
Committee Stage: Friday 10 February 2023

Procurement Bill [Lords] (Amendment Paper)

This document lists all amendments tabled to the Procurement Bill [Lords]. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

Alex Burghart

NC9

To move the following 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 64 (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).”

Member’s explanatory statement

This new clause, to be inserted after clause 62, would allow a supplier to apply to suspend a Minister’s decision to add their name to the debarment list. If the decision is suspended, the supplier will not be able to be excluded from procurements on the basis of that entry until the suspension is lifted.

Alex Burghart

NC10

To move the following 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).”

Member’s explanatory statement

This new clause, to be inserted after clause 64, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings for interim relief or an appeal against a debarment decision.

Alex Burghart

NC11

To move the following 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."

Member's explanatory statement

This new clause, to be inserted after clause 90, would provide that an appropriate authority or the Scottish Ministers could make provision to deal with the procurement consequences of a trade dispute under a treaty implemented by way of Schedule 9 (other than the Trade and Cooperation Agreement with the European Union, which is dealt with under existing legislation).

Alex Burghart

NC12

To move the following 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)."

Member's explanatory statement

This new clause, to be inserted after clause 103, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings under Part 9.

Alex Burghart

NC13

To move the following 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.”

Member’s explanatory statement

This new clause would be a substitute for clause 116 and allow a Minister of the Crown to make provision excluding from the scope of this Bill procurement that is within the scope of regulations under section 12ZB of the National Health Service Act 2006.

Alex Burghart

NC15

To move the following Clause—

“Debarment decisions: appeals (No. 2)

- (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 a particular date as part of an entry in respect of the supplier under section 62(3)(b), or
 - (c) not to remove an entry in respect of the supplier from the debarment list, or revise a date indicated as part of such an entry, following an application under section 63 (application for removal).
- (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), 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).”

Member’s explanatory statement

This new clause would be a substitute for clause 64 and replace the power to make provision about appeals relating to debarment with detailed provision for their operation.

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC1

To move the following Clause—

“National Security Procurement Committee

- (1) The Secretary of State must establish a committee, chaired by the Minister for Resilience, to consider (a) national security and (b) cyber security within the Government’s supply chain.
- (2) The committee must consider whether suppliers should be excluded on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (3) The committee must review ongoing major government contracts, with focus on threats to national and cyber security.
- (4) The committee must meet no less than once every three months.”

Member’s explanatory statement

This new clause will mandate that a new committee must be set up with a view to proactively identifying potential security threats within the Government’s supply chain.

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC2

To move the following Clause—

“Procurement principles

- (1) In carrying out a procurement, a contracting authority must pursue the following principles—
 - (a) promoting the public good, by having regard to the delivery of strategic national priorities including economic, social, environmental and public safety priorities,

- (b) value for money, by having regard to the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcome of the business case,
 - (c) transparency, by acting openly to underpin accountability for public money, anti-corruption and the effectiveness of procurements,
 - (d) integrity, by providing good management, preventing misconduct, and control in order to prevent fraud and corruption,
 - (e) fair treatment of suppliers, by ensuring that decision-making is impartial and without conflict of interest, and
 - (f) non-discrimination, by ensuring that decision-making is not discriminatory.
- (2) If a contracting authority considers that it is unable to act in accordance with any of these principles in a particular case, it must—
- (a) take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage, and
 - (b) publish a report within 90 days setting out the principles with which it could not act in accordance and its reasons.”

Member’s explanatory statement

This new clause would require contracting authorities to pursue a series of principles when carrying out procurements

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC3

To move the following 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 recontracting 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 for the equalities policies of the contracting authority and 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 new clause would create a process to ensure that contracting authorities safeguard the public interest when considering whether or not to outsource or recontract services.

Bob Seely
Mr Philip Hollobone
Damian Green
Sir Iain Duncan Smith
Sir Julian Lewis
Tim Loughton
Lloyd Russell-Moyle

NC4

To move the following Clause—

"Dependence on high-risk states

- (1) The Secretary of State must within six months publish a plan to reduce the dependence of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as a high risk sourcing country.
- (2) For the purposes of this section, a country is considered a high risk sourcing country by the United Kingdom if it is defined as either a systemic competitor or a threat in the latest Integrated Review of Security, Defence, Development and Foreign Policy."

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC5

To move the following Clause—

“Carbon reduction plans

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

Member’s explanatory statement

This new clause would require company-level carbon reduction plans for bidders for certain larger contracts, including information and targets from suppliers on the emissions attributable

to the performance of the contract. It also specifies that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC6

To move the following Clause—

“Granting of relief on an application for judicial review of a contracting authority’s decision

Section 31(2A) of the Senior Courts Act 1981 does not apply in the case of an application for judicial review of a contracting authority’s decision to award a contract if—

- (a) the contracting authority breaches the principle of non-discrimination in section 89, and
- (b) the authority’s breach is caused by a representation to the contracting authority by a Member of Parliament, Member of the House of Lords, or senior civil servant.”

Member’s explanatory statement

This new clause would ensure that if an MP, Lord or senior civil servant lobbied a contracting authority to award a contract to a certain bidder and a court held that this had resulted in unequal treatment then the court would be able to grant relief.

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC7

To move the following Clause—

“Review of procurement of Fleet Solid Support Ships

- (1) By the end of 2023, the Secretary of State for Defence must conduct a review of the procurement of Fleet Solid Support Ships.
- (2) The review must consider and report on—
 - (a) the total amount of expected UK build work for each Fleet Solid Support ship,
 - (b) the number of UK jobs and Spanish jobs that have been created so far as a result of awarding the contract for Fleet Solid Support ships to “Team Resolute”,
 - (c) the number of UK SMEs and Spanish SMEs that have been contracted to work on Fleet Solid Support ships so far by Navantia UK,
 - (d) whether Navantia UK are on track to fulfil guarantees on the UK content, UK steel targets and social value,
 - (e) whether Navantia UK are on track to meet timelines to complete the project, and
 - (f) any other matter which the reviewer considers appropriate.

- (3) The Secretary of State must report to Parliament on this review and publish a report on the review's findings by the end of 2023."

Member's explanatory statement

This new clause would mandate a review of the procurement of Fleet Solid Support Ships.

Florence Eshalomi
Chris Evans
Lloyd Russell-Moyle

NC8

To move the following Clause—

"Audit of waste in Ministry of Defence procurement

- (1) The National Audit Office (NAO) must produce and publish a report setting out any instances of waste in Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed.
- (2) In this section, "waste in Ministry of Defence procurement" means—
- (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.
- (3) The report must include recommendations on how better management of contracts can reduce the loss of public money.
- (4) Within one month of the publication of the report, the Secretary of State must report to Parliament on whether the NAO's recommendations have been accepted or rejected, with reasoning in either case."

Member's explanatory statement

This new clause would require the NAO to conduct an audit of waste in Ministry of Defence procurement and to make recommendations on how better management of contracts can reduce the loss of public money, and the Secretary of State to report to Parliament on whether its recommendations have been accepted.

Florence Eshalomi
Lloyd Russell-Moyle

NC14

To move the following Clause—

"Procurement Transaction System

- (1) An appropriate authority may by regulations make provision requiring procurement transactions to be carried out in a specified manner, including through a specified online system.
- (2) Regulations under subsection (1) may require a contracting authority to—

- (a) carry out procurement transactions in a specified way, or
 - (b) take steps to ensure that suppliers participating in a procurement carry out procurement transactions in a specified way.
- (3) A contracting authority must keep records related to any transaction or communication between the authority and a supplier for the purposes of, or in connection with, a covered procurement in a specified online system.
- (4) In this section, “procurement transactions” means transactions carried out under, or for a purpose relating to, this Act.”

Florence Eshalomi
Lloyd Russell-Moyle

NC16

To move the following Clause—

“Procurement of support services for victims of violence against women and girls

- (1) In carrying out a covered procurement for local specialist support services for victims of violence against women and girls, a contracting authority must have regard to social value within the meaning of the Public Services (Social Value) Act 2012.
- (2) For the purpose of this section, “support” means specialist support provided to victims of violence against women and girls or their children by organisations whose organisational purpose is to support victims or children and young people impacted by violence against women and girls.”

Member’s explanatory statement

This new clause would ensure authorities give regard to social value when carrying out procurement for services to support victims of violence against women and girls.

Debbie Abrahams

NC17

To move the following Clause—

“Protection of subcontractors’ payments under construction contracts

- (1) In this section—

“bank” has the meaning given to it in section 2 of the Banking Act 2009;

“building society” has the meaning given to it in section 119 of the Building Societies Act 1986;

“contractor” is the party engaged under a construction contract with a contracting authority;

“construction contract” has the meaning given to it in section 104, Housing Grants, Construction and Regeneration Act 1996;

“handover of each subcontracted works” signifies the date when the works as defined in each subcontract are substantially complete;

“project bank account” is an account set up with a bank or building society which has the requirements listed in subsection (2);

“retention monies” mean a proportion of monies withheld from payments which would otherwise be due under a construction contract, subcontract or any ancillary contract the effect of which is to provide security for the current or future performance by the party carrying out the works;

“subcontract” and “subcontractor” includes sub-subcontracts and sub-subcontractors.

- (2) For the purpose of subsection (3) a project bank account shall be established in accordance with the following requirements—
 - (a) the account is set up by the contracting authority and the contractor under a construction contract as joint account-holders;
 - (b) the monies in the account are held in trust by the contracting authority and contractor as joint trustees;
 - (c) the contracting authority is required to deposit in the account all sums becoming due to the beneficiaries and any disputed sums remain in the account until the dispute is resolved and any retention monies remain in the account until they are released to the beneficiaries;
 - (d) due payments from the account are made to all beneficiaries simultaneously; and
 - (e) the beneficiaries include—
 - (i) the contractor;
 - (ii) all subcontractors where the value of each subcontract is at least 1% of the value (excluding VAT) of the construction contract entered into between the contracting authority and the contractor, and
 - (iii) any other subcontractor which has specifically requested that its payments be discharged through the account.
- (3)
 - (a) This subsection has application to construction contracts having a value in excess of £2 million (excluding VAT).
 - (b) Not later than 30 days after entering into a construction contract a contracting authority must ensure that a project bank account is in place.
 - (c) In the event that a contracting authority fails to comply with this subsection the construction contract shall cease to be valid and cannot be enforced by either party.
 - (d) The Secretary of State must provide statutory guidance on the operation of project bank accounts to ensure that such operation is standardised amongst all contracting authorities.
- (4)
 - (a) This subsection applies where retention monies are not protected within a project bank account.

- (b) The contracting authority must establish a retention deposit account with a bank or building society which fulfils the requirements in paragraphs (a) and (b) in subsection (2).
 - (c) On each occasion that retention monies are withheld the contracting authority must lodge them within the retention deposit account and maintain a record of the names of each subcontractor having contributed to the withheld monies and the amount of the monies contributed by each.
 - (d) Subject to paragraph (e), not later than 30 days after the date of handover of each subcontracted works at least 50% of the withheld retention monies must be released, and not later than the date which is 12 months from the date of handover of each subcontracted works the balance of the retention monies must be released.
 - (e) A contracting authority has a right of recourse to subcontractors' retention monies but such right shall be limited to the subcontractor(s) which is in default of its subcontract in having delivered works which are defective and in breach of the subcontract.
Paragraphs (d) and (e) have equal application where retentions are protected in a project bank account.
 - (f)
 - (i) Non-compliance with this subsection shall mean that any entitlement to withhold retention monies in a construction contract and/or subcontracts is of no effect.
 - (ii) This subsection is without prejudice to the right of any subcontractor to pursue recovery of any outstanding or wrongfully withheld retention monies against its other contracting party.
 - (g) The Secretary of State must provide statutory guidance on the operation of retention deposit accounts to ensure such operation is standardized amongst all contracting authorities.
- (5) Any dispute under this section may be referable to adjudication in accordance with section 108 of the Housing Grants, Construction and Regeneration Act 1996.
- (6) The Secretary of State must carry out a review of the operation of this section within 5 years of it coming into force."

Member's explanatory statement

This new clause ring-fences monies due to subcontractors in construction supply chains through mandating use of project bank accounts and ensuring retention monies are safeguarded in a separate and independent account.

Order of the House

[9 January 2023]

That the following provisions shall apply to the Procurement Bill [Lords]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 23 February 2023.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and on Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

Programming committee

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to proceedings on Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
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Order of the Committee

[31 January 2023]

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 31 January) meet—
 - (a) at 2.00 pm on Tuesday 31 January;
 - (b) at 11.30 am and 2.00 pm on Thursday 2 February;
 - (c) at 9.25 am and 2.00 pm on Tuesday 7 February;
 - (d) at 11.30 am and 2.00 pm on Thursday 9 February;
 - (e) at 9.25 am and 2.00 pm on Tuesday 21 February;
 - (f) at 11.30 am and 2.00 pm on Thursday 23 February;
2. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3, Schedules 1 and 2, Clause 4, Schedule 3, Clauses 5 and 6, Schedule 4, Clauses 7 to 41, Schedule 5, Clauses 42 to 57, Schedules 6 and 7, Clauses

58 to 73, Schedule 8, Clauses 74 to 88, Schedule 9, Clauses 89 to 113, Schedule 10, Clauses 114 and 115, Schedule 11, Clauses 116 to 124, new Clauses, new Schedules, remaining proceedings on the Bill;

3. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 23 February.
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Withdrawn Amendments

The following amendments were withdrawn on 19 January 2023:

6

The following amendments were withdrawn on 26 January 2023:

5, 48
