# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# PROCUREMENT BILL [*LORDS*]

*First Sitting*

*Tuesday 31 January 2023*

*(Morning)*

CONTENTS

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**not later than**

**Saturday 4 February 2023**

**The Committee consisted of the following Members:**

*Chairs:* Clive Efford, † David Mundell

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

Sarah Thatcher, Huw Yardley, Christopher Watson, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Tuesday 31 January 2023*

*(Morning)*

[David Mundell *in the Chair*]

## Procurement Bill [*Lords*]

9.25 am

**The Chair:** Before we begin, I have a few preliminary announcements. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

The selection list for today's sittings is available in the room. This shows how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or similar issues. Please note that decisions on amendments take place not in the order that they are debated but in the order that they appear on the amendment paper. The selection list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in the group. A Member may speak more than once in a single debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or seek a decision. If any Member wishes to press any other amendment in a group to a vote, they need to let me know.

I will first call the Minister to move the programme motion standing in his name, which was discussed yesterday by the Programming Sub-Committee for the Bill.

*Ordered,*

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 31 January) meet—

(a) at 2.00 pm on Tuesday 31 January;

(b) at 11.30 am and 2.00 pm on Thursday 2 February;

(c) at 9.25 am and 2.00 pm on Tuesday 7 February;

(d) at 11.30 am and 2.00 pm on Thursday 9 February;

(e) at 9.25 am and 2.00 pm on Tuesday 21 February;

(f) at 11.30 am and 2.00 pm on Thursday 23 February;

2. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3, Schedules 1 and 2, Clause 4, Schedule 3, Clauses 5 and 6, Schedule 4, Clauses 7 to 41, Schedule 5, Clauses 42 to 57, Schedules 6 and 7, Clauses 58 to 73, Schedule 8, Clauses 74 to 88, Schedule 9, Clauses 89 to 113, Schedule 10, Clauses 114 and 115, Schedule 11, Clauses 116 to 124, new Clauses, new Schedules, remaining proceedings on the Bill;

3. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 23 February.—*(Alex Burghart.)*

**The Chair:** The Committee will therefore meet again at 2 pm this afternoon and every sitting Tuesday and Thursday until 23 February, unless we complete our consideration of the Bill before then.

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Alex Burghart.)*

**The Chair:** Copies of written evidence that the Committee receives will be circulated to Members by email and published on the Bill website.

### Clause 1

Procurement and covered procurement

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

**The Parliamentary Secretary, Cabinet Office (Alex Burghart):** It is a pleasure to serve under your chairmanship, Mr Mundell, and with all hon. Members on both sides of the Committee. This is a significant piece of legislation in this Parliament, and a substantial one. We have 124 clauses in 13 parts with 11 schedules to discuss in 12 sessions, and I look forward to sharing them all with hon. Members present.

Clause 1(1) sets out the technical definitions of "procurement" and "covered procurement". Covered procurement means those procurements that are covered by the majority of the provisions in the Bill. They are mostly procurements by contracting authorities above the relevant thresholds for goods, services and works that are not exempted from the Bill.

However, the Bill does cover some aspects of procurements that go beyond that. That is why we have a wider definition of procurement, which means any procurement. That allows the Bill to make some limited provision in relation to matters such as below-threshold procurements, and procurements in accordance with certain international rules or certain treaties. For example, the provisions in part 6 of the Bill regulate certain procurements that are of a lower value than the thresholds set in schedule 1 but are none the less subject to some regulation under the Bill.

Subsection (2) makes it clear that the term "procurement" —and, by extension, "covered procurement"—includes all steps taken in the contract award, as well as the management of a contract, up to and including termination. Subsections (3) and (4) make it clear that references to procurement and covered procurement also apply where contracting authorities conduct joint procurement and procurement by a centralised procurement authority for the benefit of other contracting authorities.

**Florence Eshalomi** (Vauxhall) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Mundell. I start by paying tribute to Sarah, Christopher and Huw in the Public Bill Office for all their hard work in going through over 100 amendments tabled for Committee stage. I also thank the Minister for his opening remarks.

We have been clear that we want to work constructively with the Government to get the Bill into as good a state as possible. We all want procurement to work for British people, inspire confidence in the system and offer genuine

value for money. I hope that the Minister will consider our amendments on their merits, as genuine attempts to get the Bill into as good a place as possible.

As we know, the Bill began its life in the Lords and underwent significant changes before reaching this place. While we expected the Government to table amendments to their own Bill—especially given that, sadly, we have seen four Chancellors of the Duchy of Lancaster since the Bill's introduction in the Lords on 11 May 2022—I have to say that the scale of change between the Bill as drafted and the Bill before us today does not inspire confidence that what we end up with will be without significant loopholes. Even as we start Committee stage today, the Minister has put his name to 71 amendments. That is a noticeable number, following on from the hundreds we had in the other place. Of course, we welcome changes that bring the Bill into a more workable state, but if we are having to amend it on such a scale with just one stage of parliamentary scrutiny left, we cannot have much confidence that the end product will not be riddled with errors and inconsistencies that have gone unfixed.

When we are talking about a third of public spending and the livelihoods of countless workers rely on us getting this right, it is disappointing that the Government introduced a Bill that still clearly needs significant work in Committee and on Report. I know that several of the amendments have come as a result of the ministerial merry-go-round that the Government have subjected us to over the past year. We broadly welcome those changes, particularly in relation to the increased consideration of small and medium-sized enterprises within the Bill.

**Kirsty Blackman** (Aberdeen North) (SNP): Does the hon. Lady share my concern that a lot of the evidence we have seen, such as the oral evidence given in the Lords, was provided on pretty much a different Bill from the one we are discussing today, and the one we will end up with after all the Government amendments?

**Florence Eshalomi:** I thank the hon. Lady for that point. It is so important, because we have seen what can happen when we do not get procurement right. We all know the impact it has on our local communities; we all have small businesses and organisations in our communities that are good at handling and dealing with public contracts but never get a look in. The fact that so many really good amendments were tabled in the other place but not taken up by the Government is quite disappointing.

What businesses ask us for is certainty, especially during these difficult economic times, but the mess the Government have made of the Bill does nothing but offer more confusion to the many businesses who rely on procurement. The Bill today is vastly different from the Bill introduced in the Lords, but it is also different from the Bill promised in the Government's Green and White Papers and—who knows?—it may be vastly different from the Bill that ends up on the statute book. That does not scream strong and stable from this Government, and it is unacceptable when public services and livelihoods are on the line.

I am sure we will hear warm words from the Government that many of the amendments we discuss in Committee are unnecessary as they plan to address them in the national procurement policy statement. But how can the Government ask us, businesses and the people who rely on procurement for the day-to-day running of the country to trust them on their word after the year of chaos and uncertainty they have subjected us to, not least in the state of the Bill?

Even this first clause had to be forced in by the Government in the other place due to confusion in the Bill originally introduced to the Lords. Labour did not oppose the introduction of clause 1, which narrows down the definition of procurement to cover public contracts, and we will not oppose it today. We understand why the definition has been included—to distinguish between the specified procurements and other general procurements, particularly as we know that certain procurements that are not meant to be caught by the full framework of this legislation are no longer automatically included. We also agree with the need to familiarise our language in respect of the World Trade Organisation's agreement on Government procurement, which the United Kingdom became a part of on 1 January 2021.

However, I share some of the concerns expressed by Lord Coaker in the other place about the use of the term "procurement" in the Bill. In particular, amendment 34 moved in the other place took non-covered procurement outside the remit of procurement objectives. I understand why that is necessary for the purpose of the Bill, but I would like to think that all procurement, covered or not, is carried out along the principles of value for money, integrity and maximising public benefit. However, I read carefully the explanation from Baroness Neville-Rolfe in the other place and found her explanation convincing enough to not table an amendment on the issue.

**Alex Burghart:** I thank the Opposition for their support for the clause.

*Question put and agreed to.*

*Clause 1 accordingly ordered to stand part of the Bill.*

## Clause 2

### Contracting authorities

**Alex Burghart:** I beg to move amendment 27, in clause 2, page 2, line 13, leave out "including the NHS".

*This amendment would remove the specific reference to the NHS because the NHS falls within the definition of "public authority" regardless.*

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

Clause 116 stand part.

Government new clause 13—*Power to disapply this Act in relation to procurement by NHS in England.*

**Alex Burghart:** Amendment 27 and new clause 13 are necessary to address amendments made in the other place that would, if left, be problematic to the proper functioning of the Bill and to healthcare procurements.

First, it is necessary to remove from the definition of a public authority in clause 2(2)(a) the words "including the NHS". We fully sympathise with the desire to mention that NHS bodies are contracting authorities—they absolutely are—but it is neither necessary nor helpful to make this addition, for a number of reasons. The NHS is not a single legal entity and does not have a clear meaning in law, so the inclusion of those words would create uncertainty and may have the effect of excluding bodies that are intended to be within it or unintentionally including bodies.

**Kirsty Blackman:** Will the Minister give us some examples of bodies that could be included or excluded by the continued inclusion of those words?

**Alex Burghart:** I am delighted by the hon. Lady's enthusiasm to hear my next paragraph.

The relevant NHS bodies that are covered by the Bill will be specifically identified in regulations made under the power in schedule 1(5). This is exactly the same approach as under our existing procurement regulations, which is appropriate and helpful as it enables the list of central Government authorities to be updated from time to time as organisations change. There is absolutely no doubt that NHS trusts and various other NHS bodies are contracting authorities. This is because they clearly meet the test for a public authority set out in clause 2(2)(a), which is that they are publicly funded. That test is how we determine whether an entity is a public authority.

Clause 116, which was inserted in the other place, needs to be removed and replaced with the original clause. As it stands, the clause would delete the power agreed by Parliament in the Health and Care Act 2022 for the Department of Health and Social Care to make healthcare procurement regulations that are appropriate for patient care—otherwise known as the provider selection regime. NHS England and the Government have consulted extensively on proposals for the provider selection regime since 2021, and it has received strong support from health and care stakeholders.

The 2022 Act and the powers within it were approved by Parliament and received Royal Assent as recently as April 2022. Parliament recognised then that the procurement of healthcare services provided to patients is a special case and would benefit from procurement rules that would allow for the further integration of services and more joined-up care for patients. The provider selection regime is designed to support the reforms made by the 2022 Act by having flexible and robust procurement rules to support greater collaboration and integration in the NHS.

If clause 116 remains unamended, DHSC will be unable to proceed with its plans to foster the greater integration of healthcare services that better serve patients. If this power is not reinstated, procurement for NHS healthcare services will end up with a confusing scheme of double regulation under the Department of Health and Social Care's healthcare procurement regulations and under this Bill. It is also likely to lead to greater competition and less collaboration for those healthcare services. I am working closely with colleagues in DHSC to ensure that the provider selection regime is compatible with, and not used to circumvent, the procurement obligations in the Bill, which properly apply to much of the NHS procurement landscape. Parliament will have the opportunity to scrutinise the provider selection regime regulations through the affirmative procedure when they are laid by DHSC in due course.

New clause 13 provides a power for a Minister of the Crown to make regulations disapplying the Bill in relation to areas covered by healthcare procurement regulations made under section 12ZB of the National Health Service Act 2006, as inserted by section 79 of the Health and Care Act 2022. Hon. Members will recall from the debate on the Health and Care Act that a separate but interrelated process of reforms is under way for the procurement of certain healthcare services. Using the powers in that Act, DHSC is currently preparing regulations to govern its proposed provider selection regime, with the aim of improving collaboration in the sector and removing barriers to integrating care. The Bill, following enactment, will therefore need to be disapplied to the relevant extent to enable that scheme of regulations to exist and achieve its intended purpose.

**Florence Eshalomi:** Labour does not intend to oppose amendment 27, nor the Government's changes through clause 116 and new clause 13. Although we of course want the NHS included in clause 2 and the scope of the Bill, I am satisfied by the Minister's response and do not intend to vote against the Government's amendments.

I wish to touch on some issues relating to clause 2, which I will raise now to avoid the need for a separate clause stand part debate. In some ways, the issues relate to the intentions behind the amendment in the other place. The term "public authority" by necessity covers a wide range of organisations, from central Government bodies to local councils to arm's length bodies and NHS contracting authorities. The number of organisations that fall under the definition of

> "(a) wholly or mainly funded out of public funds including the NHS, or
>
> (b) subject to public authority oversight,"

is exceptionally broad. With such a broad definition, there are always likely to be organisations that function on the edge of being a public body. Therefore, doubt still exists over some organisations' status as public bodies and whether they come under the scrutiny that the Bill hands down to public bodies. There are two important examples of a vast number of bodies where such ambiguity lies: in our housing and education systems.

There is consistent ambiguity about whether housing authorities are public bodies, and the definition has a significant impact on millions of households. The latest English housing survey statistics, released in December 2022, show that approximately 2.4 million dwellings in England were managed by housing associations in 2021. The Minister will be aware that previous questions about the status of housing associations have gone to court. In Weaver *v.* L&Q in 2009, the Court of Appeal said that, for the purpose of the Human Rights Act, housing associations are public bodies and susceptible to claims. The Office for National Statistics has also found it difficult to put its finger on the status of housing associations, and their classification moved from private to public in 2015 and then public to private in 2017 following the passage of Government legislation.

Obviously, the status of housing authorities and their management goes far beyond the intentions of this Bill. We did not table an amendment on the issue because we understand the greater implications that tabling an amendment of that nature would have created, but I urge the Minister to address the point and give clarity on the issue, so that public bodies and housing associations have a clearer picture of what to expect from the legislation.

9.45 am

Similarly, there is ambiguity over the status of multi-academy trusts. This definition can impact huge numbers of families in the UK. In the 2020-21 academic year, there were 9,444 academies and more than 4 million pupils attending academies, many of which are part of multi-academy trusts. Rulings such as R *v.* Governors

of Haberdashers' Aske's Hatcham College Trust in 1995, and R *v.* Harris Academy Crystal Palace in 2010, made it clear that the education services carried out by multi-academy trusts are subject to public law mechanisms, such as judicial review. However, there is still some doubt as to the public nature of multi-academy trusts for non-educational functions. For example, the Court of Appeal acknowledged in the 2009 case against the London Borough of Camden that citizens might have a right to challenge a body where public procurement rules are not followed. Again, we understand the wider implications of that case and did not choose to table an amendment for that reason.

Will the Minister clarify that legal point, as well as the point on housing associations? They are just two cases in which the lines between public and private may be blurred, and there are countless other examples in which that ambiguity may exist. I will save him the trouble of our opposing the Government's amendment, but I expect some responses from the Minister on the issue.

**Kirsty Blackman:** Thank you for chairing this sitting, Mr Mundell, and I thank your fellow Chair, who will be responsible for overseeing us and ensuring that we behave ourselves, which I am sure we will. I appreciate the opportunity to take part in the Committee and look forward to positive discussions about improving the Bill. I am not terribly hopeful that the Government will listen to much of what we say, but I hope they will listen even if they do not necessarily take it on board. In previous Bills, the Government tabled amendments that we had tabled. I hope the Minister will listen to some of what we say and that we can get clarity on some matters in response to our questions.

I want to make a couple of comments on the NHS. I am glad to hear the Minister's confirmation that NHS trusts will definitely be included in the definition. It is good to have him say that in Committee, and it is helpful to the wider understanding of how the Government intend the Bill to work.

Let me comment on how procurement rules are intended to apply, and how the NHS and NHS trusts in England are moving. We need NHS reforms and NHS procurement reforms to result in two things: the best outcomes for patients and the best outcomes for people working in the NHS. Those two things are not mutually exclusive; they go hand in hand. If people have good terms and conditions, and pay that they can afford to live on, they will do a better job than if they are struggling to make ends meet and therefore worrying.

If decisions around NHS procurement are best for businesses—putting businesses' interests first—those decisions will directly conflict with those other two aims. It may be that having some private-sector input is the best option in some situations, but it should never be the first port of call. We should run and manage the NHS so that we have fair pay and terms and conditions for people working in it, and the best possible outcomes for patients. We should outsource as a last resort. It will be interesting to see the further guidelines and the statutory instruments put forward by the Department of Health and Social Care in that regard.

It may seem odd that I am commenting on this issue, as an MP from Scotland whose NHS is entirely separate, but it has a significant impact on Scotland's budget. How the NHS is funded in England gives rise to Barnett consequentials that allow the Scottish Government to fund the NHS in Scotland, so the less the Government are willing to spend on the NHS in England, the less the Scottish Government have to spend on our priorities, particularly in the NHS but also in other areas. I look forward to seeing the future statutory instruments and I will not oppose any of the suggestions under consideration.

**Alex Burghart:** Again, I thank the Opposition for their support for the amendments.

The hon. Member for Vauxhall asked an important question about housing associations. On the question of whether the definition of contracting authority includes housing associations, the proposed definition, as with its predecessor, does not address all individual bodies or categories of bodies explicitly. It is the same for multi-academy trusts. There are simply too many bodies that exist and that change over the course of time to address it that way. Rather, the definition uses a number of tests that determine whether a particular body is covered or not. As we go through the Bill line by line, we will come across those tests over and over again. Registered providers of social housing are included in our coverage schedules to the WTO Government procurement agreement under the indicative list of bodies that may be covered. The new definition aims to ensure consistency with those international commitments.

It is the case that under normal circumstances, simple oversight would not meet the test for management and control. However, in the case of registered providers of social housing, it is well understood and documented that the Regulator of Social Housing has more than simple oversight, carrying out regulatory activity that does meet this threshold—as under the existing regime as a body governed by public law. I reassure the hon. Lady that the Bill does not change that position.

I thank the hon. Member for Aberdeen North for her interest in the English NHS. We are also committed to having an excellent NHS that both supports the people who work in it and is free at point of use for all citizens.

*Amendment 27 agreed to.*

*Clause 2, as amended, ordered to stand part of the Bill.*

## Clause 3

PUBLIC CONTRACTS

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

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

That schedule 1 be the First schedule to the Bill.

Government amendments 85 and 86.

Government motion to transfer paragraph 25 of schedule 2.

Government motion to transfer paragraphs 31 and 32 of schedule 2.

That schedule 2 be the Second schedule to the Bill.

**Alex Burghart:** We have already discussed how the majority of the Bill's provisions cover the processes and procedures required of contracting authorities in relation to covered procurement. As that concept is based on the

*[Alex Burghart]*

award, entry into and management of public contracts, it is necessary to be clear about what is meant by "public contracts".

Clause 3 classifies three types of contracts that are public contracts and covered by the legislation. The first category is contracts for the supply of goods, services and works—provided those contracts are not subject to an exemption—that have an estimated value above an applicable threshold. The second category is frameworks—that is, contracts providing for the future award of other contracts, as defined more fully in clause 45—again provided that they are not exempt and have an estimated value above an applicable threshold. The third category is concession contracts—that is, contracts where part of the consideration lies in the rights to exploit the works or services as defined more fully in clause 8—again provided they are not exempt and have an estimated value above an applicable threshold.

Schedule 2 sets out the types of contracts for which the contracting authority does not need to apply the rules in the Bill for the contract award procedure because it is exempted from the procurement rules. Where exemptions apply only to part of a public contract—that is, the contract contains both exempt and non-exempt elements—the reasonableness test in paragraph 1(2) of the schedule will prevent the contract from being exempted if the main purpose of the contract could reasonably be separated and supplied under a different contract, and that main-purpose contract would not fall under one of the exemptions in schedule 2.

We have tabled an amendment to split schedule 2 into two parts, following consultation with bodies including the Local Government Association, which was very supportive of doing so. Part 1 will be for exemptions based on the relationship with the other party, where the contract will always be exempt if the relationship conditions are met, and part 2 will be for exemptions for specific goods and services. The reasonableness test will apply only to part 2. The Bill broadly maintains the exemptions available in current domestic procurement law, but simplifies how those exemptions are framed and ensures that the terminology used reflects domestic law.

The exemptions ensure that contracting authorities have the freedom to carry out the most appropriate procurement where the rules in the Bill would otherwise be unsuitable. Contracting authorities can also exempt a procurement from the Bill where the contracting authority determines that doing so is in the interests of national security—that power is available to all contracting authorities. National security interests can include where a procurement is too sensitive to advertise, or where the UK's national security requires a UK capability. As is usual in legislation, national security is not defined in the Bill, in order to ensure that it is sufficiently flexible to protect the UK's national security interests.

Defence and security contracts are exempt where local contracting is required where the armed forces are deployed or maintain a military presence in another state. Operational requirements mean that contracts need to be placed with local suppliers for speed of acquisition. That often makes it impractical and inefficient to place contracts with suppliers outside of the state in which the armed forces are deployed. Sometimes, the state requires local contracting as part of the conditions for the presence of the armed forces.

Schedule 2 also exempts defence and security contracts under international agreements. That covers Government-to-Government contracts; contracts awarded under a procedure of an international organisation of which the UK is a member, such as NATO; and cases in which the UK and another country jointly develop a product. In all those situations, the application of the domestic procurement law of one party to such an arrangement is not viable. All the exemptions are compatible with our international obligations, particularly those in the WTO Government procurement agreement.

Schedule 1 sets out the various thresholds applicable to the different categories of contract. Whether the estimated value of a contract is above or below the relevant threshold determines whether it is subject to the main regime for public contracts set out in the Bill, or to the below-threshold regime in part 6. The core thresholds in the schedule are derived from the WTO Government procurement agreement, to which the UK is a party. The threshold values in the GPA are set in special drawing rights, or SDRs. The UK is required to provide an update to the sterling equivalent of the SDR thresholds every two years—the next one will be in January 2024. For that reason, paragraph 2 of schedule 1 contains powers for an appropriate authority to update the threshold values, so that the UK remains compliant with its international obligations.

Separately, paragraph 3 provides a power to update the light-touch thresholds in rows 5, 7 and 8 of the table. Those thresholds are not determined by international obligations, and as such will be updated for different purposes—for example, to allow for inflation or reflect changing priorities for that category of contract. The defence and security thresholds in rows 1 to 3 of the table can be updated using either power, depending on whether the current policy is continued whereby they track the GPA thresholds for utilities, though that is not required by the GPA.

On amendments 85 and 86, on Report in the Lords my noble Friend Baroness Neville-Rolfe asked officials to engage with the LGA, which I previously mentioned. The LGA was concerned that the reasonableness test in paragraph 1(2) of schedule 2 would prevent public service collaborations facilitated by the exemptions in paragraphs 2 and 3 if the contract could reasonably be alternatively awarded through competitive procurement.

Paragraph 1(2) deals with contracts where exemptions apply only to part of a public contract—that is, the contract contains both exempt and non-exempt elements. It says that a contract is not exempted if its main purpose could reasonably be separated and supplied under a different contract, and that main-purpose contract would not fall within one of the two exemptions in schedule 2. However, unlike most other exemptions in the schedule, which are conditional on the subject matter of the contract, the vertical and horizontal exemptions are conditional on the relationship between the contracting parties. Provided that those strict relationship conditions are met, it is irrelevant what the activity of the contract is.

10 am

The Bill therefore preserves the current rules under the existing regime, but the Government accept that the provision needs to be readily understood by users and

stakeholders. To aid understanding, the amendment splits schedule 2 into part 1 for contracts that are exempt due to the relationship with the other party, and part 2 for exemptions for specific goods and services that are the subject matter of the exemption and may be procured in mixed contracts with exempt and non-exempt parts. The separable test will not apply to part 1. There are two Government motions to transfer paragraphs in schedule 2, as the split into parts 1 and 2 required the moving some of the exemptions.

**Florence Eshalomi:** I have a few points to raise regarding both schedules, so will take them in turn.

Schedule 1 pertains to the threshold agreements that govern the levels above which many of the terms in the Bill become applicable to contracts. We want all contracts—whether they are for £50 or £50 million—to follow some level of basic principle in procurement: we have to ensure there is value for money for the taxpayer. However, we recognise the burden that the management of those contracts places on both the contracting authorities' procurement managers and the companies that bid for the contracts themselves. We therefore understand the purpose of threshold levels within the system as a fair way to balance the need for scrutiny with the need to ensure the system is not over-burdensome. We also understand that the threshold levels are set by the agreement between the World Trade Organisation and the United Kingdom, and we do not wish to put an important trade agreement into jeopardy by attempting to meddle with them.

However, I have a couple of questions regarding the functioning of the schedule and the bureaucratic process that goes with amending the hard numbers in the Bill, as their real-terms value shifts in the dynamic world before us. First, does the Minister consider the mechanisms in place with the World Trade Organisation and in the Bill are sufficient to account for the current high inflation levels? The World Trade Organisation's revised agreement on Government procurement, published in 2012, defines the current mechanism to deal with currency shifts. It states:

"The conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November of the year prior to the thresholds in national currency becoming effective which will be from 1 January...Thresholds expressed in national currencies will be fixed for two years, i.e. calendar years for all Parties except Israel and Japan".

Having joined the GPA on 1 January 2022, we will have our threshold set at the value measured at that time until 1 January 2024. Does the Minister not see significant problems arising from having threshold levels based on the value of the pound at that time?

In December 2022, the Office for National Statistics found that inflation rose by 9.2%. If that trend is followed when the data from 2023 is released, the threshold values will be nearly 10% lower in real terms than the thresholds agreed when we joined the GPA. That is a significant amount of money, and it could draw in many contracts over the next year that have simply been the victim of weak economic management by the Conservative party.

Although there may be benefits to having extra scrutiny of more contracts, it should not happen by accident as a result of high inflation. Nor should it mean that a significant amount of contracts will be flung into scrutiny this year, then out of scrutiny on 1 January next year. I hope the Minister recognises that that creates inconsistency for businesses and procurement managers alike. Will the Minister inform the House whether steps are being taken at the WTO to assess the impact of inflation on the thresholds? What is his assessment of the impact of inflation on the rollercoaster workload of those responsible for near-threshold contracts?

Schedule 2 sets out contracts that are excluded from the definition of a "public contract" and the provisions that apply to public contracts. I understand the need for excluded contracts and do not object to any of the listed justifications for excluding contracts from the Bill. We cannot expect areas such as the intelligence services and particularly sensitive national security matters to follow all parts of an Act relating to public services. It is right for sensible and proportionate exemptions to help make procurement efficient, save people millions and run the services that we desperately need.

One such exemption is the horizontal and vertical arrangements that form paragraphs 2 and 3 of schedule 2. Those paragraphs carry over provisions from regulation 12 of the Public Contracts Regulations 2015. Vertical and horizontal arrangements are often used by local authorities to save public money. The vertical arrangements exemption, also known as the Teckal exemption, enables the award of contracts to entities that, although separate entities, are de facto in-house to the contracting authorities. The horizontal arrangements exemption, known as the Hamburg exemption, allows public authorities to co-operate to deliver services collectively.

Taken together, such arrangements give local authorities the tools to enter agreements to share services and achieve savings through economies of scale, and those savings are significant. The Minister highlighted the LGA, whose research shows that such agreements saved the public nearly £200 million in 2018-19. When we face a cost of living crisis and families are choosing between eating and putting on the heating, it is critical that we are as efficient as possible in how we run procurement. It is critical that we do not hinder innovative agreements that help councils, which have had their budgets slashed over the past decade, in saving the money they need to deliver services such as social care.

As the Bill stands, however, there is real concern that it will hinder the use of horizontal and vertical agreements within local authorities. Paragraph 1(2) of schedule 2 stipulates that

"a contract is not an exempted contract if…the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract".

Groups such as the LGA have highlighted the fact that many contracts that fall under the vertical or horizontal arrangements can be supplied by a separate contract:

"It will often be the case that public services, whether front-line or back-office, could 'reasonably be supplied' by a provider that is not a public entity. As a result, the legislation can be interpreted as requiring the public sector to have to engage the market, even for arrangements wholly within the public sector".

If enacted, the new wording could therefore close down models of collaboration and efficient service delivery that save public money.

Sub-paragraph 1(2)(a) of schedule 2 also opens up a new avenue of legal challenge against the public sector. From the words of Baroness Neville-Rolfe on Report in the other place, I understand that the provision is

*[Florence Eshalomi]*

necessary to avoid a loophole when mixed contracts are inappropriately excluded. I am therefore pleased that the Government have tabled amendments 85 and 86, and I know that the LGA has worked hard with the Government to try to fix this loophole. However, I hope the Minister keeps up engagement with the LGA to ensure that the amendments fix the problem and do not create unintended threats to the existence of horizontal and vertical agreements.

**Alex Burghart:** On the hon. Lady's two points, she is absolutely right that the mechanism that exists in our WTO arrangement is biennial. As I said, the next upgrade, relative to inflation, is in January 2024. There is nothing we can do about the fact that the updates are biennial—it is part of the agreement, and we have obligations internationally.

The hon. Lady is right that the high rate of inflation—which we are experiencing as a result of Putin's dreadful war in Ukraine and the end of covid, and which is common to many western democracies at the moment—will make some previously below-threshold contracts into above-threshold contracts. There are pros and cons to that. It means that we will have a degree of extra competition that we would not have had before, but we will see a re-correction in what will now be less than 12 months.

**Florence Eshalomi:** Does the Minister agree on the inconsistency that this will bring for procurement managers, especially when we are proposing this legislation to cut some of the red tape and burden on those same procurement managers?

**Alex Burghart:** Obviously, some contracts will, as I said, be brought above threshold, and those contracts will need to be conducted in accordance with the law. However, as I said to the hon. Lady, that is something that all countries that are signatories to the WTO and that are experiencing inflation will find is happening. In some instances, it will also mean that there is better competition for contracts, which could result in lower costs to the public purse, so it is not all bad.

On mixed contracts, the hon. Lady is absolutely right. The work that my hon. Friend Baroness Neville-Rolfe did in the Lords with the LGA means that we have closed the loophole, and that is to the strength of the Bill.

*Question put and agreed to.*

*Clause 3 accordingly ordered to stand part of the Bill.*

*Schedule 1 agreed to.*

## Schedule 2

### Exempted contracts

*Amendments made:* 85, in schedule 2, page 84, line 11, leave out from "in" to end of line 17 and insert—

"this Part of this Schedule."

*This amendment would ensure that contracts within the new Part 1 of Schedule 2 (which will comprise paragraphs 2, 3, 25, 31 and 32) are always exempted from being public contracts.*

Amendment 86, in schedule 2, page 85, line 39, at end insert—

"Part 2

Subject-matter exempted contracts

*General*

3A (1) A contract is an exempted contract if it is—

(a) a contract of a kind listed in this Part of this Schedule;

(b) a framework for the future award of contracts only of a kind listed in this Part of this Schedule.

(2) But a Part 2-only contract is not an exempted contract if, on award of the contract, a contracting authority considers that—

(a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and

(b) that contract would not be a contract of a kind listed in this Part of this Schedule.

(3) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.

(4) In this paragraph 'Part 2-only contract' means a contract of a kind listed in this Part of this Schedule that is not of a kind listed in Part 1 of this Schedule."—*(Alex Burghart.)*

*This amendment would apply the exception previously applied to all contracts listed in Schedule 2 to those listed only in Part 2 of Schedule 2, ensure it operates by reference to the opinion of a contracting authority, and clarify that the authority may have regard to practical and financial consequences.*

*Ordered,*

That paragraph 25 of Schedule 2 be transferred to the end of line 39 on page 85.—(*Alex Burghart.*)

*This is a motion to move paragraph 25 of Schedule 2 (defence and security contracts with governments) to the new Part 1 of Schedule 2 to ensure such contracts are always exempted from being public contracts.*

*Ordered,*

That paragraphs 31 and 32 of Schedule 2 be transferred to the end of line 39 on page 85.—(*Alex Burghart.*)

*This is a motion to move paragraphs 31 and 32 of Schedule 2 (utilities contracts with affiliates and joint ventures) to the new Part 1 of Schedule 2 to ensure such contracts are always exempted from being public contracts.*

*Schedule 2, as amended, agreed to.*

## Clause 4

### Valuation of contracts

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

10.15 am

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

That schedule 3 be the Third schedule to the Bill.

Clause 5 stand part.

**Alex Burghart:** Clause 4 and schedule 3 are fundamentally interrelated. Clause 4 requires contracting authorities to estimate the value of contracts in accordance with a simple methodology set out in schedule 3, in order to determine whether the contract is above or below threshold and consequently what relevant rules need to be followed. It also includes an anti-avoidance mechanism that makes it unlawful to exercise any discretion in valuing a contract with a view to avoiding the effects of this legislation.

Schedule 3 contains the methodology that clause 3 requires contracting authorities to follow when they estimate the value of contracts. As well as the general rules in paragraph 1 of schedule 3, there are also special rules for frameworks in paragraph 2 and concessions in paragraph 3. The anti-avoidance provision in paragraph 4 is designed to ensure that contracting authorities do not artificially subdivide procurements to evade the rules. There is also a new rule for how to proceed when an estimate is not possible; in such circumstances, contracting authorities must treat the contract as above threshold.

In general terms, the long-standing mechanism in existing regulations works well, so the Bill proposes a similar mechanism, albeit with some adjustments to take advantage of opportunities for simplification and reduction of regulation and some inevitable structural differences as we move from one style of drafting to another.

In clause 5, as there are different thresholds for different types of contract, it is important that the rules adequately address the inevitable situations our contracting authorities will face, such as where a contract contains multiple elements that are subject to different thresholds—that is, a mixed contract. The existing regulatory environment provides a mechanism, across four different regulatory schemes, that allows authorities the flexibility to separate elements into separate contracts, or to mix the elements into a single contract, subject to certain safeguards to prevent rule avoidance.

However, those rules comprise around 14 pages of legislation, are somewhat complicated and can appear repetitive due to their need to address the multifarious combinations of elements within and spanning each regime. Thankfully, the harmonisation approach taken in the Bill means these complicated and seemingly repetitive provisions can be streamlined and simplified, while continuing to provide the necessary flexibility and safeguards against rule avoidance.

Clause 5 provides a safeguard to ensure that authorities do not mix above-threshold and below-threshold contracts purely for the purposes of avoiding the rules. Of course, separate elements can always be procured separately, and mixed contracts with elements that are properly inseparable should be allowed. But the basic safeguard remains that if separation is reasonably possible, but a contracting authority chooses not to separate, a mixed contract containing both above and below-threshold elements must be treated as above-threshold and therefore in scope of the legislation. When determining whether separation is reasonably possible, the practical and financial consequences of awarding more than one contract can be taken into consideration.

**Florence Eshalomi:** I thank the Minister for his explanation of clause 4 and schedule 3, which relate to the estimated value of the contracts, and are both relatively short and simple parts of the Bill. However, the importance of a value estimation is critical to the Bill and the management of procurement. That particularly relates to above-threshold contracts, regulated below-threshold contracts and the application of key performance indicators, as well as the publication of high-value contracts. Given the importance of that estimation, it is critical that contracting authorities get it right and that similar contracts do not end up with widely different values as a result of the calculation values. I would like the Minister to outline the support the Government are giving to those managing procurement within contracting authorities, so that the figures are correct. I have no doubt that such work has been done, but I would welcome an outlining of it.

I welcome the clarity of paragraph 4 of schedule 3 on anti-avoidance. It is critical that all contracts should be scrutinised under this legislation and that there should be no attempt through inventive accounting to avoid them coming under the provisions of the legislation.

I would like clarity on paragraph 5 of schedule 3, which states:

"If a contracting authority is unable to estimate the value of a contract in accordance with this Schedule (for example because the duration of the contract is unknown), the authority is to be treated as having estimated the value of the contract as an amount of more than the threshold amount for the type of contract."

While it makes sense for contracts with uncertain value to be treated as having above the threshold amount, I have a question on how that applies to the cut-off value of £5 million for key performance indicators and the publication of contracts. Obviously, we do not want every contract without an estimated value to be covered by measures designed for larger contracts. But, similarly, there will be contracts where the value will likely exceed the £5 million currently set as the limit, even when their value cannot be estimated by the clause. Can the Minister inform me whether the clause covers the higher £5 million cut-off and what steps are being taken to ensure that the right level of scrutiny is applied when the value of contracts cannot be estimated?

**Alex Burghart:** As I said a few moments ago, the group we are discussing is in part about making sure that we do not create another loophole where, in a mixed contract, it is possible for a contracting authority to go for a below-threshold requirement because one part of the contract is covered by that. As we discussed in the previous group, the measure is intended to make sure that we are not creating an opportunity for people to play the system.

*Question put and agreed to.*

*Clause 4 accordingly ordered to stand part of the Bill.*

*Schedule 3 agreed to.*

*Clause 5 ordered to stand part of the Bill.*

**Clause 6**

UTILITIES CONTRACTS

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

**The Chair:** With this it will be convenient to consider that schedule 4 be the Fourth schedule to the Bill.

**Alex Burghart:** Clause 6 explains that a utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity. Utility activities are set out in schedule 4, but do not include activities that are carried out wholly outside the UK. In the case of private utilities, they include only activities carried out where a private utility has been granted a special or exclusive right.

A special or exclusive right exists where a private utility has been granted a right under a statutory, regulatory or administrative provision that has the effect of

*[Alex Burghart]*

substantially creating a monopoly situation that would limit competition. A right is not special or exclusive if it is granted following a competitive tendering procedure under the Bill or otherwise on the basis of a transparent procedure and non-discriminatory criteria.

The utility activities set out in part 1 of schedule 4 cover the water, energy and transport sectors. Part 2 of schedule 4 lists specific activities that are not utility activities. An appropriate authority may make regulations to add or remove activities from part 2 of schedule 4. However, activities can be added to part 2 only where there is fair and effective competition in the relevant market and entry to that market is unrestricted.

Schedule 4 sets out the scope of utilities activities. This largely mirrors the coverage of the existing domestic regime and reflects our commitments in trade agreements such as the WTO Government procurement agreement.

**Florence Eshalomi:** Clause 6 and schedule 4 relate to the procurement of utilities, covering the scope of the Utilities Contracts Regulations 2016. Historically, the procurement of utilities as defined in schedule 4 has run slightly differently from general procurement. For example, the value at which a contract passes the thresholds in schedule 1 is £426,955 for general utilities contracts, as opposed to £138,760 for central Government authorities and £213,477 for sub-central Government authorities.

I thank the Minister for explaining the mechanisms in place specifically for utilities contracts. I do not disagree with the rationale behind the systematic differences between how utilities contracts are awarded and managed and how general contracts are awarded. Following the publication of the Green Paper, the Government have responded to the sector's concerns that the proposed system would be too onerous compared with the Utilities Contracts Regulations 2016. However, I do not believe that the measures in the Bill should subtract from the significant problems that need to be addressed in the utilities sector.

In particular, we have seen the rail sector have deeply troubling issues among some contracted-out services in the past months, and it is vital that we manage contracts in a way that will help to mitigate those risks. For those of us who come from an Italian background, the word "avanti" means "to come in", but I think it is fair to say that the word "Avanti" will see my hon. Friend the Member for Birkenhead and many others roll their eyes in despair. The fact is that too many of Avanti's trains have not, in fact, been coming into stations, with many cancellations and packed trains becoming a sad norm for huge swathes of the country.

Those on Avanti are not the only ones struggling. TransPennine Express, which connects places such as Grimsby, Doncaster, Sheffield and Liverpool, has also seen its performance struggle significantly. That is despite reports in *The Telegraph* that shareholders are due to earn a share of £75 million. For customers who turn up for their trains, day in and day out—many of whom have annual season tickets costing thousands of pounds—to see shareholders due to earn a share of that £75 million is a slap in the face. That also happened during the pandemic, when a number of trains up and down the country were cancelled, yet shareholders were again in line to pocket big payouts.

We have also seen franchises such as the east coast main line and Northern fall to the operator of last resort following the termination of the previous operator's contract. The fact is that the operation of train contracts in this country is simply not fit for purpose. Even the Prime Minister cannot deny the problems, saying at Prime Minister's Question Time on 30 November 2022:

> "My right hon. Friend is absolutely right about the unacceptable deterioration in the quality of Avanti's service."—[*Official Report,* 30 November 2022; Vol. 723, c. 898.]

Despite the criticism from the Prime Minister, the Government went on to award Avanti with a contract extension until 1 April 2023. That beggars belief.

My hon. Friend the Member for Lancaster and Fleetwood (Cat Smith) put it best when she said:

> "By giving Avanti this six-month contract extension, after months of failure and rail chaos, this Government are frankly rewarding that failure. Avanti promised to improve services back in September, and instead it has gone and cut services, introduced this emergency timetable and almost entirely stopped selling tickets online."

I remember trying to book tickets for annual conference last year; I kept going online and refreshing the page. I stopped using the laptop and went on to the iPad, thinking it was maybe the laptop that had problems. I stopped using the iPad and went on to my phone, thinking it was the iPad that had problems. But the tickets were not for sale; they came on sale a day before we were all due to travel to Liverpool. That mad rush at the whim of the train operators, effectively holding people to ransom, is frankly unacceptable.

My hon. Friend continued:

> "The provision of reliable train services is essential for the economic growth and prosperity of more than half the UK's population."—[*Official Report,* 25 October 2022; Vol. 721, c. 160.]

At this time, we are hoping to see more people leave their cars at home and use public transport so that we tackle the really serious climate emergency. However, the fact that these companies are being awarded contracts yet are failing to deliver is another way in which the Government are not taking the climate emergency seriously.

Will the Minister provide clarification on the metrics that he will use to assess improvements or, indeed, failure, given that the bar is currently set so low? It is clear that the west coast franchise has been fundamentally mismanaged by Avanti. It may be beyond the Bill's scope to completely fix the franchising mess in this country, but it is critical that we create a culture of procurement that is carried out in a way that restores public trust and offers fair treatment to everybody across the country.

10:30 am

**Lloyd Russell-Moyle** (Brighton, Kemptown) (Lab/Co-op): Very often, these contracts consider only value for money and the relationship between the contracting parties, not the consumer. We have tabled other amendments that look at social value and the consumer, but is it not important, particularly in relation to utilities, that the consumer is key? The outcome of that is that the consumer gets a better service, rather than the contracting parties scrimping and saving, or slicing off money for their friends.

**Florence Eshalomi:** Hear, hear, and I thank my hon. Friend for making that important point. We all remember the summer flash floods almost two years ago. People

may think, "Actually, London is insulated from that", but a number of my constituents were affected, and one issue that they outlined was the failure of Thames Water to maintain its pipes. Thames Water is another utility company that is essentially rewarding its shareholders instead of making sure that the public, which receives a vital and critical service from the company, is treated fairly. Customers see their water rates increasing and ad hoc repairs causing disruption on many roads, but all some of those companies think about are their shareholders, who continue to receive massive payouts. When we talk about procurement contracts, it is important that we think about the end users—the customers, the residents, our constituents—who all deserve value for money.

**Kirsty Blackman:** It is the case, though, that this Government are not keen to make a public service a public service. An awful lot of local banks have been closed, changes to Royal Mail since privatisation mean that people cannot get the services they need, and post offices have been closed. All that could be avoided by changing the mindset and ideology, and classing those things as public services for the benefit of the public, rather than for the benefit of shareholders.

**Florence Eshalomi:** I thank the hon. Lady for making such a vital point. The Minister will wonder why I have so many examples, but just last week, I was notified that another local bank in my constituency, NatWest on Clapham High Street, will close and that a number of the branch's customers had not been told. That is just another example of key services on our high streets, which many of our constituents rely on, disappearing. It is important that we remember the public element of those key services that continue to benefit from public contracts.

**Lloyd Russell-Moyle:** I want to raise the disastrous Southern Water and its continued spillage of sewage into our seas. Many of my constituents have become ill from sea and river swimming. Southern Water was prosecuted and found guilty of breaching water quality standards and pumping pollution into our rivers and oceans, but in the same year, the chief executive received a six-figure bonus. Clearly, there is something wrong with these utilities: there is no competition, never any procurement and they have the contract permanently, forever and ever. Does a clause that does not allow a company to be excluded from any form of procurement in the future simply let such a company continue to misbehave, as regulations are weak and shareholders run away with the profits?

**Florence Eshalomi:** My hon. Friend makes a valuable point. A number of these companies know that they can get away with it. What they are doing is effectively legal, yet for our constituents who have to suffer the consequences it is not fair. The Government have spoken about trying to make a Procurement Bill that is fair, transparent and value for money, but this is not value for money because our constituents will receive hefty fines if they are a day late with their water bill or even if they send a package without the correct postage. We see the situation with Royal Mail and the chief exec, who, when he appeared before the Business, Energy and Industrial Strategy Committee a few weeks ago, was not very clear about the bonus he received, even though the figures were there and the Chair quoted them back to him. It cannot be acceptable for managing directors, chief execs and CEOs to continue to receive big payouts and for their shareholders to be paid while the services that our constituents and the public rely on are not delivered.

**Lloyd Russell-Moyle:** The case of British Telecom and Openreach is another good one. In my constituency, they planned to make all the engineers redundant and to move them to a place in the midlands at lower pay through a fire and rehire scheme. Fundamentally, that means that people will not have well-paid local engineers ploughing money back into the local economy. Is that not the problem of trying to centralise services and underpay engineers and technical staff? The profits go to offshore companies and they do not get recycled into the local economy.

**Florence Eshalomi:** I thank my hon. Friend for making such a valuable point. I am sure that Members will remember the fantastic private Member's Bill on fire and rehire promoted by my hon. Friend the Member for Brent North (Barry Gardiner), which we debated in the House. Sadly, the Government voted it down. Throughout the pandemic, up and down the country, we saw a number of big multinational organisations using the cover of the pandemic to fire their staff, make drastic changes to their work conditions and try to re-employ them on lower wages and weaker conditions. In organisations such as British Gas/Centrica and British Airways, dedicated levels of service from staff were thrown out of the window, yet those companies continue to receive big payouts for their shareholders and CEOs. We need to address this situation; the Government could have addressed it, but they failed to do so. We have a Procurement Bill in front of us that could help to address some of the loopholes, yet the Government are failing to take it on board.

Perhaps the most frustrating thing for our train passengers is the poor service that they continue to receive while they know that the train operating companies that do such a poor job will continue to be rewarded with those contracts. LNER runs the east coast main line and we might think that it would face similar logistics to Avanti, yet it has nowhere near the same problems. It is not just a timing issue. It is shameful that until 27 November 2020, Northern rail services between some towns were carried out using bus-like Pacer trains that were designed to be inexpensive temporary solutions in the '80s.

We have heard a lot about levelling up, but we cannot level up when we have such inequal transport across the country. I say that as a Londoner, where we have Transport for London and regular buses. Whenever we leave—this issue is raised by many Members from all parties—we see that the level of service and transport provision across the country is not fair.

**Kirsty Blackman:** I am lucky enough not to have to travel on the west coast main line terribly often, but when I did last year I ended up having to get an overnight Megabus because there were no trains. It has put me off ever visiting any of those places on the west coast that I would normally get to by train. Those communities are losing out as a result—not just the people who live there all the time, but the people who want to visit the really cool places on that line.

**The Chair:** I am sure that these are important points, but we are straying slightly off the clauses. Can we stick to the clause we are debating?

**Florence Eshalomi:** Thank you, Mr Mundell, for your guidance. I agree with the hon. Lady that if we want to ensure that all sectors of our economy recover after the pandemic, it is important that people can get to those places.

I hope the Minister will work with the Department for Transport in implementing these regulations to ensure that proper levels of security and resources are in the Bill. Hopefully, that will restore trust in our rail sector.

**Alex Burghart:** Thank you for your guidance on digressions, Mr Mundell. As the hon. Member for Vauxhall is aware, rail is not dealt with in the Bill. Schedule 2(17) states that public passenger transport services are exempt and will continue to be regulated by other means, but I believe that Transport questions are coming up shortly, so she will have the opportunity to raise her concerns with the Secretary of State.

*Question put and agreed to.*

*Clause 6 accordingly ordered to stand part of the Bill.*

*Schedule 4 agreed to.*

## Clause 7

### Defence and security contracts

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

**Alex Burghart:** Clause 7 defines "defence and security contract", which is used in certain clauses and schedules to make specific provision for such contracts. The definition primarily covers contracts currently within the scope of the Defence and Security Public Contracts Regulations 2011, but it also includes other contracts set out in subsection(1)(g), where the defence and security provisions in the Bill are to apply.

The clause also defines a defence authority contract, which is a defence and security contract entered into by a defence authority. A defence authority will be specified in regulations. It is a contracting authority that exercises its functions wholly and mainly for the purposes of defence or national security. The clause also sets out additional definitions for terms used in the definition of "defence and security contract".

**Chris Evans** (Islwyn) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Mundell. I look forward to working with the members of the Committee and the Clerks as we work our way through this important Bill.

It is also a pleasure to serve opposite the Minister, whom I count as a personal friend. We often exchange text messages in the early hours of a Sunday morning or late on a Saturday night—I do not want anybody reading anything into that, but we are both huge boxing fans, and we are usually debating the merits of the latest big fight. The last time we faced each other, we debated the merits of Lennox Lewis, the greatest British fighter of all time. I think I won that one, but let us see how we go today.

Clause 7 sets out definitions for defence and security contracts—in particular, for the supply of a range of contracts on military equipment, sensitive equipment, logistics services, goods, services or works necessary for the development, production, maintenance or decommissioning of equipment and work that is relevant to the country's readiness for action and the security of the armed forces. Those definitions are crucial, because defence procurement is one of the most important activities undertaken by the Government.

The Ministry of Defence is the fifth largest spender on procurement in central Government. In 2019-20, it spent £15.9 billion on procurement, and since the pandemic, that has inevitably increased. One of the key functions of a state is to defend itself, and for it to do that, we must ensure that our armed forces have the equipment they need. Our national security, our ability to defend ourselves as a nation and the lives and safety of our troops rely in part on procuring the best equipment. As a country, we have always taken that duty to our armed forces seriously, but at times, tragically, we have not reached the level they deserve. I hope that in this Committee we can work together to improve the procurement system with the shared goal of ensuring that our forces get the equipment they deserve.

Promoting public safety should be the priority of any Government, and defence and security contracts are at the centre of that principle. It is therefore crucial that we get it right. The clause speaks to the procurement of not just the supply of military equipment, but the goods, services or works necessary for the development, production, maintenance or decommissioning of such equipment.

For my sins, between 2015 and 2019, I served on the Public Accounts Committee, and I remember some very uncomfortable hearings with some—shall we say—reticent Ministers who had to explain a lot of mistakes. If there is one thing I learned, it is this: if we do not get contracts absolutely right, it is not just a waste of taxpayers' money; it puts our safety at risk.

I know you said we should not digress from the clause, Mr Mundell, but I want to use as an example the contract for the decommissioning of the Magnox nuclear reactors. The Nuclear Decommissioning Authority failed to understand the scale and complexity of the work needed, and by the time the contract was terminated, the cost to the taxpayer, according to the National Audit Office, was £122 million. I am sad to say that that is not an isolated case—I could be here all day talking about all sorts of examples. I raise this because it is so important that procurement is undertaken with proper care and consideration, and unfortunately there are too many examples of that just not happening.

10.45 am

Defence and security contracts play a vital role in one of the core principles in the Bill: delivering value for money. If we get it right, perhaps there will be fewer permanent secretaries and Ministers dreading and having cold sweats before appearing before the Public Accounts Committee. Under the current system, there are clear, obvious failings in efficiency and effectiveness. According to the Labour party's "Dossier of waste", the Ministry of Defence wasted at least £13 billion of taxpayers' money between 2010 and 2021, the majority on overspends on procurement contracts and cancellation of contracts.

Key examples include £595 million written off with the cancellation of the Warrior armoured vehicle fighting sustainment programme, £530 million on overspends related to the Protector drone programme, and £231 million wasted by writing off armoured vehicles such as Mastiff, Ridgback and Wolfhound earlier than planned. Things as simple as delaying the procurement of much-needed Chinook helicopters cost the public purse nearly £300 million—and I could go on.

Ultimately, the country cannot continue with a procurement system that does not work and support value for money for the taxpayer. I hope that the Bill, with proper amendments, will be able to go some way towards doing that. It makes common sense to commission the National Audit Office to conduct a comprehensive audit of Ministry of Defence waste. I believe, like the Labour party, in the commitment to establish an office for value for money, to ensure that we have a tough spending regime and everything is audited and checked. The current system not only fails the taxpayer, but risks leaving the country ill prepared as a result of capability gaps. These gaps fail British troops, who need the best equipment to protect the nation and get home safe. Ultimately, that is all we want. With 42 out of 45 major defence programmes being not on time or budget, the state of defence and security procurement is not where it should be.

I am glad that my hon. Friend the Member for Merthyr Tydfil and Rhymney is serving on the Committee. He represents Merthyr and I represent Islwyn, and I think both of us have had serious problems with the Ajax armoured vehicles. Most of our time has been taken up with that over the last year, and it shows a central problem in the procurement process. This is £5.5 billion of taxpayers' money. Think of what that could have been used for if we got the Ajax programme right in the first place. Add to that the delays to Wedgetail surveillance planes and indecision over Navy support ships, which risk leaving our armed forces without the equipment they need to fight and fulfil our NATO obligations.

We all want the best for our country and for our troops, and we should take every opportunity to do that. This year, Putin's illegal invasion of Ukraine has been a stark reminder that war is, unfortunately, never far away. However safe or peaceful we feel, things can change rapidly in a day, and as a country our armed forces must be prepared. We have rightly sent equipment and munitions to Ukraine, such as Stormer vehicles, anti-air missiles and, most recently, 14 Challenger 2 tanks, but we must ensure that that equipment is replaced efficiently.

In the light of these new challenges, we must ensure that our procurement system is capable of not only replacing the equipment we donate to Ukraine, but defending our own national security. The head of the Army, General Sanders, has warned that we must urgently restore our warfighting capability. We also need to ensure that the Army has a credible warfighting division to assist in meeting our NATO obligations, but we are not expected to have that until 2030 at the earliest. To do that, we need a procurement system that is fit for use. We can no longer waste money on programmes that overrun or simply get cancelled, and we cannot allow gaps in our capabilities.

The clause outlines that defence and security contracts are the supply of works that are

"relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces."

Another aspect of the clause that strikes me as vital is the definitions of "development" and "maintenance" of defence and security equipment. If we want an effective and efficient procurement system in this country, there must be more support to create equipment, and it must be quicker and closer to home. Across the country we have some amazing businesses; many are innovative and at the cutting edge of technology. It takes our breath away to see what this country can do at its very best. Our businesses have the capability to support all the country's needs in defence and security procurement, but they need will on the part of the Government to achieve it. We have the opportunity to strengthen our development of defence procurement in this country by encouraging research on equipment development and the industrial processes involved. This gives us the chance to buy, make and sell British, securing British industry and British jobs at the same time. Surely that is what we all want.

We have an opportunity to create a procurement system that is fit for purpose, fit for our armed forces and fit for British business. As the war in Ukraine continues, we must continue to support our allies and fulfil our NATO commitments, but without risking our country's capabilities. With a reformed, fit-for-purpose procurement system, we can achieve all this, but changes need to be made. Waste needs to be reduced, and British businesses must have the first bite of the cherry. I look forward to working with the Minister on the Bill to ensure our country and our armed forces get the best and most efficient system of procurement.

**Kirsty Blackman:** I want to focus on the last point made by the hon. Member for Islwyn on local content and contract value. The value of these contracts, even when they are within budget, is significant. A huge number of jobs are being created and massive amounts of Government money are being spent, but I do not feel that the MOD is utilising it in the best possible way, not only because of the problems of budgets being overrun, the amount of time being taken, and equipment not necessarily being fit for purpose when it arrives, but also because of the fact that the way the contracts system works is that the MOD is dealing with tier 1 suppliers.

The system is not hands on enough. We need to look at the suppliers that will be subcontracted and ensure that local content is used and local jobs are created. If the MOD is only looking, for example, at the tier 1 contractors and not digging underneath, and if the majority of the contract are then being subcontracted, there is not adequate oversight or steering of the contract to ensure that best possible use is being made of public funds, so we get both the best equipment and the highest quality jobs created and funded as a result.

In Scotland, one of the things that the MOD is not doing quite as well as it could be is working with the supplier development programme. That programme literally links public authorities and public contracting authorities with suppliers, but it has not had as much input from the MOD as it would like. No matter what the situation is with the reserved nature of the MOD, the reality is that it has lots of places in Scotland, and lots of those

*[Kirsty Blackman]*

require procurement. That conversation between the local contractors and the MOD itself is not happening on the scale it should be. Local suppliers do not have the access to the contracts that they should or would like to have. One way this could be improved is by the MOD becoming more involved in the supplier development programme, which is specifically about making those links.

**David Duguid** (Banff and Buchan) (Con): I acknowledge the existence of the supplier development programme, but can the hon. Member explain why those suppliers would not ordinarily or necessarily interact directly with the MOD? Is it possible that having a Scottish version of that interaction is getting in the way?

**Kirsty Blackman:** No. A number of these contractor organisations went along to a training session that was run by the supplier development programme on applying for MOD contracts. But the thing is, those tier 1 suppliers were being given the contract. The MOD is not looking at local suppliers in the first instance in the way that it could.

I am not saying that local suppliers should always get every contract. Such a blanket approach would not be appropriate; but even those that have gone through training and have a better understanding of how to apply for MOD contracts are not necessarily being included. The supplier development programme is, for example, running a major event on 17 May this year where companies are put in touch with public authorities, but the MOD has not confirmed that it is willing to attend the event, or suggested that its tier 1 contractors should attend. I am absolutely not saying that the MOD should exclusively work with the supplier development programme. However, this is specifically about making those links. If the MOD were to get involved, it would have a better understanding of the companies out there that it would be able to contract from, the companies would have a better understanding of how best to put in tenders for the MOD, and that link would be better made between the two organisations.

I am not seeing this from the point of view of the MOD being a reserved organisation so I do not like it or agree with the way it works. The supplier development programme has not raised the same concerns with me about other reserved functions that happen in Scotland. It is specifically finding this issue with the MOD, which does have significant numbers of bases and places in Scotland, but is not as willing to engage as it could be. I am just pushing gently—I am not trying to have a big argument about this—to suggest that the MOD could do better in this regard. One of the best ways to do that would be to open that conversation and ensure that it is getting involved.

**David Duguid:** Genuinely, in the spirit of trying to resolve the issue the hon. Lady brings up, I would be interested to talk to her offline about this. I have suppliers in Banff and Buchan who have in the past, and perhaps still do, provide services to the MOD—in fact, I know at least one of them still does. As far as I know, those suppliers deal with the MOD directly. If there is a way that we can get more businesses from our constituencies to the MOD, I would be more than happy to help.

**Kirsty Blackman:** I am happy to have a conversation with the hon. Gentleman afterwards and ensure he has the contact details for the supplier development programme, so that it can lay out some of its concerns to him. Hopefully, he can similarly provide a gentle push in the background to ensure that everybody—both the people looking to contract and the contracting authorities looking to have the best possible contract and tender applications made—is getting the best possible outcome from this scenario.

**Alex Burghart:** It is a pleasure to be opposite my friend on the Opposition Front Bench, the hon. Member for Islwyn. I am sorry to say that such was the scale of his knockout defeat in that debate that it appears to have blurred his memory—we established without controversy that, as I defended, Lennox Lewis was the greatest British fighter of all time.

To the hon. Gentleman's point, we certainly agree that it is absolutely important to get these contracts right. The spirit running through the Bill is to have a streamlined process that makes it easier for everybody to understand their opportunities and responsibilities. On the point made by both the hon. Gentleman and the hon. Member for Aberdeen North, we will see as we go through the Bill that there are many opportunities through transparency and clauses put in to support SMEs to enable British businesses of different sizes to be able to avail themselves of opportunities in procurement, generally, but also in defence. In that spirit, I look forward to having specific conversations with the hon. Gentleman on those clauses as we progress.

*Question put and agreed to.*

*Clause 7 accordingly ordered to stand part of the Bill.*

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

10.59 am

*Adjourned till this day at Two o'clock.*