PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PROCUREMENT BILL [*LORDS*]

Ninth Sitting

Tuesday 21 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

Saturday 25 February 2023

The Committee consisted of the following Members:

Chairs: Clive Efford, † David Mundell

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

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

† attended the Committee

Public Bill Committee

Tuesday 21 February 2023

[David Mundell *in the Chair*]

Procurement Bill [*Lords*]

9.25 am

The Chair: I remind the Committee that *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Today, the Committee will consider new clauses tabled to the Bill. We will begin with the Government new clauses, all of which have already been debated.

New Clause 9

Debarment decisions: interim relief

"(1) A supplier may apply to the court for suspension of the Minister's decision to enter the supplier's name on the debarment list.

(2) Proceedings under subsection (1) must be brought during the debarment standstill period.

(3) The court may make an order to—

(a) suspend the Minister's decision to enter the supplier's name on the debarment list until—

(i) the period referred to in subsection (3)(b) of section 64 (appeals) ends without proceedings having been brought, or

(ii) proceedings under that section are determined, discontinued or otherwise disposed of, and

(b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.

(4) In considering whether to make an order under subsection (3), the court must have regard to—

(a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,

(b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and

(c) any other matters that the court considers appropriate.

(5) In this section—

'the court' means—

(a) in England and Wales, the High Court,

(b) in Northern Ireland, the High Court, and

(c) in Scotland, the Court of Session;

'debarment standstill period' has the meaning given in section 62 (debarment list)."—*(Alex Burghart.)*

This new clause, to be inserted after clause 62, would allow a supplier to apply to suspend a Minister's decision to add their name to the debarment list. If the decision is suspended, the supplier will not be able to be excluded from procurements on the basis of that entry until the suspension is lifted.

Brought up, read the First and Second time, and added to the Bill.

New Clause 10

Debarment proceedings and closed material procedure

"Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections (*Debarment decisions: interim relief*)(1) (interim relief) and 64 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

(a) section 6(2)(a), (7) and (9)(a) and (c);

(b) section 7(4)(a);

(c) section 8(1)(a);

(d) section 11(3);

(e) section 12(2)(a) and (b)."—*(Alex Burghart.)*

This new clause, to be inserted after clause 64, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings for interim relief or an appeal against a debarment decision.

Brought up, read the First and Second time, and added to the Bill.

New Clause 11

Trade disputes

"(1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.

(2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.

(3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement—

(a) carried out by devolved Scottish authorities, or

(b) under devolved Scottish procurement arrangements.

(4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).

(5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020."—*(Alex Burghart.)*

This new clause, to be inserted after clause 90, would provide that an appropriate authority or the Scottish Ministers could make provision to deal with the procurement consequences of a trade dispute under a treaty implemented by way of Schedule 9 (other than the Trade and Cooperation Agreement with the European Union, which is dealt with under existing legislation).

Brought up, read the First and Second time, and added to the Bill.

New Clause 12

Part 9 proceedings and closed material procedure

"Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under this Part as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

(a) section 6(2)(a), (7) and (9)(a) and (c);

(b) section 7(4)(a);

(c) section 8(1)(a);

(d) section 11(3);

(e) section 12(2)(a) and (b)."—*(Alex Burghart.)*

This new clause, to be inserted after clause 103, would allow the Minister for the Cabinet Office to apply in place of the Secretary of State to allow closed material applications to be made to the court in proceedings under Part 9.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

POWER TO DISAPPLY THIS ACT IN RELATION TO PROCUREMENT BY NHS IN ENGLAND

"(1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.

(2) In this section—

'regulated health procurement' means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;

'relevant authority' has the meaning given in that section."—*(Alex Burghart.)*

This new clause would be a substitute for clause 116 and allow a Minister of the Crown to make provision excluding from the scope of this Bill procurement that is within the scope of regulations under section 12ZB of the National Health Service Act 2006.

Brought up, read the First and Second time, and added to the Bill.

New Clause 15

DEBARMENT DECISIONS: APPEALS (NO. 2)

"(1) A supplier may appeal to the court against a decision of a Minister of the Crown—

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

(b) to indicate a particular date as part of an entry in respect of the supplier under section 62(3)(b), or

(c) not to remove an entry in respect of the supplier from the debarment list, or revise a date indicated as part of such an entry, following an application under section 63 (application for removal).

(2) Proceedings under subsection (1)—

(a) may only be brought by a United Kingdom supplier or a treaty state supplier,

(b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and

(c) must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the Minister's decision.

(4) Subsection (4) applies if, in proceedings under subsection (1)(a), the court is satisfied that—

(a) the Minister made a material mistake of law, and

(b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).

(5) The court may make one or more of the following orders—

(a) an order setting aside the Minister's decision;

(b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).

(6) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister's decision.

(7) In this section—

'the court' has the meaning given in section (*Debarment decisions: interim relief*) (interim relief);

the reference to a supplier being excluded includes a reference to—

(a) the supplier's tender being disregarded under section 26;

(b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a)."—*(Alex Burghart.)*

This new clause would be a substitute for clause 64 and replace the power to make provision about appeals relating to debarment with detailed provision for their operation.

Brought up, read the First and Second time, and added to the Bill.

New Clause 3

PUBLIC INTEREST

"(1) Where a contracting authority is considering outsourcing public services that are at the time of consideration delivered in-house or where contracts are due for renewal, the contracting authority must ensure that outsourcing or recontracting passes a public interest test and provides greater public value than direct service provision.

(2) As part of the duty in subsection (1), the contracting authority must demonstrate to the public, service users and its employees that it has thoroughly assessed the potential benefits and impact of outsourcing the service in question against a public sector comparator with assessments being based on criteria to be set by the Secretary of State from time to time, including taking a five year consideration of—

(a) service quality and accessibility;

(b) value for money of the expenditure;

(c) implications for other public services and public sector budgets;

(d) resilience of the service being provided;

(e) implications for the local economy and availability of good work in relevant sub-national labour markets;

(f) implications for public accountability and transparency;

(g) effect on employment conditions, terms and standards within the provision of the service to be outsourced and when outsourced;

(h) implications for public sector contributions to climate change targets;

(i) implications for the equalities policies of the contracting authority and compliance with the public sector equality duty.

(3) The contracting authority and the supplier of the outsourced service must monitor the performance of any contracted service against the public interest test and the stated objectives set by the contracting authority pre-procurement to demonstrate that outsourcing the service in question has not resulted in a negative impact on any of the matters mentioned in subsection (2)(a) to (i).

(4) The Secretary of State must from time to time set budget thresholds for when a public interest test would be required."—*(Florence Eshalomi.)*

The new clause would create a process to ensure that contracting authorities safeguard the public interest when considering whether or not to outsource or recontract services.

Brought up, and read the First time.

Florence Eshalomi (Vauxhall) (Lab/Co-op): I beg to move, That the clause be read a Second time.

It is a pleasure to serve under your chairship again, Mr Mundell. It is good to see all hon. Members back and raring to go on our favourite subject, the Procurement

[Florence Eshalomi]

Bill. The new clause, which we think is really important, would introduce a public interest test when contracting authorities are considering outsourcing public services that are currently in-house, and when contracts are up for renewal.

The Opposition strongly believe that there is a place for the delivery of public services by private companies. Many private companies deliver services efficiently, save the taxpayer money and represent the best of our procurement network. When outsourcing is done well, both the public and companies benefit. I highlight to the Minister that the new clause is not intended to stop good outsourcing practice, nor is it intended to harm suppliers providing public services. However, we have to remember that we are talking about public money and it is critical that we outsource only when it offers value for money for the public—not just in relation to the contract, but for the wider public sector.

When it is done wrong, outsourcing has the potential to offer poor value for money, erode rights and deliver poorer services. In effect, more public money can go to companies that are just making a profit off the taxpayer, while services could be delivered to the same or a better standard in-house, without the profit premiums. Decades of relentless outsourcing have seen hundreds and thousands of staff transferred from employment by local councils, NHS trusts, police authorities, universities, colleges, schools and utility services to external providers, such as companies or charities.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): My hon. Friend is making very good points about outsourcing. It is quite right that we support outsourcing to good companies that pay good and fair wages and offer good terms and conditions, but savings are far too often made by treating workers poorly, by undercutting their pay and terms and conditions, and by trying to offload workers who are needed for the service. This test would allow councils to check whether they could do it better in-house.

Florence Eshalomi: I thank my hon. Friend for that really valid point. It is important that we look at what has happened. Over the years, there have been many examples of outsourced services in which staff working conditions have been eroded and staff pay has not kept in line with inflation. The situation that we are seeing now is that staff are walking—they are voting with their feet and choosing to lose a day's pay by going on strike. That is a result of some areas of outsourcing. From catering to social care, from cleaning to IT and HR services, almost no area of public services has been left untouched.

Too often, outsourcing is accompanied by deterioration in the pay, pensions and terms and conditions of the staff delivering the service. That almost creates a two-tier workforce of directly employed staff working alongside contractor staff, as well as a two-tier workforce within the contractor. The Transfer of Undertakings (Protection of Employment) Regulations can offer some limited protection for staff who are transferred to an outsourced contract, but staff recruited by the contractor after transfer have no such protection. Those inferior conditions can translate to lower costs for contractors, which can play a crucial role in their offering a cheaper tender and winning contracts.

A major flaw of this model is that it creates a false economy. The cost of the service is superficially low, but over time, staff have to claim universal credit. People retire without enough to live on and have to claim pension credit. Lower pay and insecure work have a negative impact on mental health. The decline in the number of decent public sector jobs in the community has a chilling effect on the local economy. The dots are not joined and the wider economic costs not considered.

In some regards, the supposed benefits of outsourcing have been eroded by the reality of contracting out services in recent years. There has been a notable turn towards insourcing—the process by which a public authority takes a service that has been contracted out and brings it in-house to be delivered by directly employed staff. However, we are still a very long way from the presumption that services should be outsourced only if it can be shown that the work cannot be delivered just as effectively in-house. Hundreds of thousands of carers, cleaners, porters, security staff and catering staff in our public services workforce are among the worst-off and most insecure workers in the UK.

Creating a check on such practices should be an objective of the Bill. That could be achieved through a public interest test to require contracting authorities to think holistically and outsource public services only when it is demonstrably in the public interest and when a robust assessment provides clear evidence that the services could not be better delivered in-house.

If a contracting authority is considering outsourcing public services that are currently delivered in-house, or where contracts are due for renewal, it should ensure that outsourcing or re-contracting passes a pre-procurement test and provides greater public value than direct service provision. The new clause would require the contracting authority to

"demonstrate to the public, service users and its employees that it has thoroughly assessed the potential benefits and impact of outsourcing the service in question against a public sector comparator with assessments being based on criteria to be set by the Secretary of State from time to time, including taking a five year consideration of—

(a) service quality and accessibility;

(b) value for money of the expenditure;

(c) implications for other public services and public sector budgets;

(d) resilience of the service being provided;

(e) implications for the local economy and availability of good work in relevant sub-national labour markets;

(f) implications for public accountability and transparency;

(g) effect on employment conditions, terms and standards within the provision of the service to be outsourced and when outsourced;

(h) implications for public sector contributions to climate change targets;

(i) implications for the equalities policies of the contracting authority and compliance with the public sector equality duty."

Importantly, the public interest test would take place pre-procurement, and not all services subject to the test would eventually go to market. To increase transparency around those services that enter into the procurement process, the Bill should mandate information about outcomes of the associated public interest test to be published.

Under the new clause, the contracting authority and the provider of the outsourced service would also be required to

"monitor the performance of any contracted service against the public interest test and the stated objectives set by the contracting authority pre-procurement to demonstrate that outsourcing the service in question has not resulted in a negative impact on any of the matters mentioned in subsection (2)(a) to (i)."

Labour is clear that we would run the biggest programme of insourcing for a generation. We recognise the value offered by those delivering outsourced services, but we have concerns about the current scale of outsourcing. New clause 3 would lay out a clear test for outsourcing, ensuring it is done only when it is in the interests of the public, and that we do not hand out public services on the cheap.

We must create a culture of value for money throughout the public sector and avoid waste wherever we can. We believe that the new clause would help to create that culture. I hope that the Minister will give it due consideration and support it.

The Parliamentary Secretary, Cabinet Office (Alex Burghart): It is a pleasure to serve under your chairmanship once again, Mr Mundell. I can feel an air of excited sadness in the room because there is a possibility that the Committee may finish its consideration of the Bill today.

May I begin with a small correction relating to remarks that I made on 2 February when discussing dynamic markets? I stated that the current regime for dynamic markets does not remain open for new suppliers to join at any time. I was confused when I was talking about that; I was talking about the new provisions that we are making for open frameworks, where it is now possible for people to jump on. I just wanted to put that on the record.

New clause 3 would require contracting authorities always to undertake a public interest test when considering whether to outsource or continue to outsource a public sector service. Following the collapse of Carillion in January 2018 and the ongoing difficulties of some companies in the outsourcing sector, the Government's commercial function undertook a review of what we outsource, why we outsource and how we outsource. It concluded that

"when done well, the private sector can bring efficiency, scale and fresh thinking to the delivery of public services."

In February 2019, we published the first sourcing playbook, which captured key policy reforms for better outsourcing that contracting authorities should follow when considering how best to deliver Government services. This applies whether the contracting authority decides to outsource and deliver a service in partnership with the private and third sector, insource and use in-house resources, or do a mixture of both. That includes carrying out a make-versus-buy assessment, now referred to as a delivery model assessment, which is mandatory for central Government services in certain situations, such as the introduction of new public services or where there is a need to re-evaluate an existing service, for example because of a deterioration in the quality of delivery. It is important to emphasise that the playbook supports a range of delivery models that should be carefully considered as part of a mixed-economy approach to service delivery.

As well as in-house delivery and outsourcing, different models, such as grant making, may also be available. Hon. Members will recall that when I spoke on clause 3, I referred to the types of contracts regulated by the Bill. In particular, contracts must be for pecuniary interest, which can encompass monetary and non-monetary consideration. Contracts merely for the reimbursement of costs and without further remuneration or other direct benefit to the supplier are not covered. We do not, for example, intend the regime to capture contracts for the deployment of grants.

The sourcing playbook, which is now in its third iteration, builds on policies set out in the first sourcing playbook and is a more agile and appropriate place for this type of provision. I recently met the Business Services Association, which was extremely supportive of the playbook approach.

The tests set out in the new clause would be hugely burdensome for any contracting authority every time it is considering outsourcing or re-letting an already outsourced service. For that reason, I ask that the new clause be withdrawn.

Florence Eshalomi: I understand the Minister's hesitancy about supporting the new clause, which he claims is because of bureaucracy. Does he recognise that many local authorities and others are conducting a big wave of insourcing, including my local authority, Lambeth Council, which decided last year to bring back its cleaning and maintenance service? The feedback from residents was that the contractors providing the outsourced service were not delivering, so the council has now brought it back in-house.

A number of local authorities under different political parties are following in the same vein. The new clause would help us to help them to look at the key issue of value for money and ensure that every pound spent on contracts delivers value for money. The new clause is not about extra bureaucracy, but about taxpayers' money being spent on the right contracts. Does the Minister agree that the new clause would help those organisations to do that?

Alex Burghart: The hon. Lady gives a very good example of how the existing regime allows for outsourcing. We are building on that: the playbook that I described is there to help all contracting authorities to make better decisions about whether they want to outsource or to keep things in-house. She is quite right that there are circumstances in which keeping things in-house is a very good thing, but we feel strongly that the new clause would create a series of unnecessary requirements when the tools to insource are already at the disposal of authorities.

Question put and negatived.

New Clause 5

Carbon reduction plans

"(1) Subject to subsection (4), contracting authorities must obtain, assess and publish a carbon reduction plan from all suppliers under consideration for qualifying contracts before entering into a public contract with any supplier.

(2) In this section, 'qualifying contract' means—

(a) a public contract with an average value of more than £5 million per annum (excluding VAT) over the duration of the contract,

(b) any contract to be awarded under a framework agreement anticipated to be greater than £5 million per annum (excluding VAT) in value, or

(c) any contract to be awarded by reference to a dynamic market which is anticipated to be greater than £5 million per annum (excluding VAT) in value.

(3) For a qualifying contract of the type referred to in subsection (2)(a), a 'carbon reduction plan' must contain—

(a) the supplier's current greenhouse gas emissions,

(b) confirmation of the supplier's commitment to achieving net zero greenhouse gas emissions by 2050 for their UK supply chain, operations, products and services,

(c) intermediate targets for reductions in their greenhouse gas emissions at no more than 5 year intervals, beginning with the date of award of the contract,

(d) as far as they are able, the greenhouse gas emissions attributable to performance of the contract,

(e) as far as they are able, targets for reductions in those greenhouse gas emissions, and

(f) other environmental management measures in effect which will be applied when performing the contract.

(4) For the qualifying contracts of the type described in subsection (2)(b) and (2)(c), a carbon reduction plan should contain the matters specified in subsection (3)(a), (b) and (c) only.

(5) In complying with requirements imposed by the regulations, a contracting authority must have regard to guidance prepared from time to time by an appropriate authority.

(6) 'Greenhouse gas' has the meaning given in section 92 of the Climate Change Act 2008, and 'emissions' has the meaning given in section 97 of that Act."—*(Florence Eshalomi.)*

This new clause would require company-level carbon reduction plans for bidders for certain larger contracts, including information and targets from suppliers on the emissions attributable to the performance of the contract. It also specifies that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Brought up, and read the First time.

Florence Eshalomi: New clause 5 would introduce carbon reduction targets for certain large contracts, in general those worth £5 million or more. The new clause is inspired by the Government's own procurement policy note 06/21, which outlines their intention to take into account suppliers' plans to reduce carbon emissions when considering large contracts.

Climate change is the biggest threat we face as the human race. Everyone in this room must recognise and agree that we need to reduce emissions urgently if we are to avoid this crisis. We must not ignore or under-appreciate the impact that reforms to our procurement system will have on our carbon emissions. However, I fear that the Bill is a missed opportunity to deliver real change in environmental standards in the procurement system.

That is particularly true considering what the Government have already chosen to remove from the Bill. Removing amendments on social value and the procurement policy statement, for example, that would have incorporated emissions will do nothing to tackle climate change in our procurement system, and there is hardly anything else in the Bill to drive real progress on carbon emissions.

9.45 am

The Government currently use the national procurement policy statement and procurement policy notes to set out environmental standards, targets and principles. Those are welcome, but they do not have the protection of primary legislation. While we understand the need for flexibility and for tweaks and changes in targets, climate targets require long-term commitments.

Our new clause would put the principles of procurement policy note 06/21 on the statute book. It would ensure that those bidding for and winning large contracts have plans to reduce their emissions and to be in line with our net zero pledges. The Government themselves think that measure is proportionate, given that they introduced the policy in the first place, and the £5 million limit would be in line with other elements of the Bill that create extra obligations. What would be the logic behind including key performance indicators for large contracts but not including carbon reduction targets?

The Minister will probably say that these things are already in place, but what protections are there to ensure that future Governments consider them? We are now on our third Prime Minister in my three years and a few months in this place. We must ensure that we have clear targets on the statute book and that we lock these measures into the Bill. That will happen only if we all support the new clause.

Alex Burghart: New clause 5 would require contracting authorities to obtain carbon reduction plans from suppliers for contracts above £5 million per annum. In 2021, the Government implemented a procurement policy that required suppliers to provide carbon reduction plans when bidding for major Government contracts. The new clause would limit opportunities to amend and improve the policy as our ambition to achieve net zero progresses.

I assure the Committee that contracting authorities will continue to be able to take account of suppliers' net zero commitments and carbon reduction plans, environmental targets, and climate change where they are relevant to the subject of the contract. The Bill and our existing policies already allow that in individual procurements, which is absolutely in line with the Government's commitment to achieving net zero by 2050.

A key Government commitment is to encourage small and medium-sized enterprises into the Government supply chain. We are of course mindful of the impact that policy and legislation have on suppliers. The purpose of the Bill is to reduce unnecessary regulatory burdens in the procurement regime to support SME suppliers in winning Government contracts. In our view, contracting authorities are able to deal with these matters as it stands, and we will not be supporting the new clause.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 33]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 6

GRANTING OF RELIEF ON AN APPLICATION FOR JUDICIAL REVIEW OF A CONTRACTING AUTHORITY'S DECISION

"Section 31(2A) of the Senior Courts Act 1981 does not apply in the case of an application for judicial review of a contracting authority's decision to award a contract if—

(a) the contracting authority breaches the principle of non-discrimination in section 89, and

(b) the authority's breach is caused by a representation to the contracting authority by a Member of Parliament, Member of the House of Lords, or senior civil servant."—*(Florence Eshalomi.)*

This new clause would ensure that if an MP, Lord or senior civil servant lobbied a contracting authority to award a contract to a certain bidder and a court held that this had resulted in unequal treatment then the court would be able to grant relief.

Brought up, and read the First time.

Florence Eshalomi: I beg to move, That the clause be read a Second time.

The new clause would disapply section 31(2A) of the Senior Courts Act 1981 where a breach of non-discrimination occurs under clause 89 and is caused by a representation to the contracting authority by a Member of Parliament, a Member of the House of Lords or a senior civil servant. In practice, this would ensure that relief is granted in the case of a court finding that there has been unequal treatment between traders as a result of the type of lobbying seen in the VIP lane scandal during the covid-19 pandemic.

In the debate on amendment 103, tabled by the hon. Member for Aberdeen North, the Minister said:

"We understand—indeed, we agree with—the intent behind the amendment, but the Bill already covers such a scenario via robust requirements for contracting authorities to ensure equal treatment and address conflicts of interest. The bottom line is that if a conflict of interest puts a supplier at an unfair advantage, they must be treated as an excluded supplier and cannot be given a direct award."—[*Official Report, Procurement Public Bill Committee,* 7 February 2023; c. 139.]

I do not doubt that VIP lanes would breach provisions relating to equal treatment of suppliers, and I do not doubt that those provisions were broken during the VIP lane scandal. In fact, that was at the heart of Mrs Justice O'Farrell's ruling in the PestFix case last year, in which she stated that the operation of a high-priority VIP lane was

"in breach of the obligation of equal treatment".

Despite that finding, the plaintiffs in the case were not awarded remedy, and it is unclear what checks and balances are in place to ensure that a future Government will not rely on VIP lanes, even when they know that their application will fall foul of the law. That is summed up by Mrs Justice O'Farrell's closing remarks:

"In these proceedings, the Claimants have established that operation of the High Priority Lane was in breach of the obligation of equal treatment under the PCR. However, the court has found that, even if PestFix and Ayanda had not been allocated to the High Priority Lane, nevertheless they would have been treated as priority offers because of the substantial volumes of PPE they could supply that were urgently needed. Although there is public interest in the outcome of this challenge, the contracts in question have been performed (or expired) and it is sufficient that the illegality is marked by this judgment. Therefore the granting of relief does not meet the test in section 31(2B). In those circumstances, the court must refuse to grant the relief sought."

I believe that, at its heart, that ruling shows the flaws in the current system. In debates on other amendments and clauses, I have argued for more transparency in the Bill in relation to conflicts of interest. The Minister knows that the Opposition believe that shining a light on proceedings as early as possible helps to limit the time in which illegal activities can occur. Surely, however, as the Government rejected our earlier amendments, they must see the need to tighten up the consequences of acting against the law. We know that the use of the VIP lane was illegal, and we know that companies that got into the VIP lane were 10 times more likely to win a contract, but the fact is that we do not know whether there have been any real consequences associated with the use of the illegal VIP lane.

I hope the Minister will agree that the public are rightly angry about the use of the VIP lane. They are angry that billions of pounds were wasted on personal protective equipment that was not up to standard. They expect to see justice when illegal activities are carried out. What is the point of putting laws in place if there are no consequences? New clause 6 would tighten up action against activity that breaches rules on conflicts of interest by ensuring that the courts are able to grant relief when lobbying by MPs, peers or senior civil servants results in unfair treatment. I hope the Committee will support the new clause.

Alex Burghart: New clause 6 would, in circumstances where a breach of the non-discrimination principle in clause 89 was caused by a representation to the contracting authority by an MP, lord or senior civil servant, disapply section 31(2A) of the Senior Courts Act 1981 in the context of any judicial review.

Section 31(2A) essentially prohibits a court from granting relief, including awarding damages, where it is highly likely that the conduct complained of did not make a significant difference to the contracting authority's decision. In other words, the intention of the new clause is to enable a court to grant relief when lobbying for a contract to be awarded to a particular supplier has led to alleged unequal treatment, even where the contracting authority can demonstrate that it would have selected the chosen supplier regardless of any lobbying.

While I understand that the new clause is motivated by a desire to ensure consequences if an MP, lord or senior civil servant lobbies a contracting authority to award a contract to a certain bidder, resulting in the unequal treatment of other suppliers, the Bill is crystal clear with respect to conflicts of interest, and there are consequences if those statutory duties are breached. Clause 81(3) states that if

"a conflict of interest puts a supplier at an unfair advantage"

and if steps to mitigate cannot avoid that advantage, the supplier must be excluded.

Under part 9, suppliers may seek legal remedies, including relief, if they have suffered or are at risk of suffering loss or damages as a result of a breach of statutory duties. Suppliers that have lost out on contracts as a result of such unlawful behaviour are best placed to hold contracting authorities to account.

Additionally, in respect of suspected non-compliances with the Bill, including conflicts of interest that put a supplier at an unfair advantage, an appropriate authority can investigate upon the request of any party, using part 10 of the Bill or other powers, and issue recommendations if commercial practices do not comply

[Alex Burghart]

with the Bill's provisions. There is simply no need for the Bill, which has additional remedies for breach of statutory duty, to start interfering with the rule of law applicable to judicial review claims. As a result, we respectfully ask that the new clause be withdrawn.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 34]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 7

REVIEW OF PROCUREMENT OF FLEET SOLID SUPPORT SHIPS

"(1) By the end of 2023, the Secretary of State for Defence must conduct a review of the procurement of Fleet Solid Support Ships.

(2) The review must consider and report on—

(a) the total amount of expected UK build work for each Fleet Solid Support ship,

(b) the number of UK jobs and Spanish jobs that have been created so far as a result of awarding the contract for Fleet Solid Support ships to 'Team Resolute',

(c) the number of UK SMEs and Spanish SMEs that have been contracted to work on Fleet Solid Support ships so far by Navantia UK,

(d) whether Navantia UK are on track to fulfil guarantees on the UK content, UK steel targets and social value,

(e) whether Navantia UK are on track to meet timelines to complete the project, and

(f) any other matter which the reviewer considers appropriate.

(3) The Secretary of State must report to Parliament on this review and publish a report on the review's findings by the end of 2023."—(*Chris Evans.*)

This new clause would mandate a review of the procurement of Fleet Solid Support Ships.

Brought up, and read the First time.

Chris Evans (Islwyn) (Lab/Co-op): I beg to move, That the clause be read a Second time.

It is a pleasure to serve under your chairmanship, Mr Mundell. We have only been here half an hour and it is like we have never been away.

New clause 7 would require the Secretary of State for Defence to conduct a review of procurement of fleet solid support ships by the end of 2023. In November 2022, the £1.6 billion contract for fleet solid support ships was awarded to a Spanish-led consortium, Navantia UK, over the rival bidder, Team UK, which included major British defence companies such as Babcock, BAE Systems, Cammell Laird and A&P. At least 40% of the value of the work—about £640 million—will go abroad. My colleagues and I have questioned the Government on numerous occasions about whether there is a limit on how many jobs will be created in Spain and why there are no targets for UK steel in the contract. The Government are yet to give concrete answers. That is exactly why we need the new clause. It is vital that we review the contract to ensure that the promise of work and jobs in Britain is kept.

The new clause outlines key points that we believe must be reviewed. The first is about UK build work. Subsection (2) states that the review must consider

"the total amount of expected UK build work for each Fleet Solid Support ship"

and

"the number of UK jobs and Spanish jobs that have been created so far as a result of awarding the contract for Fleet Solid Support ships to 'Team Resolute'".

It is reported that Team UK's bid would have generated more than 6,000 jobs and supported a full onshore build of the ships. The bid also promised an investment of £90 million in shipyards and a further £54 million in training, apprenticeships and improving the skills base.

10 am

The Government's decision to choose Navantia UK is obviously concerning, given the smaller amount of UK work that has been granted and the possibility that the ships could still very well all be made in Spain. Furthermore, Navantia's subsidiary company, Navantia UK, was registered only in May. It has no trading history and its two directors both live in Spain. That does not give me much hope that Britain's best interest is at the heart of the contract.

The next item the review must consider is the number of UK and Spanish SMEs that have been contracted to work on fleet solid support ships so far by Navantia UK. SMEs are crucial to the supply chain, and I am concerned that the awarding of the contract to a Spanish-led consortium means that Spanish SMEs will receive the majority of contracted work. UK SMEs are being left out in the cold, with worries about workload pipelines.

SMEs are often at the forefront of innovation, but the Government's decision does not back our UK SMEs and does not ensure that the UK can stay at the forefront of innovative technology to defend Britain. This is not a new thing, however. Although the Ministry of Defence had the highest proportion of procurement spend across all Departments in 2020-21—£19.5 billion—just 23% went to SMEs.

While I still believe the Government missed an opportunity with this contract to invest in UK industry, there is still a chance to ensure that businesses to do not lose out any more. GMB estimates that, had the contract been awarded to Team UK, and had the fleet solid support ships been built in the UK, at least £285 million would have been returned to the taxpayer through income tax, national insurance contributions and lower welfare payments. I worry that if SMEs also lose out, even less will be returned to the taxpayer.

Subsection (2)(d) would require the review to consider

"whether Navantia UK are on track to fulfil guarantees on the UK content, UK steel targets and social value".

The UK steel industry also plays a role here, and it is vital that we ensure that Navantia UK is on track to fulfil its guarantees on UK content, UK steel targets and social value. It is crucial that the contract meets UK steel targets to support our industries. We believe that British steel is crucial for our national security. Russia's invasion of Ukraine has caused uncertainty and instability. It has highlighted the vulnerability of our international trade arrangements and reinforced the need for a robust British steel sector with British supply chains to increase national industrial resilience.

The Government must ensure that British steel is used in public defence contracts to secure our defence businesses for the future. We believe it is right that defence contracts should be awarded to British firms that use British materials and create British jobs, although that is far from the current trend. We believe that defence investment in UK shipbuilding is critical. We should buy, make and sell in Britain, and Labour is strongly committed to that.

The importance of social value has not gone unmentioned during the Committee's proceedings, but including social value in the review is vital to ensure that the contract meets this country's standards and expectations. When I say social value, I mean here in the UK; we should not use taxpayers' money to pay for Spain's social value.

Finally—this is linked to new clause 8—we must ensure that Navantia UK is on track to meet its timelines to complete the project. One of the biggest causes of waste in defence procurement is delays to projects. The current mismanagement of defence programmes has left a shocking 42 out of 45 projects not on time or on budget. I understand that, further along Committee Corridor, the Defence Committee is meeting to review the MOD accounts. I am sure that will be another uncomfortable hearing for the permanent secretary and the Ministers responsible. Ministers have lost control of costs and contracts, and the Defence Secretary has no plan to get a grip of the problems. We often say that we need to throw money at it, but if money is still being wasted and the same processes are in place, nothing will change. Given that the majority of the work will be done abroad, in Spanish shipyards, we need to ensure that we keep track of the contract's progress so that there is no added cost to the taxpayer.

I will make my point on waste mainly in the debate on new clause 8, but it is important that fleet solid support ships are properly monitored and that they do not fall into the current pattern of delays and overspend. While Labour would have directed investment first to British industry and British jobs, the Government unfortunately had other plans. Our objective behind the new clause is to ensure that the contract still works for the British people by ensuring that the number of UK jobs is clear, that SMEs are involved, that UK steel targets are met, that social value remains at the heart of procurement, and that the contract ultimately does not go the way of so many others by experiencing long and costly delays.

Alex Burghart: It is a pleasure to respond to the debate on new clause 7, which mandates a review of the procurement of the fleet solid support ships programme and requires findings to be published by the end of the year. Replying to my friend the hon. Member for Islwyn on this subject is sadly reminiscent of the second Anthony Joshua versus Usyk fight, where Joshua bravely, but unfortunately, deployed similar tactics to the ones he had used previously and met the same conclusion. The hon. Gentleman will be delighted to hear that monitoring is already part of the MOD's approach to the programme. The MOD will track the process of the overall FSS programme, as well as social value and recapitalisation activities, through regular governance forums such as the project delivery board and the recapitalisation and social value committee.

In support of the forums, Team Resolute is obliged to produce regular reports demonstrating the progress achieved. Examples include reports detailing execution against Harland & Wolff's shipyard infrastructure works commitments, and earned value progress in terms of design development and the ship build. Additionally, regular site visits will be undertaken by expert personnel in the Department.

I assure the hon. Gentleman that the contract will bring hundreds of jobs to the UK. The majority of the contract spend will take place in the UK, with most manufacture activities taking place in UK shipyards in Belfast and Appledore. All three ships will be integrated at Belfast, along with all testing and commissioning. As he knows, these are large ships, second only in length to the carriers. The use of a world-class auxiliary shipbuilder allows for technology and skills transfer to the UK, and for UK capability and employment to sustainably step up to deliver this contract. Team Resolute also said that it intends to use UK-sourced steel wherever it is practical to do so, and steel will be procured in accordance with Cabinet Office guidelines. It is sad to hear the hon. Gentleman talking this great programme down.

All this work will enable early identification and mitigation action against the risk of non-delivery. Key performance indicators for the programme will be reported against, with several relating to UK labour and the UK supply chain. MOD Ministers will receive regular updates throughout the programme, particularly in relation to UK skills development and ramp-up in the initial stages of the contract. That will supplement other regular reporting on FSS that the MOD has committed to providing to His Majesty's Treasury.

The Bill sets out the framework for public procurement for contracting authorities generally across England, Wales and Northern Ireland. It is therefore not appropriate to set out requirements for one specific project, the timescale for which is finite. For those reasons, I respectfully request that the amendment be withdrawn.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 35]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 8

AUDIT OF WASTE IN MINISTRY OF DEFENCE PROCUREMENT

"(1) The National Audit Office (NAO) must produce and publish a report setting out any instances of waste in Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed.

(2) In this section, "waste in Ministry of Defence procurement" means—

(a) overspend on initially planned budgets,

(b) assets being withdrawn or scrapped or prepaid services terminated,

(c) a contract being cancelled,

(d) a contract being extended beyond the initially agreed timescale, or

(e) administrative errors which have had a negative financial impact.

(3) The report must include recommendations on how better management of contracts can reduce the loss of public money.

(4) Within one month of the publication of the report, the Secretary of State must report to Parliament on whether the NAO's recommendations have been accepted or rejected, with reasoning in either case."—*(Chris Evans.)*

This new clause would require the NAO to conduct an audit of waste in Ministry of Defence procurement and to make recommendations on how better management of contracts can reduce the loss of public money, and the Secretary of State to report to Parliament on whether its recommendations have been accepted.

Brought up, and read the First time.

Chris Evans: I beg to move, That the clause be read a Second time.

I must say this, given the shared interest that my friend the Minister and I have in boxing—I was going to stay away from the boxing metaphors, but I think this will be the last time I speak in this Bill Committee. We recently marked St Valentine's Day, and he will remember the "St Valentine's Day massacre", when Jake LaMotta faced Ray Robinson, and after Ray Robinson trapped Jake LaMotta on the ropes and the fight was stopped, LaMotta ran after Robinson, shouting, "You didn't knock me down, Ray! You didn't knock me down!" Considering that the Government have won on all the new clauses, I feel like shouting at the Minister, "You didn't knock me down! You didn't knock me down!"

New clause 8 would require the NAO to conduct an audit of waste in Ministry of Defence procurement and to provide recommendations on how better contract management might minimise the loss of taxpayers' money, and then require the Secretary of State to report to Parliament on whether the NAO's recommendations had been accepted. I touched on the issue of waste in my previous speech, but I want to take this opportunity to re-examine the severe levels of waste in the Ministry of Defence. I speak not just as the shadow Minister but as one who was a member of the Public Accounts Committee for five years. I could give this Committee numerous examples of the permanent secretary sitting quite uncomfortably in his seat, answering questions mainly around the defence equipment plan and other such documents that came before the PAC. To be honest, it was embarrassing and uncomfortable, but that is where the Ministry of Defence has been for the last couple of years.

Labour's "Dossier of waste in the Ministry of Defence 2010-2021", published last year, confirmed that the MOD has wasted at least £15 billion of taxpayers' money since 2010, with £5 billion since 2019, while the current Defence Secretary has been in post. Waste in the procurement system has become engrained. This needs to change urgently. I have alluded to the defence equipment plan; when mistakes were pointed out by the NAO, very often the Ministry of Defence response was a shrug of the shoulders and, "So what?" Very often the defence equipment plan was sent back because it was inaccurate and had been drawn up very sloppily, but again, the MOD just shrugged its shoulders. This is why we would commission the National Audit Office to conduct an audit of waste, setting out any instances of waste in Ministry of Defence procurement.

We have set out five definitions of "waste in procurement", which can all be evidenced in the current procurement system. They are: overspend on initially planned budgets; assets being withdrawn or scrapped, or prepaid services terminated; a contract being cancelled; a contract being extended beyond the initially agreed timescale; and administrative errors that have had a negative financial impact. Everyone might be aware of the key examples of waste, but I feel that they should be mentioned again in order to truly depict the problem in defence procurement. They include £595 million written off with the cancellation of the Warrior armoured vehicle sustainment programme, £231 million wasted by writing off armoured vehicles such as Mastiffs, Ridgebacks and Wolfhounds earlier than planned, and £530 million on overspends relating to the Protector drone programme. The Labour party's dossier of waste also found that £64 million was wasted on administrative errors.

A shiver goes up my spine and that of my hon. Friend the Member for Merthyr Tydfil and Rhymney when I mention the delayed Ajax project, which is based in our constituencies. I have been following this project. General Dynamics, which runs the Ajax programme, has its headquarters in my constituency, and it has a facility in Merthyr Tydfil and Rhymney. Ajax is a perfect example of waste in procurement. The initial planned budget was set at £5.5 billion, with 589 armoured vehicles ordered and expected to be delivered and in service by 2017. Now, in 2023—six years later—the MOD has spent £3.2 billion and only 26 vehicles have been delivered. There are also reports that Ajax will now cost an extra £1 billion or more if all 580 vehicles are still bought.The Ajax programme has been set back by delays, mismanagement and various design and development problems, all adding costs that are being paid for by the taxpayer.

An NAO audit of waste would evaluate programmes like Ajax, analyse at which points in the programme issues start to arise, and identify whether they are trends in procurement programmes across the MOD. The recommendations from the NAO audit would be vital to minimise wasted public money. Ajax is the perfect example of how the costs of delays become built into the procurement process. I have been told by members of the Business Services Association that delays in the system cause the biggest cost, and that their potential impact on the length of procurement contracts actually puts off many from bidding on defence contracts. It is wrong that our system has become a deterrent for British businesses instead of an incentive.

10.15 am

Waste in procurement is also about transparency and accountability for public money. At the moment, it feels as though scandal after scandal revolves around procurement. Taxpayers are constantly paying for the mistakes of this system, and defence procurement is no different. As highlighted in our dossier, the 2014-15 accounts revealed that £21 million was lost due to the

"incorrect recording of Merlin aircraft component lives",

that it remained

"unclear exactly how this data entry error resulted in a £21 million fruitless payment",

and that, despite further inquiry, little explanation was given. Just think of the charities in our constituencies that are crying out for money, and what they could do and how many lives they could improve with £21 million. In addition, the fleet solid support ships award is shrouded in mystery as to why other bidders were not informed of their non-compliance.

Tackling waste helps to improve transparency, and our new clause would help to solidify the principles set out in the national procurement policy statement by,

"acting openly to underpin accountability for public money".

Value for money and transparency are at the heart of this Bill, and the waste in the MOD clearly juxtaposes those principles. Taxpayers simply deserve better, and our armed services deserve equipment that arrives on time. When discussing legislation, it is easy to forget the people on whom it will have the biggest effect day to day; in defence procurement, that is our armed services, on whom we rely to keep the nation safe and who rely on us to supply the equipment that will keep them safe. The current capabilities gap caused by continuous delays and mismanagement threatens our ability to keep our service personnel and our country safe.

It is time for a proper system of accountability. New clause 8 would ensure that a proper audit of waste is conducted. The first step in tackling this issue is to understand its scale. We will not truly see what needs to be changed until we see waste reviewed in one singular audit, which brings me to the second crucial element of the proposal. New clause 8(4) outlines that:

"Within one month of the publication of the report, the Secretary of State must report to Parliament on whether the NAO's recommendations have been accepted or rejected, with reasoning in either case."

Parliamentary sovereignty is paramount in this country, which is why the Secretary of State must report to Parliament. We need to be able to hold the Department accountable for the waste of taxpayers' money. I hope that the Minister will see this as an opportunity to make the MOD more accountable for public money and ensure that the system as a whole is more transparent.

Alex Burghart: I am very happy to play Ray Robinson to the hon. Gentleman's LaMotta. He will remember fondly, as I do, that Jake LaMotta said, "I fought Sugar Ray Robinson so many times, it is a wonder I don't have diabetes." I will cease the boxing chat there, Mr Mundell, lest you get up and bite off my ear, as Mike Tyson did to Evander Holyfield in their second fight.

I am pleased to hear the hon. Member for Islwyn say that value for money and transparency lie at the heart of the Bill, because they do, and it is because of those principles that we feel the new clause is unnecessary. However, it is also unnecessary because the National Audit Office already conducts a yearly audit of the defence equipment plan and undertakes regular audits on defence programmes. Further scrutiny of the performance of defence programmes is undertaken by the Infrastructure and Projects Authority, which tracks the progress of projects currently in the Government major projects portfolio, the details of which are published in its annual review. As an independent statutory body, the NAO decides independently of Government where to focus its resources, and determines what projects and public bodies it audits at what point in time. The new clause would interfere with its statutory independence.

At the heart of the proposal is a desire to see defence procurement improve—an objective the Government share—but I encourage the Committee to follow closely the implementation of the Government's defence and security industrial strategy, published in March 2021, which will increase the pace, agility and management of the Ministry of Defence's acquisition process. We respectfully request that the new clause be withdrawn.

The Chair: I do not know much about boxing, but I know that when there is no knockout, the judges decide.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 36]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 14

PROCUREMENT TRANSACTION SYSTEM

"(1) An appropriate authority may by regulations make provision requiring procurement transactions to be carried out in a specified manner, including through a specified online system.

(2) Regulations under subsection (1) may require a contracting authority to—

(a) carry out procurement transactions in a specified way, or

(b) take steps to ensure that suppliers participating in a procurement carry out procurement transactions in a specified way.

(3) A contracting authority must keep records related to any transaction or communication between the authority and a supplier for the purposes of, or in connection with, a covered procurement in a specified online system.

(4) In this section, 'procurement transactions' means transactions carried out under, or for a purpose relating to, this Act."—*(Florence Eshalomi.)*

Brought up, and read the First time.

Florence Eshalomi: I beg to move, That the clause be read a Second time.

The new clause would enable a future procurement system to mandate that procurement transactions be carried out in a specific way. It would build on the powers in clause 95 relating to procurement transactions, but take those powers further to ensure that everyone undertaking procurement under this regime uses a well-designed, specified system that is common throughout.

It is rare in a Bill Committee for the Opposition to propose giving unrestrained and optional power to the Government via an amendment or new clause, so I hope the Minister is delighted by our new clause. It is almost a knockout clause, I would say. We understand, and indeed welcome, the measures to introduce some degree of commonality across procurement through methods such as a single online system. Commonality within the procurement system brings many advantages. It can save contracting authorities the time, effort and money of running individual systems; boost the public's understanding of procurement data and mechanisms, indirectly boosting transparency; and make our procurement system easier to navigate for suppliers, helping SMEs to bid for contracts efficiently, rather than having to shape-shift around the application process.

Around the world, increased commonality has been seen to increase efficiency and create a system that is the envy of the world. The Minister need only speak to one of his own party's MPs, the hon. Member for West Worcestershire (Harriett Baldwin), about Ukraine's ProZorro procurement system. Systems such as ProZorro and the Republic of Korea's procurement system bring in a specified system that is used by everyone and that uses cutting edge digital technology to reduce bureaucracy. That was referenced in the Government's Green Paper on procurement, which said:

"This lack of standardisation, transparency and interoperability is preventing the UK from harnessing the opportunities that open, common and shared data could bring. The ability to analyse spend, manage suppliers, counter fraud and corruption and see inside the supply chain to ensure compliance with government policies. The experience of other nations (e.g. Ukraine and South Korea) is that driving forward with a clear digital procurement strategy focused on transparency results in greater participation and increased value for money driven by competition."

There is already international precedent for the introduction of a specified procurement system, and the Government have stated these lofty aims, so why should the Bill not make provision to go further?

Our new clause would not mandate immediate action, because we know that this would be complex and take time to set up. However, should this Government or a future one want to introduce a Ukraine-style system, it would be a shame if they found that difficult under the Bill. I therefore hope that the Minister will agree with us and support the new clause.

Alex Burghart: The hon. Lady's new clause is on the procurement transaction system. We are absolutely delighted with the Opposition's enthusiasm for our online system.

The Bill already contains provisions for the establishment of the online system for the purpose of publishing notices, documents and other information under clause 93. It also requires the online system to be free of charge and accessible for people with disabilities. Furthermore, as the Committee will remember, clause 95 requires certain information to be shared in a particular way, including through a specified online system, and requires contracting authorities to keep records of any communication between the authority and a supplier that is made for the purposes of, or in connection with, a covered procurement.

The online system will enable everyone to have better access to public procurement data, in particular because the detailed input received during the early design of the Bill from countries such as Ukraine and South Korea, which have specialist knowledge of designing procurement transparency systems. I am honoured to be able to say that my next meeting after this sitting is with the Deputy Prime Minister of Ukraine, at which we will discuss this very issue. I will thank him for his country's input to our work going forward in the Cabinet Office.

Florence Eshalomi: Does the Minister not feel that the meeting would be even more beneficial and fantastic if he were to tell the Deputy Prime Minister that he had accepted the new clause?

Alex Burghart: I will be delighted to tell our friends in Ukraine that, because of the advice they gave us earlier, there is no need for the new clause. We have a great partnership with Ukraine, which straddles many areas, and a growing number of them. We have benefited from the Ukrainians' expertise, and from that of colleagues in South Korea, which has very advanced digital government and economy.

As a result of the work we have done and are doing, 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. The Government have already committed to sharing procurement information through the online system, and the new clause would simply replicate requirements that are in the Bill already.

The hon. Member for Vauxhall asked how we know whether future Governments will be bound, but the proposal will happen within the lifetime of this Government. The Government are committed to it, to delivering on it and to learning from the experiences of colleagues abroad. We therefore respectfully ask that the new clause be withdrawn.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 37]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 16

PROCUREMENT OF SUPPORT SERVICES FOR VICTIMS OF VIOLENCE AGAINST WOMEN AND GIRLS

"(1) In carrying out a covered procurement for local specialist support services for victims of violence against women and girls, a contracting authority must have regard to social value within the meaning of the Public Services (Social Value) Act 2012.

(2) For the purpose of this section, "support" means specialist support provided to victims of violence against women and girls or their children by organisations whose organisational purpose is to support victims or children and young people impacted by violence against women and girls."—*(Florence Eshalomi.)*

This new clause would ensure authorities give regard to social value when carrying out procurement for services to support victims of violence against women and girls.

Brought up, and read the First time.

Florence Eshalomi: I beg to move, That the clause be read a Second time.

New clause 16 would ensure that contracting authorities give mind to social value when considering violence against women and girls services. Throughout the course of the Committee, we have spoken at great length about social value. I remain concerned that the Bill does not give social value the prominence it needs. There are many areas that would benefit from the consideration of social value, but there is a particular case for it to be fully considered in violence against women and girls services.

10.30 am

Tackling violence against women and girls is a major concern and priority. Last year, a nationally representative survey by Women's Aid last year showed that 14% of the population, and 33% of women, placed tackling violence against women and girls in the top three issues that the UK Government should prioritise over the next 12 months. This Bill is an opportunity to ensure that survivors of domestic abuse and other forms of violence against women and girls get the support they need. As hon. Members will know, support services are generally procured at a local level. As it stands, the Bill does little to reform the damaging approach we see in practice, which favours one-size-fits-all, generic providers that do not support all victims of domestic abuse and violence holistically and, crucially, that survivors of domestic abuse do not want to access support from, due to their lack of expertise.

The statistics on domestic abuse are truly shocking. In 2020-21, more than 62% of initial referrals to refuges were turned away. As of 2022, there is still a 24% average shortfall in refuge spaces across England. In a recent survey, 67% of Women's Aid members—frontline services—said that, if they do not receive more financial support, that will stop them from being able to support victims and survivors. That figure rose to 85% of services run by and for black and minoritised women. Unfortunately, gaps in the procurement system are hindering attempts to provide a more holistic service that could help to get women the support they need.

Sadly, I have heard from domestic abuse charities that, even where commissioners have a good understanding of the provision of VAWG services , processes are driven by procurement teams, which results in decisions that are driven by competitive procurement processes rather than the concept of social value. Those same charities say that, because the weighting of the procurement criteria and social value are often optional, smaller community domestic abuse services lose out to larger, generic providers when contracts go out for tender. Large providers can afford teams of professionals skilled in tendering and writing proposals, unlike smaller organisations that have the experience of delivering specialist services. The result is that considerable time and resources are spent on process rather than outcomes.

I remind Members of our debate on clause 12. My hon. Friend the Member for Brighton, Kemptown gave the example of a small service in Brighton led by women, for women, that was decommissioned by the local authority. He told us that, a year and a half ago, the domestic abuse service, RISE, went up for tender:

"RISE was created by women in the city, with support from the council…The procurement process did not consider RISE's social value whatsoever…RISE lost the contract. That meant that decades of understanding the needs of women from an organisation…was no longer there."—[*Official Report, Procurement Public Bill Committee,* 31 January 2023; c. 42.]

This is happening up and down the country. Excellent smaller providers are losing out to armies of big providers. The small providers know the women inside out and provide a valuable lifeline in many cases, supporting the women, their children and families.

Existing Government guidance makes it clear that large-scale procurement processes can lead to the loss of specialist providers, so why have the Government not done more to prevent this? The guidance explicitly recommends that commissioners safeguard and recognise small specialist service providers' expertise, including through grant funding. However, in the experience of domestic abuse charities, the guidance is rarely used in practice. The Public Services (Social Value) Act 2012 is also often ignored or given little weighting in a procurement system that favours commercial value. Both the Act and the commissioning guidance lack teeth. We must go one step further to ensure that specialist domestic abuse and violence against women and girls services are protected, and their value recognised.

In response to the Government's Green Paper on the Bill, specialist VAWG and domestic abuse organisations, including Women's Aid, Welsh Women's Aid, Imkaan and the End Violence Against Women coalition, recommended that

"the Government must ensure that all funding and commissioning processes for VAWG recognise and value specialist support provision, required under the Istanbul Convention. The Government must ensure community-led specialist domestic abuse services are meaningfully involved in the commissioning process. They must guarantee that local funding and commissioning processes adhere fully to the Equality Act, public sector equality duty and the Public Services (Social Value) Act, deliver appropriate legal guidance covering compliance of equalities impact assessments and the public sector equality duty, with monitoring of compliance."

We cannot continue to have procurement decisions that undercut specialist domestic abuse and VAWG services that have been serving women and children for decades. New clause 16 would give teeth to the existing guidance. More importantly, it would help survivors of domestic abuse and violence against women and girls. They need the right services now. Women's lives depend on it. I hope the Government will support this new clause.

Several hon. Members *rose—*

The Chair: Order. I will call Lloyd Russell-Moyle next, as he was referenced in the shadow Minister's speech.

Lloyd Russell-Moyle: I rise to support new clause 16 because of what happened in Brighton, which showed that it is important to have overall guidelines rather than discretionary guidance on this issue. In that case, there were multiple contracting parties, including Brighton and Hove City Council. I have no doubt that, had it contracted the service on its own, it would have seen the value of the important work that RISE has done for decades in the city. RISE is led by women, for women. It fights domestic violence, saving and supporting women who have undergone it, and provides refuge as well as counselling support for the women and their children. However, the contract was given jointly by Sussex police, East Sussex County Council and, partly, West Sussex County Council, and the social provisions in Brighton and Hove City Council's guidelines did not match up with the social provisions in East Sussex's guidelines. My understanding is that there were no provisions in the Sussex police guidelines.

When the contract went out for joint tender, the sections that were not compatible with each other were removed, because they were voluntary. This new clause would prevent that from happening again. In the case of RISE, it would have enabled the service to be provided. Instead, the contract was given to a housing association. I am sure it is a lovely, well-meaning organisation, but it is a housing association, not a specialist domestic violence organisation or a women-led organisation. It is not an organisation that has any roots in the city.

Florence Eshalomi: I thank my hon. Friend for giving such a powerful reminder of why this new clause is so important. He said that the contract was given to a housing association. Does he agree that the women who need this specialist service may not feel comfortable going to a housing association, because part of their issues and problems arise from housing?

Lloyd Russell-Moyle: Quite right. This housing association had no footprint at all in Brighton and Hove and a very limited footprint in East Sussex. The women who were in that organisation's housing might find it more difficult to go to them, because it is not a truly independent service.

Whether that is the case or not, what then happened was that the refuges and some of the counselling services that are provided in the city were sub-contracted out to some of the RISE people. So RISE picked up some bits of work, but not all of it. It could not offer the women wraparound support, just support in some very specific areas, so the service potentially became worse for women. A top-slice of the money has been taken out of the area for management and bid-writing fees and costs, which such organisations all take, and given to an organisation that is based nowhere near Sussex and does not have that specialism.

When women then complained and protested during covid, through covid-compliant protests, they were threatened by the police and told their protest was wrong and that they should not be protesting. Interestingly, the police allowed my hon. Friend the Member for Hove (Peter Kyle), the hon. Member for Brighton, Pavilion (Caroline Lucas) and me to address the covid-compliant demonstration. There was no problem with that; it was only as we left that the police pounced on the women organisers, in front of their children, and tried to fine them. That was particularly egregious. I represented those women and said that I would give statements to support them, and in the end the police dropped the case.

Even when women tried to speak up, they were abused and harassed by the police—they were women who have come through domestic violence and who have been RISE service-users. It was important to commission RISE, but it was also important that women themselves had their voices heard. At all stages—in the commissioning and the outcome—women's voices were removed and shut down. New clause 16 would give that protection.

Even if the Minister does not support the new clause—I would like him to, but I assume he might not—I hope he will reassure us that he will strengthen the section in the guidelines on women-specific services, such as those who have suffered domestic abuse, and place additional emphasis put on ensuring that local women's voices are heard, while also allowing some of the competitive tendering to be waived. That is already possible, but we need stronger guidelines, particularly for multi-authority procurement. We will push the new clause to a vote, but I hope the Minister provides those reassurances, as I suspect we all broadly agree on the issue.

Alex Burghart: New clause 16 seeks to ensure that authorities have regard to social value when carrying out procurement for services to support victims of violence against women and girls. Before I discuss the specifics, I should say that the Committee has debated over several days the centrality to this legislation of the fact that we are moving from a world of most economically advantageous tender to most advantageous tender—from MEAT to MAT. That gives contracting authorities the opportunity to make decisions that are not based solely on economic advantage. That will cover all areas, not just the specific area outlined in the new clause.

There is already a legal requirement in this area. Contracting authorities are already required to consider how social value might be improved for all types of service contracts under the Public Services (Social Value) Act 2012. That Act requires the authority to consider when placing a public service contract

"how what is proposed to be procured might improve the economic, social and environmental well-being of the area where the authority primarily exercises its functions, and how, in conducting the process of procurement, it might act with a view to securing that improvement."

Florence Eshalomi: I thank the Minister for his remarks, but does he understand the concerns raised by local and national women's charities? They say that the current guidance does not go far enough and, in their experience, they feel the guidance is ignored in many cases or given very little weighting in the contracts that are then awarded. Does the Minister agree that those organisations have valid concerns?

10.45 am

Alex Burghart: I understand what the hon. Lady is saying. Obviously, the 2012 Act will continue to apply to procurement of services to support victims of violence

against women and girls. Moreover, the public benefit objective in clause 12(1)(b) requires contracting authorities to consider the extent to which public money spent on their contracts can deliver greater social value than it otherwise would, for example by encouraging local specialist service providers that understand the particular needs of the communities they serve.

With the combination of existing legislation and this new legislation, with its emphasis on MAT rather than MEAT, we feel that the duty in new clause 16 already exists in law. I therefore respectfully ask that the new clause be withdrawn.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 38]

AYES

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

NOES

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

Question accordingly negatived.

New Clause 18

PROCUREMENT AND HUMAN RIGHTS

"(1) A contracting authority may apply a policy under which it does not contract for the supply of goods, services or works from a foreign country or territory based on the conduct of that foreign country or territory relating to human rights, provided that—

(a) the contracting authority has a Statement of Policy Relating to Human Rights, and

(b) that statement of policy is applied consistently and not specifically to any one foreign country or territory.

(2) Within six months of the passage of this Act, the Secretary of State must publish, and lay before Parliament, guidance on the form, content and application of Statements of Policy Relating to Human Rights for the purposes of subsection (1).

(3) Contracting authorities must have regard to the guidance published under subsection (2) when applying a policy in accordance with subsection (1)."—*(Florence Eshalomi.)*

This new clause would enable public authorities to choose not to buy goods or services from countries based on their human rights record. They would not be able to single out individual nations to apply such a policy to, but would have to apply it consistently, and in accordance with guidance published by the Secretary of State.

Brought up, and read the First time.

Florence Eshalomi: I beg to move, That the clause be read a Second time.

As we have discussed at length, we feel that public procurement can be a hugely important tool in using the power of the state to drive specific outcomes. That is why the rules and framework that the Bill sets out are so important, and why it is right that the Committee scrutinises them.

Often, we think of the power of procurement simply in terms of outcomes, or perhaps in terms of the economic benefit that can be delivered by the right procurement decisions, but we must not lose sight of procurement's ethical dimension. Ethical considerations should, and inevitably will, arise during discussions about procurement.

The power of procurement can be used to send a message that we as a country do not condone certain actions or wrongdoing by another country. It should be a totally legitimate position for our country not to procure goods from countries that have committed human rights abuses or war crimes. However, as it stands, the Bill fails to account for that.

New clause 18 seeks to set out a framework for ethical considerations during procurement decisions. It would enable public authorities to choose not to buy goods or services from countries based on their human rights records. In that respect, the new clause would allow for human rights abuses, specifically, to affect procurement decisions.

Human rights abuses are crimes of a different order, and I am sure that colleagues on both sides of the Committee agree that our country should condemn them. We have a proud history in the development of modern international humanitarian law, from the ashes of world war two and the creation of the United Nations, to the role we continue to play on the world stage. We have always defended the fundamental and absolute rights of all human beings. The new clause would further that endeavour and embed its principles in procurement law.

However, if procurement decisions made in respect of human rights are to have the greatest impact, it is vital that they are applied across the board. Indeed, it would be contrary to the spirit and letter of the proposed provisions if they were used to single out individual nations. Therefore, the new clause clearly states that contracting authorities must produce a document to set out their policy on procurement and human rights, which must be developed in accordance with guidance published by the Secretary of State. This will ensure that there is consistency in how contracting authorities decide on these matters.

The practical effect of that will be to make it clear and unambiguous that if a contracting authority does not wish to procure goods from Russia because of President Putin's abhorrent human rights abuses in Ukraine, the law will be on its side. Equally, if the same authority does not wish to procure services from China because of the appalling treatment of Uyghur Muslims in Xinjiang, the law will be on its side. However, if an authority acted only against a particular state, while turning a blind eye to human rights abuses elsewhere, the new clause would make such actions illegal.

Our party is clear that actions that seek to isolate and target particular states are wrong and should not be tolerated. The new clause would therefore prohibit such actions. Human rights considerations must be applied fairly and consistently, and that is what the framework set out in the new clause would provide for.

The provisions of the new clause are reasonable and proportionate. They would embed our country's proud humanitarian principles in procurement law. I hope that all Members will agree that this is a serious issue, especially given what is being played out across the world, and I hope that they and the Minister will support the inclusion of the new clause in the Bill.

Alex Burghart: New clause 18, which was tabled by the hon. Member for Nottingham North (Alex Norris), would allow public authorities to apply their own policies, under which they would not procure from certain countries because of those countries' human rights conduct.

It is obviously right and good that human rights abuses have no place in public supply chains, but the new clause is unnecessary and would give authorities too broad a discretion to apply blanket boycotts. Although the new clause would not allow for the singling-out of individual countries, it would allow authorities to exclude suppliers from entire nations without any consideration of whether a supplier itself has had any involvement in abuses or of the steps a supplier has taken to self-clean, both of which are important features of the new exclusions regime to manage risk appropriately and fairly.

Excluding suppliers based on where they are located would be disproportionate and in some cases would be contrary to the UK's international obligations. The Bill already contains a robust regime for the exclusion of suppliers that are unfit to hold public contracts. Schedules 6 and 7 set out a wide range of exclusion grounds that target the most serious risks to public procurement, including modern slavery and human trafficking. We have taken action to strengthen the way in which those terms are defined, so that suppliers may be excluded where there is sufficient evidence that they are responsible for human rights abuses anywhere in the world, whether or not they have been convicted of an offence.

Guidance already exists to help contracting authorities to address human rights risks and there is well-established practice during procurements. The guidance is detailed, at over 40 pages long, and includes sections on managing risk from new procurements to assessing existing contracts, taking action when victims of modern slavery are identified, supply chain mapping, useful tools, training, and questions to ask.

I will also highlight the new debarment regime provided for in the Bill, which allows Ministers to consider whether any supplier meets one of the grounds for exclusion and whether the issues in question are likely to recur. Suppliers on the debarment list face exclusion across the public sector. This is a significant step forward in our approach to supplier misconduct.

We respectfully request that the new clause be withdrawn.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 39]

AYES

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

NOES

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

Question accordingly negatived.

Question proposed, That the Chair do report the Bill, as amended, to the House.

Alex Burghart: Thank you, Mr Mundell, for chairing so ably and excellently. I thank the Clerks for their fantastic work. I thank my tireless officials, without whose expertise I would not know what to do. I thank Committee members on both sides of the divide. It is only fair to record in *Hansard* that the Committee has been good-natured, intelligent and at times almost enjoyable. I thank His Majesty's loyal Opposition for supporting the overall thrust of the Bill, although they do not agree with every detail. We left it in better shape than when it arrived, and I look forward to working with everyone to take it through Report and to Royal Assent.

Florence Eshalomi: I echo the Minister's comments. I formally thank the Clerks—Sarah, Chris and Huw—for their endless emails and helping me to understand the groupings and procedure. I will be honest and let hon. Members know that this is my first time leading on a Bill Committee. Many years ago, trying to tell a girl from a council estate in Brixton that she would be leading for the Opposition on such a technical Bill would have been out of the question.

The issues that we have discussed are so important. I hope the Minister will see from some of the points that we have made and the amendments that we have tabled that we have an opportunity to ensure that procurement works for everybody, including those from council estates, who may not understand it but will see the impact on their everyday lives. I look forward to discussing the Bill robustly with the Minister again as it goes through its next phases.

The Chair: Thank you. Of course, Ms Blackman put her thanks on the record on Thursday 9th. The great disappointment for me is that I am debarred from taking part in any future proceedings on the Bill. I, too, thank Committee members for the way in which they have engaged. I am sure we would also like to convey our thanks to Mr Efford for his chairing. I know that he will be deeply disappointed that there will not be a sitting this afternoon.

Question put and agreed to.

Bill, as amended, accordingly to be reported.

10.57 am

Committee rose.

Written evidence reported to the House

PB 27 Burges Salmon LLP

PB 28 Duncan Jones

PB 29 Aspire Community Works

PB 30 Raoul Robinson

PB 31 Places for People Group Limited

PB 32 Refuge

PB 33 King's College London

PB 34 Shoosmiths

PB 35 Open Contracting Partnership (further written submission)

PB 36 Dr Aris Christidis, Lecturer in Law at Newcastle University