explanatory statement

This amendment would give the Scottish Ministers power to amend Scottish procurement legislation to disapply that legislation where procurement by devolved Scottish authorities may be regulated by provision made by a Minister of the Crown under subsection (1).

Alex Burghart

72

- ★ Clause 111, page 73, line 8, at end insert—

“(za) the Procurement Reform (Scotland) Act 2014 (asp 12),”

Member’s explanatory statement

This amendment would extend the definition of “Scottish procurement legislation” to include the Procurement Reform (Scotland) Act 2014.

Alex Burghart

73

- ★ Clause 111, page 73, line 13, leave out “those regulations” and insert “that legislation”

Member’s explanatory statement

This amendment is consequential on Amendment 72.

Alex Burghart

74

- ★ Page 74, line 16, leave out Clause 116

Member's explanatory statement

This amendment indicates the Government's intention to oppose the Question that clause 116 stand part of the Bill and substitute it with the new clause that would be inserted by NC13 (which replicates the clause substituted by the Lords with clause 116).

Alex Burghart

75

- ★ Clause 118, page 75, line 21, at end insert—
“(da) section 52 (key performance indicators);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by a Minister of the Crown under clause 52.

Alex Burghart

76

- ★ Clause 118, page 75, line 23, leave out paragraph (f)

Member's explanatory statement

This amendment is consequential on Amendment 48 removing the power referred to in this paragraph.

Alex Burghart

77

- ★ Clause 118, page 75, line 29, at end insert—
“(la) section (*Trade disputes*) (trade disputes);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by a Minister of the Crown under the new trade disputes clause in NC11.

Alex Burghart

78

- ★ Clause 118, page 76, line 21, at end insert—
“(ca) section 52 (key performance indicators);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by the Welsh Ministers under clause 52.

Alex Burghart

79

- ★ Clause 118, page 76, line 26, at end insert—

“(ha) section (*Trade disputes*) (trade disputes);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by the Welsh Ministers under the new trade disputes clause in NC11.

Alex Burghart

80

- ★ Clause 118, page 76, line 47, at end insert—

“(ca) section 52 (key performance indicators);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by a Northern Ireland department under clause 52.

Alex Burghart

81

- ★ Clause 118, page 77, line 1, at end insert—

“(da) section (*Trade disputes*) (trade disputes);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by a Northern Ireland department under the new trade disputes clause in NC11.

Alex Burghart

82

- ★ Clause 118, page 77, line 15, leave out from “under” to end of line 16 and insert “any of the following provisions”

Member's explanatory statement

This amendment is preliminary to Amendment 83.

Alex Burghart

83

- ★ Clause 118, page 77, line 18, at end insert—

“(a) section 90 (treaty state suppliers: non-discrimination);

(b) section (*Trade disputes*) (trade disputes);

(c) section 111 (powers relating to procurement arrangements).”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers by Scottish Ministers under the new trade disputes clause in NC11.

Florence Eshalomi

3

Clause 119, page 77, line 24, at end insert—

““co-operative society” means—

- (a) a society registered as a co-operative society under the Co-operative and Community Benefit Societies Act 2014, or
- (b) a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act;”

Member's explanatory statement

See explanatory statement to Amendment 1.

Alex Burghart

84

★ Clause 124, page 81, line 18, leave out subsection (2)

Member's explanatory statement

This amendment would remove the technical amendment made by the House of Lords in respect of the financial privileges of the House of Commons.

Alex Burghart

NC9

★ To move the following Clause—

“Debarment decisions: interim relief

- (1) A supplier may apply to the court for suspension of the Minister's decision to enter the supplier's name on the debarment list.
- (2) Proceedings under subsection (1) must be brought during the debarment standstill period.
- (3) The court may make an order to—

- (a) suspend the Minister's decision to enter the supplier's name on the debarment list until—
 - (i) the period referred to in subsection (3)(b) of section 64 (appeals) ends without proceedings having been brought, or
 - (ii) proceedings under that section are determined, discontinued or otherwise disposed of, and
 - (b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.
- (4) In considering whether to make an order under subsection (3), the court must have regard to—
- (a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,
 - (b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and
 - (c) any other matters that the court considers appropriate.
- (5) In this section—

“the court” means—

- (a) in England and Wales, the High Court,
- (b) in Northern Ireland, the High Court, and
- (c) in Scotland, the Court of Session;

“debarment standstill period” has the meaning given in section 62 (debarment list).”

Member's explanatory statement

This new clause, to be inserted after clause 62, would allow a supplier to apply to suspend a Minister's decision to add their name to the debarment list. If the decision is suspended, the supplier will not be able to be excluded from procurements on the basis of that entry until the suspension is lifted.

Alex Burghart

NC10

★ To move the following Clause—

“Debarment proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections (*Debarment decisions: interim relief*)(1) (interim relief) and 64 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).”

Member's explanatory statement

This new clause, to be inserted after clause 64, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings for interim relief or an appeal against a debarment decision.

Alex Burghart

NC11

★ To move the following Clause—

“Trade disputes

- (1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.
- (2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.
- (3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement—
 - (a) carried out by devolved Scottish authorities, or
 - (b) under devolved Scottish procurement arrangements.
- (4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).
- (5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.”

Member's explanatory statement

This new clause, to be inserted after clause 90, would provide that an appropriate authority or the Scottish Ministers could make provision to deal with the procurement consequences of a trade dispute under a treaty implemented by way of Schedule 9 (other than the Trade and Cooperation Agreement with the European Union, which is dealt with under existing legislation).

Alex Burghart

NC12

★ To move the following Clause—

“Part 9 proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under this Part as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);

- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b)."

Member's explanatory statement

This new clause, to be inserted after clause 103, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings under Part 9.

Alex Burghart

NC13

★ To move the following Clause—

"Power to disapply this Act in relation to procurement by NHS in England

- (1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.
- (2) In this section—

"regulated health procurement" means the procurement of goods or services by a relevant authority that is subject to provision made under section 122B of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;

"relevant authority" has the meaning given in that section."

Member's explanatory statement

This new clause would be a substitute for clause 116 and allow a Minister of the Crown to make provision excluding from the scope of this Bill procurement that is within the scope of regulations under section 122B of the National Health Service Act 2006.

Florence Eshalomi

NC1

To move the following Clause—

"National Security Procurement Committee

- (1) The Secretary of State must establish a committee, chaired by the Minister for Resilience, to consider (a) national security and (b) cyber security within the Government's supply chain.
- (2) The committee must consider whether suppliers should be excluded on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (3) The committee must review ongoing major government contracts, with focus on threats to national and cyber security.
- (4) The committee must meet no less than once every three months."

Member's explanatory statement

This new clause will mandate that a new committee must be set up with a view to proactively identifying potential security threats within the Government's supply chain.

Florence Eshalomi

NC2

To move the following Clause—

"Procurement principles

- (1) In carrying out a procurement, a contracting authority must pursue the following principles—
 - (a) promoting the public good, by having regard to the delivery of strategic national priorities including economic, social, environmental and public safety priorities,
 - (b) value for money, by having regard to the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcome of the business case,
 - (c) transparency, by acting openly to underpin accountability for public money, anti-corruption and the effectiveness of procurements,
 - (d) integrity, by providing good management, preventing misconduct, and control in order to prevent fraud and corruption,
 - (e) fair treatment of suppliers, by ensuring that decision-making is impartial and without conflict of interest, and
 - (f) non-discrimination, by ensuring that decision-making is not discriminatory.
- (2) If a contracting authority considers that it is unable to act in accordance with any of these principles in a particular case, it must—
 - (a) take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage, and
 - (b) publish a report within 90 days setting out the principles with which it could not act in accordance and its reasons."

Member's explanatory statement

This new clause would require contracting authorities to pursue a series of principles when carrying out procurements

Florence Eshalomi

NC3

To move the following Clause—

"Public interest

- (1) Where a contracting authority is considering outsourcing public services that are at the time of consideration delivered in-house or where contracts are due for renewal, the contracting authority must ensure that outsourcing or recontracting passes a public interest test and provides greater public value than direct service provision.

- (2) As part of the duty in subsection (1), the contracting authority must demonstrate to the public, service users and its employees that it has thoroughly assessed the potential benefits and impact of outsourcing the service in question against a public sector comparator with assessments being based on criteria to be set by the Secretary of State from time to time, including taking a five year consideration of—
 - (a) service quality and accessibility;
 - (b) value for money of the expenditure;
 - (c) implications for other public services and public sector budgets;
 - (d) resilience of the service being provided;
 - (e) implications for the local economy and availability of good work in relevant sub-national labour markets;
 - (f) implications for public accountability and transparency;
 - (g) effect on employment conditions, terms and standards within the provision of the service to be outsourced and when outsourced;
 - (h) implications for public sector contributions to climate change targets;
 - (i) implications for the equalities policies of the contracting authority and compliance with the public sector equality duty.
- (3) The contracting authority and the supplier of the outsourced service must monitor the performance of any contracted service against the public interest test and the stated objectives set by the contracting authority pre-procurement to demonstrate that outsourcing the service in question has not resulted in a negative impact on any of the matters mentioned in subsection (2)(a) to (i).
- (4) The Secretary of State must from time to time set budget thresholds for when a public interest test would be required.”

Member’s explanatory statement

The new clause would create a process to ensure that contracting authorities safeguard the public interest when considering whether or not to outsource or recontract services.

Bob Seely
Mr Philip Hollobone
Damian Green
Sir Iain Duncan Smith
Sir Julian Lewis
Tim Loughton

NC4

To move the following Clause—

“Dependence on high-risk states

- (1) The Secretary of State must within six months publish a plan to reduce the dependence of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as a high risk sourcing country.
- (2) For the purposes of this section, a country is considered a high risk sourcing country by the United Kingdom if it is defined as either a

systemic competitor or a threat in the latest Integrated Review of Security, Defence, Development and Foreign Policy.”

Florence Eshalomi

NC5

To move the following Clause—

“Carbon reduction plans

- (1) Subject to subsection (4), contracting authorities must obtain, assess and publish a carbon reduction plan from all suppliers under consideration for qualifying contracts before entering into a public contract with any supplier.
- (2) In this section, “qualifying contract” means—
 - (a) a public contract with an average value of more than £5 million per annum (excluding VAT) over the duration of the contract,
 - (b) any contract to be awarded under a framework agreement anticipated to be greater than £5 million per annum (excluding VAT) in value, or
 - (c) any contract to be awarded by reference to a dynamic market which is anticipated to be greater than £5 million per annum (excluding VAT) in value.
- (3) For a qualifying contract of the type referred to in subsection (2)(a), a “carbon reduction plan” must contain—
 - (a) the supplier’s current greenhouse gas emissions,
 - (b) confirmation of the supplier’s commitment to achieving net zero greenhouse gas emissions by 2050 for their UK supply chain, operations, products and services,
 - (c) intermediate targets for reductions in their greenhouse gas emissions at no more than 5 year intervals, beginning with the date of award of the contract,
 - (d) as far as they are able, the greenhouse gas emissions attributable to performance of the contract,
 - (e) as far as they are able, targets for reductions in those greenhouse gas emissions, and
 - (f) other environmental management measures in effect which will be applied when performing the contract.
- (4) For the qualifying contracts of the type described in subsection (2)(b) and (2)(c), a carbon reduction plan should contain the matters specified in subsection (3)(a), (b) and (c) only.
- (5) In complying with requirements imposed by the regulations, a contracting authority must have regard to guidance prepared from time to time by an appropriate authority.
- (6) “Greenhouse gas” has the meaning given in section 92 of the Climate Change Act 2008, and “emissions” has the meaning given in section 97 of that Act.”

Member's explanatory statement

This new clause would require company-level carbon reduction plans for bidders for certain larger contracts, including information and targets from suppliers on the emissions attributable to the performance of the contract. It also specifies that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Florence Eshalomi

NC6

To move the following Clause—

“Granting of relief on an application for judicial review of a contracting authority's decision

Section 31(2A) of the Senior Courts Act 1981 does not apply in the case of an application for judicial review of a contracting authority's decision to award a contract if—

- (a) the contracting authority breaches the principle of non-discrimination in section 89, and
- (b) the authority's breach is caused by a representation to the contracting authority by a Member of Parliament, Member of the House of Lords, or senior civil servant.”

Member's explanatory statement

This new clause would ensure that if an MP, Lord or senior civil servant lobbied a contracting authority to award a contract to a certain bidder and a court held that this had resulted in unequal treatment then the court would be able to grant relief.

Florence Eshalomi
Chris Evans

NC7

To move the following Clause—

“Review of procurement of Fleet Solid Support Ships

- (1) By the end of 2023, the Secretary of State for Defence must conduct a review of the procurement of Fleet Solid Support Ships.
- (2) The review must consider and report on—
 - (a) the total amount of expected UK build work for each Fleet Solid Support ship,
 - (b) the number of UK jobs and Spanish jobs that have been created so far as a result of awarding the contract for Fleet Solid Support ships to “Team Resolute”,
 - (c) the number of UK SMEs and Spanish SMEs that have been contracted to work on Fleet Solid Support ships so far by Navantia UK,
 - (d) whether Navantia UK are on track to fulfil guarantees on the UK content, UK steel targets and social value,
 - (e) whether Navantia UK are on track to meet timelines to complete the project, and
 - (f) any other matter which the reviewer considers appropriate.

- (3) The Secretary of State must report to Parliament on this review and publish a report on the review’s findings by the end of 2023.”

Member’s explanatory statement

This new clause would mandate a review of the procurement of Fleet Solid Support Ships.

Florence Eshalomi
Chris Evans

NC8

To move the following Clause—

“Audit of waste in Ministry of Defence procurement

- (1) The National Audit Office (NAO) must produce and publish a report setting out any instances of waste in Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed.
- (2) In this section, “waste in Ministry of Defence procurement” means—
- (a) overspend on initially planned budgets,
 - (b) assets being withdrawn or scrapped or prepaid services terminated,
 - (c) a contract being cancelled,
 - (d) a contract being extended beyond the initially agreed timescale, or
 - (e) administrative errors which have had a negative financial impact.
- (3) The report must include recommendations on how better management of contracts can reduce the loss of public money.
- (4) Within one month of the publication of the report, the Secretary of State must report to Parliament on whether the NAO’s recommendations have been accepted or rejected, with reasoning in either case.”

Member’s explanatory statement

This new clause would require the NAO to conduct an audit of waste in Ministry of Defence procurement and to make recommendations on how better management of contracts can reduce the loss of public money, and the Secretary of State to report to Parliament on whether its recommendations have been accepted.

Alex Burghart

85

- ★ Schedule 2, page 84, line 11, leave out from “in” to end of line 17 and insert “this Part of this Schedule.”

Member’s explanatory statement

This amendment would ensure that contracts within the new Part 1 of Schedule 2 (which will comprise paragraphs 2, 3, 25, 31 and 32) are always exempted from being public contracts.

Alex Burghart

86

- ★ Schedule 2, page 85, line 39, at end insert—

“Part 2

Subject-matter exempted contracts

General

3A (1) A contract is an exempted contract if it is—

- (a) a contract of a kind listed in this Part of this Schedule;
 - (b) a framework for the future award of contracts only of a kind listed in this Part of this Schedule.
- (2) But a Part 2-only contract is not an exempted contract if, on award of the contract, a contracting authority considers that—
- (a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and
 - (b) that contract would not be a contract of a kind listed in this Part of this Schedule.
- (3) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (4) In this paragraph “Part 2-only contract” means a contract of a kind listed in this Part of this Schedule that is not of a kind listed in Part 1 of this Schedule.”

Member’s explanatory statement

This amendment would apply the exception previously applied to all contracts listed in Schedule 2 to those listed only in Part 2 of Schedule 2, ensure it operates by reference to the opinion of a contracting authority, and clarify that the authority may have regard to practical and financial consequences.

Alex Burghart

That paragraph 25 of Schedule 2 be transferred to the end of line 39 on page 85

Member’s explanatory statement

This is a motion to move paragraph 25 of Schedule 2 (defence and security contracts with governments) to the new Part 1 of Schedule 2 to ensure such contracts are always exempted from being public contracts.

Alex Burghart

That paragraphs 31 and 32 of Schedule 2 be transferred to the end of line 39 on page 85

Member's explanatory statement

This is a motion to move paragraphs 31 and 32 of Schedule 2 (utilities contracts with affiliates and joint ventures) to the new Part 1 of Schedule 2 to ensure such contracts are always exempted from being public contracts.

Florence Eshalomi

15

Schedule 6, page 104, line 25, at end insert—

"National security

42A A mandatory exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom."

Member's explanatory statement

This amendment, together with Amendment 16, would move national security from among the discretionary exclusion grounds in Schedule 7 to the mandatory exclusion grounds in Schedule 6.

Florence Eshalomi

16

Schedule 7, page 110, leave out lines 28 to 31

Member's explanatory statement

See explanatory statement to Amendment 15.

Alex Burghart

87

★ Schedule 7, page 110, line 33, leave out paragraph 15

Member's explanatory statement

This amendment would leave out the discretionary exclusion ground relating to forced organ harvesting.

Florence Eshalomi

17

Schedule 7, page 111, line 39, leave out sub-sub-paragraph (e)

Member's explanatory statement

See explanatory statement to Amendment 15.

Alex Burghart

88

★ Schedule 7, page 111, line 44, at end insert—

““event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;”

Member's explanatory statement

This amendment would insert a definition of “event” for the purposes of paragraph 16 of Schedule 7.

Order of the House

[9 January 2023]

That the following provisions shall apply to the Procurement Bill [Lords]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 23 February 2023.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and on Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

Programming committee

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to proceedings on Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
-

Withdrawn Amendments

The following amendments were withdrawn on 19 January 2023:

6
