

Procurement Bill [HL]

FOURTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 25th May 2022, as follows –

Clauses 1 and 2	Clauses 55 to 69
Schedules 1 and 2	Schedule 8
Clause 3	Clauses 70 to 81
Schedule 3	Schedule 9
Clauses 4 and 5	Clauses 82 to 105
Schedule 4	Schedule 10
Clauses 6 to 40	Clauses 106 and 107
Schedule 5	Schedule 11
Clauses 41 to 54	Clauses 108 to 116
Schedules 6 and 7	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 10

LORD WALLACE OF SALTAIRE

LORD FOX

BARONESS BENNETT OF MANOR CASTLE

45

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

46 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 TRUE

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

BARONESS THORNTON
BARONESS BENNETT OF MANOR CASTLE
THE EARL OF DEVON

47A Page 8, line 35, leave out “benefit” and insert “value”

BARONESS MCINTOSH OF PICKERING

47B Page 8, line 38, leave out paragraph (d)

Member’s explanatory statement

This removes the requirement for a contracting authority to have regard to the importance of acting, and being seen to act, with integrity.

LORD HUNT OF KINGS HEATH
BARONESS HAYMAN OF ULLOCK

48 Page 8, line 38, at end insert—

“(e) acting to improve economic, social, environmental and cultural well-being by carrying out public procurement in a socially responsible way.”

Member’s explanatory statement

This amendment would add economic, social, environmental and cultural well-being to the procurement objectives set out in the Clause that a contracting authority must have regard to the importance of.

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS YOUNG OF OLD SCONE
BARONESS PARMINTER

49 Page 8, line 38, at end insert—

“(e) contributing towards meeting the targets set under—
(i) Part 1 of the Climate Change Act 2008 (UK net zero emissions target and budgeting), and

Clause 11 - continued

- (ii) sections 1 to 3 of the Environment Act 2021 (environmental targets); and
- (f) adapting to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008 (report on impact of climate change)."

Member's explanatory statement

The purpose of this amendment is to extend the objectives to which contracting authorities must have regard to include certain climate and environmental matters.

BARONESS NEVILLE-ROLFE
BARONESS NOAKES

50 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.

BARONESS HAYMAN OF ULLOCK
LORD COAKER

51 Page 8, line 38, at end insert –

- “(e) proportionality.”

Member's explanatory statement

This amendment adds proportionality to the procurement objectives.

52 Page 8, line 38, at end insert –

- “(e) improving the economic, social, and environmental well-being of the relevant area.”

BARONESS THORNTON
BARONESS BENNETT OF MANOR CASTLE
THE EARL OF DEVON

52A Page 8, line 38, at end insert –

- “(e) maximising social value.”

LORD LANSLEY

53 Page 8, line 38, at end insert –

- “(1A) In subsection (1) “public benefit” includes economic benefits, environmental benefits, the promotion of innovation, maximising social value and the reduction of geographic disparities across the United Kingdom in relation to these public goods.”

Clause 11 - continued

LORD KNIGHT OF WEYMOUTH
 BARONESS HAYMAN OF ULLOCK
 LORD HENDY
 BARONESS BENNETT OF MANOR CASTLE

54 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.”

BARONESS MCINTOSH OF PICKERING

54A Page 8, line 38, at end insert –

“(1A) In carrying out a procurement, a contracting authority must act with integrity.”

Member’s explanatory statement

This is a consequential amendment. It inserts a duty on a contracting authority to act with integrity in carrying out a procurement.

LORD TRUE

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

LORD WALLACE OF SALTAIRE
 LORD FOX

56 Page 8, line 40, leave out from “same” to end of line

Member’s explanatory statement

This amendment is to probe how, why and when it is justifiable to treat suppliers differently.

LORD WALLACE OF SALTAIRE
 LORD FOX
 BARONESS BENNETT OF MANOR CASTLE

57 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".

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS YOUNG OF OLD SCONE
BARONESS PARMINTER

58 Page 8, line 43, at end insert –

“(4) In this section, “public benefit” means the supporting of national and local priority outcomes, including –

- (a) creating new businesses, jobs and skills in the United Kingdom,
- (b) improving supplier diversity, innovation and resilience, and
- (c) tackling climate change, biodiversity loss and reducing waste.”

Member's explanatory statement

The purpose of this amendment is to define "public benefit".

LORD WALLACE OF SALTAIRE
LORD FOX
BARONESS BENNETT OF MANOR CASTLE

59 Page 8, line 43, at end insert –

“(4) In this section “public benefit” includes –

- (a) the protection of the environment,
- (b) energy efficiency,
- (c) combatting climate change,
- (d) promoting innovation, employment and social inclusion,
- (e) ensuring the best possible conditions for the provision of high-quality social services, and
- (f) in certain circumstances, developing and promoting local supply chains.”

Member's explanatory statement

This amendment seeks to define "public benefit" to include elements of social value, for the purposes of the procurement objectives.

LORD PURVIS OF TWEED

59A Page 8, line 43, at end insert –

“(4) In this section “public benefit” includes social and environmental sustainability and the use of products that are fairly traded.”

Member's explanatory statement

This amendment is intended to probe the commitment of public authorities to the purchase of Fairtrade-certified products where possible when carrying out a procurement.

Clause 12

LORD LANSLEY

60 Page 9, line 2, leave out “may” and insert “must”

Clause 12 - continued

LORD LANSLEY
BARONESS BENNETT OF MANOR CASTLE

61 Page 9, line 3, at end insert –

“(1A) The strategic priorities must include, but are not limited to –

- (a) the achievement of targets set under the Climate Change Act 2008 and the Environment Act 2021,
- (b) requirements set out in the Public Services (Social Value) Act 2012,
- (c) the promotion of innovation and enhancing the competitiveness of UK suppliers, and
- (d) the minimisation of fraud, corruption, waste or the abuse of public money.”

BARONESS PARMINTER

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

LORD LANSLEY

63 Page 9, line 7, at end insert –

“(za) publish a draft statement,”

64 Page 9, line 8, after “consultation” insert “on the draft statement”

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS YOUNG OF OLD SCONE
BARONESS PARMINTER

65 Page 9, line 11, at end insert –

“(3A) The national procurement policy statement must include such matters as the need to –

- (a) contribute towards meeting the targets set under –
 - (i) Part 1 of the Climate Change Act 2008 (UK net zero emissions target and budgeting), and
 - (ii) sections 1 to 3 of the Environment Act 2021 (environmental targets), and
- (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008 (report on impact of climate change).”

Member’s explanatory statement

This amendment specifies certain matters which the national procurement policy statement must cover.

BARONESS BOYCOTT
BARONESS BENNETT OF MANOR CASTLE

66 Page 9, line 11, at end insert—

- “(3A) The national procurement policy statement must include such matters and accompanying targets in relation to food and catering services as—
- (a) local and environmentally sustainable sourcing, including minimum targets of 30% rising to 50% by expenditure,
 - (b) healthy and sustainable menu choices,
 - (c) consumption of fruit, vegetables and fibre,
 - (d) resource efficiency and waste, and
 - (e) public reporting by contracting authorities in relation to the above matters.
- (3B) In complying with the requirements under subsection (3A) the Secretary of State must have regard to any reference diet produced by an appropriate authority.”

Member’s explanatory statement

This requires that the statement makes provision for food and catering services, by putting commitments made in the Government’s food strategy onto a statutory footing. It also makes provision for the content of the NPPS in relation to food and catering to have regard to any reference diet produced by an appropriate authority.

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY
LORD CLEMENT-JONES

67 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.”

BARONESS HAYMAN OF ULLOCK
LORD COAKER

68 Page 9, line 12, leave out subsections (4) to (6) and insert—

- “(4) The national procurement policy statement, or any revision to the national procurement policy statement, does not have effect 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 purpose of this amendment is to subject the national procurement policy statement, and amendments to the national procurement policy statement, to the affirmative procedure, so that the existing national procurement policy statement remains in force if a new statement is rejected.

LORD HUNT OF KINGS HEATH
BARONESS BENNETT OF MANOR CASTLE

69 Page 9, line 27, at end insert –

“(9A) The national procurement policy statement must specify –

- (a) how a public body carries out public procurement in a socially responsible way in accordance with sustainable development principles, and
- (b) that, in any outsourcing contract entered into by a public body, the contractor must provide services in accordance with sustainable development principles.”

Member’s explanatory statement

This amendment would ensure that sustainable development principles are incorporated within the national procurement policy statement.

70 Page 9, line 27, at end insert –

“(9A) The national procurement policy statement must specify how public bodies in the awarding of public contracts are expected to abide by the policy statement on environment principles in accordance with section 18 of the Environment Act 2021.”

Member’s explanatory statement

This amendment is aimed at ensuring that procurement policy, as enunciated in the National Procurement policy statement, is consistent with the policy statement on environmental principles established under the Environment Act 2021 which sets out how ministers should apply the environmental principles, established under that Act, to support environmental protection and enhancement.

BARONESS YOUNG OF OLD SCONE
LORD HUNT OF KINGS HEATH

70A Page 9, line 27, at end insert –

“(9A) The national procurement policy statement must specify how the Secretary of State intends to ensure that net zero carbon reduction plans in relation to procurement include all elements of scope 3 carbon emissions, as defined in the Greenhouse Gas Protocol.”

Member’s explanatory statement

The amendment would increase carbon reduction plan requirements for the procurement of large contracts.

LORD ABERDARE
LORD MENDELSON

71 Page 9, line 30, leave out paragraph (b)

LORD TRUE

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

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

After Clause 12

BARONESS PARMINTER

74 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
 - (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.”

LORD WALLACE OF SALTAIRE

75 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.

After Clause 12 - continued

- (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.

BARONESS THORNTON
BARONESS HAYMAN OF ULLOCK
BARONESS BENNETT OF MANOR CASTLE
THE EARL OF DEVON

75A Insert the following new Clause –

“Social value guidance

The Secretary of State must ensure that guidance is provided to contracting authorities on how to implement social value in line with the national procurement policy statement.”

BARONESS THORNTON
BARONESS HAYMAN OF ULLOCK
BARONESS BENNETT OF MANOR CASTLE

75B Insert the following new Clause –

“Market stewardship

- “(1) All contracting authorities must consider the impact of their procurement systems, processes and decisions on the diversity of organisations bidding for contracts including, but not limited to –
 - (a) small and medium sized businesses;
 - (b) social enterprises;
 - (c) voluntary organisations.
- (2) All contracting authorities must consider how they can improve the diversity of organisations within the supply chains of suppliers for public contracts including, but not limited to –
 - (a) small and medium sized businesses;
 - (b) social enterprises;
 - (c) voluntary organisations.”

Clause 13

LORD HUNT OF KINGS HEATH

76 Page 10, line 7, at end insert –

“(3A) The Wales procurement policy statement must specify –

- (a) how a public body carries out public procurement in a socially responsible way in accordance with sustainable development principles, and

Clause 13 - continued

- (b) that in any outsourcing contract entered into by a public body, the contractor must provide services in accordance with sustainable development principles.”

Member’s explanatory statement

This amendment would ensure that sustainable development principles are incorporated within the Wales procurement policy statement.

LORD TRUE

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

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

LORD WIGLEY

78A Page 10, line 31, at end insert –

“(9A) A Minister of the Crown may not introduce a Bill in either House of Parliament to amend or omit this section, unless Senedd Cymru has resolved by a simple majority of those present and voting to approve the amending provisions.”

After Clause 13LORD HUNT OF KINGS HEATH
BARONESS BENNETT OF MANOR CASTLE

79 Insert the following new Clause –

“Environmental requirement for public sector procurement policy

In section 23 of the Environment Act 2021, after subsection (4)(c) insert –

“(d) how the OEP will ensure that public sector procurement policy is consistent with contributing to environmental protection and the improvement of the natural environment.””

Member’s explanatory statement

The amendment adds to the requirements set out on Section 23 of the Environment Act 2021 for what needs to be set out in the strategy of the Office for Environmental Protection in order to ensure that public sector procurement policy is consistent with environmental protection and the requirement to improve the natural environment.

BARONESS HAYMAN OF ULLOCK
LORD COAKER
BARONESS BENNETT OF MANOR CASTLE

80 Insert the following new Clause –

“Carbon reduction plans

- (1) Subject to subsection (4), contracting authorities must obtain, assess and publish a carbon reduction plan from all suppliers under consideration for qualifying contracts before entering into a public contract with any supplier.
- (2) In this Act, “qualifying contract” means –

After Clause 13 - continued

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

Member’s explanatory statement

This amendment and another to Clause 50 put public procurement notice 06/21 on a statutory footing by requiring company-level carbon reduction plans for bidders for certain larger contracts, broadening the requirements to include all contracting authorities and to request information and targets from suppliers on the emissions attributable to the performance of the contract. They also specify that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Before Clause 14

LORD WALLACE OF SALTAIRE
LORD FOX
BARONESS BENNETT OF MANOR CASTLE

81 Insert the following new Clause—

“Delivery model assessment

- (1) Public authorities must conduct a delivery model assessment of their operating model where a significant change is required, including—
 - (a) upon the introduction of new public services;
 - (b) where a significant development to an existing service has been identified;
 - (c) where there is a need to re-evaluate the delivery model of existing services.
- (2) The delivery model assessment must evaluate the following model options in determining the most appropriate provider—
 - (a) the whole-life cost to deliver a service in-house using internal resources and expertise (the “in-house” model);
 - (b) the expected whole-life cost of procuring a service from an outside supplier (the “expected market cost” model);
 - (c) a combination of the in-house and expected market cost models (the “mixed-economy” model).
- (3) Public sector organisations may revisit the delivery model assessment periodically over the life of a service.”

Member’s explanatory statement

This amendment is drawn from Chapter 3 of ‘The Sourcing Playbook’ and the ‘Delivery Model Assessments Guidance Note’, and ensures that the strategic decision between outsourcing and insourcing is taken on a level playing field.

Clause 14

LORD HUNT OF KINGS HEATH
LORD ABERDARE

82 Page 11, line 5, at end insert—

- “(5) A contracting authority must consider publishing a planned procurement notice where—
- (a) no significant barriers exist to publishing a planned procurement notice, and
 - (b) no detriment to service recipients would occur due to publishing a planned procurement notice.”

Member’s explanatory statement

This amendment would create a presumption that contracting authorities should publish a planned procurement notice unless there is good reason not to.

Clause 15

LORD TRUE

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

LORD LANSLEY

84 Page 11, line 11, at end insert –

“(ba) ascertaining how the tender notice may be expressed in terms of outcomes and performance indicators, for the purpose of minimising the extent of specified processes to be detailed in the tender;”

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS BOYCOTT
BARONESS PARMINTER

85 Page 11, line 11, at end insert –

“(ba) designing a procurement process which will maximise public good and encourage innovation in pursuit of a sustainable and resilient society, planet and economy;”

Member’s explanatory statement

This amendment and the other in Clause 15 in the name of Baroness Worthington provide that when undertaking preliminary market engagement contracting authorities engage with suppliers in relation to designing a procurement process that will maximise public good and encourage innovation which is in pursuit of a sustainable and resilient society and that they actively seek out suppliers offering such products and services.

LORD LANSLEY

86 Page 11, line 16, after “suppliers” insert “, especially among small and medium-sized enterprises,”

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS BOYCOTT
BARONESS PARMINTER

87 Page 11, line 22, at end insert –

“(aa) new entrant suppliers offering innovative performance and functions that enhance public benefit are actively sought out, and”

LORD LANSLEY

88 Page 11, line 28, after “contract,” insert “taking account of the size or experience of the enterprise concerned,”

LORD TRUE

89 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

Clause 15 - continued

- (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

90 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.”

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

After Clause 17

LORD HUNT OF KINGS HEATH

92 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.
- (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 18

LORD TRUE

- 93 Page 12, line 17, after “considers” insert –
 “(a) satisfies the contracting authority’s requirements, and
 (b) ”
- 94 Page 12, line 19, at beginning insert “if there is more than one criterion,”
- 95 Page 12, line 20, leave out from “assessing” to “a” and insert “tenders for the purposes of this section”

BARONESS NOAKES

- 96 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).

BARONESS NEVILLE-ROLFE

BARONESS NOAKES

- 97 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.

LORD TRUE

- 98 Page 12, line 29, leave out “must” and insert “may”
- 99 Page 12, line 29, leave out “materially”

BARONESS NEVILLE-ROLFE

BARONESS NOAKES

- 100 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.

LORD COAKER
LORD HUNT OF KINGS HEATH

101 Page 12, line 31, at end insert –

“(3A) In the case of a defence and security contract, unless it would leave no tenders that satisfy all other award criteria, a contracting authority must disregard any tender from a supplier that –

- (a) is not a United Kingdom supplier or treaty state supplier, or
- (b) intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier.”

BARONESS HAYMAN OF ULLOCK
LORD COAKER

101A Page 12, line 31, at end insert –

“(3A) In the case of a contract for the research, development or supply of health services or products, a contracting authority must have regard to the following –

- (a) suppliers’ records of ensuring affordable access to their products in low and middle-income countries and to the NHS,
- (b) the extent to which any tender includes proposals to engage in comprehensive technology transfer with manufacturers across the world,
- (c) the extent to which any tender for relevant products includes proposals, in the event of the World Health Organization declaring a public health emergency of international concern to temporarily revoke patent rights, industrial designs, other intellectual property rights and protections concerning undisclosed information relating to –
 - (i) vaccines,
 - (ii) medicines,
 - (iii) diagnostics and their associated technologies, and
 - (iv) materials,

as necessary to scale up access to pandemic tools to combat the emergency internationally.”

Member’s explanatory statement

This amendment and one to Clause 108 require that contracting authorities consider potential health contractors’ records of ensuring affordable access to their products in low and middle-income countries and to the NHS and, in the event of a public health emergency of international concern, to consider their proposals for knowledge-sharing to combat the emergency.

LORD TRUE

102 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)).”

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

Clause 18 - continued

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK
LORD HENDY

- 104 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 WALLACE OF SALTAIRE
LORD FOX

- 105 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.

LORD TRUE

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

BARONESS NOAKES

- 107 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

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

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

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

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

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

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

Clause 19 - continued

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

114 Page 13, line 39, at end insert –
“in each case, at the point of assessment.”

Clause 20

LORD TRUE

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

LORD KNIGHT OF WEYMOUTH
BARONESS HAYMAN OF ULLOCK

LORD HENDY

LORD CLEMENT-JONES

116 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 section 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 section 11(1A)(a) to (c).”

LORD TRUE

117 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.”

LORD LANSLEY

118 Page 14, line 21, at end insert –
“(5) The tender notice must provide a period during which potential suppliers may ask questions, during which all the questions and the contracting authority’s answers must be made available to all potential suppliers.”

Clause 21

LORD MENDELSON
LORD ABERDARE

- 119** Page 14, line 27, at end insert “and
(b) suppliers are signatories of good standing on the Prompt Payment Code.”

Member’s explanatory statement

This amendment would strengthen requirements of good practice and simplify checking processes for all contracts either under this Act or in the open market.

LORD ABERDARE
LORD MENDELSON

- 120** Page 14, line 38, at end insert “and the accessibility of the contract to as broad a range of suppliers as possible.”

Member’s explanatory statement

This amendment would extend the consideration of whether conditions are proportionate, to include the accessibility of the contract to as broad a range of suppliers as possible.

LORD WALLACE OF SALTAIRE

- 121** 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

- 122** Page 15, line 15, after “competitive” insert “tendering”

BARONESS THORNTON
BARONESS BENNETT OF MANOR CASTLE

- 122A** Page 15, line 15, at end insert “unless an exemption is permitted by a Minister in order to create additional public value in line with specific government priorities.”

LORD LANSLEY

- 123** Page 15, line 18, at end insert –
“(ba) enable innovative solutions to be offered in meeting the purposes of the tender,”

Clause 22 - continued

BARONESS WORTHINGTON
 BARONESS VERMA
 BARONESS BOYCOTT
 BARONESS PARMINTER

124 Page 15, line 18, at end insert –

- “(ba) align with Government obligations under –
- (i) the targets set out in Part 1 of the Climate Change Act 2008 (UK net zero emissions target and budgeting),
 - (ii) the environmental targets set out in sections 1 to 3 of the Environment Act 2021,
 - (iii) the Agricultural Transition Plan produced under section 4 of the Agriculture Act 2020,
 - (iv) the Government Food Strategy, and
 - (v) adaptation to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008,”

Member’s explanatory statement

This amendment provides that when setting award criteria a contracting authority must be satisfied that they align with the UK’s net zero and environmental targets and adaptation provisions.

BARONESS MCINTOSH OF PICKERING

124A Page 15, line 18, at end insert –

- “(ba) take account of the environmental impact of the award,”

Member’s explanatory statement

This amendment requires a contracting authority to be satisfied that the award criteria take account of environmental impact.

BARONESS HAYMAN OF ULLOCK
 LORD COAKER

125 Page 15, line 21, at end insert –

- “(e) have regard to social value”.

LORD TRUE

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

BARONESS WORTHINGTON
 BARONESS VERMA
 BARONESS BOYCOTT
 BARONESS PARMINTER

127 Page 15, line 43, at end insert –

- “(ba) the desired public good, including social and environmental impact, of the supplied goods, services or works, including over the longer term;”

Member's explanatory statement

This amendment provides that the subject-matter of a contract should include reference to the social and environmental impact of the supplied goods, services or works.

LORD DAVIES OF BRIXTON

128 Page 16, line 1, leave out paragraph (d)

Member's explanatory statement

The amendment, along with the other amendment to page 16, line 1, in the name of Lord Davies of Brixton, provides that consideration of value for money does not override other procurement objectives.

LORD WALLACE OF SALTAIRE

129 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.

LORD ABERDARE

129A Page 16, line 1, at end insert –

“(e) where and to the extent that value for money but not price or cost is a criterion under paragraph (d), an objective mechanism for determining price and cost after contract award and before the goods, services or works are supplied.”

Member's explanatory statement

This amendment avoids post-award negotiations or other price and cost uncertainty by means of an objective process for determining price and cost, conducted after award and prior to supply, which can be combined with early supplier contributions to improving value and reducing risks.

LORD DAVIES OF BRIXTON

130 Page 16, line 1, at end insert –

“(5A) In setting award criteria related to price, other costs or value for money, a contracting authority must –

- (a) pay due regard to the procurement objectives listed in section 11 and any national procurement policy statement published under section 12; and
- (b) satisfy itself that the award criteria related to price, other costs or value for money do not unnecessarily limit the potential achievement of social and environmental goals in particular.

(5B) Award criteria consisting solely of the consideration of price, other costs or value for money do not meet the requirements of subsection (5A), except where the economic, innovation-related, environmental, social or employment-related considerations of the procurement are captured through technical specifications in accordance with section 24.”

Member's explanatory statement

The amendment, along with the other amendment to page 16, line 1, in the name of Lord Davies of Brixton, provides that consideration of value for money does not override other procurement objectives.

LORD BEST

131 Page 16, line 11, at end insert –

“(7) In establishing an assessment methodology under subsection (3), the assessment of price, other costs or value for money criteria cannot be assessed, directly or indirectly, by reference to any other tender under assessment.”

Member's explanatory statement

This amendment would prohibit the use of relative price evaluation models by contracting authorities for public contracts. This is intended to help prevent “race to the bottom” behaviours by bidders and help public authorities achieve safe, quality and value for money outcomes.

Clause 23

LORD TRUE

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

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

Clause 24

LORD TRUE

134 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.”

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

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

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

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

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

Clause 24 - continued

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

LORD HUNT OF KINGS HEATH
BARONESS BENNETT OF MANOR CASTLE
BARONESS BRINTON

141 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.

LORD TRUE

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

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

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

145 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;”

145A Transpose Clause 24 to after Clause 53

Clause 25

LORD TRUE

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

After Clause 25

LORD HUNT OF KINGS HEATH

147 Insert the following new Clause –

“Review of section 18

- (1) A Minister of the Crown must, within the period of three years beginning on the day on which this Act is passed, appoint a person to conduct a review of the impact of section 18 of this Act.
- (2) The review must have particular regard to the extent to which the introduction of the “most advantageous tender” has impacted the provision within contracts of –
 - (a) social value, and
 - (b) ability to meet the needs of service recipients.”

Member’s explanatory statement

This amendment would provide for a review of the change from most economically advantageous tender (MEAT) to most advantageous tender (MAT), particularly the impact on delivery of social value, and quality of service provision.

Clause 26

LORD TRUE

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

LORD LANSLEY

149 Page 17, line 30, at end insert –

“(2A) Before assessing which tender best satisfies the award criteria for the purposes of section 18, the contracting authority may require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low; and the contracting authority may exclude the supplier where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.”

LORD TRUE

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

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

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

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

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

154 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 26 - continued

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 26 stand part of the Bill.

Clause 27

LORD TRUE

- 155 Page 17, line 38, leave out “tendering procedure other than an open” and insert “flexible”
- 156 Page 18, line 2, leave out “tendering” and insert “flexible”
- 157 Page 18, line 5, leave out “tendering” and insert “flexible”
- 158 Page 18, line 8, leave out “supplier” and insert “person”
- 159 Page 18, line 8, after “must” insert –
 “(a) notify the supplier of its intention, and
 (b) ”
- 160 Page 18, line 9, leave out second “supplier” and insert “person”
- 161 Page 18, line 10, leave out “tendering” and insert “flexible”

Clause 28

LORD TRUE

- 162 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.”
- 163 Page 18, line 16, leave out paragraph (a)
- 164 Page 18, line 20, after “subsection” insert “(A1) or”
- 165 Page 18, line 27, after “subsection” insert “(A1) or”
- 166 Page 18, line 35, after “must” insert –
 “(a) notify the supplier of its intention, and
 (b) ”

Clause 28 - continued

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

Clause 29

LORD TRUE

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

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

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

171 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

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

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

LORD MENDELSON

LORD ABERDARE

174 Page 19, line 16, at end insert –

“(d) a supplier is not a signatory of good standing on the Prompt Payment Code.”

Member’s explanatory statement

This amendment would strengthen requirements of good practice and simplify checking processes for all contracts either under this Act or in the open market.

LORD TRUE

175 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.”

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

Clause 30 - continued

LORD HUNT OF KINGS HEATH
 LORD HAIN
 LORD HENDY
 BARONESS BENNETT OF MANOR CASTLE

177 Page 19, line 24, at end insert –

- “(aa) failing, in the case of a supplier with two or more enterprises that are resident for tax purposes in two different jurisdictions with a group turnover of more than €750m, to provide a copy of a tax report which meets the requirements of the Global Reporting Initiative Tax Standard;
- (ab) failing, in the case of a supplier that is currently under investigation for tax offences in the United Kingdom or abroad, or where the company has reached a settlement with a tax authority following an investigation for a tax offence, to disclose details of the investigation;
- (ac) failing, in the case of a supplier which has a group turnover of less than €750m, to disclose that the supplier –
 - (i) is based in a tax haven, or
 - (ii) is a subsidiary of a person based in a tax haven, or
 - (iii) has a subsidiary based in a tax haven.”

Member’s explanatory statement

This amendment seeks to ensure that a supplier must be treated as an excluded supplier if it does not: report its economic activities in each country where they operate and the taxes paid in each country; report details of any tax investigations; and report where it is based in a tax haven or is a subsidiary of a person based in a tax haven.

LORD TRUE

178 Page 19, line 26, at end insert “or”

BARONESS HAYMAN OF ULLOCK
 LORD COAKER

179 Page 19, line 27, at end insert –

- “(e) making late payment without reasonable explanation.”

LORD HUNT OF KINGS HEATH
 LORD HAIN
 LORD HENDY

180 Page 19, line 27, at end insert –

- “(4A) For the purposes of subsection (4)(ac), a Minister of the Crown must by regulations made by statutory instrument make provision for the listing of those jurisdictions which are considered to be providing a tax haven to suppliers.”

Member’s explanatory statement

This provides for a Minister to lay regulations listing those jurisdictions which are considered to be providing a tax haven to suppliers. It should be read in conjunction with the other amendment to Clause 30 in the name of Lord Hunt of Kings Heath.

LORD TRUE

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

182 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.”

183 [*Withdrawn*]

After Clause 30

LORD HAIN

LORD HENDY

BARONESS WHEATCROFT

LORD KERSLAKE

184 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.

LORD HUNT OF KINGS HEATH

LORD ALTON OF LIVERPOOL

BARONESS NORTHOVER

185 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.

After Clause 30 - continued

- (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
 BARONESS BENNETT OF MANOR CASTLE
 LORD HAIN
 LORD MONKS

186

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.

- (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—

After Clause 30 - continued

- (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.

LORD HAIN
BARONESS WHEATCROFT
LORD HENDY
LORD KERSLAKE

187 Insert the following new Clause—

“Guidance on suppliers which have acted unlawfully or unethically

The Secretary of State must publish guidance advising that contracting authorities do not consider any tenders from suppliers which the Secretary of State deems 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,

and identifying the suppliers which the Secretary of State deems to have so acted.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish guidance on any suppliers which they deem to have acted unlawfully or unethically, advising contracting authorities not to consider their tenders.

Clause 31

LORD TRUE

- 188 Page 20, line 2, leave out “tendering procedure other than an open” and insert “flexible”
- 189 Page 20, line 8, leave out “procedure other than an open” and insert “flexible”
- 190 Page 20, line 11, after “competitive” insert “tendering”
- 191 Page 20, line 35, after “any” insert “requirements of a”

Clause 32

LORD TRUE

- 192 Page 21, line 3, leave out “tendering procedure other than an open” and insert “flexible”
- 193 Page 21, line 4, leave out “the exclusion of”
- 194 Page 21, line 4, at end insert “to be excluded from participating in, or progressing as part of, the procedure”
- 195 Page 21, line 6, after “competitive” insert “flexible”
- 196 Page 21, line 6, leave out “the exclusion of”
- 197 Page 21, line 7, at beginning insert “to be excluded”
- 198 Page 21, line 8, leave out from “assessing” to end of line and insert “tenders under”

Clause 33

LORD TRUE

- 199 Page 21, line 22, leave out “tendering procedure other than an open” and insert “flexible”
- 200 Page 21, line 23, leave out “the exclusion of”
- 201 Page 21, line 23, at end insert “to be excluded from participating in, or progressing as part of, the procedure”
- 202 Page 21, line 25, after “competitive” insert “flexible”
- 203 Page 21, line 25, leave out “the exclusion of”

Clause 33 - continued

- 204 Page 21, line 26, at beginning insert “to be excluded”
- 205 Page 21, line 27, leave out from “assessing” to end of line and insert “tenders under”
- 206 Page 21, line 31, leave out “been awarded” and insert “entered into”

BARONESS NOAKES

- 207 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.

LORD WALLACE OF SALTAIRE

- 208 Page 22, line 4, leave out subsection (8)

Member’s explanatory statement

This amendment is intended to allow a debate on a recommendation from the Delegated Powers and Regulatory Reform Committee in respect of Clause 33. The Committee considers that the power under subsection (8) “should be narrowed unless the Government can fully justify it”.

Clause 34

LORD TRUE

- 209 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—”
- 210 Page 22, line 10, leave out “a particular” and insert “suppliers that are not members of an appropriate”
- 211 Page 22, line 11, leave out first “a particular” and insert “suppliers that are not members of an appropriate”
- 212 Page 22, line 11, leave out second “a particular” and insert “an appropriate”
- 213 Page 22, line 13, after “competitive” insert “flexible”
- 214 Page 22, line 13, leave out “the exclusion of”
- 215 Page 22, line 14, at beginning insert “to be excluded”
- 216 Page 22, line 15, leave out from “assessing” to end of line and insert “tenders under”

Clause 34 - continued

- 217** Page 22, line 18, leave out “a particular” and insert “the appropriate”
- 218** Page 22, line 19, leave out first “a particular” and insert “the appropriate”
- 219** Page 22, line 19, leave out second “a particular” and insert “the appropriate”
- 220** Page 22, line 22, after “suppliers that have” insert “submitted a request to participate in the competitive flexible procedure, or”
- 221** Page 22, line 23, leave out “tendering” and insert “flexible”
- 222** 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

- 223** Page 22, line 32, leave out “(a “dynamic market”)”
- 224** Page 22, line 33, after “of” insert “a contracting authority”
- 225** Page 22, line 34, leave out “membership of the market” and insert “participation in the arrangements”
- 226** 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.”
- 227** Page 22, line 35, leave out subsections (2) and (3)

Clause 35 - continued

BARONESS NEVILLE-ROLFE
LORD MOYLAN

228 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.

LORD TRUE

229 Page 23, line 5, after "Act" insert "that apply"

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

231 Page 23, line 14, leave out "section" and insert "Act"

BARONESS NEVILLE-ROLFE
LORD MOYLAN

232 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.

LORD TRUE

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

Clause 36

LORD TRUE

234 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

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

Clause 40

BARONESS HAYMAN OF ULLOCK

LORD COAKER

235A Page 25, line 17, leave out subsection (2)

Member’s explanatory statement

This is a probing amendment to create a debate on the direct award of contracts in special circumstances.

LORD WALLACE OF SALTAIRE

Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 40 stand part of the Bill.

Schedule 5

BARONESS NOAKES

236 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

237 Page 89, line 27, leave out paragraph 15

Clause 41

LORD WALLACE OF SALTAIRE

LORD FOX

238 Page 26, line 12, leave out paragraph (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.

239 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.

240 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.

241 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.

BARONESS HAYMAN OF ULLOCK
LORD COAKER

242 Page 26, line 16, at end insert –

“(5) Regulations made under this section expire at the end of the period of 60 days beginning with the day on which they are made.”

Member’s explanatory statement

The addition of this subsection introduces a sunset clause for regulations made under this new power. Ministers would need to seek explicit approval from Parliament under the made affirmative procedure to continue uncompetitive tendering during a crisis period.

243 Page 26, line 16, at end insert –

“(5) A Minister of the Crown may not make regulations under this section within the period of six months beginning with the day on which previous regulations made under this section expired unless a Minister of Crown has made a statement to each House of Parliament explaining why the regulations are necessary.”

Member’s explanatory statement

The addition of this subsection introduces greater parliamentary scrutiny over the frequent renewal of these powers by requiring the Minister to provide a statement to Parliament if they seek to issue new regulations within six months of the end of other regulations made under this new power.

LORD WALLACE OF SALTIRE

Lord Wallace of Saltire gives notice of his intention to oppose the Question that Clause 41 stand part of the Bill.

Clause 42

LORD TRUE

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

Clause 42 - continued

- 245 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 ABERDARE

- 245A Page 27, line 14, leave out subsection (2) and insert –
 “(2) A “framework” is a contract between one or more contracting authorities and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers, including through a multi-party framework alliance.”

Member’s explanatory statement

This amendment clarifies that sections 44, 45, 46 and 47 governing ‘Award under Frameworks’ include the practices of leading public sector framework providers such as Crown Commercial Service whose framework contracts for goods, services and works include multi-party instruments known as ‘framework alliances’ that are entered into by multiple contracting authorities.

LORD TRUE

- 246 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.

Clause 44 - continued

(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)."

LORD LANSLEY

247 Page 27, line 24, leave out sub-paragraph (ii) and insert –
“(ii) criteria relating to the relative ranking of suppliers for award criteria if access to the framework was the result of a competitive selection process.”

248 Page 27, line 24, at end insert –
“(iii) that the supplier has the opportunity to provide details of their credentials, capacity, quality and value in relation to the framework and the contracting authority has an objective mechanism for supplier selection.”

249 Page 28, line 1, leave out subsection (7)

LORD TRUE

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

251 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

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

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

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

255 Page 28, line 26, at end insert –
“(c) a framework that is a light touch contract (see section 8(5)).”

Clause 46

LORD TRUE

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

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

Clause 47

LORD TRUE

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

259 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.”

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

Clause 48

LORD TRUE

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

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

Clause 49

LORD TRUE

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

BARONESS NOAKES

264 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

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

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

267 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

LORD LANSLEY

- 268 Page 31, line 6, leave out from “publish” to end of line 7 and insert “performance indicators in respect of the contract, which must include at least three quantifiable measures and such further factors and measures as the contracting authority considers justified in relation to the requirements and value of the contract.”

BARONESS NEVILLE-ROLFE

- 269 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.

BARONESS THORNTON
BARONESS BENNETT OF MANOR CASTLE
THE EARL OF DEVON

- 269A Page 31, line 7, at end insert “including at least one indicator in relation to social value.”

LORD LANSLEY

- 270 Page 31, line 7, at end insert—
“(1A) Key performance indicators set under this section must relate to the specifications of a tender where the contract is the subject of a competitive selection process.”

BARONESS NOAKES

- 271 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 SALTAIRE
LORD SCRIVEN
BARONESS BENNETT OF MANOR CASTLE

- 272 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.

BARONESS HAYMAN OF ULLOCK
LORD COAKER
BARONESS BENNETT OF MANOR CASTLE

273 Page 31, line 13, at end insert –

“(3A) For qualifying contracts, one of the key performance indicators must be compliance with the carbon reduction plan.”

BARONESS HAYMAN OF ULLOCK
LORD COAKER

274 Page 31, line 13, at end insert –

“(3A) For the purpose of subsection (1), at least one of the key performance indicators must assess the supplier’s performance of a contract against –

- (a) its contribution towards compliance with –
 - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), or
 - (ii) section 5 of the Environment Act 2021 (environmental targets), or
- (b) the need to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.”

Member’s explanatory statement

This amendment requires that for public contracts in scope of key performance indicators (KPIs) falling below the threshold for mandatory Carbon Reduction Plans (see the other amendment to this clause in the name of Baroness Hayman of Ullock), at least one KPI should assess supplier performance against climate or environmental considerations.

BARONESS NEVILLE-ROLFE

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

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

After Clause 50

BARONESS THORNTON
BARONESS HAYMAN OF ULLOCK
BARONESS BENNETT OF MANOR CASTLE

276A Insert the following new Clause –

“Open book accounting

- (1) All suppliers bidding for public contracts must declare the expected profit and surplus they expect to generate through the contract.
- (2) All suppliers must report back to the contracting authority on the surplus or profit generated through the contract each financial year.
- (3) All suppliers must report back to the contracting authority on the profits or surpluses reinvested into the delivery of the contract each financial year.
- (4) All suppliers must report back to the contracting authority on the taxes paid in relation to the supplier’s activities in the United Kingdom.”

Clause 51

LORD TRUE

- 277 Page 31, line 24, leave out “awarded under this Part”
- 278 Page 31, line 33, leave out from beginning to “a”
- 279 Page 31, line 34, after “authority” insert “that”
- 280 Page 31, line 35, leave out “, the authority”
- 281 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.”
- 282 Page 31, line 37, after “authority” insert “or a transferred Northern Ireland authority”
- 283 Page 31, line 38, leave out “or a transferred Northern Ireland procurement arrangement”
- 284 Page 31, line 40, at end insert “or a transferred Northern Ireland procurement arrangement”
- 285 Page 31, line 41, leave out “or a Northern Ireland department”
- 286 Page 31, line 42, leave out “in subsection (3)”
- 287 Page 32, line 3, leave out “virtue of” and insert “reference to”

Clause 52

LORD TRUE

- 288 Page 33, line 6, at end insert –
- “The contract being awarded is being awarded by reference to suppliers’ membership of a dynamic market | 10 days”
- 289 Page 33, line 24, leave out “tendering procedure other than an open” and insert “flexible”

Clause 54

BARONESS NEVILLE-ROLFE

- 290 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 TRUE

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

LORD HENDY

LORD HAIN

LORD MONKS

LORD WOODLEY

- 292 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

- 293 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.

LORD TRUE

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

BARONESS NEVILLE-ROLFE

- 295 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 TRUE

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

Clause 54 - continued

LORD HENDY
LORD HAIN
LORD MONKS
LORD WOODLEY

297 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

298 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.

LORD TRUE

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

BARONESS NEVILLE-ROLFE
LORD MOYLAN

300 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.

LORD TRUE

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

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

Schedule 6

LORD TRUE

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

Schedule 6 - continued

304 Page 91, line 17, at end insert –
 “4A An offence at common law of conspiracy to defraud.”

305 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).”

LORD WALLACE OF SALTAIRE
 BARONESS HAYMAN OF ULLOCK

306 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
 BARONESS HAYMAN OF ULLOCK

307 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.

308 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 (S.I. 2017/692) (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.

LORD TRUE

309 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.”

Schedule 6 - continued

BARONESS BOYCOTT
BARONESS YOUNG OF OLD SCONE

310 Page 93, line 8, at end insert –

“Environmental offences

31A An offence under any provision of environmental law.”

Member’s explanatory statement

This amendment, along with other amendments in the name of Baroness Boycott, makes conviction of an environmental offence grounds for mandatory exclusion.

LORD TRUE

311 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)”

312 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”

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

314 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–

(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.”

Schedule 6 - continued

LORD HENDY
LORD HAIN
LORD MONKS
LORD WOODLEY

315 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 section (*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

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

LORD MENDELSON
LORD ABERDARE

317 Page 95, line 32, at end insert –

“Signatory of Prompt Payment Code

41A A mandatory exclusion ground applies to a supplier if –

- (a) the supplier is not a signatory to the Prompt Payment Code, and
- (b) the supplier is or has been subject to an investigation by the Prompt Payment Code Compliance Board and has failed to action any recommendation of that Board.”

Member’s explanatory statement

This amendment would strengthen requirements of good practice and simplify checking processes for all contracts either under this Act or in the open market.

BARONESS BOYCOTT
BARONESS YOUNG OF OLD SCONE

318 Page 97, line 32, at end insert –

““environmental law” means any legislative provision that is mainly concerned with environmental protection;
“environmental protection” has the same meaning as in section 45 of the Environment Act 2021;”

Member’s explanatory statement

This amendment, along with other amendments in the name of Baroness Boycott, makes conviction of an environmental offence grounds for mandatory exclusion.

BARONESS NEVILLE-ROLFE
LORD MOYLAN

The above-named Lords give notice of their 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 HENDY
LORD HAIN
LORD MONKS
LORD WOODLEY

319

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.

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.

Schedule 7 - continued

- 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’.

LORD WALLACE OF SALTAIRE
LORD FOX
BARONESS HAYMAN OF ULLOCK
LORD HAIN

320

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.

321 [Withdrawn]

BARONESS BOYCOTT
BARONESS YOUNG OF OLD SCONE

322 Page 98, line 37, leave out paragraph 4

Member's explanatory statement

This amendment, along with other amendments in the name of Baroness Boycott, makes conviction of an environmental offence grounds for mandatory exclusion.

BARONESS NOAKES

323 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

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

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

BARONESS NOAKES

326 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.

327 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.

LORD WALLACE OF SALTAIRE
LORD FOX
BARONESS HAYMAN OF ULLOCK

328 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 HAYMAN OF ULLOCK
LORD COAKER

329 Page 100, line 30, at end insert –

“Contravention of collective agreements and ILO conventions

- 11A A discretionary exclusion ground applies to a supplier if a contracting authority has established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law or collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time.”

BARONESS NOAKES

330 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.

BARONESS HAYMAN OF ULLOCK
LORD COAKER
LORD BETHELL
LORD FOX

331 Page 101, line 43, at end insert –

“Serious human rights abuses

- 15A(1) A discretionary exclusion ground applies to a supplier if a decision-maker considers that there is evidence that the supplier is involved in serious human rights abuses in the United Kingdom or internationally.
- (2) In this paragraph, “serious human rights abuses” includes but is not limited to –
 - (a) war crimes,

Schedule 7 - continued

- (b) crimes against humanity,
- (c) genocide,
- (d) forced sterilisation,
- (e) extrajudicial, summary or arbitrary executions, or
- (f) torture.”

BARONESS NOAKES

332 Page 102, line 26, leave out 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.

BARONESS NEVILLE-ROLFE
LORD MOYLAN

The above-named Lords give notice of their 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

333 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 TRUE

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

LORD WALLACE OF SALTAIRE

335 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 TRUE

336 Page 34, line 30, leave out second "supplier" and insert "person"

LORD WALLACE OF SALTAIRE
LORD FOX

337 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.

338 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.

LORD TRUE

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

LORD WALLACE OF SALTAIRE
LORD FOX

340 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 56

LORD TRUE

- 341 Page 35, line 15, leave out “procurement” and insert “competitive tendering”
- 342 Page 35, line 17, leave out first “supplier” and insert “person”
- 343 Page 35, line 17, leave out second “supplier”
- 344 Page 35, line 19, leave out “supplier” and insert “person”
- 345 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”
- 346 Page 35, line 25, leave out “or replaced” and insert “, replaced or removed”
- 347 Page 35, line 25, leave out “exclusion” and insert “fact”
- 348 Page 35, line 31, leave out “or exclusion” and insert “, exclusion, replacement or removal”
- 349 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 57

LORD WALLACE OF SALTAIRE

- 349A Page 36, line 5, leave out “An appropriate authority” and insert “The Procurement Review Unit”

Member’s explanatory statement

This amendment relates to Lord Wallace’s amendment to insert a new clause after Clause 61 (Procurement Review Unit).

Clause 59

LORD WALLACE OF SALTAIRE

- 349B Page 37, line 44, after “Crown” insert “, with the advice of the Procurement Review Unit”

Member's explanatory statement

This amendment relates to Lord Wallace's amendment to insert a new clause after Clause 61 (Procurement Review Unit).

LORD WALLACE OF SALTAIRE
LORD FOX

350 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

351 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.

LORD TRUE

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

After Clause 61

BARONESS STROUD
LORD ALTON OF LIVERPOOL
BARONESS SMITH OF NEWNHAM
LORD COAKER

353 Insert the following new Clause –

“Supply chain resilience against economic coercion and slavery

- (1) The Secretary of State must by regulations make provision for reducing the dependency of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as either a systemic competitor or a threat.
- (2) A country is “considered by the United Kingdom as either a systemic competitor or a threat” if it was defined as such in the latest Integrated Review of Security, Defence, Development and Foreign Policy.
- (3) The regulations under subsection (1) may, in particular, include –
 - (a) provision for an annual review of the dependency of public bodies upon countries which are considered by the United Kingdom as systemic competitors or threats;
 - (b) provision for the setting of acceptable dependency thresholds across all categories of public procurement.
- (4) The Secretary of State must by regulations make provision for eradicating from all public contracts goods or services that are tainted by slavery and human trafficking.

After Clause 61 - continued

- (5) The regulations under subsection (4) may, in particular, include—
- (a) provision in connection with the processes to be followed by public bodies in the procurement of goods or services for the purposes of public contracts;
 - (b) provision as to steps that must be taken by public bodies for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in public bodies' supply chains;
 - (c) provision as to matters for which provision must be made in contracts for goods or services entered into by public bodies;
 - (d) provision as to the standards of disclosure and transparency required for all contractors or prospective contractors, which must, at a minimum, include publication and verification of information about the country of origin of all sourcing inputs in their supply chain;
 - (e) provision for the public disclosure of the names of contractors or prospective contractors whose supply chains are considered tainted by slavery and human trafficking;
 - (f) provision for the publication and dissemination of a risk register detailing areas from which goods cannot be sourced without unreasonable risk of slavery and human trafficking being present in supply chains.
- (6) In this section—
- “public body” means a body exercising functions of a public nature;
- “slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015;
- goods or services are “tainted” by slavery and human trafficking if slavery and human trafficking take place in relation to anyone involved in the supply chain for providing those goods or services.”

Member's explanatory statement

The amendment seeks to improve the UK's supply chain resiliency against dependency and human rights abuse by creating a double regulation making power: to enable the Government to develop a plan to address dependency throughout public procurement; and to bring the human rights standards of wider public procurement in line with the procurement standards of the Department of Health and Social Care.

LORD WALLACE OF SALTAIRE

353A

Insert the following new Clause—

“Procurement Review Unit

- (1) There is to be a Procurement Review Unit (PRU) within the Cabinet Office.
- (2) The purpose of the PRU is to—
 - (a) oversee public procurement;
 - (b) address systematic or institutional breaches of the procurement regulations;
 - (c) advise on exclusion and debarment of suppliers.

After Clause 61 - continued

- (3) The PRU must be advised by an expert panel appointed by the Cabinet Office, in consultation with outside suppliers and the relevant Parliamentary Committee.”

Member’s explanatory statement

This amendment is to probe the role and autonomy of the Procurement Review Unit in reviewing the procurement process.

Clause 63

LORD MENDELSON

LORD ABERDARE

- 353B** Page 40, line 9, after “(5)” insert “and in Schedule (*Resolving payment disputes and referral to the Small Business Commissioner*)”

Member’s explanatory statement

The Bill allows a buyer to dispute an invoice but fails to address potential abuse or cover up for late payments. This wording (taken from a Private Member’s Bill) removes an incentive to dispute every invoice so as to reduce spurious claims, and automatically adds interest and compensation to late payments.

LORD TRUE

- 354** 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

- 355** Page 41, line 30, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”
- 356** Page 41, line 36, after “to” insert “a transferred Northern Ireland authority or”

LORD MENDELSON

- 356A** Leave out Clause 64 and insert the following new Clause –

“Reporting on payment practices and performance

A contracting authority is a qualifying company for the purposes of the Reporting on Payment Practices and Performance Regulations 2017 (S.I. 2017/395).”

Member’s explanatory statement

This amendment is intended to streamline reporting procedures with one location for reporting and obtaining information relating to public and private payment practices.

Clause 65

LORD TRUE

- 357 Page 42, line 1, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”
- 358 Page 42, line 6, after “contract” insert “awarded by a private utility”
- 359 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

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

Clause 68

LORD TRUE

- 361 Page 43, line 37, leave out “subsection (8)(a) of section 63” and insert “section 63(8)(a) (electronic invoices)”
- 362 Page 44, line 2, leave out “the whole” and insert “all”
- 363 Page 44, line 5, leave out “the whole” and insert “all”

Clause 69

LORD LANSLEY

- 364 Page 44, line 23, leave out “10 per cent” and insert “one-sixth”

LORD TRUE

- 365 Page 44, line 25, leave out from beginning to “materially”
- 366 Page 44, line 25, leave out “its scope” and insert “the scope of the contract”
- 367 Page 44, line 36, after “not” insert “materially”
- 368 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.”

Clause 69 - continued

- 369** Page 45, line 1, leave out from “been” to end of line 2 and insert “permitted under subsection (1)”
- 370** 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”

Before Schedule 8

LORD MENDELSON
LORD ABERDARE

- 370A** Insert the following new Schedule—
- “RESOLVING PAYMENT DISPUTES AND REFERRAL TO THE SMALL BUSINESS COMMISSIONER
- 1 Upon notification of a dispute, the parties (supplier and purchaser) have 30 days to resolve the dispute (“the resolution period”).
 - 2 The resolution period may be extended if both parties agree to an extension in writing.
 - 3 For a dispute resolution to be agreed, both parties must confirm the agreed terms of resolution in writing.
 - 4 For the purposes of paragraphs 2 and 3, there is an agreement in writing—
 - (a) if the agreement is made in writing,
 - (b) if the agreement is made by exchange of communications in writing, or
 - (c) if the agreement is evidenced in writing,
 by both parties.
 - 5 If a resolution between the two parties is not agreed within the resolution period, either party may complain to the Small Business Commissioner under the scheme established in accordance with section 4 of the Enterprise Act 2016.
 - 6 If the dispute is found or agreed to be unwarranted, the contracting authority must include a payment for interest and compensation payable to the payee for the duration beyond the day on which payment falls due had no dispute been raised in accordance with provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
 - 7 Where a sum due is not paid in accordance with section 63(2) or (7), or 80(2) or (11) of this Act, and where a contracting authority has not notified a payee in accordance with section 63(4) or 80(4) of this Act, compensation and statutory interest as stipulated by the Late Payment of Commercial Debts (Interest) Act 1998 must be paid at the same time as the invoice regardless of whether the supplier has requested the compensation for late payment.
 - 8 If a contracting authority fails to comply with paragraph 7 and remedy any breach within 30 days of the payment due date as set out in section 63(2) or (7), or 80(2) or (11) of this Act, the rate of compensation and statutory interest is increased by 100%.”

Member's explanatory statement

The Bill allows a buyer to dispute an invoice but fails to address potential abuse or cover up for late payments. This wording (taken from a Private Member's Bill) removes an incentive to dispute every invoice so as to reduce spurious claims, and automatically adds interest and compensation to late payments.

Schedule 8

LORD TRUE

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

Clause 70

LORD TRUE

372 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).”

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

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

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

376 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,”

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

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

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

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

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

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

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

Clause 70 - continued

- 384 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,”
- 385 Page 45, line 42, at beginning insert “was”
- 386 Page 45, line 43, after “awarded” insert “as part of a procurement”
- 387 Page 46, line 1, at beginning insert “was”
- 388 Page 46, line 1, after “awarded” insert “as part of a procurement”
- 389 Page 46, line 3, leave out subsection (10)
- 390 Page 46, line 8, leave out paragraph (a)
- 391 Page 46, line 9, leave out “in subsection (7)”
- 392 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.”
- 392A 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)
- 392B Transpose the new Clause (*Publication of modifications*) to after Clause 71

Clause 71

LORD TRUE

- 393 Page 46, line 12, after “period” insert “(“a voluntary standstill period”)”
- 394 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

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

Clause 72 - continued

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

LORD LANSLEY

397 Page 46, line 27, at end insert –

“(d) changes of circumstances are such that force majeure applies and the contract can no longer be fulfilled.”

LORD TRUE

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

399 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.”

LORD LANSLEY

400 Page 47, line 9, at end insert –

“(6A) If a contract is terminated by reference to the grounds in subsection (2)(d) (force majeure), the contracting authority must pay the supplier such costs as have been necessarily incurred in relation to the contract up to the point of notification under subsection (4).”

LORD TRUE

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

After Clause 72

LORD TRUE

402 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

403 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 WALLACE OF SALTAIRE

404 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.

LORD TRUE

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

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

LORD WALLACE OF SALTAIRE

LORD SCRIVEN

407 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.

LORD TRUE

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

Clause 74 - continued

LORD WALLACE OF SALTAIRE
LORD SCRIVEN
BARONESS BENNETT OF MANOR CASTLE

409 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.

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

410 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
- (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 TRUE

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

LORD WALLACE OF SALTAIRE
LORD SCRIVEN

412 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.

LORD WALLACE OF SALTAIRE

413 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.

LORD TRUE

414 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

415 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

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

BARONESS NEVILLE-ROLFE

LORD MOYLAN

417 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.

418 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.

BARONESS NOAKES

419 Page 49, leave out line 34

Member's explanatory statement

This amendment probes where in Clause 74 "conflict of interest" is defined.

LORD TRUE

420 Page 49, line 38, after "establishment" insert "or modification"

After Clause 76

LORD WALLACE OF SALTAIRE
BARONESS BENNETT OF MANOR CASTLE

421 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.

LORD WALLACE OF SALTAIRE
LORD SCRIVEN
BARONESS BENNETT OF MANOR CASTLE

422 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.
- (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
BARONESS BENNETT OF MANOR CASTLE
BARONESS BRINTON

423 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 77

LORD TRUE

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

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

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

Clause 78

LORD TRUE

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

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

Clause 79

LORD TRUE

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

Clause 79 - continued

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

Clause 80

LORD MENDELSON
LORD ABERDARE

- 430A Page 51, line 24, after “(5)” insert “and in Schedule (*Resolving payment disputes and referral to the Small Business Commissioner*)”

Member’s explanatory statement

The Bill allows a buyer to dispute an invoice but fails to address potential abuse or cover up for late payments. This wording (taken from a Private Member’s Bill) removes an incentive to dispute every invoice so as to reduce spurious claims, and automatically adds interest and compensation to late payments.

LORD TRUE

- 431 Page 52, line 8, leave out “the whole” and insert “all”
- 432 Page 52, line 13, leave out “the whole” and insert “all”
- 433 Page 52, line 20, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”
- 434 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

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

LORD LANSLEY

- 436 Page 52, line 40, at end insert –
“(3A) Regulations may only be made under this section in relation to international agreements which have been laid before Parliament under the Constitutional Reform and Governance Act 2010.”

LORD TRUE

- 437 Page 53, line 3, leave out paragraphs (a) and (b)
- 438 Page 53, line 17, leave out “or services” and insert “, services or works”

Clause 82

LORD TRUE

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

440 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.”

LORD PURVIS OF TWEED
LORD WALLACE OF SALTAIRE

441 Page 53, line 37, at end insert –

“(3A) A contracting authority does not discriminate if it takes into account environmental, social and labour considerations and indicates in the notice of intended procurement or tender documentation how such considerations are defined.”

Member’s explanatory statement

This amendment allows a contracting authority to take into account environmental, social and labour conditions where a treaty state supplier may be a supplier for a procurement.

LORD TRUE

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

LORD WALLACE OF SALTAIRE

443 Page 53, line 46, leave out “a British Overseas Territory or a Crown Dependency”

Member’s explanatory statement

This amendment probes the inclusion of the Crown Dependencies and British Overseas Territories in the definition of “United Kingdom supplier”.

Clause 83

BARONESS MCINTOSH OF PICKERING

443A Page 54, line 3, leave out “A Minister of the Crown or”

Member’s explanatory statement

This removes the power for a Minister of the Crown to make regulations under Clause 83.

LORD TRUE

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

Clause 84

LORD HUNT OF KINGS HEATH
LORD ABERDARE
LORD MENDELSON

445 Page 54, line 23, at end insert –

“(3A) Where a contract is lower in value than £2 million, a contracting authority must consider publishing a pipeline notice where service quality and value for money would be improved by enabling a wider range of providers to participate in the procurement process.”

Member’s explanatory statement

This amendment would set conditions where publishing a pipeline notice should be considered where the contract falls below the £2 million threshold.

LORD TRUE

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

447 Page 54, line 37, at end insert “, or

(b) a transferred Northern Ireland authority.”

After Clause 84

LORD WALLACE OF SALTAIRE
LORD FOX

448 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.
- (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.

LORD HUNT OF KINGS HEATH

449 Insert the following new Clause –

“Application of Freedom of Information Act 2000 to public contracts

- (1) A Minister of the Crown must publish a statement setting out the Government’s policy in relation to the application of the Freedom of Information Act 2000 to public contracts.
- (2) Regulations must set out how contracting authorities must –

After Clause 84 - continued

- (a) respond to any request for information under the Freedom of Information Act 2000 in relation to a public contract or any proposal to enter into a public contract;
 - (b) apply the objective set out in section 11(1)(c) of this Act (procurement objectives: sharing information) in relation to the business case, the procurement strategy and plans, the tender documents and responses, the award criteria and the contract;
 - (c) include in the published tender notice the reasons if exemption from the publication of information is claimed by a contracting authority;
 - (d) establish a process to consider complaints that required information has not been published which could be grounds for a challenge to the award of a public contract;
 - (e) ensure that the exemption in section 43(2) of the Freedom of Information Act 2000 regarding commercial confidentiality is not applicable to any information request in relation to a public contract.
- (3) Any monitoring that takes place under subsection (2)(b) of the application of the objective on sharing information must be published or available on request unless exceptional circumstances set out in the regulations apply.”

Member’s explanatory statement

The amendment would ensure that only limited exceptions would be permitted to providing information about public contracts.

LORD BERKELEY
LORD CLEMENT-JONES

449A Insert the following new Clause –

“Application of the Freedom of Information Act to contractors

- (1) In this section “public authority” means –
 - (a) a public authority within the meaning of section 3 of the Freedom of Information Act 2000, and
 - (b) a public authority within the meaning of regulation 2 of the Environmental Information Regulations 2004.
- (2) The disclosure provision is deemed to be included in –
 - (a) any contract between a public authority and a contractor, and
 - (b) any sub-contract for the performance of part or all of that contract including an ongoing contract which was entered into before this section came into force.
- (3) In this section “the disclosure provision” means a provision establishing that all information held in connection with the contract or sub-contract referred to in subsection (2) by –
 - (a) the contractor,
 - (b) a sub-contractor, or
 - (c) any person acting on behalf of the contractor or sub-contractor,

After Clause 84 - continued

is, notwithstanding any contrary provision in that or any other contract, held on behalf of the public authority for the purposes of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

- (4) Where an application to the Information Commissioner has been made under section 50 (application for decision by the Commissioner) of the Freedom of Information Act 2000 in relation to information which is held by any person on behalf of a public authority, the Commissioner has the same powers –
- (a) to require that person to furnish information to him or her by means of an information notice under section 51 (information notices) of that Act, and
 - (b) to obtain and execute a warrant under section 55 (powers of entry and inspection) of and Schedule 3 to that Act in relation to that person,
- as he or she has in relation to the public authority.
- (5) Section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure) applies to a person who holds information on behalf of a public authority.
- (6) In this section “the Commissioner” means the Information Commissioner.”

Member’s explanatory statement

This amendment would bring information held by a contractor or subcontractor in connection with a contract with a public authority within the scope of the Freedom of Information Act and associated Environmental Information Regulations.

Clause 85

LORD WALLACE OF SALTAIRE
LORD FOX

450 Page 55, line 6, leave out from the second “information” to “prejudice” in line 8 and insert –

- “(a) which constitutes a trade secret, or
- (b) for which there is overriding evidence that it would”

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.

451 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 6, is intended to probe the nature of the exemptions from duties to publish or disclose information.

Clause 86

BARONESS WORTHINGTON
BARONESS BOYCOTT

452 Page 55, line 23, at end insert –

“(1A) Regulations under subsection (1) must –

- (a) require information to be available for access to any user without restriction,
- (b) require information to be published in a standardised machine-readable form, and
- (c) require information to be published under a Crown copyright licence.”

Member’s explanatory statement

This amendment makes certain transparency provisions for the publication of notices, documents and information.

LORD CLEMENT-JONES

452A Page 55, line 26, leave out paragraph (b)

Member’s explanatory statement

This amendment, and Lord Clement-Jones’s amendment to page 55, line 32, are intended to ensure that future regulations do not contravene the purpose of the single digital platform wherever possible, and to support the move to streamlining the different publication requirements for procurement information and contract spend data that are placed upon local government and the public sector.

452B Page 55, line 32, at end insert –

“(4) Notices, documents or other information subject to regulations under subsection (1) must in all cases be published on a single digital platform.”

Member’s explanatory statement

This amendment, and Lord Clement-Jones’s amendment to page 55, line 26, are intended to ensure that future regulations do not contravene the purpose of the single digital platform wherever possible, and to support the move to streamlining the different publication requirements for procurement information and contract spend data that are placed upon local government and the public sector.

LORD WALLACE OF SALTAIRE

Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 86 stand part of the Bill.

Member’s explanatory statement

This is intended to allow debate on a Delegated Powers and Regulatory Reform Committee recommendation. The Committee considers the power under Clause 86 to prescribe in regulations the information that must be set out in 16 types of notices to be “broad” and that “more needs to be said in the Bill itself about the information that must be published”.

Clause 87

LORD TRUE

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

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

Clause 88

BARONESS HAYMAN OF ULLOCK

455 Page 56, line 10, at end insert “and to establish a transparent, accessible, machine-readable and licence-free digital register for all public procurement under this Act in which all notices are to be uploaded and regularly updated”

LORD CLEMENT-JONES

456 Page 56, line 10, at end insert –

“(2A) An appropriate authority must –

- (a) set standards and formats for the publication of information on the online system, and
- (b) regularly review the accuracy, timeliness and completeness of the information provided by authorities to the online system.”

Member’s explanatory statement

This amendment ensures the information in the digital platform is regularly reviewed for accuracy and completeness.

After Clause 88

LORD TRUE

457 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).”

BARONESS HAYMAN OF ULLOCK

458 Insert the following new Clause –

“Digital registration for suppliers

The Secretary of State may by regulations create a digital registration system for suppliers, to be used for the purpose of applying for procurements to contracting authorities.”

After Clause 88 - continued

BARONESS HAYMAN OF ULLOCK
LORD COAKER
BARONESS BENNETT OF MANOR CASTLE

459 Insert the following new Clause—

“Procurement carbon emissions report

- (1) A Minister of the Crown from each of the ministerial departments must prepare an annual report to be laid before Parliament setting out—
 - (a) the estimated scope 1, 2 and 3 carbon dioxide emissions that are likely to be produced or have been produced during the execution of each contract entered into by—
 - (i) the ministerial department, and
 - (ii) public authorities for which the department has responsibility, and
 - (b) the estimated cumulative annual scope 1, 2 and 3 carbon dioxide emissions that are likely to be produced or have been produced by the execution of contracts overseen by—
 - (i) the ministerial department, and
 - (ii) public authorities for which the department has responsibility.
- (2) The first report under this section must be laid before Parliament no later than 2 years after this section comes into force.”

Member’s explanatory statement

This amendment requires each ministerial department to calculate the estimated carbon emissions from public contracts entered into and to lay the report before Parliament on an annual basis. The aim of this is to assess the impact of the procurement regime from an emissions perspective.

BARONESS HAYMAN OF ULLOCK
LORD COAKER
LORD CLEMENT-JONES

459A Insert the following new Clause—

“Digital platform for information relating to procurement

- (1) Within 6 months of the passing of this Act, the Secretary of State must make arrangements to establish and operate a single online system under section 88(2) by means of which information relating to procurement may be published.
- (2) A contracting authority must publish all notices, documents, information and data relating to procurement carried out in accordance with this Act on the online system under subsection (1).”

Member’s explanatory statement

This amendment requires a contracting authority to publish required procurement documents on a single digital platform. It is intended that this will allow public spending priorities and the performance of the procurement system to be understood by stakeholders and allow authorities to plan and deliver procurement strategically.

Clause 89

LORD MOYLAN

460 Page 56, line 23, leave out “Parts 1 to 5, 7 and 8” and insert “section 11 (procurement objectives)”

Member’s explanatory statement

The effect of this amendment would be restrict civil enforcement proceedings against contracting authorities to instances of failure to comply with the procurement objectives in section 11.

LORD TRUE

461 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.”

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

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

Clause 90

LORD TRUE

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

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

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

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

468 Page 57, line 24, at end insert –

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

Clause 91

LORD TRUE

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

Clause 95

LORD TRUE

470 Page 60, line 1, at end insert –

“(A1) A supplier must commence any specified set-aside proceedings before the earlier of –

Clause 95 - continued

- (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.”

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

472 Page 60, leave out line 5

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

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

475 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,”

476 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

477 Page 60, line 27, leave out “relevant”

Member’s explanatory statement

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

BARONESS THORNTON
 BARONESS HAYMAN OF ULLOCK
 BARONESS BENNETT OF MANOR CASTLE
 THE EARL OF DEVON

477A Page 60, line 28, at end insert “ and the implementation of social value.”

BARONESS NOAKES

478 Page 60, line 30, leave out “relevant”

Member's explanatory statement

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

479 Page 60, line 37, leave out “relevant”

Member's explanatory statement

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

480 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

481 Page 61, line 12, at end insert –

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

Clause 97

BARONESS NOAKES

482 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

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

484 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.”

After Clause 98

LORD COAKER
LORD HUNT OF KINGS HEATH
BARONESS SMITH OF NEWNHAM

485 Insert the following new Clause –

“Audit of Ministry of Defence procurement

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

BARONESS NEVILLE-ROLFE
LORD MOYLAN

486 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.

BARONESS THORNTON
BARONESS HAYMAN OF ULLOCK
BARONESS BENNETT OF MANOR CASTLE
THE EARL OF DEVON

486A Insert the following new Clause –

“Procurement expertise

An appropriate authority conducting procurement investigations must ensure that it has access to expertise from small and medium sized enterprises, social enterprises and voluntary organisations.”

Clause 99

LORD TRUE

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

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

BARONESS NEVILLE-ROLFE

489 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 TRUE

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

LORD WIGLEY

BARONESS HUMPHREYS

LORD THOMAS OF CWMGIEDD

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

LORD TRUE

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

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

Clause 100

BARONESS NEVILLE-ROLFE

494 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.

LORD TRUE

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

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

BARONESS NEVILLE-ROLFE

497 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.

LORD TRUE

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

Clause 101

LORD TRUE

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

(a) a reserved procurement arrangement, or

(b) a transferred Northern Ireland procurement arrangement.”

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

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

502 Page 64, line 6, leave out “(electronic invoicing)” and insert “, or publish guidance under section 98,”

503 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.”

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

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

(a) a reserved procurement arrangement, or

(b) a devolved Welsh procurement arrangement.”

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

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

Clause 102

LORD TRUE

508 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”

509 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”

Clause 102 - continued

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

Clause 103

LORD TRUE

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

512 Page 65, leave out line 35

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

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

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

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

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

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

Clause 104

LORD HENDY

LORD HAIN

LORD MONKS

LORD WOODLEY

519 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.

LORD ROOKER

Lord Rooker gives notice of his intention to oppose the Question that Clause 104 stand part of the Bill.

After Clause 104

LORD CLEMENT-JONES

519A Insert the following new Clause –

“Amendment of the Transport Act 1985

In section 89 of the Transport Act 1985 (obligation to invite tenders for subsidised services), omit subsection (4)(b) and subsection (5).”

Member’s explanatory statement

This amendment removes the requirement for local authorities to issue notices of tender individually to all persons who have given to that authority a written notice indicating that they wish to receive invitations to tender for the provision of local services for that authority’s area. This would bring the requirements to advertise tenders for transport services into line with those set out in the Bill, ensuring the single digital platform is where all public tenders are advertised in one place.

519B Insert the following new Clause –

“Amendment of the Service Subsidy Agreements (Tendering) (England) Regulations 2002

In the Service Subsidy Agreements (Tendering) (England) Regulations 2002, omit regulations 4 and 5 (information with respect to tenders).”

Member’s explanatory statement

Removing the two regulations specified in the amendment ensures that information about contract pipelines and contract awards for service subsidies will in future be published in the same place and in the same format as information about any other public contract, to improve consistency and accessibility.

Schedule 10

LORD TRUE

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

521 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.”

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

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

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

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

Schedule 10 - continued

- 526 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”;

Schedule 11

LORD LANSLEY

- 527 Page 112, line 27, leave out paragraph 3 and insert –
 “3 The provisions of the Act resulting from the Trade (Australia and New Zealand) Bill insofar as they were included in the Bill at its introduction to the House of Commons on 11 May 2022.”

Clause 108

LORD TRUE

- 528 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.”

BARONESS HAYMAN OF ULLOCK
LORD COAKER

- 528A Page 67, line 16, at beginning insert “Subject to subsection (3),”

Member’s explanatory statement

These amendments require that contracting authorities consider potential health contractors’ records of ensuring affordable access to their products in low and middle-income countries and to the NHS and in the event of a public health emergency of international concern, to consider their proposals for knowledge-sharing, to combat the emergency.

- 528B Page 67, line 26, at end insert –
 “(3) Any relevant health procurement regulations must include the requirement prescribed by section 18 of this Act.”

Member’s explanatory statement

This amendment, and one to Clause 18, require that contracting authorities consider potential health contractors’ records of ensuring affordable access to their products in low and middle-income countries and to the NHS and, in the event of a public health emergency of international concern, to consider their proposals for knowledge-sharing to combat the emergency.

BARONESS BRINTON
LORD SCRIVEN

528C Leave out Clause 108 and insert—

“Application of this Act to procurement by NHS England

- (1) Omit sections 79 and 80 of the Health and Care Act 2022.
- (2) For the avoidance of doubt, the provisions of this Act apply to procurement by NHS England.”

Member’s explanatory statement

This amendment is to probe the difference between procurement under this Act and procurement by NHS England under the Health and Care Act 2022.

Clause 109

LORD WALLACE OF SALTAIRE
BARONESS NEVILLE-ROLFE
LORD BERKELEY

The above-named Lords give notice of their intention to oppose the Question that Clause 109 stand part of the Bill.

Member’s explanatory statement

This amendment is intended to allow a debate on a recommendation from the Delegated Powers and Regulatory Reform Committee in respect of Clause 109. The Committee considers that the power under Clause 109 “should be narrowed unless the Government can fully justify it”.

Clause 110

LORD WALLACE OF SALTAIRE
LORD FOX

529 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.

LORD WALLACE OF SALTAIRE

530 Page 68, line 41, at end insert—

- “(s) paragraph 3(3) of Schedule 10 (qualifying defence contracts)”

Member’s explanatory statement

This amendment ensures that regulations specifying a method for determining the price payable under a qualifying defence contract are subject to the affirmative resolution procedure, as recommended by the Delegated Powers and Regulatory Reform Committee.

LORD WALLACE OF SALTAIRE
LORD FOX

531 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);
 - (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 subsection (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 subsection (4)(a) to (4)(r) of Clause 110. Subsequent regulations are to be subject to the affirmative procedure.

LORD WALLACE OF SALTAIRE

532 Page 68, line 41, at end insert –

- “(4A) A statutory instrument containing (whether alone or with any other provision) regulations made by a Minister of the Crown which make above-inflation increases to any of the financial thresholds under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament –
- (a) section 51 (contract details notices and publication of contracts);
 - (b) section 65 (information about payments under public contracts);
 - (c) section 70 (contract change notices and publication of modifications);
 - (d) section 78 (regulated below-threshold contracts: procedure);
 - (e) section 79 (regulated below-threshold contracts: notices);
 - (f) section 84 (pipeline notices).”

Member’s explanatory statement

This amendment ensures that regulations making above-inflation increases to financial thresholds are subject to the affirmative resolution procedure, as recommended by the Delegated Powers and Regulatory Reform Committee.

LORD TRUE

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

After Clause 110

BARONESS NOAKES
BARONESS NEVILLE-ROLFE

534 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 –
 - (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
BARONESS BENNETT OF MANOR CASTLE

535 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

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

BARONESS NOAKES

537 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.

538 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

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

540 Page 71, line 15, at end insert –

“covered procurement

debarment list

section (Procurement and covered
procurement)
section 54”

Clause 112 - continued

- 541 Page 71, line 25, leave out “35” and insert “34”
- 542 Page 72, line 9, leave out “a”
- 543 Page 72, line 9, leave out “section 10” and insert “section (*Procurement and covered procurement*)”
- 544 Page 72, line 11, at end insert —
- “requirements | section 18”
- 545 Page 72, line 25, at end insert —
- “utilities dynamic market | section 35
utility | section 35”

Clause 115

BARONESS WORTHINGTON
BARONESS VERMA
BARONESS YOUNG OF OLD SCONE
BARONESS PARMINTER

- 546 Page 73, line 8, leave out “comes” and insert “and section 12 come”

Procurement Bill [HL]

FOURTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

11 July 2022
