PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PROCUREMENT BILL [*LORDS*]

Seventh Sitting

Thursday 9 February 2023

(Morning)

CONTENTS

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

Monday 13 February 2023

The Committee consisted of the following Members:

Chairs: Clive Efford, † David Mundell

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

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

† attended the Committee

Public Bill Committee

Thursday 9 February 2023

(Morning)

[David Mundell *in the Chair*]

Procurement Bill [*Lords*]

11.30 am

The Chair: Before we begin, I remind you that *Hansard* colleagues will be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Clause 80

Conflicts of interest: duty to identify

Florence Eshalomi (Vauxhall) (Lab/Co-op): I beg to move amendment 116, in clause 80, page 54, line 32, after "who" insert "directly or indirectly".

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

Amendment 117, in clause 80, page 55, line 2, at end insert—

"'person who directly or indirectly influences' includes but is not limited to—

(a) civil servants;

(b) government contractors or consultants and their employees;

(c) special advisers;

(d) parliamentarians; and

(e) political appointees."

Clause stand part.

Clauses 81 and 82 stand part.

Florence Eshalomi: It is a pleasure to serve under your chairship again, Mr Mundell.

Clauses 80 to 82 concern cases where a conflict of interest may arise during the procurement process. In particular, the clauses place obligations on contracting authorities to identify and mitigate against conflicts of interests where they may arise. The clauses are important, and it is correct, alongside the principle of non-discrimination, to ensure that suppliers that may be able to unduly influence the decisions of contracting authorities are excluded from the procurement process.

It is critical that taxpayers' money is spent in the right way. We cannot and must not have a repeat of the back-room deals that we saw during the covid pandemic. The public expect their money to be spent in an open and transparent way, and they expect the value for money that comes with openness and transparency.

We know what happens when that is not the case. I have referred to this figure before, but it is important to keep stating it: the Government have written off £10 billion of public money spent on personal protective equipment that was unusable, unsellable, overpriced or undelivered. With £770,000 a day being spent to store unused gloves, goggles and gowns, that is not acceptable. The companies that got into the VIP lane were 10 times more likely to win a contract, and Ministers have now admitted that many did not go through the so-called eight-stage process of due diligence.

We know, therefore, that much more needs to be done to stand steadfast against conflicts of interests in procurements. We believe that clauses 80 to 82 may offer a step forward, but we also think that we could go even further to capture the wide range of influence on procurement decisions that may give rise to conflicts of interest.

Our amendments 116 and 117, taken together, would achieve that. They were suggested by Spotlight on Corruption in its written evidence to the Committee. We feel that they strike the right balance to increase scrutiny in the procurement system. In justifying the amendments, Spotlight on Corruption stated:

"As the Mone affair and the VIP lane as well as other COVID procurement scandals have shown, indirect influence over procurement decisions pose a real risk to public perceptions about the fairness and integrity of procurement. The fact that a minister, special adviser, or politician referred a company for emergency covid procurement appears to have been at least entertained as part of the decision-making process by procurement officials in awarding contracts. While this was an emergency procurement context, it has exposed the vulnerabilities in the UK procurement regime and the potential for those in political office to influence procurement decisions.

Sir Nigel Boardman's reviews specifically recommended that conflicts of interest in procurement should be identified in relation to a broad range of actors, including: civil servants, special advisers, contractors, consultants and political appointees. The 'VIP lane', as well as the Owen Paterson affair, show that members of parliament, who may have private interests, can also seek to influence government procurement decisions in favour of those interests.

As it is not specified on the face of the Bill what the term 'influences' may include, it is not clear whether the term will be interpreted narrowly or more widely by contracting authorities. To ensure that it is interpreted widely, in our view, the Bill should contain specific language to reflect indirect influence (which might include lobbying or financial interests), and the wide range of people who may exert such influence."

The Opposition agree with Spotlight on Corruption's arguments and believe that it makes a strong case for the inclusion of such language in the Bill.

If we are asking the public to trust us with their money, we must never let the VIP lane scandal happen again. I hope the Minister will agree that the amendments would strengthen our defence against undue influence, and I urge him to support them.

The Parliamentary Secretary, Cabinet Office (Alex Burghart): It is a pleasure to serve under your chairpersonship again, Mr Mundell. It is good to be back for the fourth day of deliberation in Committee.

Clause 80 is clear that a contracting authority must take all reasonable steps to identify conflicts or potential conflicts of interest on the part of those acting in relation to a procurement. Amendment 116 is impractically broad. The Bill already provides safeguards in clause 82(4), which could lead to the contracting authority taking steps in relation to a person with an indirect influence on a procurement, where the contracting authority

believes that such a circumstance would be likely to cause a reasonable person to believe there to be a conflict.

Extending conflicts of interest to be identified in respect of any individual with only an indirect influence over the decisions of contracting authorities, as the amendment seeks to do, would go too far. It would add unnecessary administrative burdens on contracting authorities and potentially make it impossible for them to comply with the requirements of the Bill. It is not reasonable for a procurement officer to be expected to identify all individuals who may indirectly influence a procurement decision, let alone their potential conflicts of interest, in respect of every supplier tendering for every procurement. For example, it could lead to a school, when undertaking any public procurement, having to identify and consider the interests of all senior civil servants and Ministers in the Department for Education and the Treasury. That would be neither practical nor desirable.

Amendment 117 would add a list of certain individuals for contracting authorities to consider when identifying conflicts of interest. Such a list of individuals is better kept in guidance rather than legislation. All the persons listed in the amendment, where they have influence in respect of the relevant procurement decision, will already be caught by the current provision but may not be relevant in every single procurement by every single contracting authority. We therefore respectfully request that the amendments be withdrawn.

Clause 80 sets out the obligations on a contracting authority to take all reasonable steps to identify and keep under review potential or actual conflicts of interest. It is followed by clause 81, on duties to mitigate, and clause 82, on conflicts assessments. When conflicts of interest are not properly identified and mitigated, there can be far-reaching consequences, which can lead to accusations of fraud, bribery and corruption, legal challenges and the undermining of public confidence in the integrity of our public institutions.

Clause 80 details the individuals in respect of whom conflicts, or potential conflicts, should be identified. That includes people acting for, or on behalf of, the contracting authority in relation to the procurement; a person with influence on the decision making; and a Minister acting in relation to the procurement. The clause also defines what constitutes an interest, which can be a personal, professional or financial interest, either direct or indirect.

Clause 81 sets out obligations on a contracting authority to take all reasonable steps to mitigate conflicts of interest. As a rule, it is important that we treat all suppliers the same in our procurements. That is critical for us to ensure fair and open competition and deliver the best value for money. At the same time, a conflict of interest relating to a supplier should not automatically lead to their exclusion. We must therefore ensure that where conflicts of interest are identified, contracting authorities can first attempt to put mitigations in place to avoid a given supplier having an unfair advantage or disadvantage. A contracting authority must take all reasonable steps to do so and may require a supplier to take reasonable steps too. However, to ensure open competition and genuine fairness in the procurement, if a conflict of interest does lead to an unfair advantage that cannot be avoided, or the supplier refuses to take certain steps to avoid it, that supplier must be excluded.

Clause 82 places specific duties on contracting authorities in relation to conflicts assessments. In large part, those duties are to ensure compliance with clauses 80 and 81. A conflicts assessment is a document that includes the details of both the conflicts of interest identified and any steps taken to mitigate them. The structure or format of such a document will remain within the discretion of the contracting authority, and is likely to depend on the procurement. A contracting authority must prepare a conflicts assessment at the start of the procurement and keep it under review, revising it where necessary. When publishing a relevant procurement notice, the authority must confirm that those actions have been undertaken. This is a new duty on contracting authorities that strengthens the existing requirements relating to conflicts.

It is important to clarify that there is no duty to publish the conflicts assessment; rather, contracting authorities must publish confirmation that the assessment has been prepared or revised. Conflicts of interest can adversely impact procurements at any point of the commercial lifecycle, and the Committee will note that the definition of "relevant notice" in clause 82(8), which specifies when there should be confirmation that the conflicts assessment has been revised, reflects that fact.

I respectfully request that the amendment be withdrawn, and commend the clauses to the Committee.

Florence Eshalomi: I understand the Minister's concern about additional bureaucracy, but we should aim to make sure that there is no interpretation regarding undue influence. There is a view that the Bill should contain specific language to reflect indirect influence. I hope the Minister agrees that the notion of transparency and making sure that no perceived conflicts arise should be fully addressed in order to ensure that we restore public trust, especially as it relates to Government money—taxpayers' money—and large contracts. We need to stamp out some of the concerns that many people rightly highlighted about what happened during the covid-19 pandemic. Yes, there were some cases in which emergency contracts had to be procured, but as I have already mentioned, on numerous occasions, the proper procedure was not followed. I hope the Minister agrees that the Bill should contain specific language reflecting what is termed indirect influence.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 30]

AYES

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

NOES

Bhatti, Saqib	Gibson, Peter
Burghart, Alex	Marson, Julie
Duguid, David	
French, Mr Louie	Randall, Tom

Question accordingly negatived.

Clause 80 ordered to stand part of the Bill.

Clauses 81 and 82 ordered to stand part of the Bill.

Clause 83

REGULATED BELOW-THRESHOLD CONTRACTS

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

The Chair: With this it will be convenient to discuss clauses 84 to 87 stand part.

Alex Burghart: The rules on contracts that are valued below the thresholds set out in schedule 1 broadly represent a continuation of the position under the Public Contracts Regulations 2015 and have four main functions. They apply some basic procurement standards on transparency; they continue the ban on burdensome pre-qualification stages; they ensure that suppliers get paid promptly; and they ensure that small and medium-sized businesses are considered. These rules are justifiably simpler and less onerous for contracting authorities and suppliers, given the low value of the contracts concerned. Taken together with the new duty to have regard to SMEs in clause 85, the rules will help to make Government procurement more accessible to SMEs and voluntary organisations, charities or social enterprises.

11.45 am

Clause 83 defines a regulated below-threshold contract for the purposes of these rules. It will ensure that contracting authorities only apply the rules on below-threshold contracts where the procurement does not fall into any of the exempt categories, given that we wish to regulate only where strictly necessary. Accordingly, the rules do not apply to utilities, concession contracts, the categories of exempted contract listed in schedule 2, or schools and educational institutions, in order to minimise the administrative burdens on those sectors. The Northern Ireland Executive have also chosen not to apply below-threshold rules to procurement by transferred Northern Irish contracting authorities.

Clause 84 will prevent contracting authorities from using burdensome pre-qualification questionnaires that ask about, for example, a potential supplier's ability to deliver the proposed contract as a way of screening out suppliers. Suppliers have told us that such questionnaires are a major barrier for SMEs because they often contain excessive or disproportionate requirements. In this way, all suppliers that are well equipped to deliver the requirement, regardless of their size, will be considered.

Clause 85 imposes on contracting authorities a specific duty to have regard to and consider removing or reducing barriers to the participation of SMEs before inviting the submission of tenders for regulated below-threshold contracts. That provision essentially mirrors the duty to have regard to SME participation for above-threshold contracts in clause 12(4).

Clause 86 requires contracting authorities to publish a tender notice on the central platform for below-threshold procurements, but only when they are otherwise making the opportunity publicly available. Contracting authorities are not required to do so if they will only invite bids for particular or pre-selected suppliers, for example if they are calling off from a framework agreement. In addition, any time limits set out in a tender notice—for example, for the submission of bids—must be reasonable and the same for all suppliers.

Details of who has won the contract and its value will also be published on the central platform for all procurements in scope of the regulated below-threshold rules. That must be done as soon as reasonably practicable after the contract is entered into. The tender notice and contract details notice requirements only apply to contracts with a value greater than £12,000 for central Government authorities, and £30,000 in other cases.

The clause underpins our commitment to ensure that public procurement conforms with some basic minimum standards of transparency and fairness for procurements that, while of relatively low value, concern not insignificant amounts of public money. This will help to open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts.

Clause 87 will apply the rules concerning 30-day payment terms to below-threshold regulated contracts.

Florence Eshalomi: I thank the Minister for outlining the clauses, which, as he highlighted, deal with below-threshold contracts. While such contracts do not meet the threshold for inclusion in many parts of the Bill, they will still need to follow some bits of regulation in how they are processed. In particular, a contract details notice must be published for contracts above £12,000 or £30,000 —known as notifiable below-threshold contracts—after they are entered into. Below-threshold contracts must follow the procedures relating to the 30-day payment rules.

The clauses are almost identical to current regulations, and we support their inclusion in the Bill. We feel that the extra scrutiny is welcome for groups such as SMEs, which may find that these contracts are the right size for their enterprise to deal with. It is important to strike the right balance. In general, we are happy with the clauses and will not oppose them, but I would ask the Minister what protocol will be followed when the threshold figures are altered.

Alex Burghart: It will be in secondary legislation.

Question put and agreed to.

Clause 83 accordingly ordered to stand part of the Bill.

Clause 84 ordered to stand part of the Bill.

Clause 85

REGULATED BELOW-THRESHOLD CONTRACTS: DUTY TO CONSIDER SMALL AND MEDIUM-SIZED ENTERPRISES

Amendment proposed: 2, in clause 85, page 57, line 27, after "enterprises" insert "and co-operative societies".—*(Florence Eshalomi.)*

See explanatory statement to Amendment 1.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 31]

AYES

Bhatti, Saqib	Gibson, Peter
Burghart, Alex	Marson, Julie
Duguid, David	
French, Mr Louie	Randall, Tom

NOES

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

Question accordingly negatived.

Clause 85 ordered to stand part of the Bill.

Clauses 86 and 87 ordered to stand part of the Bill.

Clause 88

TREATY STATE SUPPLIERS

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

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

That schedule 9 be the Ninth schedule to the Bill.

Clause 89 stand part.

Government amendment 59.

Amendment 102, in clause 90, page 60, line 32, at end insert—

"(1A) A Minister of the Crown acting under subsection (1) must acquire the consent of Scottish Ministers."

Government amendment 60.

Clause 90 stand part.

Government amendments 69, 77, 79 and 81 to 83.

Government new clause 11—*Trade disputes.*

Alex Burghart: Part 7 of the Bill is concerned with the implementation of the United Kingdom's international obligations. The UK is currently party to 24 international agreements that contain procurement obligations, with each listed in schedule 9 to the Bill. They include trade agreements signed before our exit from the EU, such as the World Trade Organisation Government procurement agreement, and the recently signed Australia and New Zealand trade agreements.

Clause 88 uses the term "treaty state suppliers" to identify suppliers from countries that are entitled to benefit from one of the international agreements listed in schedule 9. The clause ensures that treaty state suppliers have the right to no less favourable treatment than domestic suppliers under the UK procurement regime to the extent covered by their relevant agreement, including the right to seek remedies. As the UK negotiates new international agreements or is required to amend existing agreements, delegated powers under subsection (3) will allow schedule 9 to be revised accordingly. In this way, schedule 9 will continue to reflect our updated international obligations and ensure that the UK remains compliant.

It is important for the Committee to understand that the delegated power in subsection (3) does not allow for substantive changes to the rules set out in the Bill regime, even where required by an international agreement. This is partly the reason why separate primary legislation is required to implement the UK-Australia free trade agreement. It is therefore not capable of being used to implement rule changes that might affect matters such as food standards, environmental standards or control over the health service. For that, the Government would need to return to Parliament with further primary legislation. Schedule 9 to the Bill is a list of international agreements that contain substantive procurement obligations and to which the UK is party.

Clause 89 sets out that a UK contracting authority may not discriminate against a treaty state supplier; that is to say that UK procuring entities may not treat the goods, services and works of treaty state suppliers less favourably than those of UK suppliers. Clause 89 is imperative in order to meet our international obligations. The principle of non-discrimination is firmly embedded in the WTO's Government procurement agreement and other international agreements to which we are party. Being party to these agreements will ensure that UK goods, services, works and suppliers also receive the same fair treatment from our trading partners. In doing so, the UK will continue to enjoy the benefits of existing and future trade agreements, including guaranteed access to procurement opportunities in some of the world's largest economies.

The power set out in clause 90 allows regulations to be made in relation to devolved procurement in Scotland to ensure that treaty suppliers are not discriminated against. The power is to be exercisable concurrently by a Minister of the Crown or Scottish Ministers, meaning that in the course of implementing international obligations under the Bill, a Minister of the Crown could also implement obligations for the whole of Scotland, in respect of both reserved and devolved procurement. This recognises both that the implementation and observation of international obligations is a devolved matter, but that the UK Government are ultimately responsible for compliance with our international obligations.

Amendments 59 and 60 seek to address a concern raised by the Scottish Government that the power in clause 90 is broader than is necessary, and in particular broader than the equivalent power that allows the updating of schedule 9 to the Bill to reflect new free trade agreements.

Although I can assure the House that it is not the Government's intention to use the powers in clause 90 to interfere with Scottish procurement rules, we have listened and added a number of factors that would limit the exercise of the power. These amendments will ensure that either a Minister of the Crown or Scottish Ministers would only be able to make provision that is equivalent to provision in part 7 and only when it is necessary in order to ratify or comply with an international agreement, such as by adding to or amending the list of international agreements in Scottish procurement legislation. It could not be used to amend Scottish procurement rules substantively. I thank colleagues in Scotland for working constructively on this point.

New clause 11 and the consequential amendments 69, 77, 79, 81, 82 and 83 are needed to give the UK the ability to take necessary retaliatory or compensatory action as a result of a procurement-related dispute under the World Trade Organisation's Government procurement agreement, or with a country with which we have a free trade agreement on procurement.

Under the UK's trade agreements, if a country does not comply with its international public procurement obligations, we must be able to implement practical retaliatory measures; otherwise, we may not receive the full benefits of the commitments under these agreements. These amendments would give the UK a power to amend its domestic procurement legislation to take such action, for example to remove market access to particular procurement markets for suppliers from a trading partner that is in breach. Similarly, if the UK is in breach, it may need to implement measures to bring itself back into line.

This power is clearly limited in scope to procurement-related disputes and can only be used to make provision relating to procurement. The power cannot be used to address disputes relating to other areas of the UK's

[Alex Burghart]

trade agreements. It will also be subject to the affirmative procedure, so that there is a sufficient level of scrutiny in Parliament when it is to be used.

Without these amendments, the UK would be at a disadvantage among its trading partners, because it would not be able to take retaliatory action to incentivise other countries to comply with their procurement commitments and, in the absence of the necessary domestic legislative mechanism to compensate its partners in case of non-compliance, the UK would not be viewed as a trusted international partner.

Chris Evans (Islwyn) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Mundell, on what is the fourth day of our deliberations in this Committee.

Mr Mundell, you, my hon. Friend the Member for Merthyr Tydfil and Rhymney, the hon. Member for Aberdeen North and I are all members of the Celtic fringe, and we have all been accused in the past, somewhat unfairly, of speaking too fast. However, the Minister put us to shame just now, so I wonder whether he has Scottish or Welsh roots somewhere. *[Laughter.]*

As the Minister set out, part 7 of the Bill, which includes clauses 88, 89 and 90, sets out the implementation of international obligations in relation to procurement. These clauses have a strong theme of ensuring that no discrimination takes place between contracting authorities and treaty state suppliers, which are set out in schedule 9 to the Bill. Clause 90 also reaffirms this for procurements made by devolved Scottish authorities.

What is important about this part is our commitment to meeting our international obligations. I know from my role as a shadow Defence Minister how important it is to be an active member of the international community. It is important not only for the UK's standing in the world; I have also found that when we meet these standards, we are also doing the best for this country here at home.

I think that we were all deeply moved yesterday by President Zelensky's speech in Parliament. The war in Ukraine is a prime example of how important it is to meet our international obligations. By donating weaponry to Ukraine, we are aiding a member of our international community in their fight against an illegal invasion. However, if we are to continue to support the international community, we need to ensure that our procurement system can keep up.

As it stands, we will have a gap in our defence capabilities. In March 2021, the Defence Committee concluded that the Army would be "hopelessly under-equipped" in "obsolete armoured vehicles" and would be "very heavily outgunned" if it was called to fight an adversary, such as Russia, in eastern Europe in the next few years.

The war in Ukraine has shown us how dangerously close we are to this reality. We need to ensure that we are capable of defending ourselves first, so that we can then help others in need. I believe that a commitment to buy, sell and make more in Britain within our procurement system would help us to achieve that. Now, more than ever, we have to ensure we continue our commitment to a fairer world. I believe the way we conduct our procurement has a huge role to play in that.

12 noon

The World Trade Organisation sets out its key principles for trade, which include having a freer, more equal trade system, without discrimination. The way we interact with our international neighbours is vital, especially as we continue to navigate a post-Brexit world. Labour's amendments to the Bill would not put that at risk. In fact, our amendments, particularly around social value, would strengthen our commitments to our international obligations. We have obligations set out in international treaties to treat procurement bids from fellow treaty states in a way that ensures partner states are not disadvantaged. However, I do not believe that should mean that social value cannot be considered in the procurement process.

The UK-Australia and the UK-New Zealand free trade agreements commit both parties to ensuring fair, transparent and non-discriminatory selection processes of suppliers. We have agreed to open up our procurement markets, allowing suppliers to bid for more contracts from wider public sector bodies. It is unclear how significant the improvements are compared to the current situation.

Some obligations of the procurement chapters go beyond the World Trade Organisation Government procurement agreement, of which the UK, Australia and New Zealand are part. These include innovative provisions on advertising and conducting procurement electronically, and helping small companies bid for tenders. The Trade Union Congress has expressed its concerns regarding steel. It fears it threatens the inclusion of social value criteria in procurement rules.

While we welcome the signing of new free trade agreements, it is important that they do not interfere with our ability to include social value criteria in our procurement processes. Not only would social value allow us to fully commit to a fairer system, by ensuring jobs, skills and the environment can be prioritised, but social value would also allow us to assert that whoever we enter into a trade deal with must be compatible with our social value objectives. That is vital for the UK in order for us to meet our international obligations and require higher standards from those with whom we trade.

As a country, we need to be doing more to meet our net zero targets on climate change. For example, Bluetree Group in Wath upon Dearne, located in the constituency of my right hon. Friend the Member for Wentworth and Dearne (John Healey), the shadow Secretary of State for Defence, was originally a graphic design and print firm, but switched to supplying quality personal protection equipment during the pandemic. The company has pledged to become net zero by 2035 by engaging with and influencing suppliers to source materials that can be traced to a fair and socially responsible supply chain.

If we entrench ideas of social value into every aspect of our procurement system, we can encourage more businesses to follow their lead and make commitments to the environment, jobs and skills. Labour will prioritise our international obligations by completing a NATO test on all major defence projects in its first hundred days in Government, to check the UK is meeting its obligations to the alliance in full.

The UK needs to be an active player on the global stage. The only way to do that is by proving we can meet our international obligations, and actions speak louder

than words. I am proud of this country's response to the war in Ukraine. I hope the same commitment to our international community will be continued throughout the procurement process.

Kirsty Blackman (Aberdeen North) (SNP): I agree with the hon. Member for Islwyn that the Minister is giving us a run for our money today. I feel like I was speaking particularly slowly on Tuesday, as I was not feeling great and my brain was taking a while to catch up, but hopefully I can be a bit speedier today and get through with a higher level of coherence. Apologies if I said anything then that did not make much sense.

I will focus on clause 90, the Minister's amendment 59 and our amendment 102. The Bill seeks to confer the power exercised concurrently by UK and Scottish Ministers to implement the Government procurement chapters of the agreements with Australia and New Zealand by secondary legislation. We agree with that and have no query about the fact that the negotiation of international agreements is a reserved matter but, as the Minister noted, the implementation in devolved areas, such as Government procurement, is a devolved matter. Procurement is devolved to the Scottish Government and Scottish Parliament, and we make our own decisions about how best to implement that.

The correct constitutional and devolution-respecting solution would be to amend the Bill to grant implementation powers solely to Scottish Ministers in this regard. I agree that the Minister has put forward an amendment that changes what clause 90 says, but the amendment also says:

"Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory."

The "or" is what I have a problem with, on the basis that it still allows the UK Government to act in devolved areas. I recognise the restrictions put in place by the rest of the amendment in terms of the breadth of the action that can be taken, and I recognise that the UK Government Minister has worked with colleagues in the Scottish Parliament to ensure that we are getting a bit closer together; indeed, it is closer than in the Bill that originally came to us from the Lords. However, I still feel that amendment 102 is necessary to protect the devolution settlement, because we should not have UK Government Ministers acting in devolved competencies. They should not be able to take this decision wherever they feel it is necessary to do so.

We are not for a second suggesting that we would not act in concordance with our international agreements, because we would. I am sure the Minister would not suggest otherwise, as the Scottish Government do stick to their international agreements—regardless of whichever Government signed up to them, we do our very best to fulfil them. However, this is about the implementation of procurement rules and ensuring that that works in the best possible way for Scotland.

The Scottish Parliament is writing legislation on procurement for Scotland, which, as has been noted a number of times in this Committee, is distinct and separate in Scotland. We already have our own procurement system, which works on a different basis to the procurement system down here. We have already talked about the real living wage running through our procurement rules, where it is not in the rest of the UK. We already have a distinct situation. The UK Government are not elected to take this action in Scotland. The Scottish Parliament is elected to take this action in Scotland and to implement it in the way that will work best for our procurement systems and for the people of Scotland, who elected the Scottish Parliament to do that.

Amendment 102 says:

"A Minister of the Crown acting under subsection (1) must acquire the consent of Scottish Ministers."

I do not think that is too much to ask on the basis that this is a devolved area. Actually, if the UK Government are making new procurement rules that relate to Scotland's implementation of its international agreements, ensuring the consent of Scottish Ministers means those rules will work within our procurement frameworks, systems and situations in order that those agreements can be properly implemented.

The Scottish Government want and intend to implement these international agreements properly. However, in order for that to happen as written, the UK Government will need a significant understanding of the Scottish procurement system, which is distinct from that of the rest of the UK. Our system will continue to be distinct in order to be able to write appropriate legislation that will apply in Scotland and work within our devolved legislation. It seems like a burden for UK Government Ministers to have to learn that, when actually, they could just say to Scotland, "How would you like this to be written?" and the Scottish Government could say, "This is how we would write it." We could then have a discussion about whether or not that implements our international agreements. I am certain that it would, because the Scottish Government are good at acting in compliance.

Lastly, respect for the devolution settlement is an important tenet of our democracy. Devolution to Scotland is what the Scottish people voted for. We have the Scottish Parliament, which is significantly more popular than the Westminster Parliament in terms of the actions taken on behalf of the Scottish people. It is also significantly better regarded in terms of accessibility. I do not mean accessibility simply in terms of the building; I mean accessibility in terms of people being able to come and speak to Ministers and to have Ministers or civil servants listen and take action that improves their lives. It is much closer to people, and people feel that. Moving this process even further away seems like a real negative for people in Scotland.

David Duguid (Banff and Buchan) (Con): I am listening to the hon. Member very carefully. Given her assertion that only people who are elected to the Scottish Parliament should make these decisions, should not she and I, and indeed the Chairman of the Committee, get our coats and head home early today?

Kirsty Blackman: As I mentioned in previous speeches, we are taking decisions here for the entirety of the UK. Like it or not, I have been elected in the same way as the hon. Member has, as a UK member of Parliament. We therefore have the right in this place to take decisions on procurement in England and procurement in Wales. We do not have the right to take decisions on procurement across the UK, given the agreement that the implementation of procurement and how it works in Scotland is devolved.

[Kirsty Blackman]

In fact, this Bill does not confer any rights on Members of Parliament to make decisions for the people of Scotland. It confers the power on Ministers to make that decision, which is very different from conferring it on Parliament. I have spoken before about the Executive power creep of recent years, which continues to give more power to the Executive and less to parliamentarians and MPs in this place. It is therefore important that the Scottish Parliament gets to take these decisions. I do not think the UK Government should be allowed to override the devolution settlement whenever they feel it convenient to do so, as we saw recently when they used section 35 to stop legislation put through the Scottish Parliament on a cross-party basis.

Again, the Bill is a further overreach of the UK Government's powers. We are not suggesting for a second that the UK does not have the right to sign up to international agreements. It absolutely does, but we have the right in Scotland, as part of the devolution settlement, to implement those rules in devolved areas. In that regard, I would like to push amendment 102 to a vote. I am not convinced that I will get terribly much support, but I will do my best anyway. Hopefully the Minister will move Government amendment 59, which is a step forward, as I have said, and I hope he will also agree to the inclusion of our amendment.

Alex Burghart: To address the most pressing issue in this group, I must confess to having a Celtic heritage. Indeed, my grandfather was from south Wales, and his grandfather was born in the workhouse, not terribly far from the constituency of the hon. Member for Islwyn, so he has found me out.

Chris Evans: We are related in some way.

Alex Burghart: One family, one Wales.

I am pleased to hear the hon. Gentleman support NATO and the Government's actions with regard to our allies in Ukraine. He will know that we have a trade agreement in place with Ukraine, and yesterday was a sign of the ongoing, very close relationships between President Zelensky's Government and our own, and the necessary partnership in the face of tyranny.

Let me turn to amendment 102, in the name of the hon. Member for Aberdeen North. I must assure her at the outset that this is a power that the UK Government would only need in extremis. I completely understand that Holyrood and the Scottish Government—certainly under the SNP, I am sure—would always want to implement our international agreements. But what if another party that was not so upstanding was one day to be in power? What if another group of nationalists was to seize control from the SNP and wished to hold up our international agreements? There are other nationalist options—the former head of the hon. Lady's party has formed a renegade bunch running under the name Alba—and perhaps they would not be as reasonable the hon. Lady's party. Perhaps they would wish to prevent us from implementing our international trade agreements. That would not only prevent us from delivering the benefit of those agreements to the whole of the United Kingdom, but completely ruin our chances of signing future trade agreements. We understand her objections, but we believe that it is essential to ensure that in all circumstances the UK Government can make good on the promises that they sign with partners.

12.15 pm

Kirsty Blackman: The Minister is suggesting that clause 90 will be used only in extremis. Do I read that correctly, or is that not his suggestion?

Alex Burghart: Certainly, if there was an international agreement and the Scottish Government wished to legislate or regulate to implement it, that would be our preference. As I say, it is important that we put safeguards in the Bill. On the hon. Lady's point about burdens being placed on officials by having to keep up with procurement regulations in Scotland, I can assure her that my officials welcome the burden, and that their understanding of such regulations is so strong that they would not notice the extra weight at all. I hope that she will not move her amendment.

Question put and agreed to.

Clause 88 accordingly ordered to stand part of the Bill.

Schedule 9 agreed to.

Clause 89 ordered to stand part of the Bill.

Clause 90

TREATY STATE SUPPLIERS: NON-DISCRIMINATION IN SCOTLAND

Amendment made: 59, in clause 90, page 60, line 32, at end insert—

"(1A) Regulations under subsection (1) may only include provision that is equivalent to provision in—

(a) subsection (1), (2), (5) or (6) of section 88 (treaty state suppliers),

(b) section 89 (treaty state suppliers: non-discrimination), or

(c) Schedule 9 (specified international agreements).

(1B) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.

(1C) In subsection (1B), the reference to being a signatory to an international agreement includes a reference to having—

(a) exchanged instruments, where the exchange constitutes the agreement;

(b) acceded to the agreement."—*(Alex Burghart.)*

This amendment would mean that a Minister of the Crown or Scottish Ministers, in making regulations under clause 90, may only make provision equivalent to provision in Part 7 and if the Minister considers, or Scottish Ministers, consider it necessary in order to ratify or comply with an international agreement.

Amendment proposed: 102, in clause 90, page 60, line 32, at end insert—

"(1A) A Minister of the Crown acting under subsection (1) must acquire the consent of Scottish Ministers."—*(Kirsty Blackman.)*

Question put, That the amendment be made.

The Committee divided: Ayes 1, Noes 7.

Division No. 32]

AYES

Blackman, Kirsty

NOES

Bhatti, Saqib	Gibson, Peter
Burghart, Alex	Marson, Julie
Duguid, David	
French, Mr Louie	Randall, Tom

Question accordingly negatived.

Amendment made: 60, in clause 90, page 60, line 34, at end insert—

"(b) a reference to discrimination is a reference to discrimination as defined in section 89."—*(Alex Burghart.)*

This amendment would make clear that "discrimination" has the same meaning as in clause 89.

Clause 90, as amended, ordered to stand part of the Bill.

Clause 91

PIPELINE NOTICES

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

Alex Burghart: A contracting authority is required to publish a pipeline notice if it reasonably expects that, in the coming financial year, it will pay more than £100 million under relevant contracts. The pipeline notice in clause 91 is designed to set out details of public contracts that a contracting authority proposes to enter into in the forthcoming 18 months with an estimated value of more than £2 million. It provides potential suppliers with advance notice of upcoming opportunities and allows them to plan for future work. The notice must be published within 56 days of the first day of the relevant financial year. Private utilities and transferred Northern Irish contracting authorities are not required to publish pipeline notices.

Florence Eshalomi: The clause introduces pipeline notices, which mandate large contracting authorities to publish a pipeline of contracts worth over £2 million every year for the upcoming year. We question why it is £2 million when the Government have altered the other thresholds of that value to £5 million elsewhere in the Bill. Will the Minister clarify that for us? However, we do not oppose the lower number or the pipeline notices in general, so we are happy for the clause to stand part of the Bill.

Alex Burghart: The threshold of £2 million was set following the determination that that was the best balance of realising the benefits of transparency against the efforts made by contracting authorities in providing the information.

Question put and agreed to.

Clause 91 accordingly ordered to stand part of the Bill.

Clause 92

GENERAL EXEMPTIONS FROM DUTIES TO PUBLISH OR DISCLOSE INFORMATION

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

Alex Burghart: Clause 92 sets out when contracting authorities may withhold—for example, by way of redaction—information that they are otherwise required to publish or disclose under the Bill. The two exemptions are for national security and sensitive commercial information. "Sensitive commercial information" is defined as information that "constitutes a trade secret" or would be likely to prejudice commercial interests if published or disclosed. The exemptions are modelled on their equivalents in the Freedom of Information Act 2000 and are intended to be understood and interpreted in the same way.

However, the FOIA is a scheme for responding to requests for information, whereas the Bill is about proactive publication by contracting authorities. The sensitive commercial information exemption is subject to an overriding public interest test, while the national security exemption is absolute. If the contracting authority relies on either of the exemptions to withhold or redact information, it must notify anyone to whom the information would have been provided that information is being withheld or redacted and why. The latter requirement is suspended if it would be contrary to the interests of national security to make such a notification.

Florence Eshalomi: The clause relates to a small number of reasons why information may not be published where it would otherwise be required under the Bill. Of course, we agree that some information is particularly sensitive and should not be disclosed to the public. I welcome the Minister's assurance on ensuring that national home security is absolute. The reasons for non-publication in the clause are proportionate and sensible. We do not feel that this is controversial, and we will not oppose its addition to the Bill.

Question put and agreed to.

Clause 92 accordingly ordered to stand part of the Bill.

Clause 93

NOTICES, DOCUMENTS AND INFORMATION: REGULATIONS AND ONLINE SYSTEM

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

Alex Burghart: In support of the Government's drive towards ensuring greater transparency in procurement, there are many provisions in the Bill that place requirements on contracting authorities to publish information. Clause 93 confers a power to set out the form and content of the information to be published or provided as well as the place it is to be sent. That is a broad but necessary power. The World Trade Organisation GPA sets out the core of the detail of many of the notices that we have described in the Bill, which will give hon. Members a clear indication about the sorts of information that will be required to be published using these powers.

However, the Government wish to push further and create additional transparency to that required by the GPA. For that reason, we have created new transparency obligations and proposed the power to set out the detail in clause 93. The flexibility inherent in taking that power allows us to tailor the transparency regime over time to ensure that we can benefit from greater transparency across the procurement landscape. The power allows us

[Alex Burghart]

to set different requirements for different types of contract or different industries, depending on the needs and benefits of different areas.

Clause 93 also puts an obligation on the Government to establish and operate an online system for the purpose of publishing notices, documents and other information under the legislation. The online system must make notices, documents and other information published under the legislation available free of charge and accessible for people with disabilities.

Florence Eshalomi: Clause 93 is perhaps the most referenced throughout the Bill; it has been mentioned about 24 times. We did not expect the legislation to be all-encompassing, but we are now at clause 93 and we are seeing a little more deflection and can kicking. We support the implementation of a new digital system, but the reality is that we do not have any idea what it will look like based on the clause.

We have high hopes for the system, and it has the potential to be transformative for procurement, which we will get to during the debate on new clause 14. We believe it can be taken even further, as was the case in Ukraine. We can take inspiration from what is happening in Ukraine, and their heroic fight against Putin's barbarism, as we heard during President Zelensky's address yesterday. We must also take inspiration from their procurement system, even in the midst of what is going on.

I was pleased to hear the Minister say on Second Reading that he was pleased to let the House know that Ukraine was on our advisory panel and has informed the work on our single digital platform, which takes a lot from what Ukraine has done with ProZorro. The platform will enable everyone to have better access to public procurement data. Citizens will be able to scrutinise spending decisions, suppliers will be able to identify new opportunities to bid and collaborate, and buyers will be able to analyse the market and benchmark their performance against others on spending with SMEs, for example. That will provide better transparency, which will be better for taxpayers. Those are welcome words from the Minister, but at this stage, they are just words.

On Second Reading, the Minister also said:

"The platform is based on a system that we already have. We are confident that we will be able to introduce it in line with bringing this Bill into force. Obviously, we have to pass the legislation and get Royal Assent, and then there will be a settling-in period. But it is going to be functional very soon."—[*Official Report*, 9 January 2023; Vol. 725, c. 383.]

How soon will that be? When is that target? We all agree the system has huge potential, but, as we have already seen in the promised version of the Bill and the version before us today, we cannot be certain about anything until it is in the statute book. Will the Minister commit today to introduce the regulations under the clause as soon as possible? I hope that he will deliver on the promises he made on Second Reading.

Alex Burghart: The hon. Lady will have already heard in our debates in Committee, on Second Reading and in Westminster Hall the huge range of areas in which we are bringing in additional transparency. The online digital platform will be the repository of sunlight that she is understandably so interested in. It is necessary at this stage for us to keep the primary legislation broad, so that there will be flexibility for Governments over time.

We intend to bring forward the online digital platform in 2024, bringing the Bill into force and allowing us to see the benefits. It will be a major step change in how we see evidence of public procurement. I hope the Opposition will welcome that.

Question put and agreed to.

Clause 93 accordingly ordered to stand part of the Bill.

Clause 94

Electronic communications

Alex Burghart: I beg to move amendment 61, in clause 94, page 62, line 37, after first "a" insert "covered".

This amendment would restrict the requirements in respect of electronic communications systems to covered procurements.

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

Government amendments 62 to 64.

Clause stand part.

12.30 pm

Alex Burghart: We are introducing amendments 61 to 64 to clarify the use of electronic communication systems and the application of other systems in various commercial circumstances. Clause 94 currently requires that electronic communication systems must be

"free of charge and readily accessible".

Our intention is to allow businesses, particularly SMEs, to easily access the necessary documents and systems to bid for contracts, ensuring that access is open to all. However, the term "electronic communication systems" is broad, and concerns have been raised with us that it could inhibit certain practices that are currently commonplace, thereby making the Bill overly burdensome. For example, it could constrict the ability of utilities dynamic markets to charge for membership, and of the Ministry of Defence to make use of systems that charge to preserve secure payments.

Amendment 62 therefore limits the free-of-charge obligation beyond the point when the public contract is entered into and disapplies it to utilities dynamic markets. We have also tabled amendments 61, 63 and 64, which ensure that the clause only applies to covered procurement, and that the security exception in clause 94(3) extends to the whole clause.

Clause 94 sets out how communications relating to a procurement should be undertaken. Electronic communications can help reduce procurement process costs for suppliers and contracting authorities; reduce procurement timescales; encourage access to opportunities for suppliers; facilitate compliance with the rules; and promote traceability and auditability in the procurement process. As such, for covered procurements, we want contracting authorities to, so far as practicable, communicate with suppliers electronically and ensure suppliers do likewise. Electronic communication systems must be free of charge and readily accessible to suppliers, generally available and interoperable with other systems, and

accessible to people with disabilities. There is an exemption from the requirement to communicate electronically if doing so would pose a particular security risk.

Florence Eshalomi: These amendments tidy up this part of the Bill by limiting requirements that relate to covered procurement, limiting the obligations on information after the awards of contract or in dynamic markets, and ensuring that all parts of the clause are excluded in the case of security risks. I am pleased to say that we do not feel the amendments are controversial, and that they sensibly fix a gap that could otherwise have caused problems, so we will not oppose them.

Clause 94 concerns electronic communications. In today's modern world, electronic and digital communication is the norm, and we should expect all suppliers to have access to electronic communication methods. Such methods are the norm in wider society. It is right that information is freely available. We must ensure that it is accessible to everybody, so we welcome subsection (2), which puts some principles of communication in the Bill. We are happy for the clause stand part of the Bill.

Amendment 61 agreed to.

Amendments made: 62, in clause 94, page 62, line 42, at end insert—

"(2A) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used—

(a) after the award of the public contract, or

(b) in relation to a utilities dynamic market."

This amendment would create an exception to the requirement for electronic communications systems to be free of charge and readily accessible to suppliers where those systems are used after award of a public contract or in relation to a utilities dynamic market.

Amendment 63, in clause 94, page 63, line 1, leave out "Subsection (1)" and insert "This section".

This amendment and Amendment 64 would extend the exception in subsection (3) to any requirement in clause 94 the contracting authority considers poses a security risk.

Amendment 64, in clause 94, page 63, line 2, after "communication" insert ", or the use of an electronic communication system meeting the requirements of subsection (2),".—*(Alex Burghart.)*

This amendment and Amendment 63 would extend the exception in subsection (3) to any requirement in clause 94 the contracting authority considers poses a security risk.

Clause 94, as amended, ordered to stand part of the Bill.

Clause 95

Information relating to a procurement

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

Alex Burghart: Clause 95 provides that regulations may be made requiring certain information to be shared in a particular way. The power will be used to specify that contracting authorities and suppliers must use the central online platform, to be established under clause 93, and to provide detail on the proposed register of suppliers.

As part of the central digital platform, the register of suppliers will allow suppliers to submit the common data needed for procurements, such as their full name and registered office address, date of registration, VAT number and so on, in an evidence locker, so that they can "tell us once" across the public sector. All contracting authorities will be required to use data from the register of suppliers in their procurements.

Clause 95 also requires contracting authorities to keep records of any communication between the authority and a supplier in relation to a covered procurement. All data published on the central digital platform will be aligned to the open contracting data standard, or OCDS. Adoption of the standard will significantly improve data quality and sharing.

Florence Eshalomi: The clause puts in place similar provisions to clause 93, and has huge potential to make our procurement system more efficient—for example, by standardising how information is shared. That would simplify the procurement system for SMEs, which would not have to navigate the surprising number of ways in which the information in the Bill could be presented.

I will not reiterate my points on clause 93, but I have similar concerns that these provisions are just words, before we have seen the regulations laid, but I hope the Minister will make good use of them as quickly as possible.

Question put and agreed to.

Clause 95 accordingly ordered to stand part of the Bill.

Clause 96

Data protection

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

Alex Burghart: Clause 96 sets out that the Bill does not authorise or require a disclosure of information that would contravene the data protection legislation. It defines the data protection legislation as being the same as the meaning set out in the Data Protection Act 2018. The effect of the provision is that there is no requirement to publish information that would otherwise be prohibited from disclosure under the Data Protection Act 2018.

Florence Eshalomi: This clause, as the Minister outlined, considers data protection and ensures that the Bill does not work contrary to the Data Protection Act 2018. It is entirely correct, and we do not object to it.

Question put and agreed to.

Clause 96 accordingly ordered to stand part of the Bill.

Clause 97

Duties under this Act enforceable in civil proceedings

Alex Burghart: I beg to move amendment 65, in clause 97, page 64, line 6, at end insert—

"(6A) A supplier may not bring proceedings under this Part on the grounds that one or more of the following decisions of a Minister of the Crown was unlawful—

(a) a decision to enter a supplier's name on the debarment list;

(b) a decision relating to the information included in an entry on the debarment list;

(c) a decision not to remove an entry from the debarment list, or revise information included in such an entry,

(see section 64 (debarment decisions: appeals))."

This amendment would ensure that challenges to debarment decisions are all dealt with under clause 64 (debarment decisions: appeals).

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

Clause stand part.

Clauses 98 to 103 stand part.

Government new clause 12—*Part 9 proceedings and closed material procedure.*

Alex Burghart: Clause 97 provides that, where a UK or treaty state supplier has suffered, or risks, loss or damage in consequence of a contracting authority's failure to comply with certain parts of the Bill, that supplier can hold the contracting authority to account through civil proceedings for breach of statutory duty.

The relevant parts of the Bill govern the award, entering into and management of public contracts—namely, parts 1 to 5, 7 and 8. Clause 97(5) lists the few exceptions, however, where any compliance failure is best challenged through judicial review. Those are a failure to have regard to barriers facing SMEs, which is required by clause 12(4), and a failure to have regard to the procurement policy statements in clauses 13(9) or 14(8). Suppliers can also raise concerns with the procurement review unit, which may engage with the contracting authority on a non-statutory basis to resolve any issues.

Further, proposed new subsection (6A), courtesy of Government amendment 65, will ensure that, where a claim is on grounds that can be challenged through the debarment appeals process—under clause 64—the supplier cannot also bring a claim under part 9 on those grounds. Debarment decisions are taken by a Minister of the Crown, and not a contracting authority, thus it is appropriate for the Minister to respond to that claim. I invite hon. Members to accept the amendment.

Clause 98 says that if a contracting authority has been notified during a standstill period that a claim has commenced in relation to the procurement, the contracting authority is prevented from proceeding with the public contract until the claim is resolved. That is called automatic suspension. However, it is important that the court has a discretion to lift the automatic suspension on application by the contracting authority, and permit the contract or modification to be entered into, where that is necessary, despite a legal challenge. The factors for the court's consideration when deciding whether it is appropriate to lift the suspension are laid out in clause 99 on interim remedies.

Interim remedies are, by their nature, applicable before the determination of any legal claim, at whichever point it is raised in the procurement—pre or post contract signature. Types of interim remedy under clause 99 may therefore include suspending the procurement process or performance of the contract.

An important aspect of clause 99 is the new test for lifting the automatic suspension. Unlike the current test derived from the 1975 American Cyanamid patent case, the test on the face of the Bill is specific to public procurement disputes, and enables the court to consider the merits of the case with reference to factors that ensure that the interests of the contracting authority, the claimant, the successful supplier and the public are considered in a fair and balanced way. The test will also apply to injunctions made to prevent the contracting authority from entering into the public contract where there is no automatic suspension.

Clause 100 deals with pre-contractual remedies. Suppliers bringing claims to the court at this time are most often seeking a fair opportunity to bid for the public contract. Accordingly, clause 100 includes remedies such as reversing a decision made by the contracting authority, or requiring an action such as the re-evaluation of tenders. The court may also award damages or make any other order it deems appropriate in the circumstances.

Clause 101 sets out the post-contractual remedies—that is, those that apply once the contract or modification has been entered into. For the most egregious breaches, such as failing to honour a mandatory standstill period, where the supply has been denied the opportunity to seek pre-contractual remedies the contract may be set aside by the court. This is currently known as the remedy of ineffectiveness, and an order of this kind makes the contract or modification invalid. Where a set aside ground applies per clause 102, the court must set aside the contract or modification unless there is an overriding public interest in maintaining the contract, in which case the court may instead reduce the scope or duration of the contract, and award damages.

In common with the existing regime, the award of damages to a supplier following a breach of statutory duty is discretionary, and judges can continue to make an appropriate assessment on the award of damages, including quantum, taking into account all the circumstances of the case, including the nature of the breach and its consequences. As I mentioned, clause 102 sets out the conditions that, if met, may result in the contract or modification being set aside, where the supplier has been denied the opportunity to seek pre-contractual remedies.

Clause 103 sets out the timescales in which a supplier must raise a claim under the Bill for breach of statutory duty. For all claims except some for set aside under clause 102, this will be within 30 days from when the supplier knew—or ought to have known—about the breach. For set aside claims, after the contract has been entered into, the time limit is 30 days from the date of actual or deemed knowledge, unless a contract details notice was not published, in which case the 30 days applies up to a long stop date of six months from contract signature. The six month cut-off also applies to claims for set aside of contract modifications. The court may extend the 30 days up to three months, but may not extend the six month cut-off. The timescales aim to give suppliers adequate time to raise legal challenges to the procurement, while also enabling contracting authorities to manage the risk of delay and disruption to their public procurements.

The Government have proposed new clause 12 to be inserted after clause 103 to allow the Minister for the Cabinet Office to apply for a declaration permitting closed material procedure applications in procurement challenge proceedings, as we discussed the other day. Closed material procedure involves the non-Government parties leaving the courtroom while sensitive material is heard.

Florence Eshalomi: Amendment 65 shifts the responsibility for the debarment list remedy to clause 64, rather than being under this part of the Bill. New clause 12 is a simple amendment that extends the power to the Minister for the Cabinet Office, rather than just the Secretary of State. Both amendments make sense and we do not oppose them.

Clauses 97 to 103 relate to remedy against contracting authorities when duties under parts of the Bill are breached. It is right that suppliers have remedy when contracting authorities do not follow due process while carrying out procurement. I listened to the Minister's explanatory remarks about having a fair and balanced remedy for tenders and contractors, about discretionary damages, and about legal challenges and timescales, but has he given thought as to whether employees or contracted workers, or subcontracted organisations involved in delivering public contracts, can seek a remedy if the employment terms and conditions agreed as part of a contract are not delivered?

At the point of tender or contract, a supplier may commit to providing certain employment conditions—for example, the living wage. However, if the supplier in that example, having won the contract, does not implement an annual increase in the living wage, I hope the Minister agrees that there is little recourse for workers employed under the contract. There is no clear, robust mechanism for workers or parties such as trade unions to complain, or for workers affected to receive remedy if there is a failure to comply. There may be a redress mechanism or a point of contact for them in the contracting authority, but there is no certainty that complaints will be investigated, let alone remedied. We are concerned about that, as workers may miss out on long-term remedies. I would be grateful if the Minister responded to that point, either now or later in writing.

12.45 pm

Alex Burghart: I am happy to respond to the hon. Lady with more detail in writing. I think her example relates to where a contracting authority had written in certain terms and conditions for the employees of a supplier, which then receives the procurement deal. In those circumstances, the supplier would obviously be in breach of the contract. That would be as serious as other breaches of contract. I will check the detail and get back to the hon. Lady, but it will obviously be within the supplier's employees' rights to contact the contracting authority and let it know that they believe the supplier is in breach.

Amendment 65 agreed to.

Clause 97, as amended, ordered to stand part of the Bill.

Clauses 98 to 103 ordered to stand part of the Bill.

Clause 104

PROCUREMENT INVESTIGATIONS

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

The Chair: With this it will be convenient to discuss clauses 105 and 106 stand part.

Alex Burghart: Clause 104 enables the appropriate authority—a Minister of the Crown, a Welsh Minister or a Northern Irish Department—to investigate relevant contracting authorities' compliance with the requirements of the Bill. It also obliges the relevant contracting authorities to provide reasonable assistance to the investigation within notified time periods, and allows the findings of investigations to be published.

Although the legislative definition of a relevant contracting authority in clause 104(5) excludes Departments, they may be subject to investigation; it is simply that Ministers do not require statutory powers to do this. Ministers already have the authority to investigate the procurement activities of Departments and ensure that any recommendations resulting from an investigation are duly taken into consideration. The Cabinet Office has established routes for co-operation with such investigations within Government. The new procurement review unit will utilise the statutory powers afforded by clauses 104 to 106, as well as non-statutory powers, on behalf of Ministers of the Crown.

Clause 105 allows the appropriate authority to make statutory recommendations as a result of an investigation under clause 104, where the investigation has identified that a contracting authority is engaging in action giving rise, or likely to give rise, to a breach of any requirement of the Bill. Clause 106 allows the appropriate authority to issue statutory guidance to contracting authorities, following an investigation under clause 104. This guidance will share the lessons of matters considered in the procurement investigation where those lessons are relevant to a larger number of, or indeed all, contracting authorities, including Departments, not just those that were the subject of the investigation. Contracting authorities are required by clause 106 to have regard to the published guidance when carrying out their public procurements and considering how to comply with the requirements of this Bill. It is left to the discretion of the appropriate authority to determine which contracting authorities would benefit from having regard to the guidance.

Subsection (3) highlights clauses 107 to 109, which restrict a relevant authority's ability to issue guidance to particular contracting authorities. A Minister of the Crown can, with express consent from the devolved Administrations, issue guidance to all authorities, including devolved and transferred contracting authorities.

Florence Eshalomi: Clauses 104 to 106 concern oversight of procurement. Compliance with such is critical and it runs through the Bill.

As stated previously, the success of things such as the 30-day payment will ultimately come down to compliance with the Bill at all levels. We do not oppose these clauses, but we are concerned about the lack of ambition compared with what was outlined in the Green Paper. To take the Minister back to those proposals, the Green Paper states that the Government propose

"establishing a new unit, supported by an independent panel of experts, to oversee public procurement with powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities. This unit would aim to improve capability and practices for the benefit of all contracting authorities and suppliers rather than provide remedies for an individual supplier on a specific procurement. This will be facilitated through greater information about purchasing and supply markets and behaviour, allowing targeted interventions to be implemented, optimising policy delivery and driving improvements in capability, behaviour and practice."

We understand that proposals change between Green Papers and Bills—the Minister has touched on that before—but will he explain the reason for this reduction in ambition? What is proposed now?

There is a genuine question about to who will oversee compliance, especially as, despite the promises in the Green Paper, nothing has been done to reform the remedies

[Florence Eshalomi]

system. The Bill contains little information on how the system will be overseen. It does not mention a procurement review unit, and refers only to an "appropriate authority". Worryingly, the remit of the unit does not extend to central Government, Welsh Ministers or Northern Irish Departments, among other things. That seems like a large and inexplicable gap, which means that the unit will not be able to investigate compliance by any central Government Departments.

The "appropriate authority" has power to carry out an investigation of compliance by an authority under the Bill, and to make a recommendation; but it cannot make recommendations on compliance with a multitude of matters, including compliance with the national procurement policy statement, the national objectives in clause 12, or a specific procurement. On the face of it, that is relatively toothless, leaving the unit with limited remit and no enforcement powers. It also does not seem to be independent. That replicates the existing position, which we have discussed.

The Bill offers an opportunity to go further and to deliver better procurement systems across the country. Clearly, the Government do not wish to make the PRU into an appellate body, but the court system is an expensive and random way of enforcing compliance, tilted against challengers and small and medium-sized enterprises. While reforms of the court system belong outside the Bill, there is no evidence that any such reforms are being brought forward. We will not reject clauses 104 to 106, nor have we proposed amending them, but I hope that the Minister will address my concerns. I will welcome any feedback he can offer.

Alex Burghart: The hon. Lady will have heard me refer a number of times to the procurement review unit. We considered making the PRU an independent arm's length body, but on consideration we felt that to do so risked creating unnecessary bureaucracy and cost and would lead to confused and overlapping responsibilities, with duplications of interactions with contracting authorities. Positioning it within the Cabinet Office best aligns it with other related functions to improve commercial standards among contracting authorities that are covered by the Government's chief commercial officer.

We did not feel the need to put the PRU in the Bill, because it will not be a non-departmental body established in statute. The approach we are using here is similar to how the current public procurement review service utilises statutory powers under section 40 of the Small Business, Enterprise and Employment Act 2015, but is not specifically mentioned in that Act.

There are great opportunities for the PRU to assist in procurement processes across the country, which have been outlined during the debate.

Question put and agreed to.

Clause 104 accordingly ordered to stand part of the Bill.

Clauses 105 and 106 ordered to stand part of the Bill.

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

12.55 pm

Adjourned till this day at Two o'clock.