

Research Briefing

5 January 2023

By Ilze Jozepa

Procurement Bill 2022-23



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Summary

Procurement rules regulate public authority purchases of supplies, services and public works from the private sector. About a third of public sector spending goes towards procurement.

The Government sees a reform of the UK's EU law-based procurement rules as an opportunity to better tailor the procurement framework to the country's needs. It believes reform will make procurement simpler, quicker, more transparent and less bureaucratic.

In its view this would create more opportunities for innovation and support new businesses, including small and local companies, wishing to enter the market and deliver public contracts.

The Government first laid out its reform proposals in a green paper on [transforming public procurement](#) in December 2020. A public consultation on these proposals ran until March 2021. In December 2021, the Government published its [response to the consultation](#).

[A Procurement Bill](#) was announced in the [Queen's speech of May 2022](#) and soon introduced in the House of Lords. The Bill completed the Lords stages on 13 December 2022 and entered the House of Commons on the following day. The Bill's second reading is scheduled for 9 January 2023.

Procurement Bill

The Procurement Bill would repeal the current EU law-based procurement regulations. It would lay out new rules and procedures for central government departments, their arms-length bodies and the wider public sector when selecting suppliers and awarding contracts with a value above certain thresholds. It would also make provisions for smaller, below-threshold contracts.

The Procurement Bill as brought from the House of Lords and introduced in the House of Commons has 124 clauses arranged over 13 parts, and 11 schedules. The Bill contains a number of regulation-making powers.

Value for money and national strategic priorities

The Bill would introduce a new supplier selection regime, based on principles including non-discrimination, fair treatment, value for money, maximising public benefit, transparency, and integrity. While value for money would remain the core objective of procurement, the Bill would require public sector

buyers to take a broad view and take account of the national strategic priorities set out in [the National Procurement Policy Statement \(NPPS\)](#).

The NPPS asks public authorities to consider wider public benefits, such as creating new (local) jobs, tackling climate change, improving the diversity of their suppliers, and innovation throughout the procurement process. This would also allow authorities to consider supporting local community priorities through public purchasing.

A single regime

The Bill would consolidate the current four sets of regulations, which transpose EU Directives into UK law, into a single regime. This would cover regulations for:

- public contracts, awarded by most central government departments, their arms-length bodies and the wider public sector including local government, health authorities and schools
- utilities contracts by utilities operating in the water, energy and transport sectors. It would not cover private utilities operating on a competitive market
- concession contracts for the supply of works or services where public authorities give a supplier the right to exploit works or services
- defence and security contracts.

Devolved procurement

The Bill would apply to procurement by devolved authorities in Wales and Northern Ireland. Scotland, however, would maintain its own legal framework, while the Bill would provide for arrangements covering joint and cross-border procurement with Scottish contracting authorities.

International obligations

The Bill would provide for the UK to meet its international obligations on public procurement included in treaties that it has signed. This includes the World Trade Organisation (WTO) Agreement on Government Procurement (GPA), the Trade and Cooperation Agreement (TCA) with the EU and a range of other agreements.

Approach of the Bill

The Bill would regulate the procurement process throughout the lifecycle of a contract: from the point when a public authority (a contracting authority) considers whether and what to buy, through the selection of bidders, weighting their bids, to awarding a contract, and monitoring its performance up to its endpoint.

Enhanced transparency requirements under a new ‘noticing’ regime would span the full lifecycle of procurement. This would include publishing information about future procurement ahead of time, and publicising new contract opportunities, procurement results and information on contract performance.

The Government aims to [establish a single platform](#) for accessing procurement data, a public debarment list for excluded suppliers, a ‘tell us once’ system for supplier registration and other innovations.

Lords second reading

Members across the House of Lords [generally welcomed the Bill](#).

The opposition Labour and Liberal Democrat members noted that the Bill went less far in some respect than the green paper would suggest, for example, with regard to transparency requirements. They argued that the Bill’s text did not sufficiently define key procurement principles such as integrity, did not include specific requirements to have regard for climate objectives, and did not emphasize the social value in procurement.

Several Conservative members emphasized the need for simple, effective rules. They cautioned against enhancing requirements, for example around transparency, at a cost of creating an additional administrative burden. Members debated a range of issues including procurement of health services, defence, SMEs, ethical procurement and modern slavery.

Lords amendments

The Grand Committee of the House of Lords considered the Bill over seven sitting days between 4 July and 26 October, covering over 500 amendments, including 350 government amendments. A total of 279 government amendments were agreed. Most of these changes were narrowly focused and technical, “to ensure that the Bill functions properly and effectively”, accompanied by a large group of consequential amendments. The bulk of the amendments did not change the Bill’s policy intent.

The Lords [report stage took place on 28 and 30 November](#).

The Government again tabled a significant number of amendments for inclusion in the Bill. Of the 205 amendments proposed on report, 161 were agreed to, of which 155 were government and five non-government amendments.

Members passed government amendments which substantively clarified definitions in the Bill, including definitions of procurement, a contracting authority, and utility transport activities. Further government amendments

were agreed to introduce new, higher reporting thresholds across the regime, aiming to reduce administrative burden associated with smaller contracts.

Members of the House of Lords defeated the Government on five non-government amendments. They supported:

- bringing NHS procurement fully in scope of the Bill
- requiring a Minister to consider certain principles before publishing a national procurement policy statement (NPPS)
- including specified strategic priorities in the NPPS
- allowing contracting authorities to exclude suppliers from contract awards for their involvement in activities linked to forced organ harvesting
- ensuring removal of physical surveillance technology which has been delivered by suppliers involved in modern slavery, genocide or crimes against humanity.

Further debate in the House of Lords covered issues such as the scope of procurement rules, and the scope of delegated powers in the Bill. Members discussed provisions on supporting local suppliers and social enterprises, exclusion of suppliers for financial or economic offences, and addressing conflict of interest. Other issues included audit of the Ministry of Defence procurement spending and tackling human rights abuses in the supply chain.

[Labour members said they disagreed with the Government](#) on a fundamental point: whether procurement legislation is the right tool to enhance other policies beyond narrowly defined procurement interests.

1 Background

1.1 What is public procurement?

Public procurement is the process by which public organisations (contracting authorities) purchase goods, services and public works. It covers buying anything from office supplies to phone services, to building schools and running social care services by external contractors. The public sector's broad approach to purchasing goods and services is to seek value for money. Especially for larger purchases, value for money is generally achieved through competitive tender – a process where various organisations respond with their offers to a public authority's call to supply goods or services.

1.2 The path towards the Bill

From 1 January 2021, EU procurement law no longer applies to the UK. The Government sees this as an opportunity to reform UK's public procurement regulations to "[support British businesses and deliver the UK's needs](#)" and one of the benefits of Brexit.¹ The purpose of the reform is to simplify public sector procurement, make it more innovative, transparent and "to provide new opportunities for small businesses".²

A reform of the UK procurement rulebook has been in the pipeline for some time. The Government first laid out its reform proposals in a green paper on [transforming public procurement](#) on 15 December 2020. A public consultation on these proposals ran till 10 March 2021. On 6 December 2021, the Government published its [response to the consultation](#).³

A Procurement Bill was first announced in the [Queen's speech 2021](#), but was not brought forward in the 2021-22 session. The Government announced the Bill for the second time in the [Queen's speech of May 2022](#).⁴

[The Procurement Bill](#) (PDF) was first introduced in the House of Lords on 11 May 2022 and completed its Lords stages on 13 December 2022. The Government brought the Procurement Bill [HL] (Bill 218, 2022-23) to the House

¹ The Queen's Speech 2021, 11 May 2021, p48; HM Government, [The Benefits of Brexit](#), January 2022, p8

² Prime Minister's Office, [The Queen's Speech 2021](#) (PDF), 11 May 2021, pp48, 53

³ Cabinet Office, Consultation [Green Paper: Transforming public procurement](#) (PDF), CP 353, December 2020;

⁴ Prime Minister's Office, [Queen's speech 2021, 11 May 2021; Queen's Speech 2022](#) (PDF), 10 May 2022, pp 53–54

of Commons on 14 December 2022. Its second reading is scheduled for 9 January 2023.

1.3

Procurement statistics

Overall procurement from the private sector, pre-pandemic

In 2019/20, £295.5 billion was spent on procurement by the public sector from the private sector – about a third (32%) of public sector spending.⁵

Most of this total, £223.6 billion, covers purchase of goods, services and other expenditure.⁶ Of the £223.6 billion:

- £132.2 billion was spent by central government, including:
 - £66.1 billion by the Department for Health and Social Care (including NHS bodies in England)
 - £15.9 billion by the Ministry of Defence
 - £6.7 billion by the Scottish Government
 - £3.8 billion by the Welsh Government
- £82.4 billion was spent by local government
- £9.0 billion was spent by public corporations, such as the BBC.⁷

Procurement through the pandemic and beyond

More recent figures for total procurement spending include the procurement of goods and services by one public sector body from another, as well as purchases from the private sector.

These figures show an increase in procurement spending of 16% between 2019/20 and 2020/21 and then an increase of 8% between 2020/21 and 2021/22.⁸

⁵ HM Treasury, [Whole of Government Accounts 2019/20](#), June 2022. Figures are ‘consolidated’ so, broadly speaking, do not include spending by the public sector on other parts of the public sector – see the Whole of Government Accounts and its annexes for more details.

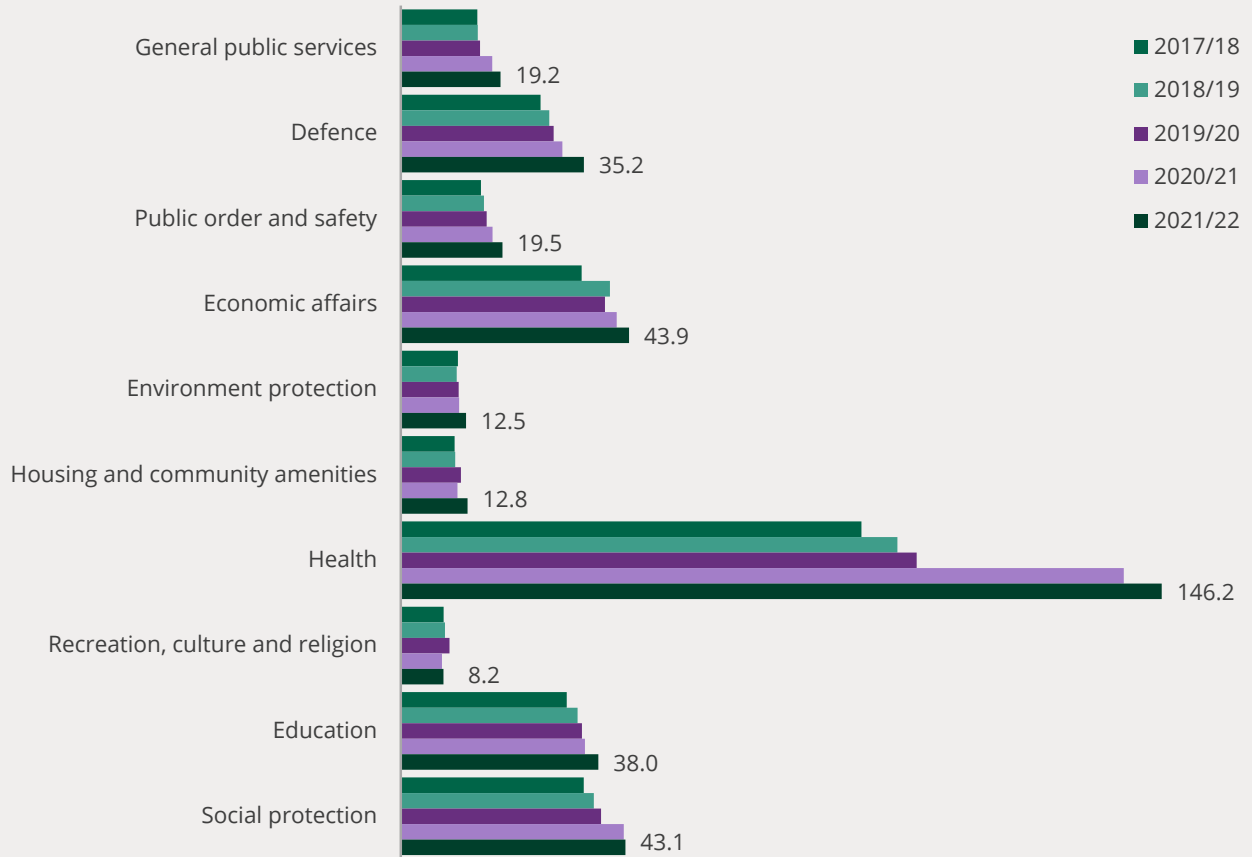
⁶ Following NAO methodology, our total procurement figures are based on Whole of Government Accounts categories: purchase of goods and services and other expenditure; additions to property, plant and equipment; additions to intangible assets; finance charges paid on finance leases and PFI contracts

⁷ HM Treasury, [Whole of Government Accounts 2019/20](#), June 2022– note 8

⁸ HM Treasury, [Public Spending Statistics release: November 2022](#), 16 November 2022, table 11

Procurement spending rose substantially in 2020/21, driven by health, and rose further in 2021/22

£ billions, gross procurement, capital and current combined



Source: HM Treasury, [Public Expenditure Statistical Analyses 2022](#), 20 July 2022, tables 5.5 and 5.6

Future budgets

Published budgets suggest central government procurement spending will stay at around the higher levels seen in 2021/22 into future years.⁹

⁹ HM Treasury, [Public Expenditure Statistical Analyses 2022](#), 20 July 2022, tables 2.2 and 2.3.

Procurement in central government budgets for the devolved administrations and the whole UK

£ billions, 2021/22 data is for plans (as of Jul 21)

| | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 | 2024/25 |
|---------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|
| Scottish Government | 9.2 | 11.4 | 11.9 | 15.3 | 15.9 | 15.7 | 15.9 | 16.2 |
| Welsh Government | 4.6 | 4.8 | 4.9 | 6.0 | 5.9 | 6.5 | 6.4 | 6.5 |
| Northern Ireland Executive | 5.2 | 5.6 | 5.7 | 6.4 | 7.0 | 6.9 | 6.8 | 6.8 |
| Total central government for UK | 160.2 | 172.0 | 176.8 | 221.1 | 247.9 | 252.8 | 249.1 | 250.9 |

Source: HM Treasury, Public Expenditure Statistical Analysis (PESA), Jul 22, table 2.2 and table 2.3

Note: covers departmental own spending as well as support to local government and public corporations. Figures include the procurement of goods and services by central government from public sector bodies.

Procurement from small businesses

In 2020/21 about 26.9% of central government procurement spending went to SMEs – 14.2% directly and 12.7% indirectly, through the supply chain.¹⁰

Procurement from abroad

Most larger UK contracts are awarded to UK suppliers. Only around 2% of contracts, by value, are awarded to directly to foreign suppliers. More are awarded to UK suppliers controlled by foreign companies, although these still make up the minority of contracts.

Note that these figures are for larger contracts only.¹¹

Awards of UK contracts to foreign suppliers

% of awards by value, 2016-2019 average

| | Contract value: | |
|---|--------------------|-------------------|
| | Up to €200 million | Over €200 million |
| Directly awarded to foreign suppliers | 2.3% | 2.1% |
| Indirectly awarded - supplier is controlled by an foreign company | 17.6% | 31.5% |

Source: European Commission, Study on the measurement of cross-border penetration in the EU public procurement market, May 2021 - Tables 2-4 and 2-24

¹⁰ Cabinet Office, [Central government spend with small and medium-sized enterprises, 2020 to 2021](#), 26 May 2022

¹¹ The analysis is largely based on records of tender and contract awards in the EU TED database. Contracts only needed to be included if they were over certain thresholds, so the statistics are only for larger contracts. The thresholds that applied are set out in Cabinet Office, [Procurement Policy Note 18/15: New Threshold Levels 2016](#) and [Procurement Policy Note 04/17: New Threshold Levels 2018](#)

Further statistics

For an overview, see the Library's [Procurement statistics: a short guide](#).

The National Audit Office publish various reports on procurement in particular areas, such as spending on PPE.¹² For information on procurement in the early stages of the pandemic see NAO, [Investigation into government procurement during the COVID-19 pandemic](#), 26 November 2020. Their reports on procurement can be found in the [Procurement and contract management section of their website](#).

For figures for the amount of procurement being done through direct contract awards (without competition from a pre-approved list of suppliers) see the Spending chapter of Institute for Government, [Whitehall Monitor 2022](#), 31 January 2022.

For further statistics about procurement in Scotland, see the highlights section of Scottish Government, [Procurement activity: annual report 2020 to 2021](#), 28 January 2022.

1.4

The current procurement regime and principles

While an EU Member State, UK procurement rules largely transposed into UK law EU public procurement rules and principles, which intend to ensure that the public procurement market is open and competitive and that suppliers of all EU Member States are treated equally and fairly.

The framework regulates competitive tender processes for public sector contracts above certain value. The guiding principles of transparency, proportionality, equal treatment and open competition are derived from the [Treaty on the Functioning of the European Union \(TFEU\)](#). These principles underpin such requirements as advertising procurement opportunities and – during the UK's EU membership – opening up procurement opportunities to suppliers located in other EU Member States.

Whereas from 1 January 2021 EU law ceased to apply to the UK, EU law-based procurement regulations and principles continue to apply by virtue of the European Union (Withdrawal) Act 2018, as “EU-derived domestic legislation”

¹² See NAO, Report by the Comptroller and Auditor General, [The supply of personal protective equipment \(PPE\) during the COVID-19 pandemic](#), HC 961, November 2020 and NAO, Report by the Comptroller and Auditor General, [Investigation into the management of PPE contracts](#), HC 1144, March 2022.

thus maintaining the status quo as far as possible. However, from 1 January 2021 updates to EU procurement rules no longer bind to the UK.

UK procurement regulations

There are currently four main UK procurement regulations.

- [Public Contract Regulations \(PCR\) 2015](#) regulate the award of contracts for works, services or supplies by central government departments and the wider public sector.¹³
- [Utilities Contract Regulations \(UCR\) 2016](#) regulate the procurement for procurement by contracting entities (utilities) for activities in the water, energy, transport and postal services sectors.¹⁴
- [Concessions Contract Regulations \(CCR\) 2016](#) regulate the award of concession contracts where public authorities give a supplier the right to exploit works or services.¹⁵
- [The Defence and Security Public Contracts Regulations \(DSPCR\) 2011](#) contains special rules regarding the contracts for military and sensitive equipment, works and services.¹⁶ (See section 1.7 below on defence procurement.)

Procurement is devolved meaning there are devolved procurement policies and devolved legislatures can legislate on procurement. Wales and Northern Ireland generally apply the above regulations, while the equivalent Scottish regulations are [the Public Contracts \(Scotland\) Regulations 2015](#), [The Utilities Contracts \(Scotland\) Regulations 2016](#), and the [Concession Contracts \(Scotland\) Regulations 2016](#). For the devolved competences in the area of public procurement see section 1.9 of this briefing.

There is some UK-specific procurement legislation. This includes [the Small Business, Enterprise and Employment Act 2015](#) which allows the UK Government to place duties on public sector contracting authorities, setting out how they conduct public procurement. The Act does not apply to devolved functions. [The Public Services \(Social Value\) Act 2012](#) requires authorities that are engaging in certain procurement exercises for services, to consider first how the proposed procurement might improve the economic, social and environmental well-being of their area, and how these improvements might be secured. The Act applies to England, and to Wales to a limited extent. The [National Health Service \(Procurement, Patient Choice and Competition\) \(No.2\) Regulations 2013](#) guide NHS procurement.

¹³ [The Public Contracts Regulations \(PCR\) 2015](#) (S.I. 2015/102)

¹⁴ [Utilities Contract Regulations \(UCR\)](#) (S.I. 2016/274)

¹⁵ [Concessions Contract Regulations \(CCR\)](#) (S.I. 2016/273)

¹⁶ [The Defence and Security Public Contracts Regulations \(DSPCR\) 2011](#) (S.I. 1848/2011)

Procurement process

The procurement regulations apply to contract above certain thresholds. For example, the core rules in the PCR 2015 apply to central government bodies buying most goods and services when valued above £138,760, and to local government and other bodies above £213,477. When buying works (construction), the threshold is higher: £5,336,937.¹⁷

The regulations set out how and where contract opportunities must be advertised, and how the procurement has to be organised to guarantee fair and equal treatment of potential suppliers. They include a choice of seven rather tightly regulated tender procedures. These range from an open procedure accessible to any interested supplier, to a restricted procedure involving a pre-selection of suitable bidders, and several types of more flexible procedure where contracting authorities can negotiate with potential suppliers.¹⁸

The regulations also detail how potential suppliers are selected and their bids weighed before contract awards, and penalties (remedies) when the rules are breached.

The current procurement rules comply with the UK's wider international obligations, including the World Trade Organisation Agreement on Government Procurement (GPA).

What has changed so far?

Since 2021, the Government has implemented several policy changes, including:

- a new approach to assessing [social value in the award of government contracts](#), including a new [Social Value Model \(PDF\)](#), that helps evaluate the social value in tenders;
- new requirements for firms applying for major government contracts [to have Carbon Reduction plans](#);
- new requirements to firms delivering major government contracts to [ensure prompt, fair and effective payments](#) to their suppliers down the supply chains;

¹⁷ The current thresholds are set out in Cabinet Office, [Procurement Policy Note 10/21 – Thresholds and Inclusion of VAT](#), December 2021; For example, the core rules in the PCR 2015 apply to central government bodies buying most goods and services when valued above £138,760, and to local government and other bodies above £213,477. When buying works (construction), the threshold is higher: £5,336,937.

¹⁸ Cabinet Office, [Green Paper: Transforming public procurement \(PDF\)](#), CP 353, December 2020, Annex A

- [Find a Tender](#) service for publishing contract notices above thresholds has replaced the publication requirement in the Official Journal of the European Union and the EU Tenders Electronic Daily;
- a policy for reserving procurement for local businesses, SMEs and social enterprises (see section 4.7 below).

Professor Albert Sanchez-Graells (Bristol University Law School) has described the changes as modest and said that “none of these will reduce procurement red tape and most, if not all, would have been possible pre-Brexit.”¹⁹

1.5 Green paper & consultation

Kickstarting the procurement reform, on 15 December 2020, the Government published a [green paper](#) on [transforming public procurement](#). The goal of the reform would be to speed up and simplify procurement processes, focus on value for money in public procurement, create opportunities for small businesses and support innovation in public service delivery. The new Bill would:

- Put procurement principles – value for money, the public good, transparency, integrity, efficiency, fair treatment of suppliers and non-discrimination – on a statutory basis.
- Simplify the current legislation as far as possible into a single, streamlined regulatory framework, with some sector specific adaptations, including for security and defence procurement.
- Diversify supplier base by establishing a single digital platform for registration and a new Dynamic Purchasing System (DPS+).²⁰
- Embed transparency throughout the commercial lifecycle from planning of procurement to completion of a contract.
- Besides seeking value for money, contracting authorities would be encouraged to have regard for wider economic, social and environmental outcomes of procurement throughout the procurement process – developing procurement strategy, drafting the contract terms and evaluating tenders.

¹⁹ Professor Albert Sanchez-Graells, [Doing Procurement Differently After Brexit? \[Update\]](#), 31 January 2022

²⁰ A [Dynamic Purchasing System](#) is an electronic procurement tool, where new suppliers can join at any time.

- Raise the standard of suppliers by considering their past performance and preventing unacceptable behaviour such as fraud by enabling to exclude certain suppliers.
- Make challenging procurement decisions faster and more accessible.
- Give new rights for subcontractors in the face of payment delays in public sector supply chains.²¹

Consultation process

Developing its proposals the Government engaged with a wide range of stakeholders including local governments, business groups and the devolved administrations. A consultation on the green paper ran between December 2020 and March 2021.²²

On 6 December 2021, having considered over 600 submissions, the Government published its [response to the consultation](#).²³ The Government concluded the overall response to the proposals has been positive and as a result, the most proposals would stand. It was planning to clarify and amend the proposals in some key areas in order to:

- create sector-specific exemptions from the general framework, including for utilities and security and defence procurement;
- strengthen the approach to the exclusion of suppliers from procurements, making it simpler, clearer and more focused on suppliers who pose an unacceptable risk;
- give new rights for subcontractors experiencing payment delays in public sector supply chains;
- ensure that the enhanced transparency requirements are proportionate to the procurements being carried out and are simple to implement;
- set up a new Procurement Review Unit (PRU) within the Cabinet Office to oversee the integrity of the public procurement system.²⁴

The Government's approach would also ensure that public procurement supports both national and local priorities, allowing contracting authorities

²¹ Cabinet Office, [Green Paper: Transforming public procurement \(PDF\)](#), CP 353, December 2020, pp 7-10

²² Cabinet Office, Consultation [Green Paper: Transforming public procurement \(PDF\)](#), CP 353, December 2020

²³ Cabinet Office, [Transforming Public Procurement: Government response to consultation \(PDF\)](#), CP 556, December 2021

²⁴ Cabinet Office, [Transforming Public Procurement: Government response to consultation \(PDF\)](#), CP 556, December 2021

to choose bids that create jobs and opportunities in the community, and support action on climate change.²⁵

The House of Lords Public Services Committee emphasized that local priorities and the social value would deserve more attention in the upcoming legislative proposals (see also section 1.8 on health procurement). Lord Agnew said, the Government would:

- retain the light touch regime for certain social, health and education services, which it planned to remove initially;
- retain the ability for contracting authorities to reserve certain procurements for [public service mutuals](#) and thus maintain the current approach of PCR regulation 77. It would increase the maximum contract duration for such contracts from 3 to 5 years and create power to potentially expand this regulation to a broader range of organisations.
- commit to taking account of social value in procurement, for example, by changing the assessment of bids from the current ‘Most Economically Advantageous Tender’ (MEAT) to ‘Most Advantageous Tender’ (MAT). This would signal that contracting authorities can look beyond purely economic motives.²⁶

Commenting on the green paper, Professor Emerita of the University of Nottingham, Sue Arrowsmith, commended its overall approach:

It proposes bold reforms to make the system more flexible, more streamlined and more transparent, including proposals for refocusing objectives, open contracting, a single and uniform regime, significant simplification, enhanced flexibility, including free access to negotiation and substantial improvements to enforcement.²⁷

She also cautioned about legal remedies not ensuring sufficient access to justice for smaller companies.

As in her earlier work, Sue Arrowsmith questioned why the Government had not chosen to consolidate procurement rules beyond the four EU-based directives and did not integrate provisions of UK Government acts (eg, [The Public Services \(Social Value\) Act 2012](#) and the Local Government Act 1988) into the single procurement regime, as there were no compelling reasons not to do so.²⁸

²⁵ [HLWS432](#) [Transforming Public Procurement], 6 December 2021

²⁶ [Letter](#) of Lord Agnew Kt, Minister of State, Cabinet Office to The Rt. Hon. Baroness Armstrong of Hill Top Chair, HL Public Services Committee, 6 December 2021

²⁷ Sue Arrowsmith, [Transforming Public Procurement Law after Brexit: Early Reflections on the Government’s Green Paper](#), 30 December 2020;

²⁸ As above; Sue Arrowsmith, University of Nottingham - School of Law, [Reimagining Public Procurement Law after Brexit: Seven Core Principles for Reform and Their Practical Implementation](#), Part 1, 10 January 2020; Sue Arrowsmith, [Reimagining Public Procurement Law after Brexit: Seven Core Principles for Reform and Their Practical Implementation: Part 2](#), 12 August 2020

Albert Sanchez-Graells, Professor of Economic Law at Bristol University, has suggested that the UK could use the freedom of a new legal framework and follow the EU by more actively excluding bidders from non-members of the WTO Agreement on Government Procurement – such as China, India or Brazil. Indirectly, it could be “a practical way of seeking to boost contract awards to UK companies”. In 2022, the EU adopted an International Procurement Policy Instrument, which is a new tool to limit non-EU companies’ access to the EU procurement market in response to their governments discriminating EU companies in public procurement.²⁹

1.6 National Procurement Policy Statement

In June 2021 the Cabinet Office set out the government’s strategic priorities for public procurement in a National Procurement Policy Statement (NPPS).³⁰ The statement asks all contracting authorities to have due regard for the national priorities relating to:

- Social value

The statement clarifies that throughout the procurement process, contracting authorities should take a broad view of value or money, and consider wider public benefits, such as creating new jobs, tackling climate change, improving the diversity of their suppliers, and innovation. Contracting authorities do not have to select the lowest price bid but seek the best mix of quality and price. Local priorities can be considered alongside the strategic priorities when weighing the procurement bids.³¹

- Commercial and procurement delivery

Contracting authorities are required to assess whether they have the right policies and processes in place to manage the key stages of commercial delivery, from the inception of a project, through to its delivery and assessment. They are required to follow various principles, good practices and guidance where relevant. Examples include publishing procurement pipelines, assessing the most suitable delivery model (outsourcing, in-house delivery or re-procurement), setting key performance indicators for suppliers, and mitigating modern slavery risks in their contracts.

- Skills and capability for procurement

²⁹ Albert Sanchez-Graells, [Doing Procurement Differently After Brexit? \[Update\]](#), 31 January 2022; European Parliamentary Research Service, [EU international procurement instrument](#), PE 649.403 – November 2022

³⁰ Cabinet Office, [Procurement Policy Note 05/21: National Procurement Policy Statement](#), 3 June 2021

³¹ Cabinet Office, [Transforming Public Procurement: Government response to consultation \(PDF\)](#), CP 556, December 2021, para 41

The statement requires that contracting authorities consider their skills and capability to deliver value for money through their procurement processes. It offers common benchmarks and standards of best practice.

1.7

Defence procurement

There are two sets of regulations that oversee defence procurement: The Defence and Security Public Contracts Regulations (DSPCR) and the Single Source Contract Regulations (SSCR).

The Procurement Bill will repeal the DSPCR. The Bill allows for a limited number of derogations that meet the specific needs of defence and security procurements, and a national security exemption. The Bill will also enable reforms to the SSCR.

Existing regulations

The Defence and Security Public Contracts Regulations 2011 (DSPCR) regulate the award of contracts for military and sensitive equipment, works and services.

In 2009 the EU adopted a new defence and security directive to improve efficiency and competition in the EU defence market. The directive was also intended to discourage the exemption of defence contracts from existing procurement rules. The Government transposed this directive (Directive 2009/81/EC) into UK law in 2011 as the DSPCR.

The DSPCR is ‘retained EU law’ by virtue of section 2 of the European Union (Withdrawal) Act 2018. The DSPCR was amended by two Statutory Instruments in 2019 and 2020 to ensure the rules continued to operate effectively after the UK left the EU. The amendments changed the definition of “economic operator” to cover contract, supplier and service providers in the UK and Gibraltar. Suppliers in the EU are now treated the same as suppliers outside the EU were treated when the UK was an EU Member State.³²

From June 2021 the MOD applied the Social Value Model to all procurements under the DSPCR.³³

The regulations apply to all contracts within its scope above the [financial threshold](#). The regulations do not apply in all circumstances; government to government sales, intelligence activities and military operations outside the UK are excluded.

³² [DSPCR guidance chapter 1: Overview](#), MOD, 5 October 2022, para 17. Also explained in [Explanatory memorandum to the defence and security public contract \(amendment\) \(EU exit\) regulations 2020](#)

³³ [PQ 991 \[Defence Equipment: Procurement\], 18 May 2021](#)

The Single Source Contract Regulations applies to contracts that are not competed. Historically the Ministry of Defence has awarded a significant proportion of contracts without an open competition. In 2014 the Government created a new framework for single source procurement for defence, including the introduction of new regulations, in the Defence Reform Act 2014.

Further background is available from Commons Library papers [Defence procurement reform](#) (CBP 9566), [Defence procurement reform: The Defence and Security Public Contract regulations](#) (CBP 9666) and [Defence procurement reform: The Single Source Contract Regulations](#) (CBP 9645).

Why is the Government replacing the DPSCR?

In March 2021 the MOD published a new Defence and Security Industrial Strategy (DSIS). The MOD confirmed that it had embarked on what it described as an “ambitious and comprehensive” review of the DPSCR and that the proposed reforms will help speed up and simplify the procurement process:

We will improve the pace and agility of acquisition, simplify the regulatory framework, tailor it to better enable innovation and support the pull through of new technology into defence and security capability.³⁴

In its [response to the Transforming Public Procurement consultation](#), the Government acknowledged there were some concerns around the impact of a simplified regulatory framework on contracts let under the DPSCR. The Government said that it plans to include a “number of exemptions to ensure the security implications for these contracts are considered.”³⁵

At Second Reading, Lord True, the Minister for State in the Cabinet Office, said defence procurement “will benefit from the simplification and increased flexibility of the core regime.” He also said the regulations support the delivery of the Defence and Security Industrial Strategy by “supporting a more strategic relationship between government and the defence and security industries.”³⁶

1.8 Health procurement

The NHS and public health service commissioners are currently required to procure clinical healthcare services - that is, hospital or community services - in line with the Public Contracts Regulations 2015. Various health and care services are procured under the less onerous light touch regime (see section 4.4 below).

³⁴ [Defence and Security Industrial Strategy](#), March 2021, CP 410 2021-22

³⁵ [Transforming Public Procurement – Government response to consultation](#), CP 556, 6 December 2021

³⁶ [HL Deb 25 May 2022, c857](#)

[The Health and Care Act 2022](#), which received Royal Assent in April 2022, creates a new carve-out from the overall procurement regime for clinical services, when delivered directly to patients and service users. Non-clinical services such as professional services or clinical consumables would still be covered by the procurement regime to be regulated by the future Procurement Act. The government would also make provision for mixed procurements, where a contract involves a mixture of health care and other services or goods.³⁷

The Health and Care Act 2022 provides a power to create a separate procurement regime for the clinical healthcare services (also known as the ‘provider selection regime’). Procurement personnel (commissioners of healthcare services in the NHS and local government) will refer to the common procurement vocabulary—CPV—codes to determine whether the provider selection regime or the general procurement regime should be applied.³⁸

The Procurement Bill would continue to cover healthcare services which are out of the scope of the provider selection regime, and services procured by authorities not defined as “relevant authorities” under the Health and Care Act 2022.

Before the Procurement Bill was introduced, peers had concerns about the interplay between the new health and care regime and the procurement reform. The House of Lords Public Services Committee was concerned that the procurement reform outlined in the Green paper was prioritising competition over collaboration between the NHS, local authorities and the voluntary sector, while the collaboration approach was supported by the Health and Care Bill. The Committee also wrote that the Procurement Green paper insufficiently recognised the role of the voluntary sector.³⁹

When the Procurement Bill was presented to the Commons in December 2022, the Department of Health and Social Care [had consulted on the provider selection regime](#) and was drafting regulations under the Health and Care Act 2022. See further sections 3.1 and 4.5 below.

³⁷ Commons Library briefing, [The Health and Care Bill \[Bill 140 of 2021-22\]](#), para 2.12; [Explanatory Notes to Health and Care Bill 140 2021-22](#) (PDF), para 116

³⁸ Commons Library briefing, [The Health and Care Bill \[Bill 140 of 2021-22\]](#), para 2.12; [Explanatory Notes to Health and Care Bill 140 2021-22](#) (PDF), para 116

³⁹ [Letter of Rt Hon Baroness Armstrong of Hill Top, Chair of House of Lords Public Services Committee to Lord Agnew Kt DL](#) (PDF), Minister of State, HM Treasury and Cabinet Office, 28 July 2021; Government response, [Letter from Lord Agnew, Minister of State, Cabinet Office, to Baroness Armstrong of Hill Top, Chair, Public Services Committee on procurement and commissioning in public services](#) (PDF), 15 September 2021

1.9

Devolved aspects

Public Procurement Common Framework

Procurement is a devolved area of competence. Scotland has its own procurement regulations while public authorities in Wales and Northern Ireland currently follow the UK procurement regulations, but maintain their own policies (see section 1.3 above).⁴⁰

To help co-ordinate policy development between UK nations in areas where powers have returned from the EU and intersect with devolved competencies, the four governments negotiate common frameworks. They started working on a common framework for public procurement in 2017 and agreed a [provisional Common Framework](#) in March 2022, the agreement has not yet been formalised.⁴¹

The objective of the Common Framework on Procurement is to:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations; and
- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties.⁴²

In practical terms, the Common Framework helps the four governments to exchange information, consult each other, and coordinate before developing policies and legislation. It also enables coordinating approaches in relation to the WTO Government Procurement Agreement (WTO GPA) business and other international agreements.⁴³

In the course of this engagement Wales and Northern Ireland have decided to join in developing HM Government public procurement legislative proposals. Scotland has chosen to develop its own procurement framework. Scotland has said that it will seek to maintain a procurement framework aligned with EU rules, but participates in discussions under the Common Framework.⁴⁴

⁴⁰ NI Department of Finance, [Public procurement policy in Northern Ireland](#); Welsh Government, Welsh Government procurement (accessed 2 January 2023)

⁴¹ Cabinet Office, [Public procurement: Provisional common framework](#), CP 609, 27 January 2022; Public Administration and Constitutional Affairs Committee, [Oral evidence: Common Frameworks](#), HC 1138, 22 March 2022, Q5

⁴² Cabinet Office, [Public procurement: Provisional common framework](#), CP 609, 27 January 2022; Public Administration and Constitutional Affairs Committee, [Oral evidence: Common Frameworks](#), HC 1138, 22 March 2022, Q5

⁴³ Public Administration and Constitutional Affairs Committee, [Oral evidence: Common Frameworks](#), HC 1138, 22 March 2022

⁴⁴ Public Administration and Constitutional Affairs Committee, [Oral evidence: Common Frameworks](#), HC 1138, 22 March 2022, Qq5, 44

Working on procurement reform

According to the Government’s own assessment, throughout the process of developing its legislative proposals it has fruitfully engaged with the devolved administrations.⁴⁵

On 18 August 2021, The [Welsh Government wrote](#) that Wales would join the UK Government Procurement’s Bill. It noted however that the UK Government’s and its own views diverged about “both the value and the role that things like fair work can and should play in procurement”. Therefore the Welsh Government has proposed a Social Partnership and Public Procurement (Wales) Bill, which is currently under consideration in the Senedd Cymru.⁴⁶

Nevertheless, the Welsh Government has decided that adhering to the UK legislative framework would not restrain its ability to achieve the desired social outcomes. It had received written guarantees from the UK Government to that effect. Welsh officials were working closely with the UK Government officials in developing the Procurement Bill.⁴⁷

Lord True, the then Cabinet Office Minister, said at the Bill’s second reading that the Scottish Government had opted not to join the UK Government Bill and would retain its own procurement regulations in respect of devolved Scottish authorities. It would maintain the current situation, with the Scottish Government having transposed the EU directives into Scottish law.⁴⁸

Devolved legislative consent

The UK Parliament normally only legislates about devolved matters with the consent of the relevant devolved legislature. Therefore, for the Procurement Bill the UK Government is seeking legislative consent of the Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly.

The Bill extends to England and Wales, Scotland and Northern Ireland as stated in Clause 122. The majority of the Bill’s provisions apply in equal measure to contracting authorities in England, Wales, and Northern Ireland, but a few clauses contain specific provisions for procurement done by Welsh or Northern Irish devolved authorities.⁴⁹

Scotland

In relation to Scotland, the Bill would for the most part apply only to the procurement activities of bodies exercising reserved functions. Only Clause 90

⁴⁵ [HLWS432, 6 December 2021](#)

⁴⁶ Welsh Government Written statement, [The Way Forward for Procurement Reform in Wales](#), 18 August 2021; Senedd Cymru, [Social Partnership and Public Procurement \(Wales\) Bill](#) page (accessed 2 January 2023)

⁴⁷ Welsh Government Written statement, [The Way Forward for Procurement Reform in Wales](#), 18 August 2021

⁴⁸ [HL Deb 25 May 2022 \[Procurement Bill \[HL\]\]](#)

⁴⁹ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218 EN, 14 December 2022, paras 38-42

on the implementation of new trade agreements relating to procurement and Clause 111 in relation to cross-border procurement would apply to all public procurement in Scotland.⁵⁰

The Scottish Government did not recommend consent to this Bill as introduced.⁵¹ Its main issues were:

- the scope and extent of the Bill will legislate for procurements undertaken in Scotland within the competence of the Scottish Parliament, so consent would depend on the acceptability of the rest of the Bill;
- the delegated powers are concurrently exercisable by UK and Scottish Ministers within devolved areas; and
- the delegated powers are significantly broader than are required, without any consent mechanism in place.⁵²

The Scottish Government's main areas of concern were the implementation of international agreements covering procurement, and cross-border procurement within the UK. On cross-border procurement it said that the new rules on framework agreements and similar arrangements would not be compatible with the rules in Scotland. As a result, contracting authorities subject to the Scottish Regulations would not lawfully be able to award a contract under a framework put in place under the UK rules, or vice versa. It argued that provisions on joint procurement by Scottish and other authorities should be made in the Bill, not by delegated powers in secondary legislation.⁵³

Wales

The Welsh Government has laid a [Legislative Consent Memorandum](#) (LCM) and subsequent supplementary LCM's updates before Senedd Cymru.⁵⁴ While supporting the Bill in general, the Welsh Minister did not recommend consenting with it until some outstanding issues were solved. Among other aspects, the Minister disagreed with the Bill providing for concurrent powers, where a Minister of the Crown would be able to exercise these powers without obtaining the consent of the Welsh Ministers.⁵⁵ Senedd Cymru is considering a consent motion.

⁵⁰ [Legislative Consent Memorandum: Procurement Bill, 25 May 2022](#)

⁵¹ Scottish Parliament, [Procurement Bill](#), 25 May 2022

⁵² Legislative Consent Memorandum: delegated powers relevant to Scotland in the Procurement Bill, The Scottish Parliament Delegated Powers and Law Reform Committee, SP Paper 238, 49th Report, 2022 (Session 6), 11 October 2022

⁵³ Eg, Clause 111 (103 as introduced) of Procurement Bill (Bill 218); Scottish Government, [Legislative Consent Memorandum](#), 25 May 2022

⁵⁴ Senedd Cymru, [Legislative Consent: Procurement Bill](#) (accessed 4 January 2023)

⁵⁵ Welsh Government, Legislative consent memorandum (No3), Para 123

Northern Ireland

Northern Ireland has not published information on the Legislative Consent Motion.⁵⁶ Since the 5 May Northern Ireland Assembly Elections the Assembly is not functioning, and the Northern Ireland Executive cannot take any new decisions.⁵⁷

1.10 International obligations

The UK is signatory to international agreements on public procurement, of which the most significant ones are the World Trade Organisation (WTO) Agreement on Government Procurement (GPA) and the Trade and Cooperation Agreement (TCA) with the EU.⁵⁸

These agreements require signatory parties to conduct procurement fairly and transparently, treat goods, services and suppliers from the partners without discrimination, and no less favourably than domestic goods, services and suppliers, when they seek to bid for contracts covered by these agreements. Therefore international commitments are a constraint to policies such as Buying British which can be discriminatory. Any amendments to the UK's procurement regime would have to be in line with its international obligations.

A full list of relevant international agreements is in Schedule 9 of the Bill. The most significant in this context are the GPA and the TCA.

The GPA commits its 21 members – including major economies like the US, the EU, Japan and South Korea – domestic treatment of each-other's suppliers with regard to covered procurement.

The scope of the TCA is considerably wider: it requires treating equally EU suppliers based in the UK, when bidding for all procurement, including below-threshold contracts. The TCA also covers utilities' procurement, but explicitly excludes procurement of healthcare services and defence.⁵⁹

The UK's first independent free trade agreements with Australia and New Zealand also include procurement chapters. Their commitments would be implemented by powers given to the Ministers under the [Trade \(Australia and](#)

⁵⁶ NIassembly.gov.uk, [Legislative Consent Motions](#), accessed 7 June 2022

⁵⁷ Commons Library, [Northern Ireland Protocol](#), 26 June 2022

⁵⁸ The UK is an independent signatory of the GPA since 1 January 2021. Previously, the UK was participating in the GPA through its EU membership.

⁵⁹ Dr Totis Kotsonis, law firm Pinsent Masons, [Public procurement in post-Brexit UK](#), 22 January 2021; Michael Bowsher K.C., [The Public Procurement Provisions in the UK-EU Trade and Cooperation Agreement](#), EU relations blog, 28 December 2020

[New Zealand\) Bill 2022](#). This Bill has completed its Commons stages and is under consideration in the House of Lords.⁶⁰

Further information

Cabinet Office, [Procurement Policy Note – Requirements for contracts covered by the WTO Government Procurement Agreement and the UK-EU Trade and Co-operation Agreement](#) (PDF), January 2021

⁶⁰ [Trade \(Australia and New Zealand\) Bill](#); Commons Library briefing, [Trade \(Australia and New Zealand\) Bill 2022-23](#) 11 November 2022

2

The Procurement Bill: introduction

[The Procurement Bill](#) (HL Bill 4, 2022-23, PDF) was first introduced in the House of Lords on 11 May 2022 and completed its Lords stages on 13 December 2022. The Bill (HL Bill 218) received its first reading in the House of Commons on 14 December. Its second reading is scheduled for 9 January 2023.

The Bill is the legislative basis for a reform of the UK public procurement regime. It would repeal the current EU-law based procurement regulations, which in Government's view are too restrictive and complex for both public buyers and suppliers. The Bill proposes new rules and procedures for central government departments, their arms-length bodies and wider public sector bodies when awarding supply contracts with a value above certain thresholds. It also contains provisions to regulate smaller, below-threshold procurement.⁶¹

The new regime would be based on value for money, competition and objective criteria in decision-making. The Government intends to simplify the procurement process, make it more flexible and open up procurement for new entrants, including small businesses and social enterprises.

The Procurement Bill as brought from the House of Lords and introduced in the House of Commons has 124 clauses arranged over 13 parts, and 11 schedules. The Bill contains a number of regulation-making powers.

2.1

Overview of the Bill

A factsheet on the Bill published by the Cabinet Office argues that the legislation would have the following benefits:

- Removing the current EU procurement regime. The application of a single regime for procurement (reduced from four EU procurement regimes) would reduce administrative costs and increase competition.
- Reducing red tape. Replacing EU-law derived rules would reduce costs for businesses and the public sector and “drive innovation by allowing buyers to tailor procurement to their exact needs”.

⁶¹ [Explanatory Notes to the Procurement bill \[HL bill 4, as introduced\]](#) (PDF), 13 May 2022, paras 38-43, para 11

- Making it easier for business to work with the public sector. The Bill would be used to create “a single digital platform for suppliers to register their details that can be used for all bids” and a “single central transparency platform” for suppliers to see opportunities. Small and medium-sized enterprises (SMEs) would be helped through prompt payment.
- Retaining value for money as the highest priority in procurement. However, the Bill would require “buyers to take account of national strategic priorities such as job creation potential, improving supplier resilience and tackling climate change”. Competitions could be reserved for UK suppliers, SMEs and social enterprises where a contract was below a certain threshold. This would assist with the government’s levelling up agenda.
- Creating a new exclusions framework to exclude suppliers who had underperformed on other contracts. It would also create a ‘debarment register’, to allow public sector organisations to see which companies should be excluded from contracts.
- Improving transparency. The bill would increase transparency and openness in public procurement by including mandated notices for direct awards and extending publication requirements “from planning to termination, including contract performance”.
- Improving procurement in a crisis. A new competition process for emergency procurements would allow contracting authorities to act at pace.⁶²

Part 1: Key definitions

Part 1 outlines the Bill’s scope. **Clause 1** defines “procurement”, meaning any procurement, and “covered procurement”, which relates specifically to public contracts above value thresholds and is covered by the vast majority of the Bill’s provisions. This clause was inserted in the Lords.

Clauses 2 and 3 define a covered “contracting authority” and “public contracts” in-scope. Subsections 5 and 6 of Clause 2 introduce Schedules 1 and 2. **Schedule 1** sets out the contract value threshold above which procurement rules would apply. **Schedule 2** lists contracts that would be exempted from the application of the future Act. This would include:

- contracts between several contracting authorities (horizontal arrangements)
- contracts between authorities and entities controlled by them (vertical arrangements)

Part 2 of the briefing refers to Bill’s clause numbers as brought to the Commons (Bill 218). For clause number changes see concordance table in annex.

⁶² Cabinet Office, ‘[Simpler, more flexible and transparent procurement](#)’, 12 May 2022

- acquisition of land and buildings
- broadcasting
- legal services and others.

Clause 4 states that contracting authorities would have to estimate the value of a contract to assess whether it exceeds contract value threshold, and is therefore covered by the rules in the Bill.

The valuation rules are set out in **Schedule 3**. They would ensure that contracts are not artificially fragmented in order to escape the value thresholds for covered procurement. The basic rule would be that the contracting authority adds up the value of all the contracts if they could reasonably have been supplied under one contract. However, to allow flexibility, the contracting authority would not have to aggregate contracts if it had “good reasons” not to. The schedule does not specify what “good reasons” are.⁶³

Clause 5 relates to mixed procurement where elements of a contract may be above or below monetary thresholds.

Clause 6 would provide a definition for utilities contracts with relevant utility activities specified in Schedule 4. **Clause 7** would define defence and security contracts, and **Clause 8** would define concession contracts.

The Government intends to retain the current scope of the light touch contracts under the Public Contracts Regulations (PCR) 2015– a special regime for certain services, such as education, health and social services exempted from the full requirements of the procurement regime. **Clause 9** would create powers to specify by regulation which contracts would be deemed to be “light touch contracts” under the new regime. The regulation-making power under clause 9(2) relates to Clause 116 dealing with NHS procurement.

Clause 10 covers mixed procurement, where contracts contain elements that may be subject to a special regime – that is, concession, defence and security, light touch and utilities – in combination with elements subject to the general procurement rules.

Part 2: Principles and objectives

This part of the Bill outlines the principles and objectives that would guide the award of a public contract. **Clause 11** would mandate that procurement is done in accordance with the future Act. It sets out that “a procurement” relates to the entire process of selecting a supplier, and contract management through to its end and a designated method of procurement – competitive award, direct award, and/or award under a framework – must be

⁶³ [HL Deb 6 July 2022, c289GC](#)

followed. It specifies that a “contracting authority” may organise a procurement on its own behalf or act jointly with other authorities.

Clause 12 says that contracting authorities “must have regard” for delivering value for money, maximising public benefit, transparency and acting with integrity, and must treat suppliers equally. As amended, Clause 12(4) says that they must also have regard to particular barriers to participation that SMEs may face.

Contracting authorities would be required to support the delivery of strategic national priorities. **Clause 13** would make provision for a national procurement policy statement to support this (see 1.6 above). **Clause 14** would make provisions for a Wales procurement policy statement.

Part 3: Award of public contracts and procedures

This part of the Bill sets out how a contracting authority can organise a procurement and award a contract. It aims to make procedures more flexible and less prescriptive.

Chapter 1 (Preliminary steps) would outline what a contracting authority can do before publishing a tender notice, including publicity of planned procurement and early engagement with potential suppliers (**Clauses 15-18**).

Chapter 2 (Competitive award) deals with the procurement process.

Clauses 19 to 25 cover the terms of a procurement. The title of **Clause 19** was amended into “Awards of public contracts following a competitive tendering procedure” in the Grand Committee.

This clause would mandate contracting authorities to only award contracts to the “most advantageous tender” – a tender that according to the contracting authority satisfies both its requirements and meets the award criteria the best. According to Explanatory Notes, this would require contracting authorities “to have regard to delivering value for money and maximising the public benefit from the contract”. Rules for designing the award criteria are in Clauses 23 and 24.⁶⁴

Clause 20 outlines the two main competitive tendering procedures:

- a single stage “open procedure”, which is open to any interested bidders, and
- a multi-stage, “competitive flexible procedure”, where the number of participants can be limited at any stage. This procedure is intended to be designed to suit the needs of a particular contract and market.

Clause 21 covers the publication of tender notices and associated documents.

⁶⁴ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022, para 26

Clause 22 (Conditions of participation) allows contracting authorities to set legal, financial and technical conditions on suppliers' participation in a tender, but such conditions must be proportionate to the contract.

Clauses 23-24 outline the rules for drawing up and refining the award criteria against which bids are assessed during the competitive tendering procedure (procurement). In drawing up the award criteria, a contracting authority would have to ensure that the criteria:

- (a) relate to the subject-matter of the contract,
- (b) are sufficiently clear, measurable and specific,
- (c) do not break the rules on technical specifications in section 24 [now Clause 56 in Chapter 6], and
- (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.⁶⁵

The Grand Committee moved former Clause 24, now Clause 56, (Technical specifications) to Chapter 6.

Clause 25 (Sub-contracting specifications) would permit direct awards of sub-contracts in special cases set out in section 41. Contracting authorities would also be permitted to require that a contractor subcontracts part of the contract won in an open procedure to a particular supplier.

Clauses 26-31 covering exclusions and modifications set out the circumstances in which contracting authorities must or may exclude certain suppliers from a procurement process or – at a later stage – from a contract award due to misconduct, poor past performance or improper behaviour. In the Committee the title of Clause 27 was amended to 'Excluding suppliers from a competitive flexible procedure'.

Schedules 6 and 7 introduced here would contain the respective mandatory and discretionary exclusion grounds. **Clause 31** would allow to modify the terms of a covered procurement in certain cases during the competitive process.

Clauses 32 and 33 would ensure that certain contracts can be reserved for sheltered employment providers to disabled or disadvantaged persons, and [public service mutuals](#). These are former public sector organisations which continue to deliver public services and aim to have a positive social impact.

Clauses 34-40 would provide for a new type of procurement procedure – a dynamic market. Contracting authorities and utilities would be able to establish a 'dynamic market' for all procurement and design membership conditions for suppliers. A dynamic market would have an unlimited number of suppliers and would always remain open for new joiners. It is intended as a faster, more efficient procedure with a timescale of four to six weeks. The

⁶⁵ Clause 22(2)

current Dynamic Purchasing System is only available for commonly used goods and services and has a timescale of six to nine months.⁶⁶

In Chapter 3 (Direct award), **Clauses 41-44** outline a limited number of circumstances in which it might be necessary to award a contract without competition. **Schedule 5** sets out when direct award would be justified, including for the production of a prototype or reasons of extreme and unavoidable urgency. A Minister of the Crown would have power to draw up regulations governing direct award of contracts in order to protect life or public order (**Clause 42**). Explanatory Notes explain that the purpose of this clause is

to ensure procurements during an emergency event (like the Covid-19 pandemic) can be conducted as quickly and transparently as possible, even if the circumstances leading to the event are foreseeable (which may rule out the extreme urgency justification for direct award contained in Schedule 5).⁶⁷

Chapter 4 (Award under frameworks), **Clauses 45-49**, sets out the proposed rules for a type of a contract “where a limited number of suppliers can be put on a list and certain types of contracts (specified in the framework procurement) can be awarded” in the future more easily.⁶⁸ Such contracts could be awarded directly to a supplier or following a competition among the preselected framework suppliers. A framework would generally be limited to a term of four years (or eight years for utility frameworks, and defence and security frameworks).

Chapter 5 (After award, standstill periods and notices) details further transparency requirements. Contracting authorities would be required, for example, to publish a contract award notice (**Clause 50**), key performance indicators for contracts worth over £5 million (**Clause 52**), and contract details (**Clause 53**). A standstill period (**Clause 51**) would be a pause after the publication of the contract award notice giving an aggrieved bidder an opportunity to complain about a contract award before it is signed.

In Chapter 6 (General provision about award and procedures), **Clause 54** would establish the minimum periods that contracting authorities should allow for the submission of tenders during the procurement. **Clause 55** would require a notice is published if a procurement is terminated. **Clause 56** would mandate technical specifications such as product standards to be drawn up in a way that does not discriminate between equivalent goods, services or suppliers or restrict competition.⁶⁹

Clauses 57 and **58** set out the circumstances in which a contracting authority would be allowed to exclude a supplier from a procurement due to serious

⁶⁶ Cabinet Office, [Green Paper: Transforming public procurement \(PDF\)](#), CP 353, December 2020, para 137; [HL Deb 24 October 2022, c311GC](#)

⁶⁷ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022, para 273

⁶⁸ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 18

⁶⁹ In the original draft of the Bill this clause was in Chapter 2.

misconduct, unacceptably poor performance or other circumstances which would make the supplier unfit to bid for public contracts. The Government's intent is to make it easier for contracting authorities to reject suppliers which pose unacceptable risks.

Schedule 6 outlines the mandatory grounds and **Schedule 7** covers the discretionary grounds for exclusion. **Clauses 59-65** would cover procedures relating to debarment of suppliers. **Clause 59** would provide for a public debarment list for serious cases of misconduct and give a Minister of the Crown power to add a supplier to the debarment list following an investigation. **Clause 63** would regulate the removal of suppliers from debarment the list. **Clause 64** would regulate appeals against ministerial debarment decisions.

Part 4: Management of public contracts

This part sets out the steps contracting authorities would be required to take during a contract's lifetime, after a contract has been awarded. This includes recognising e-invoicing, ensuring prompt payment to suppliers and a requirement to publish information about payment compliance – the authority paying suppliers in time (**Clauses 66-69**).

Clause 70 would require a contracting authority to assess suppliers' performance against key performance indicators and publish this information. This would apply to major contracts with an estimated value above £5 million.

Clauses 71-72 would regulate how the whole contract or a part of it could be sub-contracted to another supplier, and prompt payment to sub-contractors.

Clauses 73-76 outline the circumstances under which a contract could be modified during its term without having to conduct a new procurement. The grounds for permitted modifications are in **Schedule 8**. In some cases a contracting authority would be required to publish a contract change notice. In the Committee, former Clause 70 was split to cover 'Contract change notices' (now Clause 74) and 'Publication of modifications' (now Clause 76).

It would be possible to terminate public contracts under the terms in **Clauses 77-79**.

In the Lords committee, a new **Clause 78** was added to allow a contracting authority to terminate a contract on national security grounds by agreement of a Minister of the Crown.

Part 5 Conflict of interest

Clauses 80-82 in this part of the Bill outline how contracting authorities would be required to identify and deal with conflicts of interest.

Part 6: Below-threshold contracts

This part of the Bill (**Clauses 83-87**) sets out the rules for procurement of contracts with a value below the thresholds listed in Schedule 1. Such smaller contracts would be subject to less onerous requirements, but procurement would follow some basic standards of transparency and prompt payment to suppliers.

For example, an authority would be able to choose whether to advertise such a tender or rely on an existing framework agreement or a dynamic market. After entering into a contract worth more than a certain threshold (a “notifiable below-threshold contract”), an authority would have to publish a notice of contract details. The threshold would be £12,000 for central government authorities and a £30,000 for all others.

Clause 85, added in the Lords, would require contracting authorities to have regard for SMEs and consider removing potential barriers they might face competing for a below-threshold contract. **Clause 87** would regulate prompt payment rules for below-threshold contracts. According to the explanatory notes, these rules mirror the prompt payment rules for the main, above-threshold regime (clauses 67 and 72), but are adapted for the below-threshold context.⁷⁰

Part 7: implementation of international obligations

This part of the Bill (**Clauses 88-90**) would allow the UK to implement its obligations under international treaties which require giving suppliers from the ‘treaty state’ access to the UK procurement market. Discrimination against ‘treaty state suppliers’ would be prohibited.

The relevant international agreements are listed in **Schedule 9** and there would be a power to make regulations to modify the Schedule and include future trade agreements. See section 1.10 above on UK’s international obligations.

Part 8 Information and notices: general provision

Part 8 of the Bill (Clauses 91 to 96) is focused on transparency in procurement. The Government aims to ensure that procurement information is publicly available, not only to support competition but also to give the public insight into the spending of public authorities.⁷¹

Clause 91 would require publication of procurement pipelines for all procurements over £2 million, by any contracting authority spending more than £100 million a year on contracts that are not exempted from procurement.

⁷⁰ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022, para 521

⁷¹ [HL Deb 25 May 2022](#), cc858-859

Clause 92 would make exemptions for withholding information in the interest of national security, and information that is commercially sensitive.

Clause 93 would provide an appropriate authority power to make regulations outlining the form and content of procurement information which contracting authorities would be required to publish or otherwise provide under the Bill.

The Government announced in the green paper that it intended to create a single digital platform for registering contracts, and would require all contracting authorities to publish procurement and contracting data throughout the commercial lifecycle to this central platform. In the House of Lords, new subsections (4) and (5) were added to this clause, to mandate the Government to establish such an online transparency platform.⁷²

Clause 94 would promote electronic communication.

Clause 95 would give an appropriate authority power to make regulations about the type of procurement information to be shared and through which channels, including online systems. This would support the creation of a single register of suppliers.

A new Clause inserted by the House of Lords (**Clause 96**) would not allow information to be disclosed if it is covered by the data protection legislation defined in the Data Protection Act 2018.

Part 9 Remedies for breach of statutory duty

Clauses 97-103 outline the remedies that would be available to UK or treaty state suppliers looking to bring a claim against a contracting authority for breach of procurement rules, where that has resulted in loss or damage. These clauses detail the remedies, which would be available at different stages of procurement, and the applicable time limits on claims.

For example, any claim made in civil court during an applicable standstill period between the decision to award a contract and the contract entering into force, would automatically suspend the procurement (**Clause 98**).⁷³

Part 10 Procurement oversight

Clauses 104-106 of the Bill would give an appropriate authority power to investigate compliance of contracting authorities with the procurement regime and issue both individual recommendations and wider guidance for contracting authorities. A new procurement review unit, announced in the green paper, would exercise oversight functions on behalf of the Minister, but this entity is not explicitly referenced in the Bill.⁷⁴

⁷² Cabinet Office, [Green Paper: Transforming public procurement \(PDF\)](#), CP 353, December 2020, para 175

⁷³ [HL Deb 25 May 2022, c859](#)

⁷⁴ [HL Deb 24 October 2022, c341GC](#)

Part 11 Appropriate authorities and cross-border procurement

This part would regulate the overlap in functions between UK Ministers, Welsh Ministers and Northern Ireland departments. It would also regulate Scottish authorities' access to purchasing arrangements covered by the Bill.

Clauses 107 and 108 detail the limits of the respective powers of the Welsh Ministers and Northern Ireland departments under the Bill. **Clause 109** sets out the areas where a Minister of the Crown would not be able to exercise functions because they fall within the devolved competence of the Welsh Ministers or concern excepted matters of a Northern Ireland department. Clause 109 also outlines the areas of concurrent powers.

Clause 110 defines 'procurement arrangements' as dynamic markets, frameworks, joint procurement by several authorities, and arrangements set up by centralised procurement authorities. It would regulate situations where such procurement arrangements would be considered devolved or reserved.

Clause 111 sets out how Scottish devolved authorities would be able to access devolved and reserved procurement arrangements such as frameworks and dynamic markets. It would also create powers to make regulations regarding such cross-border procurement.

Part 12 Amendments and repeals

This part would provide for amendments and repeals of other Acts. The Local Government Act 1988 (s.17(1)) prevents local authorities and certain other bodies from considering non-commercial matters in their procurement. The Cabinet Office argued that this could cause a problem for the Bill:

This risks cutting across certain provisions in this bill, in particular around the national policy statement and the extent to which social value can be considered as part of the expenditure of public funds on procurement.⁷⁵

Therefore **Clause 112** would contain power to disapply the duty under section 17 by regulation.

Clause 113 sets out that **Schedule 10** would amend the Defence Reform Act 2014 in relation to single source defence contracts.

Clause 114 would make provisions for concurrent powers in the Government of Wales Act 2006.

Clause 115 refers to **Schedule 11** which lists primary and secondary legislation to be repealed.

Delegated powers in the Bill are discussed in more detail in section 4.3 below.

⁷⁵ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 173

Part 13 General

This part contains some provisions of general application.

Clause 116 (Clause 108 as introduced) would have given a Minister of the Crown power to make an exemption for procurement by NHS in England. With it, “certain healthcare and associated contracts, for certain bodies” could have been carved out of the scope of the bill regime.⁷⁶ In the Lords, Clause 116 was amended to remove power to make regulations in respect of healthcare procurement. According to Explanatory Notes, now the clause “reiterates that the Bill will apply to procurement by NHS England”.⁷⁷

Clause 117 would give power to amend this Act in relation to private utilities. **Clause 118** sets out which procedures would be applied to regulations made under this Act.

Clause 120 contains an index of defined expressions used in the Bill.

Bill’s provisions would come into force on dates set out by ministerial regulation (**Clause 123**).

2.2 Territorial extent

Formally, the Bill extends to England, Scotland Wales and Northern Ireland (Clause 122), but the majority of its provisions covers England, Wales and Northern Ireland. [Scotland has its own procurement framework](#) and its contracting authorities are not covered by the Bill. However, the Bill does apply to cross-border public bodies in Scotland and bodies with only reserved powers.⁷⁸ Annex A to the Explanatory Notes to the Bill has a clause-by-clause overview of Bill’s application in the devolved nations.

The Government has requested legislative consent of the devolved parliaments. See section 1.9 above.

2.3 Further information on the Bill

- [Explanatory Notes to the Procurement bill \[HL bill 218-EN\]](#) (PDF) as brought from the House of Lords⁷⁹

⁷⁶ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 40

⁷⁷ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022, para 663

⁷⁸ [Explanatory Notes to the Procurement bill \[HL bill 4, as introduced\]](#) (PDF), 13 May 2022, paras 38-43

⁷⁹ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022

- Government Commercial Function, [The Procurement Bill - a summary guide to the provisions](#), 16 June 2022
- Cabinet Office, [Transforming Public Procurement - Our Transparency Ambition](#), July 2022⁸⁰
- Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022
- House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), [3rd Report of Session 2022–23, Procurement Bill](#), HL Paper 15, 14 June 2022
- Cabinet Office, [Impact Assessment. Procurement Reform Bill](#), CO2024, 21 April 2022
- Ministry of Defence, [Single Source Defence Contracts: Amendments to the Defence Reform Act 2014](#), 9 May 2022
- Further background to the Bill as introduced in the House of Lords is in the Lords Library briefing for Lords stages.⁸¹

Further information is on the [Bill’s page on Parliament.uk](#).

2.4 Commentary

Comparing the ambition of the green paper on Transforming Public Procurement and the Bill as brought forward, legal experts have noted that some of the green paper’s proposals were not fully reflected in the Bill. Notably, this concerns both the Government’s transparency ambition and attention to the social value in procurement.⁸² During the Lords stages, members extensively debated whether stronger references to social value should be included in the Bill and how to address transparency provisions.

Some commentators doubt whether including the rules for utilities in the single framework would make it easier to apply utilities exemptions; these provisions are placed throughout the main body of the Bill and within the schedules.⁸³

⁸⁰ Cabinet Office, [Transforming Public Procurement - Our Transparency Ambition](#), 30 June 2022

⁸¹ [Procurement Bill \[HL\]](#), House of Lords Library briefing, 20 May 2022

⁸² Sally Guyer, Global CEO, World Commerce and Contracting, 20 Sept 2022, [Institute for Government event](#) Carillion: four years on.

⁸³ Womble Bond Dickinson, [Differences between the new procurement bill and the government response to the green paper](#), 10 August 2022

Womble Bond Dickinson LLP says that the greater freedom for contracting authorities to design procurement processes would have to be balanced against the increased administrative requirements in the Bill, which seek to ensure transparency of procurement.⁸⁴

Addleshaw Goddard LLP notes that the green paper mentioned a possibility of a separate procurement tribunal which could have made litigation speedier and more cost-effective in case of a breach of procurement rules. This proposal did not appear in the Bill. High Court litigation, they argue, can cause significant delay to the procurement process and can have a chilling effect on a challenger's willingness to mount a claim against a contracting authority.⁸⁵

Albert Sanchez-Graells, Professor of Economic Law at Bristol University, notes that it is currently hard to tell how different the new regime will be:

It is difficult to gauge whether the government's proposals will result in a legislative text that materially deviates from the current rules. It is also unclear to what extent the new Procurement Review Unit will have effective oversight powers, or enforcement powers.

The Procurement Bill, moreover, contains only the bare bones of a future regime. Secondary legislation and volumes of statutory guidance will be adopted and developed once the final legislation is in place.⁸⁶

Other stakeholder commentary is included in the sections of this briefing which discuss specific issues.

More information

- Herbert Smith Freehills, [The long-awaited Procurement Bill goes before Parliament: 10 key features](#), 23 May 2022 - provides a succinct overview of the main changes introduced by the Bill.
- Albert Sanchez-Graells, Professor of Economic Law at Bristol University, [Initial Comments on the UK's Procurement Bill: A Lukewarm Assessment](#), May 2022 - The article takes stock of the proposals of the green paper that have not made it into the Bill. It also highlights some "important aspects of procurement regulation that the Bill does not cover" and which may come back as secondary legislation or guidance.
- Jorren Knibbe, [The Procurement Bill – a first look](#), Local Government Lawyer, 20 May 2022 - compares the Bill to the current, EU law-based rules.

⁸⁴ Womble Bond Dickinson, [Examining changes to competitive tendering procedures under new Procurement Bill \[via Lexology\]](#), 15 Dec 2022

⁸⁵ Addleshaw Goddard LLP, [The Procurement Bill: What's missing?](#), 22 December 2022

⁸⁶ Albert Sanchez-Graells, [UK Regulation after Brexit revisited - public procurement](#), UK in a Changing Europe, 15 November 2022

- Local Government Association, [Procurement Bill, Second Reading, House of Lords](#), 23 May 2022

3 House of Lords scrutiny of the Bill

3.1 Second reading debate

Part 3 of the briefing refers to Bill’s clause numbers as introduced in the House of Lords (Bill 4). For clause number changes see concordance table in annex.

The [Lords second reading debate](#) took place on 25 May 2022.⁸⁷

Members of the House of Lords generally welcomed the Bill and raised various issues and concerns which were debated later in the Grand Committee and in the report stage. These themes included:

- procurement objectives and principles;
- health and care procurement;
- defence procurement;
- eradicating forced labour and modern slavery from supply chains;
- equal treatment of suppliers, and fair and open competition;
- supporting small and medium sized enterprises throughout procurement; and
- transparency in procurement processes.

Lord True (Con), the then Minister of State at the Cabinet Office, introduced the Bill on behalf of the Government. He said this “large and technical Bill” reflected over two years of intense policy development.⁸⁸ The Bill was an opportunity to remove the current regime, seen by the Government as too restrictive and bureaucratic. The Bill would consolidate 350 different procurement regulations spread over several regimes for different types of procurement into a single regime. According to the Government, this would better fit the UK’s needs, while remaining compliant with the country’s international obligations. Lord True summarised the Bill’s aims:

[The Bill] will introduce a new regime that is based on value for money, competition and objective criteria in decision-making. It will create a simpler and more flexible commercial system that better meets our country’s needs, and it will more effectively open up public procurement to new entrants such as small businesses and social enterprises, so that they can compete for and win more public contracts.⁸⁹

⁸⁷ [HL Deb 25 May 2022](#)

⁸⁸ [HL Deb 25 May 2022, c856](#)

⁸⁹ [HL Deb 25 May 2022, c856](#)

Baroness Hayman (Lab) said the Official Opposition supported the Government’s ambition of speeding up and simplifying the procurement processes, and particularly welcomed the move to awarding contracts based on most advantageous tender (MAT), rather than the most economically advantageous tender (MEAT) built into the current regime. Labour also supported improving SMEs’ and social enterprises’ access to government contracts.⁹⁰

Procurement objectives and principles

A key concern of members from across the House was how procurement objectives and the legal principles of procurement introduced in the Green paper – the public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination – would be reflected on the face of the Bill.⁹¹

The Labour Party noted the Green paper included several proposals, which had its backing, but were not explicit in the Bill:

- the environment and climate change objectives;
- a reference to sustainable procurement;
- a reference to social value in procurement; and
- the digital single suppliers’ portal, based on a “tell us once” principle.⁹²

Referring to deficient transparency and scrutiny of government contracting during the pandemic, Baroness Hayman saw the Bill as an opportunity to create a rigorous regime able to prevent that from happening in the future. However, in her view the Bill’s transparency provisions and reporting requirements for public authorities were watered down compared to the government proposals in the Green paper.⁹³

There was support from across the House for including objectives in relation to the **environment and climate change** in the Bill and ensuring through procurement that businesses move their supply chains to a more sustainable model.⁹⁴

Lord Lansley (Con) said the procurement objectives and principles should have both public benefit and social value:

government should be very clear that the procurement objectives include not only public benefit but social value, and the latter must be defined in the national procurement policy statement in the ways that we specify in the Bill. [...], including the issues relating to climate change, supply chain resilience

⁹⁰ [HL Deb 25 May 2022, cc860-863](#)

⁹¹ [HL Deb 25 May 2022, cc863-867](#); [HL Deb 25 May, 2022 c895](#); [HL Deb 25 May 2022, c871](#)

⁹² [HL Deb 25 May 2022, cc860-862](#)

⁹³ [HL Deb 25 May 2022, c860](#)

⁹⁴ See Baroness Young (Lab), Baroness Parminter (LD), Baroness Hayman, Lord Stevens, Lord Lansley

and the importance, from my point of view, of procurement-led innovation in the economy.⁹⁵

The Minister responded that procurement principles outlined in the Green paper were split in the Bill into a group of objectives (delivering value for money, maximising public benefit, sharing information, and acting, and being seen to act with integrity (Clause 11(1)) and rules. The latter, for example, included same treatment (previously equal treatment), non-discrimination against treaty-state suppliers, and national rules on non-discrimination (Clauses 81 to 83). In addition, the Bill would require contracting authorities to have regard to national and local priorities, including net zero, as set out in a national procurement policy statement (NPPS) and a Wales procurement policy statement.⁹⁶

Health and care procurement

Members from across the House – including Baroness Hayman, Baroness Brinton, Baroness Noakes, Lord Hunt and Lord Stevens – asked about the interplay of the provider selection regime under the Health and Care Act 2022 and the procurement reform (summarised in section 1.8 above).

Labour and Liberal Democrat members said that the Health and Care Act 2022 had effectively given the Secretary of State power, through regulation, to change NHS procurement process, without sufficient information on which elements of NHS contracts would be excluded from procurement. They asked for government assurances that protections and transparency under the Procurement Bill would also apply to excluded NHS procurement.⁹⁷ Lord Lansley (Con) noted that in NHS procurement, “‘light touch’ should not mean without proper transparency”.⁹⁸

Following the second reading, the Government clarified in [a letter to the Lords that the Procurement Bill would be disapplied](#) (PDF) for a tightly defined subset of healthcare services provided to patients and service users, and to the extent these services would be procured by relevant healthcare authorities including NHS bodies and local authorities. The services would be precisely defined based on Common Procurement Vocabulary (CPV) codes. The Cabinet Office and the DHSC worked in step to develop the new framework.⁹⁹

The discussion continued throughout the Lords’ proceedings (see section 4.5).

⁹⁵ [HL Deb 25 May 2022, c871](#)

⁹⁶ [HL Deb 25 May 2022, cc926-927](#)

⁹⁷ See for example Lord Stevens (CB), [HL Deb 25 May 2022, cc867-868](#); Baroness Brinton (LD), [HL Deb 25 May 2022, cc885-887](#); Lord Hunt (Lab), [HL Deb 25 May 2022, cc897-898](#)

⁹⁸ [HL Deb 25 May 2022, c871](#)

⁹⁹ [Letter from Lord True to Peers regarding issues raised during the Second Reading: scope of the Bill, litigation costs for small businesses, China and supply chain resilience, interaction with the Health and Care Act 2022, below threshold procurements, data protection, housing associations](#) (PDF), 7 June 2022

SMEs and local procurement

Members from across the House supported offering wider opportunities for small and local businesses through procurement. Lord Mendelsohn (Lab) & Lord Aberdare (CB) urged to support SMEs by synchronising prompt payment rules across the Procurement Bill and various other pieces of legislation. Liberal democrats and Labour cautioned of the Bill being wholly dependent on private enforcement with litigation costs being an obstacle to SMEs seeking legal protection. Lord Mendelsohn (Lab) said “it is unrealistic to expect small businesses that are trying to break into this market to be able to rely on that as a protection”.^{100 101}

Lord Thomas (CB) noted that procurement could be used to subsidise and encourage local performance and it therefore was important to recognise the relationship between subsidy control rules and their use to develop local economies and procurement.¹⁰²

Ethical procurement and modern slavery

Lord Alton of Liverpool (CB) drew members’ attention to the Government’s policy in connection with the procurement of goods made in states credibly accused of genocide and states using slave labour. He referred to work being done across both Houses on amendments addressing ethical procurement, slave labour and national resilience. The Government agreed the current rules on excluding suppliers linked to modern slavery were too weak but said the Bill would improve on that.¹⁰³

Lord Alton intervened regarding government purchases of CCTV cameras supplied by Hikvision and Dahua Technology, companies blacklisted in the US and Australia. Hikvision, in his words, actively collaborates with the Chinese Government on surveillance and has been linked to oppression of Uighurs.¹⁰⁴ On report, the Minister confirmed government departments will remove equipment supplied by Hikvision and some other suppliers from sensitive sites, and will avoid purchasing it in future.¹⁰⁵

Transparency

According to Liberal Democrat peers the Bill avoided issues of supplier ethics and human rights. Lord Fox (LD) said his party’s concerns included

¹⁰⁰ [HL Deb 25 May 2022, cc872-873](#); c88; c896

¹⁰¹ [HL Deb 25 May 2022, c873](#), see Government response in [Letter from Lord True to Peers regarding issues raised during the Second Reading: scope of the Bill, litigation costs for small businesses, China and supply chain resilience, interaction with the Health and Care Act 2022, below threshold procurements, data protection, housing associations](#). (PDF), 7 June 2022

¹⁰² [HL Deb 25 May 2022, c896](#)

¹⁰³ [HL Deb 25 May 2022, c876](#), C926; See House of Lords International Relations and Defence Committee report, ‘[The UK and China’s security and trade relationship: A strategic void](#)’, HL Paper 62, 10 September 2021

¹⁰⁴ [HL Deb 25 May 2022, c876](#)

¹⁰⁵ [HL Deb 30 November 2022, c1827](#)

transparency provisions and safeguards against abuse of data protection rules.¹⁰⁶ Various members talked about PPE procurement during the Covid-19 pandemic. Lady Brinton (LD) said in the future, transparency rules should apply to emergency contracts such as those issued at the time. Referring to the UK Anti-Corruption Coalition’s response to the Bill she said “despite the warm words in the Green Paper, the Bill does not create a clear, unambiguous imperative in primary legislation for a single rulebook with full transparency”.¹⁰⁷

Defence procurement

Baroness Smith (LD) welcomed the provisions on defence procurement in the Bill but mentioned problems, such as “contracts regularly [running] over length and over budget”. On exemptions for national security reasons, she probed the Government on who would determine whether something was a matter of national security. She also warned against politicization of defence procurement.¹⁰⁸

Lord Coaker, the shadow spokesperson for defence, similarly raised issues with defence spending and asked how the Bill will improve defence procurement.¹⁰⁹

Other issues

Conservative peers, Baroness Noakes, Lord Maude and Lord Lansley called for simpler, more streamlined and less bureaucratic regulation, refraining from “gold-plating” of UK’s international commitments. They raised the issue later in the Committee where it was said the Bill had not simplified the rules in “any meaningful degree” and may have remained too close to the EU rules. Members were also concerned the light touch regime might be too open-ended, allowing the Government to include various services in this category.¹¹⁰

In response to various members raising the issue of “Buy British” policy, Lord True reminded of the options already available for below threshold contracts (see section 4.8 below). He noted that a blanket “Buy British” policy would conflict with the UK’s international obligations to treat suppliers from partner countries equally.¹¹¹

Lord Fox (LD) drew members’ attention to how the Procurement Bill might interact with the Sewel convention, the Trade Act and the UK Internal Market Act 2021 (UKIMA). For example, he said, the Bill’s approach and the UKIMA might be in conflict when Scottish authorities would extend their procurement offer to the rest of the UK. The Procurement Bill would require that

¹⁰⁶ [HL Deb 25 May 2022, c864](#)

¹⁰⁷ [HL Deb 25 May 2022, c887](#); UK Anti-Corruption Coalition, [10 Point Plan to fix the Procurement Bill](#), 19 May 2022

¹⁰⁸ [HL Deb 25 May 2022, cc874-876](#)

¹⁰⁹ [HL Deb 25 May 2022, c924](#)

¹¹⁰ [HL Deb 25 May 2022, cc879-882](#); [HL Deb 25 May 2022 cc 889-891](#); [HL Deb 4 July 2022, cc214-216GC](#)

¹¹¹ [HL Deb 25 May 2022, c928](#)

Westminster regulations are applied while the UKIMA mandated “the exact opposite”.¹¹²

The Minister pointed out there would be a six-month lead-in for the implementation of the Act’s provisions. In response to members’ concerns he outlined a comprehensive training programme including online learning tools and written guides for contracting authorities at all levels of government to get to grips with the new system.¹¹³

3.2 Committee stage in brief

This section summarises the committee stage and signposts the main issues of debate.

The Grand Committee of the House of Lords considered the Bill over seven sitting days between 4 July and 26 October 2022, with a long period of recess and the break in parliamentary business following the passing of Her Late Majesty Queen Elizabeth II.

The Grand Committee considered 594 amendments, including 350 government amendments. A total of 279 government amendments were agreed. Members withdrew 23 amendments, including two government amendments. 282 amendments, including 11 government amendments were not moved. Agreed government amendments were narrowly focused and technical, “to ensure that the Bill functions properly and effectively”, accompanied by a large group of consequential amendments. The bulk of these amendments did not change the Bill’s policy intent.¹¹⁴

The Government provided the Grand Committee with [a Keeling schedule](#) – a version of the Bill showing the proposed government amendments highlighted in a new version of the Bill’s text.

Day 1, 4 July

The Grand Committee debated a group of government amendments related to a new Clause before Clause 1, Clauses 1 and 2, and Schedule 2.¹¹⁵ Other debated amendments span a range of subjects, including:

- which bodies and organisations should be in scope of the Bill’s rules, including privately-owned utilities, universities, and the Advanced Research and Innovation Agency (ARIA)¹¹⁶;

¹¹² [HL Deb 25 May 2022, cc865-866](#)

¹¹³ [HL Deb 25 May 2022, c929](#)

¹¹⁴ [HL Deb 4 July 2022, c182GC](#)

¹¹⁵ Starting with Amendment 1

¹¹⁶ Amendment 3

- exemption of joint procurement of several countries¹¹⁷; and
- joint procurement by groups of local authorities.¹¹⁸

The Government introduced a group of technical amendments, though with a general effect on provisions of the Bill – covering definitions of procurement, the definition of contracting authorities and exempted procurement. Other government amendments were drafted following engagement with stakeholders, including local authorities and the devolved administrations. An example is amendments allowing joint bodies of several local authorities to procure goods and services for participating members, without having to conduct a tender.¹¹⁹

Various members voiced their discontent with the large number of government amendments tabled shortly before the Grand Committee without sufficient explanatory notes. The Minister withdrew a group of amendments for clarification and brought new amendments back on report (see section 4.1).¹²⁰

Members agreed to Clauses 1 and 2 and Schedule 1.

Day 2, 6 July

Members considered amendments starting with amendment 10 to Schedule 2 (Exempted contracts), agreed further clauses up to Clause 7. Government drafting, clarifying and consequential amendments 10 to 18, 20 and 24 were agreed to. Members put forward amendments to the Bill covering a range of subjects, including:

- exempted contracts, such as procurement in-house. This refers to authorities procuring from entities they control (vertical arrangements);
- delegated powers in the Bill;
- procurement by private utilities such as postal service providers;
- transparency requirements benefitting SMEs;
- focus on key performance indicators (KPIs); and
- incentivising innovation and sustainability.

¹¹⁷ Amendment 19

¹¹⁸ Amendment 42

¹¹⁹ [HL Deb 4 July 2022, cc182GC-183GC](#)

¹²⁰ [HL Deb 4 July 2022, c197GC](#)

Day 3, 11 July

The third day of consideration in the committee span clauses 8 to 10 with relevant amendments 30 to 44. A clarifying government Amendment 32 to Clause 8 was agreed to. The debate covered a range of subjects, including:

- light touch contracts and health and care services;
- considering bids from charities, mutuals and social enterprises;
- supporting SMEs and limiting their administrative burden¹²¹;
- defining procurement objectives, principles and requirements more explicitly; and
- the role of artificial intelligence (AI).¹²²

Day 4, 13 July

The committee debated amendments 45 (New Clause on procurement requirements) to 85, and greed Clauses 11 to 14. Clause 11 (now 12) was amended to place a duty on contracting authorities to have regard to SMEs and barriers to participation they might face. A large group of further government consequential and clarifying amendments to Clause 15 (Preliminary market engagement) was agreed to starting with Amendment 83.¹²³ The debate covered issues including:

- defining procurement objectives, principles and requirements on the face of the Bill and in the National Procurement Policy Statement: social value, addressing climate change;
- amendments to the Local Government Act 1988 which would allow authorities to consider non-commercial matters in procurement;
- the role of the Prompt Payment Code in timely payments to suppliers;
- barriers in procurement facing small providers and charities;
- contract award criteria;
- determining value for money; and
- devolved procurement in Scotland.

Day 5, 18 July

The Grand Committee further considered the Bill, beginning with amendment 86. A number of government amendments were agreed to, clarifying the two types of competitive tendering procedures: an “open procedure” and a

¹²¹ Amendments 38, 50, 97, 100, 534

¹²² Amendment 46; [HL Deb 11 July 2022, cc354-355GC](#), [HL Deb 11 July 2022, c366GC](#)

¹²³ [HL Deb 13 July 2022, c501GC](#)

“competitive flexible procedure”. Amendment 98 would ensure that contracting authorities can choose not to assess tenders that do not comply with the procedure. Other clarifying and drafting amendments were passed.¹²⁴ The Grand Committee agreed Clauses 15 to 29.

Members speaking on the day put forward amendments covering a range of subjects, including:

- small and medium sized enterprises (SMEs);
- a central digital procurement platform;
- strengthening good practice requirements and simplifying checking processes for all contracts; and
- procurement procedures available to authorities.

Day 6, 24 October

The Grand Committee considered the Bill, beginning with amendment 177. Various government amendments were agreed to in relation to the concept of dynamic markets.¹²⁵ The Grand Committee agreed Clauses 30 to 49 and Schedule 5.

The amendments put forward on day six covered subjects such as:

- excluding suppliers for improper behaviour
- oversight functions and the Procurement Review Unit (PRU)
- framework agreements
- dynamic markets

Day 7, 26 October

On the final day of the Lords committee stage, amendments discussed covered Clauses 50 (Key performance indicators), 74 (Conflicts of interest: duty to identify), 81 (Treaty state suppliers), 99 (Welsh Ministers: restrictions on the exercise of powers) and 111 (Interpretation) of the Bill.

The Grand Committee considered amendments beginning with amendment 268 and agreed to various changes proposed by the Government.¹²⁶ These

¹²⁴ Amendments 89 to 91, 93 to 95, 98 to 99, 102 to 103, 106, 108 to 115, 117, 122, 126, 132 to 140, 142 to 146, 148, 150 to 171, and 175 to 176.

¹²⁵ Amendments 178, 181, 182, 188 to 206, 209 to 227, 229 to 231, 233 to 235, 237, 244 to 246, 250 to 263, and 265 to 267

¹²⁶ Amendments 277 to 289, 291, 294, 296, 299, 302, 303 to 305, 309, 311 to 314, 316, 324, 325, 334, 336, 339, 341 to 349, 352, 354 to 356, 357, 358, 360, 361, 362, 363, 365 to 370, 371 to 378, 380, 381, 383 to 387, 389 to 396, 398, 399, 401 to 403, 414, 427, 428, 429, 430, 431 to 434, 438, 440, 442, 446, 447, 457, 461, 464 to 476, 481, 483, 484, 496, 501, 502, 510, 518, 520 to 526, 533, 536, 539, 541, 544, and 545.

were largely technical and clarifying amendments. For example, former Clause 70 was split to cover ‘Contract change notices’ (now Clause 74) and ‘Publication of modifications’ (now Clause 76). The Grand Committee agreed to the remaining Clauses 49 to 116.

Members speaking on the final day of committee stage put forward amendments on subjects including:

- key performance indicators or quantifiable measures in contracts
- conflicts of interest.

The Grand Committee agreed to report the Procurement Bill as amended.

Law firm Burgess Salmon provides some [commentary with respect to the House of Lords committee stage amendments](#) regarding preliminary market engagement, most advantageous tender and debarment.¹²⁷

3.3 Report stage in brief

The Lords [report stage took place on 28 and 30 November](#).¹²⁸

The Government again tabled a significant number of amendments for inclusion in the Bill. Of the 205 amendments proposed on report, 161 were agreed to, of which 155 were government and five non-government amendments. Members defeated the Government on a vote on five non-government amendments. They also voted against one non-government amendment.

On [the first day of report](#), members passed government amendments which substantively clarified definitions in the Bill, including definitions of procurement, a contracting authority, and utility transport activities. See further information in sections 4.1. and 4.2 below.

Several government amendments defined educational institutions to be excluded from light touch procurement obligations. Other government amendments related to the grounds for excluding suppliers from procurement.

Clause 9 was amended to clarify treatment of mixed contracts containing elements falling under “the special regimes” for concessions, defence, light touch and utilities contracts.¹²⁹

¹²⁷ John Houlden, [The Procurement Bill: Key changes proposed following the House of Lords Committee Stage](#), Burgess Salmon, 18 November 2022

¹²⁸ [HL Deb 28 November 2022](#); [HL Deb 30 November 2022](#)

¹²⁹ [HL Deb 28 November 2022, c1577](#), Amendments 24, 25, 26, 27 and 28

Schedules 1 (Threshold amounts) and 2 (Exempted contracts) were amended to clarify the rules in relation to frameworks.¹³⁰

Further government technical Amendments 170 and 185 were passed, as well as changes to the index of defined expressions in Clause 115 (112 as introduced).¹³¹

Members continued debating NHS procurement, delegated powers in the Bill, principles to consider in procurement and strategic priorities in the National Procurement Policy Statement, including climate change. They discussed supporting SMEs through procurement, and exclusion of suppliers for criminal activity or breach of workers' rights. Three non-government amendments were agreed on divisions (votes): Amendment 3 (to amendment 2), amendment 46 and amendment 47.

Amendment 3 (to amendment 2), which would ensure the NHS is included in the definition of a public authority under the Procurement Bill (and is thus in scope of the Bill's procurement regime). [Amendment 3 was agreed to](#), with 196 votes to 183.

Amendment 46 would require the government to consider a set of principles before publishing the National Procurement Policy Statement. These principles would include: economic, social, environmental and public safety priorities, value for money, transparency and accountability for public spending, integrity, fair treatment of suppliers and non-discriminatory decision making. Members [agreed that amendment 46 is made](#), by 163 votes against 162.

Amendment 47 would ensure legal requirements regarding climate change, the environment, public services, supplier innovation and the abuse of public money become strategic priorities in the National Procurement Policy Statement. [Amendment 47 was agreed to](#) with 165 votes in favour and 150 against.

On [the second day of report](#), members agreed to further government technical and consequential amendments, such as amendments to Schedules 6 and 7 (mandatory and discretionary grounds of exclusion). Further government amendments were agreed, which would introduce new, lower reporting thresholds across the regime, aimed at reducing administrative burden associated with smaller contracts.¹³²

Members debated further non-government amendments pertaining to conflict of interest, the Procurement Review Unit, tackling human rights abuses, modern slavery and organ harvesting through procurement. The Labour Party tabled a probing amendment to audit the Ministry of Defence spending but withdrew it following a debate.

¹³⁰ Amendments 7 and 8

¹³¹ Amendments 194, 195 and 196

¹³² Amendment 80

Members [voted on three non-government amendments](#): Amendment 72, amendment 91 and amendment 94.

With 201 votes to 220 [members rejected amendment 72 on 'VIP' lanes for future contracts](#), that aimed to ensure there was no preferential treatment of suppliers connected to or recommended by members of the House of Commons or members of the House of Lords.

Amendment 91 on forced organ harvesting would provide a discretionary power to exclude suppliers from being awarded a public contract if they have participated in forced organ harvesting or unethical activities relating to human tissue. Members [agreed amendment 91, by 191 votes to 169](#).

Amendment 94 on removal of suppliers would create a timeline for the removal of physical technology or surveillance equipment from the government's procurement supply chain, where there is established evidence that a provider has been involved in modern slavery, genocide, and crimes against humanity. [Amendment 94 was agreed to, with 178 votes to 158](#).

3.4 Third reading

The Bill had its third reading in the House of Lords on 13 December 2022. It [passed with one government amendment](#), regarding the definition of a centralised procurement authority.¹³³

The Bill entered the House of Commons on 14 December.

¹³³ [HL Deb 13 December 2022](#)

4 Main themes and Lords amendments

Below is a summary of the key themes debated in the Lords Grand Committee and report stage.

4.1 Key definitions in the Bill

Part 4 of this briefing refers to Bill's clause numbers as introduced in the House of Lords (Bill 4). For clause number changes see concordance table in annex.

Clause 1 (now **Clause 2**) of the Bill defines “contracting authorities”, that is, public authorities required to follow the procurement rules in this Bill. A public authority would mean any authority with functions of a public nature that is wholly or mainly funded from public funds or is subject to contracting authority oversight.¹³⁴ Authorities excluded from the scope of the Bill are devolved Scottish authorities; the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; and the Advanced Research and Invention Agency (ARIA).¹³⁵

Procurement rules would not apply to His Majesty acting in his private capacity. But procurement conducted using the Crown Estate's vote expenditure forms part of the UK's commitments under the GPA and would be regulated under the Bill.¹³⁶

In relation to a utilities contract, a “contracting authority” could be a public authority, public undertaking or a private utility.¹³⁷

Clause 2 (now **Clause 3**) defines three types of contracts that would be public contracts within the scope of the Bill:

- contracts for the supply, for pecuniary interest, of goods, services and works to a contracting authority
- contracts for frameworks, that is contracts which provide for the future award of other contracts
- concession contracts

A contract of a given type would be in scope if it were not exempt and had an estimated value above a specific value threshold set out in Schedule 1. Schedule 2 lists the types of exempted contracts.

¹³⁴ Clause 1(2)

¹³⁵ Clause 1(5)

¹³⁶ Clause 1(9), see [HL Deb 4 July 2022, c228GC](#)

¹³⁷ Clause 1(1)

Debate

On the first day of the Grand Committee, the Government proposed to insert a new clause before Clause 1 to clarify the meaning of “covered procurement” and “procurement”. “Covered procurement” would refer to contracts fully regulated by the Bill’s provisions (essentially above threshold). The term “procurement” would refer to those contracts that are less regulated, such as the below-threshold contracts and international organisation procurement. The new Clause would define a “centralised procurement authority” as a contracting authority carrying out procurement on behalf of other contracting authorities.¹³⁸

However, various members voiced their discontent about the large number of government amendments tabled shortly before the Grand Committee without sufficient explanatory information. The Minister withdrew the amendments to clarify them and bring them back on report (see below).¹³⁹

The Grand Committee debated various other probing amendments in relation to definitions, such as undertakings subject to ‘contracting authority oversight’.¹⁴⁰ The Government clarified that it did not intend to change the current scope of the definition of ‘contracting authority’ but was seeking to replace concepts derived from European procurement law with the relevant UK concepts.¹⁴¹

Members were also probing how the Bill would relate to procurement activities of various organisations, e.g. self-governing institutions like universities.¹⁴² The Minister clarified that organisations such as universities would be in scope of the procurement rules, to the extent that they are mainly publicly funded or controlled, but their commercially funded activities would be out of scope.¹⁴³

Lord Wallace (Lab) and Lord Scriven (LD) tabled a probing amendment to test the autonomy and the role of local authorities within the Bill when they procure contracts jointly. According to the Government, Clause 10(4)(a) would allow for local authority cooperation when doing procurement on behalf of others.¹⁴⁴

Exemption for horizontal and vertical arrangements between authorities

Following up on the earlier debate in the Grand Committee¹⁴⁵, on the first day of report, members debated Amendment 9 to Schedule 2, brought by Baroness Noakes (Con). This Amendment would have modified how vertical

¹³⁸ New Clause before Clause 1, [HL Deb 4 July 2022, c183GC](#)

¹³⁹ [HL Deb 4 July 2022, c197GC](#)

¹⁴⁰ For example, Amendments 4, 8, 23 and 29, [HL Deb 4 July 2022, cc214-216](#)

¹⁴¹ [HL Deb 4 July 2022, c227GC](#)

¹⁴² [HL Deb 4 July 2022, cc213-214GC](#), Amendments 3, 19

¹⁴³ [HL Deb 4 July 2022, c227GC](#)

¹⁴⁴ Amendment 42, [HL Deb 4 July 2022, cc218-220GC](#)

¹⁴⁵ [HL Deb 6 July 2022](#), e.g. debate on government drafting and clarifying amendments 10-14, Amendment 11A, cc237-249GC

contracts and horizontal arrangements between public authorities would qualify as exempt contracts.¹⁴⁶ The amendment would have set aside the reasonableness test proposed in Schedule 2 used to determine whether an arrangement is exempted from procurement. According to the author, the amendment would preserve the current rules applied to public service collaborations – allowing contracts within or between local authorities to be exempt from procurement rules. Members from across the House spoke in support of the amendment with some saying that the current drafting would hamper local government collaborations in service provision.¹⁴⁷ Baroness Noakes said:

reformulating EU rules for the purposes of the UK in this Bill, we seem to have opened up a new source of challenge for local authorities that want to use the vertical or horizontal arrangements.¹⁴⁸

The Minister replied that the Bill’s provisions would continue the current regime of exemptions available to horizontal and vertical arrangements, but the Government would consider tabling a clarifying amendment in the Commons.¹⁴⁹

Amendments on report

On report, the Government tabled again a new Clause before Clause 1 (Amendment 1) to distinguish between “procurement”, meaning any procurement, and “covered procurement”. The latter relates specifically to public contracts above value thresholds and is covered by the vast majority of the Bill’s provisions. This technical amendment and a large number of consequential amendments throughout the Bill would help clarify and consolidate Bill’s definitions and ensure it functions properly.¹⁵⁰

Government Amendment 2 to Clause 1, (as amended by non-government amendment 3, see section 3.3 above) would change the definition of a “contracting authority” to clarify the difference between a public authority and public undertaking. It would exclude from the Bill certain bodies which, despite their relationship with public authorities, operate on a commercial basis.¹⁵¹

Referring to the earlier debate in the Grand Committee on vertical arrangements, the Government sought further amendments to Clause 1 to

¹⁴⁶ Vertical arrangements are “quasi in-house awards”, which arise where a contracting authority enters into an arrangement with an organisation that is connected “vertically” with the contracting authority, i.e. with a body which has a separate legal personality but is under its control, called a “controlled person”. Horizontal arrangements are awards where several contracting authorities cooperate to deliver a service, such as waste disposal, across the territory of the participating authorities; [Explanatory Notes to the Procurement bill \[HL bill 4, as introduced\]](#) (PDF), 13 May 2022, paras 653-659

¹⁴⁷ [HL Deb 28 November 2022, c1602](#)

¹⁴⁸ [HL Deb 28 November 2022, c1601](#)

¹⁴⁹ [HL Deb 28 November 2022, c1606](#)

¹⁵⁰ [HL Deb 28 November 2022, c1575](#). There were 46 consequential amendments to various clauses.

¹⁵¹ [HL Deb 28 November 2022, c1575](#) and Amendments 5, 6

ensure that commercial bodies, which are controlled by public authorities, behave like contracting authorities when awarded a public contract, and apply procurement rules to relevant sub-contracts.¹⁵²

4.2 Utilities procurement

The Bill would repeal the Utilities Contracts Regulations 2016 and bring procurement of utilities operating in the water, energy and transport sectors in scope of the new single framework for procurement. There would be some limited differences, including in relation to “dynamic markets” and the duration of “closed frameworks”. **Clause 5** would define utilities contracts with relevant utility activities specified in Schedule 4.¹⁵³

Committee members debated the extent to which (private) utilities should fall under the Bill’s remit and would have to apply procurement rules when buying goods or services.¹⁵⁴ Conservative and Labour peers tabled a number of amendments, arguing that the Bill would increase the burden to private utilities beyond what was required of them under the current EU law-based utility procurement regime.¹⁵⁵ However, it was noted the Government would have power under Clause 109 to amend this Act by regulation to reduce the regulation of private utility procurement.¹⁵⁶

Lord True clarified that utilities were defined in the Bill as public bodies, public undertakings or certain private undertakings that carry out utility activities. He noted that the Bill would cover public undertakings carrying out activities of economic and commercial (and not public) nature. Private utilities would be in scope only where they had been granted a special or exclusive right to carry out a utility activity without competition from other utilities. This was necessary because such private utilities were effectively in a monopoly position and could favour affiliated businesses, discriminating other suppliers.¹⁵⁷

Schedule 4 specifies that utilities in water, energy and transport sectors are covered (Part 1). Part 2 of Schedule 4 specifies which utility activities.

The Minister also noted that the UK was required by various international agreements to ensure that such private utilities did not discriminate against “treaty state suppliers”, and adhere to the rules for utilities’ procurements.¹⁵⁸

¹⁵² Amendments 5 and 6; see [HL Deb 6 July 2022, cc248-249GC](#)

¹⁵³ [Explanatory Notes to the Procurement bill \[HL bill 4, as introduced\]](#) (PDF), 13 May 2022, para 46, paras 70-75

¹⁵⁴ [HL Deb 4 July 2022, cc201-202GC](#), cc205-206GC

¹⁵⁵ [HL Deb 4 July 2022, c201](#), c205GC, c208GC, starting with Amendment 2 to Clause 1, Amendments 25-27

¹⁵⁶ [HL Deb 4 July 2022, cc207-208GC](#)

¹⁵⁷ [HL Deb 6 July 2022, c267GC](#)

¹⁵⁸ [HL Deb 4 July 2022, c209GC](#)

Lord True clarified in a letter to the Grand Committee how particular entities and services are covered by the utilities regime of the Bill.¹⁵⁹

On the first day of report, a group of government amendments passed relating to an exemption for utility activities exposed to competition listed in Schedule 4, such as electricity, gas and oil extraction, production and generation.¹⁶⁰ Baroness Bloomfield noted that this group of amendments was brought forward to alleviate concerns of the DPRRC. The Government was now proposing to replace this power with a requirement to draft the exemption by secondary legislation subject to an affirmative procedure. The new regime would carry forward current exemptions from the general procurement regime for utilities subject to competition.¹⁶¹

Other government amendments to Clause 5 set out that a private utility is only a contracting authority in respect of the utility activities for which it has a special or exclusive right.¹⁶² Further amendments change the description of utility transport service (that is, by rail, tram, bus or by other means),¹⁶³ and relate to the utilities dynamic market.¹⁶⁴ Amendment 77 to Clause 48 would allow a private utility to award a contract directly, before the end of a mandatory standstill period.

Amendments 29 to 32 to Clause 10 were consequential to New Clause 1.

4.3 Delegated powers

The Cabinet Office published a Delegated Powers Memorandum to assist the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) with its scrutiny of the Procurement Bill.¹⁶⁵ It set out that the Procurement Bill as introduced contained 53 delegated powers 25 of which would allow for adopting secondary legislation by affirmative procedure. For example, under Clause 86, the Ministers would have power to make provision about the content of transparency notices contracting authorities would be required to publish in 16 instances.

¹⁵⁹ [Letter from Lord True to Baroness McIntosh of Pickering and Lord Purvis of Tweed regarding the Procurement Bill committee stage debate \(first and second days\): how particular entities and services are covered under the Bill and interplay with the Australia free trade agreement: Parcelforce Worldwide, Post Office Limited, Freeports and Legal Services](#), 19 July 2022

¹⁶⁰ Amendments 11, 13, 14, 17, 20, 21, 22, 169, 174, 180 and 184 to Clause 5 and Schedule 4, and a consequential amendment 12 to Schedule 2.

¹⁶¹ [HL Deb 28 November 2022, cc1609-1613](#)

¹⁶² Amendments 15, 16

¹⁶³ Amendments 18, 19

¹⁶⁴ Amendments 56, 71 and 200

¹⁶⁵ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022

The Bill as introduced also includes several [Henry VIII powers](#) that could be used to change primary legislation or retained direct EU legislation, including:

- power to adjust various contract value thresholds determining when certain procurement provisions apply (Clauses 51, 65, 70, 78, 79 and 84);¹⁶⁶
- power in Clause 104 allowing Ministers to make regulations to disapply the duty in section 17 of the Local Government Act 1988, which requires local authorities to conduct procurement without referencing a range of “non-commercial matters”;
- power to disapply this Bill in relation to NHS procurement in England (Clause 107);
- power to amend the Bill for the purpose of reducing the regulation of private utilities (Clause 109);
- power to specify an alternative method for determining the price payable under a defence contract and the circumstances in which that method is to be used under the Defence Reform Act 2014 (Paragraph 3(3) of Schedule 10).¹⁶⁷

In its report, DPRRC identified “multiple failures in the Memorandum to adequately explain and justify” giving Ministers such new and broad delegated powers. Some of the regulations made with the new powers would be subject the negative procedure, which the DPRRC considered inappropriate; such regulations should instead be subject to the fuller scrutiny of the affirmative procedure, the DPRRC wrote.¹⁶⁸

The DPRRC noted that under the European Communities Act 1972 Ministers had broad power to make “laws to give effect to EU law” in the area of public procurement, albeit limited to the implementation of the EU procurement directives. The new powers under the Procurement Bill had no such constraints.¹⁶⁹

In the Grand Committee members debated delegated powers extensively. Various members were concerned about the Government’s move away from detailed legislation towards skeleton bills and executive discretion. Lords Coaker (Lab) and Wallace (LD) referred to the DPRRC’s criticism of the Government’s reliance on the negative procedure and apparent use of delegated powers as “a tool to cover imperfect policy development”.¹⁷⁰ Lord Blencathra (Con), a former Chair of the DPRRC, referred to two reports

¹⁶⁶ DPRRC, paras 11-17

¹⁶⁷ DPRRC, paras 7, 66

¹⁶⁸ DPRRC, para 66

¹⁶⁹ House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), [3rd Report of Session 2022-23, Procurement Bill](#), HL Paper 15, 14 June 2022, paras 7, 9-10

¹⁷⁰ [HL Deb 4 July 2022 c202GC](#), c213GC, c224GC, c225GC; [HL Deb 6 July 2022 c256GC](#); related Amendments 18, 21, 28, 31, 208, 530, 532

published by the DPRRC and the Secondary Legislation Scrutiny Committee in 2021, and the various recommendations to which the Government had subsequently agreed, but, he said, such changes had not been reflected in the Procurement Bill.¹⁷¹

The Minister explained that the Government's intention of some of the powers was to replicate a power previously exercised by the European Commission under Public Procurement Regulations 2015 or the Utilities Contracts Regulations 2016; also that there were natural limitations on the scope of a respective power, for example, powers were linked to commitments in UK international agreements, such as the GPA or other FTAs. Some powers were needed to react to the evolution of the market in the future (for example, expanding services covered by the light touch regime), which otherwise would require changing primary legislation.¹⁷²

Changing negative to affirmative procedure on report

On report, members agreed to several government amendments, which would implement most of the recommendations made by the DPRRC.¹⁷³

- Amendments 10 and 12 would remove ministerial power to define public passenger transport services and concession contracts for air services that could be exempted from procurement under Schedule 2. They would define the contracts for such transport services on the face of the Bill.
- Amendment 165 introduces the affirmative procedure for the approval of regulations regarding defence contracts in Schedule 10.
- Amendments 175 to 178, 181 and 182 relate to the publication of contracts, the publication of information about payments, the requirement for pipeline notices and obligations relating to notices to be published in relation to below-threshold contracts. These government amendments would subject such regulations to the affirmative procedure instead of the negative procedure as introduced.
- The Government is considering bringing forward similar amendments in relation to the threshold for the publication of Key Performance Indicators (KPIs) for major contracts.¹⁷⁴
- The only exception where the Government did not follow the DPRRC recommendation was Clause 80, which, in relation to below-threshold contracts, would prohibit prior exclusion of suppliers on the basis of

¹⁷¹ The DPRRC, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive*, November 2021; Secondary Legislation Scrutiny Committee, *Government by Diktat: A call to return power to Parliament*, 20th Report of Session 2021-22, 24 November 2021, HL Paper 105; [HL Deb 6 July 2022, c256GC](#)

¹⁷² [HL Deb 6 July 2022, cc263-263GC](#)

¹⁷³ House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), [3rd Report of Session 2022-23, Procurement Bill](#), HL Paper 15, 14 June 2022

¹⁷⁴ [HL Deb 28 November 2022, c1607](#)

suitability. According to the Minister it was reasonable to use the negative procedure, given that the thresholds applicable to this clause were aligned to the GPA thresholds which would also be amended by the negative procedure.¹⁷⁵

4.4 Light touch contracts

Clause 8 would create powers to specify “light touch contracts” for certain services that would be subject to a less onerous procurement regime and some special rules. Light touch contracts would be identified by regulations made under subsection (2). They were expected to cover education, health, social and other services which are of less interest to treaty state suppliers, benefit an individual or a community and where service quality would benefit from proximity of the supplier.¹⁷⁶

In the Green Paper the Government proposed to entirely remove the separate light touch provision available under the current regime, but reverted to this concept following consultation.

In the committee, members sought to clarify or narrow the scope of light touch contracts.¹⁷⁷ The Government responded that it did not want to adopt a more stringent approach than other European countries and desired to give authorities flexibility to design procurement procedures appropriate for such types of services. Light touch contracts would still be subject to the necessary safeguarding requirements and limited to what is allowed under the GPA and other international agreements. For example, catering and canteen services and possibly some prison-related services could be procured under the light touch regime.¹⁷⁸

4.5 Health and care procurement

Debating Clause 8 (Light touch contracts) in the Grand Committee members returned to the point raised during the second reading that legislation covering health and care procurement could be potentially confusing (See section 3.1 above). They noted that Clause 108 would grant a Minister of the Crown power to carve out procurement covered by the Health and Care Act 2022 from the single procurement regime by regulation.¹⁷⁹ Members were also concerned about mixed procurement, where clinical services are purchased

¹⁷⁵ [HL Deb 28 November 2022, c1605](#)

¹⁷⁶ [Explanatory Notes to the Procurement Bill \[Bill 218\]](#) (PDF), Bill 218-EN, 14 December 2022, paras 88-91

¹⁷⁷ For example, Amendments 30, 33

¹⁷⁸ [HL Deb 11 July 2022, c345CG](#)

¹⁷⁹ Cabinet Office memo of 11 May to the Delegated Powers and Regulatory Reform Committee

together with other goods and services in settings such as care villages, which provide both housing and health services, or large hospitals.

Baroness Brinton (LD) said the proposed regime would subject NHS spend to less public scrutiny and accountability and tabled a probing amendment that would have applied the procurement Bill to all healthcare purchasing.¹⁸⁰

On report, there was cross-party support for bringing the NHS within the scope of the Bill. Speaking to Amendments 3 and 173, Baroness Brinton reiterated her concerns about the NHS being treated differently from other public services. It was noted that members had had no sight of the draft regulations under the Health and Care Act 2022. Lord Alton (CB) referred to issues with PPE procurement during the Covid-19 pandemic. Lord Hunt (Lab) noted that there was no impact assessment covering the interrelationship between the Procurement Bill and the Health and Care Act.¹⁸¹

The Government argued that the Health and Care Act 2022 provided for separate procurement rules for healthcare services – a future Provider Selection Regime – to patients and service users, but not for goods except those that are an integral part of the delivery of a clinical care services contract. The Minister said that especially for small NHS contracts involving social care or clinical services it would make sense to have a separate regime. To underline that the forthcoming healthcare procurement regulations would apply narrowly to a “tightly defined subset of healthcare services”, the regulations would include a limited list of bodies involved in health and social care. The Minister also promised guidance on health and care procurement. Regarding mixed contracts, the Government expected that

the wider Cabinet Office rules [would] apply to mixed contracts that involve a provider selection regime [for healthcare services] element and another healthcare or non-healthcare element if those elements could reasonably be supplied under separate contracts. If they could not be, the Cabinet Office rules will apply where the non-provider selection regime element has the higher value.¹⁸²

In conclusion [members voted in support of Baroness Brinton’s Amendment 3](#), defeating the Government by 196 votes to 183. This would ensure that the NHS is fully in scope of the Bill’s procurement regime.

4.6

Procurement objectives and principles

In the Committee it became apparent that members were seeking clearer references to various procurement objectives on the face of the Bill.

¹⁸⁰ Amendment 528C; Amendments 101A, 528A and 528B, and 528C; [HL Deb 13 July 2022, c503GC](#)

¹⁸¹ [HL Deb 28 November 2022, cc1578-1583](#), c1586

¹⁸² [HL Deb 28 November 2022, c1590](#); [DHSC held a consultation on a Provider Selection Regime](#) - a new set of rules replacing the existing procurement rules for arranging healthcare services in England. The proposed rules would be introduced by regulations made under the Health and Care Bill.

While there was cross-party support for better defined objectives to guide officials, Conservative members supported more abstract texts that would offer flexibility in the long term, but opposition members tabled lists of specific objectives to refer to at various stages of procurement. Amendments included setting out procurement principles (promoting the public good, value for money, transparency, integrity, fair treatment of suppliers, non-discrimination), procurement purposes (social value and local economic growth) or requirements for authorities to consider. A group of amendments sought to define ‘public benefit’ to include such aspects as environmental protection, energy efficiency, and climate change.¹⁸³

Various members questioned why commitments to social value were included in the National Procurement Policy Statement, which could be changed by each new government, but not on the face of the Bill, as suggested in the Green Paper.

Social value

Background

The current procurement framework allows contracting authorities to take account of matters which impact the wider society more broadly in their procurement. For example public authorities can involve small businesses and voluntary organisations in service delivery. They can consider how their procurement will improve skills, enhance inclusion in employment, environmental sustainability, or reduce risks of modern slavery. Procurement procedures can be designed to support social value, provided the criteria set to all bidders are related to the subject-matter of the procured contract, consistent with value for money, be proportionate, transparent, and treat bidders equally, without discrimination. The criteria are set out in [Public Contracts Regulations 2015](#) (PCR 2015) and [further guidance](#).

The Public Services (Social Value) Act 2012 requires relevant authorities to consider how their purchasing of services might improve the economic, social and environmental well-being of their area.

In recent years, events such as the compulsory liquidation of Carillion garnered attention for integrating wider social and environmental criteria in public purchasing. In 2019, the Trade Union Congress (TUC) called upon the government to promote social value as a core component of procurement strategy when outsourcing – including a stronger focus on promoting employment standards and “great jobs.”¹⁸⁴

The Government has published a [Sourcing playbook](#), and further guidance setting out how departments and government arm’s length bodies should

¹⁸³ Amendments 43, 44 and 45 to insert new clauses after clause 10. Amendments 59, 59A to Clause 11

¹⁸⁴ TUC, [Outsourcing - Five ways to fix it for working families](#), 8 November 2019

approach outsourcing projects.¹⁸⁵ Maximising the social value is among the guiding principles in outsourcing:

The public sector shall maximise social value effectively and comprehensively through its procurement and account for social value in the evaluation criteria.¹⁸⁶

In 2019, the government held a consultation on [social value in procurement](#). In December 2020, the Cabinet Office published a new social value model introducing a requirement to explicitly evaluate social value, rather than just ‘consider’ it. All central government departments, their executive agencies and non-departmental public bodies, including NHS Trusts, are required to include in their procurements a social value award criterion weighted at a minimum of 10% of the overall score.¹⁸⁷

In its response to the consultation in the Green Paper Transforming Public Procurement, the Cabinet Office recognised that taking greater account of social value “can play a big role in contributing to the Government’s levelling-up goals”.¹⁸⁸

The new NPPS requires contracting authorities to consider how they could maximise social value in creating new businesses, jobs and skills, improving supplier diversity and tackling climate change.¹⁸⁹ See section 1.6 above.

In 2021 the Government introduced measures which mandate businesses to commit to net zero by 2050 and submit carbon reduction plans, before they can bid for major government contracts.¹⁹⁰

[The Greening Government Commitments Framework for 2021 to 2025](#) requires government departments to report on their sustainable procurement from March 2021.¹⁹¹

Social value in Procurement Bill

The Bill as introduced did not explicitly refer to social value. In the committee, Baroness Thornton (Lab) noted that over the last decade, consensus had developed across the political spectrum and among business groups about the importance of social value in procurement.¹⁹² Labour referred to the Social

¹⁸⁵ An Outsourcing Playbook was first launched in February 2019, following the collapse of Carillion in January 2018.

¹⁸⁶ Cabinet Office, Crown Commercial Function, [Sourcing playbook](#), May 2021, p15

¹⁸⁷ Cabinet Office, [Taking account of social value in the award of central government contracts](#), Procurement Policy Note (PPN), 06/20 of 24 September 2020

¹⁸⁸ Cabinet Office, [Transforming Public Procurement: Government response to consultation \(PDF\)](#), CP 556, December 2021, para 2

¹⁸⁹ Cabinet Office, the [National Procurement Policy Statement \(NPPS\)](#) PPN 05/21, June 2021; [Annex to PPN 05 21-National Procurement Policy Statement \(publishing.service.gov.uk\)](#) (PDF)

¹⁹⁰ Cabinet Office, [Firms must commit to net zero to win major government contracts](#), 7 June 2021; Procurement Policy Note, [PPN 06/21: Taking account of Carbon Reduction Plans in the procurement of major government contracts](#), 5 June 2021

¹⁹¹ DEFRA, [Greening Government Commitments 2021 to 2025 - GOV.UK \(www.gov.uk\)](#), October 2021

¹⁹² [HL Deb 11 July 2022, c374GC](#), Amendment 57B

Enterprise UK statement that [the absence of any reference to social value in the Bill was their biggest area of concern](#).¹⁹³

There was wider concern that prioritising value for money in procurement often translated into the lowest price overriding other procurement objectives. Baroness Worthington (CB) said:

it seems to me that the reference to “maximising public benefit” in the Bill is completely and utterly superfluous and has no meaning. The Minister’s response has further confirmed that the only criteria that can really be taken into account are value for money and cost. We will need to return to this at Report, because it now seems very clear that this is not an accident or some kind of desire for flexibility; it is really saying that there is only one thing that counts, and that is cost—and in the short term.¹⁹⁴

Members argued therefore that social value objectives should be clearly spelled out in the Bill, for example, by refining the definition of ‘public benefit’ in Clause 11 (procurement objectives) or in relation to different stages of procurement.¹⁹⁵

Later, debating **Clause 22** (Award criteria) some proposed that policy priorities in some instances would take precedence over other award criteria to create additional public value; or that such priorities would be considered when determining the value for money (Clause 22(5)(d)).¹⁹⁶

The Government disagreed that the lowest price was the overriding principle and stressed that the Bill would shift the focus from prioritising the “most economically advantageous tender” (MEAT), to the “most advantageous tender” (MAT). Its message was that procurers could take a broader view of value for money than simply lowest price. The Government would also publish guidance on the assessment of the most advantageous tender.

In the context of procurement objectives, Lord Knight (Lab), co-Chair of the APPG on the Future of Work proposed to introduce a new objective in Clause 11 – good work – meaning work which provides and promotes fair pay and working conditions; equality and freedom from discrimination; access to union representatives; employee participation and other aspects. He expected the Rt. Hon. David Davis MP, the other co-Chair of the APPG, to table similar amendments in the Commons.¹⁹⁷

Other related amendments referred to exclusion of suppliers due to misconduct in relation to breaching labour rights and to the debarment list.¹⁹⁸

¹⁹³ Social Enterprise UK, [The Procurement Bill and the future of social value](#). Andrew O’Brien, Director of External Affairs at Social Enterprise UK, accessed on 27 November 2022

¹⁹⁴ [HL Deb 13 July 2022, c517GC](#)

¹⁹⁵ Amendments 47A, 48, 49, 52, 52A, 53, 58, 59, 59A

¹⁹⁶ Amendments 122A, 129

¹⁹⁷ [HL Deb 13 July 2022, cc470-473GC](#), Amendments 54 and 535

¹⁹⁸ Amendments 67, 104, 116, 186, 292, 297, 315, 319, 519; See [Letter from Lord True to Lord Hendy QC regarding the Bill committee stage debate \(fourth day\): question on labour standards - International Labour Organisation Conventions](#) (PDF), 4 August 2022

The Labour probing Amendment 141 would have sought to re-establish a requirement that contracting authorities have due regard to accessibility criteria for disabled people. They argued that the public sector equality duty under the Equality Act was not made sufficiently clear in the Bill.¹⁹⁹

The Minister noted Clauses 104 and 107 (now 112 and 115) would ensure that authorities covered by Section 17 of the Local Government Act 1988 would not be prevented from complying with their duties under this Bill in relation to the social value.²⁰⁰ On Report, the Government said that secondary legislation laid before the new regime comes into force could consider the disapplication of Section 17.²⁰¹

Clause 12 (National Procurement Policy Statement) would give the government an option to publish an NPPS setting out its strategic priorities for procurement. A draft NPPS was published in June 2022. Members across the committee expressed regret that the strategic priorities of the NPPS were not included in the Bill. They proposed amendments that would have mandated the Government to publish an NPPS, instead of leaving it as an option under Clause 12 as introduced. Members also offered various lists of strategic priorities and accompanying targets to be included in the NPPS; for example, a reference to the Climate Change Act 2008, the Environment Act 2021; promotion of innovation and competitiveness; “the minimisation of fraud, corruption, waste or the abuse of public money”; the government’s food strategy and sustainable development.²⁰²

Climate and environmental objectives

In the committee members debated amendments that would seek to support the UK’s climate and environmental objectives. Baroness Parminter (LD) referred to the National Audit Office and the House of Commons Environmental Audit Committee findings that departmental public procurement lacked connection with consideration of net zero and government environmental goals.²⁰³

Debating **Clause 12** (NPPS), Baroness Verma (Con) called it a missed opportunity that the language of the NPPS was more modest than that of the Green Paper regarding climate change and meeting UK’s net-zero carbon targets by 2050.²⁰⁴

¹⁹⁹ [HL Deb 6 July 2022, cc273-275GC, cc277-278GC](#)

²⁰⁰ [HL Deb 13 July 2022, c472GC](#)

²⁰¹ [HL Deb 28 November 2022, c1643](#)

²⁰² 60, 61, 63, 64, 65, 69, 70, 74, 79

²⁰³ [HL Deb 6 July 2022, c284GC](#); see further NAO, [Achieving net zero](#), 4 December 2020; NAO, [Environmental Sustainability Overview](#), 13 May 202; Environmental Audit Committee, [The UK’s footprint on global biodiversity](#), 30 September 2021, paras 11-13

²⁰⁴ [HL Deb 13 July 2022, c479GC](#)

Labour proposed introducing a statutory requirement in relation to carbon reduction plans, but the Government said it already required such plans from bidders for major government contracts.²⁰⁵

Cross-party amendments would allow authorities, when undertaking preliminary market engagement (**Clause 15**), to reward suppliers who demonstrated potential for innovation and offered climate-positive and nature-positive sustainable products.²⁰⁶ Others proposed that contract award criteria (Clause 22) would always be aligned with specific environmental and climate change objectives.²⁰⁷

Government position

The Government generally did not support including in primary legislation wider policy objectives in relation to social value, including climate change and net zero targets – fundamentally important points in themselves. Lord True argued that it would not be appropriate to subject all procurement, from a large-scale infrastructure project to a smaller, price-driven arrangement to the same level of requirements. Therefore the NPPS was better suited to outline wider policy priorities. In that way contracting authorities would have greater flexibility to decide when referencing specific policy objectives would be appropriate. This would avoid adding to the administrative burden contracting authorities and businesses face.²⁰⁸

On report, Baroness Neville-Rolfe reiterated the Government’s position that the NPPS was the right place for including wider policy objectives and said the NPPS was easier to adapt to changing priorities over time. She pointed out that the Bill already required authorities to focus on the “most advantageous tender” rather than the current “most economically advantageous tender”, giving authorities flexibility to reflect specific policy priorities in bespoke tender documents. Also, many of the themes featured in the current non-statutory NPPS.²⁰⁹

Amendments on report

Members returned to procurement objectives and principles on report. There was a cross-party consensus that certain procurement principles and objectives should be explicitly reflected in the Bill’s text. Non-government amendments included requirements for contracting authorities to have regard for social value and certain specific objectives. Other amendments proposed to strengthen the role of the NPPS and guide the government on including social and environmental factors in the NPPS.²¹⁰

²⁰⁵ Amendment 80, a new clause after Clause 13; Cabinet Office, [Firms must commit to net zero to win major government contracts](#), 7 June 2021

²⁰⁶ Amendments 85 and 87 to Clause 15

²⁰⁷ Amendment 124, 124A, 127

²⁰⁸ [HL Deb 6 July 2022, c291GC](#); [HL Deb 13 July 2022, cc493GC](#), cc499GC

²⁰⁹ [HL Bill 28 November 2022, cc1627-1629](#)

²¹⁰ Including Amendments 33, 35, 36, 42, 44, 46, 47, 48 and 96.

Several Conservative members noted that, however commendable the above principles were, including many of them in law would make it more prescriptive, rigid and make it especially harder for small suppliers to compete. They preferred the flexibility to consider social and environmental objectives on a case-by-case basis, while maintaining value for money as the main focus.²¹¹

The Labour Party returned with amendments that would have required authorities to have regard for accessibility requirements for disabled people.²¹² The Minister said this was already a legal requirement, but the government could include clear references to applicable legislation in future technical specifications and guidance.²¹³

The Government lost the vote on the following two amendments to Clause 12 (NPPS).

Baroness Hayman's (Lab) Amendment 46 would require the government to consider a set of principles before publishing the National Procurement Policy Statement. These principles would include: economic, social, environmental and public safety priorities, value for money, transparency and accountability for public spending, integrity, fair treatment of suppliers and non-discriminatory decision making. Members [agreed that the amendment is made](#), by 163 votes to 162.

Lord Lansley's (Con) Amendment 47 would ensure that legal requirements regarding climate change, the environment, public services, supplier innovation and abuse of public money become strategic priorities in the National Procurement Policy Statement. The [amendment was agreed to](#) with 165 votes in favour and 150 against.

4.7

Buying from SMEs and social enterprises

Background

The government's broad approach to buying from SMEs and social enterprises has been to make the procurement process "simpler, more open and less bureaucratic – so all businesses, no matter what their size have a chance of success".²¹⁴ Since 2015, it has implemented a range of measures, for example:

²¹¹ [HL Deb 28 November 2022, cc1619-1621](#), c1624

²¹² Amendments 38, 83

²¹³ [HL Deb 28 November 2022, c1629](#)

²¹⁴ HM Government, [Making public sector procurement more accessible to SMEs: consultation document, 19 September 2013](#) (accessed 28 December 2022)

- preventing departments from ruling out financially sound bidders because of low turnover;²¹⁵
- breaking up large contracts into smaller lots;²¹⁶
- the simplification of bidding procedures, such as removing the requirement for Pre-Qualification Questionnaires for bids under the thresholds;²¹⁷
- making contract opportunities [easier to find](#), and
- requiring [prompt payment](#) of invoices through the supply chain (5 to 30 days when undisputed).

The Government runs a [Public Procurement Review Service](#) that allows suppliers and potential suppliers to raise concerns anonymously about unfair public sector procurement practice. It covers the public sector (but not in areas devolved to Scotland, Wales and Northern Ireland) and prime contractors working on government contracts.²¹⁸

The 2019 Conservative manifesto pledged to “support start-ups and small businesses via government procurement”.²¹⁹

Procurement Bill

There is cross-party support for widening procurement opportunities for small and local businesses (see section 3.1 above). In the Grand Committee the Minister, Lord True, summed up the ways the Bill would open up procurement to SMEs:

First, we are committed to ensuring that the new procurement regime is simpler, quicker and cheaper for suppliers, which particularly benefits SMEs and social enterprises, ensuring lower barriers for entry to the market.

Secondly, bidders will have to submit their core credentials only once to a single platform, making it easier, especially for SMEs, to bid for any public contract. The single transparency platform means that suppliers will be able to seek all opportunities, including a pipeline of future opportunities, in one place.

Thirdly, the Bill will ensure that prompt payment flows down the supply chain, making it more attractive for SMEs to get involved.

²¹⁵ As above; Crown Commercial Service, [Reforms to make public procurement more accessible to SMEs. Procurement Policy Note Q3/15](#), 18 February 2015 (accessed 28 December 2022)

²¹⁶ As above; Crown Commercial Service, [Reforms to make public procurement more accessible to SMEs. Procurement Policy Note Q3/15](#), 18 February 2015 (accessed 28 December 2022)

²¹⁷ As above; Crown Commercial Service, [Reforms to make public procurement more accessible to SMEs. Procurement Policy Note Q3/15](#), 18 February 2015 (accessed 28 December 2022)

²¹⁸ Cabinet Office, [Public Procurement Review Service: scope and remit](#) (accessed 28 February 2022)

²¹⁹ The Conservative and Unionist Party, [Get Brexit done: unleash Britain's potential: manifesto 2019](#) (accessed 28 December 2022)

Fourthly, contracts below the threshold listed in Schedule 1 can be reserved for suppliers based in the UK and/or small suppliers where it is good value for money to do so. Thus, the Bill represents good news for SMEs.²²⁰

The Bill also has provisions to increase visibility of upcoming public sector opportunities and preliminary market engagement. For example, contracting authorities spending more than £100 million annually on procurement would be required to publish a “pipeline notice”, including information about upcoming procurement with an estimated value of more than £5 million. The Bill also aims to improve commercial tools, such as the introduction of dynamic markets and open frameworks.²²¹

Throughout the committee stage, various members questioned whether the Bill did enough to remove barriers to SMEs, social enterprises, not-for-profit organisations, and [public service mutuals](#) accessing public procurement.

Of the amendments, which were tabled to clarify procurement principles and objectives, some referred to SMEs (see the previous section of this briefing). Lords tabled other amendments to stimulate bids from SMEs, charities and others at various stages of the procurement process and for different types of procurement. For example, some would have required that offers from smaller, local suppliers would have to be considered alongside profit-making outsourcing companies and government agencies, particularly in the area of personal social services (Clause 8, Light touch contracts).²²²

Labour sought to require contracting authorities to give more transparency to procurement plans to allow the necessary time, particularly for smaller organisations, to prepare bids (Clause 14, Planned procurement notices).²²³

A group of Conservative probing amendments aimed to limit the bureaucratic burden for small businesses and better involve SMEs in the preliminary stage of procurement (Clause 15, Preliminary market engagement).²²⁴

The Government noted that its Sourcing playbook encourages procurers during preliminary market engagement to actively seek out small and medium-sized enterprises that can help improve delivery, as well as voluntary, community and social enterprises.²²⁵

Members also probed ways to support SMEs by mandating suppliers to join the government Prompt Payment Code which requires that bills of subcontractors (often SMEs) are generally paid within 5 to 30 days.²²⁶

Others proposed addressing disproportionate or unreasonable requirements being put on contracts that would end up excluding SMEs. Examples include

²²⁰ [HL Deb 11 July 2022, c384GC](#)

²²¹ [HL Deb 28 November 2022, cc1634-1635](#)

²²² [HL Deb 11 July 2022, c367GC](#), Amendment 34

²²³ Amendment 82 to Clause 14, amendment 88 to Clause 15

²²⁴ [HL Deb 11 July 2022, cc375-378GC](#), Amendments 38, 50, 97, 100, 534, Amendment 86

²²⁵ [HL Deb 6 July 2022, c292GC](#)

²²⁶ [HL Deb 13 July 2022, c514CG](#), Amendment 119

asking suppliers to demonstrate income or insurance unrelated to the size of the contract.²²⁷ According to the Government, Clause 21 (Conditions of participation) already forbids such unreasonable requirements.

Government amendments on report

On report, a number of amendments in Government's name would complement the existing provisions in the Bill aimed at SMEs. The Government proposed to:

- introduce a new duty for contracting authorities to have regard for the participation of SMEs. For example, they would need to consider whether the requirements are proportionate to the contract from the perspective of a SME, the bidding times realistic and whether they have provided clear pipelines of opportunity.
- remove potential barriers for SMEs
 - such as asking potential bidders in procurement to provide audited annual accounts even for businesses that do not otherwise need to produce them.
 - preventing contracting authorities from asking an insurance in relation to a contract to be in place before the award of the contract.²²⁸

The new duty to have regard for SMEs would be exempted from enforcement in civil proceedings (the remedies regime in Part 9). Any failure to comply would be investigated by a procurement review unit created under Part 10, or subject to a judicial review.²²⁹

Clause 19 (Competitive tendering procedures) was amended to require that a contracting authority would provide sufficient information in the tender notice or associated documents to enable suppliers to prepare tenders.²³⁰

These amendments received support. A number of non-government amendments were also debated in this context but were subsequently withdrawn or were not moved.²³¹

²²⁷ [HL Deb 13 July 2022, c515CG](#), Amendment 120

²²⁸ Amendments 40, 122, 57, 70 and 74; consequential Amendments 75, 76, 134, 140, 179, 183, 186, 188, 192 and 203. Clause 43 would be split onto two.

²²⁹ [HL Deb 28 November 2022, c1644](#)

²³⁰ Amendments 55 and 60

²³¹ [HL Deb 28 November 2022, cc1635-1641](#), e.g. Amendments 41 and 123, 134, 164

4.8

Buying British

Background

Supporting UK businesses and local suppliers through government procurement has been embraced by both the Government and the Official Opposition. The Conservative Party pledged in its 2019 manifesto to encourage the public sector to “‘Buy British’ to support our farmers and reduce environmental costs”.²³² The Labour Party made buying from British businesses one of the cornerstones of its post-pandemic recovery plan. It would seek to use the social and environmental “stretch clauses” in public contracts for the benefit of UK suppliers.²³³ The Labour’s 2022 National procurement plan “would reward businesses that create local jobs, skills and wealth”.²³⁴

Backbench MPs have showed interest in supporting British businesses, for example by asking government to prioritise buying food locally. In the parliamentary Session 2021-22, Labour MP John Spellar sponsored a Private Members’ Bill that would place a duty on public bodies to have a presumption in favour of purchasing goods of British origin in purchasing decisions. This would apply notwithstanding the principles of procurement in [regulation 18 of the Public Contracts Regulations 2015](#) (PCR).²³⁵

However, under the current rules, contracting authorities cannot directly require that the goods they buy originate in the UK, or are from particular regions or areas within the UK. That would be against the general principles of non-discrimination and equal treatment of suppliers embedded in the PCR 2015.²³⁶

Such requirements would also counter the UK’s international obligations on government procurement. Commitments in the UK’s international agreements require that goods, services and suppliers from partner countries are not discriminated against and are treated no less favourably than domestic goods, services and suppliers when they seek to bid for contracts covered by these agreements. See section 1.10 above.

²³² The Conservative and Unionist Party, [Get Brexit done: unleash Britain's potential: manifesto 2019](#)

²³³ Labourlist.org.uk, [Rachel Reeves sets out Labour plan to “make, sell and buy more in Britain”](#), 3 July 2021; Financial Times, [Rachel Reeves says a Labour government would buy British](#), 4 July 2021

²³⁴ Labourlist.org.uk, [Angela Rayner to open conference with pledge to end Tory “procurement racket”](#), 23 September 2022

²³⁵ [British Goods \(Public Sector Purchasing Duty\) Bill](#) (PDF), Bill 43, 2021-22, see Parliament.uk website: <https://bills.parliament.uk/bills/2925>; the [Bill was not selected for debate](#)

²³⁶ PCR 2015, Regulation 18

Reserving below threshold procurement

Under the current procurement regime, there are ways to make procurement attractive to local or regional businesses without explicitly favouring them – for example through

- breaking contracts down into lots of a size that smaller local suppliers would be able to manage more easily
- including relevant associated procurement requirements that would lead to more local people being trained or employed
- promoting potential contracts locally (although not exclusively so)

In December 2020, the Government published [Procurement Policy Note PPN 11/20, Reserving Below Threshold Procurements](#). The note explains that contracting authorities can run a competition for smaller contracts (procurement which is not subject to international trade rules) and specify that only suppliers within a chosen geographical area can bid. Procurement can be reserved to

- UK suppliers only, or to
- local or regional businesses, SMEs or voluntary, community and social enterprises (VCSEs).²³⁷

The following year, an additional [Guide on reserving below threshold procurement](#) (PDF) was published.²³⁸

The threshold for goods and services contracts is below £123,000 (according to Tussel, 54% of all contracts in 2020) and below £4.7 million for works (87% of all contracts in 2020).²³⁹

Local food procurement

Considering the Bill, various members championed the idea of using the procurement regime to support UK businesses. Baroness McIntosh (Con) questioned whether the Bill would support a requirement to purchase food from local suppliers.²⁴⁰ On report she returned with an amendment proposing to add to Clause 11 a procurement objective that the target for procurement

²³⁷ [Procurement Policy Note 11/20: Reserving below threshold procurements](#), December 2020; The thresholds are set out in Cabinet Office, [Procurement Policy Note 10/21 – Thresholds and Inclusion of VAT](#), December 2021

²³⁸ [Procurement Policy Note 11/20: Reserving below threshold procurements](#), September 2021

²³⁹ Tussel, [Overseas Suppliers to the UK Public Sector](#), 2021 Report; “The threshold for ‘Supplies’ and ‘Services’ contracts is below £123k (54% of all contracts in 2020) and below £4.7m for ‘Works’ (87% of all contracts in 2020).”

²⁴⁰ [HL Deb 4 July 2022, cc216-217GC](#)

of food and drink would be procuring 50% of products and ingredients locally.²⁴¹

The Minister, Baroness Neville-Rolfe, reiterated that requiring quotas for buying local UK food and drink produced at a national level would generally breach GPA obligations. However the government note (see above) sets out other options to reserve contracts. This could be useful for schools and some hospitals to identify local producers for purchasing food. DEFRA had consulted on the public sector food and catering policy, and food-buying standard, and would consider how to encourage engagement with small businesses in procurement.²⁴²

4.9 Exclusion grounds

Clauses 54 to 61 include provisions on the exclusion of suppliers, which are deemed unsuitable, on mandatory (Schedule 6) or discretionary (Schedule 7) grounds. A debarment regime would allow Ministers to make a decision to bar individual suppliers from access to the procurement regime entirely.

Tax compliance and disclosure of beneficial ownership

As part of its transparency agenda, the Government [proposed in the green paper to extend the ‘mandatory grounds of exclusion’](#) (PDF) and require that suppliers who do not disclose their ‘beneficial owners’ are automatically excluded from tenders. The Fair Tax Foundation welcomed the proposals and urged [to go further and require](#) greater transparency around tax policies of individual suppliers. During the consultation other respondents said that “local authorities should not be expected to have the resources or expertise to assess suppliers’ compliance on complex issues such as tax.” (see, for example, [Q16 and Q17 of Government response to consultation](#)).²⁴³

In the Grand Committee, members debated Labour amendments to exclude suppliers which are not transparent about their tax payments or have links to tax havens. This was aimed at addressing the issue of some multinationals paying limited tax in the UK. The Government said that the Bill’s scope with regard to tax compliance was broadened to include all tax evasion compared to the current law. Its “unprecedented” transparency requirements would, among other things, require suppliers to disclose their beneficial owners. Moreover, passing judgement on tax compliance was an HMRC

²⁴¹ Amendments 37 and 53, [HL Deb 28 November 2022, c1632](#)

²⁴² [HL Deb 13 July 2022, c494GC](#)

²⁴³ Cabinet Office, [Green paper to extend the ‘mandatory grounds of exclusion’](#) (PDF), para 112; Fair Tax Foundation, [submission to the consultation on the Green paper](#) (PDF); Cabinet Office, [Transforming Public Procurement: Government response to consultation](#) (PDF), CP 556, December 2021, Qq 16-17

competence.²⁴⁴ Lord Hunt said there was a fundamental disagreement between the Government and the Labour Party as to whether procurement legislation could be a tool to enhance other policies.²⁴⁵

Exclusion for financial or economic offences

On report, Liberal Democrats proposed to ensure that the contracting authority can exclude businesses from procurement on evidence of financial or economic offences such as fraud, money laundering, bribery or sanctions evasions, but a formal conviction is outstanding.²⁴⁶ Labour sought to exclude suppliers who have significantly breached workers' rights.²⁴⁷ The Government opposed the amendments: they would add administrative burden for contracting authorities or have a chilling effect on business engagement in procurement. It said other tools were available to address such offences.

Human rights abuses, modern slavery, organ harvesting

In the Grand Committee members debated amendments proposing to tackle organ harvesting, human rights abuses in the supply chains and addressing the issue of Chinese surveillance cameras. For example, Lord Hunt's amendment would have proposed to exclude suppliers located in a country at high risk of forced organ harvesting from certain specific procurements. Lord Alton referred to recent Biden Administration legislation in the US directed to prevent slave labour as an example of a useful policy approach.²⁴⁸

Members returned to these issues on report, with Conservative, Labour, Liberal Democrats and cross-bench peers backing amendments. The Government agreed with the importance of the issues raised, but maintained its position that the Procurement Bill was not the right vehicle for these amendments.²⁴⁹

Members supported two non-government amendments.

Amendment 91 on forced organ harvesting would provide a discretionary power to exclude suppliers from being awarded a public contract if they have participated in forced organ harvesting or unethical activities relating to human tissue. Members [agreed the amendment by 191 votes to 169](#).

²⁴⁴ Amendment 177, 180 to Clause 30; the UK government has committed to [publishing beneficial ownership data](#) in a "structured, machine-readable format which meets the Beneficial Ownership Data Standard". See guidance, [Collect, use and exchange beneficial ownership information](#), 16 March 2022.

²⁴⁵ [HL Deb 24 October 2022, cc277-c293GC](#)

²⁴⁶ Amendment 89 to Schedule 7; Government's [Review into the Risks of Fraud and Corruption in Local Government Procurement](#), MHCLG, June 2020

²⁴⁷ Amendment 91A to Schedule 7

²⁴⁸ [HL Deb 24 October 2022, cc293-306GC](#)

²⁴⁹ [HL Deb 30 November 2022, cc1813-1827](#), e.g. Amendments 91, 94, 95

Amendment 94 on removal of suppliers would create a timeline for the removal of physical technology or surveillance equipment from the government’s procurement supply chain, where there is established evidence that a provider has been involved in modern slavery, genocide, or crimes against humanity. The amendment was [agreed to, with 178 votes to 158](#).

Other government amendments

The Government amended Clause 28 on report, to ensure that the authorities of the House of Commons and House of Lords would not be required to seek the approval of a Minister of the Crown to exclude a supplier on the basis of national security.²⁵⁰

Further government technical amendments in relation to exclusion grounds were agreed on report. Government Amendment 85 would ensure that the mandatory exclusion grounds capture all Scots law offences equivalent to the already specified English and Welsh offences.²⁵¹

4.10

Transparency, conflict of interest and procurement review unit

The procurement reform would introduce a set of measures to strengthen rules aimed at increasing transparency in procurement and fighting corruption. The Government outlined various steps in the Green Paper on Transforming Public Procurement, its consultation response and the Bill. Part of this is in response to lessons learned during the Covid-19 pandemic (see Box 1).²⁵²

The Government is seeking to create a “fully transparent public procurement system” by expanding on procurement information being reported. Government policy paper [Transforming Public Procurement – our transparency ambition](#) summarises the core steps:

- Introducing of a number of new procurement ‘notices’, to cover the entire procurement lifecycle from planning through to contract expiry;
- Establishing a register for suppliers, where they can input information that will be used by all contracting authorities during procurement processes - a ‘Tell Us Once’ system;

²⁵⁰ Amendments 59, 60, 108 and 109

²⁵¹ [HL Deb 28 November, C1653](#)

²⁵² Cabinet Office policy paper, [Transforming Public Procurement - Our Transparency Ambition](#), July 2022; Cabinet Office, Consultation [Green Paper: Transforming public procurement \(PDF\)](#), CP353, December 2020; Cabinet Office, [Transforming Public Procurement: Government response to consultation \(PDF\)](#), CP 556, 6 December 2021

- Building a publicly accessible central digital platform with API access to data published to the Open Contracting Data Standard (OCDS). In future it could be supplemented with a number of registers and tools for analysis and integration of commercial data.²⁵³

The Government expects the transparency reform would contribute to lowering prices through better disclosure, improved accountability in spending, less scope for corruption and savings for businesses due to the ‘Tell Us Once’ approach.²⁵⁴

The Bill also proposes to impose a duty on contracting authorities to have regard for sharing procurement information and ‘acting, and being seen to act, with integrity’.²⁵⁵

1 Procurement during the Covid-19 pandemic

In responding to the pandemic, the Government and other public sector bodies outsourced many activities, including supplies of personal protective equipment (PPE), medical equipment and the organisation of Covid-19 testing, to the private sector. Large volumes of supplies, services and works had to be procured with extreme urgency and facing global shortages.²⁵⁶

Concerns have been raised about the performance of these outsourced services, and about lack of transparency of some procurement processes.²⁵⁷ A proportion of offers of PPE – approximately 430 of the 24,000 according to the Government – were [processed through a ‘high priority referral’ route](#), also referred to as ‘VIP lane’. During an opposition day debate on 6 December, the Labour Party reiterated it was “extremely concerned” that the use of this route may have resulted in “contracts being awarded without due diligence and wasted taxpayer money.” The Government’s position is that all offers for PPE underwent similar due diligence checks regardless of the route through which they were identified.²⁵⁸

The National Audit Office (NAO) has carried out investigations and published several reports on procurement during the pandemic, including:

²⁵³ Cabinet Office, [Transforming Public Procurement - Our Transparency Ambition](#), 30 June 2022

²⁵⁴ As above

²⁵⁵ Now Clauses 12(1)(c) and 12(1)(d)

²⁵⁶ Background on the range of contracts involved in the Government’s Covid-19 response can be found in the National Audit Office (NAO) report, [Investigation into government procurement during the COVID-19 pandemic](#), November 2020.

²⁵⁷ NAO, [Investigation into government procurement during the COVID-19 pandemic, HC959](#), 26 November 2020, para 3.2

²⁵⁸ Commons Library debate pack, [Opposition day debate: Government PPE contracts](#), 6 December 2022; [HC Deb \[Government PPE Contracts\]](#), 6 December 2022

- NAO, Report by the Comptroller and Auditor General, [Investigation into government procurement during the COVID-19 pandemic](#), HC: 959, 2019-21, November 26, 2020
- NAO, Report by the Comptroller and Auditor General, [The supply of personal protective equipment \(PPE\) during the COVID-19 pandemic](#), HC 961, November 2020
- NAO, Report by the Comptroller and Auditor General, [Investigation into the management of PPE contracts](#), HC 1144, March 2022

The Public Accounts Committee (PAC) has held several [inquiries into Covid-19 procurement following NAO reporting](#) and published reports which have looked at the handling of the high priority lane and the Department of Health and Social Care management of pandemic procurement.²⁵⁹

In 2020/21, The Cabinet Office [commissioned an independent expert review](#) in relation to pandemic procurement. Nigel Boardman published two reports and recommendations, which the Government has accepted.²⁶⁰ Among other steps, the Government has updated guidance on exclusion of suppliers, and managing conflict of interest.²⁶¹

To address emergency situations, the Procurement Bill would allow certain contracts to be awarded directly. For this, circumstances would have to be unforeseen and justified by extreme and unavoidable urgency (Clause 40 (now 41) and Schedule 5). Clause 41 (now 42) would introduce a new power to deal with procurement in case of an extreme event, which might have been foreseen, but where fast action is required to protect life. All direct contract awards would be accompanied by transparency notices.

At various points in the Grand Committee and on report, Members debated amendments related to conflict of interest, covid procurement and VIP lanes. Enhanced transparency provisions were generally widely supported. Members discussed non-government amendments, including to prevent the future use of 'VIP lanes' for public contracts.²⁶² On report, members voted against Labour Amendment 72 in relation to 'VIP' lanes (see section 3.3 above).

On report, Baroness Neville-Rolfe clarified that the Bill would help implement NAO and Boardman recommendations:

²⁵⁹ Public Accounts Committee, [Forty-Second Report – COVID-19: Government procurement and supply of Personal Protective Equipment](#), HC 928, Session 2019-21, 10 February 2021, paras 8-10; PAC, [DHSC management of PPE contracts](#), Session 2022-23, HC 260, 20 July 2022

²⁶⁰ Cabinet Office, [Independent report, Findings of the Boardman review into pandemic procurement](#), 7 May 2021; for a summary of the recommendation see Commons Library debate pack, CDP 2021/0089, [Government contracts during the Covid-19 outbreak](#), 18 June 2021, section 1.1

²⁶¹ Cabinet Office, [Procurement Policy Note 04/21: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing](#), May 2021

²⁶² [HL Deb 24 October 2022, cc316-325GC](#), Amendments 240, 236A; [HL Deb 30 November 2022, cc1791-1794, Amendment 72](#)

One point worth making is that a key theme in Boardman and the NAO reports mentioned was the lack of record-keeping and audit around decision-making. The Procurement Bill strengthens the requirements on conflicts of interest compared with the current law. A new duty has been introduced in Clause 78(5) to require contracting authorities to confirm that a “conflicts assessment” has been prepared and then reviewed and revised as necessary when publishing a procurement note.²⁶³

Procurement review unit

Labour, Liberal Democrat and cross-bench members queried the status of the Procurement Review Unit (PRU), which was proposed in the green paper, but is not explicitly mentioned in the Bill. On report, the Minister sought to reassure them that “the Cabinet Office is committed to establishing an effective procurement review unit” assisted by an advisory panel of sector experts. The key objective of the PRU would be to oversee contracting authorities’ compliance with the new rules. It would investigate suppliers who might have to be added to the debarment list for excluded suppliers. It would also investigate individual complaints – currently the work of the Public Procurement Review Service.²⁶⁴

²⁶³ [HL Deb 30 November 2022, c1802](#)

²⁶⁴ As above

Annex: Procurement Bill clause concordance table

| Procurement Bill [HL]: Clause concordance table | | | |
|--|---|---|---|
| HL Bill 4 (as introduced) | HL Bill 63 (as amended in Grand Committee) | HL Bill 75 (as amended on Report) | Bill 218 2022-23 (as brought from the House of Lords) |
| Part 1: Key definitions | | | |
| | | 1 | 1 |
| 1 | 1 | 2 | 2 |
| 2 | 2 | 3 | 3 |
| 3 | 3 | 4 | 4 |
| 4 | 4 | 5 | 5 |
| 5 | 5 | 6 | 6 |
| 6 | 6 | 7 | 7 |
| 7 | 7 | 8 | 8 |
| 8 | 8 | 9 | 9 |
| 9 | 9 | 10 | 10 |
| Part 2: Principles and objectives | | | |
| 10 | 10 | 11 | 11 |
| 11 | 11 | 12 | 12 |
| 12 | 12 | 13 | 13 |
| 13 | 13 | 14 | 14 |
| Part 3: Award of public contracts and procedures | | | |
| Chapter 1: Preliminary steps | | | |
| 14 | 14 | 15 | 15 |
| 15 | 15 | 16 | 16 |
| 16 | 16 | 17 | 17 |
| 17 | 17 | 18 | 18 |
| Chapter 2: Competitive award | | | |
| 18 | 18 | 19 | 19 |
| 19 | 19 | 20 | 20 |
| 20 | 20 | 21 | 21 |
| 21 | 21 | 22 | 22 |
| 22 | 22 | 23 | 23 |
| 23 | 23 | 24 | 24 |
| 24 | (Transposed to 53) | (see 56) | (See 56) |
| 25 | 24 | 25 | 25 |

| | | | |
|---|--------------------------|-----------------------|-----------------------|
| 26 | 25 | 26 | 26 |
| 27 | 26 | 27 | 27 |
| 28 | 27 | 28 | 28 |
| 29 | 28 | 29 | 29 |
| 30 | 29 | 30 | 30 |
| 31 | 30 | 31 | 31 |
| 32 | 31 | 32 | 32 |
| 33 | 32 | 33 | 33 |
| 34 | 33 | 34 | 34 |
| 35 | 34 | 35 | 35 |
| 36 | 35 | 36 | 36 |
| 37 | 36 | 37 | 37 |
| 38 | 37 | 38 | 38 |
| 39 | 38 | 39 | 39 |
| | | 40 | 40 |
| Chapter 3: Direct award | | | |
| 40 | 39 | 41 | 41 |
| 41 | 40 | 42 | 42 |
| 42 | 41 | 43 | 43 |
| 43 | 42 | 44 | 44 |
| Chapter 4: Award under frameworks | | | |
| 44 | 43 | 45 | 45 |
| | | 46 | 46 |
| 45 | 44 | 47 | 47 |
| 46 | 45 | 48 | 48 |
| 47 | 46 | 49 | 49 |
| Chapter 5: After award, standstill periods and notices | | | |
| 48 | 47 | 50 | 50 |
| 49 | 48 | 51 | 51 |
| 50 | 49 | 52 | 52 |
| 51 | 50 | 53 | 53 |
| Chapter 6: General provision about award and procedures | | | |
| 52 | 51 | 54 | 54 |
| 53 | 52 | 55 | 55 |
| | 53 transposed from 24 | 56 (as transposed) | 56 (as transposed) |
| 54 | 54 | 57 | 57 |
| 55 | 55 | 58 | 58 |
| 56 | 56 | 59 | 59 |
| 57 | 57 | 60 | 60 |
| 58 | 58 | 61 | 61 |
| 59 | 59 | 62 | 62 |
| 60 | 60 | 63 | 63 |
| 61 | 61 | 64 | 64 |
| | | 65 | 65 |

| Part 4: Management of public contracts | | | |
|---|------------------------|-----------------|-----------------|
| 62 | 62 | 66 | 66 |
| 63 | 63 | 67 | 67 |
| 64 | 64 | 68 | 68 |
| 65 | 65 | 69 | 69 |
| 66 | 66 | 70 | 70 |
| 67 | 67 | 71 | 71 |
| 68 | 68 | 72 | 72 |
| 69 | 69 | 73 | 73 |
| 70 | Divided into 70 and 72 | 74 (and 76) | 74 (and 76) |
| 71 | 71 | 75 | 75 |
| | 72 (as divided) | 76 (as divided) | 76 (as divided) |
| 72 | 73 | 77 | 77 |
| | 74 | 78 | 78 |
| 73 | 75 | 79 | 79 |
| Part 5: Conflicts of interest | | | |
| 74 | 76 | 80 | 80 |
| 75 | 77 | 81 | 81 |
| 76 | 78 | 82 | 82 |
| Part 6: Below-threshold contracts | | | |
| 77 | 79 | 83 | 83 |
| 78 | 80 | 84 | 84 |
| | | 85 | 85 |
| 79 | 81 | 86 | 86 |
| 80 | 82 | 87 | 87 |
| Part 7: Implementation of international obligations | | | |
| 81 | 83 | 88 | 88 |
| 82 | 84 | 89 | 89 |
| 83 | 85 | 90 | 90 |
| Part 8: Information and notices: general provision | | | |
| 84 | 86 | 91 | 91 |
| 85 | 87 | 92 | 92 |
| 86 | 88 | 93 | 93 |
| 87 | 89 | 94 | 94 |
| 88 | 90 | 95 | 95 |
| | 91 | 96 | 96 |
| Part 9: Remedies for breach of statutory duty | | | |
| 89 | 92 | 97 | 97 |
| 90 | 93 | 98 | 98 |
| 91 | 94 | 99 | 99 |
| 92 | 95 | 100 | 100 |
| 93 | 96 | 101 | 101 |
| 94 | 97 | 102 | 102 |
| 95 | 98 | 103 | 103 |

| Part 10: Procurement oversight | | | |
|---|-----|-----------------|-------------------|
| 96 | 99 | 104 | 104 |
| 97 | 100 | 105 | 105 |
| 98 | 101 | 106 | 106 |
| Part 11: Appropriate authorities and cross-border procurement | | | |
| 99 | 102 | 107 | 107 |
| 100 | 103 | 108 | 108 |
| 101 | 104 | 109 | 109 |
| 102 | 105 | 110 | 110 |
| 103 | 106 | 111 | 111 |
| Part 12: Amendments and repeals | | | |
| 104 | 107 | 112 | 112 |
| 105 | 108 | 113 | 113 |
| 106 | 109 | 114 | 114 |
| 107 | 110 | 115 | 115 |
| Part 13: General | | | |
| 108 | 111 | Replaced by 116 | 116 (as replaced) |
| 109 | 112 | 117 | 117 |
| 110 | 113 | 118 | 118 |
| 111 | 114 | 119 | 119 |
| 112 | 115 | 120 | 120 |
| 113 | 116 | 121 | 121 |
| 114 | 117 | 122 | 122 |
| 116 | 118 | 123 | 123 |
| 116 | 119 | 124 | 124 |

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