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Local authority boycotts

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Summary

The Government is proposing to introduce new rules and guidance to limit the extent to which local authorities in England and Wales can use boycotts in their procurement and pensions investment policies. They argue that these are inappropriate, other than where the Government itself has put formal legal sanctions, embargoes and restrictions in place.

As part of this, the Government is consulting on changes to Local Government Pension Scheme (LGPS) which would require authorities to publish an investment strategy statement in line with guidance from the Secretary of State. It has said that guidance would explain how investment policies should reflect foreign policy, covering sanctions against foreign nations and the UK defence industry.

On procurement, the Government has issued guidance that reminds contracting authorities of existing international obligations when letting public contracts. Such obligations limit the ability of authorities to boycott companies purely on the grounds of their wider activities or their country.

Much of the debate on this issue has been in relation to boycotts of Israel and settlements in the Occupied Palestinian Territories. A key international agreement opens up certain larger procurement opportunities to potential suppliers from countries including Israel. The UK Government does not consider the Occupied Palestinian Territories to be part of Israel.

Proposed restrictions on the powers of local authorities to carry out boycotts have been criticised as an attack on local democracy, as they potentially limit the powers of local councils to make their own decisions on their investments and spending.

1. Background

The Government has said that there will be new rules to stop “politically-motivated boycott and divestment campaigns by town halls against UK defence companies and against Israel”.

The Secretary of State for Communities and Local Government has argued that such policies are problematic:

Divisive policies undermine good community relations, and harm the economic security of families by pushing up council tax. We need to challenge and prevent the politics of division.¹

The Minister for the Cabinet Office has suggested that such policies challenge security:

We will safeguard the security of families at home and prevent such playground politics undermining our international security.²

The Government has said that such boycotts are often inappropriate:

[...] using pensions and procurement policies to pursue boycotts, divestments and sanctions against foreign nations and the UK defence industry are inappropriate, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.³

Local councils are already obliged to assess whether they are achieving ‘best value’ in their supply of services to local populations – in effect, whether they are drawing an appropriate balance between cost and quality in their spending decisions.⁴

¹ See for example BBC, [Government to introduce rules to stop 'political' boycotts](#), 3 October 2015

² Conservative Home, [Government acts against town hall boycotts of Israeli goods](#), 5 October 2015

³ Department for Communities and Local Government, [Local Government Pension Scheme: Revoking and replacing the Local Government Pension Scheme \(Management and Investment of Funds\) Regulations 2009, Consultation](#), November 2015

⁴ Considerations of ‘Best Value’ were originally introduced in the [Local Government Act 1999](#).

2. Pensions

In November the Government issued draft regulations in relation to the Local Government Pension Scheme (LGPS) for consultation, requiring administering authorities to publish an investment strategy statement, which must be in accordance with guidance from the Secretary of State.

In advance of the regulations coming into force, the Government has said it will publish guidance explaining how investment policies should “reflect foreign policy and related issues”. It has indicated that the guidance will cover “sanctions against foreign nations and the UK defence industry”.

Current guidance to LGPS administering authorities from the Local Government Association (LGA) states that the “precise choice of investment may be influenced by wider social ethical or environmental considerations, so long as that does not risk material financial detriment to the fund.”⁵

Consultation on new regulations

On 25 November 2015, the Department for Communities and Local Government (DCLG) issued a consultation on reforms to the Investment Regulations applying to England and Wales.⁶ This included a proposal to issue guidance to authorities that they should “not pursue policies which run contrary to UK foreign policy”:

3.7 The Secretary of State has made clear that using pensions and procurement policies to pursue boycotts, divestments and sanctions against foreign nations and the UK defence industry are inappropriate, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government. The Secretary of State has said, “Divisive policies undermine good community relations, and harm the economic security of families by pushing up council tax. We need to challenge and prevent the politics of division.”

3.8 The *Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009* already require administering authorities to publish and follow a statement of investment principles, which must comply with guidance issued by the Secretary of State. The draft replacement Regulations include provision for administering authorities to publish their policies on the extent to which environmental, social and corporate governance matters are taken into account in the selection, retention and realisation of investments. **Guidance on how these policies should reflect foreign policy and related issues will be published ahead of the new Regulations coming into force.** This will make clear to authorities that in formulating these policies their predominant concern should be the pursuit of a financial return on their investments, including over the longer term, and that, reflecting the position set out in

⁵ [Investment in local infrastructure projects vital, says Committee](#), 30 November 2015
[LGPS Advisory Board, Advice on Fiduciary Duty with regard to the investment of Local Government Pension Scheme \(LGPS\) funds, April 2014.](#)

⁶ Separate regulations apply in Scotland: the [LGPS \(Management and Investment of Funds\) \(Scotland\) Regulations 2010 \(SSI 2010/233\)](#).

the paragraph above, they should not pursue policies which run contrary to UK foreign policy.⁷

A summary of the draft regulations explains that administering authorities will be required to consult on and publish an investment strategy statement, which must be in accordance with guidance from the Secretary of State. The consultation also proposes to give the Secretary of State the power to intervene where an authority had “failed to have regard to the regulations governing their investments or guidance”.⁸

The draft *Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016* are on Gov.UK – [here](#). The Government has not yet issued its response.

On 28 January 2016, Shadow Leader of the House Chris Bryant MP called for the regulations to be debated on the floor of the House:

[The Government] want to amend the *Local Government Pension Scheme (Management and Investment of Funds Regulations) 2009* and publish a revised Cabinet Office procurement policy note. I believe that this constitutes a major curtailment of local authorities’ power to act. Can the Leader of the House guarantee that the changes will be subjected to proper scrutiny? That means a debate and vote on the Floor of the House on any changes in the pensions regulations, and a separate debate and vote on the procurement policy note.⁹

The guidance to local authorities and other public bodies “reminding them that their procurement and investment decisions should provide value for money and be consistent with UK Government policy” is still to be issued.¹⁰ In its response to the consultation, the Local Government Association asked for assurance that the guidance would not “impair the ability of LGPS pension funds to pursue ESG policies appropriate to meeting their duty to maximise returns”.¹¹

For more on the framework for [Local Government Pension Scheme investments](#), see Library Briefing Paper CBP 7309.

⁷ Department for Communities and Local Government, [Local Government Pension Scheme: Revoking and replacing the Local Government Pension Scheme \(Management and Investment of Funds\) Regulations 2009, Consultation](#), November 2015

⁸ See para 4.4 of the same document.

⁹ [HC Deb 28 January 2016 c438](#)

¹⁰ [PQ26288 11 February 2016](#)

¹¹ LGA, [Response to consultation on revoking and replacing the LGPS \(Management and Investment of Funds\) Regulations 2009](#), 18 February 2016

3. Procurement

There are a variety of existing rules and agreements that control public procurement.

New guidance reminds authorities of those rules and argues that boycotts that go beyond the UK Government's formal legal sanctions, embargoes and restrictions can have negative consequences.

3.1 Existing obligations

There are limits on the ability of local authorities to boycott suppliers, especially in higher value procurements.

European procurement rules

As it stands, many of the rules that govern procurement are set at the European level. One of the core principles of the Treaty on the Functioning of the European Union (TFEU) is to establish a single market within the EU, and this extends to public procurement. To establish and encourage this single market, the Treaty sets out principles, including the free movement of goods, the freedom to provide services, non-discrimination and equal treatment. These principles apply to almost all public procurement; there is no common threshold – meaning that much public procurement must be opened up to potential bidders across the EU.¹²

Above certain thresholds (for example £164,176 for local authorities buying many goods and services¹³), European public procurement directives generally apply – these set out detailed rules for how public procurement processes must operate. The directives are implemented in the UK by Scottish and UK Government regulations.¹⁴

Excluding bidders based on their other activities

The European procurement directives set out the specific situations in which authorities can exclude bidders from a procurement process – for example this may be permitted if bidders have convictions for corruption, fraud or human trafficking, or for not paying taxes. They also give set limits on the kinds of criteria that can be used in selecting bidders – for example allowing consideration of their technical and

¹² It is only in the case of a contract that 'would be of no interest to economic operators located in other Member states', where the principles would not apply. European Commission, [Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives \(2006/C179/02\)](#), 1 August 2006

¹³ See Cabinet Office, [Procurement Policy Note, New Threshold Levels 2016](#), 10 December 2015 for the full set of thresholds.

¹⁴ The directives were changed in 2014 and the implementing regulations are currently being updated in response to this. The text and examples in this section focus on the 2014 EU directives.

For more information on the Scottish regulations, see the Scottish Government webpages, [EU Procurement Directives](#) and [Implementing the EU Directives and Procurement Reform \(Scotland\) Act 2014](#).

For more on the UK Government regulations, see the UK Government webpage, [Transposing EU procurement directives](#).

The directives are available via a European Commission website, [Legal rules and implementation](#).

professional ability, or their suitability to pursue the professional activity. They set out the types of criteria that may be used in awarding the contract – in essence, these must focus on price and quality, but quality is drawn relatively widely (it can relate to the environmental and social aspects of what is being bought and how it is produced, for example).

These rules place relatively tight constraints on the ability of authorities to boycott companies. They could make it difficult to exclude a bidder purely on the grounds that they, for example, sell arms (unless they meet other criteria in the rules that permit their exclusion).

Excluding bidders based on their country

Boycotts are often mentioned in the context of Israeli government actions. Leicester city council for example resolved to boycott “produce originating from illegal Israeli settlements in the West Bank until such time as it complies with international law and withdraws from Palestinian Occupied territories”.¹⁵

The European Union has signed the current World Trade Organisation [Agreement on Government Procurement / General Procurement Agreement](#) (GPA), as have a range of countries including Israel.¹⁶ The terms of the agreement mean that the countries of the European Union must open up much higher value public procurement to such countries and vice versa.¹⁷ This means that, under the current rules, local authorities are also restricted in their ability to boycott certain countries – including Israel – in such higher value procurement.

While authorities are restricted by the agreement in their ability to boycott products from Israel, the status of products from Israeli settlements in the Occupied Palestinian Territories is argued to be different. The UK Government does not recognise Israeli sovereignty over the territories occupied by Israel in 1967.

The Scottish Government contends that if a company exploits assets in illegal Israeli settlements, they may be guilty of grave professional misconduct, and that it may therefore be permissible to exclude them from a procurement process.¹⁸ Being guilty of grave professional misconduct is one of the reasons that potential suppliers may be excluded from a procurement process under the public procurement directives.

Section 5 gives some context on Israel, Palestine and boycotts more generally.

3.2 New requirements?

The Government issued [Procurement policy note: ensuring compliance with wider international obligations when letting public contracts](#) on 17

¹⁵ [Minutes of Leicester City Council meeting, 13 November 2014](#).

¹⁶ World Trade Organisation, [Agreement on Government Procurement: Parties, observers and accessions](#) [accessed 19 February 2016]

¹⁷ See World Trade Organisation, [Revised Agreement on Government Procurement](#) and Article 25 of [Directive 2014/24/EU on public procurement](#).

¹⁸ Scottish Procurement Policy Note SPPN 4/2014, [Public Procurement and Illegal Settlements](#), 22 August 2014

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February 2016. Procurement policy notes provide guidance on best practice for public sector procurement.¹⁹

Most of the note is spent reminding contracting authorities of their international obligations when letting public contracts, as discussed above.

The note concludes with a statement and argument against such boycotts:

Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government. There are wider national and international consequences from imposing such local level boycotts. They can damage integration and community cohesion within the United Kingdom, hinder Britain's export trade, and harm foreign relations to the detriment of Britain's economic and international security. As highlighted earlier, it can also be unlawful and lead to severe penalties against the contracting authority and the Government.²⁰

¹⁹ Scotland issues its own public procurement notes.

²⁰ Cabinet Office, [Procurement policy note: ensuring compliance with wider international obligations when letting public contracts](#), 17 February 2016

4. Reaction and debate

4.1 Comment

Labour

The Labour leader, Jeremy Corbyn, is reported to have opposed these moves. A spokesperson said:

The Government's decision to ban councils and other public bodies from divesting from trade or investments they regard as unethical is an attack on local democracy.

People have the right to elect local representatives able to make decisions free of central government political control. That includes withdrawal of investments or procurement on ethical and human rights grounds.

This Government's ban would have outlawed council action against apartheid South Africa. Ministers talk about devolution, but in practice they're imposing Conservative Party policies on elected local councils across the board.²¹

Boycott, Divestment and Sanctions group

The coalition of Palestinian organisations that leads the Boycott, Divestment and Sanctions (BDS) movement have opposed changes. Riya Hassan, Europe Campaigns Officer with the Palestinian BDS National Committee said that:

We share the outrage of people in Britain about the government's willingness to undermine civil rights and democratic principles in order to shield Israel ethical pressure similar to that applied to apartheid South Africa.

She also suggested that recent changes to procurement guidelines might continue to offer local bodies flexibility:

We're seeking further legal advice but it appears that it remains perfectly legal for councils and universities to take ethical stances that reflect the views of their communities and exclude companies that violate human rights from tender exercises.

The tone and language in the documents published by the government is intended as a gift to Israel and is clearly designed to intimidate councils into falsely thinking that they are no longer allowed to exclude companies that violate human rights from tender exercises, making this a particularly underhand attack on local democracy.²²

Jewish Human Rights Watch

Jewish Human Rights Watch, which was established partly to combat the boycott movement, said that they "applaud the Government for this forthright and unequivocal response". They argue that local government boycott motions are expensive and inappropriate:

These offensive motions harm community relations, and they are also an enormous waste of local councils' time and money.

²¹ Independent, [Israel boycott ban: Shunning Israeli goods to become criminal offence for public bodies and student unions](#), 14 February 2016

²² BDS Movement, [Diluted UK government position on 'Israel boycott ban' follows public outrage](#), 18 February 2016

Ordinary citizens want their councils to focus on providing the highest quality local services at the lowest cost, not to expend resources on defending divisive BDS resolutions in court. It beggars belief that some local councils can complain about austerity but still find large sums of money to wage legal battles in defence of motions they themselves admit have no practical effect. With this sort of prioritisation, no wonder they are in the red.

Citizens also don't want their councils doing foreign policy. That outlet for "local democracy" is through the election of local MPs who decide at Westminster on our collective policy toward foreign nations. That's why we have a civil service and a government.²³

4.2 Debate in Parliament

There have been two recent oral questions in the House of Lords on these issues.

One focused on boycotts of Israeli settlements:

Asked by Baroness Tonge: To ask Her Majesty's Government what advice they have given to local authorities and other public bodies concerning boycotts of goods and services from the Israeli settlements in the West Bank.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, on 17 February, the Government published procurement guidance for public authorities on existing policy that has been in place for many years under successive Governments. The guidance makes it clear that boycotts in public procurement are inappropriate, outside where formal legal sanctions, embargos and restrictions have been put in place by the UK Government. It is not an Israel-specific policy.

Baroness Tonge (Ind LD): Knock me down with a feather, my Lords, if I was not expecting that reply. Is the Minister aware that the Foreign Office advice of July 2015 on overseas business risks in the Occupied Palestinian Territories said:

"EU citizens and businesses should ... be aware of the potential reputational implications of getting involved in economic and financial activities in ... settlements"—

in the Occupied Territories, and—

"should seek ... legal advice before proceeding"?

How does that equate with the advice that we received last week?

Lord Bridges of Headley: I can easily tell the noble Baroness. Paragraph 2.4 of the advice says:

"The UK Government is deeply committed to promoting our trade and business ties with Israel and strongly opposes boycotts."

This is the Foreign Office advice, and the Cabinet Office advice sits alongside that.

See [HL Deb 25 Feb 2016 | 769, C 394 – 396](#) for the full debate.

²³ Jonathan Neumann (director of Jewish Human Rights Watch), [Jews know that a boycott is just the beginning](#), 17 February 2016, in the Telegraph

Another question related to fossil fuel holdings:

Asked by Baroness Miller of Chilthorne Domer: To ask Her Majesty's Government why on 17 February they changed the guidance to local authorities regarding procurement of, and investment in, fossil fuel holdings.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, on 17 February the Government published new procurement guidance for public authorities reminding them of existing policy that has been in place for many years under successive Governments. The guidance makes it clear that boycotts in public procurement are inappropriate, other than where formal legal sanctions, embargos and restrictions have been put in place by the UK Government. It does not mention procurement of, or investment in, fossil fuels or any other specific type of holding. Guidance on local government pension investments is a separate matter. The Government will be issuing guidance in due course on social, environmental and ethical considerations in council pension investment decisions.

Baroness Miller of Chilthorne Domer (LD): I thank the Minister for making that plain, but the diktat—or should I say the reminder?—from the Cabinet Office on 17 February has made local authorities very nervous about the new regulations coming into force. Will she champion the role of local democracy in investment and confirm that—subject to the administering authorities publishing their social, environmental and corporate governance policies, and subject to a decent return on investment for the people whose pensions they are responsible for—they will be free to divest or invest as they see fit?

Baroness Williams of Trafford: My Lords, there may have been some confusion in the press over the difference between the pension investment guidance and the procurement guidance. There will shortly be guidance on pension investment, but I think what has made local authorities slightly uneasy is the slight confusion in the press. On divestment from pension funds, it is the first duty of a pension fund to provide the best returns for investors, as I said yesterday at the Dispatch Box.

See [HL Deb 24 Feb 2016 | 769, C 259 - 260](#) for the full debate on the question.

There was also a topical oral question to the Foreign Secretary in the House of Commons:

Mr Clive Betts (Sheffield South East) (Lab): On the Foreign Office website, there is very clear advice to private companies thinking of doing business with illegal Israeli settlements. It states:

“Financial transactions, investments, purchases, procurements as well as other economic activities...in Israeli settlements or benefiting Israeli settlements, entail legal and economic risks”

And “we do not encourage or offer support to such activity.”

Do the Government give exactly the same advice to public bodies, including local councils, with regard to their procurement decisions?

Mr Philip Hammond: Yes, we are clear with local authorities that they are bound by and must follow procurement rules, but we are clear that we do not support boycott movements. The Minister for

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the Cabinet Office was in Israel just last week and made that abundantly clear then.²⁴

²⁴ [HC Deb 23 Feb 2016 | 606 C 151](#)

5. Context: Israel and Palestine

This section discusses the status of the Occupied Palestinian Territories, including the settlements within them. It also looks at boycott campaigns and labelling of products from settlements.

Section 3 of this note discussed the procurement rules in relation to boycotts of products from Israel and the settlements.

5.1 The Occupied Palestinian Territories

The West Bank and Gaza were invaded by Israel in 1967, and are collectively known as the Occupied Palestinian Territories (OPTs). They comprise the West Bank, including East Jerusalem, the Gaza Strip and much of the Golan Heights.

Before the Israeli invasion, the West Bank was part of Jordan whilst Gaza was part of Egypt and the Golan Heights were Syrian. These areas were under full Israeli control until the mid-1990s, when the Palestinian Authority (PA) was created. The PA controls some areas of the OPTs, but other areas remain under Israeli control. Many in the international community, including the UK Foreign and Commonwealth Office, still regard the Territories as 'occupied' in their entirety because Israel retains control of their borders. The FCO Minister, Tobias Ellwood, [said on 9 March](#) 2016: "The UK does not recognise Israeli sovereignty over the territories occupied by Israel in 1967. We therefore do not consider the Occupied Palestinian Territories to be part of Israel".

5.2 Israeli settlements in OPTs

Many Israeli citizens have moved into the OPTs, living in purpose-built Israeli settlements.

In January 2015 the Israeli Interior Ministry was reported to have said that 389,250 Israelis were living in the West Bank and 375,000 in East Jerusalem.²⁵ Settlements vary from small farming communities and villages to urban suburbs and cities.

Human rights organisations have accused the Israeli Government and Defence Forces of demolishing Palestinian homes to collectively punish Palestinians and seize their property for the expansion of Israeli settlements.

The Fourth Geneva Convention prohibits the Israeli practice, though Israel argues that the Convention does not apply in the OPTs. In successive resolutions the [UN Security Council resolutions](#) has found that the territories are occupied by Israel and has called for an end to settlement-building and for an Israeli withdrawal from the territories.

Successive British governments' policy has been to follow the line laid down by the Security Council.

²⁵ [BreakingIsraelNews, 5 January 2015](#).

5.3 Status of OPTs in international law

The OPTs do not presently meet the criteria for statehood under international law. However, this fact does not inhibit other states from granting diplomatic recognition to 'Palestine' if they so wish. Out of 193 UN member states, 136 have granted diplomatic recognition to Palestine, though most Western countries have not. However, in a number of countries which have not yet recognised Palestine (including the UK), national Parliaments have passed motions (albeit non-binding ones) calling on their governments to do so. Tobias Ellwood [said on 1 March](#) 2016:

The British Government reserves the right to recognise a Palestinian state bilaterally at a moment of our choosing and when it can best help bring about peace. We are clear that we want to see the creation of a sovereign, independent, democratic, contiguous and viable Palestinian State, living in peace and security, side by side with Israel. Only a negotiated settlement can achieve this.

The PA has in recent years made various attempts to upgrade its status at the United Nations, some more successful than others. Following an unsuccessful application for full membership in 2011, the "State of Palestine" was admitted as a non-member observer state in 2012. Subsequently, in 2014, Jordan (a key Palestinian ally and non-permanent member of the UN Security Council) submitted a draft resolution to the UN Security Council, calling for an end to the occupation by 2017. This resolution was rejected by the Security Council. In protest at the Security Council's decision, Palestine acceded to the Rome Statute, the founding treaty of the International Criminal Court. Israel, and many in the international community, had argued that it should refrain from acceding until agreement has been reached on a two-state solution.

5.4 Pressure for a boycott of goods made in Israeli settlements

The "[Boycott, Divestment & Sanctions](#)" (BDS) movement campaigns for a ban on the import of goods and services from Israeli settlements. The movement has enjoyed limited successes to date: neither the UK nor the EU has banned the import of goods/services from Israeli settlements in the OPTs.

The UK Government does not support a boycott of goods from Israeli settlements:

DFID's work in the Occupied Palestinian Territories is channelled through trusted partners including both the UN and non-governmental organisations and mainly consists of large-scale and strategic programmes. The UK Government has made its position on boycotts clear. While we do not hesitate to express disagreement with Israel whenever we feel it necessary, we are firmly opposed to boycotts. We believe that imposing sanctions on Israel or supporting anti-Israeli boycotts would not support our

efforts to progress the peace process and achieve a negotiated solution.²⁶

However, the UK Government has issued guidelines which recommend that produce from Israeli settlements be labelled as such:

For produce from the West Bank, labelling currently states country of origin as 'Produce of the West Bank'. Traders and retailers may wish to indicate whether the product originated from an Israeli settlement or from Palestinian producers. This could take the form, for example, of 'Produce of the West Bank (Israeli settlement produce)' or 'Produce of the West Bank (Palestinian produce)', as appropriate.²⁷

These guidelines, which are advisory only, have been in place since 2009 and are intended to allow consumers to make a discerning choice as to whether they wish to purchase products produced in the settlements.

5.5 EU guidelines

In July 2013 the EU published [Guidelines](#) "on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards". The Guidelines refer in Article 1 to ensuring "the respect of EU positions and commitments in conformity with international law on the non-recognition by the EU of Israel's sovereignty over the territories occupied by Israel since June 1967".

In Article 3 they make clear that the EU "will not recognise any changes to pre-1967 borders, other than those agreed by the parties to the Middle East Peace Process (MEPP)".²⁸ They provide that any Israeli entity wanting funding from or cooperation with the EU must demonstrate that it has no links to West Bank, East Jerusalem or Golan Heights.

In April 2015 the UK Foreign Secretary joined 15 other EU foreign ministers in asking the EU High Representative Federica Mogherini to follow through on a longstanding policy to ensure the clear labelling of goods produced in Israeli settlements. At subsequent Foreign Affairs Councils in 2015 the UK Government pressed the High Representative to implement EU wide labelling guidelines.

On 15 November 2015 the European Commission adopted an [Interpretative Notice](#) on the indication of origin of goods from the OPTs. Israeli Foreign Ministry described the notice as an "exceptional and discriminatory step" for "political reasons". The Commission pointed out in a [Factsheet](#) that this was an interpretative notice and not new legislation:

... it clarifies certain elements linked to the interpretation and the effective implementation of existing EU legislation. It aims to provide Member States, economic operators and consumers with the necessary information on the indication of origin of products

²⁶ [Desmond Swayne, 23 June 2015](#)

²⁷ [DEFRA: Technical advice: labelling of produce grown in the Occupied Palestinian Territories](#)

²⁸ The EU's long-held position has been that it would recognise changes made to the borders once they were agreed by both parties. The EU's position on Israel and the OPTs was tested in [Case C-386/08](#). See ECJ Judgment, 25 February 2010.

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when it comes to products originating in Israeli settlements beyond Israel's 1967 borders.

The Commission's Notice recommends that goods imported into the EU which originate from Israeli settlements in the occupied territories should bear an indication which makes that provenance clear. That recommendation is already included in the current technical advice to UK retailers and importers concerning the labelling of agricultural produce from the West Bank issued by Defra in 2009.

Recent parliamentary questions (including [one from Hilary Benn](#)) have sought information on how the EU's labelling practice is being applied. George Eustice said in February 2016 that there was no reason to believe the system is not working.

However, the situation has clearly given rise to questions because in a [statement on 18 January 2016](#) the EU Foreign Affairs Council reiterated that it would continue to differentiate between Israel proper and the settlements. But it continued to insist that this did not amount to a boycott:

The EU and its Member States are committed to ensure continued, full and effective implementation of existing EU legislation and bilateral arrangements applicable to settlements products. The EU expresses its commitment to ensure that - in line with international law - all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967. This does not constitute a boycott of Israel which the EU strongly opposes.

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