

Procurement Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

LORD WALLACE OF SALTAIRE
LORD FOX

Page 2, line 8, leave out paragraph (c)

Member's explanatory statement

This amendment is to probe why the Advanced Research and Invention Agency is an excluded authority for the purposes of the Bill.

Clause 8

LORD WALLACE OF SALTAIRE

Page 6, line 37, leave out paragraph (a)

Member's explanatory statement

This is a probing amendment to explore why paragraph (a) is included in this Clause.

Page 6, line 43, at end insert –

- “(d) provision by a local authority will make for more effective and efficient supply of the services;
 - (e) provision by a –
 - (i) social enterprise;
 - (ii) not-for-profit company;
 - (iii) mutual company; or
 - (iv) charity
- will make for more effective and efficient supply of the services.”

Member's explanatory statement

Light-touch contracts tend to apply to services such as health care, social care and education. This amendment is intended to ensure that local authorities, social enterprises, not-for-profit organisations, mutuals and charities are properly considered for such contracts.

After Clause 10

LORD WALLACE OF SALTAIRE
LORD FOX

Insert the following new Clause—

“Procurement purposes

- (1) The purposes of a procurement are to deliver—
 - (a) social value; and
 - (b) local economic growth.
- (2) Following the conclusion of a procurement, a contracting authority must evaluate the extent to which a procurement has fulfilled the purposes under subsection (1).
- (3) In carrying out an evaluation under subsection (2) a contracting authority must consult—
 - (a) the relevant local authority;
 - (b) local small businesses or their representatives; and
 - (c) any other person the contracting authority considers appropriate.
- (4) If, following an evaluation under subsection (2), a contracting authority determines that any supplier of the goods, services or works has not adequately delivered the procurement purposes under subsection (1), the contracting authority may recommend to a Minister of the Crown that the supplier is entered on the debarment list (see section 59).
- (5) In this section “social value” means improving the economic, social and environmental well-being of the relevant area.”

Member’s explanatory statement

This amendment ensures that the outcome of any public procurement under the Bill is to deliver social value and to deliver local economic growth.

Insert the following new Clause—

“Procurement requirements

- In carrying out a procurement, a contracting authority must have regard to—
- (a) the target to reduce the net UK carbon account;
 - (b) the ethical and human rights record of the supplier;
 - (c) the need to maintain data security within the digital platform; and
 - (d) the necessity for transparency and openness.”

Member’s explanatory statement

This amendment specifies a number of overarching requirements that a contracting authority must have regard to when carrying out a procurement.

LORD CLEMENT-JONES

Insert the following new Clause –

“Procurement principles: automated decision-making and data ethics

In carrying out a procurement, a contracting authority must ensure the safe, sustainable and ethical use of automated or algorithmic decision-making systems and the responsible and ethical use of data.”

Member’s explanatory statement

This amendment ensures that the ethical use of automated decision-making and data is taken into account when carrying out a procurement.

Clause 11

LORD WALLACE OF SALTAIRE
LORD FOX

Page 8, line 43, at end insert –

- “(4) In this section “value for money” means the most advantageous combination of cost, quality and sustainability to meet the requirements of the procurement where –
- (a) “cost” means consideration of the whole life cost;
 - (b) “quality” means meeting a specification which is fit for purpose and sufficient to meet the requirements of the procurement; and
 - (c) “sustainability” means economic, social and environmental benefits of the procurement.”

Member’s explanatory statement

This amendment is intended to probe the meaning of “value for money”.

Clause 12

BARONESS PARMINTER

Page 9, line 6, leave out subsections (3) to (8)

After Clause 12

BARONESS PARMINTER

Insert the following new Clause –

“The national procurement policy statement: process

- (1) A Minister of the Crown must prepare a draft of the national procurement policy statement.
- (2) A Minister of the Crown must consult such persons as he or she considers appropriate in relation to the draft statement.
- (3) A Minister of the Crown must lay the draft statement before Parliament.
- (4) If before the end of the 60-day period –
 - (a) either House of Parliament passes a resolution in respect of the draft statement, or

After Clause 12 - continued

- (b) a committee of either House of Parliament, or a joint committee of both Houses, makes recommendations in respect of the draft statement, a Minister of the Crown must produce a response and lay it before Parliament.
- (5) A Minister of the Crown must prepare and lay before Parliament the final statement, but not before—
- (a) if subsection (4) applies, the day on which the Minister lays the response required by that subsection, or
 - (b) otherwise, the end of the 60-day period.
- (6) The final statement has effect when it is laid before Parliament.
- (7) A Minister of the Crown must publish the statement when it comes into effect.
- (8) “The 60-day period” is the period of 60 days beginning with the day on which the draft statement is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid).
- (9) When calculating the 60-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) The requirements in subsections (1) and (2) may be met by the preparation of a draft statement, and consultation, before this section comes into force.
- (11) A Minister of the Crown must keep the national procurement policy statement under review.
- (12) The national procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.”

After Clause 17

LORD HUNT OF KINGS HEATH

Insert the following new Clause—

“Duty to prepare and publish a business case

- (1) Before any tender notice is published for any contract in excess of £1 million or such other amount as may be specified in regulations, the contracting authority must prepare a business case in accordance with requirements set out from time to time by the Treasury.
- (2) The business case must be published at least 42 days before the tender notice is published.
- (3) Any responses to the publication of the business case must be considered and published.
- (4) The process for awarding the contract must demonstrate due regard to the business case and award criteria must be consistent with the published business case.

After Clause 17 - continued

- (5) In any case where it is claimed that an emergency or other exceptional circumstances justify proceeding with publication of a tender notice without the publication and consideration of a business case, the responsible body must—
- (a) publish the reasons for withholding publication;
 - (b) publish the business case within 14 days of the award of the contract.”

Member’s explanatory statement

The amendment is aimed at ensuring transparency through ensuring that for any contract in excess of £1 million there has to be a Business Case published in advance of the tender notice being published.

Clause 19

LORD WALLACE OF SALTAIRE
LORD FOX

Page 13, line 12, leave out paragraph (b)

Member’s explanatory statement

This amendment is to probe under what circumstances it may be considered “appropriate” not to undergo an open tendering procedure.

Clause 22

LORD WALLACE OF SALTAIRE

Page 16, line 1, leave out “in all the circumstances” and insert “, taking into account the protection of the environment, energy efficiency, combatting climate change, and promoting innovation, employment and social inclusion.”

Member’s explanatory statement

This amendment includes broader factors in determining value for money.

Clause 41

LORD WALLACE OF SALTAIRE
LORD FOX

Page 26, line 12, leave out subsection (c)

Member’s explanatory statement

This amendment is to probe what is meant by “confer a discretion” in regulations specifying that public contracts may be awarded directly to protect life.

Page 26, line 12, at end insert—

“(3A) Provision under subsection (1) must always comply with the principles of transparency, integrity, fairness and non-discrimination, including in its implementation.”

Member's explanatory statement

This amendment is intended to ensure that the principles of transparency, integrity, fairness and non-discrimination are applied in cases of public contracts being awarded directly to protect life.

Page 26, line 12, at end insert –

“(3A) Provision under subsection (1) must not confer any preferential treatment on suppliers connected to or recommended by Members of the House of Commons or members of the House of Lords.”

Member's explanatory statement

This amendment is intended to prevent the future use of “VIP lanes” for public contracts.

Page 26, line 13, at end insert –

“(za) inform the appropriate committees of both Houses of Parliament of the justification for the direct award,”

Member's explanatory statement

This amendment is intended to provide greater transparency of the decision to make a direct award.

Clause 59

LORD WALLACE OF SALTAIRE

LORD FOX

Page 38, line 9, at end insert –

“(2A) Subsection (3) also applies where a contracting authority has made a recommendation under section (*Procurement purposes*).”

Member's explanatory statement

This amendment is consequential on Lord Wallace's new Clause after Clause 10.

LORD WALLACE OF SALTAIRE

Page 38, line 33, at end insert “in regulations”

Member's explanatory statement

This amendment requires the debarment list to be made by regulations, thereby requiring Parliamentary scrutiny.

Clause 74

LORD WALLACE OF SALTAIRE

Page 47, line 41, leave out “reasonable”

Member's explanatory statement

This amendment is intended to probe what actions a contracting authority must take about, and to what extent they must investigate, conflicts of interest and potential conflicts of interest.

Clause 75

LORD WALLACE OF SALTAIRE

Page 48, line 25, at end insert –

“(2A) In subsection (2), “requiring a supplier to take reasonable steps” may include requiring the supplier to declare as part of the procurement process whether it has given a donation or loan of more than £7,500 to any political party in a calendar year.”

Member’s explanatory statement

This amendment is intended to increase transparency in any conflicts of interest or potential conflicts of interest in relation to any procurement.

After Clause 76

LORD WALLACE OF SALTAIRE

Insert the following new Clause –

“Undue influence

- (1) A contracting authority must take all reasonable steps to prevent any undue influence in relation to a procurement.
- (2) There is undue influence in relation to a procurement if a former minister or former senior official with an interest in a potential supplier of a procurement seeks to influence a contracting authority in regard to that procurement.
- (3) In taking reasonable steps to prevent undue influence, a contracting authority must have regard to any public register of interests of former ministers and former senior officials.
- (4) A public register of interests of former ministers and former senior officials must be kept by the Secretary of State for the purposes of subsection (3).
- (5) A register under subsection (4) must contain details of the interests of former ministers and former senior officials for a period of 5 years after departing that role.”

Member’s explanatory statement

This amendment aims to ensure there is no undue influence by former ministers or senior civil servants on a procurement. It includes provision to establish a register of interests for five years following departure from their role.

After Clause 84

LORD WALLACE OF SALTAIRE

LORD FOX

Insert the following new Clause –

“Freedom of Information Act: application to contractors

- (1) A Minister of the Crown must make an order under section 5 of the Freedom of Information Act 2000 (further power to designate public authorities) to designate as a public authority any external supplier contracted under this Act where such a contractor is exercising functions of a public nature.

After Clause 84 - continued

- (2) A Minister of the Crown may choose not to designate an external supplier under subsection (1) if the total worth of all public contracts held by that supplier is less than the threshold amount.”

Member’s explanatory statement

This amendment is intended to bring external contractors into the scope of the Freedom of Information Act where they are exercising public functions by requiring a Minister to designate them as a public authority. There is an exemption for smaller contractors.

Clause 110

LORD WALLACE OF SALTAIRE
LORD FOX

Page 68, leave out lines 19 to 22 and insert –

- “(4) A statutory instrument containing the first regulations (whether alone or with other provision) made by a Minister of the Crown under any of the following provisions is subject to the super-affirmative resolution procedure set out in subsections (4A) to (4H) – ”

Member’s explanatory statement

This amendment and the amendment to page 68, line 41 require the super-affirmative procedure to be used for the first set of regulations under subsections (4)(a) to (4)(r) of Clause 110. Subsequent regulations are to be subject to the affirmative procedure.

Page 68, line 41, at end insert –

- “(4A) A Minister of the Crown must lay before Parliament –
- (a) a draft of the regulations, and
 - (b) a document which explains the draft regulations.
- (4B) Where a draft of the regulations is laid before Parliament under subsection (4A), no statutory instrument containing the regulations may be laid before Parliament until after the expiry of the 30-day period.
- (4C) A Minister of the Crown must request a relevant committee of either House of Parliament to report on the draft regulations within the 30-day period.
- (4D) In preparing a draft statutory instrument containing the regulations, a Minister of the Crown must take account of –
- (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee under subsection (4C) made within the 30-day period with regard to the draft regulations.
- (4E) If, after the 30-day period, a Minister of the Crown wishes to make regulations in the terms of the draft or a revised draft, he or she must lay before Parliament a statement –
- (a) stating whether any representations, resolutions or recommendations were made under subsection (4D);

Clause 110 - continued

- (b) giving details of any representations, resolutions or recommendations so made; and
 - (c) explaining any changes made in any revised draft of the regulations.
- (4F) A Minister of the Crown may make a statutory instrument containing the regulations (whether or not revised) if, after the laying of the statement required under subsection (4E), a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4G) In this section, reference to “the 30-day period” in relation to any draft regulations is to the period of 30 days beginning with the day on which the original draft regulations were laid before Parliament.
- (4H) For the purposes of subsection (4G) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (4J) A statutory instrument containing subsequent regulations made by a Minister of the Crown under subsections (4)(a) to (4)(r) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Member’s explanatory statement

This amendment and the amendment to page 68, line 19 require the super-affirmative procedure to be used for the first set of regulations under subsections (4)(a) to (4)(r) of Clause 110. Subsequent regulations are to be subject to the affirmative procedure.

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20 June 2022
