
Report Stage: Monday 15 May 2023

Procurement Bill [Lords], As Amended (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 Any withdrawn amendments are listed at the end of the document.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.

Sir Iain Duncan Smith
Sarah Champion
Sir Chris Bryant
Tim Loughton
Damian Green
Mr Marcus Fysh
Priti Patel
Bob Blackman
Craig Mackinlay
Ms Marie Rimmer
Wera Hobhouse
Judith Cummins
Mr Tobias Ellwood

Bob Seely
Mr Alistair Carmichael
Mr David Davis
Charlotte Nichols
Caroline Lucas
Sarah Olney
Simon Fell

Sir Bernard Jenkin
Richard Drax
Andrew Lewer
Jim Shannon
Henry Smith
Daisy Cooper
Sarah Atherton

NC1

To move the following Clause—

“Removal from the procurement supply chain of physical surveillance equipment produced by companies subject to the National Intelligence Law of the People’s Republic of China

- (1) Within six months of the passage of this Act, the Secretary of State must publish a timeline for the removal from the Government’s procurement supply chain of physical surveillance equipment produced by companies subject to the National Intelligence Law of the People’s Republic of China.
- (2) The Secretary of State must lay the timeline before Parliament.”

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC2

To move the following Clause—

“National security: sensitive sectors

The Secretary of State must maintain and publish a list of sectors in relation to which covered procurement is sensitive to national security issues.”

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC3

To move the following Clause—

“High Risk list

- (1) A Minister of the Crown must maintain a High Risk list of suppliers in sectors included in the list maintained under section [National security: sensitive sectors].
- (2) The High Risk list must include the name of the supplier and the sector to which it relates.
- (3) A Minister of the Crown—
 - (a) must publish the High Risk list,
 - (b) must keep the High Risk list under review,
 - (c) must lay before Parliament, not later than twelve months after the passage of this Act, and every twelve months thereafter, a statement on the maintenance of the High Risk list over the previous twelve months.
- (4) A supplier may be defined as “High Risk” (and therefore included in the list maintained under subsection (1)) if they operate in a sector included in the list maintained under section [National security: sensitive sectors] and a Minister of the Crown determines that the supplier or a connected person poses a threat to the national security of the United Kingdom.
- (5) For the purposes of this section, “connected person” has the meaning given in paragraph 44 of Schedule 6.”

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC5

To move the following Clause—

“Award of contract: High Risk suppliers

A contracting authority may not award a contract to a supplier who is on the High Risk list unless—

- (a) the authority has notified a Minister of the Crown of its intention to make that award, and
- (b) the Minister of the Crown is satisfied that the supplier or (where section 28(4B) applies) a sub-contractor does not pose a threat to the national security of the United Kingdom.”

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC6

To move the following Clause—

“Procurement Security Commissioner

- (1) The Secretary of State must appoint a person as the Procurement Security Commissioner (in this Chapter “the Commissioner”).
- (2) The Commissioner is to have the following functions—
 - (a) reviewing the High Risk list and making recommendations for the addition or removal of suppliers;
 - (b) providing advice about the High Risk list to contracting authorities.
- (3) The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.
- (4) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—
 - (a) such staff, and
 - (b) such accommodation, equipment and other facilities as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.”

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC7

To move the following Clause—

“Reports by Commissioner

- (1) As soon as reasonably practicable after the end of each reporting period—
 - (a) the Commissioner must—
 - (i) prepare a report about the exercise by the Commissioner during that period of the functions of the Commissioner, and
 - (ii) give a copy of the report to the Secretary of State;
 - (b) the Secretary of State must lay a copy of the report before Parliament, and the Commissioner must publish the report.
- (2) The reporting periods are—
 - (a) the period—
 - (i) beginning with the first appointment as Commissioner and—
 - (ii) ending with the next 31 March or, if the period ending with that date is 6 months or less, ending with the next 31 March after that date, and
 - (iii) each succeeding period of 12 months.”

Member’s explanatory statement

This new clause refers to the Procurement Security Commissioner established under NC6.

Alicia Kearns
Darren Jones
Mr Tobias Ellwood
Caroline Nokes
Tim Loughton
Mr Alistair Carmichael
Sarah Atherton
Jim Shannon

Simon Fell
Richard Foord

David Simmonds
Alyn Smith

NC8

To move the following Clause—

“High Risk list: application for removal

- (1) A supplier may at any time apply to a Minister of the Crown for the removal of an entry in respect of the supplier from the High Risk list.
- (2) If in the opinion of the Minister the supplier’s application presents sufficient information to demonstrate that the supplier does not present

a risk to national security, the relevant entry must be removed from the High Risk list.

- (3) In a case where the supplier has made a previous application under subsection (1) the Minister is only required to consider the application if—
 - (a) in the opinion of the Minister, there has been a material change of circumstances, or
 - (b) the application is accompanied by significant information that has not previously been considered by a Minister of the Crown.”

Sarah Olney

NC9

To move the following Clause—

“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 new clause includes the NHS under this Act and procurement by NHS England under the Health and Care Act 2022.

Florence Eshalomi
Angela Rayner

NC10

To move the following Clause—

“Tax transparency

- (1) This section applies to any covered procurement for a public contract with an estimated value of £5 million or over.
- (2) When assessing tenders under section 19 or awarding a contract under section 41 or 43, a contracting authority must require the submission of a tax report where a supplier is a multi-national supplier.
- (3) Where a multi-national supplier fails to submit a tax report, a contracting authority must exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (4) Subject to subsection (5), a contracting authority that enters into a contract with a multi-national supplier must publish a copy of the tax report—
 - (a) if the contract is a light touch contract, before the end of the period of 120 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 30 days beginning with the day on which the contract is entered into.
- (5) Where a copy of a contract is by virtue of regulations under section 95 published under section 53(3) on a specified online system, the tax report

relating to that contract must be published on the same specified online system—

- (a) if the contract is a light touch contract, before the end of the period of 120 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 30 days beginning with the day on which the contract is entered into.
- (6) A ‘multi-national supplier’ is a supplier with two or more enterprises that are resident for tax purposes in two or more different jurisdictions.
- (7) A ‘tax report’ means a report setting out—
- (a) the income booked in the UK,
 - (b) the profit before tax attributable to the UK,
 - (c) the corporate income tax paid on a cash basis in the UK,
 - (d) the corporate income tax accrued on profit/loss attributable to the UK, and
 - (e) any other information specified in regulations under section 95 for the multinational supplier.
- (8) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.”

Member’s explanatory statement

This new clause would require large multinational corporations bidding for a public contract to provide information about their Income booked in the UK, their profit before tax attributable to the UK, their corporate income tax paid on a cash basis in the UK and their corporate income tax accrued on profit/loss attributable to the UK, and that information to be published.

Florence Eshalomi
Angela Rayner

NC11

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 demonstrate that they have considered whether outsourcing or re-contracting provides greater public value than direct service provision.
- (2) As part of the duty in subsection (1), the contracting authority should demonstrate that it has 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, 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.

Debbie Abrahams

NC12

To move the following Clause—

“Protection of subcontractors’ payments under construction contracts

- (1) A project bank account must be established for the purpose of subsections (2) to (4) in accordance with the following requirements—
- (a) the account must be 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 must deposit in the account all sums becoming due to the beneficiaries and any disputed sums must 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 must be 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.
- (2) Subsections (3) and (4) have application to construction contracts having a value in excess of £2 million (excluding VAT).
- (3) Not later than 30 days after entering into a construction contract a contracting authority must ensure that a project bank account is in place.
- (4) In the event that a contracting authority fails to comply with this subsection the construction contract ceases to be valid and may not be enforced by either party.
- (5) 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.
- (6) Subsections (7) to (10) apply where retention monies are not protected within a project bank account.
- (7) The contracting authority must establish a retention deposit account with a bank or building society which fulfills the requirements of subsection (1)(a) and (b).
- (8) 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.
- (9) Subject to subsection (10), 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.
- (10) A contracting authority has a right of recourse to subcontractors' retention monies but such right is limited to any subcontractor which is in default of its subcontract in having delivered works which are defective and in breach of the subcontract.
- (11) Paragraphs (9) and (10) also apply where retention monies are protected in a project bank account.
- (12) Non-compliance with subsections (6) to (11) renders any entitlement to withhold retention monies in a construction contract or subcontracts of no effect.
- (13) Subsections (6) to (12) do not affect the right of any subcontractor to pursue recovery of any outstanding or wrongfully withheld retention monies against its other contracting party.
- (14) 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.
- (15) Any dispute under this section is referable to adjudication in accordance with section 108 of the Housing Grants, Construction and Regeneration Act 1996.
- (16) The Secretary of State must carry out a review of the operation of this section within 5 years of it coming into force.

(17) 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.”

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.

Bob Seely

NC13

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.”
-

Sarah Olney

14

Clause 2, page 2, line 15, after “funds,” insert “including the NHS,”

Member’s explanatory statement

This amendment includes the NHS in the definition of a public authority for the purposes of this Act.

Richard Burgon

4

Clause 19, page 13, line 31, at end insert—

“(aa) must disregard any tender from a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors;”

Member’s explanatory statement

This amendment, together with Amendments 5 to 8, is designed to ensure that no public contract can be let unless the supplier guarantees the payment of the Real Living Wage to all those involved in the delivery of the contract.

Alicia Kearns

9

Darren Jones

Mr Tobias Ellwood

Caroline Nokes

Tim Loughton

Mr Alistair Carmichael

Sarah Atherton

Jim Shannon

Simon Fell

Richard Foord

David Simmonds

Alyn Smith

Clause 28, page 19, line 33, at end insert “or on the High Risk list.”

Member’s explanatory statement

This amendment would require contracting authorities to ascertain whether sub-contractors are on the High Risk list (see NC3).

Alicia Kearns 10
 Darren Jones
 Mr Tobias Ellwood
 Caroline Nokes
 Tim Loughton
 Mr Alistair Carmichael
 Sarah Atherton Simon Fell David Simmonds
 Jim Shannon Richard Foord Alyn Smith

Clause 28, page 19, line 36, at end insert “or on the High Risk list.”

Member’s explanatory statement

This amendment would enable contracting authorities to request information for the purpose of ascertaining whether sub-contractors are on the High Risk list (see NC3).

Alicia Kearns 11
 Darren Jones
 Mr Tobias Ellwood
 Caroline Nokes
 Tim Loughton
 Mr Alistair Carmichael
 Sarah Atherton Simon Fell David Simmonds
 Jim Shannon Richard Foord Alyn Smith

Clause 28, page 20, line 7, at end insert—

- “(4A) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is on the High Risk list, a contracting authority must—
- (a) notify the supplier of that fact, and
 - (b) give the supplier reasonable opportunity to find an alternative supplier with which to sub-contract.
- (4B) Where—
- (a) a contracting authority has taken the steps in paragraphs (a) and (b) of subsection (4A), and
 - (b) the supplier has not found an alternative supplier with which to sub-contract which is not on the High Risk list,
- section [Award of contract: High Risk suppliers] applies as if the supplier were on the High Risk list.”

Member’s explanatory statement

This amendment would mean that contracting authorities could not award a contract if a supplier intended to sub-contract to a supplier which was on the High Risk list unless a Minister of the Crown was satisfied that the sub-contractor did not pose a threat to the national security of the UK (see NC8).

Alicia Kearns
 Darren Jones
 Mr Tobias Ellwood
 Caroline Nokes
 Tim Loughton
 Mr Alistair Carmichael
 Sarah Atherton
 Jim Shannon

Simon Fell
 Richard Foord

David Simmonds
 Alyn Smith

Clause 28, page 20, line 16, leave out “and (4)” and insert “to (4B)”

Member’s explanatory statement

This amendment is consequential on Amendment 11.

Richard Burgon

Clause 41, page 28, line 26, at end insert—

“(3A) A contracting authority may not award a contract under this section to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors.”

Member’s explanatory statement

See explanatory statement to Amendment 4.

Sarah Olney

Clause 42, page 29, line 14, 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.

Richard Burgon

6

Clause 43, page 30, line 3, at end insert—

“(5A) A contracting authority may not award a contract under subsection (1) to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors.”

Member’s explanatory statement

See explanatory statement to Amendment 4.

Angela Rayner
Florence Eshalomi

2

Clause 44, page 30, line 16, at end insert—

“(4) Any Minister of the Crown, Member of Parliament, Member of the House of Lords or senior civil servant involved in recommending a supplier for a contract under section 41 or 43 must make a public declaration to the Cabinet Office of any private financial interest in that supplier within 10 working days.”

Member’s explanatory statement

This amendment would implement a recommendation by the National Audit Office that any contracts awarded under emergency provisions or direct awards should include transparency declarations.

Richard Burgon

7

Clause 45, page 31, line 6, at end insert—

“(aa) permit the award of a public contract to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors.”

Member's explanatory statement

See explanatory statement to Amendment 4.

Florence Eshalomi
Angela Rayner

17

Clause 68, page 49, line 15, at end insert—

- “(10A) Within a year of the passage of this Act, the Secretary of State must prepare, publish and lay before Parliament a report on the effectiveness of this section in ensuring prompt payment of small and medium-sized enterprises.
- (10B) Not later than 6 months after the report has been laid before Parliament, a Minister of the Crown must make a motion in the House of Commons in relation to the report.”

Member's explanatory statement

This amendment would require the Government to report to Parliament on the effectiveness of this section in ensuring prompt payment of SMEs.

Sarah Olney

13

Page 78, line 12, leave out clause 119.

Richard Burgon

8

Clause 122, page 82, line 5, at end insert—

““Real Living Wage” means the hourly wage rates for London and for outside London calculated annually by the Resolution Foundation and overseen by the Living Wage Commission (or their successor bodies);”

Member's explanatory statement

This amendment inserts a definition of the Real Living Wage for the purposes of Amendments 4 to 7.

Florence Eshalomi
Angela Rayner

15

Schedule 6, page 110, line 12, at end insert—

"National security

42AA mandatory exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom."

Member's explanatory statement

This amendment would move national security from among the discretionary exclusion grounds in Schedule 7 to the mandatory exclusion grounds in Schedule 6.

Florence Eshalomi
Angela Rayner

16

Schedule 7, page 116, line 6, at end insert—

"Sanctions offences

14A(1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in conduct constituting—

- (a) An offence established in any regulations made under Part 1 of the Sanctions and Anti-Money Laundering Act 2018;
- (b) An offence established under Part 5 of the Customs and Excise Management Act 1979.

(2) 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 outside of the United Kingdom that could result in such an offence being committed if that conduct occurred in the United Kingdom."

Member's explanatory statement

This amendment would create a discretionary exclusion ground where a supplier (or connected person) has violated UK sanctions or export controls, or would have done so if they were in the UK.

Ms Marie Rimmer

3

Sarah Champion

Dr Philippa Whitford

Charlotte Nichols

Damian Green

Wera Hobhouse

Sir Stephen Timms

Caroline Lucas

Sir George Howarth

Patrick Grady

Judith Cummins

Sir Iain Duncan Smith

Fiona Bruce

Andrew Lewer

Schedule 7, page 116, line 10, at end insert—

“Involvement in forced organ harvesting

14A(1) A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person has been, or is, involved in—

- (a) forced organ harvesting,
 - (b) unethical activities relating to human tissue, including anything which involves the commission of an offence under sections 32 (prohibition of commercial dealings in human material for transplantation), 32A (offences under section 32 committed outside UK) or 33 (restriction on transplants involving a live donor) of the Human Tissue Act 2004, or under sections 20 (prohibition of commercial dealings in parts of a human body for transplantation) or 20A (offences under section 20 committed outside UK) of the Human Tissue (Scotland) Act 2006, or
 - (c) dealing in any device or equipment or services relating to conduct mentioned in paragraphs (a) or (b).
- (2) “Forced organ harvesting” means killing a person without their consent so that their organs may be removed and transplanted into another person.”

Member’s explanatory statement

This amendment is designed to give a discretionary power to exclude suppliers from being awarded a public contract who have participated in forced organ harvesting or unethical activities relating to human tissue, including where they are involved in providing a service or goods relating to such activities.

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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Withdrawn Amendments

The following amendments were withdrawn on 30 March 2023:

NC4
