

Procurement Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Before Clause 1

LORD TRUE

Insert the following new Clause—

“Procurement and covered procurement

- (1) In this Act—
 - (a) “procurement” means the award, entry into and management of a contract;
 - (b) “covered procurement” means the award, entry into and management of a public contract.
- (2) In this Act, a reference to a procurement or covered procurement includes a reference to—
 - (a) any step taken for the purpose of awarding, entering into or managing the contract;
 - (b) a part of the procurement;
 - (c) termination of the procurement before award.
- (3) In this Act, a reference to a contracting authority carrying out a procurement is a reference to a contracting authority carrying out a procurement—
 - (a) on its own behalf, including where it acts jointly with or through another person other than a centralised procurement authority, and
 - (b) if the contracting authority is a centralised procurement authority—
 - (i) for or on behalf of another contracting authority, or
 - (ii) for the purpose of the supply of goods, services or works to another contracting authority.
- (4) In this Act, “centralised procurement authority” means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities.”

Clause 1

BARONESS NOAKES

Page 2, line 2, after “are” insert “capable of being”

Member’s explanatory statement

This amendment probes how the definition of contracting authority oversight works in relation to companies which are not wholly owned and where the appointment of directors requires the contracting authority to exercise its voting rights.

Clause 2

BARONESS NOAKES

Page 2, line 27, leave out “pecuniary interest” and insert “consideration”

Member’s explanatory statement

This amendment probes why “pecuniary interest” has been used.

Page 2, line 31, at end insert –

“(2A) Goods, services or works are provided to a contracting authority even if they are supplied for the benefit of persons other than the contracting authority.”

Member’s explanatory statement

This amendment probes the meaning of the supply of services “to” a contracting authority in subsection (2) of Clause 2.

Schedule 2

LORD TRUE

Page 76, line 8, after “could” insert “reasonably”

Page 76, line 11, leave out sub-paragraphs (1) and (2) and insert –

- “(1) A contract between a contracting authority and a person that is controlled by –
- (a) the contracting authority,
 - (b) the contracting authority acting jointly with one or more other contracting authorities,
 - (c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or
 - (d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).
- (2) A contracting authority, or a contracting authority acting jointly with one or more other contracting authorities, controls a person if –
- (a) the contracting authority is a parent undertaking, or the contracting authorities are parent undertakings, in relation to the person,

Schedule 2 - continued

- (b) no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly),
 - (c) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of—
 - (i) the contracting authority or authorities, or
 - (ii) another person that is, or other persons that are, controlled by the authority or the authorities acting jointly, and
 - (d) in the case of joint control—
 - (i) each of the contracting authorities is represented on the person's board, or equivalent decision-making body, and
 - (ii) the person does not carry out any activities that are contrary to the interests of one or more of the contracting authorities.
- (2A) A person is not to be regarded as controlled by a contracting authority, or a contracting authority acting jointly with other contracting authorities, if any person that is not a public authority holds shares in the person.
- (2B) In sub-paragraph (2)(a)—
“parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person;
“parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.”

Page 76, line 33, leave out “(2)(d)” and insert “(2)(c)”

Page 76, line 33, at end insert—

- “(5) For the purposes of sub-paragraph (2)(d)(i), one representative may represent more than one contracting authority.
- (6) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.”

Page 77, line 6, at end insert—

- “(4) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.”

Page 78, line 3, leave out from beginning to “provided” and insert “legal services”

Page 78, leave out lines 18 and 19

Page 78, line 38, leave out from second “contract” to end of line 39 and insert—

- “(2) In this paragraph, the expressions “contract of employment” and “worker's contract”—

Schedule 2 - continued

- (a) in the case of a contract awarded by a transferred Northern Ireland contracting authority or awarded as part of a procurement under a transferred Northern Ireland procurement arrangement, have the meanings given in Article 3 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16));
- (b) in any other case, have the meanings given in section 230 of the Employment Rights Act 1996.”

Page 81, line 6, leave out sub-paragraph (2)

Schedule 3

BARONESS NOAKES

Page 83, line 38, leave out from “contracts” to end of line 39

Member’s explanatory statement

This amendment probes what “good reasons” are acceptable for the purposes of not aggregating contracts.

Clause 4

BARONESS NOAKES

Page 3, line 31, leave out “pecuniary interest” and insert “consideration”

Member’s explanatory statement

See the note to the amendment in Baroness Noakes’ name to page 2, line 27.

Clause 5

LORD TRUE

Page 3, line 41, after “works” insert “wholly or”

Clause 7

BARONESS NOAKES

Page 6, line 16, leave out “pecuniary interest” and insert “consideration”

Member’s explanatory statement

See the note to the amendment in Baroness Noakes’ name to page 2, line 27.

Clause 8

BARONESS NOAKES

Page 6, line 28, at end insert “and which are health or social care services supplied for benefit of individuals”.

Member's explanatory statement

This amendment probes why light touch contracts are not more narrowly defined in Clause 8.

LORD TRUE

Page 6, line 35, after second “the” insert “appropriate”

Clause 10

LORD TRUE

Page 8, line 4, after second “a” insert “covered”

Page 8, line 6, leave out subsection (2)

Page 8, line 13, leave out “only award a public contract” and insert “not enter into a public contract unless it is awarded”

Page 8, line 19, leave out subsections (4) and (5)

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

Page 8, line 30, at end insert –

“(6) A consortium of local authorities may constitute a centralised procurement authority.”

Member's explanatory statement

This amendment is to probe the role of local government as a procurement authority.

Clause 11

LORD TRUE

Page 8, line 32, after first “a” insert “covered”

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY

Page 8, line 38, at end insert –

“(1A) In carrying out a procurement, a contracting authority must take into account the impacts or potential impacts on local good work as a consequence of awarding the procurement contract with particular regard to the evaluation of –

- (a) the gains or loss of employment in the contracting authority,
- (b) the terms and conditions of work available, and
- (c) the quality of work available.”

LORD TRUE

Page 8, line 39, after first “a” insert “covered”

Clause 12

LORD KNIGHT OF WEYMOUTH
 BARONESS HAYMAN OF ULLOCK
 LORD HENDY

Page 9, line 11, at end insert –

“(3A) A national procurement policy statement must include a statement setting out national priorities relating to the creation and protection of good work in relation to procurement across the United Kingdom.”

LORD TRUE

Page 9, line 33, leave out “any” and insert “procurement under a”

Page 9, line 36, after “to” insert “procurement under”

After Clause 12

LORD WALLACE OF SALTAIRE

Insert the following new Clause –

“Review of compliance with the national procurement policy statement

- (1) A Minister of the Crown must, within the period of 3 years beginning on the day on which this Act is passed, appoint a person to conduct a review of compliance by contracting authorities with the national procurement policy statement.
- (2) The review must have particular regard to the ability of small providers to challenge decisions which are not in compliance.
- (3) The review must have particular regard to the treatment of social enterprises, voluntary organisations and small providers in supply chains.”

Member’s explanatory statement

This amendment provides for a review of the national procurement policy statement within three years, with a particular focus on smaller providers.

Clause 13

LORD TRUE

Page 10, line 22, after “to” insert “procurement under”

Page 10, line 26, after “to” insert “procurement under”

Clause 15

LORD TRUE

Page 11, line 9, leave out “specifications” and insert “requirements”

Clause 15 - continued

Page 11, line 30, leave out from “must” to end of line 31 and insert “in relation to the award—

- (a) treat the supplier as an excluded supplier for the purpose of—
 - (i) assessing tenders under section 18 (competitive award), or
 - (ii) awarding a contract under section 40 or 42 (direct award), and
- (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.”

Clause 16

LORD TRUE

Page 11, line 33, leave out subsection (1) and insert—

- “(1) If a contracting authority carries out preliminary market engagement, the authority must—
- (a) publish a preliminary market engagement notice before publishing a tender notice, or
 - (b) provide reasons for not doing so in the tender notice.”

Page 11, line 36, after “conduct” insert “, or has conducted,”

Clause 18

LORD TRUE

Page 12, line 17, after “considers” insert—

- “(a) satisfies the contracting authority’s requirements, and”

Page 12, line 19, at beginning insert “if there is more than one criterion,”

Page 12, line 20, leave out from “assessing” to “a” and insert “tenders for the purposes of this section”

BARONESS NOAKES

Page 12, line 22, leave out “must” and insert “may”

Member’s explanatory statement

This amendment probes why suppliers which do not satisfy conditions of participation must be excluded from a contract award under clause 18 though such suppliers are not required to be excluded from the tendering process under clause 21(6).

LORD TRUE

Page 12, line 29, leave out “must” and insert “may”

Page 12, line 29, leave out “materially”

Clause 18 - continued

Page 12, line 34, at end insert –

“(4A) In this Act, a reference to a contracting authority’s requirements is a reference to requirements described in the tender notice or associated tender documents (see section 20(5) and (6)).”

Page 12, line 35, leave out subsection (5)

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY

Page 12, line 36, at end insert –

“(5A) A contracting authority may request information from a supplier submitting a tender about good work standards and practices that would be applied in the contract under consideration.”

Clause 19

LORD TRUE

Page 13, line 14, at end insert “(a “competitive flexible procedure”)”

BARONESS NOAKES

Page 13, line 17, at end insert “from the perspective of suppliers”

Member’s explanatory statement

This amendment probes whether cost and complexity referred to in Clause 19(3) should be considered from the perspective of the contracting authority, the suppliers or both and whether it is a subjective or objective test. The Explanatory Notes (para 142) suggest that it is aimed at not being unnecessarily complex and burdensome for suppliers.

LORD TRUE

Page 13, line 18, leave out “tendering procedure other than an open” and insert “flexible”

Page 13, line 26, leave out “tendering procedure other than an open” and insert “flexible”

Page 13, line 34, leave out from first “to” to end of line

Page 13, line 35, leave out from “to” to “which” on line 36 and insert “an assessment of”

Page 13, line 36, after “tenders” insert –

“(a) satisfy the contracting authority’s requirements, and”

Clause 19 - continued

Page 13, line 39, at beginning insert “if there is more than one criterion,”

Page 13, line 39, at end insert –

“in each case, at the point of assessment.”

Clause 20

LORD TRUE

Page 14, line 8, leave out “procedure other than an open” and insert “flexible”

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY

Page 14, line 18, at end insert “, including –

- (a) a procurement policy setting out its approach to good work,
- (b) a good work impact assessment, including the factors listed under subsection 11(1A)(a) to (c),
- (c) guidance to potential contractors about fulfilment of the requirements with the good work procurement policy, and
- (d) the factors and measurements of good work to be taken into account in assessing 11(1A)(a) to (c).”

LORD TRUE

Page 14, line 21, at end insert –

- “(5) A tender notice or associated tender document must detail the goods, services or works required by the contracting authority.
- (6) In detailing its requirements, a contracting authority must be satisfied that they –
 - (a) are sufficiently clear and specific, and
 - (b) do not break the rules on technical specifications in section 24.”

Clause 21

LORD WALLACE OF SALTAIRE

Page 14, line 43, at end insert –

“(6A) A contracting authority must take reasonable steps to ensure that the ability of a supplier to deliver a contract as specified accurately reflects commitments in the bid materials, including the willingness and ability of sub-contractors to deliver what a supplier has agreed.”

Member’s explanatory statement

This amendment would require contracting authorities to take reasonable steps on due diligence over sub-contractors.

Clause 22

LORD TRUE

Page 15, line 15, after “competitive” insert “tendering”

Page 15, line 26, at beginning insert “if there is more than one criterion,”

Clause 23

LORD TRUE

Page 16, line 14, leave out “tendering procedure other than an open” and insert “flexible”

Page 16, line 18, after “competitive” insert “tendering”

Clause 24

LORD TRUE

Page 16, line 29, at end insert –

“(A1) This section applies in relation to –

- (a) a competitive tendering procedure;
- (b) an award of a public contract in accordance with a framework;
- (c) a process to become a member of a dynamic market.”

Page 16, line 30, leave out “terms of a procurement” and insert “procurement documents”

Page 16, line 33, leave out “terms of a procurement” and insert “procurement documents”

Page 16, line 36, after “tenders” insert “, proposals or applications”

Page 16, line 40, leave out “terms of a procurement” and insert “procurement documents”

Page 17, line 1, leave out “terms of a procurement” and insert “procurement documents”

Page 17, line 2, after “tenders” insert “, proposals or applications”

Page 17, line 5, leave out “terms of a procurement” and insert “procurement documents”

Page 17, line 5, leave out “anything set out in”

Clause 24 - continued

Page 17, line 6, after “any” insert “requirements of a”

Page 17, line 7, at end insert –

- “(b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;
- (c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions of membership;”

Transpose Clause 24 to after Clause 53

Clause 25

LORD TRUE

Page 17, line 19, after “competitive” insert “tendering”

Clause 26

LORD TRUE

Page 17, line 24, leave out from “assessing” to end of line and insert “tenders under”

Page 17, line 32, leave out first “supplier” and insert “person”

Page 17, line 33, after “tender” insert –

- “(a) notify the supplier of its intention to disregard, and
- (b) ”

Page 17, line 34, leave out “supplier” and insert “person”

Page 17, line 35, leave out “supplier” means a supplier” and insert “person” means a person”

Page 17, line 36, at end insert “(see section 21(7)), but not a person who is to act as guarantor as described in section 21(8).”

Clause 27

LORD TRUE

Page 17, line 38, leave out “tendering procedure other than an open” and insert “flexible”

Page 18, line 2, leave out “tendering” and insert “flexible”

Clause 27 - continued

Page 18, line 5, leave out “tendering” and insert “flexible”

Page 18, line 8, leave out “supplier” and insert “person”

Page 18, line 8, after “must” insert –

- “(a) notify the supplier of its intention, and
- (b) ”

Page 18, line 9, leave out second “supplier” and insert “person”

Page 18, line 10, leave out “tendering” and insert “flexible”

Clause 28

LORD TRUE

Page 18, line 13, at end insert –

“(A1) A contracting authority must as part of a competitive tendering procedure –

- (a) request information about whether a supplier intends to sub-contract the performance of all or part of the public contract, and
- (b) seek to determine whether any intended sub-contractor is on the debarment list.”

Page 18, line 16, leave out paragraph (a)

Page 18, line 20, after “subsection” insert “(A1) or”

Page 18, line 27, after “subsection” insert “(A1) or”

Page 18, line 35, after “must” insert –

- “(a) notify the supplier of its intention, and
- (b) ”

Page 18, line 41, leave out “supplier” and insert “person”

Clause 29

LORD TRUE

Page 19, line 3, leave out “or exclude the supplier” and insert “, exclude the supplier or notify the supplier of its intention”

Page 19, line 7, leave out “excluded” and insert “excludable”

Clause 29 - continued

Page 19, line 8, leave out “virtue of” and insert “reference to”

Page 19, line 9, at end insert –

- “(3) The reference in subsection (2) to a contracting authority notifying a supplier of its intention is a reference to notification in accordance with section 26(3), 27(4) or 28(4).”

Clause 30

LORD TRUE

Page 19, line 12, leave out “a procurement” and insert “the award of a public contract”

Page 19, line 14, leave out “of a public contract”

Page 19, line 17, leave out from “must” to end of line 18 and insert “in relation to the award –

- (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 18, and
- (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.”

Page 19, leave out line 23 and insert “In subsection (1), the reference to a supplier acting improperly is reference to a supplier – ”

Page 19, line 26, at end insert “or”

Page 19, line 32, leave out “suppliers” and insert “persons”

Page 19, line 40, leave out from “must” to end of line 41 and insert “in relation to the award –

- (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 18, and
- (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.”

Page 19, line 41, at end insert –

- “(7) Before disregarding a tender or excluding a supplier under subsection (6) by reference to a request for information about an associated person or intended sub-contractor, the contracting authority must –
- (a) notify the supplier of its intention to disregard or exclude, and
 - (b) give the supplier reasonable opportunity to replace the associated person, or find an alternative supplier with which to sub-contract.”

After Clause 30

LORD HUNT OF KINGS HEATH
LORD ALTON OF LIVERPOOL

Insert the following new Clause—

“Excluding supplier for involvement in forced organ harvesting

- (1) Subsection (2) applies if a contracting authority determines that a supplier is located in a country categorised by a Minister of the Crown as at high risk of forced organ harvesting.
- (2) The contracting authority must treat the supplier as an excluded supplier in relation to the award of a public contract involving—
 - (a) any device or equipment intended for use in organ transplant medicine or activities relating to human tissue, or
 - (b) any service or goods relating to organ transplant medicine or activities involving human tissue.
- (3) A Minister of the Crown must by regulations made by statutory instrument make provision for the listing of countries considered to be at high risk of forced organ harvesting.
- (4) A country is at high risk where—
 - (a) the country has high levels, or is suspected of having high levels, of forced organ harvesting or trafficking in persons for purposes of the removal of organs; or
 - (b) the government of the country is directly or indirectly seen as supporting or indirectly supporting forced organ harvesting or trafficking in persons for purposes of the removal of organs.”

Member’s explanatory statement

The amendment is designed to exclude suppliers located in a country at high risk of forced organ harvesting from being awarded a public contract involving any device or equipment intended for use in organ transplant medicine or activities relating to human tissue or any service or goods relating to organ transplant medicine or activities involving human tissue.

LORD HENDY

Insert the following new Clause—

“Excluding suppliers for other improper behaviour

- (1) Subject to subsection (2), if a contracting authority determines that a supplier, within the three years leading to the date of tender—
 - (a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it;
 - (b) has admitted that it significantly breached the rights of an employee or worker engaged or formerly engaged by it; or
 - (c) has made a payment to an employee or worker engaged or formerly engaged by it in respect of a significant breach by it of the employee or worker’s rights;

the contracting authority must treat the supplier as an excluded supplier in relation to the award of the public contract.

After Clause 30 - continued

- (2) Where a contracting authority determines that a supplier fulfils one or more of paragraphs (1)(a), (b) or (c), the contracting authority may determine that the supplier is not an excluded supplier in relation to the award of the public contract if the contracting authority is satisfied that the supplier has provided convincing evidence to the effect that measures taken by the supplier are sufficient to demonstrate that it is in the public interest and in the interest of the contracting authority that the supplier should not be excluded from the procurement procedure.
- (3) The evidence referred to in subsection (2) must include proof that the supplier has—
 - (a) paid or undertaken to pay without delay compensation in respect of any damage caused by the breach of rights;
 - (b) clarified the facts and circumstances in a comprehensive manner by actively and without delay collaborating with any relevant employment tribunal or court process and the parties thereto; and
 - (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further breaches of rights of a similar kind.
- (4) Any such measures taken by the supplier must be evaluated taking into account the gravity and particular circumstances of the breach or breaches of rights.
- (5) Where the contracting authority considers such measures to be insufficient, the contracting authority must give the supplier a statement of the reasons for that decision.
- (6) “Rights” in this section means any entitlement or benefit of an employee or worker engaged or formerly engaged by the supplier or of a trade union of which he or she is a member deriving from common law (including contract and tort), statute, or protected by the international obligations of the UK referred to in Article 399 of the Trade and Cooperation Agreement 2020.”

Member’s explanatory statement

This amendment would mean that suppliers who have been found by an employment tribunal or court to have significantly breached the rights of staff in the last three years would not be permitted to become public contractors unless they have ‘self-cleansed’, a phrase borrowed from Regulation 57(11)-(17) of the Public Contracts Regulations 2015 from which the process of self-cleansing in the amendment has been adapted.

Clause 31

LORD TRUE

Page 20, line 2, leave out “tendering procedure other than an open” and insert “flexible”

Page 20, line 8, leave out “procedure other than an open” and insert “flexible”

Page 20, line 11, after “competitive” insert “tendering”

Clause 31 - continued

Page 20, line 35, after “any” insert “requirements of a”

Clause 32

LORD TRUE

Page 21, line 3, leave out “tendering procedure other than an open” and insert “flexible”

Page 21, line 4, leave out “the exclusion of”

Page 21, line 4, at end insert “to be excluded from participating in, or progressing as part of, the procedure”

Page 21, line 6, after “competitive” insert “flexible”

Page 21, line 6, leave out “the exclusion of”

Page 21, line 7, at beginning insert “to be excluded”

Page 21, line 8, leave out from “assessing” to end of line and insert “tenders under”

Clause 33

LORD TRUE

Page 21, line 22, leave out “tendering procedure other than an open” and insert “flexible”

Page 21, line 23, leave out “the exclusion of”

Page 21, line 23, at end insert “to be excluded from participating in, or progressing as part of, the procedure”

Page 21, line 25, after “competitive” insert “flexible”

Page 21, line 25, leave out “the exclusion of”

Page 21, line 26, at beginning insert “to be excluded”

Page 21, line 27, leave out from “assessing” to end of line and insert “tenders under”

Page 21, line 31, leave out “been awarded” and insert “entered into”

Clause 33 - continued

BARONESS NOAKES

Page 21, line 31, leave out “three” and insert “five”

Member’s explanatory statement

This amendment probes whether the intention is to allow consecutive contract awards to public sector mutuals under Clause 33.

Clause 34

LORD TRUE

Page 22, line 8, leave out from “competitive” to end of line 9 and insert “flexible procedure may provide for the following suppliers to be excluded from participating in, or progressing as part of, the procedure—”

Page 22, line 10, leave out “a particular” and insert “suppliers that are not members of an appropriate”

Page 22, line 11, leave out first “a particular” and insert “suppliers that are not members of an appropriate”

Page 22, line 11, leave out second “a particular” and insert “an appropriate”

Page 22, line 13, after “competitive” insert “flexible”

Page 22, line 13, leave out “the exclusion of”

Page 22, line 14, at beginning insert “to be excluded”

Page 22, line 15, leave out from “assessing” to end of line and insert “tenders under”

Page 22, line 18, leave out “a particular” and insert “the appropriate”

Page 22, line 19, leave out first “a particular” and insert “the appropriate”

Page 22, line 19, leave out second “a particular” and insert “the appropriate”

Page 22, line 22, after “suppliers that have” insert “submitted a request to participate in the competitive flexible procedure, or”

Page 22, line 23, leave out “tendering” and insert “flexible”

Clause 34 - continued

Page 22, line 30, at end insert –

- “(6) A dynamic market or part of a dynamic market is “appropriate” for the purposes of this section if its terms permit the award of the contract by the contracting authority.
- (7) This section does not apply in relation to the award of a concession contract, unless the concession contract is also a utilities contract.
- (8) In this Act –
 - “dynamic market” means arrangements established under section 35(1); references to a contract being awarded by reference to suppliers’ membership of a dynamic market are references to a contract being awarded in reliance on this section;
 - references to suppliers’ membership of a dynamic market are references to suppliers’ participation in arrangements established under section 35(1).”

Clause 35

LORD TRUE

Page 22, line 32, leave out “(a “dynamic market”)”

Page 22, line 33, after “of” insert “a contracting authority”

Page 22, line 34, leave out “membership of the market” and insert “participation in the arrangements”

Page 22, line 34, at end insert –

“(1A) In this Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.”

Page 22, line 35, leave out subsections (2) and (3)

Page 23, line 5, after “Act” insert “that apply”

Page 23, line 11, leave out subsection (5)

Page 23, line 14, leave out “section” and insert “Act”

Page 23, line 20, leave out subsection (8)

Clause 36

LORD TRUE

Page 23, line 29, at end insert –

- “(1A) A condition set under subsection (1)(b) may relate to suppliers’ qualifications, experience or technical ability, but may not –
- (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 24, or
 - (c) require particular qualifications without allowing for their equivalents.
- (1B) When considering whether a condition is proportionate for the purposes of subsection (1) a contracting authority must have regard to the nature, complexity and cost of contracts to be awarded by reference to suppliers’ membership of the market.
- (1C) A condition of membership may require the provision of evidence that is verifiable by a person other than the supplier.”

Clause 39

LORD TRUE

Page 25, line 6, after “authority” insert “that established the market”

Schedule 5

BARONESS NOAKES

Page 88, line 26, leave out “five” and insert “four”

Member’s explanatory statement

This amendment probes why direct contract awards can be made on a repeat basis for up to 5 years while the time period for framework contracts is 4 years under Clause 45.

LORD TRUE

Page 89, line 27, leave out paragraph 15

Clause 42

LORD TRUE

Page 26, line 28, after “satisfy” insert “the contracting authority’s requirements or”

Page 26, line 44, at end insert “or

- (b) submitted an unsuitable tender or request in response to the invitation referred to in subsection (1)(a).”

Clause 44

LORD TRUE

Page 27, line 18, at end insert –

- “(3A) A competitive selection process may provide for conditions of participation only if the contracting authority is satisfied that the conditions are a proportionate means of ensuring that suppliers party to the framework have –
- (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (3B) In this section, a “condition of participation” means a condition that a supplier must satisfy in order to be awarded a public contract in accordance with the framework.
- (3C) A condition set under subsection (3A)(b) may relate to suppliers’ qualifications, experience or technical ability, but may not –
- (a) require suppliers to have been awarded a contract under the framework or by a particular contracting authority,
 - (b) break the rules on technical specifications in section 24, or
 - (c) require particular qualifications without allowing for their equivalents.
- (3D) When considering whether a condition is proportionate for the purposes of subsection (3A), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (3E) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (3F) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive selection process.
- (3G) A competitive selection process may provide for the assessment of proposals, but only by reference to one or more of the award criteria against which tenders were assessed in awarding the framework.
- (3H) The award criteria may be refined for the purposes of subsection (3G).”

Page 28, line 6, leave out “under an open framework (see section 47)”

Page 28, line 6, at end insert –

- “(9) Subsections (3) to (5) do not apply to a framework that is a light touch contract (see section 8(5)).”

Clause 45

LORD TRUE

Page 28, line 24, leave out “a framework awarded”

Page 28, line 25, at beginning insert “a framework awarded”

Page 28, line 26, at beginning insert “a framework awarded”

Clause 45 - continued

Page 28, line 26, at end insert –

“(c) a framework that is a light touch contract (see section 8(5)).”

Clause 46

LORD TRUE

Page 28, line 42, leave out “supplier” and insert “person”

Page 28, line 43, leave out second “supplier” and insert “person”

Clause 47

LORD TRUE

Page 29, line 12, at end insert “(but see subsection (2A))”

Page 29, line 15, at end insert –

“(2A) An open framework may provide that, if a framework expires in accordance with subsection (2)(b) while a process for the award of a contract in accordance with the framework is ongoing, the contracting authority may continue the process and award the contract as though the framework had not expired.”

Page 29, line 25, leave out “earlier award” and insert “an earlier award of a framework”

Clause 48

LORD TRUE

Page 30, line 10, after “competitive” insert “tendering”

Page 30, line 26, leave out “virtue of” and insert “reference to”

Clause 49

LORD TRUE

Page 30, line 31, after second “the” insert “contract”

BARONESS NOAKES

Page 30, line 42, leave out paragraphs (d) and (e)

Member’s explanatory statement

This amendment probes why a standstill period is not appropriate for contracts awarded by reference to dynamic markets or to light touch contracts.

LORD TRUE

Page 31, line 2, after “period” insert “(a “voluntary standstill period”)”

Page 31, line 3, after “the” insert “contract”

Page 31, line 3, at end insert –

- “(5) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract award notice is published.”

Clause 50

BARONESS NOAKES

Page 31, line 8, leave out subsection (2)

Member’s explanatory statement

This amendment probes in what circumstances performance indicators would not be appropriate.

LORD WALLACE OF SALTIRE
LORD SCRIVEN

Page 31, line 13, at end insert “, including economic, social or environmental factors, and which must have a particular reference to how these will support sustainable local improvement in these factors.”

Member’s explanatory statement

This amendment clarifies that key performance indicators may relate to the wider public benefit.

Clause 51

LORD TRUE

Page 31, line 24, leave out “awarded under this Part”

Page 31, line 33, leave out from beginning to “a”

Page 31, line 34, after “authority” insert “that”

Page 31, line 35, leave out “, the authority”

Page 31, line 35, at end insert –

- “(a) if the contract is a light touch contract, before the end of the period of 180 days beginning with the day on which the contract is entered into;
(b) otherwise, before the end of the period of 90 days beginning with the day on which the contract is entered into.”

Page 31, line 37, after “authority” insert “or a transferred Northern Ireland authority”

Clause 51 - *continued*

Page 31, line 38, leave out “or a transferred Northern Ireland procurement arrangement”

Page 31, line 40, at end insert “or a transferred Northern Ireland procurement arrangement”

Page 31, line 41, leave out “or a Northern Ireland department”

Page 31, line 42, leave out “in subsection (3)”

Page 32, line 3, leave out “virtue of” and insert “reference to”

Clause 52

LORD TRUE

Page 33, line 6, at end insert –

<p>“The contract being awarded is being awarded by reference to suppliers’ membership of a dynamic market</p>	<p> 10 days”</p>
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Page 33, line 24, leave out “tendering procedure other than an open” and insert “flexible”

Clause 54

LORD TRUE

Page 34, line 2, leave out “supplier” and insert “person”

Page 34, line 5, leave out second “supplier” and insert “person”

Page 34, line 10, leave out “supplier” and insert “person”

Page 34, line 13, leave out second “supplier” and insert “person”

Page 34, line 15, after first “a” insert “covered”

Page 34, line 19, leave out first “section” and insert “Act”

Schedule 6

LORD TRUE

Page 91, line 14, at end insert “, other than an offence under section 54 of that Act”

Page 91, line 17, at end insert –

“4A An offence at common law of conspiracy to defraud.”

Page 91, line 34, at end insert –

“8A An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (taking vehicle without authority etc).”

Page 93, line 1, leave out paragraphs 28 and 29 and insert –

“28(1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(2) In this paragraph, “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under –

(a) Part 1 of the Social Security Contributions and Benefits Act 1992, or

(b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.”

Page 94, line 15, leave out “a tax arrangement that is abusive” and insert “tax arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013)”

Page 94, line 17, leave out from beginning to “(countering” in line 18 and insert “adjustments have accordingly been made under section 209 of that Act”

Page 94, leave out line 21 and insert “Adjustments are not to be treated as having been made until they”

Page 94, line 30, leave out from “of” to end of line 32 and insert “notifiable tax arrangements they have entered into.

(2) In this paragraph –

“defeat” means that –

(a) Condition A in paragraph 5 of Schedule 16 to the Finance (No. 2) Act 2017, or

(b) Condition B in paragraph 6 of that Schedule,

is met in respect of the arrangements (where “T” in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);

“notifiable tax arrangements” means tax arrangements in respect of which a reference number –

Schedule 6 - continued

- (a) has been notified to the supplier or connected person under section 311A, 312 or 312ZA of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and
 - (b) has not been withdrawn;
- “tax arrangements” has the meaning given in paragraph 3(1) of Schedule 16 to the Finance (No. 2) Act 2017.”

LORD HENDY

Page 94, line 32, at end insert –

“Labour law infringements

- 38A A mandatory exclusion ground applies to a supplier if the contracting authority has determined that the supplier is an excluded supplier in accordance with subsection (1) of section (*Excluding suppliers for other improper behaviour*) and has not determined that the supplier is not an excluded supplier in accordance with subsection (2) of (*Excluding suppliers for other improper behaviour*).”

Member’s explanatory statement

This is the corollary of new Clause (Excluding suppliers for other improper behaviour) by making the appropriate amendment to Schedule 6 on mandatory exclusion grounds.

LORD TRUE

Page 95, line 1, leave out paragraph (b)

Schedule 7

LORD HENDY

Page 98, line 36, at end insert –

- “3A Subject to paragraph 3B, a discretionary exclusion ground applies to a supplier if a contracting authority determines that a supplier, within the three years leading to the date of tender –
- (a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it;
 - (b) has admitted that it significantly breached the rights of an employee or worker engaged or formerly engaged by it; or
 - (c) has made a payment to an employee or worker engaged or formerly engaged by it in respect of a significant breach by it of the employee or worker’s rights;

and the contracting authority may treat the supplier as an excluded supplier in relation to the award of the public contract.

Schedule 7 - continued

- 3B Where a contracting authority determines that a supplier fulfils one or more of sub-paragraphs (3A)(a), (b) or (c), the contracting authority must determine that the supplier is not an excluded supplier in relation to the award of the public contract if the contracting authority is satisfied that the supplier has provided convincing evidence to the effect that measures taken by the supplier are sufficient to demonstrate that it is in the public interest and in the interest of the contracting authority that the supplier should not be excluded from the procurement procedure.
- 3C The evidence referred to in paragraph 3B must include proof that the supplier has—
- (a) paid or undertaken to pay without delay compensation in respect of any damage caused by the breach of rights;
 - (b) clarified the facts and circumstances in a comprehensive manner by actively and without delay collaborating with any relevant employment tribunal or court process and the parties thereto; and
 - (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further breaches of rights of a similar kind.
- 3D Any such measures taken by the supplier must be evaluated taking into account the gravity and particular circumstances of the breach or breaches of rights.
- 3E Where the contracting authority considers such measures to be insufficient, the contracting authority must give the supplier a statement of the reasons for that decision.
- 3F “Rights” in paragraphs 3A to 3E means any entitlement or benefit of an employee or worker engaged or formerly engaged by the supplier or of a trade union of which he or she is a member deriving from common law (including contract and tort), statute, or protected by the international obligations of the UK referred to in Article 399 of the Trade and Cooperation Agreement 2020.”

Member’s explanatory statement

This amendment is intended as an alternative to the new Clause after Clause 30 and the amendment to page 94, line 32, in the name of Lord Hendy. This would give contracting authorities the discretion to exclude suppliers who have been found by an employment tribunal or court to have significantly breached the rights of staff in the last three years unless they have ‘self-cleansed’.

BARONESS NOAKES

Page 99, line 32, leave out “considers” and insert “is confident”

Member’s explanatory statement

These amendments probe why the test in Schedule 7 for discretionary exclusion for competition law infringements is “considers” which is lower than “is confident” as set out in the Explanatory Notes.

LORD TRUE

Page 99, line 38, leave out “the supplier or connected person is”

Schedule 7 - continued

Page 99, line 40, at beginning insert “the supplier or connected person is”

BARONESS NOAKES

Page 99, line 46, leave out “considers” and insert “is confident”

Member’s explanatory statement

These amendments probe why the test in Schedule 7 for discretionary exclusion for competition law infringements is “considers” which is lower than “is confident” as set out in the Explanatory Notes.

Page 100, line 17, leave out “considers” and insert “is confident”

Member’s explanatory statement

These amendments probe why the test in Schedule 7 for discretionary exclusion for competition law infringements is “considers” which is lower than “is confident” as set out in the Explanatory Notes.

Page 101, line 28, leave out paragraph 14

Member’s explanatory statement

This amendment probes the relationship between the mandatory exclusion for improper behaviour under clause 30 and the similar discretionary exclusion ground in paragraph 14 of Schedule 7.

Page 102, line 26, leave out sub-paragraphs (a) to (c)

Member’s explanatory statement

This amendment probes why labour market misconduct, environmental misconduct and poor performance, which are existing grounds for discretionary exclusion, are ignored if they took place before the Schedule comes into force.

Clause 55

LORD TRUE

Page 34, line 27, leave out second “supplier” and insert “person”

Page 34, line 30, leave out second “supplier” and insert “person”

Page 35, line 5, leave out paragraph (b)

Clause 56

LORD TRUE

Page 35, line 15, leave out “procurement” and insert “competitive tendering”

Page 35, line 17, leave out first “supplier” and insert “person”

Clause 56 - continued

Page 35, line 17, leave out second “supplier”

Page 35, line 19, leave out “supplier” and insert “person”

Page 35, line 20, at end insert –

- “(iv) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an excluded or excludable supplier (see section 36), or
- (v) has removed an excluded or excludable supplier from a dynamic market under section 37, and”

Page 35, line 25, leave out “or replaced” and insert “, replaced or removed”

Page 35, line 25, leave out “exclusion” and insert “fact”

Page 35, line 31, leave out “or exclusion” and insert “, exclusion, replacement or removal”

Page 36, line 2, at end insert –

- “(aa) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify;”

Clause 59

LORD TRUE

Page 38, line 34, leave out “a Northern Ireland department” and insert “the Northern Ireland department that the Minister considers most appropriate”

Clause 63

LORD TRUE

Page 41, line 13, at end insert –

- “(b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose.”

Clause 64

LORD TRUE

Page 41, line 30, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Page 41, line 36, after “to” insert “a transferred Northern Ireland authority or”

Clause 65

LORD TRUE

Page 42, line 1, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Page 42, line 6, after “contract” insert “awarded by a private utility”

Page 42, line 9, at end insert –

- “(d) awarded by a transferred Northern Ireland authority, unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement, or
- (e) awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.”

Clause 66

LORD TRUE

Page 42, line 32, leave out “remedy the breach or”

Clause 68

LORD TRUE

Page 43, line 37, leave out “subsection (8)(a) of section 63” and insert “section 63(8)(a) (electronic invoices)”

Page 44, line 2, leave out “the whole” and insert “all”

Page 44, line 5, leave out “the whole” and insert “all”

Clause 69

LORD TRUE

Page 44, line 25, leave out from beginning to “materially”

Page 44, line 25, leave out “its scope” and insert “the scope of the contract”

Page 44, line 36, after “not” insert “materially”

Page 44, line 37, at end insert –

“(4A) In this section, a reference to a modification changing the scope of a contract is a reference to a modification providing for the supply of goods, services or works of a kind not already provided for in the contract.”

Page 45, line 1, leave out from “been” to end of line 2 and insert “permitted under subsection (1)”

Clause 69 - continued

Page 45, line 7, leave out from “to” to end of line 8 and insert “a contract to modify a contract where the modification is made in accordance with this section”

Schedule 8

LORD TRUE

Page 104, line 36, after “assignment” insert “(or in Scotland, assignment)”

Clause 70

LORD TRUE

Page 45, line 19, at end insert –

“unless the modification is a permitted modification under paragraph 9 of Schedule 8 (novation or assignment on corporate restructuring).”

Page 45, line 23, leave out “to a public contract that is”

Page 45, line 26, leave out “another modification made to” and insert “an earlier modification of”

Page 45, line 31, at end insert “or,
(b) the modification.”

Page 45, line 35, leave out “was” and insert –
“(za) is a defence and security contract,
(zb) is a light touch contract,
(zc) was awarded by a private utility,”

Page 45, line 36, at beginning insert “was”

Page 45, line 36, after “authority” insert “or a transferred Northern Ireland authority”

Page 45, line 36, after second “awarded” insert “as part of a procurement”

Page 45, line 37, leave out “or a transferred Northern Ireland procurement arrangement”

Page 45, line 39, at beginning insert “was”

Page 45, line 39, after “awarded” insert “as part of a procurement”

Page 45, line 39, at end insert “or a transferred Northern Ireland procurement arrangement”

Clause 70 - continued

Page 45, line 41, leave out “was” and insert—

- “(za) is a defence and security contract,
- (zb) is a light touch contract,
- (zc) was awarded by a private utility,”

Page 45, line 42, at beginning insert “was”

Page 45, line 43, after “awarded” insert “as part of a procurement”

Page 46, line 1, at beginning insert “was”

Page 46, line 1, after “awarded” insert “as part of a procurement”

Page 46, line 3, leave out subsection (10)

Page 46, line 8, leave out paragraph (a)

Page 46, line 9, leave out “in subsection (7)”

Page 46, line 9, at end insert—

- “(12) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds.”

Divide Clause 70 into two clauses, the first (*Contract change notices*) to consist of subsections (1) to (5) and (9) and (12) and the second (*Publication of modifications*) to consist of subsections (6) to (8) and (11)

Transpose the new Clause (*Publication of modifications*) to after Clause 71

Clause 71

LORD TRUE

Page 46, line 12, after “period” insert “(“a voluntary standstill period”)”

Page 46, line 13, at end insert—

- “(2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published.”

Clause 72

LORD TRUE

Page 46, line 24, leave out “supplier” and insert “person”

Page 46, line 25, leave out second “supplier” and insert “person”

Page 46, line 30, leave out “ 28(1)” and insert “ 28(A1)(a)”

Page 46, line 32, leave out paragraph (b) and insert –

“(b) subsection (3A), (3B) or (3C) applies.

(3A) This subsection applies if, before awarding the public contract, the contracting authority did not know the supplier intended to sub-contract the performance of all or part of the contract.

(3B) This subsection applies if –

- (a) the sub-contractor is an excluded or excludable supplier under section 54(1)(b) or (2)(b) (the debarment list), and
- (b) before awarding the contract the contracting authority –
 - (i) sought to determine whether that was the case in accordance with section 28(A1)(b), but
 - (ii) did not know that it was.

(3C) This subsection applies if –

- (a) the sub-contractor is an excluded or excludable supplier under section 54(1)(a) or (2)(a),
- (b) the contracting authority requested information about the sub-contractor under section 28(1), and
- (c) before awarding the contract, the contracting authority did not know that the sub-contractor was an excluded or excludable supplier.”

Page 47, line 22, leave out “8” and insert “9”

After Clause 72

LORD TRUE

Insert the following new Clause –

“Terminating public contracts: national security

A contracting authority may not terminate a contract by reference to the implied term in section 72 on the basis of the discretionary exclusion ground in paragraph 15 of Schedule 7 (threat to national security) unless –

- (a) the authority has notified a Minister of the Crown of its intention, and
- (b) the Minister considers that –
 - (i) the supplier or sub-contractor is an excludable supplier by reference to paragraph 15 of Schedule 7, and
 - (ii) the contract should be terminated.”

Clause 73

LORD TRUE

Page 47, line 37, at end insert “, or

- (b) in relation to a contract awarded under section 40 by reference to paragraph 16 of Schedule 5 (direct award: user choice contracts).”

Clause 74

LORD TRUE

Page 47, line 42, after “a” insert “covered”

Page 48, line 3, after second “a” insert “covered”

Page 48, line 9, after “a” insert “covered”

Clause 75

LORD TRUE

Page 48, line 24, after “a” insert “covered”

Page 48, line 34, leave out from “must” to end of line 35 and insert “in relation to the award—

- (a) treat the supplier as an excluded supplier for the purpose of—
 - (i) assessing tenders under section 18 (competitive award), or
 - (ii) awarding a contract under section 40 or 42 (direct award), and
- (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.”

BARONESS NOAKES

Page 48, line 36, leave out subsection (5)

Member’s explanatory statement*This amendment probes where in clause 74 “conflict of interest” is defined.***Clause 76**

LORD TRUE

Page 48, line 38, after second “a” insert “covered”

BARONESS NOAKES

Page 49, leave out line 34

Member’s explanatory statement*This amendment probes where in Clause 74 “conflict of interest” is defined.*

LORD TRUE

Page 49, line 38, after “establishment” insert “or modification”

Clause 77

LORD TRUE

Page 50, line 12, leave out “the award of a contract” and insert “procurement”

Page 50, line 13, leave out “unless it is awarded” and insert “other than procurement”

Page 50, line 18, leave out paragraph (c)

Clause 78

LORD TRUE

Page 50, line 20, leave out “Where” and insert “If”

Page 50, line 33, leave out “An appropriate authority” and insert “A Minister of the Crown”

Clause 79

LORD TRUE

Page 51, line 5, leave out “where” and insert “if”

Page 51, line 21, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Clause 80

LORD TRUE

Page 52, line 8, leave out “the whole” and insert “all”

Page 52, line 13, leave out “the whole” and insert “all”

Page 52, line 20, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Page 52, line 24, at end insert –

“(b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose.”

Clause 81

LORD TRUE

Page 52, line 32, leave out “, below-threshold procurement or international organisation procurement”

Page 53, line 3, leave out paragraphs (a) and (b)

Clause 81 - *continued*

Page 53, line 17, leave out “or services” and insert “, services or works”

Clause 82

LORD TRUE

Page 53, line 26, leave out from “procurement” to end of line 27

Page 53, line 37, at end insert –

“(3A) In this section, a reference to a supplier’s association with a state includes a reference to the fact that the state is the place of origin of goods, services or works supplied by the supplier.”

Page 53, line 42, leave out “virtue of” and insert “reference to”

Clause 83

LORD TRUE

Page 54, line 6, leave out from “means” to “by” in line 8 and insert “procurement carried out”

Clause 84

LORD TRUE

Page 54, line 35, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Page 54, line 37, at end insert “, or

(b) a transferred Northern Ireland authority.”

Clause 87

LORD TRUE

Page 55, line 34, after first “a” insert “covered”

Page 55, line 39, after first “a” insert “covered”

After Clause 88

LORD TRUE

Insert the following new Clause –

“Data protection

- (1) This Act does not authorise or require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred and the duties imposed by and under this Act).
- (2) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).”

Clause 89

LORD TRUE

Page 56, line 32, at end insert –

“(4A) A contracting authority’s duty to comply with section 12(9) or 13(8) (requirement to have regard to procurement policy statements) is not enforceable in civil proceedings under this Part.”

Page 56, line 34, leave out from “a” to “procurement” in line 35 and insert “procurement other than a covered”

Page 57, line 7, leave out subsection (8)

Clause 90

LORD TRUE

Page 57, line 11, after “if” insert “during any applicable standstill period”

Page 57, line 12, leave out “have been” and insert “are”

Page 57, line 14, leave out “has been” and insert “is”

Page 57, line 17, leave out subsection (3)

Page 57, line 24, at end insert –

“(6) See sections 49 and 71 for provision about standstill periods.”

Clause 91

LORD TRUE

Page 57, line 33, leave out “entering” and insert “entry”

Clause 95

LORD TRUE

Page 60, line 1, at end insert –

- “(A1) A supplier must commence any specified set-aside proceedings before the earlier of –
- (a) 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 circumstances giving rise to the claim;
 - (b) the end of the period of six months beginning with the day the contract was entered into or modified.”

Page 60, line 2, after “any” insert “other”

Page 60, leave out line 5

Page 60, line 6, leave out subsections (2) to (4)

Page 60, line 19, leave out “(1) or (4)” and insert “(A1)(a) or (1)”

Page 60, line 21, after “after” insert –

- “(a) in the case of specified set-aside proceedings, the end of the period referred to in subsection (A1)(b), and
- (b) in any case,”

Page 60, line 23, at end insert –

- “(7) In this section, “specified set-aside proceedings” means proceedings under section 93(2) to –
- (a) set aside a public contract in circumstances where the contracting authority did not publish a contract details notice in respect of the contract in accordance with section 51, or
 - (b) set aside a modification of a contract.”

Clause 96

BARONESS NOAKES

Page 60, line 27, leave out “relevant”

Member’s explanatory statement

These amendments probe why Government departments are exempted from procurement oversight.

Page 60, line 30, leave out “relevant”

Member’s explanatory statement

These amendments probe why Government departments are exempted from procurement oversight.

Page 60, line 37, leave out “relevant”

Member’s explanatory statement

These amendments probe why Government departments are exempted from procurement oversight.

Page 61, leave out lines 3 to 8

Member’s explanatory statement

These amendments probe why Government departments are exempted from procurement oversight.

LORD TRUE

Page 61, line 12, at end insert—

““section 97 recommendation” has the meaning given in section 97”

Clause 97

BARONESS NOAKES

Page 61, line 27, leave out subsection (3)

Member’s explanatory statement

This amendment probes the exclusion of procurement objectives, policy procurement statements or the exercise of discretion from recommendations following procurement investigations and the impact of those exclusions on guidance issued under Clause 98.

Clause 98

LORD TRUE

Page 62, line 14, after “to” insert “relevant”

Page 62, line 14, at end insert—

“(3) In subsection (2), the reference to relevant guidance is a reference to guidance that could, in light of Part 11, be addressed to the contracting authority.”

Clause 99

LORD TRUE

Page 62, line 26, leave out “the award of contracts” and insert “procurement”

Page 62, line 27, leave out from “arrangement” to end of line 27

Page 62, line 40, leave out “awarding a contract” and insert “carrying out a procurement”

Page 62, line 42, leave out sub-paragraph (ii)

Page 63, line 4, leave out subsection (5)

Clause 100

LORD TRUE

Page 63, line 22, leave out “the award of contracts” and insert “procurement”

Page 63, line 28, leave out “in” and insert “by”

Page 63, line 39, leave out subsection (5)

Clause 101

LORD TRUE

Page 63, line 45, at end insert “procurement under –

- (a) a reserved procurement arrangement, or
- (b) a transferred Northern Ireland procurement arrangement.”

Page 64, line 1, leave out paragraphs (a) and (b)

Page 64, line 5, at end insert “or 98 (guidance following procurement investigation)”

Page 64, line 7, leave out “(electronic invoicing)” and insert “, or publish guidance under section 98,”

Page 64, line 8, at end insert “, or the guidance relates to, procurement under –

- (a) a reserved procurement arrangement, or
- (b) a transferred Northern Ireland procurement arrangement.”

Page 64, line 9, leave out paragraphs (a) and (b)

Page 64, line 14, at end insert “procurement under –

- (a) a reserved procurement arrangement, or
- (b) a devolved Welsh procurement arrangement.”

Page 64, line 15, leave out paragraphs (a) and (b)

Page 64, line 23, leave out subsection (6)

Clause 102

LORD TRUE

Page 64, line 27, leave out from second “a” to “awarded” in line 28 and insert “procurement under a procurement arrangement is a reference to a procurement as part of which the contract is”

Clause 102 - continued

Page 64, line 34, at end insert –

“and includes a reference to the entry into and management of the contract, and termination of the procurement before award”

Page 65, line 28, after “framework” insert “agreement”

Clause 103

LORD TRUE

Page 65, line 34, at end insert “devolved Scottish authorities carrying out procurement under”

Page 65, leave out line 35

Page 65, line 39, leave out paragraph (b)

Page 65, line 41, at end insert “procurement under devolved Scottish procurement arrangements”

Page 65, line 42, leave out paragraphs (a) and (b)

Page 66, line 3, leave out “the award of contracts” and insert “procurement”

Page 66, line 5, leave out paragraph (b)

Page 66, line 6, leave out “section” and insert “Act”

Clause 104

LORD HENDY

Page 66, line 15, at end insert –

“(A1) In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations), in subsection (5), omit paragraphs (a) and (b).”

Member’s explanatory statement

The purpose of this amendment is to remove the prohibition on taking into account the terms and conditions of the staff and/or the legal status of sub-contractors’ staff.

Schedule 10

LORD TRUE

Page 108, line 6, leave out “the parties to it agree”

Schedule 10 - continued

Page 108, line 7, at end insert –

- “(7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if –
- (a) single source contract regulations contain provision to that effect, or
 - (b) the parties to the contract agree that it should.”

Page 108, line 8, leave out “(7)” and insert “(8)”

Page 108, line 8, leave out “specify circumstances in which certain” and insert “make provision about when”

Page 108, line 9, leave out “may or may not” and insert “are or are not to”

Page 109, line 8, leave out paragraph (c)

Page 109, line 12, at end insert –

- “(ea) in new step 3, before “Any increase” insert “In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and”;

Clause 108

LORD TRUE

Page 67, line 16, leave out subsection (1) and insert –

- “(1) If the procurement of goods or services by a relevant authority is regulated by health procurement rules, a Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to such procurement.”

Clause 110

LORD TRUE

Page 70, line 10, leave out “Part 2” and insert “section 29”

After Clause 110

BARONESS NOAKES
BARONESS NEVILLE-ROLFE

Insert the following new Clause –

“Review of procurement

- (1) A Minister of the Crown must carry out reviews of the operation of this Act and must in particular consider –

After Clause 110 - continued

- (a) how procurement rules have impacted the award of contracts to small and medium sized enterprises;
 - (b) whether there is scope to reduce or simplify procurement rules without impacting the procurement objectives set out in section 11.
- (2) “Procurement rules” means the requirements related to procurement set out in this Act or issued under the authority of this Act, and the health procurement rules referred to in section 108.
- (3) The Minister of the Crown must consult Welsh Ministers and a Northern Ireland department.
- (4) After each review, the Minister of the Crown must—
- (a) publish a report of the review, and
 - (b) lay a copy of the report before Parliament.
- (5) The first report must be published within the period of 6 years beginning with the day on which this Act comes into force and subsequent reports must be published at intervals of not more than 5 years.”

Member’s explanatory statement

This amendment requires the Government to keep procurement rules under review.

Clause 111

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY

Page 70, line 19, at end insert—

- ““good work” means work which provides and promotes—
- (a) fair pay;
 - (b) fair conditions;
 - (c) equality and freedom from discrimination;
 - (d) dignity;
 - (e) autonomy of workers;
 - (f) physical and mental wellbeing;
 - (g) access to union representatives;
 - (h) participation of workers in determining and improving working conditions; and
 - (i) access to facilities for career guidance and training;

LORD TRUE

Page 70, line 35, leave out “payable” and insert “paid, or to be paid,”

BARONESS NOAKES

Page 70, line 35, after “payable” insert “or receivable”

Member's explanatory statement

This amendment probes whether the VAT inclusive definition of the amount payable under a contract is intended to apply to the valuation of concession contracts under paragraph 3 of Schedule 3.

Page 70, line 35, leave out “a reference to any amount referable to”

Member's explanatory statement

This amendment probes why the formulation “any amount referable to VAT” has been used.

Clause 112

LORD TRUE

Page 71, line 3, leave out “supplier” and insert “person”

Page 71, line 15, at end insert –

“covered procurement	section (Procurement and covered procurement) section 54”
debarment list	

Page 71, line 25, leave out “35” and insert “34”

Page 72, line 9, leave out “a”

Page 72, line 9, leave out “section 10” and insert “section (*Procurement and covered procurement*)”

Page 72, line 11, at end insert –

“requirements	section 18”
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Page 72, line 25, at end insert –

“utilities dynamic market utility	section 35 section 35”
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Procurement Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

27 June 2022
