

Procurement Bill [HL]

SIXTH
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.**

Clause 30

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

Clause 30 - continued

- (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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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
BARONESS FINLAY OF LLANDAFF

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.
- (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—
 - (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.

After Clause 30 - continued

- (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

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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”
- 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

BARONESS SCOTT OF BYBROOK

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"

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.

Clause 34 - continued

- (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

BARONESS SCOTT OF BYBROOK

- 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)

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.

BARONESS SCOTT OF BYBROOK

- 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”

Clause 35 - continued

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.

BARONESS SCOTT OF BYBROOK

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

Clause 36

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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

Clause 40

LORD WALLACE OF SALTAIRE
LORD CLEMENT-JONES

235ZA★ Page 25, line 16, at end insert –

“(c) if the contract is not included in a framework agreement.”

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.

BARONESS SCOTT OF BYBROOK

237 Page 89, line 27, leave out paragraph 15

Clause 41

LORD WALLACE OF SALTAIRE

BARONESS BRINTON

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 SALTAIRE

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

Clause 42

LORD WALLACE OF SALTAIRE
LORD CLEMENT-JONES

243A★ Page 26, line 25, at end insert –

“(d) the contract is not included in a framework agreement.”

BARONESS SCOTT OF BYBROOK

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

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.

BARONESS SCOTT OF BYBROOK

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.
- (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).”

Clause 44 - continued

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)

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

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

Clause 47 - continued

- 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

BARONESS SCOTT OF BYBROOK

- 261 Page 30, line 10, after “competitive” insert “tendering”
- 262 Page 30, line 26, leave out “virtue of” and insert “reference to”

Clause 49

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

- 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.”

Clause 50 - continued

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.”

Clause 50 - continued

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

BARONESS SCOTT OF BYBROOK

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

Clause 51 - continued

- 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

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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

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

Schedule 6

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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

LORD WALLACE OF SALTIRE
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.

BARONESS SCOTT OF BYBROOK

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

LORD WALLACE OF SALTIRE
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

BARONESS SCOTT OF BYBROOK

- 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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS HAYMAN OF ULLOCK
LORD COAKER

353AA★ Insert the following new Clause –

“Public interest

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

Member’s explanatory statement

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

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.

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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”

Clause 65 - continued

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

BARONESS SCOTT OF BYBROOK

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

Clause 68

BARONESS SCOTT OF BYBROOK

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

LORD ABERDARE

361A Page 43, line 37, at end insert—

“(2A) Where a supplier fails to comply with subsections (2) to (5) of section 63 (implied payment terms in public contracts), the contracting authority has the implied right to pay a sub-contractor directly for those goods, services or works and to set-off the amount paid from monies otherwise owed to the supplier or recover the same from the supplier as a debt.”

Member’s explanatory statement

This amendment will provide the public sector contracting authority the right to intervene when payment from a tier 1 contractor/supplier to a sub-contractor/supplier for an undisputed invoice takes more than 30 days. The contracting authority will then have the subsequent right to offset any payment from monies owed to, or already paid to, the tier 1 supplier. This is a right, not an obligation.

BARONESS SCOTT OF BYBROOK

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”

BARONESS SCOTT OF BYBROOK

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

Clause 69 - continued

- 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.”
- 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”

BARONESS MCINTOSH OF PICKERING
BARONESS HAYMAN OF ULLOCK
LORD COAKER

- 370ZA★** Page 45, line 8, at end insert –
“(10) In order to assess if a contract modification under this section is desirable, contract reviews must be undertaken by both contracting parties every three months.”

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.

Before Schedule 8 - continued

- 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

BARONESS MCINTOSH OF PICKERING
BARONESS HAYMAN OF ULLOCK
LORD COAKER

370B★ Page 104, line 17, at end insert –

“*Significant inflation*

- 7A(1) A modification is a permitted modification if –
- (a) the average annual rate of inflation is 5% or more, and
 - (b) the modification prevents the supplier from being disproportionately affected by the inflation.
- (2) In order to assess if a contract modification under this paragraph is desirable, contract reviews must be undertaken by both contracting parties every three months.”

BARONESS SCOTT OF BYBROOK

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

Clause 70

BARONESS SCOTT OF BYBROOK

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).”

Clause 70 - continued

- 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”
- 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)

Clause 70 - continued

- 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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

- 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.

Clause 72 - continued

- (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).”

BARONESS SCOTT OF BYBROOK

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

After Clause 72

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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

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

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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).

After Clause 76 - continued

- (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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 429 Page 51, line 5, leave out “where” and insert “if”
- 430 Page 51, line 21, leave out “An appropriate authority” and insert “A Minister of the Crown or the Welsh Ministers”

Clause 80LORD 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.

BARONESS SCOTT OF BYBROOK

- 431 Page 52, line 8, leave out “the whole” and insert “all”
- 432 Page 52, line 13, leave out “the whole” and insert “all”

Clause 80 - continued

- 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

BARONESS SCOTT OF BYBROOK

- 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.”

BARONESS SCOTT OF BYBROOK

- 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

BARONESS SCOTT OF BYBROOK

- 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 SALTIRE

- 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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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—
 - (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,
 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

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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.”

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.

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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”

Clause 90 - continued

- 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

BARONESS SCOTT OF BYBROOK

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

Clause 95

BARONESS SCOTT OF BYBROOK

- 470 Page 60, line 1, at end insert –
“(A1) A supplier must commence any specified set-aside proceedings before the earlier of –
(a) the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;
(b) the end of the period of six months beginning with the day the contract was entered into or modified.”
- 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.

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

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

LORD ALTON OF LIVERPOOL

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

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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”

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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.

BARONESS SCOTT OF BYBROOK

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

Clause 101

BARONESS SCOTT OF BYBROOK

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)

Clause 101 - continued

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

Clause 102

BARONESS SCOTT OF BYBROOK

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”

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

Clause 103

BARONESS SCOTT OF BYBROOK

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

BARONESS SCOTT OF BYBROOK

- 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)
- 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

BARONESS SCOTT OF BYBROOK

- 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 SALTIRE
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);

Clause 110 - continued

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

BARONESS SCOTT OF BYBROOK

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;

BARONESS SCOTT OF BYBROOK

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

Clause 111 - continued

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

BARONESS SCOTT OF BYBROOK

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”
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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”
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545 Page 72, line 25, at end insert –

Clause 112 - *continued*

“utilities dynamic market utility	section 35 section 35”
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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]

SIXTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

8 September 2022
