

Procurement Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 28th November 2022, as follows –

Clauses 1 and 2	Clauses 55 to 69
Schedules 1 and 2	Schedule 8
Clause 3	Clauses 70 to 83
Schedule 3	Schedule 9
Clauses 4 and 5	Clauses 84 to 108
Schedule 4	Schedule 10
Clauses 6 to 39	Clauses 109 and 110
Schedule 5	Schedule 11
Clauses 40 to 54	Clauses 111 to 119
Schedules 6 and 7	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 40

LORD SCRIVEN
BARONESS BRINTON
BARONESS BENNETT OF MANOR CASTLE

72

Page 26, line 22, 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.

After Clause 42

LORD CLEMENT-JONES
LORD FOX

73 Insert the following new Clause –

“Retendering of direct award contracts

Any contract awarded under section 39 or 41 that is included in a framework agreement must be retendered within the period of 18 months beginning with the day on which it was awarded.”

Member’s explanatory statement

This amendment requires direct award contracts included in a framework agreement to be retendered 18 months after the date of award.

Clause 43

BARONESS NEVILLE-ROLFE

74 Page 27, line 40, at end insert –

“(5A) A condition set under subsection (4)(a) may not –

- (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
- (b) require insurance relating to the performance of the contract to be in place before the award of the contract.”

Member’s explanatory statement

This amendment would prevent contracting authorities from requiring audited accounts from suppliers that do not otherwise prepare audited accounts (for example, small companies), or insurance to be in place before award.

75 Page 28, line 18, at end insert –

“(11A) In this section, a “competitive selection process” means a competitive selection process for the award of a public contract in accordance with a framework.

(11B) This section does not apply to a framework that is a light touch contract.”

Member’s explanatory statement

This amendment would add a definition and exception as a preliminary step to dividing Clause 43.

After Clause 43

BARONESS NEVILLE-ROLFE

76 Divide Clause 43 into two Clauses, the first (*Frameworks*) to consist of subsections (1) to (3) and (12) to (17) and the second (*Frameworks: competitive selection process*) consisting of subsections (4) to (11B).

Member's explanatory statement

This is a motion to divide Clause 43 into two Clauses and make it easier to follow.

Clause 48

BARONESS NEVILLE-ROLFE

77 Page 31, line 40, at end insert –

“(ba) awarded under section 39 or 41 (direct award and switching to direct award) by a private utility;”

Member's explanatory statement

This amendment would mean that a private utility would not have to wait until the expiry of a mandatory standstill period before directly awarding a contract.

Clause 49

BARONESS NEVILLE-ROLFE

78 Page 32, line 7, leave out “£2” and insert “£5”

Member's explanatory statement

This amendment would mean that a contracting authority is only required to set key performance indicators for a public contract if the contract's value is more than £5 million.

BARONESS HAYMAN OF ULLOCK

LORD COAKER

79 Page 32, line 7, leave out “£2” and insert “£3”

Member's explanatory statement

This amendment would probe the government amendment meaning that a contracting authority is only required to set key performance indicators for a public contract if the contract's value is more than £5 million.

Clause 50

BARONESS NEVILLE-ROLFE

80 Page 32, line 36, leave out “£2” and insert “£5”

Member's explanatory statement

This amendment would mean that a contracting authority is only required to publish a public contract if the contract's value is more than £5 million.

BARONESS HAYMAN OF ULLOCK

LORD COAKER

81 Page 32, line 36, leave out “£2” and insert “£3”

Member's explanatory statement

This amendment would probe the government amendment meaning that a contracting authority is only required to publish a public contract if the contract's value is more than £5 million.

Clause 53

THE EARL OF LINDSAY

82 Page 35, line 16, at end insert –

“(3A) The procurement documents may require that economic operators provide a test report or a certificate or other service from a conformity assessment body, in which case the conformity assessment body must hold accreditation for the conformity assessment by an accreditation body that is a signatory to the multilateral recognition agreements of the International Accreditation Forum or the International Laboratory Accreditation Cooperation, or subsequent international agreements on the recognition of accreditation.”

Member’s explanatory statement

This amendment would stipulate that, where a contracting authority requires conformity assessment (e.g. testing or certification) as part of a public procurement exercise, the body delivering it must be accredited so that its competence, integrity and impartiality are verified, on an ongoing basis, against international standards, by a nationally appointed accreditation body.

After Clause 53

LORD HUNT OF KINGS HEATH
BARONESS BRINTON

83 Insert the following new Clause –

“Technical specification and disabled persons

- (1) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the procurement documents must, except in duly justified cases, be drawn up so as to take into account the accessibility of procured goods, services or works to disabled persons.
- (2) The Equality and Human Rights Commission must give guidance to contracting authorities in relation to the duty imposed by subsection (1).
- (3) Before giving guidance under subsection (2) the Commission must consult such persons, including bodies representing disabled persons, as they consider appropriate.
- (4) In drawing up the procurement documents, a contracting authority must have regard to the guidance given under subsection (2).”

Clause 54

BARONESS NEVILLE-ROLFE

84 Page 36, line 19, after first “a” insert “covered”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Schedule 6

BARONESS NEVILLE-ROLFE

85 Page 95, line 38, after “steal,” insert “uttering, embezzlement,”

Member’s explanatory statement

This amendment would ensure that additional relevant Scots common law offences are contained in the mandatory exclusion ground in paragraph 4.

86 Page 96, line 2, leave out “7” and insert “1”

Member’s explanatory statement

This amendment would clarify that the offence of theft is covered under the mandatory exclusion ground in paragraph 6.

87 Page 96, line 9, leave out “7” and insert “1”

Member’s explanatory statement

This amendment would clarify that the offence of theft is covered under the mandatory exclusion ground in paragraph 7.

88 Page 101, line 21, after “4,” insert “5,”

Member’s explanatory statement

This amendment would ensure that the new mandatory exclusion ground inserted in Committee (conspiracy to defraud) is reflected in paragraph 43(3).

Schedule 7

LORD FOX

89 Page 103, line 36, at end insert –

“Financial and economic misconduct

3A A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) any of the following offences –

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

Schedule 7 - continued

- (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.

BARONESS NEVILLE-ROLFE

90 Page 104, line 14, leave out paragraph 6

Member’s explanatory statement

This amendment would remove the discretionary exclusion ground relating to a supplier being unable to pay their debts.

LORD HUNT OF KINGS HEATH
BARONESS NORTHOVER
BARONESS HAYMAN OF ULLOCK

91 Page 106, line 41, at end insert –

“Involvement in forced organ harvesting

15~~A~~(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.

LORD HENDY

91A Page 106, line 41, at end insert –

“Labour law infringements

15A(1) Subject to paragraph (2), a discretionary exclusion ground applies to a supplier if a contracting authority determines that a supplier, within the three years leading to the date of tender –

- (a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it,
- (b) has admitted that it significantly breached the rights of an employee or worker engaged or formerly engaged by it, or
- (c) has made a payment to an employee or worker engaged or formerly engaged by it in respect of a significant breach by it of the employee or worker’s rights,

and the contracting authority may treat the supplier as an excluded supplier in relation to the award of the public contract.

- (2) Where a contracting authority determines that a supplier fulfils one or more of sub-paragraphs (1)(a), (b) or (c), the contracting authority must determine that the supplier is not an excluded supplier in relation to the award of the public contract if the contracting authority is satisfied that the supplier has provided convincing evidence to the effect that measures taken by the supplier are sufficient to demonstrate that it is in the public interest and in the interest of the contracting authority that the supplier should not be excluded from the procurement procedure.
- (3) The evidence referred to in sub-paragraph (2) must include proof that the supplier has –
 - (a) paid or undertaken to pay without delay compensation in respect of any damage caused by the breach of rights,
 - (b) clarified the facts and circumstances in a comprehensive manner by actively and without delay collaborating with any relevant employment tribunal or court process and the parties thereto, and
 - (c) taken concrete technical, organisational and personnel measures appropriate to prevent further breaches of rights of a similar kind.
- (4) Any such measures taken by the supplier must be evaluated taking into account the gravity and particular circumstances of the breach or breaches of rights.
- (5) Where the contracting authority considers such measures to be insufficient, the contracting authority must give the supplier a statement of the reasons for that decision.
- (6) “Rights” in paragraphs (1) to (4) means any entitlement or benefit of an employee or worker engaged or formerly engaged by the supplier or of a trade union of which he or she is a member deriving from common law (including contract and tort) or statute, or protected by the international obligations of the United Kingdom referred to in Article 399 of the Trade and Cooperation Agreement (within the meaning of section 37 of the European Union (Future Relationship) Act 2020).”

Member's explanatory statement

This amendment is intended to give contracting authorities the discretion to exclude suppliers who have significantly breached the rights of staff in the last three years unless they have "self-cleansed".

BARONESS NEVILLE-ROLFE

92 Page 107, line 20, at end insert –

“(da) paragraph 13(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;”

Member's explanatory statement

This amendment would ensure that the discretionary exclusion ground in paragraph 13(4) (publishing of adverse information) is reflected in paragraph 16(3), so far as that ground is triggered by the publishing of information in relation to a breach of contract by a supplier.

93 Page 107, line 28, at end insert –

“(ca) paragraph 13(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;”

Member's explanatory statement

This amendment would ensure that the discretionary exclusion ground in paragraph 13(4) (publishing of adverse information) is reflected in paragraph 16(4), so far as that ground is not triggered by the publishing of information in relation to a breach of contract by a supplier.

After Clause 61

LORD ALTON OF LIVERPOOL
LORD BLENCATHRA
LORD FOX
LORD COAKER

94 Insert the following new Clause –

“Timeline for removal of suppliers

- (1) Within 6 months of the passing of this Act, the Secretary of State must publish a timeline for the removal of physical technology or surveillance equipment from the Government's procurement supply chain where the Secretary of State is satisfied there is established evidence that a provider has been involved in –
 - (a) modern slavery,
 - (b) genocide, or
 - (c) crimes against humanity.
- (2) The Secretary of State must lay the timeline before Parliament.”

LORD ALTON OF LIVERPOOL

95 Insert the following new Clause –

“Labelling products from countries accused of modern slavery or genocide

The Secretary of State must by regulations make provision to secure that, where any product purchased with public funds comes from a country which –

After Clause 61 - continued

- (a) the Secretary of State considers is responsible for modern slavery or genocide, or
 - (b) has been named in a resolution passed by the House of Commons as being responsible for modern slavery or genocide,
- the product is labelled to identify it as coming from a country where paragraph (a) or (b) apply (as applicable).”

BARONESS HAYMAN OF ULLOCK
LORD COAKER
LORD WALLACE OF SALTAIRE
LORD HENDY

96 Insert the following new Clause –

“Public interest

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

Member's explanatory statement

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

LORD WALLACE OF SALTAIRE

97 Insert the following new Clause—

“Procurement Review Unit

- (1) There is to be a Procurement Review Unit (“the PRU”) within the Cabinet Office.
- (2) The purpose of the PRU is to—
 - (a) oversee public procurement;
 - (b) address systematic or institutional breaches of the procurement regulations;
 - (c) advise on exclusion and debarment of suppliers.
- (3) The PRU must be advised by an expert panel appointed by the Cabinet Office, in consultation with outside suppliers and the relevant Parliamentary Committee.”

Member's explanatory statement

This amendment is to probe the role and autonomy of the Procurement Review Unit in reviewing the procurement process.

Clause 63

BARONESS NEVILLE-ROLFE

98 Page 42, line 27, leave out from “by” to end of line 28 and insert “a school”

Member's explanatory statement

This amendment is consequential on the new definition of “school” inserted by the Government amendment to clause 114.

99 Page 43, line 16, leave out subsection (11)

Member's explanatory statement

This amendment is consequential on the new definition of “school” inserted by the Government amendment to clause 114.

Clause 64

BARONESS NEVILLE-ROLFE

100 Page 44, line 8, at end insert “or in relation to a public contract awarded by a school”

Member's explanatory statement

This amendment is consequential on the new definition of “school” inserted by the Government amendment to clause 114.

Clause 65

BARONESS NEVILLE-ROLFE

- 101 Page 44, line 21, leave out from “by” to end of line 22 and insert “a school,
(d) awarded by a transferred Northern Ireland authority, unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement, or
(e) awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.”

Member’s explanatory statement

This amendment would exclude transferred Northern Ireland authorities and procurements by a school (as defined in the Government amendments to clause 114) from the duty to publish information under this clause.

Clause 68

BARONESS NEVILLE-ROLFE

- 102 Page 46, line 22, leave out from “by” to end of line 23 and insert “a school”

Member’s explanatory statement

This amendment is consequential on the new definition of “school” inserted by the Government amendment to clause 114.

Clause 70

BARONESS NEVILLE-ROLFE

- 103 Page 48, line 12, after “awarded” insert “as part of a procurement”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 72

BARONESS NEVILLE-ROLFE

- 104 Page 48, line 29, leave out “£2” and insert “£5”

Member’s explanatory statement

This amendment would mean that a contracting authority is only required to publish a modification of a public contract if the contract’s value is (or becomes as a result of the modification) more than £5 million.

BARONESS HAYMAN OF ULLOCK
LORD COAKER

- 105 Page 48, line 29, leave out “£2” and insert “£3”

Member’s explanatory statement

This amendment would probe the government amendment meaning that a contracting authority is only required to publish a modification of a public contract if the contract’s value is (or becomes as a result of the modification) more than £5 million.

BARONESS NEVILLE-ROLFE

106 Page 48, line 35, after “awarded” insert “as part of a procurement”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

107 Page 48, line 37, after “awarded” insert “as part of a procurement”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 74

BARONESS NEVILLE-ROLFE

108 Page 50, line 25, before “contracting” insert “relevant”

Member’s explanatory statement

This amendment and the other Government amendment to this clause would ensure that the House authorities are not required to seek the approval of a Minister of the Crown to terminate a contract with a supplier on the basis of national security.

109 Page 50, line 32, at end insert –

“(2) In this section, a “relevant contracting authority” means a contracting authority other than –

- (a) a Minister of the Crown or a government department,
- (b) the Corporate Officer of the House of Commons, or
- (c) the Corporate Officer of the House of Lords.”

Member’s explanatory statement

This amendment and the other Government amendment to this clause would ensure that the House authorities are not required to seek the approval of a Minister of the Crown to terminate a contract with a supplier on the basis of national security.

Clause 76

BARONESS NEVILLE-ROLFE

110 Page 51, line 10, after “a” insert “covered”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

111 Page 51, line 13, after second “a” insert “covered”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

112 Page 51, line 19, after “a” insert “covered”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

LORD FOX
LORD SCRIVEN

113 Page 51, line 30, at end insert –

““person who influences” includes, but is not limited to –

- (a) civil servants;
- (b) any other public sector employees or officials;
- (c) NHS staff;
- (d) government contractors and their employees;
- (e) consultants;
- (f) special advisers;
- (g) political appointees;

“reasonable steps” include, but are not limited to –

- (a) requiring that suppliers submit a conflict of interest declaration, or
- (b) requiring that suppliers submit written confirmation of compliance with the Supplier Code of Conduct issued by the Government Commercial Function applicable at the time, or any future guidance that replaces it.”

Member's explanatory statement

This amendment broadens the range of people to whom conflicts of interest in procurement should be identified. It also requires suppliers to submit conflict of interest declarations. Both parts of the amendment are in line with the recommendations of Sir Nigel Boardman's review of Covid-19 procurement.

Clause 77

BARONESS NEVILLE-ROLFE

114 Page 51, line 34, after “a” insert “covered”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 78

BARONESS NEVILLE-ROLFE

115 Page 52, line 12, after second “a” insert “covered”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

116 Page 52, line 23, leave out “might” and insert “it considers are likely to”

Member's explanatory statement

This amendment would mean that the obligation to publish information about mitigating perceived conflicts of interest applies only in respect of those the contracting authority considers are likely to arise.

Clause 79

BARONESS NEVILLE-ROLFE

117 Page 53, line 26, leave out paragraph (a)

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

118 Page 53, line 28, leave out "the award of a contract" and insert "procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

119 Page 53, line 28, at end insert –
 “(ai) by a school,”

Member's explanatory statement

This amendment is consequential on the new definition of "school" inserted by the Government amendment to clause 114.

120 Page 53, line 29, leave out "unless it is awarded" and insert "other than procurement"

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

121 Page 53, line 34, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

After Clause 80

BARONESS NEVILLE-ROLFE

122 Insert the following new Clause –

“Regulated below-threshold contracts: duty to consider small and medium-sized enterprises

- (1) Before inviting the submission of tenders in relation to the award of a regulated below-threshold contract, a contracting authority must –
 - (a) have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and
 - (b) consider whether such barriers can be removed or reduced.
- (2) Subsection (1) does not apply in relation to the award of a contract in accordance with a framework.”

Member's explanatory statement

This new Clause would require a contracting authority, before inviting the submission of tenders for a regulated below-threshold contract (other than under a framework), to have regard to the particular barriers to competing for a contract that small and medium-sized enterprises may have, and remove or reduce them where possible.

LORD WALLACE OF SALTAIRE

LORD FOX

As an amendment to Amendment 122

- 123** In subsection (1)(a), after “enterprises” insert “, social enterprises and not-for-profit companies”

Member's explanatory statement

This amendment requires a contracting authority to also have regard to the particular barriers faced by social enterprises and not-for-profit companies in competing for contracts.

Clause 83

BARONESS NEVILLE-ROLFE

- 124** Page 56, line 8, leave out “, below-threshold procurement or international organisation procurement”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1 - there, “procurement” includes below-threshold procurement and international organisation procurement.

- 125** Page 56, line 22, leave out paragraphs (a) and (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1 - there, “procurement” includes below-threshold procurement and international organisation procurement.

Clause 84

BARONESS NEVILLE-ROLFE

- 126** Page 57, line 2, leave out from “procurement” to end of line 3

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

LORD PURVIS OF TWEED

LORD FOX

- 127** Page 57, line 13, at end insert –
“(3A) A contracting authority does not discriminate if it takes into account environmental, social and labour considerations and indicates in the notice of intended procurement or tender documentation how such considerations are defined.”

Member's explanatory statement

This amendment allows a contracting authority to take into account environmental, social and labour conditions where a treaty state supplier may be a supplier for a procurement.

Clause 85

BARONESS NEVILLE-ROLFE

128 Page 57, line 31, leave out from “means” to “by” in line 33 and insert “procurement carried out”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 88

BARONESS NEVILLE-ROLFE

129 Page 59, line 15, at end insert –

- “(4) A Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under this Act.
- (5) An online system established or operated under subsection (4) must –
- (a) make notices, documents and other information published under this Act available free of charge, and
 - (b) be accessible to people with disabilities.”

Member's explanatory statement

This amendment would require a Minister of the Crown to set up an online system for the publication of notices, documents and other information under the Bill.

LORD CLEMENT-JONES

LORD FOX

As an amendment to Amendment 129

130 At end insert –

- “(6) The relevant Minister of the Crown must publish an annual report on the operation of the online system setting out the performance standards expected and achieved in the relevant period including metrics on satisfaction and accessibility experience from stakeholders.”

Member's explanatory statement

This amendment requires an annual report to be published on the operation of the online system.

Clause 89

BARONESS NEVILLE-ROLFE

131 Page 59, line 17, after first “a” insert “covered”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 90

BARONESS NEVILLE-ROLFE

132 Page 59, line 36, leave out subsection (2)***Member's explanatory statement***

This amendment would remove an unnecessary power to establish and operate an online system, since it can be done using common law powers.

133 Page 60, line 3, leave out “procurement under this Act” and insert “covered procurement”***Member's explanatory statement***

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 92

BARONESS NEVILLE-ROLFE

134 Page 60, line 26, after “with” insert “section 11(4) (requirement to have regard to barriers facing SMEs), or”***Member's explanatory statement***

This amendment would mean that the duty to have regard to barriers facing small and medium-sized enterprises inserted by the Government amendment to Clause 11 is not enforceable under Part 9.

135 Page 60, line 30, leave out from “a” to “procurement” in line 31***Member's explanatory statement***

This amendment is consequential on the change in terminology in new clause before clause 1 - there, “procurement” includes below-threshold procurement and international organisation procurement.

136 Page 60, line 32, at end insert “, except in relation to a covered procurement”***Member's explanatory statement***

This amendment is consequential on the other Government amendment to this subsection and would ensure that the duty is enforceable in relation to covered procurements.

137 Page 61, line 2, leave out subsection (9)***Member's explanatory statement***

This amendment is consequential on the Government amendments to this clause.

After Clause 98

LORD COAKER
 BARONESS HAYMAN OF ULLOCK
 BARONESS SMITH OF NEWNHAM

138 Insert the following new Clause—

“Audit of Ministry of Defence procurement

- (1) Within one month of the passing of this Act, the Secretary of State must commission the National Audit Office to produce and publish a report setting out any instances of Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed that have resulted in—
 - (a) overspend on initially planned budgets,
 - (b) assets being withdrawn or scrapped or prepaid services terminated,
 - (c) a contract being cancelled,
 - (d) a contract being extended beyond the initially agreed timescale, or
 - (e) administrative errors which have had a negative financial impact.
- (2) The National Audit Office report must include recommendations on how better management of contracts can reduce the loss of public money.
- (3) Within three months of the publication of the report, the Secretary of State must report to Parliament on whether its recommendations have been accepted or rejected, with reasoning in either case.
- (4) The Secretary of State must commission the National Audit Office to conduct a similar review annually.”

Member’s explanatory statement

This amendment would require an annual audit of Ministry of Defence procurement to be commissioned by the Secretary of State.

Clause 99

BARONESS NEVILLE-ROLFE

139 Page 64, line 42, at end insert—

- “(ca) the Corporate Officer of the House of Commons;
 (cb) the Corporate Officer of the House of Lords;
 (cc) the Senedd Commission;
 (cd) the Northern Ireland Assembly Commission;”

Member’s explanatory statement

This amendment would add the listed bodies as contracting authorities not subject to procurement investigations.

Clause 100

BARONESS NEVILLE-ROLFE

140 Page 65, line 23, at end insert –

“(ba) comply with section (*Regulated below-threshold contracts: duty to consider small and medium-sized enterprises*) (regulated below-threshold contracts: duty to consider SMEs);”

Member’s explanatory statement

This amendment would mean that the duty to have regard to barriers facing small and medium-sized enterprises inserted by the Government amendment to Clause 80 may not be the subject of a “section 100 recommendation”.

After Clause 101

BARONESS STROUD
LORD ALTON OF LIVERPOOL
LORD COAKER
BARONESS SMITH OF NEWNHAM

141 Insert the following new Clause –

“Supply chain resilience against economic coercion and slavery

- (1) The Secretary of State must by regulations make provision for reducing the dependency of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as either a systemic competitor or a threat.
- (2) A country is “considered by the United Kingdom as either a systemic competitor or a threat” if it was defined as such in the latest Integrated Review of Security, Defence, Development and Foreign Policy.
- (3) The regulations under subsection (1) may, in particular, include –
 - (a) provision for an annual review of the dependency of public bodies upon countries which are considered by the United Kingdom as systemic competitors or threats;
 - (b) provision for the setting of acceptable dependency thresholds across all categories of public procurement.
- (4) The Secretary of State must by regulations make provision for eradicating from all public contracts goods or services that are tainted by slavery and human trafficking.
- (5) The regulations under subsection (4) may, in particular, include –
 - (a) provision in connection with the processes to be followed by public bodies in the procurement of goods or services for the purposes of public contracts;
 - (b) provision as to steps that must be taken by public bodies for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in public bodies’ supply chains;
 - (c) provision as to matters for which provision must be made in contracts for goods or services entered into by public bodies;

After Clause 101 - continued

- (d) provision as to the standards of disclosure and transparency required for all contractors or prospective contractors, which must, at a minimum, include publication and verification of information about the country of origin of all sourcing inputs in their supply chain;
 - (e) provision for the public disclosure of the names of contractors or prospective contractors whose supply chains are considered tainted by slavery and human trafficking;
 - (f) provision for the publication and dissemination of a risk register detailing areas from which goods cannot be sourced without unreasonable risk of slavery and human trafficking being present in supply chains.
- (6) In this section –
- “public body” means a body exercising functions of a public nature;
 - “slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015;
 - goods or services are “tainted” by slavery and human trafficking if slavery and human trafficking take place in relation to anyone involved in the supply chain for providing those goods or services.”

Member’s explanatory statement

The amendment seeks to improve the UK’s supply chain resilience against dependency and human rights abuse by creating a double regulation making power: to enable the Government to develop a plan to address dependency throughout public procurement; and to bring the human rights standards of wider public procurement in line with the procurement standards of the Department of Health and Social Care.

Clause 102

BARONESS NEVILLE-ROLFE

142 Page 66, line 23, leave out “the award of contracts” and insert “procurement”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

143 Page 66, line 24, leave out from “arrangement” to end of line

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

144 Page 66, line 37, leave out “awarding a contract” and insert “carrying out a procurement”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

145 Page 66, line 39, leave out sub-paragraph (ii)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

146 Page 67, line 1, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 103

BARONESS NEVILLE-ROLFE

147 Page 67, line 19, leave out “the award of contracts” and insert “procurement”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

148 Page 67, line 20, leave out from “arrangement” to end of line

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

149 Page 67, line 36, leave out subsection (5)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 104

BARONESS NEVILLE-ROLFE

150 Page 67, line 42, leave out from “to” to end of line 45 and insert “procurement under –
 (a) a reserved procurement arrangement, or
 (b) a transferred Northern Ireland procurement arrangement.”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

151 Page 68, line 6, leave out from “to” to end of line 9 and insert “, or the guidance relates to, procurement under –
 (a) a reserved procurement arrangement, or
 (b) a transferred Northern Ireland procurement arrangement.”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

152 Page 68, line 12, leave out from “to” to end of line 15 and insert “procurement under –
 (a) a reserved procurement arrangement, or
 (b) a devolved Welsh procurement arrangement.”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

153 Page 68, line 15, at end insert –

“(4A) A Minister of the Crown may not publish guidance under section 101 for the purpose of regulating a Northern Ireland department without the consent of a Northern Ireland department, unless the guidance relates to procurement under –

- (a) a reserved procurement arrangement, or
- (b) a devolved Welsh procurement arrangement.”

Member's explanatory statement

This amendment would ensure that a Minister of the Crown could not issue guidance for the purposes of regulating a Northern Ireland department without the consent of a Northern Ireland department unless it relates to procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement.

154 Page 68, line 21, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 105

BARONESS NEVILLE-ROLFE

155 Page 68, line 25, leave out from second “a” to “awarded” on line 26 and insert “procurement under a procurement arrangement is a reference to a procurement as part of which the contract is”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

156 Page 68, line 29, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 106

BARONESS NEVILLE-ROLFE

157 Page 69, line 30, at end insert “devolved Scottish authorities carrying out procurement under”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

158 Page 69, leave out line 31

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

159 Page 69, line 35, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

160 Page 69, line 37, leave out from “to” to end of line 40 and insert “procurement under devolved Scottish procurement arrangements”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

161 Page 69, line 43, leave out “the award of contracts” and insert “procurement”

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

162 Page 69, line 45, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

Clause 107

LORD HENDY

162A Page 70, line 12, after “considerations)” insert—
 “(a) in subsection (5), omit paragraphs (a) and (b), and
 (b) ”

Member's explanatory statement

The purpose of this amendment is to remove the prohibition on taking into account the terms and conditions of the staff or the legal status of sub-contractors' staff.

BARONESS BENNETT OF MANOR CASTLE

163 Page 70, line 14, leave out subsection (2) and insert—
 “(2) A Minister of the Crown and the Welsh Ministers must, within six months of the passing of this Act, make regulations in accordance with section 113(4) or (10) (as applicable) disapplying the duty under section 17(1) of the Local Government Act 1988 (“the 1998 Act”) as it applies to any proposed or subsisting below-threshold contracts procured by any public authorities.”

Member's explanatory statement

This amendment would commit English and Welsh Ministers to lay regulations to bring local authorities in line with the rest of the public sector in being able to reserve below-threshold contracts for UK suppliers, local suppliers, SMEs or voluntary, community and social enterprises, as laid out in a Procurement Policy Note issued by the Cabinet Office in December 2020.

BARONESS NOAKES
LORD MOYLAN

- 164 Page 70, line 22, at end insert –
“(ca) below-threshold contracts;”

Member’s explanatory statement

This amendment ensures that the regulations can specifically exclude below-threshold contracts from the duty in section 17 of the Local Government Act 1988.

Schedule 10

BARONESS NEVILLE-ROLFE

- 165 Page 113, line 39, at end insert –
“6A(1) Section 42 (single source contract regulations: general) is amended as follows.
(2) In subsection (4)(b), omit the second “or”.
(3) After subsection (4)(b) insert –
“(ba) provision made by virtue of section 15(2)(b) (pricing of contracts), whether alone or with other provision, or”.”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under the new provision in section 15 of the Defence Reform Act 2014 inserted by paragraph 3(3) of this Schedule.

Schedule 11

BARONESS NOAKES
LORD MOYLAN

- 166 Page 117, line 27, at end insert –
“A1 Subsections (4)(b) and (5) of section 89 of the Transport Act 1985 (obligation to invite tenders for subsidised services).”

Member’s explanatory statement

This amendment removes the requirement to issue notices of tenders individually to anyone who has given written notice so that publication requirements are confined to the single digital platform proposed for public procurement.

LORD LANSLEY

- 167 Page 117, line 34, leave out paragraph 3 and insert –
“3 The provisions of the Act resulting from the Trade (Australia and New Zealand) Bill insofar as they were included in the Bill at its introduction to the House of Commons on 11 May 2022.”

Member’s explanatory statement

This amendment would limit this repeal to those provisions in the Trade (Australia and New Zealand) Bill which are replaced by the powers in Part 7; any amendments to the Trade (Australia and New Zealand) Act which are not rendered unnecessary by this Bill would remain in Statute.

BARONESS NOAKES
LORD MOYLAN

168 Page 118, line 3, at end insert –

“4A Regulations 4 and 5 of the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (S.I. 2002/2090).”

Member’s explanatory statement

This amendment removes the requirement to publish tender information relating to transport service subsidies so that publication requirements are confined to the single digital platform proposed for public procurement.

BARONESS NEVILLE-ROLFE

169 Page 118, line 8, leave out paragraphs 8 to 11

Member’s explanatory statement

This amendment would preserve the Commission Decisions.

Clause 111

BARONESS NEVILLE-ROLFE

170 Page 71, leave out lines 11 to 20 and insert –

“(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 subsection (1)–

“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;”

Member’s explanatory statement

This amendment would clarify that the power to exclude certain procurement relating to health services may only be excluded from the scope of the Bill if it is the subject of provision under the National Health Service Act 2006.

LORD HUNT OF KINGS HEATH

171 Page 71, line 14, at end insert –

“(aa) the award or management of a contract for the supply of services or goods in relation to health and care services which support the integration of those services;”

Member’s explanatory statement

The amendment is designed to probe the extent to which services commissioned under the auspices of integrated care systems will be covered by this Clause including social care services and shared IT services to facilitate integration.

172 Page 71, line 16, at end insert “and (aa)”

Member's explanatory statement

The amendment is designed to probe the extent to which services commissioned under the auspices of integrated care systems will be covered by this Clause including social care services and shared IT services to facilitate integration.

BARONESS BRINTON
LORD SCRIVEN
BARONESS BENNETT OF MANOR CASTLE

173 Leave out Clause 111 and insert—

“Application of this Act to procurement by NHS England

- (1) Omit sections 79 and 80 of the Health and Care Act 2022.
- (2) For the avoidance of doubt, the provisions of this Act apply to procurement by NHS England.”

Member's explanatory statement

This amendment is to probe the difference between procurement under this Act and procurement by NHS England under the Health and Care Act 2022.

Clause 113

BARONESS NEVILLE-ROLFE

174 Page 72, line 17, at end insert—

“(za) section 5 (utilities contracts)”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

175 Page 72, line 20, at end insert—

“(ca) section 50 (publication of contracts);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 50.

176 Page 72, line 22, at end insert—

“(ea) section 65(3)(a) (information about payments: financial thresholds);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 65.

177 Page 72, line 23, at end insert—

“(fa) section 81 (regulated below-threshold contracts: notices);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 81.

- 178 Page 72, line 25, at end insert –
“(ha) section 86 (pipeline notices);”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 86.

- 179 Page 72, line 31, at end insert –
“(na) section 114 (interpretation);”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

- 180 Page 73, line 12, at end insert –
“(za) section 5 (utilities contracts)”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

- 181 Page 73, line 15, at end insert –
“(ca) section 65(3)(a) (information about payments: financial thresholds);
(cb) section 70 (contract change notices and publication of modifications);
(cc) section 81 (regulated below-threshold contracts: notices);”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 65, 70 or 81.

- 182 Page 73, line 16, at end insert –
“(da) section 86 (pipeline notices);”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of powers under Clause 86.

- 183 Page 73, line 20, at end insert –
“(ha) section 114 (interpretation);”

Member’s explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

- 184 Page 73, line 32, at end insert –
“(za) section 5 (utilities contracts);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 5.

185 Page 73, line 35, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on a Northern Ireland department not having the power to make regulations under clause 64 and would remove the power of a Northern Ireland department to amend the thresholds in that clause.

186 Page 73, line 39, at end insert –

“(ga) section 114 (interpretation);”

Member's explanatory statement

This amendment would apply the affirmative procedure to an exercise of the powers inserted by the Government amendment to Clause 114.

Clause 114

BARONESS NEVILLE-ROLFE

187 Page 74, line 24, at end insert –

““pupil referral unit” means –

- (a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996;
- (b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996;

“school” means –

- (a) the governing body of a maintained school (see section 19(1) of the Education Act 2002);
- (b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;
- (c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;
- (d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;
- (e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));”

Member's explanatory statement

This amendment would create a new definition of “school” for the purposes of excluding them from certain obligations under the Bill.

188 Page 74, line 24, at end insert –

““small and medium-sized enterprises” means suppliers that –

- (a) have fewer than 250 staff, and
- (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;”

Member’s explanatory statement

This amendment would insert a definition of “small and medium-sized enterprises” for the purposes of the Government amendment to Clause 11 and the Government’s new clause after Clause 80 inserting duties in relation to those enterprises.

LORD LANSLEY

As an amendment to Amendment 188

189 Leave out paragraph (b)

Member’s explanatory statement

This amendment would focus the SME criterion on the size of an enterprise in terms of its headcount.

BARONESS NOAKES

BARONESS NEVILLE-ROLFE

190 Page 74, line 30, leave out “paid, or to be paid” and insert “payable or paid, receivable or received, or to be paid or received”

Member’s explanatory statement

This amendment would ensure that references to amounts received, receivable or to be received in the Bill include references to those amounts referable to VAT.

BARONESS NEVILLE-ROLFE

191 Page 74, line 31, at end insert –

- “(3) In this Act, a reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit.”

Member’s explanatory statement

This amendment would ensure that the new definition of “school” for the purposes of the Bill inserted into this Clause would apply such that references to contracts awarded by a school are read as references to contracts awarded for the purposes of pupil referral units.

192 Page 74, line 31, at end insert –

- “(3) An appropriate authority may by regulations change the definition of “small and medium-sized enterprises”.
- (4) Regulations under subsection (3) may amend this section.”

Member’s explanatory statement

This amendment would allow the Secretary of State to more precisely define “small and medium-sized enterprises”.

Clause 115

BARONESS NEVILLE-ROLFE

193 Page 74, leave out line 37

Member’s explanatory statement

This amendment is consequential on the new definition of “school” inserted by the Government amendment to Clause 114.

194 Page 75, line 5, leave out “section 10” and insert “section (Procurement and covered procurement)”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

195 Page 75, line 5, at end insert—

“competitive flexible procedure competitive tendering procedure	section 19 section 19”
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Member’s explanatory statement

This amendment would add definitions to the index of defined expressions.

196 Page 75, line 12, at end insert—

“convertible contract covered procurement debarment list	section 69 section (Procurement and covered procurement) section 54”
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Member’s explanatory statement

This amendment would add definitions to the index of defined expressions.

197 Page 75, leave out line 30

Member’s explanatory statement

This amendment is consequential on the new definition of “school” inserted for the purposes of the Bill by the Government amendment to clause 114.

198 Page 76, line 6, leave out “a”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

- 199 Page 76, line 6, leave out “section 10” and insert “section (*Procurement and covered procurement*)”

Member’s explanatory statement

This amendment is consequential on the change in terminology in new clause before clause 1.

- 200 Page 76, line 8, at end insert –

“publication of a tender notice

| section (*Qualifying utilities dynamic markets notices: no duty to publish a tender notice*)”

Member’s explanatory statement

This amendment is consequential on the Government’s new Clause on qualifying utilities dynamic market notices.

- 201 Page 76, line 11, at end insert –

“school

| section 114”

Member’s explanatory statement

This amendment is consequential on the new definition of “school” inserted for the purposes of the Bill by the Government amendment to clause 114.

- 202 Page 76, leave out line 13

Member’s explanatory statement

This amendment is consequential on the new definition of “school” inserted for the purposes of the Bill by the Government amendment to Clause 114.

- 203 Page 76, line 13, at end insert –

“small and medium-sized enterprises

| section 114”

Member’s explanatory statement

This amendment is consequential on the Government amendment to Clause 114 inserting a definition of “small and medium-sized enterprises”.

Procurement Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

28 November 2022
