

Procurement Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

BARONESS NEVILLE-ROLFE

Page 1, line 10, leave out sub-paragraph (iii)

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Page 2, line 13, leave out “or private utility”

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Clause 10

BARONESS NEVILLE-ROLFE

Page 8, line 5, at end insert “, unless tenders will only be considered from suppliers with an annual turnover of less than £5 million.”

Member's explanatory statement

This amendment seeks to reduce the burden on business of the Bill's provisions.

Clause 11

BARONESS NEVILLE-ROLFE

Page 8, line 38, at end insert –

“(e) keeping the bureaucratic burden associated with tendering on small businesses as low as possible.”

Member's explanatory statement

This amendment seeks to reduce the burden of tendering on small business.

Clause 18

BARONESS NEVILLE-ROLFE

Page 12, line 23, at end insert “unless the tender is from a supplier with an annual turnover of less than £5 million;”

Member's explanatory statement

These amendments probe the scope for excluding small business from the burden of these provisions.

Page 12, line 31, at end insert “unless the tender is from a supplier with an annual turnover of less than £5 million.”

Member's explanatory statement

These amendments probe the scope for excluding small business from the burden of these provisions.

Clause 24

LORD HUNT OF KINGS HEATH

Page 17, line 3, at end insert –

“(4A) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the terms of procurement must, except in duly justified cases, be drawn up so as to take into account accessibility criteria for disabled persons and Universal Design principles.”

Member's explanatory statement

This amendment would ensure that contracting authorities have due regard to accessibility criteria for people with disabilities and the principles of Universal Design as defined under the UN Convention on the Rights of Persons with Disabilities.

After Clause 30

LORD HAIN

LORD HENDY

BARONESS WHEATCROFT

LORD KERSLAKE

This amendment replaces the amendment in the name of Lord Hain published on sheet HL Bill 4(d)

Insert the following new Clause –

“Power to exclude suppliers which have acted unlawfully or unethically

If the Secretary of State considers a supplier to have acted –

- (a) unlawfully, in relation to either UK law or the law of the country in which the supplier is operating, or
- (b) unethically,

they must by regulations made by statutory instrument prevent contracting authorities from considering any tenders from that supplier.”

Member's explanatory statement

This amendment is intended to grant Ministers the ability to exclude by statutory instrument companies from tendering for government contracts where they have acted illegally or unethically.

Clause 35

BARONESS NEVILLE-ROLFE

Page 23, line 4, leave out subsection (4)

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Page 23, line 17, leave out paragraph (b)

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Clause 50

BARONESS NEVILLE-ROLFE

Page 31, line 6, leave out “three key performance indicators” and insert “one key performance indicator”

Member's explanatory statement

This and other amendments in the name of Baroness Neville-Rolfe probe the value of requiring performance indicators by law and the wisdom of requiring at least 3 in every large contract given the need for clarity of purpose.

Page 31, line 14, leave out subsection (4)

Page 31, line 15, leave out “changing” and insert “reducing”

Clause 54

BARONESS NEVILLE-ROLFE

Page 33, line 40, at end insert “it is a supplier with an annual turnover of £5 million or more and”

Member's explanatory statement

This excludes small suppliers from the ambit of Schedule 6 in order to reduce the degree of bureaucratic cross compliance which could deter small bidders for public contracts.

LORD HENDY

Page 34, line 2, leave out from “supplier” to “or” in line 4

Member's explanatory statement

This amendment, along with the amendment to page 34, line 10, in the name of Lord Hendy, removes the burden on the contracting authority to prove that the supplier, having been demonstrably guilty of misconduct sufficient to disbar it from the procurement process, is 'likely' to misconduct itself similarly again.

LORD WALLACE OF SALTAIRE
LORD FOX

Page 34, line 3, leave out sub-paragraph (ii) and insert—

“(ii) the supplier or associated supplier cannot demonstrate that the circumstances giving rise to the application of the exclusion ground are not likely to occur again, or”

Member's explanatory statement

This amendment, along with Lord Wallace's amendment to page 34, line 11, reverses the burden of proof in the Bill so that the onus will be on the contractor to prove that the exclusion grounds will not arise again.

BARONESS NEVILLE-ROLFE

Page 34, line 7, at end insert “it is a supplier with an annual turnover of £5 million or more and”

Member's explanatory statement

This excludes small suppliers from the ambit of Schedule 7 in order to reduce the degree of bureaucratic cross compliance which could deter small bidders for public contracts.

LORD HENDY

Page 34, line 10, leave out from “supplier” to “or” in line 12

Member's explanatory statement

This amendment, along with the amendment to page 34, line 2, in the name of Lord Hendy, removes the burden on the contracting authority to prove that the supplier, having been demonstrably guilty of misconduct sufficient to disbar it from the procurement process, is 'likely' to misconduct itself similarly again.

LORD WALLACE OF SALTAIRE
LORD FOX

Page 34, line 11, leave out sub-paragraph (ii) and insert—

“(ii) the supplier or associated supplier cannot demonstrate that the circumstances giving rise to the application of the exclusion ground are not likely to occur again, or”

Member's explanatory statement

This amendment, along with Lord Wallace's amendment to page 34, line 3, reverses the burden of proof in the Bill so that the onus will be on the contractor to prove that the exclusion grounds will not arise again.

BARONESS NEVILLE-ROLFE

Page 34, line 15, leave out subsection (3)

Member's explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Schedule 6

LORD WALLACE OF SALTAIRE

Page 92, line 2, at end insert –

“11A An offence under Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (sanction evasion offences).”

Member's explanatory statement

This amendment is intended to make criminal offences for sanctions evasion grounds for exclusion from public procurement.

LORD WALLACE OF SALTAIRE

LORD FOX

Page 92, line 8, leave out “or 6” and insert “, 6 or 7”

Member's explanatory statement

This amendment includes the failure of commercial organisations to prevent bribery as an offence which is a mandatory exclusion ground.

Page 92, line 10, at end insert –

“16A An offence under section 86, 88 or 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (money laundering offences).”

Member's explanatory statement

This amendment is intended to ensure that the full range of criminal offences for money laundering are properly captured for the purposes of exclusion from public procurement.

BARONESS NEVILLE-ROLFE

Baroness Neville-Rolfe gives notice of her intention to oppose the Question that Schedule 6 be the 6th Schedule to the Bill.

Member's explanatory statement

This is to probe the case for these provisions including whether they exist in the EU law that the Bill replaces, any perverse effects on productivity and the compliance costs to bidders.

Schedule 7

LORD WALLACE OF SALTAIRE
LORD FOX

Page 98, line 36, at end insert –

“Financial and economic misconduct

- 3A A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) any of the following offences –
- (a) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences);
 - (b) an offence under section 86, 88 or 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
 - (c) an offence under Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (sanctions evasion offences);
 - (d) an offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences);
 - (e) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
 - (f) an offence under section 1, 2, 6 or 7 of the Bribery Act 2010 (bribery offences).”

Member’s explanatory statement

This amendment is intended to allow relevant Ministers and Contracting Authorities the power to exclude suppliers from procurement where they have evidence of financial and economic criminal activity, such as fraud, money laundering, bribery or sanctions evasion, but there has not yet been a conviction by a court.

Page 100, line 30, at end insert –

“Deferred prosecution agreements

- 11A A discretionary exclusion ground applies to a supplier if –
- (a) the supplier is subject to a deferred prosecution agreement under the Crime and Courts Act 2013 (Schedule 17), and
 - (b) the supplier has failed to make sufficient progress in implementing any compliance programme agreed or mandated by the agreement.”

Member’s explanatory statement

This amendment is intended to ensure that serious wrongdoing that forms the basis for a Deferred Prosecution Agreement, and progress made by a supplier in ensuring that wrongdoing will not occur again, can be properly considered and assessed by contracting authorities when evaluating a supplier’s reliability as a contractor.

BARONESS NEVILLE-ROLFE

Baroness Neville-Rolfe gives notice of her intention to oppose the Question that Schedule 7 be the 7th Schedule to the Bill.

Member's explanatory statement

This is to probe the case for these provisions including whether they exist in the EU law that the Bill replaces, any perverse effects on productivity, the proposed use of discretion and the compliance costs to bidders.

Clause 55

LORD WALLACE OF SALTAIRE
LORD FOX

Page 34, leave out lines 23 to 26 and insert –

“(1) In considering, for the purposes of section 54(1)(a) or (2)(a), whether the circumstances giving rise to the application of an exclusion ground are not likely to occur again, a supplier, associated supplier or connected person may provide evidence on the following matters –”

Member's explanatory statement

Clause 55 of the Bill expands the circumstances in which companies can be deemed to have become “reliable”. This amendment, along with further amendments from Lord Wallace to Clause 55, restricts those circumstances; requires evidence to show that companies have taken concrete steps to prevent further wrongdoing; and requires statutory guidance to assist contracting authorities in applying exclusions.

LORD WALLACE OF SALTAIRE

Page 34, line 28, leave out “for example by paying compensation” and insert “in particular by paying compensation for any damage caused by criminal offending or misconduct and by collaborating proactively with investigating authorities”

Member's explanatory statement

Clause 55 of the Bill expands the circumstances in which companies can be deemed to have become “reliable”. This amendment, along with further amendments from Lord Wallace to Clause 55, restricts those circumstances; requires evidence to show that companies have taken concrete steps to prevent further wrongdoing; and requires statutory guidance to assist contracting authorities in applying exclusions.

LORD WALLACE OF SALTAIRE
LORD FOX

Page 34, line 34, leave out paragraphs (c) and (d)

Member's explanatory statement

Clause 55 of the new Bill expands the circumstances in which companies can be deemed to have become “reliable”. This amendment, along with further amendments from Lord Wallace to Clause 55, restricts those circumstances; requires evidence to show that companies have taken concrete steps to prevent further wrongdoing; and requires statutory guidance to assist contracting authorities in applying exclusions.

Page 35, line 1, leave out subsection (3) and insert –

“(3) A contracting authority must require whatever evidence is necessary from a supplier, associated supplier or connected person to assure itself that the circumstances giving rise to the application of the exclusion grounds are not likely to occur again.”

Member's explanatory statement

Clause 55 of the Bill expands the circumstances in which companies can be deemed to have become "reliable". This amendment, along with further amendments from Lord Wallace to Clause 55, restricts those circumstances; requires evidence to show that companies have taken concrete steps to prevent further wrongdoing; and requires statutory guidance to assist contracting authorities in applying exclusions.

Page 35, line 7, at end insert –

“(4) The relevant appropriate authority under section 56 must produce statutory guidance for contracting authorities on the application of exclusion grounds.”

Member's explanatory statement

Clause 55 of the Bill expands the circumstances in which companies can be deemed to have become "reliable". This amendment, along with further amendments from Lord Wallace to Clause 55, restricts those circumstances; requires evidence to show that companies have taken concrete steps to prevent further wrongdoing; and requires statutory guidance to assist contracting authorities in applying exclusions.

Clause 74

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

Page 48, line 8, after “who” insert “directly or indirectly”

Member's explanatory statement

This amendment, and Lord Wallace's amendment to page 48, line 20, are intended to broaden the range of people to whom conflicts of interest in procurement should be identified, in line with the recommendations of Sir Nigel Boardman's review of Covid-19 procurement.

Page 48, line 20, at end insert –

““person who can directly or indirectly influence” includes, but is not limited to –

- (a) civil servants;
- (b) any other public sector employees or officials;
- (c) NHS staff;
- (d) government contractors and their employees;
- (e) consultants;
- (f) special advisers; or
- (g) political appointees.”

Member's explanatory statement

This amendment, and Lord Wallace's amendment to page 48, line 8, are intended to broaden the range of people to whom conflicts of interest in procurement should be identified, in line with the recommendations of Sir Nigel Boardman's review of Covid-19 procurement.

Page 48, line 20, at end insert –

““reasonable steps” include, but are not limited to –

- (a) requiring that suppliers submit a conflict of interest declaration; or

Clause 74 - continued

- (b) requiring that suppliers submit written confirmation of compliance with the Suppliers Code of Conduct applicable at the time, or any future guidance that replaces it.”

Member’s explanatory statement

This amendment requires suppliers to submit conflict of interest declarations, in line with a recommendation from Sir Nigel Boardman’s review into Covid-19 procurement.

Clause 75

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

Page 48, line 24, at end insert “or undermine the integrity of the procurement process”

Member’s explanatory statement

This amendment is intended to encourage a broader evaluation of conflicts of interest.

Clause 76

BARONESS NEVILLE-ROLFE

Page 49, line 6, leave out subsection (4)

Member’s explanatory statement

This amendment removes a provision based on what people think which is not objective and could have perverse effects on contracts granted.

Page 49, line 24, leave out subsection (7)

Member’s explanatory statement

This amendment and others in the name of Baroness Neville-Rolfe would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

After Clause 76

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

Insert the following new Clause –

“Management of conflicts of interest

- (1) A Minister of the Crown must by regulations specify how conflicts of interest are to be managed on a day-to-day basis.
- (2) Before making regulations under subsection (1) a Minister of the Crown must consult such persons as they consider appropriate.
- (3) A Minister of the Crown must publish guidance on the end-to-end management of conflicts of interest through the procurement process.

After Clause 76 - continued

- (4) Regulations under this section 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

The review carried out by Sir Nigel Boardman into Covid-19 procurement, and the National Audit Office and local government procurement reviews published in 2020, recommended a number of measures to ensure robust management of conflicts of interest across government procurement. This probing amendment is intended to allow a debate on the implementation of these recommendations.

LORD SCRIVEN
LORD WALLACE OF SALTAIRE

Insert the following new Clause—

“Conflicts of interest: subsequent appointments

A former senior official who acted for or on behalf of a contracting authority in relation to a procurement may not, for the period of six months after leaving that role—

- (a) be employed by,
- (b) be sub-contracted to, or
- (c) give paid advice to,

a potential supplier of that procurement.”

Member’s explanatory statement

This amendment aims to ensure that a senior official working on a procurement may not be employed by or give paid advice to a company that may be a supplier to that procurement for a period of six months after they have left their role in the public sector.

Clause 85

LORD WALLACE OF SALTAIRE
LORD FOX

Page 55, line 8, leave out “be likely to” and insert “, the overriding evidence suggests,”

Member’s explanatory statement

This amendment, along with Lord Wallace’s amendment to page 55, line 14, is intended to probe the nature of the exemptions from duties to publish or disclose information.

Page 55, line 14, at end insert—

- “(c) a description of a public interest served by withholding such information.”

Member’s explanatory statement

This amendment, along with Lord Wallace’s amendment to page 55, line 8, is intended to probe the nature of the exemptions from duties to publish or disclose information.

After Clause 98

BARONESS NEVILLE-ROLFE

Insert the following new Clause –

“Intellectual property restrictions

Where a public authority enters into a public contract with a supplier, the public authority must not restrict the ability of the supplier to sell the supplier’s products or services, including products or services very similar or identical to the product or service covered by the public contract, to other buyers, except on the grounds of national security.”

Member’s explanatory statement

This amendment seeks to prevent the public sector stopping the private sector spreading innovative solutions to other clients.

Clause 99

BARONESS NEVILLE-ROLFE

Page 62, line 28, leave out “or private utility”

Member’s explanatory statement

This amendment and others in the name of Baroness Neville-Rolfe would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

LORD WIGLEY
BARONESS HUMPHREYS

Page 62, line 41, after “wholly” insert “or mainly”

Clause 100

BARONESS NEVILLE-ROLFE

Page 63, line 17, leave out “or private utilities”

Member’s explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Page 63, line 30, leave out “or private utility”

Member’s explanatory statement

These amendments would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Clause 109

BARONESS NEVILLE-ROLFE

Baroness Neville-Rolfe gives notice of her intention to oppose the Question that Clause 109 stand part of the Bill.

Member's explanatory statement

This together with amendments in the name of Baroness Neville-Rolfe would remove private utilities from the ambit of the Bill which at present allows the government and devolved authorities by order to regulate industry and its procurement practices.

Procurement Bill [HL]

AMENDMENTS
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28 June 2022
