PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PROCUREMENT BILL [*LORDS*]

Sixth Sitting

Tuesday 7 February 2023

(Afternoon)

CONTENTS

Clause 57 agreed to.
Schedules 6 and 7 agreed to, one with amendments.
Clauses 58 to 63 agreed to, some with amendments.
Clauses 64 and 65 disagreed to.
Clauses 66 to 73 agreed to, some with amendments.
Schedule 8 agreed to.
Clauses 74 to 79 agreed to, some with amendments.
Adjourned till Thursday 9 February at half-past Eleven o'clock.
Written evidence reported to the House.

PBC (Bill 218) 2022 - 2023

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 11 February 2023

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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 7 February 2023

(Afternoon)

[David Mundell *in the Chair*]

Procurement Bill [*Lords*]

Clause 57

Meaning of excluded and excludable supplier

2 pm

Florence Eshalomi (Vauxhall) (Lab/Co-op): I beg to move amendment 23, in clause 57, page 39, line 22, after "mandatory" insert "or discretionary".

This amendment would make a supplier or an associated person on the debarment list for a discretionary ground an excluded supplier.

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

Amendment 24, in clause 57, page 39, line 29, leave out subsection (b).

This amendment is consequential on Amendment 23.

Clause stand part.

Clause 58 stand part.

Florence Eshalomi: It is a pleasure to serve under your chairship, Mr Mundell. Amendments 23 and 24 would ensure that everyone on the debarment list is excluded from the procurement system, except for under the provisions relating to the public interest test in clause 41.

On Thursday I listened to the Minister explain "exclusions", "exclusionary" and the debarment list. We had hoped that the Minister would give a more substantive explanation, given the issues that we highlighted, but we remain concerned. I will not go over the debate, but I was not satisfied to hear that a contracting authority will have discretion to award, say, a paperclip contract, as the Minister said, to a company identified as a national security risk. I have my paperclips here, if the Minister would like one. I want to ask a question that most people in this country will have. Why we are giving public money to a supplier who is identified as being a threat? With all due respect to procurement officers, we cannot expect there not to be blurred lines. Something that seems innocuous might actually be an open door, not spotted by a procurement officer or even our own security experts.

I am sure we all heard last week about the issue of the spy balloon, and how that created alarm in the USA. In the end, military action was required to shoot it down. A US defence officer has revealed that other suspected spy balloons flew over the US during the Trump Administration. That shows that real threats can pop up anytime and anywhere, and they can take multiple forms. Amendments 23 and 24 reflect some of the dissatisfaction I have outlined. As the Bill stands, a supplier put on the debarment list on schedule 7 grounds would be classed as an "excludable supplier", meaning the contracting authority could still, at its discretion, award them a contract. I understand from the Minister's comments, and from conversations with stakeholders, why there needs to be discretion with regard to excludable grounds, but I do not believe that such discretion should extend to suppliers on the debarment list.

The Government have outlined the debarment list is reserved for the most serious cases of misconduct. On 4 August 2022, the then Minister Lord True wrote a letter to the now Minister Baroness Neville-Rolfe, in which he said:

> "I should start by explaining that the debarment list is intended to focus on the most serious cases of supplier misconduct, where suppliers may pose a significant risk to contracting authorities or the public. It is not the case that every supplier which meets a ground for exclusion will be considered for inclusion on the debarment list. Rather, there will be a prioritisation policy which governs how cases are selected for investigation. It is likely that only a small number of cases will be considered each year.
>
> It is also important to clarify that meeting a ground for exclusion is not sufficient on its own to justify the addition of a supplier to the debarment list. In addition to considering whether an exclusion ground applies, the Minister must also consider whether the circumstances that led to the application of the exclusion ground are likely to occur again. Only if the circumstances are considered likely to occur again may the supplier be added to the debarment list. This ensures that exclusion is not a punishment for past behaviour but a forward-looking measure based on the risk posed by the supplier."

In the words of Lord True, suppliers on the list represent a significant risk to the public. It was therefore pleasing to hear the Minister say on Tuesday:

> "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."—[*Official Report, Procurement Bill Public Bill Committee,* 31 January 2023; c. 63.]

I think most people would welcome the fact that suppliers on the list are automatically excluded. However, under the Bill, the contracting authority will still be able to exclude suppliers on the list on discretionary exclusion grounds. When a supplier represents such a risk that they are one of the few to be on the debarment list, why should they still be allowed access to public contracts? We do not want suppliers who commit egregious breaches near public contracts.

I refer back to the Minister's example of a paperclip contract. Does he believe that a supplier who has been found guilty of environmental misconduct, has frequently breached contracts and performed poorly, is a national threat, or committed a breach that is grounds for discretionary exclusion, although the Government decided not to put them on the debarment list, should have access to public contracts? Will the public want their money to be spent that way, and handed to that supplier? Every supplier on the debarment list is surely one that the Minister believes should not be near our procurements. Again, we come to the question: why allow this discretion? Our amendment would ensure that those on the debarment list were excluded from all public contracts without question. I urge the Minister to think carefully about that, and to consider whether he can support the amendment.

I turn briefly to clause 58. Although every excluded or excludable supplier must be given the opportunity to prove that they are now a reputable supplier, it is important to remember that procurement rules are there

to ensure that public money is spent efficiently and on delivering the public services we need. When it comes to deciding whether a supplier comes under the definitions set out in clause 57, has the Minister considered taking the US-style approach of weighing the reputational and delivery risk to the contracting authority of allowing the supplier to take the contract? There will be disadvantages and advantages to both approaches, but I would be interested to learn whether that was explored, and why the Government adopted the approach taken in the Bill.

The Parliamentary Secretary, Cabinet Office (Alex Burghart): It is a pleasure to serve under your chairmanship once again, Mr Mundell. Amendments 23 and 24 would require contracting authorities to treat any supplier on the debarment list as being subject to mandatory exclusion, even when it is on the list because a discretionary exclusion ground applies. The concept of "excluded supplier" is by nature a blunt instrument. An excluded supplier faces exclusion from every public contract for five years unless and until a contracting authority is satisfied that the risk of the issues re-occurring has been addressed. For that reason, a supplier is an excluded supplier only when one of the grounds reserved for the most serious forms of misconduct apply—the mandatory grounds.

It is clearly right that when a Minister of the Crown places a supplier on the debarment list because a mandatory exclusion ground applies, and the issues are likely to occur again, authorities awarding contracts should treat that supplier as an excluded supplier. The inclusion of discretionary exclusion grounds in schedule 7 reflects the fact that, for offences where a range of misconduct could be involved, it might be appropriate to take into account factors such as the nature of the contract being tendered or the level of harm caused before deciding to exclude a supplier.

None the less, the Government believe that it should be possible to include a supplier that has fallen foul of a discretionary exclusion ground on the debarment list. This involves contracting authorities having to do their own due diligence on the suppliers' misconduct and self-cleaning measures. However, given that discretionary exclusion grounds are potentially less serious, a contracting authority should retain some discretion with regard to that supplier, once they are on the list.

Clause 57 sets out the meaning of the terms "excluded supplier" and "excludable supplier". The Bill provides elsewhere that contracting authorities are either obliged or permitted to consider whether suppliers should be excluded or excludable at various points in a procurement. In most cases, excluded suppliers must be prevented from participating in a procurement or being awarded a contract, while excludable suppliers may be excluded at the discretion of the contracting authority.

Excluded suppliers are defined in subsection (1) as those to whom a contracting authority considers that

"a mandatory exclusion ground applies",

as set out in schedule 6. The contracting authority must also consider that

"the circumstances giving rise to the application of the exclusion ground are likely to occur again,"

or that the supplier is

"on the debarment list by virtue of a mandatory exclusion ground."

Excludable suppliers are defined in subsection (2) as those to whom a contracting authority considers that

"a discretionary exclusion ground applies"

as set out in schedule 7. The contracting authority must also consider that

"the circumstances giving rise to the application of the exclusion ground are likely to occur again,"

or that the supplier is

"on the debarment list by virtue of a discretionary exclusion ground."

In both cases, the supplier is excluded or excludable if they are on the debarment list. Private utilities can treat mandatory exclusion grounds as discretionary; that is set out in subsection (3).

Clause 58 sets out how contracting authorities should assess the risk of the re-occurrence of the circumstances that gave rise to the application of an exclusion ground to a supplier. Contracting authorities may have regard to the range of factors set out in subsection (1) when evaluating that risk. Subsection (2) imposes a duty on the contracting authorities applying the exclusions regime to give suppliers an opportunity to submit evidence to show that the circumstances are not likely to recur—that is, that they have "self-cleaned". Suppliers are also entitled to make the case that they are not subject to a ground for exclusion, and to make representations more generally.

The self-cleaning evidence must be sufficient to satisfy the contracting authority that the circumstances that gave rise to potential exclusion are not likely to occur again. Importantly, subsection (3) stipulates that contracting authorities must not make disproportionate requests for information or remedial evidence. That protects suppliers by ensuring that contracting authorities focus on the most important aspects of self-cleaning relevant to the particular circumstances.

The hon. Member for Vauxhall understandably takes us back to the issue of discretionary versus mandatory exclusions, which we debated the other day. One thing we need to bear in mind—perhaps with regard to more rarefied objects than paperclips—is that there may be circumstances in which particular substances or items can be procured only from certain suppliers. That may be essential for the operation of certain processes or the response to certain emergency situations.

Florence Eshalomi: As I said, I understand why the Minister says that there should be some discretion, and that it should lie with the contracting authority. However, does he agree that such discretion should not stretch to the point at which an organisation is on the debarment list, and there is an issue of national security?

Alex Burghart: There is absolutely the issue of national security. However, it is important that we retain an element of flexibility, so that in extremis, if there is only one provider of an essential good, the public authorities that need it still have access to it, even if there are concerns about other activities performed by a certain company. Although I completely understand the hon. Lady's desire to prevent companies whose practices we disagree with from unduly benefiting from the public purse, we have to retain a degree of flexibility so that, in extremis, public authorities can get what they need.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 24]

AYES

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

NOES

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

Question accordingly negatived.

Clause 57 ordered to stand part of the Bill.

Schedule 6

Mandatory exclusion grounds

Question proposed, That the schedule be the Sixth schedule to the Bill.

2.15 pm

Alex Burghart: Schedule 6 sets out the mandatory grounds for exclusion. They consist of criminal offences and other misconduct serious enough to merit exclusion if the circumstances in question are likely to reoccur.

Florence Eshalomi: As the Minister highlighted, the schedule covers the grounds on which a supplier can be excluded, with some general provisions on how the suppliers are treated. I have touched on our concerns about excluded suppliers and excludable systems, and we will say more about that when we come to schedule 7. However, we believe that the scope of schedule 6 could be widened to cover issues of national security, to ensure that suppliers who are a risk to national security are not included in our supply chain, even when contracting authorities want paperclips. We support the increase in the scope of the schedule, so that it excludes suppliers who have committed serious offences, and who represent a concern to the authorities in the delivery of services. We are pleased to support the schedule.

Question put and agreed to.

Schedule 6 accordingly agreed to.

Schedule 7

Discretionary exclusion grounds

Alex Burghart: I beg to move amendment 87, in page 110, line 33, schedule 7, leave out paragraph 15.

This amendment would leave out the discretionary exclusion ground relating to forced organ harvesting.

Amendment 87 removes an amendment made to schedule 7 in the other place. It created a discretionary exclusion ground for suppliers with connections to forced organ harvesting, which is, of course, an utterly abhorrent practice. However, serious unethical behaviour particular to a certain industry is already covered by the ground of professional misconduct. The Bill is not the appropriate place to address the issue.

Every exclusion ground, whether mandatory or discretionary, must be considered for each and every supplier for each procurement. I am sure the Committee can appreciate how burdensome that would be when there are thousands of contracts every year. We want to make public procurement simpler and less burdensome for suppliers, particularly those that are small and medium-sized enterprises, and to drive value for money for the public. Adding additional exclusion grounds costs contracting authorities time and money. It is therefore crucial that we limit exclusion grounds to those that pose a major risk to public procurement. No supplier to the UK public sector has been involved in forced organ harvesting, as far as I am aware.

I am, however, pleased to say that the Government have already taken significant steps to make it explicit that the overseas organ trade, or complicity in it, will not be tolerated. Under the Health and Care Act 2022, it is already an offence to travel outside the UK to purchase an organ. That is why I believe that the amendment is necessary to overturn a well-meaning but, in practice, very challenging change to the Bill.

Florence Eshalomi: As the Minister highlighted, amendment 87 would sadly overturn Lords amendment 91, made on Report, in relation to forced organ harvesting. I agree with the Minister that there can be no doubt that organ harvesting is an abhorrent practice, but we should be careful when saying that this measure would just result in additional bureaucracy and time in contracts and procurement.

The practice of forced organ harvesting involves the removal of organs from a living prisoner, which results in their death or near death. It is something that none of us should stand by and watch. Linking this back to taxpayers' money, no taxpayer would expect a single penny of their public money to go to a company explicitly linked to this practice. Tragically, there is evidence that forced organ harvesting may not be a particularly niche issue.

The Minister highlighted that the measure, although well intended, would add more time and another layer of bureaucracy. I want to go back to the debates in the other place, and some of the powerful words from Lord Alton of Liverpool and Lord Hunt of Kings Heath, who moved the amendment that led to our discussion today. Both made moving and compelling arguments for the inclusion of the measure against forced organ harvesting, providing examples of evidence that the practice is taking place on an extremely depressing scale in China.

The excellent speeches made by Lord Alton and Lord Hunt have been backed up by the Office of the UN High Commissioner for Human Rights, which stated that serious human rights violations have been committed in the Xinjiang Uyghur Autonomous Region,

"in the context of the Government's application of counter-terrorism and counter-'extremism' strategies. The implementation of these strategies, and associated policies in XUAR has led to interlocking patterns of severe and undue restrictions on a wide range of human rights. These patterns of restrictions are characterized by a discriminatory component, as the underlying acts often directly or indirectly affect Uyghur and other predominantly Muslim communities."

The OHCHR also stated that the treatment of persons held in the system of so-called vocational education and training centres—VETC facilities—is,

"of equal concern. Allegations of patterns of torture or ill-treatment, including forced medical treatment and adverse conditions of detention, are credible, as are allegations of individual incidents of sexual and gender-based violence. While the available information at this stage does not allow OHCHR to draw firm conclusions regarding the exact extent of such abuses, it is clear that the highly securitised and discriminatory nature of the VETC facilities, coupled with limited access to effective remedies or oversight by the authorities, provide fertile ground for such violations to take place on a broad scale."

That is damning. It shows there is evidence of this already happening. In an April 2022 paper published in the *American Journal of Transplantation*, Matthew P. Robertson and Jacob Lavee stated:

"We find evidence in 71 of these reports, spread nationwide, that brain death could not have properly been declared. In these cases, the removal of the heart during organ procurement must have been the proximate cause of the donor's death. Because these organ donors could only have been prisoners, our findings strongly suggest that physicians in the People's Republic of China have participated in executions by organ removal."

As a country, we must stand steadfast against these practices and ensure that any supplier with ties to forced organ harvesting is not allowed anywhere near our procurement system. I do not think taxpayers would expect anything less. No one wants to be linked to these horrific practices.

I fully understand and appreciate that the Minister may have covered these and other concerns in his remarks, but we may want to consider that there is no doubt this practice is an exclusion ground. In Committee in the Lords, the Minister, Baroness Neville-Rolfe, said it was almost certain that it would be covered by paragraph 12, but I think we have to ask ourselves, how many times have we heard that something is almost certain, only for it not to be covered when the Bill passes? We cannot and should not take chances on this issue. It is a fundamental and critical issue of human rights. If the Committee is to do its job, we cannot support the attempts to remove forced organ harvesting as a discretionary exclusion ground. For those powerful and valid reasons, I will not be supporting the amendment.

Kirsty Blackman (Aberdeen North) (SNP): It is tempting to think that forced organ harvesting is so far removed from anything that we consider human, or a normal occurrence, that it does not happen—but it does. As the shadow Minister laid out, the issue was discussed in significant detail in the other place. We know it occurs.

The Minister has given some level of assurance that other parts of the Bill cover this practice. Could he be explicit that he does not believe that any supplier involved in forced organ harvesting would be eligible to receive a public contract through the procurement framework set out in the Bill? If he can give that explicit assurance that he believes the practice is covered elsewhere in the Bill, and that provisions elsewhere in the Bill adequately do the job of this provision, I would be happy not to oppose the amendment. That assurance from the Minister would give us a measure of reassurance and comfort that the Bill covers everything that he intends and expects.

Alex Burghart: We are assured that the absolutely abhorrent practice of forced organ harvesting would qualify as serious unethical behaviour. Consequently, that would mean that, in the Bill, it would be covered by the grounds of professional misconduct. Within the Bill, we have that provision; outwith the Bill, we have the Health and Social Care Act, to which I referred in my remarks. I hope that no one will take away anything other than the fact that the Government are strongly opposed to this practice and to the people who conduct this practice and that we wish public procurement to have no part in it.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 4.

Division No. 25]

AYES

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

NOES

Eshalomi, Florence
Evans, Chris
Jones, Gerald
Russell-Moyle, Lloyd

Question accordingly agreed to.

Amendment 87 agreed to.

Florence Eshalomi: I beg to move amendment 106, in schedule 7, page 111, line 4, at end insert—

"*Failure to consider sanctions regime*

16 A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person has failed to adhere to sanctions imposed by the United Kingdom."

This amendment would add a discretionary exclusion ground based on the failure to adhere to UK sanctions regimes.

Amendment 106 would add a discretionary ground to give contracting authorities the power to disregard tenders from suppliers who do not comply with the UK sanctions scheme. The amendment takes inspiration from the international reaction to Putin's illegal and barbaric invasion of Ukraine. We know that many companies did the right thing in response to that invasion and swiftly pulled out from Russia. They withdrew funding, marketing and development, and they all took a stand not to finance Putin's actions against the people of Ukraine. Sadly, however, some did not.

For example, research from Yale has identified the status of more than 1,000 companies in Russia, rating them from A to F on what presence they still have in the country. I will not go into specific cases, but it noticeable that companies rated D—defined as "continuing substantive business"—have been awarded lucrative public contracts since the invasion of Ukraine.

2.30 pm

The UK could carry out similar steps to the EU's public procurement sanctions against Russia. The amendment would add an automatic ability for contracting authorities to disregard tenders, when it is appropriate to do so, from those that have flouted such sanctions. As the Minister said previously, such discretionary grounds are bluntly about providing discretion to a contracting authority to disregard those tenders. The measure would have to be activated all at once.

Again, the public will rightly ask whether we should be spending public money on companies that are dealing with Russia almost a year after the invasion of Ukraine. The amendment would ensure that we can act on the wishes of the public by mandating within procurement

the consideration of compliance with sanctions. It would also shine a light on where such sanctions are being abided by.

Without the amendment, information on compliance might simply not be available. For example, the Government have asked suppliers for evidence of compliance with the Russian and Belarusian sanctions regime. If the Government were to publish a statement from all key Government vendors about their compliance with Russian or any other sanctions, their supply chain and their intention to withdraw or suspend indefinitely their Russian or Belarusian operations, then all public authority authorities, commercial organisations and consumers could make better informed purchasing decisions.

The amendment could also give the Government the power to put companies that are flagrantly ignoring UK sanctions regimes on the debarment list. That would make it clear that companies that continue to work with regimes such as Putin's Russia would be barred from the UK's procurement system. I hope that the Minister will agree and support the amendment.

Alex Burghart: The amendment would introduce a new discretionary exclusion ground in relation to sanctions violations. The Government of course expect all businesses to comply with their obligations under the UK sanctions regime.

In 2016, the Office of Financial Sanctions Implementation was established to ensure that sanctions are properly understood, implemented and enforced. A range of tools are available to encourage compliance, including monetary penalties. However, we do not consider that sanctions violations pose a sufficient risk to public procurement to justify a ground for exclusion.

I am not aware of any evidence that public contracts have been awarded to suppliers that have violated sanctions. It is important that the exclusions regime focuses on the most pertinent risks, because each additional exclusion ground will increase burdens on contracting authorities and suppliers. That is why we have taken a targeted, risk-based approach, informed by extensive consultation across the public sector and with those who are most impacted by the exclusions regime, such as small and medium-sized enterprises. I respectfully request that the amendment be withdrawn.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 26]

AYES

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

NOES

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

Question accordingly negatived.

Florence Eshalomi: I beg to move amendment 112, in schedule 7, page 111, line 4, at end insert—

"Labour law infringements

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

(a) has been found by an employment tribunal or court to have significantly breached the rights of an employee or worker engaged or formerly engaged by it,

(b) has admitted that it significantly breached the rights of an employee or worker engaged or formerly engaged by it, or

(c) has made a payment to an employee or worker engaged or formerly engaged by it in respect of a significant breach by it of the employee or worker's rights,

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

(2) Where a contracting authority determines that a supplier fulfils one or more of sub-paragraphs (1)(a), (b) or (c), the contracting authority must determine that the supplier is not an excluded supplier in relation to the award of the public contract if the contracting authority is satisfied that the supplier has provided convincing evidence to the effect that measures taken by the supplier are sufficient to demonstrate that it is in the public interest and in the interest of the contracting authority that the supplier should not be excluded from the procurement procedure.

(3) The evidence referred to in sub-paragraph (2) must include proof that the supplier has—

(a) paid or undertaken to pay without delay compensation in respect of any damage caused by the breach of rights,

(b) clarified the facts and circumstances in a comprehensive manner by actively and without delay collaborating with any relevant employment tribunal or court process and the parties thereto, and

(c) taken concrete technical, organisational and personnel measures appropriate to prevent further breaches of rights of a similar kind.

(4) Any such measures taken by the supplier must be evaluated taking into account the gravity and particular circumstances of the breach or breaches of rights.

(5) Where the contracting authority considers such measures to be insufficient, the contracting authority must give the supplier a statement of the reasons for that decision.

(6) 'Rights' in paragraphs (1) to (4) means any entitlement or benefit of an employee or worker engaged or formerly engaged by the supplier or of a trade union of which he or she is a member deriving from common law (including contract and tort) or statute, or protected by the international obligations of the United Kingdom referred to in Article 399 of the Trade and Cooperation Agreement (within the meaning of section 37 of the European Union (Future Relationship) Act 2020)."

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

We hope that amendment 112 will be a step toward recognising that being granted public money via a public contract is a privilege, and that in return for this privilege suppliers should be upholding high standards in the workplace. The Bill provides us with an opportunity to drive up standards and ensure public procurement is used as a means to promote decent work throughout the supply chain and to reward businesses that treat their workers right, so we can raise standards right across the economy. We must all back the workers and employers who are creating Britain's wealth. We must use procurement as an opportunity to raise the bar for all on working conditions. We believe this is a strong amendment. It seeks to include good work and the promotion of quality employment as a strategic priority.

Alex Burghart: Amendment 112 would introduce a new discretionary ground for exclusion in relation to labour law infringements. There are already robust grounds for exclusion for the most egregious violations of the rights of workers. These are based on the serious labour offences within the purview of the director of labour market enforcement. Compared with the mandatory grounds in existing legislation—the Public Contracts Regulations 2015—they represent an expansion in the scope of the grounds on which suppliers can be excluded from procurements for labour violations, with new grounds including failure to pay the national minimum wage and offences relating to employment agencies.

It is right that exclusion is reserved for the most serious circumstances or behaviour that could, if not addressed, raise a sufficient risk to contracting authorities or the public as to make the supplier unfit to bid for public contracts. Nevertheless, where the treatment of workers and the protection of their rights is relevant to the contract being procured, contracting authorities are entitled to set conditions of participation in these areas and to evaluate treatment of workers as part of the award criteria in assessing tenders. This may be the case, for example, for the procurement of contracts for labour-intensive services. I respectfully urge the hon. Member to withdraw the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 27]

AYES

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

NOES

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

Question accordingly negatived.

Alex Burghart: I beg to move amendment 88, in schedule 7, page 111, line 44, at end insert—

> "'event' means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;"

This amendment would insert a definition of "event" for the purposes of paragraph 16 of Schedule 7.

The Chair: With this it will be convenient to discuss that schedule 7 be the Seventh schedule to the Bill.

Alex Burghart: Amendment 88 is a technical amendment that inserts a definition of "event" for the purpose of the five-year look-back period in schedule 7. It mirrors the same definition already included in schedule 6, but refers to an event by virtue of which a discretionary exclusion ground applies to a supplier.

Schedule 7 sets out the discretionary grounds for exclusion. Discretionary grounds involve a range of circumstances, some of which are potentially less serious and might not merit exclusion. It might depend on the circumstances relating to the exclusion ground, the type of contract being procured such as its urgency or criticality, or facts specific to the procurement—the number of bidders, for example.

Similar to the mandatory exclusion grounds, the discretionary grounds are subject to a five-year, look-back period, as set out in paragraph 16, whereby only convictions or other events that the decision maker was aware of within the past five years count when assessing whether grounds apply. Again, that is subject to a transitional regime to avoid the unfair retrospective effect of new exclusion grounds for events that would not have given rise to exclusion prior to the coming into force of the Bill.

The discretionary grounds generally apply to misconduct or circumstances involving either the supplier or a connected person of the supplier. Connected persons are defined in paragraph 44 of schedule 6, as I explained earlier. As with schedule 6, I hope that we have achieved our objective of making the exclusion grounds both clearer and more consistent.

Florence Eshalomi: As the Minister outlined, the amendment seeks to define the events, with reference to the relevant paragraph of the schedule on determining temporal cut-off points for events that may make a supplier excludable. We believe that it is a tidying-up amendment to ensure that the event is defined in the schedule, so we do not wish to oppose it.

More widely, there are some faults with the schedule and its implementation, but the Opposition view it as a step forward in procurement versus the Public Contracts Regulations 2015. We recognise the importance of clauses on matters such as labour markets and environmental misconduct, but the appropriateness of the scope of schedule 7 will depend on how stringent the rules on excludable suppliers are applied by contracting authorities. We should consider that when assessing how well the terms of the schedule will work in a few years' time.

I would be grateful if the Minister explained why different timescales have been used in different parts of the Bill, as set out in paragraph 16. How were the decisions made for different grounds? We do not seek further amendments to the schedule, which we are happy to support.

Alex Burghart: I thank the hon. Lady for her comments and support of the schedule. She asked about the look-back periods in paragraph 16 and why they differ—perhaps she could intervene to clarify her question.

Florence Eshalomi: I asked about the different timescales outlined in paragraph 16. I would like a better understanding of how those decisions were reached.

Alex Burghart: I am embarrassed to say that my memory is failing me, but I will let the hon. Lady know later in the afternoon.

Florence Eshalomi: Thank you.

Amendment 88 agreed to.

Schedule 7, as amended, agreed to.

Clause 58 ordered to stand part of the Bill.

Clause 59

NOTIFICATION OF EXCLUSION OF SUPPLIER

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

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

Clauses 60 and 61 stand part.

Government amendments 42 to 44.

Clause 62 stand part.

Government amendments 45 to 47.

Clauses 63 and 64 stand part.

Government amendment 76.

Government new clause 9—*Debarment decisions: interim relief.*

Government new clause 10—*Debarment proceedings and closed material procedure.*

Government new clause 15—*Debarment decisions: appeals (No. 2).*

Alex Burghart: We move on to a monster grouping. The clauses, which concern the debarment list, are important, ground-breaking provisions that will support contracting authorities to reject bids from suppliers that pose the most serious risk.

Clause 59 requires contracting authorities to notify either a UK, Welsh or Northern Irish Minister—depending on the status of the contracting authority—whenever action is taken under the exclusions regime against a supplier or subcontractor. Subsection (1) sets out the relevant actions, which include exclusion from a procurement, rejection of a tender, rejection of an application to join a dynamic market or removal from a dynamic market, or the replacement of an associated person or intended subcontractor.

The obligation to notify a relevant appropriate authority is in subsection (2), and must be made within 30 days of the relevant action. Subsection (3) sets out the information that must be in the notification. There is also an obligation in subsections (4) and (5) to notify within 30 days where a challenge is brought under part 9 of the Bill against a contracting authority with regard to any exclusion, and also on conclusion of any such proceedings.

2.45 pm

The purpose of the clause is to allow for suppliers to be considered for addition to the debarment list where a contracting authority has determined that they are unfit to bid for public contracts. Importantly, however, any company may be considered for debarment, whether or not they have previously bid for public contracts. Notification under the clause is not a precondition for launching a debarment investigation; the clause simply provides one route by which suppliers may be brought to the attention of the authorities.

Clause 60 allows in subsection (1) for UK, Welsh or Northern Irish Ministers to investigate whether a supplier is excluded or excludable—in other words, whether it meets a ground for exclusion and has failed to self-clean such that the issues in question are liable to occur again. Such an investigation is a prerequisite before a Minister can put a supplier on the debarment list. The supplier must be notified of a decision to investigate under subsection (3).

Clause 61 requires a report to be published by a Minister following consideration of a supplier for debarment. Importantly, reports must be published whether or not the supplier is found to meet a ground for exclusion or to have self-cleaned. As well as ensuring transparency around investigations, the reports will help suppliers found to be fit to bid for public contracts to evidence that fact to contracting authorities when bidding in the future.

Clause 62 provides for the creation and publication of the debarment list. Only a Minister of the Crown may add a supplier to the debarment list, although they must give the supplier notice under subsection (5) and consult the Welsh and Northern Irish Administrations under subsection (9) before doing so. The list must be published by virtue of the existing subsection (8).

The Government have tabled amendment 42 to clause 62(3) to make it clear that each entry on the debarment list will relate to one exclusion ground, as a supplier could find itself on the list for breaches of multiple exclusion grounds. Entries must include the name of the supplier, the relevant ground for exclusion and the date on which the supplier will be removed from the debarment list because the ground will cease to apply. The date of removal will usually be five years after the event for which the supplier is being debarred. However, suppliers may be removed from the list before that point if they are found to have self-cleaned such that the issues in question are no longer likely to reoccur.

New subsections (5A) and (5B) to clause 62, which we have tabled as amendment 43, allow for a standstill period of eight working days, during which the Minister must not add a supplier’s name to the debarment list. That is to allow the supplier a short window to apply to the court to have the Minister’s decision suspended when the supplier wishes to appeal that decision. I will speak further about the interim relief mechanism and the appeal process shortly.

Clause 62 requires the Minister to keep the debarment list under review and allows for amendments to be made to it at any time. The Minister must remove an entry if the supplier is no longer an excluded or excludable supplier in respect of the relevant exclusion ground. In amendment 44, we seek to restrict changes to removal of an entry and revisions to the end date for exclusion. The amendment also allows the Minister to voluntarily remove an entry while it is being appealed. The Government propose inserting new clause 9 after clause 62. The new clause allows the court to suspend a Minister’s decision to add a supplier’s name to the debarment list while that decision is being appealed.

Clause 63 provides in subsection (1) that suppliers “may at any time” apply to be removed from the debarment list. Early removal is possible if a supplier can demonstrate that it is no longer subject to a ground for exclusion, or has taken sufficient remedial action such that the issues in question are no longer likely to reoccur. The Government have tabled amendments 45, 46 and 47 to clause 63 to allow suppliers to apply to revise the end date when they will no longer be on the debarment list. To prevent suppliers from making speculative applications for removal or changes to the end date, subsection (2) of clause 63 provides that applications must be considered only where the supplier presents significant new information or there has been a “material change of circumstances”.

We have tabled new clause 15 to include a new clause in place of new clause 64, setting out detailed provisions on debarment appeals instead of the current power to provide for these details in secondary legislation. Amendment 76 is consequential on new clause 15 and removes reference to that power in the list of powers in clause 118.

New clause 15 allows suppliers to appeal debarment decisions to the court. Subsection (1) lists the decisions that can be appealed—namely, a decision to enter a supplier's name on the debarment list; to include the end date when the supplier's name will no longer be on the list; and not to remove an entry following an application by the supplier for review.

New clause 10 seeks to allow the Minister for the Cabinet Office to apply for a declaration permitting closed material procedure applications in debarment appeal proceedings. Closed material procedure involves the non-Government parties leaving the courtroom while sensitive material is heard. The Justice and Security Act 2013 already provides for such an application to be made by a Secretary of State, or any party to the proceedings, in civil proceedings. The new clause extends that to the Minister for the Cabinet Office in debarment appeal hearings. It will be used only in very limited circumstances, such as when a supplier has been added to the debarment list because the Minister considers that the supplier poses a threat to national security.

I urge the Committee to support the Government amendments and new clauses, and allow clauses 59 to 63 to stand part of the Bill. I do not support clause 64 stand part.

Florence Eshalomi: This group of amendments and new clauses pertains to the debarment regime and a new interim relief scheme that suppliers can use when they wish a decision to be put on the debarment list. We support the addition of a debarment list to the Bill. It is right that suppliers that represent a significant risk to contracting authorities and the public are identified. Clearly, this is a strong step and represents a higher bar than simply excluding a supplier from a procurement tender process.

That high-bar intention for the list has been made clear by the Government and in the Minister's remarks. I refer back to the letter of the then Minister Lord True to Minister Baroness Neville-Rolfe:

"I should start by explaining that the debarment list is intended to focus on the most serious cases of supplier misconduct, where suppliers may pose a significant risk to contracting authorities or the public."

Ministers must also consider whether the circumstances that led to the application of the exclusion ground are likely to occur again. However, the Government might have changed their mind since then. Will the Minister confirm whether that is still the intention in that case?

Clarity is needed. The need for clarity highlights a potential flaw in the existing clauses: there is still some ambiguity about what the bar actually is to be placed on the debarment list. As drafted, any supplier deemed to be an excluded or excludable supplier can, in theory, be added to the list. It is also possible that no suppliers, even those with egregious cases, are added to the list.

The only other issue that I will raise is that of the threshold. Will there be additional guidance for suppliers and contracting authorities? The list can involve severe reputational and financial damage, so it is right to have safeguards. We will support the measure if the Minister can outline the additional safeguards.

Alex Burghart: The hon. Lady is right that Lord True wrote to a Member of the House of Lords about this, and we do not believe that the Government's position has changed since then. I am afraid I cannot remember her second point—if she is happy to intervene on me, that will refresh my memory.

Florence Eshalomi: I will write to the Minister.

Alex Burghart: I look forward to receiving the hon. Lady's letter.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Clauses 60 and 61 ordered to stand part of the Bill.

Clause 62

Debarment list

Amendments made: 42, in clause 62, page 43, line 30, leave out from "section" to end of line 39 and insert

"and, as part of that entry, must—

(a) state the exclusion ground to which the entry relates, and whether it is a mandatory exclusion ground or a discretionary exclusion ground, and

(b) indicate the date on which the Minister expects the supplier to cease to be an excluded or excludable supplier by virtue of the stated exclusion ground (and, accordingly, expects the entry to be removed from the list).

(4) A list kept for the purposes of this section is the 'debarment list'."

This amendment would make it clearer that each entry will relate to one exclusion ground and, as such, could be challenged individually.

Amendment 43, in clause 62, page 43, line 44, at end insert—

"(5A) The Minister may not enter a supplier's name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the 'debarment standstill period').

(5B) The Minister may not enter a supplier's name on the debarment list if—

(a) during the debarment standstill period—

(i) proceedings under section (*Debarment decisions: interim relief*)(1) (interim relief) are commenced, and

(ii) the Minister is notified of that fact, and

(b) the proceedings have not been determined, discontinued or otherwise disposed of."

This amendment would ensure that an application for interim relief under the new clause inserted by NC9 would suspend the Minister's decision to add a supplier's name to the debarment list.

Amendment 44, in clause 62, page 44, line 1, leave out from "review" to end of line 5 and insert—

"(b) may remove an entry from the debarment list at any time, and

(c) may revise a date indicated under subsection (3)(b).

(7) If a Minister of the Crown voluntarily removes an entry from the debarment list in connection with proceedings under section 64 (debarment decisions: appeals), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.

(7A) A Minister of the Crown must remove an entry from the debarment list if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry."—*(Alex Burghart.)*

This amendment would restrict modifications that could be made to the debarment list, provide for the Minister to voluntarily suspend a decision to add an entry to the debarment list in connection with proceedings, and clarify that the Minister must remove an entry where a particular ground no longer applies.

Clause 62, as amended, ordered to stand part of the Bill.

Clause 63

Debarment list: application for removal

Amendments made: 45, in clause 63, page 44, line 16, leave out from "for" to end of line 17 and insert—

"(a) the removal of an entry in respect of the supplier from the debarment list, or

(b) the revision of the date indicated as part of such an entry under section 62(3)(b)."

This amendment would ensure that a supplier can apply to change the date indicating when it will cease to be an excluded or excludable supplier.

Amendment 46, in clause 63, page 44, line 21, leave out from "since" to ", or" and insert

"the entry was made or, where relevant, revised".

This amendment would allow for the fact that a supplier may make different applications in respect of the same or different entries.

Amendment 47, in clause 63, page 44, line 23, after "subsection (1)" insert

"in relation to the entry or, where relevant, revision".—*(Alex Burghart.)*

This amendment is consequential on Amendment 45.

Clause 63, as amended, ordered to stand part of the Bill.

Clause 64 disagreed to.

Clause 65

Timeline for removal of suppliers

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

Alex Burghart: Clause 65, which was added to the Bill in the other place, requires the Government to publish a timetable for the removal of Government surveillance equipment where there is evidence that a provider has been involved in modern slavery, genocide or crimes against humanity. That would require the Government to undertake a review of evidence that existing surveillance suppliers or subcontractors have been involved in those matters. Given the size and complexity of technology supply chains, any review of that nature would be costly and resource-intensive; it would need to cover hundreds, if not thousands, of companies.

The measure is intended to target Chinese suppliers, but it is not guaranteed to lead to action against them. The evidence surrounding the complicity of surveillance suppliers in the oppression of Uyghurs in Xinjiang is highly contested, and it would likely be difficult to show that any supplier had been involved in the matters set out in the clause. Although it is unclear what precisely is meant by "established evidence" that a provider has been "involved" in the specified abuses, proving that those suppliers knowingly provided technology for use in human rights abuses would be especially difficult. Even if there were sufficient evidence to do so, the cost and disruption of removing such surveillance equipment from across the entire Government estate would be significant. For that reason, public procurement policy has tended to focus on preventing unfit suppliers from participating in future procurements, rather than requiring the termination of existing contracts.

However, the Government are deeply concerned by both the accusations of modern slavery and the national security implications posed by such equipment, and they are taking action. In November, they announced that all Government Departments will be expected to remove such equipment from sensitive sites and to avoid procuring it in the future. We are also strengthening our powers in the Bill by introducing an exclusion ground for suppliers considered to pose a threat to the national security of the United Kingdom. Combined with the new powers for a centralised debarment list, that will mean that where the risk is sufficiently serious, Ministers can act quickly to ensure suppliers that threaten national security face exclusion from all contracts across the public sector.

I believe that we have taken decisive action in this area, both in the written ministerial statement and in the Bill. However, we are mindful of the concerns raised in both Houses, and we will continue to reflect carefully on those views as we move forward with the legislation and its implementation.

Florence Eshalomi: I thank the Minister for his closing remarks on that and the need to address some of the concerns. The clauses mandate the eventual removal of physical technology or surveillance equipment from the Government's procurement system supply chain, where there is substantiated evidence of modern slavery, genocide or crimes against humanity.

3 pm

The clause was added to the Bill following the work of the Lords, in particular Lord Alton of Liverpool who moved amendment 94 to give effect to it. It follows the findings of the Foreign Affairs Committee report of July 2021, which said:

"Cameras made by the Chinese firm Hikvision have been deployed throughout Xinjiang, and provide the primary camera technology used in the internment camps. Dr Samantha Hoffman of the Australian Strategic Policy Institute and Dr Radomir Tylecote of Civitas shared their concern that facial recognition cameras made by companies such as Hikvision operating in the UK are collecting facial recognition data, which can then be used by the Chinese government. Dr Hoffman said that Hikvision cameras are operating 'all over London'. Independent reports suggest that Hikvision cameras are operating throughout the UK in areas such as Kensington and Chelsea, Guildford, and Coventry, placed in leisure centres and even schools.

Equipment manufactured by companies such as Hikvision and Dahua should not be permitted to operate within the UK. We recommend that the Government prohibits organisations and individuals in the UK from doing business with any companies known to be associated with the Xinjiang atrocities through the sanctions regime. The Government should prohibit UK firms and public sector bodies from conducting business with, investing in, or entering into partnerships with such Chinese firms, to ensure that UK companies do not provide either blueprints or financing for further technology-enabled human rights abuses."

It is welcome that since the publication of the FAC report, the Government have banned Whitehall Departments from using Hikvision and Dahua cameras on sensitive sites. I think we should ask, however, why they should still be allowed in our schools and hospitals. Surely the threat from the current equipment still exists. We cannot hide how terrifyingly deep companies such as Hikvision run in the UK's procurement systems.

A report by Big Brother Watch found that around 2,800 public bodies, over 60%, currently use their surveillance cameras. It also found that other public bodies have confirmed through freedom of information requests that they use Dahua and Hikvision cameras, and that includes 73% of local authorities, 63.4% of schools, 66.2% of colleges, 53.8% of higher education bodies, 34.9% of the UK's police forces and 60.3% of NHS trusts.

There is growing evidence of Hikvision's and Dahua's involvement in the construction of internment camps in Xinjiang. There is widespread use of their cameras for interrogation in China, and the US has subsequently placed both companies on a blacklist. Those are the same camps that we discussed when we considered amendment 87, and they are linked to some of the cruellest practices.

I do not think that we can see ourselves being weaned off such technology overnight, otherwise what we are discussing would be an easy task. The beauty of the clause, however, is that it mandates the Secretary of State to lay out a clear timeframe for its removal. Bodies would even have six months in which to do that. Given that Hikvision is already banned in the US for links to internment camps in Xinjiang and banned in Whitehall, the timeframe could easily be met for the rest of the procurement supply chain. I urge the Minister to reconsider that.

Kirsty Blackman: Throughout the discussion of Hikvision and other companies in relation to human rights abuses, genocide and crimes against humanity, the Minister has missed the point. The shadow Minister has absolutely got the point.

For a start, the US has already blacklisted Hikvision. If the US believes that there is enough evidence to do that, and the Scottish Government are getting rid of the Hikvision cameras we have in Scotland, I do not see why the UK Government are unable to act in that regard. Two other jurisdictions have found enough evidence to debar Hikvision from providing cameras involved in our public life, yet the UK Government feel that there is still not enough evidence. They are somehow suggesting that perhaps the situation is over-egged, but it appears that the Foreign Affairs Committee does not think the situation is an over-exaggeration, and that it thinks that there is actually a risk and danger.

This is not just about the threat to our national security, although that is obviously incredibly important, and the Labour Front Benchers have been clear about national security throughout our discussion of the Bill. This is also about supporting a company that is committing human rights abuses. It does not matter whether a company is committing them here or elsewhere; the reality is that through public procurement, we are funding a company using facial recognition in mosques and committing atrocities against Uyghur Muslims in the Xinjiang region. How is that okay just because it is not causing any problems here?

Even if the company were not causing any threat to national security, this is about the direction of travel. On modern slavery, for example, the Government are pretty clear that no matter where that is happening, we do not want to be entangled with suppliers involved in modern slavery and enslaving people. We should not want to be involved with, and companies and suppliers should not be giving public money to, the people committing these crimes. Just because this is not modern slavery, it does not mean that they are not creating significant problems and putting people in severe danger as part of the extreme regimes that they are working for.

I do not see the justification in allowing public money to be given to any of these organisations. As I said last week, it is not as though this is a high bar; it is a low bar. We are saying that modern slavery and genocide are crimes against humanity. Those are pretty much the most serious things we can think of. Any organisation involved in those should not get public money, whether or not it is a threat to national security.

I am slightly pleased that the Government and the Minister seem a bit more willing to look at the possibilities regarding Hikvision. I appreciate that removing it from secure and sensitive sites, particularly, is a priority for the Government—they have agreed that they will do that—but that is not enough; we should not fund these organisations at all. Asking the UK Government to make a move in that regard in order to remove this technology and ensure that Hikvision does not get any more of our money is incredibly important, and not too much to ask.

I stress again the point made by the hon. Member for Vauxhall: the clause does not ask for immediate removal. It gives the Government six months to publish a timeline for removal—it is not giving them six months to remove the stuff, but to produce a timeline. They are not being asked for something entirely unreasonable. There are other camera providers and technologies out there that could be used instead to provide safety and security for places that we want to be safe and secure, without our supporting a company propping up a regime that is profiling and committing crimes against humans just because they happen to be Muslim. That is completely unacceptable, no matter where in the world it is doing that. Whether or not this is being done in the UK, the Government should take action on that.

I will therefore strenuously resist any attempt to remove clause 65 from the Bill. I used this phrase earlier, but it should not be too much to ask for the Government to take action on this issue. I am pleased that the Minister seems to have moved his language slightly since our previous debate, but it is not good enough and we are not there yet. We need a firm commitment from the Government to remove this technology that is causing so much harm to the lives of so many and to remove the support for the people causing such harm.

Alex Burghart: I thank hon. Members for their remarks. As I said, we think that the clause as drafted would be unworkable. On what the hon. Members for Vauxhall

[Alex Burghart]

and for Aberdeen North said, we are moving to a new debarment regime, and I am not able to prejudge who will be covered by that regime. Suppliers will be considered for addition to the debarment list based on a rigorous and fair prioritisation policy. That policy is under development, and it is too early to say which suppliers will or will not be added to the debarment list.

We should remember that the new regime will give broader exclusion powers to authorities that have primary responsibility for applying the exclusions regime. The sorts of crimes we have touched on this afternoon, such as organ harvesting, modern slavery and the like, are very serious crimes against people and humanity, and no doubt that will have a bearing on future judgments. I appreciate where the amendment in the Lords came from, but we do not think the clause is workable. As a Government, however, we continue to consider the issue carefully.

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

The Committee divided: Ayes 5, Noes 8.

Division No. 28]

AYES

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

NOES

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

Question accordingly negatived.

Clause 65 disagreed to.

Clause 66

ELECTRONIC INVOICING: IMPLIED TERM

Alex Burghart: I beg to move amendment 50, in clause 66, page 45, line 30, at end insert—

"(5A) The implied term does not prevent a contracting authority—

(a) requiring the use of a particular system in relation to electronic invoices;

(b) in the case of a defence authority (as defined in section 7(5)), requiring the use of a system that requires the payment of fees by the supplier."

This amendment would ensure that a contracting authority can require the use of a particular system in relation to electronic invoices, and that a contracting authority that is a defence authority can require that the system is one that requires the payment of fees by the supplier.

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

Alex Burghart: Before I discuss Government amendment 50, I will take this opportunity to go back to the question that the hon. Member for Vauxhall asked me about timescales for exclusion. Generally, the look-back is five years, but for some offences, we have transitional provisions to avoid creating retrospective offences in the early years of implementation. I am happy to write to her with a more detailed explanation if that will be useful.

Amendment 50 will ensure that the clause, which governs electronic invoicing, does not inadvertently prevent contracting authorities from requiring suppliers to submit electronic invoices via invoice processing systems. Invoice processing systems are used by many contracting authorities and we want to make it clear that their use is permitted under the clause.

The amendment will also ensure that defence authorities are allowed to charge suppliers for using such systems. For security reasons, the Ministry of Defence does not permit suppliers to have direct access to their internal system to submit invoices and track payments in relation to its contracts. Suppliers are thus required to use and register with a third-party system in order to carry out invoicing and payments with the MOD. They are charged a fee for use of that system. Amendments 51 and 52, and 61 to 64 are all related to that, and we will return to them later in Committee.

More broadly, the clause applies a term to every public contract to ensure that invoice processing is done electronically. That is essential for swifter payments to suppliers, proper audit trails and increased visibility on public contract spend. It retains the principles of the existing regime with regard to e-invoicing. Nothing in a contract may restrict or override the implied term.

3.15 pm

Florence Eshalomi: I thank the Minister for introducing the amendment. As he highlighted, the clause mandates contracting authorities to accept non-disputed electronic invoices as an implied term in every contract. The amendment provides clarity that contracting authorities can require the use of a particular system for electronic invoicing, with extra provisions relating to defence contracts. We think that neither the original clause nor the amendment are disagreeable, and they are not controversial. We support their addition to the Bill.

Amendment 50 agreed to.

Clause 66, as amended, ordered to stand part of the Bill.

Clause 67

IMPLIED PAYMENT TERMS IN PUBLIC CONTRACTS

Florence Eshalomi: I beg to move amendment 110, in clause 67, page 46, line 32, at end insert—

"(10A) Within six months of the passage of this Act, the Secretary of State must prepare, publish and lay before Parliament a report on the effectiveness of this section in ensuring prompt payment of small and medium-sized enterprises.

(10B) Not later than 6 months after the report has been laid before Parliament, a Minister of the Crown must make a motion in the House of Commons in relation to the report."

This amendment would require the Government to report to Parliament on the effectiveness of this section in ensuring prompt payment of SMEs.

The amendment would add provisions to mandate that, within six months of passing this Act, the Government produce and publish a report on the effectiveness of implied payment terms in public contracts in ensuring the prompt payment of small and medium-sized enterprises.

One of the problems we see in procurement is the failure to promptly pay suppliers down the supply chain. Many of those suppliers are small and medium-sized enterprises, which require prompt payments to pay wages and bills, and, in some cases, to keep their company going. Failure to pay SMEs the money that they are owed can lead to serious repercussions.

The Government talk about improving the chances of SMEs when it comes to procurement, but for far too long, this has just been a lot of talk and no action. The statistics for SMEs and procurement are truly shocking. Analysis by the Spend Network found that big corporations still win the lion's share—more than 90%—of contracts worth £30 billion a year that are deemed to be suitable for bids from smaller businesses.

Research from the British Chambers of Commerce and Tussell found that just over one in every five pounds, or 21%, spent by the Government on public sector procurement in 2021 was awarded to SMEs. They also found that SMEs now receive a relatively smaller amount of reported direct Government procurement spending than they did five years ago.

As a proportion of the overall procurement budget, direct spend with SMEs by local government bodies was the highest at 38%. NHS bodies across England spent 22% of their procurement budget with SMEs, while central Government was significantly lower than the average, awarding only 11% of contracts to SMEs.

We have touched on the issue of subcontractors and why they should be paid on time by those contracting out their services, whether that is a contracting authority, a prime supplier or a supplier three or four rungs down the supply chain. We are pleased to see terms to protect the 30-day payment standard between contracting authorities and prime suppliers, but, as the Bill stands, we have concerns about its ability to properly protect subcontractors down the supply chain.

On Second Reading, the Paymaster General said:

> "On the prime, that is easy: we will be paying the prime contractor within the 30-day period. People in the supply chain will be aware of the contract under which they are supplying to the prime, and we expect that 30-day payment to trickle all the way down the chain. It is the first time that such a measure has been incorporated. It really will be for primes to be held to account. I say to hon. Members of this House that if partners to a contract are not being paid without good cause, it will call into doubt the contract with the prime supplier, so it will be very much in the interest of the prime supplier to deliver. Every effort the Government have made to improve the payment terms through the supply chains has so far been adhered to pretty well by industry. Across Government, we have seen a significant improvement in payments out to industry, and we are expecting a ripple-down effect as a result of the Bill."—[*Official Report*, 9 January 2023; Vol. 725, c. 347.]

Although we recognise what the Paymaster General was saying, we are left with some concerns, especially for the SMEs that are waiting for that vital payment. I do not think we can expect these terms to ripple down the supply chain, and it may take a while for a ripple-up effect to take place if a subcontractor down the line misses payments to another subcontractor in the supply chain, which could be serious. The Government say that that would reflect badly on the prime contractor, but what methods will the Minister use to track this? How will he be able to tell whether it is effective?

Our amendment would add a requirement to assess the effectiveness of the Government's claims about the ripple-down effect within six months of the Bill passing. As the Paymaster General highlighted on Second Reading,

> "This is the first time that such a measure has been incorporated."—[*Official Report*, 9 January 2023; Vol. 725, c. 347.]

Surely the Minister owes it to suppliers across the supply chain to check whether this method is effective. This should not be an arduous report to comply with, but it could provide a crucial stress test for the new system and feed into tweaks that go even further to ensure that all suppliers are paid on time. I hope that the Minister will agree with us about bringing SMEs into the procurement system and that those SMEs need to be paid in a timely manner. I urge him to support our amendment.

Alex Burghart: Amendment 110 would require Ministers to report to Parliament within six months of the Bill's passage, detailing how effective the implied payment terms in clause 67 have been in ensuring prompt payment of small and medium-sized enterprises. The new regime will not come into force immediately on passage of the Bill; secondary legislation will be needed prior to the go-live, as will the comprehensive programme of learning and development and the digital platform to support the increased transparency obligations. I am afraid, therefore, that the time period in the amendment is impractical.

In addition, there is already a requirement for contracting authorities to publish payment information, set out in clause 68 on payments compliance notices, which requires reports to be published on the speed of invoice payments one month after the end of each successive six-month period. Those reports will enable interested parties, including taxpayers and suppliers, to see for themselves how prompt payment performance has changed as a result of the new regime without the need for additional reporting. The reports will address payments to all suppliers of a contracting authority, rather than just SMEs, and will be publicly available for all to inspect. I therefore respectfully request that the amendment be withdrawn.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 29]

AYES

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

NOES

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

Question accordingly negatived.

Alex Burghart: I beg to move amendment 51, in clause 67, page 46, line 33, at end insert—

> "(za) 'electronic invoice' and 'required electronic form' have the meanings given in section 66(3);"

This amendment would clarify that "electronic invoice" and "required electronic form" in clause 67(8) have the same meanings as in clause 66(3).

The Chair: With this it will be convenient to discuss Government amendment 52.

Alex Burghart: Amendments 51 and 52 are technical amendments. Amendment 51 clarifies that clauses 67 and 66 mean the same thing when they refer to "electronic invoice" and "required electronic form". Amendment 52, similar to amendment 50, ensures that contracting authorities can require the use of a particular system in relation to the processing of electronic invoices.

Florence Eshalomi: The two amendments are uncontroversial and clarify points covering the terms of use. We will not oppose them.

Amendment 51 agreed to.

Amendment made: 52, in clause 67, page 46, line 36, after "address" insert

", or through an electronic invoicing system,".—*(Alex Burghart.)*

This amendment would clarify that a reference to a contracting authority receiving an invoice for the purposes of clause 67 includes receiving an electronic invoice through a system specified in the contract.

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

Alex Burghart: Briefly, clause 67 will set the standard by which all contracting authorities will be expected to pay their suppliers. The clause will imply 30-day terms into public contracts. Any attempts to override those payment terms will be without effect, unless the arrangements are to pay quicker than 30 days. Ministers may, by regulations, vary the number of days, provided that the number of days to pay suppliers does not exceed 30 days. SMEs will benefit from 30-day payment terms on a much broader range of public sector contracts, including those previously covered by public utilities and defence. The clause does not apply to concession contracts, utilities contracts awarded by a private utility or contracts awarded by a school.

Question put and agreed to.

Clause 67, as amended, accordingly ordered to stand part of the Bill.

Clause 68

Payments compliance notices

Alex Burghart: I beg to move amendment 53, in clause 68, page 47, line 18, at end insert ", or

(d) in relation to a concession contract."

This amendment would exempt contracting authorities from the requirement to publish a payments compliance notice in relation to a concession contract.

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

Alex Burghart: Amendment 53 will exempt concession contracts, and payments made under them, from the scope of payments compliance notices. This minor technical amendment aligns with the scope of clause 67 on implied payment terms in public contracts, from which concession contracts are excluded, and brings consistency across the payment clauses. It will also save contracting authorities from additional bureaucracy, as they will no longer have to produce a payments compliance notice where concessions are the only payments they are making.

Clause 68 will require contracting authorities to publish a payments compliance notice—specified information detailing how quickly they have paid suppliers—every six months. We are strengthening payment legislation to ensure that the public sector is held to account on its own performance. We are aligning how the public and private sectors report on their payment performance, and we will report against the same set of metrics. By creating a central repository of Government payment information, we will increase transparency of public sector payment performance and make external scrutiny of that performance easier. The clause does not apply to private utilities, contracts awarded by schools or Northern Ireland contracting authorities.

Florence Eshalomi: The amendment will exclude concession contracts from the provisions of the clause. Given that the nature of these contracts is to give the right to exploit a developed resource, it makes sense to exclude them from this part of the Bill. We will not be voting against the amendment and we welcome the provisions in clause 68. Contracting authorities should report on their compliance with the 30-day payment term. As we have touched on previously, sunlight is the best disinfectant, and the clause shines a light on whether contracting authorities are complying with payment terms.

As I highlighted in the debate on clause 67, however, I have concerns as to whether this will lead to a ripple-down effect, although benefits may arise from suppliers feeling some level of scrutiny when they are responsible for paying subcontractors, many of which, as I mentioned, will be SMEs—the same SMEs that are currently struggling in the procurement system. I have touched on the value of those contracts and the fact that the big corporations continue to win the lion's share of them, as shown by research from the British Chambers of Commerce. That research also found that direct spend is still quite a small proportion of the overall procurement budget.

I am disappointed that the Government did not see the sense of our amendment 110. I hope that will take action to ensure that suppliers are acting in the spirit of the clause.

3.30 pm

Alex Burghart: We intend to issue guidance separately to contracting authorities, setting out how to include spot checks on the payment performance of supply chain members through terms and conditions. We do not think that needs to be done in legislation; it can be addressed through guidance. Furthermore, contracting authorities are often better placed to use civil remedies and can have a significant influence over suppliers, so they should hold suppliers to account and ensure that payment terms are passed down the supply chain to subcontractors, enforcing such terms through contractual remedies if necessary.

Amendment 53 agreed to.

Clause 68, as amended, ordered to stand part of the Bill.

Clause 69

INFORMATION ABOUT PAYMENTS UNDER PUBLIC CONTRACTS

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

Alex Burghart: Clause 69 requires contracting authorities to publish specified information about any payment of more than £30,000 made by the authority under a public contract. That information must be published before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made. The financial threshold and time limit for publication may be amended by regulations.

The clause does not apply to public contracts awarded by private utilities or schools, or to concession contracts. Its purpose is to bring transparency to the expenditure of public money, and to allow interested parties to ascertain the value that was specified in the tender, the value of the contract at the point of award, and how the contract spend is progressing. The Northern Ireland Executive have decided to include a derogation from this publication obligation.

Florence Eshalomi: As the Minister outlined, the clause relates to the publication of information on payments of over £30,000 by contracting authorities. Its impact will be heavily affected by the ultimate state of the online system, as specified in clause 93. It is frustrating that many aspects of the Bill are to be set out in secondary legislation: we will not know whether this is a sensible and proportionate measure until we know how the online system promised by the Government will work. However, we believe that this is an important provision of the Bill, and as such we do not intend to oppose it.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Clause 70

ASSESSMENT OF CONTRACT PERFORMANCE

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

Alex Burghart: Clause 70 has two main functions. First, it requires contracting authorities that have set key performance indicators in their public contracts under clause 52 to assess performance against each KPI, and to publish the results at least once every 12 months. The exact nature of the information required in each case will be set out in regulations made under clause 90. The purpose of this provision is to bring greater transparency to the performance and management of public contracts.

Secondly, the clause requires contracting authorities to publish a notification in certain circumstances relating to breach of contract or poor performance by a supplier. The circumstances are equivalent to those that constitute the discretionary exclusion ground for breach of contract and poor performance in paragraph 13 of schedule 7. The purpose of the provision is to provide verifiable information for contracting authorities on suppliers that meet the exclusion ground for breach of contract or poor performance. Clause 70 does not apply to private utilities, and the subsections relating to poor performance do not apply to light-touch contracts.

Florence Eshalomi: As the Minister outlined, the clause relates to key performance indicators and lays out how they will be assessed in the system. Subsection (2) mandates an annual assessment of the key performance indicators and the publication of information in this area. Again, this subsection makes reference to clause 93 in terms of how information relating to the key performance indicators is to be published. It might be useful to consider what information should be part of that system.

There could be merit in having an obligation to publish information on performance workflows and the relationships between contracting authorities and suppliers. The obligation could mean that contracting public bodies must publish the following on a six-monthly basis in respect of service contracts: operational performance against contracts; changes to staff terms and conditions; financial performance and payments made to contractors; costs of client contract management; any financial penalties or service credits; and details of meetings between decision makers. They could also publish the contracts within three months of them being let.

Subsection (5) relates to information that must be published within 30 days where a contracting authority believes a supplier has breached a contract to the point of termination or remedy. It also covers instances where suppliers provide an unsatisfactory service following a proper opportunity to improve performance. The powers are important to ensure that the process is properly followed when a supplier is not delivering for the public. It is right for the supplier involved and for the public that the information is published. We therefore support the inclusion of the clause in the Bill.

Question put and agreed to.

Clause 70 accordingly ordered to stand part of the Bill.

Clause 71

SUB-CONTRACTING: DIRECTIONS

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

The Chair: With this it will be convenient to discuss clause 72 stand part.

Alex Burghart: Clause 71 covers subcontracting, which is an important part of the delivery of public contracts. It enables businesses to use specialist suppliers to increase their overall effectiveness and efficiency. It also encourages SMEs to participate in public sector procurement, which helps to encourage innovation and deliver value for money for the public. The clause applies when a contracting authority either requires or permits a supplier to subcontract, and also where that subcontractor has been relied on to pass conditions of participation. In such circumstances, a contracting authority may direct a supplier to enter into a legally binding agreement with the proposed subcontractor, failing which the contracting authority can refuse to enter into the public contract, require an alternative subcontractor, or terminate the contract if already commenced.

[Alex Burghart]

Clause 72 will ensure that the 30-day payment terms set out in clause 67 will apply throughout the public sector supply chain, regardless of whether they are written into the contract. That will ensure that businesses in the supply chain that substantially contribute to the performance of a public contract benefit from the prompt payment and the liquidity benefits it brings. Unlike the equivalent provisions in the Public Contracts Regulations 2015, clause 72 includes defence and public utility contracts, benefiting SMEs in the supply chain across a much broader range of public sector contracts. Those rules do not apply to utilities contracts awarded by a private utility, concession contracts and contracts awarded by a school.

Florence Eshalomi: Clauses 71 and 72 relate to the treatment of subcontractors in the system. We welcome the clauses as a step forward in the attempt to ensure the prompt payment of subcontractors. The Bill makes a slight alteration from the current system by making a 30-day payment an automatic term for subcontractors rather than requiring the contracting authority to include an obligation on its suppliers to flow down. We have spoken at great length about the issue of subcontractors being paid on time, and the fact that many smaller businesses rely on prompt payment. We do not see any issue with the clauses, which we are happy to support.

Question put and agreed to.

Clause 71 accordingly ordered to stand part of the Bill.

Clause 72 ordered to stand part of the Bill.

Clause 73

Modifying a public contract

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

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

That schedule 8 be the Eighth schedule to the Bill.

Government amendment 54.

Clauses 74 and 75 stand part.

Government amendments 55 to 58.

Clause 76 stand part.

Alex Burghart: I will take a deep breath. Clause 73 sets out when a contracting authority may modify a public contract or when a contract, as a result of a modification, will become a public contract—that is to say, a convertible contract. It provides that a contract may be modified in one of the following circumstances: where the modification falls within one of the grounds permitted under schedule 8; where the modification itself is not a "substantial modification"; or where the modification itself is below a threshold that makes it de minimis in effect. Certain contracts, such as below-threshold contracts and light-touch contracts, are exempt from the constraints on modifications.

A "substantial" modification in this context is one that increases or decreases the duration of the contract by more than 10%, or materially changes the supply of the deliverables under the contract, or makes the contract materially more economically beneficial to the supplier.

Clause 73(4) clearly defines what constitutes a "below-threshold modification". Those low-value modifications, to be properly considered as such, must not materially change the contract in either value or scope. A cap is placed on successive modifications permitted under this ground, as the aggregated value of below-threshold modifications made during the lifetime of a contract should be less than the Government procurement agreement threshold amount for the type of contract. Overall, these provisions give contracting authorities more usable grounds to make modifications that are not sufficiently material to justify requiring contracting authorities to run a new competition.

Schedule 8 sets out seven grounds, in addition to the two provided in clause 73, on which contract modifications are permitted. Four of those grounds are based on policy retained from existing legislation, as consultation established that contracting authorities wished to retain those commonly relied on "safe harbours". Those four grounds are where the modification is provided for in the contract; where the modification has arisen due to unforeseeable circumstances; where the modification is for additional goods, services or works in specific limited circumstances; and where the modification is to effect a transfer of the contract following a corporate restructuring. I would like to be clear that that concise ground on corporate restructuring is intended to cover all the circumstances, such as insolvency, detailed in the Public Contracts Regulations 2015.

We have also introduced three new grounds, to provide for greater flexibility that stakeholders have indicated is needed, and to give greater legal certainty to contracting authorities than the existing grounds currently afford. The new ground of

"Urgency and the protection of life, etc"

will enable contracting authorities to act swiftly and efficiently in extraordinary circumstances and modify existing contracts to adapt to those urgent requirements.

The new ground permitting modifications on materialisation of a known risk will give contracting authorities legal certainty that they can modify contracts to adapt to a risk that, although identified as such at the outset, could not be addressed in the initial contract document in clear and unequivocal terms. The risk must have materialised through no fault of the contracting authority or supplier and must have been identified in the tender or transparency notice.

For example, if, due to quickly emerging cyber-threats, a requirement for a new software system to hold personal information needs to be adapted in order for it to operate safely and adequately protect that information, the contracting authority can adjust the requirement accordingly, provided that the risk of the new cyber-threat was identified up front in the required notices.

3.45 pm

The defence-specific grounds necessary for the effective operation of defence and security are contained in two paragraphs. Paragraph 10 of schedule 8 permits a defence authority contract to be modified to take advantage of technological developments, or to minimise potential adverse impacts. Paragraph 11 permits a defence authority contract to be modified to ensure there are no operational gaps in a contract. This provision ensures that contract modifications necessary for the armed forces to maintain

operational capability, effectiveness, readiness for action, safety, security or logistical capabilities can be made. That will ensure that lack of contract cover does not expose the armed forces to unnecessary risk.

Government amendment 54 deletes a provision in clause 74 that requires a contract change notice to be completed for light-touch contracts in circumstances of contract novation. That is an unnecessary provision as light-touch contracts are excluded from the requirement to publish contract change notices in any circumstances, at subsection (6)(b).

Clause 74 sets out the mandatory transparency requirement that, before modifying a public contract or convertible contract, a contracting authority must publish a contract change notice. Contract modifications are an area where costs to taxpayers can spiral. Mandatory publication of contract change notices for those modifications will attract greater scrutiny of modifications, making contracting authorities more accountable for how they spend taxpayers' money.

The transparency requirement, moreover, is proportionate. Contracting authorities are not required to publish a notice if the modification varies the estimated value of the contract by 10% or less in the case of a contract for goods or services, or 15% or less in the case of a contract for works; or where the modification changes the duration of the contract by less than 10%. Contracting authorities must, however, publish a notice in circumstances of contract novation.

Modifications to defence and security contracts, light-touch contracts, and contracts awarded by private utilities and by Northern Ireland are exempted from the requirement to publish contract change notices. Finally, we have taken a power to make regulations to amend the value and duration percentages above which a contract change notice is required.

Clause 75 sets out that a contracting authority may not modify a public contract or a convertible contract before the end of the standstill period that it voluntarily provided for and described in a contract change notice. The details of that standstill would be set out in the notice, but subsection (2) specifies that the standstill period must not be less than eight working days.

Standstill gives contracting authorities and suppliers a compressed, critical period before the proposed modification is entered into. During that period, suppliers and interested third parties may consider the validity of the proposed modification and challenge the contracting authority on it. If a challenge is received during the standstill period, the contracting authority is obliged automatically to suspend the modification, which then cannot be entered into until the challenge has been resolved. Challenges received after the standstill period, however, would not result in an obligation automatically to suspend the modification.

The standstill rules also provide contracting authorities facing a successful challenge with greater protection against the modification being set aside—that is, treated as being without any effect from the date of any court order. Choosing to apply a voluntary standstill therefore gives contracting authorities greater certainty and confidence in proceeding with modifications once the standstill period has elapsed.

Government amendments 55 to 58 correct and update clause 76 to ensure that contracting authorities are only obliged to publish modifications to high-value contracts when a contract change notice is required. Amendment 55 adds the contract change notice provision to the existing requirement that contracting authorities must publish a copy of the contract as modified, or the modification itself, if the contract being modified has an estimated value of more than £5 million. That includes contracts where the value of the modification itself pushes the estimated value of the contract over the £5 million threshold. Amendments 56 to 58 are consequential to amendment 55.

The effect of those amendments will be to reduce the administrative requirement on contracting authorities in a proportionate manner. Authorities will not be obliged to publish the minor contract modifications that may arise during the life of a contract—only those that are significant enough to require a contract change notice.

Clause 76 sets out a transparency requirement in regards to contract modifications. With the addition of the Government's amendments 55 to 58, which I have just discussed, the clause stipulates that if a contracting authority publishes a contract change notice and makes a contract modification that modifies or results in a contract valued above £5 million, the authority must publish either a copy of the contract as modified or a copy of the modification itself.

It is important to note that, as defence and security contracts, light-touch contracts, private utilities and Northern Ireland authorities are exempt from the requirement to publish contract change notices, they are exempt from that provision. The Welsh Government have opted to take an exemption from the requirement, although they will publish contract change notices under clause 74. Publications made under clause 76 will enable interested third parties to check that contracting authorities are abiding by the contract modification rules and that they have published contract change notices correctly on significant contract modifications.

Overall, the publication of modifications requirement, coupled with the mandatory publication of contract change notices, is a real step change in transparency from the existing regime—sunlight, Mr Mundell. It is a change that will give interested parties sight of the modifications made, including the money spent on those modifications, during the life of a contract.

The Chair: We all like sunlight, Minister.

Florence Eshalomi: I thank the Minister for the points he has outlined. Amendment 54 is largely uncontroversial, removing an unnecessary provision from clause 74.

Amendments 55 to 58, taken together, would reduce the burdens on contracting authorities to publish contract modifications, requiring them to do so only where they are required to under clause 74, which does not cover changes that only change the value or length of the contract to a relatively small degree. Without the amendments, even minuscule contract amendments would be required to be published. Although these measures cover the larger contracts affected by the Bill—in particular, those valued over £5 million—it would be a disproportionate burden on contracting authorities to be required to publish every change to a contract. We understand the rationale for the amendments and we do not intend to oppose them.

[Florence Eshalomi]

On clauses 73 to 76 more widely, we understand that it is necessary, on occasion, to alter public contracts. It is important that the circumstances are justified, and we are pleased to see schedule 8 set out proportionate reasons to modify contracts. However, it is important to ensure that contracts are drawn up in a way that does not open this part of the Bill up to abuse.

As noted in paragraph 1 of schedule 8, modifications can be made if they are agreed in the contract and do not

"change the overall nature of the contract."

However, there must not be a free-for-all. Contracting authorities must draw up contracts that provide the right flexibility for change. We should not expect service levels to vary massively because contracts are written in a way that would allow modification under this part of the Bill. For example, our engagement with stakeholders has revealed concerns that modifications are seen as an alternative to remedy and clawback, and that expensive legal fees put authorities off using clawback clauses, with those authorities instead opting to renegotiate terms with suppliers. That should not be the case.

We do not believe the best way to tackle that is necessarily through the Bill, but it is an important point. In an answer to a parliamentary question dated 20 December 2022, the Government admitted that money was wasted and that only £18 million had been clawed back from PPE contracts. That was only highlighted after the National Audit Office revealed that the Government had effectively written off quite a lot of that money, and auditors had rebuked the Department of Health and Social Care for its management of taxpayers' cash during the pandemic.

It is a shame that the Government are still locked in legal battles with companies that failed to deliver on their contractual obligations. The public expect their money to be clawed back when contracts are broken, but if even the Government find it difficult to claw back money from contracts, it is little wonder that smaller contracting authorities apparently rely on contract alterations to seek remedy. The result is that suppliers that have not delivered for the public keep winning contracts to deliver services.

I understand why people may look at a supplier and say, "This supplier has failed to deliver services to an acceptable standard. Why are they still delivering our services? Why has this supplier not had this contract taken off them? Why have we not got our money back?" They are all valid questions. I hope that the Minister will outline his understanding of the use of contract modification as a substitute for clawbacks, and what steps he is taking to ensure we get our money back from suppliers.

We feel it is right that contract changes are published. Clauses 74 and 76 allow for the publication of a notice of change and, for larger contracts, publication of the changes and the altered contract. Those measures are proportional to the provisions of clause 53, relating to publication when a contract starts.

Clause 74 refers to the terms of clause 93. We agree with the introduction of a new online programme, but it is disappointing that we do not have the detail of what will be expected as part of that system. We should not leave future Governments with their hands tied, unable to go beyond what we can achieve today, but we do think that the Government could show some base level of ambition and outline the basic level of transparency that we think the system should allow. I hope the Minister will touch, even just briefly, on how the system will work and what information will be expected under clause 74, via the provisions of clause 93.

Alex Burghart: To the hon. Lady's first point, we all accept that, in exceptional circumstances, contracting authorities may have to move very quickly to procure essential goods, services and works with minimal delay. Launching a new procurement procedure can take time. When time is of the essence and when a supplier has proven in-contract its ability to deliver to time, cost and the expected standard, it makes sense to take the modification route. To be clear, these are areas where the urgency and protection-of-life grounds must exist in the first place.

With the new transparency rules in clauses 74 and 76, taxpayers will be able to see exactly where we propose to spend their money, including where there is additional expenditure through use of modification grounds. The transparency rules will require contract change notices to be published in circumstances where the urgency ground is used and, where such modifications are made to contracts over the £5 million threshold, the modifications themselves will need to be published.

On the hon. Member for Vauxhall's general point about what happened during the pandemic, she will have heard me say on a number of occasions that the Department of Health and Social Care, despite the circumstances in which it was working, had robust contracts in place. That means it is capable now, where it was given defective goods, to enter mediation. If that proves insufficient, it will be able to enter into litigation. The whole purpose of the exercise in which we are currently engaged—at length—is to ensure that we have better procurement processes in this country. That is what the Bill is going to deliver.

Question put and agreed to.

Clause 73 accordingly ordered to stand part of the Bill.

Schedule 8 agreed to.

Clause 74

CONTRACT CHANGE NOTICES

Amendment made: 54, in clause 74, page 51, line 5, leave out paragraph (c).—*(Alex Burghart.)*

This amendment would remove unnecessary provision, as light touch contracts are excluded from the whole clause under subsection (6)(b).

Clause 74, as amended, ordered to stand part of the Bill.

Clause 75 ordered to stand part of the Bill.

Clause 76

PUBLICATION OF MODIFICATIONS

Amendments made: 55, in clause 76, page 51, line 40, after "modification" insert "—

(a) in respect of which the contracting authority is required to publish a contract change notice under section 74, and".

This amendment would limit the requirement to publish a copy of a contract as modified or a modification to those modifications in respect of which the contracting authority was required to publish a contract change notice.

Amendment 56, in clause 76, page 51, line 43, leave out paragraphs (a) to (c).

This amendment is consequential on Amendment 55.

Amendment 57, in clause 76, page 52, line 3, leave out "or a transferred Northern Ireland authority".

This amendment is consequential on Amendment 55.

Amendment 58, in clause 76, page 52, line 7, leave out "or a transferred Northern Ireland procurement arrangement".—*(Alex Burghart.)*

This amendment is consequential on Amendment 55.

Clause 76, as amended, ordered to stand part of the Bill.

Clause 77

IMPLIED RIGHT TO TERMINATE PUBLIC CONTRACTS

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

4 pm

The Chair: With this it will be convenient to discuss clauses 78 and 79 stand part.

Alex Burghart: Clause 77 sets out that it is an implied term of public contracts that a contracting authority can terminate a contract if one of a number of termination grounds apply. These are where a contracting authority considers that the contract was awarded or modified in breach of the Bill and regulations made under it, where a supplier has become an excluded or excludable supplier, or where a subcontractor is an excluded or excludable supplier.

These last two grounds considerably expand the implied right to terminate on exclusion grounds and are a good example of how we are tightening the rules on poor suppliers. Contracting authorities must still give suppliers that subcontract to an excluded or excludable supplier the opportunity to cease their arrangements. Contracting authorities must also communicate any intention to terminate the contract on these grounds before proceeding to terminate.

Clause 78 requires contracting authorities to obtain approval from a Minister before terminating a contract in reliance on the discretionary exclusion ground for suppliers that pose a threat to national security. Subsection (1) states that this requirement applies when contracting authorities are seeking to rely on the implied termination right in clause 77 where a supplier or subcontractor is excludable in respect of the national security exclusion ground. Subsection (2) says that this requirement applies to all contracting authorities other than a Minister, a Department or a corporate officer of the House of Commons or House of Lords.

The clause is essential to ensure that contract terminations on the basis of national security are not made without ministerial consideration of the risk posed by the supplier and the impact of the decision. The requirement to seek ministerial approval will allow for the views of those tasked with protecting national security, including the security services, to be taken into account.

Clause 79 sets out the mandatory transparency requirement that all contracting authorities must publish a contract termination notice on termination of all public contracts, with the exception of private utilities contracts and user choice contracts that have been directly awarded. It specifies the time period by which it must be published, which is 30 days after a public contract has terminated. It also sets out that contract termination notices will contain information that will be specified in the regulations made under clause 93.

Clause 79(3) makes it clear that a reference to termination includes: discharge, expiry, termination by a party, rescission, or set aside by court order, whether or not under part 9 remedies. That list does not exclude other references to termination, and a contract termination notice should be issued at the conclusion of a contract, however that contract has ended.

Florence Eshalomi: Clauses 77 to 79 relate to provisions that allow for the termination of contracts in specific circumstances. The implied circumstances include the contract being awarded or modified in a material way in opposition to this Bill, or a supplier becoming an excluded or excludable supplier. They also provide for termination when a supplier is subcontracting all or part of the contract to an excluded or excludable supplier.

The Opposition understand and support the need for these provisions, but we have some concerns about the meaning of the clauses. When a contractor becomes an excluded supplier, will the contract be terminated automatically? It would seem strange that, although a contract cannot be awarded to a supplier under those terms, an excluded supplier is not automatically stripped of a contract when they become excluded.

Some of the provisions included under the excluded schedule are extremely severe. They include human trafficking offences, slavery offences, corporate homicide and even terrorism. We must make it clear that, when suppliers are convicted of such crimes, they must not provide contracts for public services. I hope we all agree on that. Does the clause allow for contracts with excluded suppliers to be automatically terminated, or is that at the discretion of the contracting authority? That is a really important point, and I hope the Minister will be able to clarify it. The public would not expect a supplier that has been convicted of terrorism to still be carrying out public contracts, even if the contracting authority decides it is right.

We also have concerns about how discretionary exclusion grounds are treated in this part of the Bill. As I have previously said, we want consistency in the Bill on when these grounds are applied. We do not believe that it makes sense for a company to have its contract terminated by one contracting authority for, say, environmental misconduct, but in the same breath keep a similar contract with similar risk with another contracting authority based simply on the decision of the authority. A lot of that is inconsistent and confusing, which has been highlighted, and it means suppliers that fall foul of discretionary exclusion grounds to the degree that a contract can be stripped from them may still be providing services to the public in other areas. The Minister has highlighted the need for discretion, which we understand, but surely there should be some level of consistency.

I also raise the inconsistency between national security in clause 78 and how the Minister laid it out previously. We do not wish to vote against clause 78, and we believe that it is the right way to carry out public procurement

[Florence Eshalomi]

when considering national security. As the name suggests, national security is a national issue. However, during the Minister's remarks on our amendments 15 to 19, he said:

"Amendments 15 to 19 seek to make exclusion on national security grounds mandatory, rather than discretionary. Any risk to national security should of course be taken very seriously indeed, but it is right that we leave some scope for nuance and flexibility in the application of the exclusion ground. Suppliers may pose a risk in some contexts, but not in others."

The Minister went on to say:

"It is important to note that contracting authorities must consider all exclusion grounds, mandatory and discretionary, against every supplier in each procurement."

He also said:

"There would be a balance of risks. Not all security threats are proven. Of course, it is up to the authority to assess the concerns".—[*Official Report, Procurement Public Bill Committee*, 2 February 2023; c. 113.]

Based on what the Minister said in response to our amendments, there is some inconsistency in this approach. We need verification to identify a national security threat on a national scale and to disregard a contract on that basis, but to say that awarding or terminating a contract for a national security threat is at the discretion of authorities is a little contradictory.

For example, let us take what happens when a contracting authority identifies a threat. If the authority decides not to terminate the contract regardless, the contract is awarded with no follow-up from the Government and no check that it is a threat. If the authority decides to terminate the contract, it needs to go through a check with the Minister and confirm whether it is a threat. We think that is the right course of action, but why should the decision effectively be taken at different levels? Surely there should be an obligation to check with the Government regardless of whether the contract is terminated or not. At the very least, the Government can advise on the decision not to terminate the contract based on the threat.

As I and those who submitted evidence have highlighted, we can see procurement departments in many organisations being overstretched. We cannot expect those very same contracting authorities we want to come forward to bid for public contracts to act as MI5 or national security experts.

The Chair: I call the Minister, mindful that there will be a vote in the House at 4.12 pm.

Alex Burghart: I will try to contain my remarks to the next few minutes. Before I get to the specifics, I should for the sake of posterity record that, by working so hard today, hon. Members have reached the end of the selection list. Had more groupings been available, they would no doubt have wished to go further—*[Interruption.]* Cries of "More, more!" were heard from the Opposition Benches.

I will return to some of our previous conversations. As I said earlier to the hon. Member for Vauxhall, there will be times when a supplier may have made errors and got itself into trouble. It may be the case that there are times when a company has suppliers over which there are national security concerns, but they supply goods that cannot be found anywhere else and do not in themselves present a risk to national security. That is the role of the difference. The Division bell is ringing, but I am happy to pick up on this when we meet again on Thursday.

Question put and agreed to.

Clause 77 accordingly ordered to stand part of the Bill.

Clauses 78 and 79 ordered to stand part of the Bill.

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

4.11 pm

Adjourned till Thursday 9 February at half-past Eleven o'clock.

Written evidence reported to the House

PB 23 Serco Group Plc

PB 24 Chris Smith, e-Procurement and Procurement Consultant, CA Procurement Consulting Ltd (further submission)