

# Procurement Bill [HL]

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## COMMONS AMENDMENTS

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*[The page and line references are to Bill 218, the Bill as first printed for the Commons]*

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### Clause 2

#### COMMONS AMENDMENT 1

1 Page 2, line 13, leave out “including the NHS”

#### COMMONS AMENDMENT 2

2 Page 2, line 16, leave out “subsection” and insert “subsections (8A) and”

#### COMMONS AMENDMENT 3

3 Page 3, line 12, at end insert—

“(8A) In this Act, a reference to a public authority includes a reference to the Common Council of the City of London.”

### Clause 13

#### COMMONS AMENDMENT 4

4 Page 10, line 9, leave out paragraph (b)

#### COMMONS AMENDMENT 5

5 Page 10, line 29, leave out subsection (4)

### Clause 19

#### COMMONS AMENDMENT 6

6 Page 14, line 21, at end insert—

“(ba) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;”

## COMMONS AMENDMENT 7

7 Page 14, line 23, at end insert –

- “(3A) Before disregarding a tender under subsection (3)(ba) (abnormally low price), a contracting authority must –
- (a) notify the supplier that the authority considers the price to be abnormally low, and
  - (b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.
- (3B) If the supplier demonstrates to the contracting authority’s satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(ba) (abnormally low price).”

**Clause 32**

## COMMONS AMENDMENT 8

8 Page 23, line 22, after “operates” insert “wholly or partly”

## COMMONS AMENDMENT 9

- 9 Page 23, line 24, leave out from “individuals” to end of line 26 and insert “where –
- (a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,
  - (b) if a particular part of the organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or
  - (c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of –
    - (i) those organisations,
    - (ii) where a particular part of each organisation is to perform the contract, those parts, or
    - (iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.”

**Clause 43**

## COMMONS AMENDMENT 10

10 Page 29, line 40, leave out “19” and insert “19(3)(a), (b) or (c)”

## COMMONS AMENDMENT 11

11 Page 30, line 1, leave out paragraph (c)

## COMMONS AMENDMENT 12

12 Page 30, line 4, after “notice” insert “or associated tender documents”

**Clause 52**

## COMMONS AMENDMENT 13

- 13 Page 35, line 24, leave out “and publish”

## COMMONS AMENDMENT 14

- 14 Page 35, line 28, at end insert –  
“(2A) A contracting authority must publish any key performance indicators set under subsection (1).”

**Clause 54**

## COMMONS AMENDMENT 15

- 15 Page 37, line 14, at end insert –

“The contract –	No minimum period
(a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and is subject to a negotiated tendering period	
The contract –	10 days”
(a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and tenders may be submitted only by pre-selected suppliers	

## COMMONS AMENDMENT 16

- 16 Page 37, line 35, at end insert –  
““central government authority” has the meaning given in paragraph 5 of Schedule 1 (threshold amounts);  
“negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers;”

## COMMONS AMENDMENT 17

- 17 Page 38, line 2, at end insert –  
““pre-selected supplier” means a supplier that –  
(a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or  
(b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market;”

**Clause 56**

## COMMONS AMENDMENT 18

- 18 Page 38, line 24, at end insert –  
“(za) the standard adopts an internationally-recognised equivalent, or”

## COMMONS AMENDMENT 19

- 19 Page 38, line 26, leave out paragraph (b)

## COMMONS AMENDMENT 20

- 20 Page 38, line 29, at end insert –
- “(3A) If the procurement documents refer to a United Kingdom standard, they must provide that tenders, proposals or applications that the contracting authority considers satisfy an equivalent standard from another state, territory or organisation of states or territories will be treated as having satisfied the United Kingdom standard.
- (3B) In considering whether a standard is equivalent to a United Kingdom standard for the purposes of subsection (3A), a contracting authority may have regard to the authority’s purpose in referring to the standard.
- (3C) A contracting authority may require certification, or other evidence, for the purpose of satisfying itself that a standard is satisfied or equivalent.”

## COMMONS AMENDMENT 21

- 21 Page 38, line 36, leave out “such matters” and insert “the matters mentioned in subsection (4)”

## COMMONS AMENDMENT 22

- 22 Page 39, leave out lines 9 to 12 and insert –  
“(b) are primarily developed for use in the United Kingdom, or part of the United Kingdom.”

**Clause 57**

## COMMONS AMENDMENT 23

- 23 Page 39, line 20, after “are” insert “continuing or”

## COMMONS AMENDMENT 24

- 24 Page 39, line 28, after “are” insert “continuing or”

## COMMONS AMENDMENT 25

- 25 Page 39, line 30, at end insert –
- “(2A) If a supplier is an excluded supplier on the basis of the supplier or an associated person being on the debarment list only by virtue of paragraph 34A of Schedule 6 (threat to national security), the supplier is to be treated as an excluded supplier only in relation to public contracts of a kind described in the relevant entry.”

**Clause 58**

## COMMONS AMENDMENT 26

26 Page 39, line 40, after “are” insert “continuing or”

## COMMONS AMENDMENT 27

27 Page 40, line 5, after “circumstances” insert “continuing or”

**Clause 59**

## COMMONS AMENDMENT 28

28 Page 40, line 43, leave out “on the basis” and insert “—  
(i) under section 57(1)(a) or (2)(a) by virtue”

## COMMONS AMENDMENT 29

29 Page 40, line 44, at end insert “, or  
“(ii) on the basis of being on the debarment list by virtue of  
paragraph 34A of Schedule 6 (threat to national security).”

**Clause 60**

## COMMONS AMENDMENT 30

30 Page 41, line 29, after “may” insert “, for the purpose of considering whether an  
entry could be added to the debarment list in respect of a supplier,”

## COMMONS AMENDMENT 31

31 Page 41, line 32, at end insert—  
“(1A) A Minister of the Crown must—  
(a) have regard to the fact that contracting authorities may be  
unknowingly awarding public contracts to suppliers that—  
(i) could be excludable suppliers by virtue of paragraph 14 of  
Schedule 7 (threat to national security), or  
(ii) are sub-contracting to suppliers that could be excludable  
suppliers by virtue of that paragraph, and  
(b) in light of that fact, keep under review whether particular suppliers  
or sub-contractors should be investigated under this section.”

## COMMONS AMENDMENT 32

32 Page 41, line 33, leave out subsection (2)

**Clause 61**

## COMMONS AMENDMENT 33

33 Page 42, line 36, leave out from “out” to end of line 45 and insert—

“whether the Minister is satisfied that the supplier is, by virtue of a relevant exclusion ground, an excluded or excludable supplier, and if the Minister is so satisfied—

- (a) in respect of each applicable relevant exclusion ground—
  - (i) whether it is a mandatory or discretionary ground,
  - (ii) the date on which the Minister expects the ground to cease to apply (see paragraph 43 of Schedule 6 and paragraph 16 of Schedule 7), and
  - (iii) whether the Minister intends to make an entry to the debarment list,
- (b) in respect of the exclusion ground in paragraph 34A of Schedule 6 (if applicable), the description of contracts in relation to which the Minister—
  - (i) is satisfied the ground applies, and
  - (ii) intends to refer to in a relevant entry in the debarment list, and”

### Clause 62

#### COMMONS AMENDMENT 34

**34** Page 43, line 30, leave out from “section” to end of line 39 and insert “and, as part of that entry, must include the relevant debarment information.

- (3A) In this section, the “relevant debarment information” means—
- (a) the exclusion ground to which the entry relates;
  - (b) whether the exclusion ground is mandatory or discretionary;
  - (c) in the case of an entry made on the basis of paragraph 34A of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier;
  - (d) the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 43 of Schedule 6 and paragraph 15 of Schedule 7).”

#### COMMONS AMENDMENT 35

**35** Page 43, line 43, leave out “section (*Debarment decisions: appeals*)” and insert “sections 63 to section (*Debarment decisions: appeals*)”

#### COMMONS AMENDMENT 36

**36** Page 43, line 44, at end insert—

- “(5A) The Minister may not enter a supplier’s name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the “debarment standstill period”).
- (5B) The Minister may not enter a supplier’s name on the debarment list if—
- (a) during the debarment standstill period—
    - (i) proceedings under section (*Debarment decisions: interim relief*)(1) (interim relief) are commenced, and
    - (ii) the Minister is notified of that fact, and

- (b) the proceedings have not been determined, discontinued or otherwise disposed of.”

COMMONS AMENDMENT 37

37 Page 44, line 1, leave out from “review” to end of line 5 and insert –

- “(b) may remove an entry from the debarment list,
  - (c) in the case of an entry added on the basis of paragraph 34A of Schedule 6 (threat to national security), may revise an entry to remove a description of contracts, and
  - (d) may revise a date indicated under subsection (3A)(d).
- (7) If a Minister of the Crown voluntarily removes or revises an entry in connection with proceedings under section (*Debarment decisions: appeals*), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.
- (7A) A Minister of the Crown must –
- (a) remove an entry if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry, and
  - (b) in the case of an entry added on the basis of paragraph 34A of Schedule 6 (threat to national security), revise the entry to remove a description of contracts if the Minister is satisfied the exclusion ground in that paragraph does not apply in relation to contracts of that description.”

COMMONS AMENDMENT 38

38 Page 44, line 11, leave out “an entry from the debarment list” and insert “or revising an entry”

**After Clause 62**

COMMONS AMENDMENT 39

39 Insert the following new Clause –

**“Debarment decisions: interim relief**

- (1) A supplier may apply to the court for suspension of the Minister’s decision to enter the supplier’s name on the debarment list.
- (2) Proceedings under subsection (1) must be brought during the debarment standstill period.
- (3) The court may make an order to –
  - (a) suspend the Minister’s decision to enter the supplier’s name on the debarment list until –
    - (i) the period referred to in subsection (3)(b) of section (*Debarment decisions: appeals*) ends without proceedings having been brought, or
    - (ii) proceedings under that section are determined, discontinued or otherwise disposed of, and
  - (b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.

- (4) In considering whether to make an order under subsection (3), the court must have regard to—
- (a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,
  - (b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and
  - (c) any other matters that the court considers appropriate.
- (5) In this section—
- “the court” means—
- (a) in England and Wales, the High Court,
  - (b) in Northern Ireland, the High Court, and
  - (c) in Scotland, the Court of Session;
- “debarment standstill period” has the meaning given in section 62 (debarment list).”

### Clause 63

#### COMMONS AMENDMENT 40

- 40 Page 44, line 16, leave out from “for” to end of line 17 and insert “the removal or revision of an entry made on the debarment list in respect of the supplier.”

#### COMMONS AMENDMENT 41

- 41 Page 44, line 21, leave out from “since” to “, or” and insert “the entry was made or, where relevant, revised”

#### COMMONS AMENDMENT 42

- 42 Page 44, line 23, after “subsection (1)” insert “in relation to the entry or, where relevant, revision”

#### COMMONS AMENDMENT 43

- 43 Page 44, line 26, at end insert—
- “(3) After considering an application under subsection (1), the Minister must—
- (a) notify the supplier of the Minister’s decision, and
  - (b) give reasons for the decision.”

### After Clause 63

#### COMMONS AMENDMENT 44

- 44 Insert the following new Clause—
- “Debarment decisions: appeals**
- (1) A supplier may appeal to the court against a decision of a Minister of the Crown—
- (a) to enter the supplier’s name on the debarment list,
  - (b) to indicate contracts of a particular description as part of an entry made in respect of the supplier on the basis of paragraph 34A of Schedule 6 (threat to national security),



- (c) to indicate a particular date as part of an entry in respect of the supplier under section 62(3A)(d), or
  - (d) not to remove or revise an entry made in respect of the supplier, following an application under section (63).
- (2) Proceedings under subsection (1) –
  - (a) may only be brought by a United Kingdom supplier or a treaty state supplier,
  - (b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and
  - (c) must be commenced before 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 Minister’s decision.
- (3) Subsection (4) applies if, in proceedings under subsection (1)(a) or (b), the court is satisfied that –
  - (a) the Minister made a material mistake of law, and
  - (b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).
- (4) The court may make one or more of the following orders –
  - (a) an order setting aside the Minister’s decision;
  - (b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).
- (5) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister’s decision.
- (6) In this section –
  - “the court” has the meaning given in section (*Debarment decisions: interim relief*) (interim relief);
  - the reference to a supplier being excluded includes a reference to –
    - (a) the supplier’s tender being disregarded under section 26;
    - (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).”

#### Clause 64

#### COMMONS AMENDMENT 45

**After Clause 64**

## COMMONS AMENDMENT 46

46 Insert the following new Clause –

**“Debarment proceedings and closed material procedure**

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections (*Debarment decisions: interim relief*)(1) (interim relief) and 64 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office –

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).”

**Clause 65**

## COMMONS AMENDMENT 47

47 Page 44, line 34, leave out Clause 65

**Clause 66**

## COMMONS AMENDMENT 48

48 Page 45, line 30, at end insert –

“(5A) The implied term does not prevent a contracting authority –

- (a) requiring the use of a particular system in relation to electronic invoices;
- (b) in the case of a defence authority (as defined in section 7(5)), requiring the use of a system that requires the payment of fees by the supplier.”

**Clause 67**

## COMMONS AMENDMENT 49

49 Page 46, line 33, at end insert –

“(za) “electronic invoice” and “required electronic form” have the meanings given in section 66(3);”

## COMMONS AMENDMENT 50

50 Page 46, line 36, after “address” insert “, or through an electronic invoicing system,”

**Clause 68**

## COMMONS AMENDMENT 51

- 51 Page 47, line 18, at end insert “, or  
(d) in relation to a concession contract.”

**Clause 74**

## COMMONS AMENDMENT 52

- 52 Page 51, line 5, leave out paragraph (c)

**Clause 76**

## COMMONS AMENDMENT 53

- 53 Page 51, line 40, after “modification” insert “ –  
(a) in respect of which the contracting authority is required to publish a contract change notice under section 74, and”

## COMMONS AMENDMENT 54

- 54 Page 51, line 43, leave out paragraphs (a) to (c)

## COMMONS AMENDMENT 55

- 55 Page 52, line 3, leave out “or a transferred Northern Ireland authority”

## COMMONS AMENDMENT 56

- 56 Page 52, line 7, leave out “or a transferred Northern Ireland procurement arrangement”

**Clause 78**

## COMMONS AMENDMENT 57

- 57 Page 53, line 43, at end insert –  
(1) A relevant contracting authority may not terminate a contract by reference to the implied term in section 77 on the basis of the mandatory exclusion ground in paragraph 34A of Schedule 6 (threat to national security) unless the authority has notified a Minister of the Crown of its intention.”

**Clause 90**

## COMMONS AMENDMENT 58

- 58 Page 60, line 32, at end insert –  
(1A) Regulations under subsection (1) may only include provision that is equivalent to provision in –  
(a) subsection (1), (2), (5) or (6) of section 88 (treaty state suppliers),  
(b) section 89 (treaty state suppliers: non-discrimination), or  
(c) Schedule 9 (specified international agreements).

- (1B) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.
- (1C) In subsection (1B), the reference to being a signatory to an international agreement includes a reference to having—
- (a) exchanged instruments, where the exchange constitutes the agreement;
  - (b) acceded to the agreement.”

COMMONS AMENDMENT 59

- 59 Page 60, line 34, at end insert—
- “(b) a reference to discrimination is a reference to discrimination as defined in section 89.”

**After Clause 90**

COMMONS AMENDMENT 60

- 60 Insert the following new Clause—

**“Trade disputes**

- (1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.
- (2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.
- (3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement—
  - (a) carried out by devolved Scottish authorities, or
  - (b) under devolved Scottish procurement arrangements.
- (4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).
- (5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.”

**Clause 94**

COMMONS AMENDMENT 61

- 61 Page 62, line 37, after first “a” insert “covered”

## COMMONS AMENDMENT 62

62 Page 62, line 42, at end insert –

- “(2A) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used –
- (a) after the award of the public contract, or
  - (b) in relation to a utilities dynamic market.”

## COMMONS AMENDMENT 63

63 Page 63, line 1, leave out “Subsection (1)” and insert “This section”

## COMMONS AMENDMENT 64

64 Page 63, line 2, after “communication” insert “, or the use of an electronic communication system meeting the requirements of subsection (2),”

**Clause 95**

## COMMONS AMENDMENT 65

65 Page 63, line 13, leave out subsection (3)

**After Clause 95**

## COMMONS AMENDMENT 66

66 Insert the following new Clause –

**“Record-keeping**

- (1) A contracting authority must keep such records as the authority considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract.
- (2) For the purposes of subsection (1), a decision is “material” if, under this Act, a contracting authority is required –
  - (a) to publish or provide a notice, document or other information in relation to the decision, or
  - (b) to make the decision.
- (3) A contracting authority must keep records of any communication between the authority and a supplier that is made –
  - (a) in relation to the award or entry into of a public contract, and
  - (b) before the contract is entered into.
- (4) A record under this section must be kept until –
  - (a) the day on which the contracting authority gives notice of a decision not to award the contract (see section 55), or
  - (b) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- (5) This section does not apply in relation to defence and security contracts.

- (6) This section does not affect any other obligation under any enactment or rule of law by virtue of which a contracting authority must retain documents or keep records, including for a longer period.”

### Clause 97

#### COMMONS AMENDMENT 67

67 Page 64, line 6, at end insert –

- “(6A) A supplier may not bring proceedings under this Part on the grounds that one or more of the following decisions of a Minister of the Crown was unlawful –
- (a) a decision to enter a supplier’s name on the debarment list;
  - (b) a decision relating to the information included in an entry on the debarment list;
  - (c) a decision not to remove an entry from the debarment list, or revise information included in such an entry,
- (see section (*Debarment decisions: appeals*)).”

### After Clause 103

#### COMMONS AMENDMENT 68

68 Insert the following new Clause –

#### “Part 9 proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under this Part as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office –

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).”

### Clause 107

#### COMMONS AMENDMENT 69

69 Page 70, line 3, leave out “only” and insert “wholly or mainly”

#### COMMONS AMENDMENT 70

70 Page 70, line 12, leave out paragraph (b)

#### COMMONS AMENDMENT 71

71 Page 70, line 14, after “section” insert “and section 123 (commencement)”

## COMMONS AMENDMENT 72

72 Page 70, line 16, at end insert –

“(4A) Subsection (1) does not apply in relation to a power under sections 59 to 66 (Debarment proceedings and closed material procedure).”

**Clause 108**

## COMMONS AMENDMENT 73

73 Page 71, line 3, at end insert –

“(5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (Debarment proceedings and closed material procedure).”

**Clause 109**

## COMMONS AMENDMENT 74

74 Page 71, line 12, after “section 66” insert “or section 121”

## COMMONS AMENDMENT 75

75 Page 71, line 30, at end insert –

“(za) sections 59 to 66 (Debarment proceedings and closed material procedure);”

## COMMONS AMENDMENT 76

76 Page 71, line 32, at end insert –

“(ba) section (*Trade disputes*) (trade disputes);”

**Clause 111**

## COMMONS AMENDMENT 77

77 Page 73, line 4, leave out “A Minister of the Crown or”

## COMMONS AMENDMENT 78

78 Page 73, line 5, leave out from “of” to end of line 7 and insert –

“(a) applying it in relation to procurement carried out by contracting authorities under devolved Scottish procurement arrangements;  
(a) disapplying it in relation to procurement carried out by devolved Scottish authorities under –  
(i) reserved procurement arrangements,  
(ii) devolved Welsh procurement arrangements, or  
(iii) transferred Northern Ireland procurement arrangements.”

## COMMONS AMENDMENT 79

79 Page 73, line 8, at end insert –

“(za) the Procurement Reform (Scotland) Act 2014 (asp 12),”

## COMMONS AMENDMENT 80

80 Page 73, line 13, leave out “those regulations” and insert “that legislation”

**Clause 116**

## COMMONS AMENDMENT 81

81 Page 74, line 16, leave out Clause 116

**After Clause 116**

## COMMONS AMENDMENT 82

82 Insert the following new Clause—

**“Power to disapply this Act in relation to procurement by NHS in England**

(1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.

(2) In this section—

“regulated health procurement” means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;

“relevant authority” has the meaning given in that section.”

**Clause 118**

## COMMONS AMENDMENT 83

83 Page 75, line 21, at end insert—  
(da) section 52 (key performance indicators);”

## COMMONS AMENDMENT 84

84 Page 75, line 23, leave out paragraph (f)

## COMMONS AMENDMENT 85

85 Page 75, line 29, at end insert—  
(la) section (*Trade disputes*) (trade disputes);”

## COMMONS AMENDMENT 86

86 Page 75, line 39, at end insert—  
“(ua) section 123(6) (exclusion of devolved Welsh authorities);”

## COMMONS AMENDMENT 87

87 Page 76, line 21, at end insert—  
“(ca) section 52 (key performance indicators);”



## COMMONS AMENDMENT 88

- 88 Page 76, line 26, at end insert –  
 (ha) section (*Trade disputes*) (trade disputes);”

## COMMONS AMENDMENT 89

- 89 Page 76, line 47, at end insert –  
 “(ca) section 52 (key performance indicators);”

## COMMONS AMENDMENT 90

- 90 Page 77, line 1, at end insert –  
 “(da) section (*Trade disputes*) (trade disputes);”

## COMMONS AMENDMENT 91

- 91 Page 77, line 15, leave out from “under” to end of line 16 and insert “any of the following provisions”

## COMMONS AMENDMENT 92

- 92 Page 77, line 18, at end insert –  
 “(a) section 90 (treaty state suppliers: non-discrimination);  
 (b) section (*Trade disputes*) (trade disputes);  
 (c) section 111 (powers relating to procurement arrangements).”

**Clause 123**

## COMMONS AMENDMENT 93

- 93 Page 81, line 14, leave out subsection (3) and insert –  
 “(3) A Minister of the Crown may not make specified regulations under subsection (2) without the consent of the Welsh Ministers.  
 (4) In this section, “specified regulations” means regulations to bring into force provisions regulating procurement by a devolved Welsh authority other than procurement under –  
 (a) a reserved procurement arrangement, or  
 (b) a transferred Northern Ireland procurement arrangement,  
 but “specified regulations” does not include regulations to bring into force provisions in Part 7 (implementation of international obligations).  
 (5) In this section, “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006.  
 (6) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of ensuring that –  
 (a) Parts 1 to 6 and 8 to 13, or particular provisions in those Parts, so far as not already brought into force under subsection (2) do not regulate procurement by a devolved Welsh authority other than procurement under –  
 (i) a reserved procurement arrangement, or  
 (ii) a transferred Northern Ireland procurement arrangement;

- (b) existing legislation continues to regulate procurement by devolved Welsh authorities and procurement under devolved Welsh procurement arrangements.
- (7) Regulations under subsection (6) may modify this Act.
- (8) In this section –
  - “existing legislation” means any enactment, other than this Act or regulations made under this Act, that is passed or made before section 11 (covered procurement only in accordance with this Act) comes into force;
  - a reference to a provision regulating procurement includes a reference to a provision conferring a function exercisable in relation to procurement.”

#### Clause 124

##### COMMONS AMENDMENT 94

- 94 Page 81, line 18, leave out subsection (2)

#### Schedule 2

##### COMMONS AMENDMENT 95

- 95 Page 84, line 11, leave out from “in” to end of line 17 and insert “this Part of this Schedule.”

##### COMMONS AMENDMENT 96

- 96 Page 85, line 39, at end insert –

#### “PART 2

##### SUBJECT-MATTER EXEMPTED CONTRACTS

#### *General*

- 3A (1) A contract is an exempted contract if it is –
- (a) a contract of a kind listed in this Part of this Schedule;
  - (b) a framework for the future award of contracts only of a kind listed in this Part of this Schedule.
- (2) But a Part 2-only contract is not an exempted contract if, on award of the contract, a contracting authority considers that –
- (a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and
  - (b) that contract would not be a contract of a kind listed in this Part of this Schedule.
- (3) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.

- (4) In this paragraph “Part 2-only contract” means a contract of a kind listed in this Part of this Schedule that is not of a kind listed in Part 1 of this Schedule.”

COMMONS AMENDMENT 97

- 97 That paragraph 25 of Schedule 2 be transferred to the end of line 39 on page 85

COMMONS AMENDMENT 98

- 98 That paragraphs 31 and 32 of Schedule 2 be transferred to the end of line 39 on page 85

COMMONS AMENDMENT 99

- 99 Page 91, line 22, at end insert –

*“Commercial contracts of the City of London*

- 37 A contract for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.”

**Schedule 6**

COMMONS AMENDMENT 100

- 100 Page 102, line 11, at end insert –

*“National security*

- 34A (1) A mandatory exclusion ground applies to a supplier in relation to contracts of a particular description if an appropriate authority determines that the supplier or a connected person –
- (a) poses a threat to the national security of the United Kingdom, and
  - (b) would pose such a threat in relation to public contracts of that description.
- (2) In sub-paragraph (1) –
- (a) the reference to an appropriate authority is a reference to the appropriate authority that is considering whether the exclusion ground applies;
  - (b) the reference to a particular description includes, for example, a description by reference to –
    - (i) the goods, services or works being supplied;
    - (ii) the location of the supply;
    - (iii) the contracting authority concerned.
- (3) Sub-paragraph (1) applies only for the purpose of an appropriate authority’s functions under sections 59 to 66 (debarment), and cannot otherwise be relied on by a contracting authority when considering whether a supplier is an excluded supplier under section 57(1)(a).”

## COMMONS AMENDMENT 101

- 101** Page 105, line 20, at end insert –  
“(d) paragraph 34A (threat to national security).”

**Schedule 7**

## COMMONS AMENDMENT 102

- 102** Page 110, line 33, leave out paragraph 15

## COMMONS AMENDMENT 103

- 103** Page 111, line 44, at end insert –  
““event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;”

**Schedule 10**

## COMMONS AMENDMENT 104

- 104** Page 116, line 18, leave out “subsection (4) or (5)” and insert “this section”



# Procurement Bill [HL]

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## COMMONS AMENDMENTS

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*14 June 2023*

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