



Procurement Bill [HL]

HL Bill 4 of 2022–23

Author: Charley Coleman

Date published: 20 May 2022

On 25 May 2022, the second reading of the [Procurement Bill \[HL\]](#) is scheduled to take place in the House of Lords.

The Procurement Bill consists of 116 clauses arranged over 13 parts. It has 11 schedules. The bill also contains a number of regulation-making powers.

The bill would reform existing rules on public procurement. These largely derive from the UK's former membership of the EU. The government has argued these rules are complicated and restrictive and that the new legislation would be simpler and more flexible.

Key procurement principles of non-discrimination and equal treatment are included in the bill, along with four objectives: value for money, maximising public benefit, transparency and integrity. The government's policy objectives for the reforms made under the bill are:

- to speed up and simplify public procurement processes
- to place value for money at their heart
- to create greater opportunities for small businesses and social enterprises to innovate public service delivery

The bill has been introduced following the publication of a green paper by the Cabinet Office and a period of consultation. The government published its response to the consultation in December 2021.

Table of Contents

1. Why has the legislation been introduced?

2. Overview of the bill

3. Responses to the bill

4. Read more

Table of Contents

1. Why has the legislation been introduced?	1
1.1 The government's public procurement principles	3
2. Overview of the bill	5
2.1 Part 1: Key definitions.....	5
2.2 Part 2: Principles and objectives	8
2.3 Part 3: Award of public contracts and procedures.....	10
2.4 Part 4: Management of public contracts	14
2.5 Part 5: Conflicts of interest	15
2.6 Part 6: Below-threshold contracts.....	15
2.7 Part 7: Implementation of international obligations.....	16
2.8 Part 8: Information and notices: general provision	19
2.9 Part 9: Remedies for breach of statutory duty	20
2.10 Part 10: Procurement oversight.....	20
2.11 Part 11: Appropriate authorities and cross-border procurement.....	21
2.12 Part 12: Amendments and repeals.....	22
2.13 Part 13: General.....	24
3. Responses to the bill	26
4. Read more	28

I. Why has the legislation been introduced?

The [Procurement Bill \[HL\]](#) was announced in the 2022 Queen's Speech. Its introduction followed the publication of a green paper by the government in December 2020.¹ The government consulted on the green paper and published its response in December 2021.² The government had also announced a procurement bill in the 2021 Queen's Speech, but did not introduce it in the 2021–22 session.³

Alongside the bill, the government has published [explanatory notes](#); a [delegated powers memorandum](#); and an [impact assessment](#), including an [equalities impact assessment](#) and an [annex to the impact assessment on amendments to the Defence Reform Act 2014](#).

The bill would introduce changes to public procurement legislation in the UK, much of which is derived from EU law.⁴ Public procurement refers to the purchase of goods, services and works by governments and public authorities. The government has said that public procurement accounts for a third of all public expenditure, at £300bn each year.⁵

The government's policy objectives for the reforms made under the bill are:⁶

- to speed up and simplify public procurement processes
- to place value for money at their heart
- to create greater opportunities for small businesses and social enterprises to innovate public service delivery

The government has argued that the existing public procurement regime is too restrictive and complicated for both buyers and suppliers. It intends that the new regime should be simpler and more flexible “to make it better able to adapt to the fast moving environment in which businesses operate”.⁷

The Cabinet Office has set out some of the differences between the current and proposed procurement regimes:

Substantial differences from the current regime include greater powers for ministers (including in the devolved administrations) to investigate non-compliance; a new emergency procurement process to be used in

¹ Cabinet Office, '[Transforming public procurement](#)', December 2020, CP 353.

² Cabinet Office, '[Transforming public procurement: Government response to consultation](#)', December 2021, CP 556.

³ Prime Minister's Office, '[Queen's Speech 2021](#)', 11 May 2021, pp 74–6.

⁴ [Explanatory notes](#), para 34.

⁵ [Explanatory notes](#), para 8.

⁶ [Explanatory notes](#), para 10.

⁷ [Explanatory notes](#), para 11.

extremely urgent situations and a new debarment list, which will preclude entities included on it from access to the UK procurement regime.⁸

A factsheet on the bill published by the Cabinet Office has argued that the legislation would have the following benefits:⁹

- 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. The bill would remove 350 existing rules derived from the EU. Replacing these would “not only reduce costs for businesses and the public sector, but also drive innovation by allowing buyers to tailor procurement to their exact needs, building in new stages such as demonstrations and testing prototypes”.
- 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, while a single central transparency platform will allow suppliers to see all opportunities in one place”. This would help SMEs through prompt payment “on a much broader range of contracts”.
- 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.

⁸ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 4.

⁹ Cabinet Office, [‘Simpler, more flexible and transparent procurement’](#), 12 May 2022.

- Improving value for money. Greater transparency and a “bespoke approach” to procurement would give buyers more flexibility and greater opportunities to negotiate with suppliers.
- Protecting national security. Suppliers that presented a risk to national security could be excluded from defence and security tenders. The bill’s provisions would also “secure value for money, as well as providing flexibility for contracts to be upgraded to refresh technology and avoid gaps in capability”.

The explanatory notes to the Procurement Bill describe the following as the principal legislation covering public procurement in England, Wales and Northern Ireland and would be repealed by the bill:

- the Public Contracts Regulations 2015
- the Utilities Contracts Regulations 2016
- the Concession Contracts Regulations 2016
- the Defence and Security Public Contracts Regulations 2011

These regulations contain “over 350 individual regulations derived from EU directives”.¹⁰

In oral evidence to the House of Commons Public Administration and Constitutional Affairs Committee, Jacob Rees-Mogg, minister of state for Brexit opportunities and government efficiency, said that the Welsh Government and Northern Ireland Executive had decided the bill should extend to Wales and Northern Ireland, but Scotland has decided to remain outside the framework of the bill:

[B]oth Wales and Northern Ireland have decided to join in the public procurement with HMG rather than doing it separately. Scotland has decided to do it separately.¹¹

In August 2021, the Welsh government said that it had agreed to work with the UK government following assurances that it would still be able to achieve its own legislative and policy agenda on procurement (as set out in its draft Social Partnership and Public Procurement (Wales) Bill).¹²

1.1 The government’s public procurement principles

The government has stated that the reforms have been guided by the ‘principles of public procurement’ set out in the government’s 2020 green

¹⁰ [Explanatory notes](#), para 15

¹¹ House of Commons Public Administration and Constitutional Affairs Committee, ‘[Oral evidence: Common frameworks](#)’, 22 March 2022, HC 1138 of session 2021–22, Q6.

¹² Welsh government, ‘[Procurement reform in Wales](#)’, 23 August 2021.

paper.¹³ The six principles in the green paper were: public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination.¹⁴ The government’s response to its consultation said that “a clear majority” of respondents supported the principles, but 20% raised concerns about the removal of the EU principle of proportionality. The government said proportionality was a key concept, as detailed in its better regulation framework,¹⁵ and it would introduce it in specific regulations where required “to ensure this is captured and to address responses requiring more specific detail”.¹⁶ The government gave the following example of factors that would be taken into consideration when assessing proportionality:

For example, the proposed legal regime will require the timescales of a procurement procedure to be proportionate to the cost, nature and complexity of the requirement, and that the conditions of participation in a procurement are a proportionate means of checking suppliers have the necessary capability to avoid treating smaller suppliers unfairly.¹⁷

Respondents also asked for more clarity on the practical implementation of the principles, particularly on public good, and some suggested changing fair treatment to equal treatment to reduce subjectivity.¹⁸

The government said it would also “refine the proposed wording in the draft legislation on the principles previously proposed into ‘objectives’ and ‘principles’ so that the obligations on contracting authorities are clearer”.¹⁹ The government said it would frame public good as an objective, maximising public benefit, and that value for money and integrity would also be statutory objectives. On transparency, the government said it would look to clarify requirements to be placed on contracting authorities and suppliers:

The response to the green paper showed strong support for the increased emphasis on transparency but highlighted some potential additional burdens on both contracting authorities and suppliers. We therefore propose to introduce procedural obligations at each stage of the procurement process setting out more explicit publication

¹³ [Explanatory notes](#), para 3.

¹⁴ Cabinet Office, ‘[Transforming public procurement](#)’, December 2020, CP 353, para 27.

¹⁵ Department for Business, Energy and Industrial Strategy, ‘[Better regulation framework: Interim guidance](#)’, March 2020.

¹⁶ Cabinet Office, ‘[Transforming public procurement: Government response to consultation](#)’, December 2021, CP 556, para 42.

¹⁷ Cabinet Office, ‘[Transforming public procurement: Government response to consultation](#)’, December 2021, CP 556, para 42.

¹⁸ Cabinet Office, ‘[Transforming public procurement: Government response to consultation](#)’, December 2021, CP 556, p 10.

¹⁹ Cabinet Office, ‘[Transforming public procurement: Government response to consultation](#)’, December 2021, CP 556, para 34.

obligations that will provide clarity to contracting authorities on exactly what they need to publish. The transparency principle previously proposed will set a minimum standard in terms of the quality and accessibility of information where there is a publication obligation elsewhere in the bill.

On fair treatment, the government said this would “cover both equal treatment of suppliers and procedural fairness during procurement procedures, to provide clarity for contracting authorities”.²⁰

The explanatory notes state that the bill “embeds a number of key principles (non-discrimination and equal treatment) and objectives (value for money, maximising public benefit, transparency and integrity) for public procurement”.²¹ Procurement objectives are set out in clause 11 of the bill.²²

On international agreements, the explanatory notes state that the government is committed to compliance with the World Trade Organisation’s (WTO) Agreement on Government Procurement (GPA) and that it will “continue to maintain and build on the UK’s existing international relationships and new bilateral trade agreements”.²³ The Cabinet Office has stated that the bill would be compliant with the UK’s existing international obligations on procurement, for example the GPA.²⁴ Provisions under part 7 of the bill would also create powers for the government to make changes implementing future agreements the UK may enter into.

2. Overview of the bill

The Procurement Bill is a substantial piece of legislation consisting of 116 clauses arranged over 13 parts. It has 11 schedules. The bill also contains a number of regulation-making powers. This section provides an overview of the bill’s provisions.

2.1 Part 1: Key definitions

Part 1 of the bill includes nine clauses. These provide definitions for several of the terms used in the bill.

Clause 1 defines contracting authorities as a public authority (other than an excluded one) or, in relation to a utilities contract, a public authority, public undertaking or a private utility. A public authority would mean any authority

²⁰ Cabinet Office, ‘[Transforming public procurement: Government response to consultation](#)’, December 2021, CP 556, para 37.

²¹ [Explanatory notes](#), para 24.

²² See section 2.3 of this briefing for further information.

²³ [Explanatory notes](#), para 12.

²⁴ Cabinet Office, ‘[Transforming public procurement](#)’, December 2020, CP 353, para 5.

with functions of a public nature that is wholly or mainly funded from public funds or is subject to contracting authority oversight.²⁵ A public undertaking is an undertaking that is not a public authority but is funded wholly or mainly from public funds or is subject to contracting authority oversight.²⁶ Excluded authorities are defined as: devolved Scottish authorities; the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; and the Advanced Research and Invention Agency.²⁷

Clause 2 defines three types of contracts that would be public contracts for the purposes of the bill. These include:

- 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 of the bill if it was not exempt and had an estimated value above a specific threshold. These thresholds are set out in schedule 1. Schedule 2 sets out what type of contracts are considered exempted contracts for the purposes of the bill.

Clause 3 would make provision for the valuation of contracts. A contracting authority estimating the value of a contract would have to do so in accordance with schedule 3.

Clause 4 relates to mixed procurement where elements of a contract may be above or below different thresholds. The bill's explanatory notes set this out as follows:

There are different thresholds in schedule 1 for different types of contract. It is therefore necessary to determine for the purposes of applying those thresholds whether a contract containing elements relating to different types (a mixed contract) should have those elements separated into different contracts so that the thresholds can be calculated separately for each separate contract (each of which will only fall within one such type).

If this is possible but a contracting authority chooses not to separate the mixed contract, the mixed contract will, where one of its elements would be above a threshold but it would otherwise be a below-threshold contract, be treated as above a threshold (and therefore,

²⁵ Clause 1(2).

²⁶ Public undertakings are “bodies funded wholly or mainly from public funds or over which a contracting authority exercises a dominant influence” ([Explanatory notes](#), para 17).

²⁷ Clause 1(5).

unless an exemption applies, a public contract to which this legislation applies).²⁸

Clauses 5, 6, 7, and 8 provide definitions for utilities contracts, defence and security contracts, concession contracts and light touch contracts.

Light touch contracts are defined under clause 8 as “a contract wholly or mainly for the supply of services of a kind specified in regulations under [clause 8(2)]”. The making of such regulations is subject to certain considerations. The Cabinet Office has explained that the regime under the bill for light touch contracts is an aspect of existing rules for contracts that have fewer rules regulating them:

The light touch regime is a facet of the existing rules [...] and has fewer rules regulating how a procurement is conducted for these contracts. This is reflected in the bill by a series of exceptions of obligations under the procurement regime for the relevant contracts.²⁹

The regulation-making power in clause 8(2) relates to common procurement vocabulary (CPV) codes. These are used in international agreements and are “aimed at standardising the references used by contracting authorities and entities to describe the subject of procurement contracts”.³⁰ CPV codes derive from the EU and are “well used and understood in the market, so the UK has continued to use these codes post EU exit”. Another form of code, called central product classification (CPC) is used by other nations (for example, it is used in the GPA).³¹ CPVs are more granular than CPCs. The Cabinet Office has explained that CPV codes would be used to indicate categories of contracts that may benefit from the light touch regime:

Whilst the scope of what is to be included in the power is known, it is not practicable for the bill to include a long list of detailed CPV codes to indicate which categories of contracts may benefit from the light touch regime. In addition, both CPC and CPV codes may evolve over time, which would (absent a power) require amendment to the bill. The power will be used to ensure that the scope of what is included with the light touch regime does not extend beyond what is permitted for the UK by reference to the GPA and/or other international trade agreements.³²

²⁸ [Explanatory notes](#), paras 62–3.

²⁹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 39.

³⁰ SIMAP, ‘[CPV](#)’, accessed 18 May 2022.

³¹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 40.

³² Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 42.

The Cabinet Office also states that the regulation-making power under clause 8(2) needs to be read with clause 108 “which allows a minister of the crown to carve certain healthcare and associated contracts, for certain bodies out of the scope of the bill regime”. Clause 108 is discussed in section 2.13 of this briefing.

Clause 9 relates to mixed procurement where certain contracts contain elements of different types of contracts which would be subject to different rules (for example, light touch contracts).³³

A general index of defined expression can be found in clause 112.

2.2 Part 2: Principles and objectives

Requirement to carry out procurement under the bill

Under clause 10 a contracting authority would only be able to carry out a procurement in accordance with the bill. A procurement would include the award and management of a public contract “including any steps taken for the purpose of awarding or managing the contract”. Procurement would also include part of a procurement or, when relevant, the termination of a procurement before award.

Clause 10(3) sets out that a contracting authority would only be able to award a public contract in accordance with the following clauses of the bill:

- section 18 (competitive award)
- section 40 (direct award in special cases)
- section 42 (direct award after switching procedures)
- section 44 (award under frameworks)

Procurement objectives

Clause 11 of the bill sets out procurement objectives to which a contracting authority must have regard when carrying out a procurement:

- (1) In carrying out a procurement, a contracting authority must have regard to the importance of—
- (a) delivering value for money;
 - (b) maximising public benefit;
 - (c) sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions;
 - (d) acting, and being seen to act, with integrity.

³³ [Explanatory notes](#), para 89.

(2) In carrying out a procurement, a contracting authority must treat suppliers the same unless a difference between the suppliers justifies different treatment.

(3) If a contracting authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

National procurement policy statement

Clause 12 would provide that a minister of the crown would be able to publish a statement which sets out the government's strategic priorities in relation to procurement, to be known as the national procurement policy statement (NPPS). In 2021, the government published an NPPS.³⁴ In the policy note accompanying the statement, the government said it intended to legislate to require contracting authorities to have regard to the NPPS.³⁵ The bill implements that commitment.

The government would have to “carry out such consultation as the minister considers appropriate” on the statement.³⁶ The statement would have to be laid before Parliament. The statement would have to be withdrawn before the end of a 40-day period if either House resolved not to approve it. The statement would have to be kept under review by the government and it could be amended or replaced by a subsequent statement. New or amended statements would also be subject to the same process as the original statement.

Under clause 12(9), contracting authorities would have to have regard to the statement. However, under clause 12(10), subsection 9 would not apply to certain contracting authorities and contracts, for example private utilities or in relation to any devolved Welsh procurement arrangement or transferred Northern Ireland procurement arrangement.

Clause 13 would provide for a similar power for Welsh ministers to publish a statement setting out the Welsh government's strategic priorities in regard to procurement.

The Cabinet Office's memorandum to the Delegated Powers and Regulatory Reform Committee states that the statements would be “akin to a statutory code of practice”.³⁷ The ‘have regard’ obligation would apply in relation to

³⁴ Cabinet Office, [‘Procurement policy note 05/21: National procurement policy statement’](#), 3 June 2021.

³⁵ Cabinet Office, [‘Procurement policy note: National procurement policy statement’](#), June 2021.

³⁶ Clause 12(3)(a).

³⁷ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 11.

“all functions under the bill”, including “the point of inception that a contract may be required and govern any preliminary market engagement that might take place”. It would apply throughout the process of procurement and also to the management, amendment and termination of any contract that has been awarded. The Cabinet Office sets out that the intention of the NPPS was not to impose the government’s political priorities on bodies normally outside of its control, but rather to influence them:

The NPPS is aimed at influencing procurement by bodies that are outside central government. The power is not intended to go so far as to impose HMG’s political priorities on bodies normally beyond its direct control. It is, though, to ensure that there is a consistent set of procurement priorities that permeates across the public sector and expenditure of public money on procurement, this ensures that all contracting authorities consider the same core priorities when undertaking procurement activities.³⁸

Currently, the government publishes procurement policy notes (PPNs) which apply to central government contracting authorities but not to those outside of central government.³⁹ The Cabinet Office argued that the NPPS would help in “ensuring that the expenditure of public money can be used in a way that best reflects developing and ongoing societal needs”.

2.3 Part 3: Award of public contracts and procedures

Part 3 includes the bill’s provisions on the award of public contracts and procedures to be followed in procurement. It consists of 48 clauses over six chapters. It includes clauses on:

- preliminary steps
- competitive awards (including terms of procurement, exclusions and modifications, reserving contracts to certain suppliers and awarding contracts by reference to dynamic markets)
- direct awards
- award under frameworks
- after awards, standstill periods and notices
- general provision about award and procedure (including time limits and termination, excluding suppliers and debarment)

This section provides an overview of these provisions.

³⁸ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 45.

³⁹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 48.

Breaking up larger contracts

One of the provisions that forms part of the bill's chapter on preliminary steps would require that before publishing a tender notice, a contracting authority would have to consider whether breaking the contract into smaller contracts, or lots, was appropriate.⁴⁰ The authority would either have to arrange for the contract to be awarded by reference to lots or provide reasons for not doing so. The Cabinet Office has explained that this would "open up government procurement to a greater range of bidders, in particular SMEs".⁴¹

Competitive awards

The explanatory notes state that a key part of the bill is the requirement that tenders are based on identifying the 'most advantageous tender'.⁴² Clause 18 provides that a contracting authority may award a public contract to the supplier that submitted the most advantageous tender in a competitive tendering process. This is the tender that the contracting authority considers best satisfied its awarding criteria. These criteria are set under clause 22. In setting award criteria, the contracting authority must be satisfied 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, and
- (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.⁴³

The contracting authority would have to describe how tenders would be assessed by reference to the criteria and indicate their relative importance.⁴⁴

The Cabinet Office has stated that the provisions on competitive award are generally started by the publication of a tender notice and that multi-stage tendering would also be allowed:

Provisions on competitive award set out the discretion afforded to a contracting authority in establishing the process under which it will carry out individual procurements. Procurements are generally started by the publication of a tender notice (sometimes with subsequent "tender documents") which sets out essential information in relation

⁴⁰ Clause 17.

⁴¹ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 13.

⁴² [Explanatory notes](#), para 25.

⁴³ Clause 22(2).

⁴⁴ Clause 22(3)

to the procurement (to be determined in regulations). It allows for multi-stage tendering where initial stages require potential bidders to satisfy certain conditions for participation.⁴⁵

Other provisions include addressing “the circumstances in which limited types of contracts can be reserved for certain types of supplier, for example public service mutuals and supported employment schemes”.⁴⁶

Clauses 26 to 31 make provision relating to exclusions and modifications. This includes provisions on excluding suppliers that are threats to national security or for improper behaviour. Clause 30(4) says that a supplier might act improperly in relation to a procurement by:

- (a) failing to provide information requested by the contracting authority;
- (b) providing information that is incomplete, inaccurate or misleading;
- (c) accessing confidential information;
- (d) unduly influencing the contracting authority’s decision-making.

Direct awards

As well as competitive awards, clause 40 of the bill includes provision on the direct award of contracts.⁴⁷ In order for a contracting authority to directly award a contract to a supplier, a ‘direct award justification’ must apply. These are set out in schedule 5. The Cabinet Office has summarised these as including the following:

- a. prototypes and development of novel goods and services;
- b. where the award can only be made to one supplier;
- c. a limited quantity of additional or repeat goods and services;
- d. goods purchased on a commodity market;
- e. goods purchased on particularly advantageous terms following an insolvency;
- f. urgency;
- g. where necessary to protect life etc (see more detail below);
- h. user choice contracts (where another statutory regime makes provision for user choice, for example health); and
- i. defence and security contracts.⁴⁸

⁴⁵ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 14.

⁴⁶ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 15.

⁴⁷ Including to excluded suppliers “if the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier” (clause 40(2)).

⁴⁸ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 16.

Clause 41 would allow a minister of the crown to make regulations specifying that an award under clause 40 may be made for specified public contracts to “protect human, animal or plant life or health” or “protect public order or safety” as if a direct award justification applied.⁴⁹ Provision in the regulations would be able to:

- (a) specify contracts or classes of contract, or otherwise describe contracts by reference to purpose, subject-matter or contracting authority;
- (b) include other conditions or limitations;
- (c) confer a discretion.⁵⁰

The Cabinet Office has stated that this power would enable the government to be able to deal more effectively with “a situation akin to Covid-19”.⁵¹

Clause 42 makes provision for a contracting authority to “switch from a competitive tendering procedure to the direct award of a contract in circumstances where no suitable tenders or requests to participate have been received in a competitive procedure”.⁵²

Before making a direct award under clause 40 or 42, the contracting authority would have to publish a transparency notice setting out its intention to make the award and other information that may be specified by regulations under clause 86.⁵³

Excluded suppliers and debarment

Clauses 54 to 61 include provisions on the exclusion of certain suppliers. This includes both mandatory and discretionary grounds:

The bill also sets out a regime for the exclusion of certain suppliers who are deemed not suitable to be bidding for public contracts. There are a range of mandatory and discretionary exclusionary grounds (see in particular Schedules 6 (mandatory exclusion grounds) and 7 (discretionary exclusion grounds)). This includes provision for a debarment regime, which allows ministers to make a decision to bar individual suppliers from access to the procurement regime entirely.⁵⁴

⁴⁹ Clause 41(2).

⁵⁰ Clause 41(3).

⁵¹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 63.

⁵² [Explanatory notes](#), para 42.

⁵³ See section 2.8 of this briefing for more information on clause 86.

⁵⁴ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 20.

The bill would also provide for forms of collective procurement:

This includes through framework agreements, 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 more easily.⁵⁵

2.4 Part 4: Management of public contracts

Part 4 of the bill contains provisions on different terms implied in public contracts (including implied payment terms and rights to terminate); notices about payments and performance; sub-contracting; modifying contracts; and terminating public contracts.

Terms implied under the bill include certain obligations on the provision and acceptance of electronic invoices (e-invoices) and timescales within which invoices must be paid. For example, under clause 62(2) a contracting authority must accept for payment an undisputed e-invoice that complies with the e-invoice standard.⁵⁶ This standard is made in reference to existing British standards for electronic invoicing, as set out in clause 62(3).⁵⁷ Under clause 63(2), it would be an implied term in public contracts that “a payment due to be made under the contract by the contracting authority must be paid within 30 days from the day the invoice is received by the authority (or later where a payment date is specified)”.⁵⁸ The Cabinet Office has said that the requirement to pay invoices within 30 days “is intended to help make public contracts more accessible to businesses, specifically SMEs”.⁵⁹ Clause 63(10) would allow this period to be reduced through regulations. The Cabinet Office has said the 30-day period could be reduced in the future:

We anticipate that it may be appropriate in the future to reduce the maximum payment term from 30 days, either as a result of changes in contracting authority behaviour or as a result of technological changes affecting how payments are managed, or both. The power is constrained so that the maximum payment term will not exceed 30 days.⁶⁰

Clause 64 makes provision for the publication of payments compliance notices. This is defined as a notice that sets out specific information on the

⁵⁵ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 18.

⁵⁶ [Explanatory notes](#), para 363.

⁵⁷ [Explanatory notes](#), para 364.

⁵⁸ [Explanatory notes](#), para 371.

⁵⁹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 90.

⁶⁰ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 90.

authority's compliance with the obligation under clause 63(2) to make payments under public contracts within 30 days.⁶¹ Payments compliance notices would have to be published within 30 days of the end of the 'reporting period'. The reporting period is defined as:⁶²

- (a) the period beginning with the day on which this section comes into force and ending with the 31 March or 30 September following that day, whichever is earlier, and
- (b) each successive period of six months.

Under clause 64(4) regulations could be made about the preparation of these notices "including provision requiring that the notice must be approved by a person of a description specified in the regulations". The Cabinet Office has said that the requirement is designed to show how contracting authorities are performing on payments:

This requirement is intended to support compliance with the prompt payment rules including a way of recognising those contracting authorities who consistently out-perform what is required of them by legislation and identify those who are consistently performing poorly to challenge and drive improvements.⁶³

In the longer-term, the Cabinet Office has stated that it intends for these notices to be published on a single digital platform "to enable transparency and visibility of public sector payment performance in one location". In the short term, notices would be published online.

2.5 Part 5: Conflicts of interest

This part sets out the bill's provisions on how contracting authorities should identify and avoid conflicts of interest. The Cabinet Office has set out that this includes "allowing for the exclusion of any supplier in respect of which no less invasive measure can be taken to avoid a conflict".⁶⁴ Authorities would also have to carry out an assessment "in respect of both actual and potential conflicts".

2.6 Part 6: Below-threshold contracts

The bill would set out "certain limited obligations" on contracting authorities when they are procuring contracts below the threshold value for regulation

⁶¹ [Explanatory notes](#), para 382.

⁶² Clause 64(3)

⁶³ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 92.

⁶⁴ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 23.

under the substantive regime.⁶⁵ The explanatory notes state that rules for below-threshold contracts “are simpler and less onerous for contracting authorities, while maintaining some basic standards in procurement”.⁶⁶ For example, regulated below-threshold contracts would have implied payment terms, including a requirement for the contracting authority to pay invoices within 30 days “from the day the invoice is received or became due (whichever is later)”.⁶⁷ The explanatory notes state these rules mirror prompt payment rules in the above-threshold regime, but “adapted for the below-threshold context”.⁶⁸

There would also be a requirement to publish a “below-threshold tender notice” under certain circumstances. Such a notice would have to set out the contracting authority’s intention to award a contract in addition to any other information specified in regulations made under clause 86.⁶⁹

The below-threshold obligations would apply to contracts falling between certain values:

These below-threshold obligations apply only to works contracts whose value also equals or exceeds certain “lower” thresholds set out at subsection (3) [of clause 78], namely: (i) where the contracting authority is a central government authority, £138,760; and (ii) otherwise, £213,477.⁷⁰

These thresholds could be amended through regulations made under clause 78(4). The Cabinet Office has said the power is needed to “take into account both inflation and also interaction with the upper thresholds as they themselves are amended over time”.⁷¹

2.7 Part 7: Implementation of international obligations

Part 7 of the bill contains provisions on the implementation of the UK’s international obligations relating to procurement.

The UK is party to some international agreements which include obligations on the UK to ensure that certain of its contracting authorities allow

⁶⁵ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 24.

⁶⁶ [Explanatory notes](#), para 456.

⁶⁷ [Explanatory notes](#), para 478.

⁶⁸ [Explanatory notes](#), para 476.

⁶⁹ Clause 86 would grant a regulation making power to set the contents of notices provided for under the bill (see section 2.8 of this briefing for further information).

⁷⁰ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 108.

⁷¹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 110.

suppliers that benefit under those agreements to access the UK's procurement regime.⁷²

Schedule 9 of the bill includes a list of specific international agreements. Clause 81 would define a 'treaty state supplier' as one which is entitled to benefits of an international agreement in schedule 9. This would apply "only to the extent" that the supplier was entitled to the benefits of an international agreement in relation to a procurement, below-threshold procurement or international organisation procurement that was being carried out or challenged.

Under clause 81(3), schedule 9 could be amended through regulations in order to add, remove or amend a reference to an international agreement to which the UK is a signatory. These regulations would be subject to the affirmative procedure.

Clause 82 would prevent a contracting authority from discriminating against a treaty state supplier when it carries out a procurement, below-threshold procurement or an international organisation procurement.⁷³ Clause 83 "confers on ministers of the crown or Scottish ministers the power to make regulations in the future to ensure that treaty suppliers are not discriminated against in carrying out devolved procurements".⁷⁴

In its delegated powers memorandum, the Cabinet Office said that the regulation-making power under clause 81(3) would be used to add international agreements that include procurement obligations to schedule 9, such as free trade agreements. This would ensure that the UK met its obligations under such agreements:

This ensures that UK contracting authorities will treat suppliers from those countries in the same way as UK ones and ensures the UK is compliant with its international obligations. It will also be used to ensure that those agreements which the UK already has in place can be kept up to date, ensuring the UK's continued compliance with its international obligations.⁷⁵

The Cabinet Office stated that the power would only allow relevant suppliers to access the UK's procurement regime. It would not allow for changes to be made to the regime under the bill:

The power has the effect only of extending to the goods, services and

⁷² [Explanatory notes](#), para 489.

⁷³ In part 7 the terms 'below threshold procurement' and 'international organisations procurement' are defined in clause 81(5).

⁷⁴ [Explanatory notes](#), para 504.

⁷⁵ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 125.

suppliers covered by those agreements, the right to benefit from the UK procurement regime, including the right to seek remedies under it. The power does not allow for changes to the bill regime, even where required by one of those agreements.⁷⁶

It could not be used to “implement rule changes that might affect matters like food standards, environmental standards or control over the health service”.⁷⁷ Were changes to the bill’s regime required by an international agreement, the Cabinet Office said, “a different legislative vehicle would be needed”.⁷⁸

The Cabinet Office argued that the power was justified to allow the UK to respond quickly to updates to the procurement elements of “our existing (and future) trade agreements where that needs to be done”.⁷⁹

The [Trade \(Australia and New Zealand\) Bill](#) has had its first reading in the House of Commons. The bill would provide for the UK’s implementation of the procurement chapters of the UK’s free trade agreements with Australia and New Zealand. The explanatory notes to the bill set out that the legislation is required because the agreements need to be implemented before the Procurement Bill is likely to enter into force:

The relevant provisions of the Procurement Bill are anticipated to enter into force after this bill [the Trade (Australia and New Zealand) Bill] and after the necessary changes to domestic law have been made for entry into force of the agreements [the free trade agreements between the UK and Australia and the UK and New Zealand]. To the extent that implementation of the agreements for their entry into force is complete, the Procurement Bill is expected to repeal the Trade (Australia and New Zealand) Bill (as enacted) and save relevant statutory instruments. Ongoing implementation of the market access aspects of the agreements would be provided for by a power in the Procurement Bill.⁸⁰

The Trade (Australia and New Zealand) Bill (and changes it would make to the Government of Wales Act 2006) would be repealed by provisions in schedule 11 of the Procurement Bill.

⁷⁶ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 126.

⁷⁷ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 128.

⁷⁸ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 126.

⁷⁹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 127.

⁸⁰ [Explanatory notes to the Trade \(Australia and New Zealand\) Bill](#), para 6.

2.8 Part 8: Information and notices: general provision

This part of the bill makes general provision about the publication of notices. This includes ‘pipeline notices’ designed to give “notice to the market about any high value contracts (£2,000,000) that [a contracting authority] intend[s] to tender for that year”.⁸¹

The Cabinet Office has explained that the reforms under the bill are “intended to be more transparent than the current system and there is a significantly greater degree of notices, documents and other information that need to be published or shared”.⁸² Part 8 contains provisions to regulate these notices.

For example, clause 86(1) contains a regulation-making power to set the content of notices where the bill does not otherwise specify their contents:

This bill seeks to bring greater transparency to procurement than the existing regime. To that end it creates a number of different obligations to publish or produce notices, documents and other information. The relevant provisions in the bill establish the circumstances under which the notice must be published and the effect of publication. In some instances they also set out certain information that must be included in that specific notice. In general though, they leave the content of such notices, etc to be set out in regulations made under this power.⁸³

The Cabinet Office has set out the following notices as those in respect of which the power could be exercised:⁸⁴

- planned procurement notice (Clause 14)
- preliminary market engagement notice (Clause 16)
- tender notice and associated tender documents (Clause 20)
- dynamic market notice (Clause 39(2), (3), (4), (5) and (6))
- transparency notice (Clause 43)
- contract award notice (Clause 48(2))
- contract details notice (Clause 51)
- exclusion notice (Clause 56(2))

⁸¹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 135.

⁸² Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 26.

⁸³ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 139.

⁸⁴ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 142.

- notices in relation to a debarment investigation (Clause 57(3))
- notices to a supplier about being put on the debarment list (Clause 59(5)(c))
- contract payments notice (Clause 65)
- contract performance notices (both in relation to the publication of key performance indicators and circumstances where a contracting authority considers them not to have been met) (Clause 66)
- contract change notice (Clause 70)
- contract termination notice (Clause 73)
- below threshold tender notice (Clause 79)
- pipeline notice (Clause 84)

The regulation-making power under clause 86(1) would be able to require a notice or document to contain specified information. It would also be able to “require publication on a specified online system”.⁸⁵ The Cabinet Office has said that it is the intention that a central digital platform for procurement will be created to host such notices and support greater transparency and easier access to procurement information. However, it stated that the platform does not currently exist.⁸⁶

2.9 Part 9: Remedies for breach of statutory duty

Part 9 of the bill contains provisions on remedies for breaches of statutory duties. The Cabinet Office has summarised the provisions as follows:

Part 9 creates the remedies regime which allows the challenge of perceived deficiencies on the part of contracting authorities (including the potential for damages for breach of statutory duty). The regime is broadly similar to the existing regime, though it is anticipated that combined with a degree of procedural rules reform (not addressed in this bill) and greater up front transparency, that this will have the effect of reducing the time taken to resolve legal challenges and allow contracting authorities to proceed to award public contracts.⁸⁷

2.10 Part 10: Procurement oversight

Part 10 of the bill would establish powers for ministers of the crown, Welsh ministers or a Northern Ireland department (as appropriate) to investigate an allegation that a contracting authority had breached the regime under the

⁸⁵ Clause 86(2)(b).

⁸⁶ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 140.

⁸⁷ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 27.

bill. Ministers would be able to issue guidance to individual authorities when the minister has taken the view that the regime had not been followed. Ministers would also be able to issue general guidance to contracting authorities.

2.11 Part II: Appropriate authorities and cross-border procurement

Part II makes provision relating to devolved authorities. It sets out that Welsh ministers and a Northern Ireland department can only exercise powers under the bill in relation to contracting authorities that are devolved or transferred. It also establishes when a minister of the crown is able to make regulations on devolved or transferred authorities.

In regard to Scotland, the bill:

[...] also provides powers for regulations to be made which will enable continued access by Scottish authorities to purchasing arrangements (such as frameworks and dynamic markets) established by bodies covered by the bill and for such bodies to access arrangements established by Scottish authorities.⁸⁸

On the issue of legislative consent, the explanatory notes state:

In the view of the UK Government, the general application of the bill will engage the Sewel convention in Scotland, Wales and Northern Ireland. Legislative consent will therefore be sought. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for those amendments.⁸⁹

The annex in the explanatory notes sets out a summary of the position regarding territorial extent and application. The extent of the bill is considered further in section 2.13 of this briefing.

Common framework on public procurement

The UK government, Scottish government, Welsh government and Northern Ireland executive have agreed a provisional common framework on public procurement.⁹⁰ Common frameworks are common approaches to

⁸⁸ Cabinet Office, '[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)', 11 May 2022, para 30.

⁸⁹ [Explanatory notes](#), para 42.

⁹⁰ Cabinet Office, '[Public procurement: Provisional common framework](#)', 27 January 2022, CP 609.

areas which were previously governed by EU law but which would otherwise fall within areas of devolved competence. The common framework for public procurement has been established to achieve the following outcomes:⁹¹

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

In oral evidence to the Public Administration and Constitutional Affairs Committee in March 2022, Jacob Rees-Mogg, minister of state for Brexit opportunities and government efficiency, said that he expected the six-month period within which the provisions of the Procurement Bill would be brought into force would be enough time for conversations that may need to be held under the common framework:

The common framework continues to provide a forum for discussion if there are divergences, so that people know. That knowledge is very important. The Procurement Bill will take the normal time to get through Parliament, and there will then be six months before its provisions come in, because people obviously need to plan and prepare; procurements that have started under the old system will continue under the old system. That allows you to have plenty of time for any conversations you may need under the common framework.⁹²

2.12 Part 12: Amendments and repeals

Schedule 11 sets out enactments which the bill would repeal.

Clause 104 would provide a regulation-making power to disapply a duty in section 17 of the Local Government Act 1988. The Cabinet Office states that section 17 “limits the matters that certain contracting authorities can take into consideration when carrying out a procurement”.⁹³ It 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.⁹⁴

⁹¹ Cabinet Office, [‘Public procurement: Provisional common framework’](#), 27 January 2022, CP 609, para 2.2.

⁹² Public Administration and Constitutional Affairs Committee, [‘Oral evidence: Common frameworks’](#), 22 March 2022, HC 1138 of session 2021–22, Q25.

⁹³ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 173.

⁹⁴ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 173.

The Cabinet Office stated that the powers are required to enable domestic policy considerations to be applied effectively in England and Wales:

Such policy might include that for which provision could be made under clauses 12 (national procurement policy statement) or 13 (Wales procurement policy statement). The inherent flexibility of those obligations means that it would be impossible to set out with clarity on the face of the bill how those provisions need to be disapplied so this power allows more individual consideration.⁹⁵

Part 12 would also make changes to single-source contracts through amendments to part 2 of the Defence Reform Act 2014. The 2014 act “creates a framework for regulating defence contracts and sub-contracts which have not been completed”.⁹⁶ These are known as single-source contracts.

The government published its policy objectives for reforming the single-source contracts regime in a command paper published in April 2022.⁹⁷ This centred on three main themes:⁹⁸

- providing greater choice and flexibility in procurement
- speeding up and simplifying the procurement process
- promoting innovation

The command paper also included “several technical changes designed to address problems that have been identified during the eight years over which the regime has been operating”.⁹⁹

Part of the reform proposed by the command paper would be delivered by amending the 2014 act through schedule 10 of the bill. It would also require “amending existing or creating new secondary legislation, and changes to statutory guidance issued by the SSRO [Single Source Regulations Office]”.

⁹⁵ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 176.

⁹⁶ [Explanatory notes](#), para 21.

⁹⁷ Ministry of Defence, [‘Defence and security industrial strategy: Reform of the single source regulations’](#), 4 April 2022, CP 647.

⁹⁸ [Explanatory notes](#), para 22.

⁹⁹ [Explanatory notes](#), para 22.

2.13 Part 13: General

Power to disapply the provisions of the bill in relation to procurement by NHS in England

Clause 108 would grant a minister of the crown the power to make regulations disapplying any provision of the bill in relation to:

- (a) the award or management of a contract for the supply of services or goods to which health procurement rules apply;
- (b) a relevant authority, to the extent it is carrying out activities within paragraph (a).

The Cabinet Office has set out the following explanation of why the power has been included in the bill:

The Health and Care Act 2022 includes at section 77 (procurement regulations) powers to make provision for procurement of certain healthcare services (and associated goods) by certain NHS bodies. DHSC [The Department of Health and Social Care] only intends regulations made under that power to cover a certain number of services, to be defined by reference to CPV codes. As the light touch regime in (regulations made under) the bill will cover health care services to some degree, this will create an impossible overlap between the bill regime and regulations made under the Health and Care Act 2022.

In order to manage this overlap, this power seeks to disapply the bill provisions in relation to matters covered by the DHSC regulations, ie procurements by a defined series of bodies under a defined series of CPV codes. Once DHSC have settled the ambit of the regulations they are intending to make under the power in the Health and Care Act, Cabinet Office will use this power to disapply this regime in those areas.¹⁰⁰

The Cabinet Office has stated that the intention is not to allow the power to deregulate procurement in the healthcare sector, “it is only to remove the application of this bill where procurement is to be regulated under the healthcare regime, going forward”.¹⁰¹

¹⁰⁰ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, paras 178 and 179.

¹⁰¹ Cabinet Office, ‘[Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee](#)’, 11 May 2022, para 183.

Power to amend the provisions of the bill in relation to private utilities

Clause 109 would provide a regulation-making power to amend the legislation, once enacted, “for the purpose of reducing the regulation of private utilities under this act”.¹⁰² Private utilities are “generally covered” by the bill in the same way as public sector utilities.¹⁰³ However, the Cabinet Office has said that it believes that because of existing regulatory oversight of such utilities and “inherent efficiencies in private utility businesses”, it is not necessary for private utilities to be “subject to additional procurement regulation and therefore wishes to exempt them from the bill to the extent practical”.¹⁰⁴ The Cabinet Office said the regulation-making power would allow the government to consider how best to achieve this:

In a rapidly evolving commercial market it is not possible to set out on the face of the bill those aspects of regulation that could most usefully be removed from private utilities. On more detailed consideration of each sector, it might also be that different sectors would benefit from deregulation in different ways. This power will deliver deregulation in as targeted and flexible a way as possible.¹⁰⁵

Regulations

Clause 110 sets out how the regulation-making powers under the bill would operate, including their levels of parliamentary scrutiny. The bill creates a large number of such powers. For further information on the regulation-making powers under the bill not otherwise referenced in this briefing, please see the Cabinet Office’s delegated powers memorandum.¹⁰⁶

Commencement

Clause 115 sets out that part 13 of the bill would come into force on the day on which the act was passed. The remaining provisions would come into force through regulations.

The [Government Commercial Function](#) has said that it will “give a minimum of 6 months’ notice before ‘go-live’” of the new regime.¹⁰⁷ It stated that this would not be until 2023 at the earliest. Existing legislation would apply until

¹⁰² Clause 109(1).

¹⁰³ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 185.

¹⁰⁴ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 187.

¹⁰⁵ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022, para 190.

¹⁰⁶ Cabinet Office, [‘Procurement Bill: Memorandum from the Cabinet Office to the Delegated Powers and Regulatory Reform Committee’](#), 11 May 2022.

¹⁰⁷ Government Commercial Function, [‘Transforming public procurement’](#), 29 April 2022.

this time and would continue to apply to procurements started under the current regime. The Government Commercial College is intended to be the “primary channel” for learning and development produced to support the roll out of the new public procurement regime.

Extent

The bill would extend to England and Wales, Scotland and Northern Ireland.¹⁰⁸ The explanatory notes set out that the majority of the bill’s provisions would “apply equally” to contracting authorities in England, Wales and Northern Ireland.¹⁰⁹

The bill does not make provision for all public procurement in Scotland, but it does apply to some contracting authorities:

The bill [...] does apply to contracting authorities in Scotland which are either cross-border bodies or exercise wholly reserved functions. The exceptions to this are in clauses 83 (treaty state suppliers: non-discrimination in Scotland) and 103 (powers relating to procurement arrangements). These make provision respectively for making regulations to ensure that suppliers that are “treaty state suppliers” (ie those which benefit from an international agreement relating to procurement) are not discriminated against by devolved Scottish authorities and for regulating cross-border procurements involving devolved Scottish authorities which would not otherwise be regulated by the core provisions in the bill.¹¹⁰

3. Responses to the bill

Speaking in the House of Commons in response to the Queen’s Speech, Angela Rayner, shadow minister for the Cabinet Office, described the Procurement Bill as looking “increasingly unworthy of the name”.¹¹¹ She argued that procurement legislation should support British businesses:

We need a bill that allows us to use government contracts to support British businesses, so that we can make, buy and sell more in Britain. As we recover from the pandemic, we have a chance to seize new opportunities to shape a new future for Britain—opportunities to give people new skills and jobs here in the UK, to invest in local businesses, and to help our high streets to thrive again.

A Labour Government would ask every public body to give more

¹⁰⁸ Clause 114.

¹⁰⁹ [Explanatory notes](#), para 38.

¹¹⁰ [Explanatory notes](#), para 40.

¹¹¹ [HC Hansard, 12 May 2022, col 301](#).

contracts to British businesses, using social, environmental and labour clauses in contract design.¹¹²

The Local Government Association (LGA) said it welcomed the reforms to public procurement in the bill but was “keen to discuss the detail” with the government.¹¹³ The LGA said it had been working with the government to help it understand how councils procure goods, works and services and that it wanted to continue to work with the government to “develop the granular detail”. It also said it welcomed a number of specific provisions:

We welcome the proposal for clearer arrangements for local councils to buy at pace if necessary and we would want to discuss the detail with government. We also welcome the new exclusion rules, to tackle unacceptable behaviour and poor supplier performance and would welcome further discussion with government regarding the detail of how this would work with local councils.¹¹⁴

The LGA said it would also welcome a further discussion on the possibility of funding a national approach to upskilling council procurement officers.

The legal firm Eversheds Sutherland has set out its headline observations on the bill.¹¹⁵ The firm said some of the provisions appeared to have changed between the government’s response to the consultation and the bill’s publication:

We largely welcomed the government’s consultation response, as it demonstrated that in key areas the government had listened to the feedback and showed an ambitious and welcome set of proposals for change. It’s therefore perhaps unexpected that some of the apparently settled positions included in the consultation response appear to have been changed in the bill. The reasons for this change of policy direction are unclear and may emerge during debates on the bill.

For example, the firm said that the test for lifting ‘automatic suspensions’ resulting from a procurement challenge would “still involve an assessment of the adequacy of damages for a challenger”. Eversheds Sutherland said that “many practitioners” had responded to the green paper on “the difficulties with this aspect of the current test and the impact that it had on the number of challenges which proceeded towards a damages hearing (sometimes resulting in the authority paying twice for the contract in question)”.

¹¹² [HC Hansard, 12 May 2022, col 301](#).

¹¹³ Local Government Association, ‘[Queen's Speech \(May 2022\): LGA briefing](#)’, 12 May 2022.

¹¹⁴ Local Government Association, ‘[Queen's Speech \(May 2022\): LGA briefing](#)’, 12 May 2022.

¹¹⁵ Eversheds Sutherland, ‘[Will the new UK Procurement Bill truly transform public procurement?](#)’, 13 May 2022.

It argued that the government's consultation response "appeared to suggest that this limb of the test would be removed, but that is no longer the case".

Amongst its other observations on the bill, Eversheds Sutherland argued that the language used was "much more user-friendly than was previously the case with drafting that had resulted from lengthy and complex negotiations amongst EU member states". However, it described the bill's approach to the principles of procurement law as "somewhat unclear", stating that "part 2 of the bill is titled 'principles and objectives', and whilst the latter concept is defined in section 11, the former is not".

The National Farmers Union (NFU) has said that it welcomed the bill and urged "the government to use public procurement to champion British food and British food standards in our schools, hospitals, armed forces and across other public bodies".¹¹⁶

The Chartered Institute of Building (CIOB) has said it is pleased to see the government address public procurement. CIOB said that it would be emphasising "recognising businesses that are seeking to deliver greater social, environmental, and economic outcomes".¹¹⁷ It argued that public procurement should focus on "wider-value rather than lowest cost".

4. Read more

- House of Commons Library, '[Procurement statistics: A short guide](#)', 29 October 2021
- House of Commons Library, '[Public procurement and contracts](#)', 19 September 2018

¹¹⁶ National Farmers Union, '[New Procurement Bill announced in the Queen's Speech](#)', accessed 18 May 2022.

¹¹⁷ Chartered Institute of Building, '[Queen's Speech 2022: What bills are set to have an impact on the built environment?](#)', 13 May 2022.

About the Library

A full list of Lords Library briefings is available on the [Library's website](#).

The Library publishes briefings for all major items of business debated in the House of Lords. The Library also publishes briefings on the House of Lords itself and other subjects that may be of interest to members.

Library briefings are produced for the benefit of Members of the House of Lords. They provide impartial, authoritative, politically balanced information in support of members' parliamentary duties. They are intended as a general briefing only and should not be relied on as a substitute for specific advice.

Every effort is made to ensure that the information contained in Lords Library briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Disclaimer

The House of Lords or the authors(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice. The House of Lords accepts no responsibility for any references or links to, or the content of, information maintained by third parties.

This information is provided subject to the conditions of the [Open Parliament Licence](#).

Authors are available to discuss the contents of the briefings with Members of the House of Lords and their staff but cannot advise members of the general public.

Any comments on Library briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to hlresearchservices@parliament.uk.
