
Report Stage: Monday 12 June 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 Any withdrawn amendments are listed at the end of the document.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.

☆ Amendments which will comply with the required notice period at their next appearance.

Jeremy Quin

NC15

To move the following 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.”

Member’s explanatory statement

This new clause, to be inserted after clause 97, would require contracting authorities to keep

records to explain decisions made for the purpose of awarding or entering into a public contract and records of communications with suppliers made before the contract is entered into, in each case subject to time limits.

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 and environmental 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.”

Florence Eshalomi
Angela Rayner

NC14

To move the following Clause—

“Procurement and human rights

- (1) A contracting authority may apply a policy under which it does not contract for the supply of goods, services or works from a foreign country or territory based on the conduct of that foreign country or territory relating to human rights, provided that—
 - (a) the contracting authority has a Statement of Policy Relating to Human Rights, and
 - (b) that statement of policy is applied consistently and not specifically to any one foreign country or territory.
- (2) Within six months of the passage of this Act, the Secretary of State must publish, and lay before Parliament, guidance on the form, content and application of Statements of Policy Relating to Human Rights for the purposes of subsection (1).

- (3) Contracting authorities must have regard to the guidance published under subsection (2) when applying a policy in accordance with subsection (1)."

Member's explanatory statement

This new clause would enable public authorities to choose not to buy goods or services from countries based on their human rights record. They would not be able to single out individual nations to apply such a policy to, but would have to apply it consistently, and in accordance with guidance published by the Secretary of State.

Bob Seely

NC16

To move the following Clause—

"Eradicating slavery and human trafficking in supply chains

- (1) The Secretary of State must by regulations make such provision as the Secretary of State thinks appropriate with a view to eradicating the use in covered procurement of goods or services that are tainted by slavery and human trafficking.
- (2) The regulations may, in particular, include—
- (a) provision as to circumstances in which a supplier is excluded from consideration for the award of a contract;
 - (b) provision as to steps that must be taken by contracting authorities for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in procurement supply chains;
 - (c) provision as to matters for which provision must be made in contracts for goods or services entered into by contracting authorities, including mandating or enabling the use of forensic supply chain tracing.
- (3) In this section—

"forensic supply chain tracing" is the process of using forensic techniques to track the movement of goods and services through a supply chain;
 "slavery and human trafficking" has the meaning given by section 54(12) of the Modern Slavery Act 2015;
 "tainted": goods or services are "tainted" by slavery and human trafficking if slavery and human trafficking takes place in relation to anyone involved in the supply chain for providing those goods or services."

Caroline Lucas

NC17

☆ To move the following Clause—

"Food procurement

- (1) A public contract which includes the supply of food must include provisions ensuring that the supply of food under that contract—
- (a) is aligned with the Eatwell Guide, and

- (b) includes options suitable for a plant-based diet.
- (2) The “Eatwell Guide” is the policy tool used to define government recommendations on eating healthily and achieving a balanced diet published by Public Health England on 17 March 2016, as updated from time to time.”

Member’s explanatory statement

This new clause would require public contracts for the supply of food to be aligned with current nutritional guidelines and to include plant-based options.

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.

Jeremy Quin

19

Clause 2, page 2, line 17, leave out “subsection” and insert “subsections (8A) and”

Member’s explanatory statement

This amendment is consequential on Amendment 20.

Jeremy Quin

20

Clause 2, 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.”

Member’s explanatory statement

This amendment would mean that a reference to a public authority in the Bill includes the City of London.

Caroline Lucas
Nadia Whittome

60

Clause 13, page 10, line 11, at end insert—

- “(3A) When the Minister lays the statement before Parliament, the Minister must also lay before Parliament a report which sets out—
- (a) the Secretary of State’s assessment of the impact of the statement on meeting environmental and climate targets,
 - (b) the steps the Secretary of State has taken or intends to take in relation to procurement to support the meeting of those targets.”

Member’s explanatory statement

This amendment would require the Secretary of State to explain in a report laid before Parliament the Government’s assessment of the impact of the national procurement policy statement on meeting environmental and climate targets and to set out any intended steps in relation to the meeting of those targets.

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 Simon Fell David Simmonds
 Jim Shannon Richard Foord 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	12
Darren Jones	
Mr Tobias Ellwood	
Caroline Nokes	
Tim Loughton	
Mr Alistair Carmichael	
Sarah Atherton	Simon Fell
Jim Shannon	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	5
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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	1
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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.

Jeremy Quin

21

Clause 43, page 29, line 29, leave out "19" and insert "19(3)(a), (b) or (c)"

Member's explanatory statement

This amendment would mean that a contracting authority could not rely on clause 19(3)(d) to justify a switch to direct award - which (in not referring to "material" breach) is broader than clause 43(2)(e).

Jeremy Quin

22

Clause 43, page 29, line 34, leave out paragraph (c)

Member's explanatory statement

This amendment would mean that a contracting authority would have to apply the clause 19 rules on abnormally low tenders before relying on that fact to switch to direct award.

Jeremy Quin

23

Clause 43, page 29, line 37, after "notice" insert "or associated tender documents"

Member's explanatory statement

This amendment would reflect the fact that some procedural requirements will be in associated tender documents.

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.

Jeremy Quin 24

Clause 52, page 35, line 17, leave out “and publish”

Member’s explanatory statement

This amendment is consequential on Amendment 25 and would remove the requirement to publish key performance indicators before entering into a public contract.

Jeremy Quin 25

Clause 52, page 35, line 21, at end insert—

“(2A) A contracting authority must publish any key performance indicators set under subsection (1).”

Member's explanatory statement

This amendment is linked to Amendment 24 and would require key performance indicators to be published, but not necessarily before the contract is entered into - further provision about publication would be made in regulations under clause 95.

Jeremy Quin

26

Clause 57, page 40, line 8, after "are" insert "continuing or"

Member's explanatory statement

This amendment would make it clear that a contracting authority must be satisfied that circumstances are not continuing - that is, it is no defence to say they have never ceased and therefore cannot re-occur.

Jeremy Quin

27

Clause 57, page 40, line 16, after "are" insert "continuing or"

Member's explanatory statement

This amendment would make it clear that a contracting authority must be satisfied that circumstances are not continuing - that is, it is no defence to say they have never ceased and therefore cannot re-occur.

Jeremy Quin

28

Clause 57, page 40, line 18, 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."

Member's explanatory statement

This amendment is consequential on Amendment 57 adding new paragraph 34A to Schedule 6, and would allow a supplier to be debarred only in respect of particular contracts.

Jeremy Quin 29

Clause 58, page 40, line 28, after "are" insert "continuing or"

Member's explanatory statement

This amendment is consequential on Amendments 26 and 27.

Jeremy Quin 30

Clause 58, page 40, line 35, after "circumstances" insert "continuing or"

Member's explanatory statement

This amendment is consequential on Amendments 26 and 27.

Dame Margaret Hodge 61
Ian Blackford

☆ Clause 58, page 40, line 38, leave out paragraph (c)

Member's explanatory statement

This amendment would remove provision allowing a contracting authority to have regard to commitments to prevent circumstances giving rise to the application of an exclusion ground from occurring again when considering whether a supplier should be excluded.

Dame Margaret Hodge 62
Ian Blackford

☆ Clause 58, page 40, line 41, leave out paragraph (e)

Member's explanatory statement

This amendment would remove provision allowing a contracting authority to have regard to evidence, explanations or factors not specified elsewhere in the clause when considering whether a supplier should be excluded.

Dame Margaret Hodge 63
Ian Blackford

☆ Clause 58, page 41, line 8, leave out subsection (3)

Member's explanatory statement

This amendment removes clause 58 (3), which limits the ability of a contracting authority to require whatever evidence is necessary to make their assessment about whether a supplier is reliable.

Jeremy Quin 31

Clause 59, page 41, line 31, leave out “on the basis” and insert “—
(i) under section 57(1)(a) or (2)(a) by virtue”

Member’s explanatory statement

This amendment would clarify that a contracting authority would only have to notify the appropriate authority if it excludes a supplier on the basis of its own judgement (rather than the debarment list).

Jeremy Quin 32

Clause 59, page 41, line 31, 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).”

Member’s explanatory statement

This amendment would require a contracting authority to notify the appropriate authority if it excludes a supplier on the basis of a supplier being on the debarment list by virtue of the new ground to be inserted by Amendment 57.

Jeremy Quin 33

Clause 60, page 42, line 18, after “may” insert “, for the purpose of considering whether an entry could be added to the debarment list in respect of a supplier,”

Member’s explanatory statement

This amendment would clarify that investigations are for the purpose of considering whether an entry to the debarment list could be added in respect of a supplier.

Jeremy Quin 34

Clause 60, page 42, line 21, 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.”

Member’s explanatory statement

This amendment would require a Minister to keep under review whether particular suppliers or sub-contractors should be investigated under this section.

Jeremy Quin

35

Clause 60, page 42, line 22, leave out subsection (2)

Member’s explanatory statement

This amendment would clarify that investigations under clause 60 are for the purpose of considering whether a supplier could be put on the debarment list, rather than potentially being connected to an application under clause 64.

Jeremy Quin

36

Clause 61, page 43, line 27, leave out from “out” to end of line 36 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”

Member’s explanatory statement

This amendment would ensure that the investigation reports specify the description of contracts in respect of which a supplier is to be an excluded supplier by virtue of the ground added by

Amendment 57, and clarify that the report can be prepared and published before an entry is made.

Jeremy Quin

37

Clause 62, page 44, line 21, leave out from “must” to end of line 29 and insert “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).”

Member’s explanatory statement

This amendment would ensure that the debarment list can specify the description of contracts in respect of which a supplier is an excluded supplier by virtue of the ground to be added by Amendment 57.

Jeremy Quin

38

Clause 62, page 44, line 33, leave out “section 64” and insert “sections 63 to 65”

Member’s explanatory statement

This amendment is consequential on the new clauses inserted at Committee providing additional rights to suppliers placed on the debarment list.

Jeremy Quin

39

Clause 62, page 45, line 3, leave out “at any time” and insert—

- “(ba) 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,”

Member’s explanatory statement

This amendment would ensure that the Minister could remove certain descriptions of contracts from the entry of a supplier that is an excludable supplier by virtue of the ground to be added by Amendment 57 without removing the entire entry.

Jeremy Quin 40

Clause 62, page 45, line 4, leave out “(3)(b)” and insert “(3A)(d)”

Member’s explanatory statement

This amendment is consequential on Amendment 37.

Jeremy Quin 41

Clause 62, page 45, line 5, leave out “an entry from the debarment list” and insert “or revises an entry”

Member’s explanatory statement

This amendment is consequential on Amendment 39.

Jeremy Quin 42

Clause 62, page 45, line 9, leave out “from the debarment list”

Member’s explanatory statement

This amendment is to ensure consistent references to “removal or revision of entries” (in line with the other Government amendments to this clause).

Jeremy Quin 43

Clause 62, page 45, line 11, at end insert “, 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.”

Member’s explanatory statement

This amendment would require the Minister to remove a description of contracts from a debarment list if the Minister is satisfied that the ground to be added by Amendment 57 does not apply in relation to them.

Jeremy Quin 44

Clause 62, page 45, line 17, leave out “an entry from the debarment list” and insert “or revising an entry”

Member's explanatory statement

This amendment is consequential on Amendments 39 and 43.

Jeremy Quin

45

Clause 64, page 46, line 6, leave out from "for" to end of line 10 and insert "the removal or revision of an entry made on the debarment list in respect of the supplier."

Member's explanatory statement

This amendment is consequential on Amendments 39 and 43.

Jeremy Quin

46

Clause 64, page 46, line 20, 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."

Member's explanatory statement

This amendment sits alongside Amendment 37, which would remove the reference to maintaining an entry on the debarment list from things to be published as part of a report of an investigation under clause 60. It is clause 64 that is concerned with maintaining entries, not clause 60.

Jeremy Quin

47

Clause 65, page 46, line 24, at end insert—

- "(aa) 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),"

Member's explanatory statement

This amendment would permit suppliers to challenge their being made an excluded supplier in relation to particular contracts by virtue of the ground to be added by Amendment 57 (instead of having to challenge the whole entry).

Jeremy Quin 48

Clause 65, page 46, line 26, leave out “(3)(b)” and insert “(3A)(d)”

Member’s explanatory statement

This amendment is consequential on Amendment 37.

Jeremy Quin 49

Clause 65, page 46, line 27, leave out from “remove” to “following” on line 28 and insert “or revise an entry made in respect of the supplier”

Member’s explanatory statement

This amendment is consequential on Amendments 39 and 43.

Jeremy Quin 50

Clause 65, page 46, line 38, after “(1)(a)” insert “or (aa)”

Member’s explanatory statement

This amendment is consequential on Amendment 47.

Florence Eshalomi 17
Angela Rayner

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.

John Penrose

68

☆ Clause 71, page 51, line 11, at end insert—

- “(6A) When a planned procurement notice is published under section 15 or a tender notice is published under section 21, the contracting authority must include a statement of the outcomes which the contract is intended to achieve.
- (6B) The contracting authority must commission an independent evaluation of whether each contract delivered the outcomes mentioned in subsection (6A), unless the contract is excluded by regulations under subsection (6D).
- (6C) An evaluation under subsection (6B) must—
- (a) be performed by an independent body in accordance with UK Government Evaluation Standards, and include a clear recommendation on whether similar further public contracts should be begun, renewed or extended;
 - (b) be commissioned in time to be completed within six months of contract termination, renewal or extension;
 - (c) be published in full by the contracting authority immediately it is received from the independent external body.
- (6D) The Secretary of State may by regulations specify types of contracts that do not require independent evaluations under subsection (6B).
- (6E) Where the independent evaluation under subsection (6B) recommends that similar public contracts should not be begun, extended or renewed, any contracting authority which nonetheless intends to do so must publish its reasons not less than 30 days before the agreement is begun, extended or renewed.”
-

Jeremy Quin

51

Clause 79, page 56, line 26, at end insert—

- “(1A) A relevant contracting authority may not terminate a contract by reference to the implied term in section 78 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.”

Member’s explanatory statement

This amendment would mean that, as with the existing national security exclusion ground in paragraph 14 of Schedule 7, a relevant contracting authority would need to notify a Minister

before terminating a contract in reliance on the new exclusion ground to be added by Amendment 57.

Jeremy Quin

52

Clause 97, page 66, line 31, leave out subsection (3)

Member's explanatory statement

This amendment is consequential on similar provision being made in NC15.

Jeremy Quin

53

Clause 110, page 74, line 4, at end insert—

“(4A) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).”

Member's explanatory statement

This amendment would ensure that the Welsh Ministers can conduct debarment investigations otherwise than for the purpose of regulating devolved Welsh authorities.

Jeremy Quin

54

Clause 111, page 74, line 36, at end insert—

“(5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).”

Member's explanatory statement

This amendment would ensure that a Northern Ireland department can conduct debarment investigations otherwise than for the purpose of regulating transferred Northern Ireland authorities.

Jeremy Quin 55

Clause 112, page 75, line 19, at end insert—
“(za) sections 59 to 66 (debarment);”

Member’s explanatory statement

This amendment would ensure that a Minister of the Crown can conduct debarment investigations and put suppliers on the debarment list for the purpose of regulating devolved and transferred authorities.

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.

Jeremy Quin 56

Schedule 2, page 96, line 43, at end insert—

“Commercial contracts of the City of London

38 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.”

Member's explanatory statement

This amendment would exempt from the Bill those contracts entered into by the City of London other than for the purposes of its functions as a local authority, police authority or port health authority (for example, operating independent schools).

Dame Margaret Hodge 64
Ian Blackford

- ☆ Schedule 6, page 106, line 7, at end insert "or an offence under section 86, 88 or 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017."

Member's explanatory statement

This amendment is intended to ensure that the full range of criminal offences for money laundering are properly captured for the purposes of exclusion from public procurement.

Dame Margaret Hodge 65
Ian Blackford

- ☆ Schedule 6, page 106, line 12, leave out "or 6" and insert ", 6 or 7"

Member's explanatory statement

This amendment includes the failure of commercial organisations to prevent bribery as an offence which is a mandatory exclusion ground.

Dame Margaret Hodge 66
Ian Blackford

- ☆ Schedule 6, page 106, line 14, at end insert—
"18A An offence under Schedule 3 of the Anti-Terrorism, Crime and Security Act 2001 (sanctions evasion offences)."

Member's explanatory statement

This amendment is intended to make criminal offences for sanctions evasion grounds for mandatory exclusion from public procurement.

Jeremy Quin 57

Schedule 6, page 107, line 36, 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)."

Member's explanatory statement

This amendment would allow the Minister to put a supplier on the debarment list as an excluded supplier in relation to contracts of a particular description if satisfied that the supplier would pose a threat to national security in relation to those contracts.

Florence Eshalomi
Angela Rayner

15

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

"National security

42A A 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.

Jeremy Quin

58

Schedule 6, page 111, line 6, at end insert—

"(d) paragraph 34A (threat to national security)."

Member's explanatory statement

This amendment is consequential on Amendment 57.

Florence Eshalomi
Angela Rayner

18

Schedule 7, page 113, line 2, at end insert—

“1A A discretionary exclusion ground applies to a supplier if a contracting authority determines that a supplier, within a year leading to the date of tender—

- (a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it with one or more aggravating features, or has admitted to doing so; and
- (b) has not conformed with applicable obligations in the fields of environmental, social and labour law established by national law, collective agreements or international environmental, social and labour law provisions; and
- (c) has not taken steps to rectify the situation through—
 - (i) paying or undertaking to pay compensation in respect of any damage caused by the breach of rights; and
 - (ii) clarifying the facts and circumstances in a comprehensive manner by actively collaborating with any relevant employment tribunal or court process and the parties thereto; and
 - (iii) taking concrete technical, organisational and personnel measures appropriate to prevent further breaches of rights of a similar kind.

1B In making a decision on whether a discretionary exclusion ground applies to a supplier under paragraph 1A, a contracting authority must—

- (a) evaluate the adequacy of any action taken by the supplier in accordance with sub-paragraph (c) of that paragraph, taking into account the gravity and particular circumstances of the breach or breaches of rights, and
- (b) make reasonable provision for the employer and the employee or worker concerned to make representations, which may be made by agreement by a trade association or trade union.”

Member’s explanatory statement

This amendment would give contracting authorities the discretion to exclude suppliers who have significantly and repeatedly breached the rights of staff in the last year unless they have “self-cleansed”.

Dame Margaret Hodge
Ian Blackford

67

☆ Schedule 7, page 113, line 17, at end insert—

“Financial and economic misconduct

3A A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom)

constituting (or that would, if it occurred in the United Kingdom, constitute) any of the following offences—

- (a) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences);
- (b) an offence under section 86, 88 or 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- (c) an offence under Schedule 3 to the Anti-terrorism, Crime and Security Act 2001 (sanctions evasion offences);
- (d) an offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences);
- (e) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
- (f) an offence under section 1, 2, 6 or 7 of the Bribery Act 2010 (bribery offences)."

Member's explanatory statement

This amendment is intended to allow relevant Ministers and Contracting Authorities the power to exclude suppliers from procurement where they have evidence of financial and economic criminal activity, such as fraud, money laundering, bribery or sanctions evasion, but there has not yet been a conviction by a court.

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

Bob Blackman

Sir Peter Bottomley

Carol Monaghan

Margaret Ferrier

John McDonnell

Peter Dowd

Sammy Wilson

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.

Jeremy Quin

59

Schedule 10, page 121, line 27, leave out “subsection (4) or (5)” and insert “this section”

Member’s explanatory statement

This amendment would allow single source contract regulations to make provision as to whether a contract is or is not an amendment of an existing contract for any purpose under section 14 of the Defence Reform Act 2014, not simply for the purposes of subsections (4) and (5).

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
