

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PROCUREMENT BILL [*LORDS*]

Second Sitting

Tuesday 31 January 2023

(Afternoon)

CONTENTS

CLAUSES 8 TO 15 agreed to, one with amendments.
Adjourned till Thursday 2 February at half-past Eleven o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 4 February 2023

© Parliamentary Copyright House of Commons 2023

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chairs: † CLIVE EFFORD, DAVID MUNDELL

Bhatti, Saqib (<i>Meriden</i>) (Con)	† Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab)
† Blackman, Kirsty (<i>Aberdeen North</i>) (SNP)	† Marson, Julie (<i>Hertford and Stortford</i>) (Con)
† Burghart, Alex (<i>Parliamentary Secretary, Cabinet Office</i>)	† Randall, Tom (<i>Gedling</i>) (Con)
† Clarke-Smith, Brendan (<i>Bassetlaw</i>) (Con)	† Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/Co-op)
† Duguid, David (<i>Banff and Buchan</i>) (Con)	† Tracey, Craig (<i>North Warwickshire</i>) (Con)
† Eshalomi, Florence (<i>Vauxhall</i>) (Lab/Co-op)	† Whitley, Mick (<i>Birkenhead</i>) (Lab)
† Evans, Chris (<i>Islwyn</i>) (Lab/Co-op)	
† Fletcher, Nick (<i>Don Valley</i>) (Con)	Sarah Thatcher, Huw Yardley, Christopher Watson, <i>Committee Clerks</i>
† French, Mr Louie (<i>Old Bexley and Sidcup</i>) (Con)	
† Gibson, Peter (<i>Darlington</i>) (Con)	† attended the Committee
Greenwood, Lilian (<i>Nottingham South</i>) (Lab)	

Public Bill Committee

Tuesday 31 January 2023

(Afternoon)

[CLIVE EFFORD *in the Chair*]

Procurement Bill [Lords]

Clause 8

CONCESSION CONTRACTS

2 pm

Question proposed, That the clause stand part of the Bill.

The Parliamentary Secretary, Cabinet Office (Alex Burghart): Colleagues will be sad to hear that we have only 117 clauses to go as we enter this second sitting. Clause 8 defines the concept of a concession contract. It is a type of public contract, and its award is regulated by the Bill. Subsection (1) sets out the key concepts specific to a concession contract. There are two main features. First, under a concession contract, at least part of the consideration received must lie in the right to exploit the works or services. A good example might be a concession contract to operate a canteen where the supplier receives income from customers.

Secondly, in exploiting that right, the supplier or concessionaire must be exposed to a real operating risk. Subsection (2) defines an operating risk, which is a risk that the supplier will be unable to recover its costs through the concession—for example, the risk of fluctuating vehicle numbers and income under a contract for the construction and operation of a toll bridge where the supplier has the right to receive the toll income.

Florence Eshalomi (Vauxhall) (Lab/Co-op): Apologies for my lateness, Mr Efford. Clause 8 refers to concessionary contracts—contracts through which the authority contracts out work on the basis that the contracted company may be able to exploit or charge for extracted resources. Examples include the channel tunnel, which was paid for by private finance, with the financiers picking up the benefits. We support these contracts in principle—they can help us to build things without much cost to the taxpayer, and can help to expand the state—but there needs to be a balance. There needs to be guidance on what the right cost is. We could lose millions if the cost is wrong and the concession is given away too cheaply. Also, when deals regarding important infrastructure are signed, there needs to be caution to ensure that the long-term running of the system is up to standard. It is important that performance-based targets are included, as well as provisions for infrastructure building.

The Green Paper highlights that proposals for integrating the regulations for concession contracts into the core regime will be taken forward. However, there will be specific provisions covering the definition of a concession, how a concession contract is to be valued, and the duration of that concession. Those specific provisions address the key points raised by stakeholders in the consultation. The Government also propose to retain the higher financial threshold for concession contracts, greater discretion with regard to the method of calculating

the estimated value of a concession contract, and an exemption for lottery-operating services, as well as other exemptions that come under the current regime; in all other respects, procurements for concession contracts will be subject to the new regime. We support the clause.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

LIGHT TOUCH CONTRACTS

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Light-touch provisions reflect the fact that certain public contracts, including those for social, healthcare and legal services, can warrant special treatment and greater flexibility. Flexibility is permitted by the scope of our international agreements. Clause 9 introduces the term “light-touch contract”, and provides for regulations to define which exact services should be subject to the lighter rules. As in the existing regime, common procurement vocabulary codes will be used to specify services.

The special features of the contracts are identified in subsection (4), which helps to prevent any inappropriate use of the power, as does compliance with our international agreements, which would prevent us from expanding the scope of what is included in the light-touch regime.

Light-touch contracts will be openly advertised unless a direct award ground applies. Contracting authorities will have to apply the exclusions and consider conflicts of interest. Transparency will be maintained through publication requirements, including requirements for an award notice, a contract detail notice and, when the contract is over £5 million, publication of the contract. By integrating these light-touch contracts into the broader regime, and having carve-outs where greater flexibility is justified, we have made it much clearer how such procurement should be run, and have ensured that probity and transparency are built into the process, while respecting these contracts’ unique characteristics.

Florence Eshalomi: I understand the need for a light-touch contracts regime, but I share the concerns expressed in the other place about the scale of the changes. Lady Noakes tabled a probing amendment that pressed the Government on why such contracts are not more narrowly or widely defined. Her amendment 30 sought to confine light-touch contracts to those concerning health or social care services provided to individuals, on the basis that that is how they are used at the moment—that is my understanding. However, if the Government believe that the definition should be wider, they should put that in the Bill. Open-ended regulation-making powers should not be necessary and are not desirable.

As the Minister is aware, the Cabinet Office delegated powers memorandum justifies the power by saying:

“While the scope of what is to be included in regulations made under this power is known, it is not practical 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. It goes on to say that

“CPV codes may evolve over time, which would...require amendment to the Bill.”

However, the report of the Delegated Powers and Regulatory Reform Committee found that explanation to be inadequate, as

“it does not explain why it is considered appropriate for the power to be so broad that the issue of which kinds of contracts are to be subject to the ‘light touch contract’ regime is left entirely to regulations. There is nothing of substance on the face of the Bill to limit the discretion afforded to Ministers to allow less rigorous regulation for contracts of a kind that they choose to specify in regulations. Clause 8(4) lists three factors which Ministers must consider but without saying what effect these factors are to have. The Memorandum suggests that the provision made in exercise of the power will simply be a list of CPV codes but the power need not be exercised in that way.”

In its conclusion, the Committee said that

“the reasons given by the Government for leaving entirely to regulations the question of which contracts should be subject only to the ‘light touch’ regulatory regime are inadequate”,

and recommended that

“unless the Government can fully justify doing otherwise, the Bill should include criteria for determining which contracts should be subject to that regime.”

I understand the Government’s response to the consultation—that it might be tricky to tie down a definition and put it in the Bill—and Labour therefore does not seek to amend clause 9 today. However, I share the concerns aired in the other place about the scope of this part of the Bill. I am also concerned that the Government have not justified their stance beyond pointing to the existence of the common procurement vocabulary codes. Many feel that that does not answer the question posed by the Delegated Powers and Regulatory Reform Committee. I would like clarity from the Government on whether they are working closely with the likes of Lady Noakes to put their minds at rest. In particular, I would welcome a clear definition of what the powers in clause 8 mean in practice and how the Government intend to use them.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

MIXED PROCUREMENT: SPECIAL REGIME CONTRACTS

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Clause 10 concerns mixed contracts that involve an element to be procured under the general rules regime and an element to be procured under one of the special rules regimes. We discussed the objective of clause 5, which is in a similar vein. It is important to provide for such mixed contracts—a need for them will inevitably arise—while safeguarding against exploitation of exemptions and the lighter-touch rules. That will be achieved through the introduction of a test of separability, a safeguard similar to that in clause 5.

If separation of the general rules regime and special rules regime elements are possible, but a contracting authority chooses not to separate out the contract, then that mixed contract must be awarded in accordance with the general rules. It will not qualify for the special rules regime if the elements could reasonably be procured separately, having regard to the practical and financial consequences of splitting the requirement out.

Florence Eshalomi: As the Minister outlined, clause 10 is similar to clause 5. It is uncontroversial, as we see it, and it closes a loophole where one part of a contract could come under the special rules regime.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

COVERED PROCUREMENT ONLY IN ACCORDANCE WITH THIS ACT

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Clause 11 requires contracting authorities to carry out covered procurement solely in accordance with the Bill. Specifically, they must use the procedures in the Bill for competitive award, direct award and framework agreements. That will ensure that contracting authorities properly engage with the market and achieve value for money.

The duty that clause 11 creates will allow a supplier to hold a contracting authority to account. Remedies are available under part 9 when it can be demonstrated that a contracting authority has materially failed to have regard to one or more of the requirements in the Bill—for example, where there is direct award without proper justification, or discriminatory technical specifications—and the supplier consequently suffers, or is at risk of suffering, loss or damage.

Florence Eshalomi: We support this uncontroversial clause. It underpins many parts of the Bill, and mandates that procurement must be carried out under the terms of the Bill. The clause also points to different parts of the Bill for different forms of procurement—to clause 19 on competitive award, clause 41 on direct award in special cases, clause 43 on direct award after switching procedures, and clause 45 on award under frameworks.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

COVERED PROCUREMENT: OBJECTIVES

Florence Eshalomi: I beg to move amendment 9, in clause 12, page 9, line 24, after “money” insert

“, including value that is social value within the meaning of the Public Services (Social Value) Act 2012, overall providing the optimum balance of economy, efficiency, effectiveness and equity”.

This amendment would require social value to be considered in the procurement objectives.

The Chair: With this it will be convenient to discuss the following:

Amendment 10, in clause 12, page 9, line 25, after “benefit” insert

“and public value, including in relation to benefits and value contributing to socio-economic development, to be realised over time and in relation to areas of public responsibility of other contracting authorities.”

This amendment would require public value to be considered in the procurement objectives.

Amendment 100, in clause 12, page 9, line 28, at end insert—

“(e) mitigating climate change and “Net Zero” commitments.”

Amendment 101, in clause 12, page 9, line 28, at end insert—

“(e) transparency and anti-corruption efforts.”

Amendment 89, in clause 12, page 9, line 28, at end insert—

“(1A) In having regard to delivering value for money under subsection (1), a contracting authority must consider the impact of delivering the contract on—

- (a) social value,
- (b) the ability to meet the needs of service users,
- (c) long-term value, including the prevention of adverse life outcomes and the increasing demand for services that results from adverse life outcomes,
- (d) savings to other areas of public service delivery, and
- (e) furthering equality and tackling inequality.”

This amendment would define value for money when carrying out covered procurement.

New clause 2—*Procurement principles*—

“(1) In carrying out a procurement, a contracting authority must pursue the following principles—

- (a) promoting the public good, by having regard to the delivery of strategic national priorities including economic, social, environmental and public safety priorities,
- (b) value for money, by having regard to the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcome of the business case,
- (c) transparency, by acting openly to underpin accountability for public money, anti-corruption and the effectiveness of procurements,
- (d) integrity, by providing good management, preventing misconduct, and control in order to prevent fraud and corruption,
- (e) fair treatment of suppliers, by ensuring that decision-making is impartial and without conflict of interest, and
- (f) non-discrimination, by ensuring that decision-making is not discriminatory.

(2) If a contracting authority considers that it is unable to act in accordance with any of these principles in a particular case, it must—

- (a) take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage, and
- (b) publish a report within 90 days setting out the principles with which it could not act in accordance and its reasons.”

This new clause would require contracting authorities to pursue a series of principles when carrying out procurements

Florence Eshalomi: Our amendment 9 would require social value to be considered as a procurement objective. We welcome the changes made in the other place to include social value in the national procurement policy statement, but I was disappointed to see scant mention of social value in the original version of the Bill.

Social value is a tool that makes it easier to give money to local British enterprises, creating jobs, skills and green opportunities in those communities. It rewards providers that want to build a better society and contribute to our nation’s prosperity in the long term, and it can convey a huge amount of value.

I have quoted these figures to the Minister before: Social Enterprise UK found that between 2010 and 2020 we may have missed over £700 billion-worth of opportunities to create economic, social and environmental value. The Bill provides an opportunity to make, buy and sell more in Britain, which is something that we should all champion, and a chance to give more public contracts to large, medium and small-sized British companies, so that contracts do not automatically always go to giant offshore corporations with the lowest price. Those contracts should go to businesses that create local jobs, and provide skills and training, and to businesses that maintain workers’ rights and trade union access.

2.15 pm

This is not an anti-business amendment. The businesses that we have spoken to about social value cannot get enough of it. They are proud to show what they can offer, and they want to train people, work in communities, and create the skills and jobs that would be acknowledged in contracts. Those businesses know that value for money means taking into account social value. I urge the Minister to go a step further and put a commitment to social value in the Bill. He may be aware that the Conservative party introduced the Public Services (Social Value) Act 2012 under David Cameron to increase the amount of public money given to small and medium-sized enterprises.

Mick Whitley (Birkenhead) (Lab): My hon. Friend is making a good speech. Obviously, we do not see much social value in the Bill. I would go back to a speech that I made in the Chamber a week ago about Mersey ferries. The Liverpool Mayor commissioned a replacement for the iconic but decades-old Mersey ferries, and Cammell Laird, which sits on the River Mersey, was singularly well-suited to build it. It had a reputation for quality and innovation across the sector, and sits right on the banks of the Mersey. Building a new ferry in Cammell Laird would have guaranteed the viability of the site and allowed the yards to make further investments. Not only that, but it would have employed a lot of local people. This is all about social value. Why should it be only companies that benefit? The community should level up, and get the value out of social value.

Florence Eshalomi: I thank my hon. Friend for that example of why social value is so important. That contract was a missed opportunity to employ local people. We all want those local benefits, and employment in our constituency, so it is important that contracts be awarded to local companies, as well as the big ones.

Amendment 10 would require public value to be among the procurement objectives. That would complement our amendment on social value; together, the amendments would add real teeth to the Bill, and would give contracting authorities the mandate to make decisions that would benefit not only their area but the whole country. That is important because we spend £3 billion a year on procurement, and although the Bill is a step forward, without clear mandates on social value and public value, contracting authorities may miss out on the chance of creating tremendous value for the public through their procurement processes. Amendment 89 clarifies that by explicitly providing a wider definition of value for money. The Bill does not define value for money, nor does it set out what can or should be considered when an assessment is being made of which is the most advantageous tender.

Legislation allows for wider considerations of value, but the determining factor too often remains the low unit cost. That is problematic because it can lead to services being procured that do not effectively meet needs, and it can drive higher costs in the long term, particularly when it leads to a spiral of support needs. People do not get the support that they need, and their need for support escalates as a result. They are forced to keep going to services that cannot give them the help that they need, or cannot address the root causes of their issues.

Although the Cabinet Office is planning training to be rolled out alongside the legislation to encourage culture change, it is important that the legislation goes as far as possible in encouraging better practice. Further defining value for money is an example of how it could be done.

The aim of amendment 89 is to help to prevent the false economies that arise when we take value for money on a short-term and shallow basis. When we are considering such massive parts of public spending, crossing many levels, it is vital that every penny spent ties together. We do not want a situation where saving a penny in one pot loses a pound from another. By defining value for money in the way that the amendment does, we could ensure that contracting authorities consider the wider impact of their decisions. Again, that could lead to significant efficiency savings for this and future Governments, and to stronger public services for all to enjoy.

New clause 2 would place the procurement principles on the face of the Bill: promoting the public good; value for money; transparency; integrity; fair treatment of suppliers; and non-discrimination. In their December 2020 Green Paper, "Transforming public procurement", the Government proposed enshrining those principles in law. In responding to the consultation, the Government stated that 92% of 477 respondents agreed with the original desire to put the procurement principles in the Bill, so I was not the only one surprised when the principles were missing from the Bill when it was published in the other place.

Our new clause 2 seeks to accomplish the original aim of the Bill. I know that we will hear from the Minister that we should trust the Government on such issues, and that we should wait for the national procurement policy statement, rather than looking to put things in the Bill. The principles are so important to how we carry out procurement, however, and perhaps the best source for why that is so comes from the Government. In the Green Paper, the Government say of the public good:

"The decision to invest public funds into policies, services, projects and programmes is subject to analysis and appraisal to assess the public good that is expected to accrue as a result of the expenditure. For national spending this will have been conducted in accordance with the HM Treasury Green Book guidance and subject to National Audit Office scrutiny. Procurement should draw a clear link between the objectives, outcomes and anticipated benefits that underpin the investment decision and the selection of contracting parties to deliver those benefits... Public procurement should also be leveraged to support strategic national priorities. Commercial teams should have regard to the Government's national priorities when conducting public procurement. These will be set out in the National Procurement Policy Statement... This is consistent with international practice where public procurement is regularly leveraged to achieve social and environmental value beyond the primary benefit of the specific goods, services and capital works through operational delivery that contributes additional social value."

The Green Paper goes on to say of value for money:

"The Government is making clearer the ways in which value for money is assessed at the point of the investment decision, which will be set out in a revised Green Book. A critical element of the assessment is a strong strategic case that sets: a clear objective aligned to government priorities, a rationale for intervention, and/or robust evidence and analysis for how different options for delivering that intervention will advance that objective... The role of procurement is to translate the desired outcomes into the right contracts and select the supplier or suppliers that will deliver these in the way that offers best social value for money. For many procurements there may only be a single contract, but for complex major projects there will be many hundreds of separate contracts of different types, sizes and sectors that need to be packaged and procured in such a way as to deliver the whole project successfully. Whether there is one contract or many it is critical to maintain the 'golden thread' from government priorities via the business cases through to procurement specifications and the assessment of price and quality when awarding contracts.

Value for money does not therefore mean simply selecting the lowest price, it means securing the best mix of whole-life quality and effectiveness for the least outlay over the period of use of the goods, works or services bought. Value for money also involves an appropriate allocation of risk and an assessment of the procurement to provide confidence about its probity, suitability, and economic, social and environmental value over its life cycle." On transparency, the Green Paper states:

"The principle of transparency in public procurement is central to the integrity and accountability of the system and the fight against corruption. This is consistent with best international practice. It ensures business opportunities are accessible and processes and decisions can be monitored and scrutinised. It ensures that decision makers are held accountable for spending public money and helps open up public procurement to more effective competition that in return can deliver better value for money."

On integrity, it states:

"The principle of integrity is key to strengthening trust and combating corruption. Procurement professionals must always bear in mind the needs of the 'customer' or 'user'. Planning a public procurement must promote good governance, sound management of public money, and a professional relationship between buyer and supplier, e.g. managing conflicts of interest, protecting intellectual property and copyrights, confidential information or other standards of professional behaviour."

On the fair treatment of suppliers, it states:

"The principle of fair treatment of suppliers means all suppliers must receive fair and reasonable treatment before, during and after the contract award procedure so as to encourage participation by suppliers of all types and sizes. Suppliers should have timely access to review mechanisms to ensure the overall fairness of the procurement process."

And on non-discrimination, the Green Paper states:

"The principle of non-discrimination applies to procurement under the new regulations and means contracting authorities cannot show favouritism among domestic suppliers. This principle also applies to suppliers who have rights under an international trade agreement that covers the procurement. Non-discrimination in this context means that suppliers, goods and services from any other party to the agreement are given no less favourable treatment than domestic suppliers, goods and services."

Thank you, Mr Efford, for indulging me; I felt it was really important to outline the very same principles that the Government put in the Bill, but on which they have now reneged. I do not think anyone in this room would disagree with those principles, but the treatment of the procurement principles during the lifetime of the Bill shows why we are keen to make sure we get this down in legislation. We cannot rely on just words and expect to trust the Government when they have already changed their mind on the Bill so much.

[*Florence Eshalomi*]

Delegating so much responsibility to regulations and statements risks taking the Bill further away from its original intentions, and I do not think that even the Minister wants that. I hope he has listened to those key statements, as outlined by his Government. I urge him to live up to the pledges in the Green Paper, which were supported in the other place, and to support our amendment.

Kirsty Blackman (Aberdeen North) (SNP): Thank you for chairing our sitting this afternoon, Mr Efford; we appreciate it. I am going to talk about my amendment 101 and also the Labour party's amendments 9, 10, 89 and new clause 2.

I am happy to support all the Labour party's amendments. It is particularly important to put new clause 2 in the Bill. I cannot find a definition of value for money or of public benefit in the Bill. If the Government are making suggestions about how contracting authorities should proceed, they should be clearer about what that means and what outcomes they are seeking in the Bill, rather than in a national procurement statement to come at a later time. I understand that the Government's priorities will change, which is to be expected, particularly when we expect a change of Government. That will happen and they will definitely have different priorities, but the principles that we are talking about in new clause 2 will surely not change. They are the threads that should run through everything we do and all the decisions we make.

I want to mention integrity specifically. The Prime Minister has said that he wants his Government to be marked by professionalism, accountability and integrity; it is very clear that integrity is one of the Government's priorities in this regard, so not having it on the face of the Bill when the Government have been very clear that they support it seems odd to me. Adding it to the Bill through new clause 2 would be incredibly useful.

2.30 pm

On amendment 89 and the definition of value for money, local authorities in particular, but other contracting bodies as well, have a long history of working under best value rules. Best value is about getting not just the cheapest contract but the best contract—the contract that balances value for money in the short term with value for money in the long term, taking into account the public benefit, the good that the contract can do, and whether or not it is particularly excellent in comparison with other contracts.

Local authorities working under best value rules are not tied to simply having to pick the value-for-money option. When I was a local councillor in Aberdeen, we worked under those principles. We did not always pick the cheapest tender, because we picked the best tender—the one that was going to have the best possible effect, which was not necessarily the cheapest one. As I say, those best value principles are pretty well understood and have been worked under for a long time, so it seems strange that they are not the principles the Government have chosen to run through the Bill. Rather, they have chosen separate value-for-money and public benefit principles that are not terribly well defined.

Regarding the speeches that have been made by Labour Members, I am always disappointed when the Labour party does not talk about the Well-being of Future Generations (Wales) Act 2015. From what I have heard, that is one of the best things the Welsh Government have done. It seems like an absolutely excellent idea to be thinking about the social, economic, environmental and cultural impacts of every decision taken by the public bodies listed in that Act. It means that when those authorities take contracting decisions, subsidy decisions or decisions in general, they have to think about not just value for money—not just ticking that box—but the long-term impacts of any policy they put in place. There is specifically a Future Generations Commissioner whose job it is to oversee that process and make sure it happens. Obviously, I am slightly removed from this in Scotland, but from my distance it looks like a brilliant idea, and I wish the Labour party would talk more about how it is working in Wales.

As I say, that principle is really positive—it is something that would have added positively to this Bill. It is also something I am concerned about, given that the Welsh Government have decided to be part of the Bill, rather than to do what the Scottish Government have decided to do and have our own procurement framework and rules. I am concerned that the Well-being of Future Generations (Wales) Act may be overridden by some of the principles in this Bill, and I do not want that to happen. I want that Act to work as it is supposed to work, not to be overruled by Westminster's decision making in this area.

I turn now to amendments 100 and 101. Amendment 101 adds transparency and anti-corruption to the list of objectives in clause 12. As amended, clause 12 would read:

“In carrying out a covered procurement, a contracting authority must have regard to the importance of”

the objectives that are there, and then additionally, “transparency and anti-corruption efforts.”

It is slightly ironic to be debating this amendment on a day when the UK has dropped five points in Transparency International's corruption perceptions index to 73, going from 11th in the world to 18th in the world. That is the lowest score since the index was revamped. The only other countries whose index levels have dropped are Qatar, Myanmar, Azerbaijan and Oman—which is not really the list of countries that the UK wants to be associated with.

The UK Government have made statements in relation to transparency and anti-corruption. They have plans and provisions, and decision making around transparency and anti-corruption. They have intentions to reduce the amount of corruption that exists in terms of dealings with other states. It would be sensible, therefore, for them to require the contracting authorities to fulfil those principles and work on the basis of requiring transparency and anti-corruption measures. If the UK Government believe there were issues in the contracts for personal protective equipment during covid, transparency is the way we will understand what went wrong. It is the way we will understand how to ensure that the UK Government do not get into this mess again. It is the way that we need to go forward. Obviously, there are commercial sensitivities in some of the contracts that will be granted, but being as transparent and as anti-corrupt as possible seems to be a suggestion that nobody could argue with.

If we were requiring contracting authorities to avoid corruption, I do not think that seems like something that is at all controversial.

Amendment 100 is on net zero. The Government are probably a bit fed up with my talking about net zero and climate change commitments—although probably not the Government Committee members, given that it is unlikely that many of them have served on Committees with me. I raised those issues in discussions about the Advanced Research and Invention Agency Bill and the Subsidy Control Bill, and at various other times.

When we were setting up the Advanced Research and Invention Agency I suggested that in the creation of a brand new body it would be sensible to begin with the principle of working on a net zero basis. After all, we are going to have to get to that. Everything that the Government do is going to have to get to the point of being net zero. When we start new things, we should at least begin in that way—retrofitting is harder. I completely agree and understand that trying to make some of the Government Departments net zero now is much more difficult. If we are starting a new one, though, we should begin on that basis, and it should be the same for contracts. We should have a presumption that contracts are granted on the basis of ensuring that the objectives of climate change and net zero are met.

I am not asking the Government even to go as far as we have in Scotland, given that the Scottish Government have more ambitious climate change targets than the UK Government. I am not pushing for that in this circumstance. I am asking for the Government to say to authorities that award contracts that we have net zero commitments: “We have commitments in terms of reducing the amount of carbon and the environmental impact of the decisions taken, so we expect you, the authorities, to fulfil them as we intend to do.”

The problem is that, although people in this place are happy to talk about climate change and reducing carbon output, they are not so happy to do anything about it. It is vital: it is the biggest issue for the generation to come, and even for our generation. It is absolutely incumbent on us as politicians to make these decisions and lead from the front. We cannot say to all the businesses out there, “You must meet net zero commitments,” if we are not putting that into practice in this place.

It seems to me now just as it seemed during discussion of the Subsidy Control Bill: that we should be asking contracting authorities to work on a basis of reducing their environmental footprint and the carbon that they generate—indeed, we should have been asking that already. We are going to be asking them to do that anyway, whether they are contracting something out or not. We are asking them to have more energy-efficient buildings and to improve what they are doing. It is not difficult to ask them in the Bill, because every decision we are taking should be seen through the lens of, “What impact does this have on meeting our objective to reduce climate change?” When we are talking about balancing value for money with public benefit, and the balances that are going to have to be struck with all this, it seems to me that a slightly more expensive contract that has a massively smaller environmental impact is far preferable.

Lastly, the other thing about climate change objectives and net zero is that they assist in the assumption of local. They assist in saying to people, “If you procure

locally, the carbon footprint of that procurement is by necessity going to be less. You are not going to be transporting things or people as far, and you are not going to be using those transport costs, which we know are a significant amount of the carbon that we generate.” It is a win-win. It would make sense for us to ensure that contracting bodies are working on that basis.

I still believe the Government have an awful lot of work to do on this. They should be leading from the front in this regard, but they should also be saying to every authority and organisation that is responsible for spending public money that this is one of their top priorities—if not the top priority—and therefore must be followed when making procurement decisions.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): I rise to support all the amendments in this group. I will talk a little bit about the importance of requiring people to consider social value. Currently, councils might consider it. It is an option for some, and many councils weave through the requirements and the paperwork to do so. I think about Liverpool City Council or Preston City Council; many Labour councils are leading the way in navigating the current system.

In Sussex, this situation causes real problems, where some councils are proactive and others not. A year and a half ago, our domestic abuse services, run by a local charity called RISE, went up for tender. RISE was created by women in the city, with support from the council. This time around, the contracting authority was East Sussex, West Sussex, Brighton and Hove, and the police trying to do it together. As only Brighton and Hove had social value as a key part of its procurement process, social value was dropped entirely. The procurement process did not consider RISE’s social value whatsoever.

Unsurprisingly, RISE lost the contract. That meant that decades of understanding the needs of women from an organisation that had grown out of the Brighton Women’s Centre—a successful centre that I have taken Justice Ministers to a couple of times—and the refuge support that was provided, was no longer there. A national organisation, with no presence in the city, came to take over. The problem is that not only is the money now taken out of the area and distributed elsewhere—an enterprise has the contract rather than a charity—but when procurement comes around next time, there will be no local competition because the experience will have been lost and RISE’s ability to bid again will have been depreciated.

The service could well have been within the council, so no procurement would have been needed. However, because we wanted women to run it themselves and for it to be women-led, it was an external to the council. That meant procurement rules were applied and the women’s organisation lost out to a housing organisation—not even an organisation specialising in domestic violence, abuse, refuge or any of the key areas.

2.45 pm

My hon. Friend the Member for Vauxhall has tabled an amendment that will specifically exclude domestic violence and women’s services from some of the procurement rules and I will support it. However, RISE is not a one-off case that we need to fix. It is an example of how, when taking social value into consideration is not compulsory, small local organisations, charities, co-operatives and

social enterprises—made up of local women in this case, but it could be a local ethnic minority centre, specialist services for people living with HIV or a raft of other services—cannot compete with professional bid writers who can put in all the fancy words, fulfil the requirements and call upon armies of lawyers.

I note that the clause mentions the regard councils should have for small and medium-sized enterprises. However, that gives no regard to location or a differential for non-profits, charities or organisations that the council might have spun out to be arm's length because they wanted service users to manage it directly. That is why the social enterprise amendment not only makes sure that some of those things are in the Bill but that they are a requirement rather than an ability. That is important.

That requirement should, of course, be balanced with value for money; no one is saying we should throw good money after bad. Of course, it should be balanced against transparency and anti-corruption, but it should have equal regard. The other reality is that, even for the most progressive councils, social value currently forms a lesser requirement overall than best value. We can weave things in and try and interpret best value in the widest possible way, but at the end of the day, councils and other public bodies have to push against that. Changing that is important.

It is also important to look at the wider effects on our local environment. We have heard about our international environment, and I fully support everything around climate change, but it is often the case that organisations that come in and do not understand the local environment can cause damage and externalities to the local environment that the council and other public bodies have to pick up. If those wider considerations are not equally balanced, we will have to give contracts to people who are not actually in the best place to receive them. That is why I support this group of amendments, and why we need to ensure that these principles are in the Bill, including those of transparency and anti-corruption taken into account by my colleague in the SNP, the hon. Member for Aberdeen North.

Procurement should be used to grow our economy locally, to build our country up and to provide greater resilience for future generations. I am pleased that the hon. Member for Aberdeen North mentioned the fantastic work of the Labour Welsh Government on the Wellbeing of Future Generations Bill, and that is what needs to be in procurement—that is the aim. The aim is not a quick buck and just to procure everything out. I shall rise to speak to other clauses looking at in-sourcing—something else that would be allowed more easily if social value was on the face of the Bill. I urge support for all the amendments in the group.

Alex Burghart: I will try to treat all the amendments in this large group in order. Amendment 9 seeks to replace the well-understood concept of value for money with a new duty, by importing into the procurement objectives the meaning of “social value” under the Public Services (Social Value) Act 2012. There are difficulties with that approach, I am afraid, in particular that there is no definition of “social value” in that Act. Contracting authorities are also likely to struggle to understand the concept of equity in the context of procurement.

Amendment 10 is unnecessary, as “public benefit” already allows for “public value” and for contributing to socioeconomic development to be considered where

appropriate and relevant. This amendment also undermines the concept of what is in the public benefit by overlaying a similar but different concept of public value. That suggests that benefit and value are different things, and narrows the former term in a way that is not legally helpful.

Amendments 9 and 10 are also not necessary to ensure that social value is considered in the procurement objectives. The public benefit objective in subsection (1)(b) requires contracting authorities to think about the extent to which public money spent on their contracts can deliver greater benefit than it otherwise would—for example, broader social value or equitable outcomes for groups such as armed forces veterans, local employment and such like.

Amendment 101, tabled by the hon. Member for Aberdeen North, seeks to add transparency and anti-corruption efforts to the list of procurement objectives in the Bill. The Bill, however, will establish a world-leading transparency regime. It will see more commercial information published in three nations of the UK than ever before, including information on upcoming procurements prior to opportunities being advertised, and data against key performance indicators on major contracts, so that taxpayers can see how well contracts are being performed. Transparency is therefore already a mandatory requirement.

Florence Eshalomi: Is the Minister aware that the Government's own “transparency ambition” document outlines a failure to provide for transparency in our procurement system? Some of the measures he has outlined are a step forward, but they still lack substantiveness to give providers and the public access to the full transparency that we need. Should we not look to follow in the steps of Ukraine in publishing an accessible digital dashboard, which would help the Government?

Alex Burghart: As the hon. Lady knows, transparency sits throughout the Bill. As I have just said, there are far greater requirements to publish than ever before, on an online platform that the Government will provide. She gave the important example of Ukraine. She will remember that we talked about this on Second Reading: the Ukrainians were advisers to the UK Government when we were putting our ideas together, so we are very much building on what they did in Ukraine. This will be an extraordinary step forward for transparency in the nations that are taking it up.

The Bill also requires contracting authorities to have regard to acting, and being seen to act, with integrity. That will oblige them to consider how to prevent fraud and corruption through good management, prevention of misconduct, and control. Failure to take anti-corruption steps or measures will be an indication that the contracting authority did not have a regard to the importance of acting and being seen to act with integrity.

Contracting authorities will also be required to comply with the provisions in the Bill on conflicts of interests and the exclusion of suppliers, preventing contracts from being awarded to inappropriate suppliers. That provides further opportunities to directly address transparency and anti-corruption issues within the context of a procurement. I hope that we all agree that it is essential that the procurement regime commands the trust of

suppliers, the public and our international trading partners. In our view, the Bill already provides for those matters as it stands.

Amendment 89 seeks to define value for money. Clause 12 specifically does not define value for money to leave a degree of flexibility for different types of contracting authorities to adapt the concept for their own procurements. Contracting authorities should be able to select the most advantageous tender that prioritises things that deliver value for money for them. There are many precedents on the statute book where the term is left undefined, and that allows for a degree of flexibility. I could point to the Communications Act 2003, the Energy Act 2004, the Defence Reform Act 2014, the Bus Services Act 2017, and so on.

Kirsty Blackman: The Minister has answered the question in relation to value for money not being defined in this Bill because it is mentioned in other measures without that kind of definition. Regarding the term “public benefit”, is it also the case that it is widely used in other legislation without being defined? If the Minister does not have an answer now, I would be happy to hear something afterwards.

Alex Burghart: No, I am happy to say that it is already set out in the social value Act, I think, which I mentioned at the start of my remarks. Similarly to amendment 9, we feel that amendment 89 is unnecessary, as “public benefit” already allows for those factors to be considered, where appropriate and relevant to the contract being awarded.

New clause 2, also tabled by the hon. Member for Vauxhall, seeks to oblige contracting authorities to follow the six principles that the Government consulted on in the Green Paper. Now, the Green Paper was just that; it was a Green Paper and it formed the basis of what came subsequently. The six principles in the Green Paper were subsequently refined and then translated into the objectives and specific obligations that now exist in the Bill in the light of the responses to the Green Paper.

The language of a Green Paper is not the language of legislation, and one of the main lessons from the Green Paper and the consultation was the need to reflect the principles in a way that helps contracting authorities understand how they will implement them. That is what we have done. However, I assure the Committee that each of those principles remains within the Bill in an appropriate form. “Value for money” remains a fundamental tenet of the procurement regime. It is well understood by contracting authorities so does not need to be elaborated on.

“Public good” was focused on the delivery of strategic national priorities, so we revised it to the objective of “public benefit” to address the concerns raised in the public response to the Green Paper that it was solely about national, and not local, priorities. The revised principle supports wider consideration of social value benefits.

As we have discussed, “transparency” remains as an objective to encourage information sharing with suppliers, and “integrity” also remains an objective. The public response to the Green Paper indicated that “fair treatment” was too subjective for contracting authorities to determine by objective standards, so we introduced the concept of

“treating suppliers the same”, which hon. Members will find in clause 12(2). Finally, “non-discrimination” has been converted from an objective to a hard-edged obligation in clauses 88 to 90.

The combination of the objectives and specific legal obligations in the Bill deals with procurement principles more effectively than the broad principles that the Government consulted on in the Green Paper. I therefore respectfully request that the amendments be withdrawn.

Florence Eshalomi: I heard the Minister’s response, and I think, again, that it is disappointing that there is a total shift between what was introduced by the Government in the Green Paper and what we now see in front of us. That was also noted in the other place.

I welcome the aim of the amendments tabled by the hon. Member for Aberdeen North. That is something that we do support, and I know that she highlighted it in a Westminster Hall debate just last week. Climate change is something that we are very much concerned about.

On ensuring that we think about the next generation, we can only do that if we protect the environment and the Earth that we are on now. We only have one opportunity. We cannot do it later, because there will be nothing left. That is a key issue that our young people are concerned about, and it must be front and centre in this Bill.

The climate elements of the Bill are really important. They touch on social value and on public value. There is an interwoven link showing why that is important, and that should receive due consideration, so it is a shame to hear the Minister not wanting to take those measures forward.

Kirsty Blackman: If possible—I did not indicate this before—I would like to push amendment 100 to a vote.

The Chair: We will come to that.

3 pm

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 1]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negated.

Amendment proposed: 10, in clause 12, page 9, line 25, after “benefit” insert

“and public value, including in relation to benefits and value contributing to socio-economic development, to be realised over time and in relation to areas of public responsibility of other contracting authorities.”—(Florence Eshalomi.)

This amendment would require public value to be considered in the procurement objectives.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negated.

Amendment proposed: 100, in clause 12, page 9, line 28, at end insert—

“(e) mitigating climate change and “Net Zero” commitments.”
—(*Kirsty Blackman.*)

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 3]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negated.

Amendment proposed: 89, in clause 12, page 9, line 28, at end insert—

“(1A) In having regard to delivering value for money under subsection (1), a contracting authority must consider the impact of delivering the contract on—

- (a) social value,
- (b) the ability to meet the needs of service users,
- (c) long-term value, including the prevention of adverse life outcomes and the increasing demand for services that results from adverse life outcomes,
- (d) savings to other areas of public service delivery, and
- (e) furthering equality and tackling inequality’.—(*Florence Eshalomi.*)

This amendment would define value for money when carrying out covered procurement.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 4]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Clarke-Smith, Brendan
----------------	-----------------------

Duguid, David	Marson, Julie
Fletcher, Nick	Randall, Tom
French, Mr Louie	Tracey, Craig
Gibson, Peter	

Question accordingly negated.

Florence Eshalomi: I beg to move amendment 1, in clause 12, page 9, line 36, after “enterprises” insert “and co-operative societies”.

This amendment, together with Amendments 2 and 3, would ensure that the barriers to cooperative societies are considered by contracting authorities during the procurement process.

The Chair: With this it will be convenient to discuss the following:

Amendment 90, in clause 12, page 9, line 36, after “enterprises” insert “and charities”.

This amendment, together with Amendment 91, would ensure that the barriers to charities are considered by contracting authorities during the procurement process.

Amendment 91, in clause 16, page 13, line 17, at end insert—

‘(6) In carrying out preliminary market engagement, a contracting authority must consider potential barriers to participation by small and medium sized enterprises and charities, and take steps to mitigate any barriers identified.’

This amendment, together with Amendment 90, would ensure that the barriers to charities are considered by contracting authorities during the procurement process.

Amendment 2, in clause 85, page 57, line 27, after “enterprises” insert “and co-operative societies”.

See explanatory statement to Amendment 1.

Amendment 3, in clause 119, page 77, line 24, at end insert—

“co-operative society” means—

- (a) a society registered as a co-operative society under the Co-operative and Community Benefit Societies Act 2014, or
- (b) a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act;’.

See explanatory statement to Amendment 1.

Florence Eshalomi: The amendments relate to co-ops and charities, respectively. As a proud Labour/Co-op MP and a huge believer in the co-operative movement, I am proud that the amendments relating to co-ops were the first to be tabled.

The amendments follow in the same vein as amendments made in the other place, which Labour supports, to help remove barriers to the procurement process. We want SMEs to have fair access to public procurement, and those amendments will help to make a positive impact on the inclusion of SMEs in the procurement system. In fact, we think the amendments have so much potential that we want them to apply to other groups that we see as disadvantaged by the system.

One of those groups is co-ops. There are over 7,000 co-operatives across the UK employing 250,000 people, and they make an annual contribution to the UK economy of nearly £40 billion. They range in size from large retail co-operatives, such as the Co-op, to small community pubs, and include co-operative financial institutions such as credit unions and building societies. Indeed, many will be SMEs and already covered by the clause.

Historically—and as evidenced by experiences during covid—co-ops are a more resilient form of business, in large part due to the commitment and support of their members and their ability to make democratic decisions for the long term, rather than based on short-term returns. The number of independent co-ops grew by 1.2% in 2020, despite the impact of covid. In the same year, just 1.5% of co-ops were dissolved, compared with 6.5% of businesses in the wider economy, meaning that they were arguably four times less likely to cease trading. In the same vein, co-ops are seen as more productive, as their members have a vested interest in their success, bringing natural social value to their contracts.

Despite that, co-operatives make up less than 1% of the total number of UK businesses. The sector should be encouraged and supported to grow to ensure a more democratic economy, where wealth and power are shared more fairly and business is rooted in the interests and geography of local communities. Given the nature of these businesses and their model—they are run by people who work on the ground—they have a lot to offer the procurement system. Many of those who would work at a procurement co-op service may be service users themselves, able to see the cracks in the system and offer innovative solutions to create a public service provider that offers true value for public money.

Co-ops have a lot to offer our procurement system, and our procurement system has a lot to offer co-ops. That is why we have tabled these amendments. I hope the Minister will look at them carefully and accept them.

Amendments 90 and 91 would do a similar thing to amendments 1 to 3 but for charities. While all types and sizes of charities experience challenges relating to the commissioning and procurement of public services, smaller organisations often face greater barriers. The National Council for Voluntary Organisations highlighted to the House of Lords the barriers charities face in delivering services for communities and the lessons learned from how authorities worked with charities during the covid-19 pandemic.

I hope the Minister will agree that the Bill must reduce barriers to entry for charities and voluntary organisations, because they are often best placed to deliver a range of public services. They are trusted in communities, able to reach people who are overlooked or underserved by mainstream services, and can provide wraparound support to address the root causes of the challenges many people face.

Charities and voluntary organisations often combine support with a focus on prevention of future needs, with a versatility and agility that enables them to respond quickly to changing circumstances. Their ability to do that while delivering wider social value for individuals, communities, the local economy and other public services means that their impact reaches not only those accessing services, but others in their local communities and taxpayers more widely.

The Government spent £11.6 billion on contracts with charities alone in 2019-20. Ensuring that the Bill works for such organisations and services is therefore crucial. To help address some of the barriers facing charities, we would like the Government to commit to include specific reference to charities in guidance and in learning and development content. I know that many charities are likely to be covered by the clause as they are SMEs, but I would like to take that further by passing amendments 90 and 91.

Kirsty Blackman: I am quite happy to support these amendments, which are clever and necessary. They would both improve the process and make clear the direction of travel and intention behind the Bill. Procurement legislation and processes, and the tender processes that organisations have to go through in order to win a contract, are sometimes quite exclusionary. They are difficult. As the hon. Member for Vauxhall mentioned, they are easy to navigate for companies with significant teams of lawyers and tender-writing experts, but much more difficult to navigate for small organisations, which may be doing a huge amount of good but unable to translate that into writing the best possible tender. That is not to say that some of them do not write excellent tenders—I am sure some of them do—but it is important that we take that into account and include a presumption to consider such organisations.

Charities are struggling at the moment. Every charitable organisation that I have spoken to has mentioned its concerns about how it will carry on. We know that during the cost of living crisis, people are reducing their discretionary spending; they do not have any money left to spend on things such as charitable giving, and therefore charities are really in need of contracts to be able to continue to provide their services. Charities have workers—people work for charities. Without securing sensible, value-for-money contracts, charities will not be able to give their staff the uplift they need in order to avoid the cost of living crisis. It would be helpful specifically to include charities in the Bill and define that.

On co-operative societies, I have thought a fair bit about how we encourage those businesses and organisations that are not currently co-operatives but may benefit from becoming a co-operative. How do we make that landscape easier? How do we make it easier to understand how to become a co-operative organisation? I represent Aberdeen, where we have a significant number of companies that grow to a certain size and then get sold off. Some of those companies continue to flourish under some multinational, international umbrella, but some of them are just subsumed and disappeared, because the multinational is doing its best to buy up the intellectual property so that there are fewer competitors. In some of those situations—I am not saying it is the case in all situations—a co-operative would be the best way forward for the company. I do not think enough is being done to smooth the path for that and to put it on a more level playing field.

3.15 pm

We know that there are potential benefits for our local communities from enabling companies to keep IP and manufacturing at home, where it belongs. This is a small but important way in which the Government could make it clear that this is a realistic, sensible and reasonable way for a company to choose to go forward if it wants to. That would help jobs and organisations in our local communities. As I said, I support the amendments.

Alex Burghart: Amendments 90 and 91, tabled by the hon. Member for Vauxhall, seek to amend clauses 12 and 16 so that contracting authorities have to have regard to potential barriers to the participation of charities, particularly when carrying out pre-market engagement.

[Alex Burghart]

Charities provide important services and may well offer the best value for money in a procurement, particularly in the social and education services. That was in the forefront of our minds when allowing greater flexibility for light-touch contracts, which means that those procurements often facilitate the participation of charitable and not-for-profit organisations.

Before I go on, I must correct my remarks to the hon. Member for Aberdeen North at the end of our debate on the previous group of amendments. I foolishly leapt to my feet and said that it was the social value Act that was relevant. It is actually section 4 of the Charities Act 2011. I am grateful to have officials who do not err.

There are a broad range of charities involved in public procurement, including some very large, well-established organisations capable of effectively competing in a public procurement market. Charities that need extra support for public procurement will often meet the definition of SME in clause 119, and will therefore already benefit from the duty in clause 12(4) to support SMEs, which applies to pre-market engagement and the whole procurement lifecycle. I say as someone who has worked with and for both large and small charities that asking for charities of all sizes to be treated the same way is perhaps not appropriate. In addition, the provisions on reserving contracts for certain suppliers in clauses 32 and 33 will help those charities that qualify as a supported employment provider or public sector mutuals.

The Government are fully committed to supporting charities, hence the sector will often be the beneficiary of grants that sit outside the public procurement regime. However, the Bill already functions to give appropriate support to charities' participation in public procurement. It is undesirable to include other types of organisations in clause 12(4) and risk diluting the separate requirement for contracting authorities to have particular regard to barriers that smaller suppliers face because of their size. I respectfully request that the Committee does not support amendments 90 and 91.

In the other place, my colleague Baroness Neville-Rolfe admirably championed small and medium-sized enterprises, and tabled amendments to complement the Bill's existing provisions that support smaller businesses. Those include explicit duties to have regard to the participation of SMEs. Amendments 1 to 3, tabled by the hon. Member for Vauxhall, would amend those duties to include a specific reference to co-operative societies. I share her deep admiration for co-operative societies. They play a very important role in our economy and our society as a whole. I am happy to confirm to the Committee that the SME obligation will include co-operative organisations where they meet the tests for being an SME.

Many co-operatives will meet our definition of SME in clause 119. Where they do not, for example because they employ more than 250 staff, they should not benefit from the duty to support SMEs. We think it would be wrong to treat a large co-operative bank, for example, in the same way that we are proposing to treat SMEs. If we included other types of organisations, we would risk diluting the Bill's particular regard to the barriers that SMEs face—the clauses would lose their impact, which would be a shame for the SMEs that the Bill seeks to support. I therefore respectfully urge the hon. Lady to withdraw her amendments.

Question put. That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 5]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negated.

Amendment proposed: 90, in clause 12, page 9, line 36, after “enterprises” insert “and charities”.—(Florence Eshalomi.)

This amendment, together with Amendment 91, would ensure that the barriers to charities are considered by contracting authorities during the procurement process.

The Committee divided: Ayes 6, Noes 9.

Division No. 6]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negated.

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Clause 12 sets out the procurement principles that establish what the Bill is designed to achieve, and how its success will be judged. The clause splits the procurement principles into objectives and other rules to help contracting authorities to understand what they are obliged to do.

The objectives in clause 12(1) set out the values of public procurement, the furthering of which contracting authorities must give proper consideration to in the course of making procurement decisions. Public procurement needs to be focused on achieving value for money, which is rightly at the top of the list of objectives set out in clause 12(1). However, each of those objectives has its own merit, and each must be considered independently. It is not the intention of the Bill that value for money, however important, disappplies or overrides the obligation on contracting authorities to have due regard for the objectives of public benefit, information sharing and integrity.

The rules on equal treatment in subsections (2) and (3) are obligations that set minimum standards that contracting authorities must follow. The Bill will also accelerate spending with SMEs through the creation of new duties

that will require contracting authorities to have regard to SME participation. We want to level the playing field for smaller businesses and for buyers, not only to avoid putting up, but to remove barriers to their participation.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13

THE NATIONAL PROCUREMENT POLICY STATEMENT

Florence Eshalomi: I beg to move amendment 22, in clause 13, page 10, line 2, leave out “may” and insert “must”.

This amendment would require a Minister to publish a National Procurement Policy Statement.

The amendment seeks to mandate that the Government “must” publish a national procurement policy statement, instead of just “may”. I am sure the Minister will tell me that the amendment is unnecessary as, of course, the Government will seek to publish a national procurement policy statement. However, as has been stated, the change that we have seen in the Bill from the Green Paper to today means that we can take nothing for granted when it comes to the Government’s word on procurement.

The amendment is identical to the one tabled in the other place by Lord Lansley. When Baroness Noakes introduced it, she said that the clause’s current wording leaves the door open for a statement not to be published. Given the importance of the policy statement in setting rules for covered procurement, it would be deeply damaging for it not to be published. I urge the Minister to ensure that that cannot happen by supporting our amendment.

Kirsty Blackman: It seems to me that this is probably the easiest amendment for the Government to accept. They have made it clear how important the national procurement policy statement will be, and how a significant proportion of the decision-making processes in the Bill will flow from that statement.

I support the amendment, and I would suggest going even further in saying that every Government should publish a national procurement policy statement. We have had quite a lot of Governments recently, but after every general election and every first King’s Speech of a new parliamentary Session, the Government should be clear in a number of areas. They should set out their policy direction of travel, not just in procurement but in general. That is a key moment when the Government could refresh their national procurement policy statement.

I do not have a significant issue with the Government updating the statement based on priorities. We have seen what has happened in the last few years with covid, and in the past decade or so, we have developed a better public understanding of the impacts of climate change. Science has changed, and not only have priorities changed, but the social system has changed as a result of covid. It therefore seems that updating the statement would be a sensible thing to do. If the Minister is not willing to accept the amendment, I urge him to make it clear that the Government intend to publish the national procurement policy statement, no matter whether the clause says “may” or not.

We will come to the clause stand part debate, but the clause states that there is an intention to keep the statement “under review”. Does the Minister expect that if Government priorities were to change significantly,

a new or a tweaked statement would be published? For example, if something major happened, as with covid or the war in Ukraine, priorities may change as a result. Does he expect Government Ministers to at least consider updating the national procurement policy statement in the light of drastic changes that may or may not come to us in future?

Alex Burghart: Amendment 22 would require the Government to publish a national procurement policy statement rather than just allowing them to do so. We have had a lot of debate about the nature of procurement policy and the associated important elements of procurement, such as driving social change.

As has been demonstrated by the sheer number of topics that we have touched on, procurement is often used to transact wider policies. That is correct, but we have to be realistic about the fact that those policies shift over time. The hon. Member for Aberdeen North gave a couple of examples of that. Indeed, the Government demonstrated how quickly we can change our procurement policies in the light of Russia’s illegal invasion of Ukraine. It is therefore both preferable and necessary that procurement policy is aligned with wider Government objectives. As such, the publication of an NPPS is a decision based on the strategic policy priorities relevant to the Government at that time. It needs to be as flexible as possible, and mandating a Minister to publish one takes away some of that possibility.

However, I assure the hon. Lady that the Government absolutely intend to publish an NPPS. They are working on it at the moment, and I look forward to bringing it to the House and discussing it when the time comes. She is right that it will be possible for Administrations to update their national procurement policy statement, but it will also be possible for them to withdraw it. One reason for not mandating is that there may be times when the Government are working on a new one, and there is a hiatus between the two. I therefore do not see that changing the drafting of the clause and mandating the statement is necessary. I respectfully request that the hon. Member for Vauxhall withdraw her amendment.

3.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 7]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

NOES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

Question accordingly negatived.

Alex Burghart: I beg to move amendment 28, in clause 13, page 10, line 9, leave out paragraph (b).

This amendment would remove the requirement for a Minister of the Crown to give due regard to certain principles before publishing the national procurement policy statement.

The Chair: With this it will be convenient to discuss the following:

Amendment 7, in clause 13, page 10, line 12, after “environmental” insert “, cyber security”.

This amendment would make cyber security one of the strategic national priorities for procurement.

Amendment 11, in clause 13, page 10, line 12, after “environmental” insert “, national security”.

This amendment would add national security as part of procurement principles.

Amendment 107, in clause 13, page 10, line 25, at end insert—

“(vii) fair treatment of workers, by ensuring fair pay and conditions, workplace wellbeing, development of skills and progression and diversity in recruitment.”

This amendment would add a procurement principle based on the fair treatment of workers.

Government amendment 29.

Amendment 105, in clause 13, page 10, line 36, at end insert—

“(4A) The national procurement policy statement must include measures to ensure that no supplier may be granted a procurement contract with a contracting authority where the Secretary of State is satisfied there is established evidence that a provider has been involved in—

- (a) modern slavery,
- (b) genocide, or
- (c) crimes against humanity.”

Alex Burghart: The purpose of amendments 28 and 29 is to overturn amendments added to the Bill in the other place, which require that prior to publishing a national procurement policy statement, the Minister must give due regard to a number of specified principles and mandate the inclusion of a number of priorities in the NPPS.

I reiterate that the Government recognise that those principles are important to procurement, which is why most of them are already core elements of the procurement regime and are reflected throughout the Bill. That is evident in the Bill’s drafting overall. For example, value for money, integrity and maximising public benefit are set out in clause 12 as procurement objectives that contracting authorities must have regard to directly when carrying out procurements. As discussed, transparency is also a requirement running through the Bill. Furthermore, specific requirements in the Bill place obligations on contracting authorities regarding fair treatment of suppliers and non-discrimination in decision making—for example, the conflicts of interest provisions in part 5. Therefore, although the principles are important, to incorporate them as part of the national procurement policy statement process when they are already applicable to procurements on the face of the Bill is unnecessary.

Similarly, the other place added a subsection that requires the inclusion of specific priorities in the national procurement policy statement. Those relate to achieving targets set under the Climate Change Act 2008, the Environment Act 2021 and the Public Services (Social Value) Act 2012, as well as to promoting innovation among potential suppliers and minimising the incidence of fraud.

We carefully considered which policy priorities should and should not be included within the regime, in order to maximise productivity and ensure that the Bill is as streamlined as it can be to deliver for all contracting

authorities and maximise the benefits from all procurements. It is, I believe, more than adequate that the Public Services (Social Value) Act requires contracting authorities to consider the economic, social and environmental wellbeing of an area when undertaking specified procurement. Restating that in a policy statement would be unnecessary, as that Act is already binding on contracting authorities.

The amendment introduced in the other place looks to increase innovation and minimise fraud, but that is already at the core of the Bill. With our new approach to small businesses, we are unleashing innovation in the supply chain, and by embedding transparency throughout the procurement lifecycle, alongside our plans for oversight, tackling fraud will be easier than ever before. It would be counterproductive to restrict the flexibility of the national procurement policy statement by placing specific priorities in primary legislation.

We have made it clear that the NPPS will be used to set out strategic policy priorities, over and above those enshrined in the Bill, that are relevant at the time that the NPPS is to take effect.

Florence Eshalomi: I oppose amendment 28; it would remove Lords amendment 46, which was added on Report. Clause 13 currently mandates the Government to give due regard to a number of important principles before publication of their national procurement policy statement. Those principles follow on from the procurement principles promised in the Bill—namely, promoting the public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination.

Those principles are important. We know that public good allows us to put what we believe is best for the country at the heart of procurement. When we also consider the huge amount of money spent on procurement—ultimately, it is the public’s money going towards delivering goods and services—it is right that the Government expect the money to be spent in the public’s interest. Procurement must always have that idea in mind, and it cannot be driven by any other aim of individuals in Government or other private individuals.

Lloyd Russell-Moyle: It is particularly important to include these principles in the Bill. Although we all agree with them, have there not been many accusations that during covid, the principles were not followed? We know that a huge amount of reclaimed money has still not been discovered. There were fast-tracks for mates and friends with no experience. People lobbied and pushed for their mates to get contracts—we know that because one Member of Parliament has had to resign over it and the scandal is ongoing. Without having these principles in the Bill, there is a danger that even if Conservative or other Governments are whiter than white, the public will not believe it and think that something murky is going on? That destroys trust in politics, so including them will protect us all.

Florence Eshalomi: I thank my hon. Friend for that important point; I will highlight that further as I make progress.

It would be completely wrong, especially when households up and down the country are struggling to put the heating on during this cold winter, to not carry

out the due diligence and get every bit of public value out of our procurement budget. Again, this is public money and, as my hon. Friend highlighted, transparency is even more critical now. The Government must not take money from the taxpayer and then be opaque about how it is spent. As has been highlighted, we saw during the pandemic why that principle was so important. Shining a light on our procurement not only is fair, but makes it more efficient and helps to achieve more value for money for the public.

During the pandemic, we saw billions of pounds of personal protective equipment written off. I believe that greater transparency in the process could have helped prevent some of that waste and some of the scandals that unfortunately lie at the Government's doorstep today. We have concerns about transparency in the Bill as it stands, and I want to speak about that at greater length.

Integrity ties all this together. Ensuring good management and fighting against fraud and corruption is critical in ensuring public trust in the system and ensuring we get value for money. That links closely with transparency—we need a transparent system where integrity naturally flows and corruption is highlighted. It also links to ensuring that the public get their money back when contracts are not carried out or are carried out to a poor standard. Too often in the current system, those who deliver poor services get away with it. They are even awarded further contracts despite poor performances. We do not see enough money clawed back: just before Christmas, the figure was just over £10 million from fraudulent PPE contracts during the pandemic. Perhaps the Minister can update us on that; I hope that it is far more, considering the amount of waste in that area.

Fair treatment of suppliers is also vital to maintaining the best possible procurement system. I know that that may be frustrating at times when considering wider policy goals. It is always tempting to mandate certain procurements to support groups such as SMEs or to follow agendas such as levelling up, yet this is equally as important as the other principles.

We cannot have favouritism in the system or decide what is best based on the supplier and not the merits of the offer. As my hon. Friend the Member for Brighton, Kemptown highlighted, we saw that during the pandemic, with the VIP lanes ultimately being ruled unlawful in court. In her ruling in January last year, Mrs Justice O'Farrell said the Good Law Project and EveryDoctor had established that the VIP lane system was

“in breach of the obligation of equal treatment”.

She went on:

“There is evidence that opportunities were treated as high priority even where there were no objectively justifiable grounds for expediting the offer.”

It is clear that that cannot happen again. I hope the Minister will outline what steps are being taken to ensure that that principle is adhered to and that there are consequences for going against it.

Similarly, non-discrimination is an important principle to ensure we show no favouritism among suppliers. That is particularly important when we sign up to trade agreements and want to ensure respect between partners. I expect the Minister to say that we should trust the Government and that it will be in a policy statement, but if the Government can go against their own words in the Green Paper, why should we trust them now?

More importantly, the amendment ensures that future policy statements from any Government would have to follow these principles in procurement. I think we all agree that the principles are important, and should a future Government want to go against them, that should be done via primary legislation and not through a policy statement with far less oversight. Primary legislation can always be introduced, so we are not tying a Government to the principles for life, but given their importance to the system that runs through the Bill, any policy note brought by this piece of legislation should take this into consideration. I urge the Government to think carefully and withdraw amendment 28.

I will now speak to amendment 7 and urge the Government to go further to strengthen the procurement principles in the policy statement. Our amendment 7 would introduce cyber-security as a strategic national priority for the Government. The past 12 months have reminded us of the risks to our security from every corner of the globe—from nation states, criminals and rogue actors. This year's National Cyber Security Centre annual review confirmed that cyber-crime continues to be the most significant threat for consumers and small businesses. Looking at the big picture, it is clear that the cyber-security threat is not at the forefront of minds when it comes to risk, despite the recent joint warning from the heads of MI5 and the FBI that commercial organisations on both sides of the Atlantic are increasingly being targeted by state-sponsored hackers. This is a challenge that requires us to raise our game domestically and collaborate more effectively internationally.

Endpoint security is a major challenge, particularly for the public sector. The Government's cyber-security strategy is very welcome, but fails to mention device security once. When it comes to cyber-security, everyone thinks about software, but the resilience of our PCs, laptops and printers is often under-appreciated. A lack of protection for hardware in our schools and hospitals leaves the UK vulnerable to malign actors, and data shows that the Government remain an attractive target for cyber-attackers, with 40% of cyber incidents between 2020 and 2021 affecting the public sector. The Chancellor of the Duchy of Lancaster recently acknowledged that the UK is now the third most targeted country for cyber-attacks, behind only the USA and Ukraine.

Combating fraud requires the Government, businesses and individuals across the UK to work together. Greater co-operation and knowledge sharing can make a real difference. Raising awareness of the different types of fraud we face and its impact on all corners of the UK is the first key step to arming us with the knowledge to stay safe online. The NCSC's cyber aware campaign—which in the run-up to Christmas revealed that victims of online shopping scams in the same period last year lost an average of £1,000 per person—is a great move in the right direction. We need to ensure our policies and requirements have greater teeth to better protect UK plc, and there are three simple steps that the Government can take to do that. Now that the UK has left the European Union, we are in a much stronger position to defend our national interest within our own public procurement rules. If the Bill allowed the Government to exclude suppliers to the public sector on cyber-security grounds, that would send a strong signal to malicious actors around the world.

[Florence Eshalomi]

Our amendment would insert cyber-security requirements as a required purchasing criterion for public sector procurement into the national procurement policy statement, which sets out national priorities and guidance for contracting authorities. It would make cyber-security one of the strategic national priorities for procurement, and would strengthen the Bill's national security focus. I hope it gets cross-party support and is accepted by the Government, as it would help to safeguard the UK from attacks from rogue actors and nation states, and would bring us into line with best practice from across the world.

3.45 pm

Amendment 11 is similar to amendment 7, but relates to national security, which should be at the heart of our procurement policy. The purpose of procurement is to keep the country running, and nothing is more important to that than national security. Our procurement should never serve counter to our national security; it should go without saying that national security is the first priority. I welcome the steps in the Bill to boost national security, but unfortunately we have seen multiple examples of procurement raising national security concerns over the past decade.

We all remember the debates about Huawei in the House, when the integrity of our 5G infrastructure was called into question, but that is just the surface of the national security problems. The Chair of the Foreign Affairs Committee, the hon. Member for Rutland and Melton (Alicia Kearns), is very knowledgeable about this subject, and her speech on Second Reading highlighted the national security problems with procurement. She outlined why national security must be a high priority in this Bill:

“There are tens of examples that could be raised...which are used by our police forces across Britain...The likelihood is that what is seen by every police officer entering the home of a constituent in Rutland and Melton could be sent back to China. The risk is so strong that Motorola has created technology to intercept that technology and prevent the data from being sent back...The Chinese Communist party is seeking to build a tech totalitarian state, and that requires the data of those around the world. At the moment, British taxpayers' data and money is enabling that.”—[*Official Report*, 9 January 2023; Vol. 725, c. 361.]

I hope the Minister reflects on that. I am sure he will agree that she outlined some very valid concerns.

Our procurement system cannot be a back door for foreign actors to get access to sensitive information. Amendment 11 would ensure that national security runs through the centre of the Bill like it would a stick of rock. Ensuring that the Government consider national security at all turns means we can build a truly resilient procurement system. I know this amendment will fall should the Government pass amendment 28, but I invite them to consider amendments 7 and 11 carefully when drawing up their national procurement policy statement.

Amendment 107 would make the fair treatment of workers a strategic priority for procurement. I understand that the Government may not want to be too onerous in some obligations when it comes to procurement, as that aim may be best served by other Bills, but the policy statement is a good place to set out a strong strategy and to put rights, skills and progression at the heart of procurement. The amendment would not place an obligation on individual businesses. Instead, it would look at the bigger picture on procurement.

As we have highlighted, we have a great opportunity to increase the social value of our procurement system, and much of that value can be realised in the work that goes into procurement. When done right, procurement can be a powerful tool to ensure that everyone receives fair pay, feels happy at work and develops the skills they need for their workplace. Without wider consideration of those points, it is easy to lose that critical value within our procurement. That is why I believe that our amendment 107 offers the vital impetus to ensure that the promotion of workers runs through our procurement system. I am aware that amendment 107 would fall if amendment 28 is agreed, but I urge the Government to think carefully about the promotion of workers in their policy statements. They should make sure that the huge slice of public spending functions for the good of workers in our system.

We believe that if Government amendment 29 is accepted it would remove Lords amendment 47, which was proposed by Lord Lansley on Report in the other place. He said that the amendment

“does not tell the Government to have a long list of strategic priorities. They may have their own strategic priorities but, during the Committee debates, noble Lords who were there will recall that there were some clear strategic priorities which the Committee wanted to see reflected in the Government's statement. They included, perhaps most prominently, the environmental issues. One way of doing it which should cause the Government the least possible vexation is to do it by specific reference to the existing statutory targets set out in the Climate Change Act and the Environment Act—that is, to make it clear that they must ask contracting authorities to do the things that they are statutorily obliged to do in any case.”—[*Official Report*, *House of Lords*, 28 November 2022; Vol. 825, c. 1618.]

Government amendment 29 would remove a limited but important part of the Bill.

Climate change is one of the biggest battles that we all face today. We all know that the world is getting hotter. We know that the failure to rapidly deaccelerate emissions will lead to environmental degradations with long-lasting and devastating consequences. In the UK, that means coastal communities flooded by rising sea levels. It means more severe flood risk across the country, and farmers having to adapt to changing environmental conditions. It could mean more extreme weather for which we are ill prepared. Around the world, it could mean famine, mass extinction of species and massive destabilisation. It is very much in our public interest to do everything we can to stop the climate emergency. Failing to consider that important impact is a false economy that will cost far more in the long run. It is vital that a sector as big as procurement properly considers the impact of its action on the environment and our battle against devastating climate change. I hope that the Minister will provide us with the security of knowing that climate change will be considered in future policy statements, not just those of today.

Amendment 105 in the name of the hon. Member for Aberdeen North seeks to add provisions to ensure that no supplier involved in modern day slavery, crimes against humanity or genocide is granted contracts. That is a valid concern and similar to those addressed in amendment 111. We are definitely minded to support her amendment. I look to her to introduce her amendment and to the Minister to hear his response.

Kirsty Blackman: I will cover the amendments in the order that seems more sensible to me, which is probably not the order in which they appear on the selection list

and amendment paper—apologies. I will do my best not to go over the same ground that has been covered by the shadow Minister in her excellent extensive speech. We are discussing a significant hefty chunk of the Bill and a number of different issues in one section.

The terms of Government amendment 28 are almost the opposite of new clause 2, which we discussed earlier. As I said then, I think it is one of the most important Labour amendments. I still believe that to be the case, and I think the withdrawal of the 33 principles would make the Bill poorer. This is one of those moments when you read a Bill—I am not sure how many people read Bills—and you think, “Hey, this is pretty good.” And then the Government take out the clauses that you actually liked. That is not helpful. The Government did exactly the same thing in the Online Safety Bill Committee. Before sending that Bill to the Lords, they took out some of the most useful and helpful clauses, which would have made most difference to people’s lives. I will therefore resist the Government amendment to this Bill vigorously.

Amendments 7 and 11 were tabled by the shadow Minister. I will not add too much on those, other than to say that cyber-security is one of the biggest risks facing us as Members of Parliament, the United Kingdom, the devolved Administrations—all of us. At this moment, that risk is only increasing. To have a conversation about cyber-security and national security in Committee is important, but they must also be considered during any procurement decisions. We want to improve cyber-security and national security and to take them into account, rather than forgetting them or hoping that they do not exist.

Amendment 107 on the fair treatment of workers struck me as one of the places where Government spending—public spending—could have the best benefit. Spending public money delivers not only great services for citizens, but high-quality jobs. It delivers jobs that are well paid and that have, in a lot of places, comparatively great terms and conditions. It is incumbent on us to ensure that the principles of fair work are held throughout all the decisions made on public spending. It is incredibly important that, when we use public money to create jobs, those jobs are good, well-paid jobs and, where possible, they financially recognise the increased cost of living—that the Government make the uplifts they should be making in the negotiations with various trade unions, which are struggling at the moment on behalf of workers and their members.

I will also strongly resist Government amendment 29. The shadow Minister explained it well. This is a pretty low bar. Clause 13(4) states:

“The strategic priorities to be included in the statement must include, but are not limited to...achieving targets set under the Climate Change Act 2008 and the Environment Act 2021”.

The Government passed those Acts. Why do they not intend them to be a strategic priority? Were they just things they passed in order to tick a box? If tackling climate change is a priority, clearly it should be part of the national procurement priorities.

Last week or the week before, in a Westminster Hall debate on public procurement, we heard the percentage of public money spent on public contracts; it is something like £1 in every £3. That is so much money! The clause as drafted is asking the Government to include a piece of their own legislation in the Bill as one of the strategic priorities. I do not think that that is asking too much.

I have just covered subsection (4)(a) and, in earlier discussion, we covered paragraph (b) at some length—again, I agreed with that. Paragraph (d) covers:

“minimising the incidence of fraud, waste or abuse of public money.”

That is very important. We saw the issues caused by the covid PPE contracts and the resultant massive waste of public money. It is totally inconceivable for the Government to open themselves to getting into that mess again, or for us to end up with another illegal fast-track lane, no matter how urgent the circumstances. The circumstances meant there was an urgent need for suitable PPE, not an urgent need for the Government to procure a whole lot of unusable PPE, or to prioritise recommendations from those in the VIP lane above companies that had a track record of producing PPE. It has not worked. It has failed our doctors, nurses and those working on the frontline. It has failed all of us who contribute towards public money and want it spent in a good way. It is therefore important to minimise instances of fraud, waste or abuse of public money. That should not need to be stated, but it does.

4 pm

Amendment 105 sets a really low bar. It is not difficult for us to ask the Government to include in their national procurement policy statement

“measures to ensure that no supplier may be granted a procurement contract with a contracting authority where the Secretary of State is satisfied there is established evidence that a provider has been involved in...modern slavery...genocide, or...crimes against humanity.”

The bar is the Secretary of State, in this regard. Despite the Government’s unwillingness to blacklist Hikvision, for example, even though we know its cameras are involved in the racial profiling of Uyghur Muslims, we have tabled this amendment to recognise that the Secretary of State may have more understanding or insight into whether a company is responsible for crimes against humanity. The Secretary of State is, therefore, an appropriate person to keep a list of those companies, so that when a contracting authority makes decisions, they can have a look at the list and say, “We are not going to give a contract to an organisation that is involved in this.”

Sometimes, if a contracting authority is not terribly large—I am not for a second suggesting that contracting authorities do not do due diligence, but it is in Hikvision’s interests not to be open about what its cameras are used for—it is in companies’ interests to hide such information as much as possible. I think it is important for the Secretary of State to be able to provide direction to authorities involved in the procurement framework and the granting of contracts that any company involved in these most serious of crimes against humanity cannot be granted contracts. That would make a clear statement that the UK will not work with organisations that are involved in modern slavery, genocide or crimes against humanity. It would be a clear international indication that we will not allow our public money to be spent in this way.

I mention Hikvision because such a high percentage of public authorities use cameras made by the company. They are funding this company, which is using the money that it has gained to assist a foreign Government in their campaign against the Uyghur Muslims. We will know about all such cases, but Secretaries of State will certainly have more insight into the matter than many

contracting authorities do, and they will be able to come up with a list of companies that should not be included.

The Government could start by following the Scottish Government's lead in getting rid of Hikvision cameras. That is what is happening in Scotland; they are leaving our public authorities. As far as I am aware, the UK Government have unfortunately not yet made a statement that they will be doing the same, and it would be good if they were to do so. It would be good if they ensured that we started from the principle that no supplier involved in any of these atrocious crimes can be given a contract or public money that they can use to continue to commit such crimes.

Alex Burghart: Amendment 7 would require “cyber security” to be added to the list of principles to which Ministers should have regard when drafting a national procurement policy statement, and amendment 107 would require fair treatment of workers. Similarly, amendment 11 seeks to broaden the list of principles to which Ministers should have regard when drafting a national procurement policy statement by adding “national security”.

National security is, of course, of paramount importance. The Bill makes substantial provision for the protection of the UK's national security through the national security exemption in schedule 2(21) and the discretionary exclusion grounds for suppliers in schedule 7(14). Where national security considerations are relevant, the Government have established policy and guidance that procurers must take strict account of.

Amendment 105 seeks to prevent the award of contracts to suppliers involved in modern slavery, genocide or crimes against humanity through measures to be included in the national procurement policy statement. The hon. Member for Aberdeen North mentioned her enjoyment of reading Bills. As she will see later on, the Bill already contains a robust regime for the exclusion of suppliers that are unfit to hold public contracts.

Schedules 6 and 7 set out a wide range of exclusion grounds that target the most serious risks to public procurement, and that explicitly includes modern slavery. We have also taken action to strengthen the way that modern slavery is defined, so that suppliers may be excluded where there is sufficient evidence that they are responsible for modern slavery anywhere in the world, whether or not they have been convicted of an offence.

I also draw the hon. Member's attention to the debarment regime in clauses 59 to 64, which allows for Ministers to consider whether any supplier meets one of the grounds for exclusion and whether the issues in question are likely to reoccur. Suppliers on the debarment list face exclusion across the public sector at all levels. That is a significant step forward in our approach to supplier misconduct.

As I made clear in my initial remarks, the principles in clause 13(3)(b) are duplicative and do not serve a strong purpose. I therefore still propose to overturn them.

The hon. Lady remarked on failures in the existing regime. I gently extend the invitation to her, once again, to leave the existing regime behind and join the new regime; but alas, Scotland has declined to do so and will be stuck with the existing regime.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 6.

Division No. 8]

AYES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

NOES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

Question accordingly agreed to.

Amendment 28 agreed to.

Amendment proposed: 29, in clause 13, page 10, line 29, leave out subsection (4).—(Alex Burghart.)

This amendment would remove the requirement for a Minister of the Crown to include particular strategic priorities in the national procurement policy statement.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 6.

Division No. 9]

AYES

Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Duguid, David	Randall, Tom
Fletcher, Nick	Tracey, Craig
French, Mr Louie	

NOES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	Russell-Moyle, Lloyd
Evans, Chris	Whitley, Mick

Question accordingly agreed to.

Amendment 29 agreed to.

Amendment proposed: 105, in clause 13, page 10, line 36, at end insert—

“(4A) The national procurement policy statement must include measures to ensure that no supplier may be granted a procurement contract with a contracting authority where the Secretary of State is satisfied there is established evidence that a provider has been involved in—

- (a) modern slavery,*
- (b) genocide, or*
- (c) crimes against humanity.”—(Kirsty Blackman.)*

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 11.

Division No. 10]

AYES

Blackman, Kirsty	Evans, Chris
Eshalomi, Florence	Jones, Gerald

NOES

Burghart, Alex	Fletcher, Nick
Clarke-Smith, Brendan	French, Mr Louie
Duguid, David	Gibson, Peter

Marson, Julie
Randall, Tom
Russell-Moyle, Lloyd

Tracey, Craig
Whitley, Mick

Question accordingly negated.

Question proposed, That the clause, as amended, stand part of the Bill.

The Chair: With this it will be convenient to consider clause 14 stand part.

Alex Burghart: I hope the clauses can stand part of the Bill.

Chris Evans (Islwyn) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Efford. The clause states that Welsh Ministers may publish a statement setting out

“the Welsh Government’s strategic priorities in relation to procurement.”

I am pleased that the Welsh Government are adopting the Bill, subject to the legislative consent of the Senedd, of course. To put it simply, the clause comes down to respect. Devolution was originally introduced in the UK in 1998 through the Scotland Act 1998, the Government of Wales Act 1998 and the Northern Ireland Act 1998. It has since become embedded in our society and our national identities; a whole generation has not known anything different, which is a good thing. Protecting the voices of our devolved nations in UK legislation is crucial not only for maintaining the relationships between the UK Government and the devolved nations, but for our democracy as a whole. The Wales procurement policy statement is the voice of the Welsh Government on procurement and, by extension, the voice of the Welsh people, and that deserves a place in the Bill.

The Bill has arisen from our exit from the European Union. Our exit has given us opportunities to ensure that our legislation works best for the UK and the devolved powers. We need a procurement system that works for all communities across the UK and all the devolved nations.

Clause 14 also outlines the steps that Welsh Ministers will need to take before publishing the policy statement. They include carrying out a consultation and, after receiving the responses, making any necessary changes to the statement, which must then be laid before the Senedd. The Bill is a good example of how the two Governments can work together in consultation on legislation in a devolved setting.

I note the views of the Welsh Government on fair value and social partnership, which they have outlined in their Social Partnership and Public Procurement (Wales) Bill. It focuses on the wellbeing of Wales and a “prosperous Wales” as an outcome of procurement, and provides a framework for improving socially responsible public procurement. Ensuring that our public procurement system supports the whole UK’s prosperity is vital.

The social partnership between Government, employers and workers is also a strong focus of the Welsh Government’s Bill. It is valuable to include everyone who is at the table. A major component of the legislation is the requirement on certain public bodies to take into account socially responsible procurement by establishing wellbeing goals that they must meet when procuring,

and to publish a procurement strategy. Under the Welsh Government’s framework, those public bodies will be required to seek to improve economic, environmental, social, and cultural wellbeing when carrying out procurement.

4.15 pm

I know from working with the defence industry that social value and the SMEs in the supply chain are crucial to the micro-climates that grow from procurement contracts. I think I should explain what I mean by “micro-climates”. When a contract is awarded, it is not just larger businesses that benefit; so do the smaller businesses in their supply chains—the businesses that contracted for supplying materials, or maintaining the building. This is also about investment in local businesses in the surrounding areas where workers may choose to shop, pick up their weekly essentials or buy their morning coffee.

For constituents such as mine, who have to deal with the post-industrial world, the relocation of a major company thanks to a Government procurement contract can be a game changer. The reach of just one procurement contract can be profound. Ensuring that we award contracts to businesses that represent our best values is vital to creating a procurement system that works for the country. An example is General Dynamics, which has transformed not only Islwyn, but the constituency of my hon. Friend the Member for Merthyr Tydfil and Rhymney. From a post-industrial background, we now have a modern, high-tech business, which attracts other high-tech, modern businesses, and the local economy is flourishing.

Clause 14 outlines that the Wales procurement policy statement, which must be laid before the Senedd, must be withdrawn within 40 days if the Senedd annuls it. The clause also outlines that the policy statement must be kept under review and may be amended or replaced. These provisions embody the Welsh Government’s continued involvement in the Bill and are an example of the need for respect between the two Governments. Welsh lawmakers must have a say in our procurement system, and must be able to change and adapt it.

The final aspect of the clause that I wish to speak to also concerns the theme of respect. The clause sets out which contracting authorities must have regard to the Welsh procurement policy statement. They include “a devolved Welsh Authority” and

“a contracting authority other than a devolved Welsh authority in relation to procurement under a devolved Welsh procurement arrangement.”

While it should not have to be put in writing that contracting authorities must not forget to have regard to the Wales procurement policy statement, it is welcome that devolved powers are recognised and respected in the Bill.

I finish by noting the concerns of the Welsh Minister for Finance and Local Government, Rebecca Evans, which she laid out in the Welsh Government’s legislative consent memorandum in June 2022—it is amazing that I got those words out, Mr Efford. She stated:

“the Bill as introduced provides for concurrent powers with no requirement to obtain the consent of the Welsh Ministers when the UK Government Ministers are exercising this power in relation to devolved areas.”

She added:

“This will need to be amended to reflect powers for the Welsh Ministers in this area.”

The Welsh Minister also noted that it would not be appropriate to recommend consent until this matter of concern had been resolved. To reinforce my earlier point, devolution is embedded in our society, and respect for the Welsh Government should be best practice. Until those concerns are resolved, I am worried about the potential impact on the foundation of devolution; this may affect the relationship between the two Governments. I hope that the Bill is used as an opportunity to retain a Welsh voice in procurement, and to ensure continued co-operation between the UK and Welsh Governments.

Alex Burghart: I am delighted to follow the hon. Gentleman’s comments about Wales. I must say that work on this Bill has been an absolute model of co-operation between us in Westminster and colleagues in Cardiff. The Bill is very much a result of joint working, and it is stronger for it, and for the support it enjoys from colleagues from Northern Ireland, from Belfast. We hope that one day colleagues in Holyrood will see fit to join us in creating a new procurement landscape that takes advantage of the opportunities that leaving the EU has made available to us. I praise the joint working that we have seen so far, and look forward to joint working in the future.

Question put and agreed to.

Clause 13, as amended, accordingly ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15

PLANNED PROCUREMENT NOTICES

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Clause 15 concerns the planned procurement notice. It is designed to give as much advance information to the market as possible, so that interested suppliers can determine whether they wish to bid in the procurement covered by the notice, and so that they have the maximum time for preparation. It also gives contracting authorities the option of reducing tendering periods by publishing a planned procurement notice. Publication of that notice may take place at any time before publication of the tender notice, but if its publication occurs at least 40 days and no longer than one year before publication of the notice, the contracting authority may, if it wishes, benefit from reduced tender periods of a minimum of 10 days.

Florence Eshalomi: As the Minister has outlined, clause 15 relates to planned procurement notices. When used well, such notices allow for significant benefits, both for the contracting authority and for the companies wanting to bid. For the contracting authority, they reduce the time limits associated with procurement notices by significant amounts; in many cases, that reduction may be from 25 days to 10 days, which represents a significant decrease in the time limit and reduces bureaucracy for contracting authorities. The clause will mean that suppliers get 40 days to plan for a bid before the official bidding time limit opens. We welcome that; it is a sensible mechanism that will benefit a number of SMEs, which

often do not have legions of administrative staff. They will welcome that extra notice to prepare a bid for a contract.

As the Minister may be aware, Lord Hunt of Kings Heath and Lord Aberdare supported an amendment in the other place that attempted to make those notices mandatory. Lord Aberdare said:

“The existing wording in Clause 14(1) allows for better practice, confirming that contracting authorities are able to publish a planned procurement notice. But your Lordships will know that being able to do something within legislation does not mean that it actually happens...My preference might be simply to replace ‘may publish’ with ‘must publish’.”—[*Official Report, House of Lords*, 6 July 2022; Vol. 823, c. GC279.]

I do not think I need to push that point particularly hard with the Minister, but I hope that as we progress, he will explore in more detail what support can be given through the Bill to help SMEs.

How does the Minister expect the notices to be used by contracting authorities? When it comes to small contracts, the amendment tabled in the Lords may be too onerous on contracting authorities, but I think we can all agree that the notices are used by contracting authorities. As Lord True said in response to the amendments in the name of Lord Hunt of Kings Heath and Lord Aberdare,

“I agree that it is vital that the market—particularly certain aspects of it to which the noble Lord and others referred—is given sufficiently early warning of what contracting authorities intend to buy so that suppliers can gear up to deliver. This is particularly important for SMEs and charities, which were referred to by the noble Lord and others.”—[*Official Report, House of Lords*, 6 July 2022; Vol. 823, c. GC290.]

Will the Minister outline to contracting authorities how often they should use those notices, and will he take a proactive approach to investigating how they are used by contracting authorities, and whether their use can be expanded?

Also, how can groups such as SMEs and charities find out about the notices? Perhaps the Minister is leaving much of this to the Government’s planned digital platform, but I hope he can confirm that the notices will be on the platform, and that SMEs will be able to find them efficiently.

Alex Burghart: Absolutely. This is all part of our enhanced transparency regime, which will make it much easier for everyone—authorities, suppliers, the public, the press, and hon. Members of this House—to see what is going on in public procurement. Planned procurement notices are a very good thing; they give authorities the option of making clear what they are about to do, thereby giving themselves the chance to speed up that process slightly later on. We have every expectation and hope that they will be widely used, and as the hon. Member for Vauxhall has said, it is often small and medium-sized enterprises that will particularly benefit. When this initiative is considered alongside our plans to encourage authorities to publish their pipelines, we can really start to see the benefits of enhanced transparency in this area.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—(Julie Marson.)

4.25 pm

Adjourned till Thursday 2 February at half-past Eleven o’clock.

Written evidence reported to the House

PB 01 Professor Albert Sanchez-Graells, Professor of Economic Law and Co-Director, Centre for Global Law and Innovation, University of Bristol Law School

PB 02 Anthony Booth, Procurement Business Partner, Bromford Housing Group

PB 03 Pedro Telles, Associate Professor in law at Copenhagen Business School and member of the EU Committee of the Law Society of England and Wales

PB 04 Richard Bonnar, Professor of Public Procurement Law and Practice, School of Law, University of Leeds

PB 05 Spotlight on Corruption

PB 06 Open Contracting Partnership

PB 07 John Lichnerowicz

PB 08 Colin M Cram FCIPS

PB 09 Chris Smith, e-Procurement and Procurement Consultant, CA Procurement Consulting Ltd

PB 10 UK Anti-Corruption Coalition

PB 11 Big Brother Watch

PB 12 Housing Procurement Leadership Group

PB 13 National Council for Voluntary Organisations, Locality, Lloyds Bank Foundation for England and Wales, The Charities Aid Foundation, and The National Association for Voluntary and Community Action (joint submission)

PB 14 Civil Engineering Contractors Association (CECA)

PB 15 Social Enterprise UK

PB 16 Robert Logan

PB 17 Trowers & Hamlins LLP

