

Research Briefing

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Economic Activity of Public Bodies (Overseas Matters) Bill 2022-23

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Summary

On 19 June 2023, the Department for Levelling Up, Housing and Communities introduced [The Economic Activity of Public Bodies \(Overseas Matters\) Bill 2022-23](#) (HC Bill 325) into the House of Commons. The Bill was carried over into the 2023-24 session, as HC Bill 005.

The Bill's second reading was held on 3 July 2023 and Public Bill Committee sessions from 5 to 14 September 2023. Report stage was held on 25 October 2023. The Bill's third reading will be held on 10 January 2024.

This briefing explains the main clauses of the Bill and international and UK background to the legislation. It also summarises the second reading debates, committee debates on the Bill, the report stage and plans for legislative consent motions.

What does the Bill aim to do?

As introduced, [the Bill](#) (PDF) intends to prevent “public bodies when making decisions about procurement and investment from considering a country or territory of origin or other territorial considerations in a way that indicates political or moral disapproval of a foreign state.”

Such boycotts or divestments (reduction of existing investments) by public bodies would potentially be liable to investigation and fines under the legislation.

The [Government states the Bill aims to stop councils and other publicly funded bodies from “pursuing their own foreign policy agendas.”](#) In particular, it cites concerns that [campaigns in universities](#) (PDF) and local authorities on investment decisions relating to certain countries “lead to community tensions, and, in the case of Israel, a rise in antisemitism.” Much of the debate on this issue has focused on suggested boycotts of Israel and Israeli settlements in the Occupied Palestinian Territories.

The Bill does not prevent public bodies from complying with formal UK sanctions, embargoes, and restrictions. [Clause 3 of the Bill](#) (PDF) also gives the Government the power to make regulations to exempt certain countries or territories from the restrictions. The Government [intends for Russia and Belarus to be exempted immediately upon commencement](#) (PDF).

However, the Bill does not allow for these regulations to exempt Israel, the [Occupied Palestinian Territories](#) and the [Occupied Golan Heights](#).

The Bill's clauses

Clauses 1 to 4 contain the key provisions of the Bill. Clauses 1 and 2 would forbid public authorities to make procurement or investment decisions based on their own moral or political disapproval of policies or conduct by foreign authorities. Clause 3 would provide for exemptions to this ban. Clause 4 would forbid public authorities to make statements about boycott and divestment campaigns and their decisions in this respect.

Clauses 5 to 11 set out how the ban introduced by the Bill would be enforced. It would generally be subject to judicial review by the High Courts or the Court of Session in Scotland, when applicable to decisions taken by public authorities. For decisions and statements which cannot be challenged by judicial review, a specific enforcement regime would be introduced.

Clauses 7 to 9 would give the Government or another designated enforcement authority tools to investigate potential breaches, request public authorities to comply with its decisions and finally to issue a fine. [The Government believes this enforcement regime would “act as a strong deterrent”](#) to public bodies engaging in boycott and divestment campaigns.

Clauses 12 and 13 would apply the restrictions on procurement and investment decisions in Clauses 1 and 4 of the Bill to local Government pension schemes.

Clause 14 sets out how this Bill relates to procurement legislation. Clause 15 would amend Section 17 of the 1988 Local Government Act, which prohibits local authorities from taking into account non-commercial considerations in procurement decisions.

The Bill contains nine delegated powers. Regulations made using these powers would be passed following the [draft affirmative procedure](#), except sometimes for in urgent circumstances, where regulations could be passed by the [made affirmative procedure](#).

Current guidance and legislation

[The Local Government Act 1988](#) restricts the ability of UK local authorities from considering the territory or country of origin when issuing contracts. [The Government argues it is necessary to go further](#) (PDF) in order to meet the [Conservative manifesto commitment](#) (PDF) to “ban public bodies from imposing their own [...] boycotts, disinvestment or sanctions campaigns.”

The Bill as introduced follows issuances of several guidance documents in recent years, including [advice issued by the Cabinet Office on procurement](#). [2016 guidance for the local Government pension scheme, however, was removed](#) in response to legal proceedings and court judgments that the

Government had exceeded its powers by prohibiting a pensions administrator from taking a decision if it was counter to UK defence or foreign policy.

The Boycott, Divestment and Sanctions movement

The Government has said that the Bill aims to stop “[businesses and organisations—including those affiliated with Israel—being targeted through ongoing boycotts by public bodies.](#)” One of the most prominent campaigns for a boycott against Israeli-linked goods, services and companies has been the [Boycott, Divestment and Sanctions \(BDS\) movement](#).

The Government acknowledges that the “[number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is relatively low, albeit with a high potential impact for each case](#)” (PDF).

It cites examples of council motions including [in Wirral in 2022 for the council to consider its investments in companies linked to Israeli settlements in the Occupied West Bank](#) and a [2014 Leicester City Council motion](#) to, “insofar as the law allows,” not to purchase goods from the Occupied Palestinian Territories (the [motion was upheld by the Court of Appeal](#) in 2018).

Devolution and legislative consent

All the Bill’s clauses apply to England and Wales, Scotland and Northern Ireland. The UK Government [states legislative consent motions will be sought on clauses 1 and 4 only](#) (PDF), as the remainder fall within the reserved responsibility of the UK for foreign policy.

The [Scottish](#) and [Welsh Governments](#) have recommended their respective parliaments withhold legislative consent, stating they have acted in line with the UK’s international obligations, and raised concerns on the compatibility of the Bill with freedom of speech and ability to make ethical investments. Committees in the [Welsh](#) and [Scottish](#) Parliaments have also recommended the respective parliaments withhold legislative consent for the Bill.

The UK Parliament does not require legislative consent motions to be passed by devolved legislatures for royal assent to be sought. While instances where a bill has become law without devolved legislative consent are rare, this has happened [several times in recent years](#).

Second reading debate

The [Bill's second reading was held on 3 July 2023](#). The Official Opposition moved a reasoned amendment which stated the Commons declined to give a second reading to the Bill. Reasons included the Bill's incompatibility with international law and restrictions on public bodies from expressing a view on current and proposed policy. Labour, SNP, and Liberal Democrat MPs spoke in favour of the amendment, but it was rejected following a division. After debate, the Bill passed its second reading unamended, 268 votes to 70.

Committee stage

The Public Bill Committee took evidence and examined the Bill line by line in six sittings between 5 and 14 September 2023. The Government did not table any amendments for the committee. [Opposition parties tabled 33 amendments](#) and one new clause. The committee rejected 17 amendments and the new clause after a vote. Three amendments were withdrawn after debate and with the remaining amendments not voted on. The Bill was reported unamended.

Opposition MPs expressed their overall support for legislation to address the issues raised by sanctions and divestment campaigns traditionally singling out Israel. However, they disagreed with the approach of this Bill.

The main themes debated in the committee included the Bill's application in Scotland, Wales and Northern Ireland, Government's powers to add exceptions to the ban on boycotts and divestment and taking decisions related to Israel and the Occupied Palestinian Territories.

MPs also debated the impact of the Bill's prohibition for public authorities to make statements indicating an intention or desire to ban certain countries from procurement or to prevent investment on moral or political grounds. Opposition MPs were concerned about the prohibition's compatibility with the law protecting freedom of expression.

Report stage

[Report stage](#) of the Bill was held on 25 October 2023. Four amendments were subject to a division, though none gained sufficient votes to pass. The amendments focused on 1) the Bill's compatibility with the Human Rights Act 1998, 2) its treatment of Israel and the Occupied Palestinian Territories, 3) the removal of provisions allowing Ministers to amend the Schedule, via regulations, to add or remove a description of decision or consideration, and 4) to allow public bodies to act in line with new centrally issued guidance on human rights to make procurement and investment decisions.

The Secretary of State for Levelling Up, Housing and Communities, Michael Gove, also said the Government [would consider whether “specific human rights considerations” need to be added to the Bill](#) when it is in the Lords.

Next parliamentary stages

The Third Reading is due to be held on Wednesday 10 January 2024.

Responses to the Bill (to July 2023)

Opposition to the BDS movement has been expressed by both the Government and Opposition. However, there have been concerns raised both inside and outside Parliament about the potential impact of measures in the Bill.

In June 2023, then Shadow Secretary of State for Levelling Up, Housing and Communities, Lisa Nandy MP (Lab) [raised concerns about the Bill and its impact on public bodies wishing to take action in response to China’s treatment of Uyghurs](#).

The Bill has been supported by several Jewish groups and organisations. Upon publication of the Bill in June 2023, [the Board of Deputies of British Jews welcomed the legislation](#) as preventing “divisive local situation[s]” and hindering the “unnecessary and inappropriate targeting of Israel” by councils and others. However, [several Jewish youth movements have expressed opposition to the Bill](#), stating that while they oppose the BDS movement, the Bill restricts freedom of speech and non-violent protest.

Some civil society groups, [such as Human Rights Watch, and groups including some Uyghur exiles from China](#), have echoed concerns about the impact of the Bill on public bodies wishing to make ethical choice on investments and procurement. In a [joint statement](#), more than 70 organisations, including Friends of the Earth, Green Peace, and Liberty argued that the legislation would threaten a range of campaigns and attempts to invest and trade ethically.

1 UK policy background

1.1 What is public procurement?

Public procurement is the process by which public organisations (contracting authorities) purchase goods, services and public works. It covers buying anything from office supplies to phone services, to building schools and roads, or running social care services by external contractors. The public sector's broad approach to purchasing goods and services is to seek value for money. Especially for larger purchases, value for money is generally achieved through competitive tender – a process where various organisations respond with their offers to a public authority's call to supply goods or services.

The current legislative framework for procurement regulates competitive tender processes for public sector contracts above certain value. [Procurement rules are set out in law and policy documents](#). The key [Public Contract Regulations \(PCR\) 2015](#) regulate the award of contracts for works, services or supplies by central Government departments and the wider public sector.¹

Procurement is devolved meaning there is devolved procurement legislation and policies. Wales and Northern Ireland generally follow the [Public Contract Regulations 2015](#), while the equivalent Scottish regulations are [the Public Contracts \(Scotland\) Regulations 2015](#). The [Procurement Reform \(Scotland\) Act 2014](#) provides a legislative framework for public procurement in Scotland.

As the UK has left the European Union, the Government is reforming UK procurement rules which are based on EU law. It says the reform will make procurement [simpler, faster, more transparent and less bureaucratic](#).² [Procurement Act 2023](#) received royal assent in October 2023. The new rules are expected to be fully in force from October 2024.

Further information about the current legislative framework for procurement is in [section 1.4](#) (PDF) of our [briefing on the Procurement Bill](#). This briefing also sets out the purpose and background to the Procurement Act 2023.

¹ [The Public Contracts Regulations \(PCR\) 2015](#) (S.I. 2015/102)

² Cabinet Office, [Procurement Bill Factsheet: Simpler, more flexible and transparent procurement](#), 12 May 2022

Current position for local authorities

Local and regional authorities are considered ‘contracting authorities’ within the meaning of public procurement rules and are required to follow these rules when buying goods, services or works.³

Local Government Act 1988

[Section 17 of the 1988 Local Government Act](#) prohibits local authorities or councils (and some other authorities defined in Schedule 2 of the Act) in England, Wales and Scotland from taking into account non-commercial considerations in procurement decisions.⁴

In Subsection 17(5), the Act lists non-commercial matters – in other words, those matters that should not be taken into account in procurement decisions, which include:

(a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces; [...]

(d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons;

(e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;

(f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees; [...]⁵

The Bill, as introduced in June 2023, proposes to replace paragraph (e) of Subsection 17(5) of the 1988 Act.⁶ In its impact assessment on the 2022-23 Bill, the Government said the existing Act provides only “partial coverage in preventing boycotts across local authorities and does not include any wider public bodies and divestment campaigns.”⁷

See section 3.2 (on clause 15) of this briefing for further information.

³ Section 2(1) of the [Public Contracts Regulations 2015](#); See also Procurement Bill 2022-23, Section 2

⁴ [Local Government Act 1998](#), as amended, Section 17(5); See also [Local Government \(Miscellaneous Provisions \(Northern Ireland\) Order 1992](#), Article 19

⁵ [Section 17\(5\) of the Local Government Act 1988](#);

⁶ [Economic Activity of Public Bodies \(Overseas Matters\) Bill, Bill 325 EN](#) (PDF), as introduced 19 June 2022, clause 15(3)

⁷ Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, p2

1.2

Timeline of guidance, legislative debates and Government commitments

Proposals for further legislation to govern how public authorities adopt procurement practices on political or other grounds are not new: The Commons Library briefing, [Local authority boycotts](#), March 2016, provides background to the issue.

This section focuses on legislative and other steps taken by the Government post-2016 and recent commitments made by the post-2019 Government.

2016: Cabinet Office guidance

In February 2016, the [Cabinet Office introduced guidance](#) that “aim[ed] to stop inappropriate procurement boycotts by public authorities.”⁸ The guidance applies to contracting authorities (such as the central government or local authorities) and “advises” that:

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.⁹

2016: Local Government pension scheme guidance

In 2016, the Department for Communities and Local Government introduced guidance for the Local Government Pension Scheme to state it should not use pension policies “to pursue boycotts, divestment and sanctions against foreign nations,” other than where formal UK Government measures such as sanctions are in place.¹⁰

However, this guidance was removed in 2017 in response to legal proceedings.¹¹ Court judgements in 2018 (in the High Court) and 2020 (in the Supreme Court) found the government had acted unlawfully in attempting to enforce its foreign and defence policies by prohibiting an administrator from taking a decision if it ran counter to such policies. Section 3.3 of the Commons Library research briefing, [Local Government Pension Scheme investments](#), February 2022, provides more on the cases and legal judgments.

⁸ Cabinet Office, [Putting a stop to public procurement boycotts](#), 17 February 2016

⁹ Cabinet Office, [Procurement policy note 01/16: Complying with international obligations](#), 17 February 2016, para 7

¹⁰ Department for Communities and Local Government, [Local Government Pension Scheme](#) (PDF), September 2016 (original, now archived), p9

¹¹ See Ministry of Housing, Communities and Local Government, [Local Government pension scheme: guidance on preparing and maintaining an investment strategy statement](#), updated July 2017

2017: Proposed amendment to best value guidance

In 2017, the Ministry of Housing, Communities and Local Government announced revised statutory guidance for England to “seek to prevent councils from boycotting companies and countries if it is against the Government’s position [...] particularly by introducing boycotts against Israel.”¹²

The suggested revisions to the government’s best value statutory guidance followed a consultation on whether the guidance should state that “authorities should not implement or pursue boycotts other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.”¹³

The guidance was not updated. The latest version was issued in 2015.¹⁴

2019: Conservative Manifesto and Queen’s speech

The 2019 Conservative Manifesto pledged a Conservative Government would:

ban public bodies from imposing their own direct or indirect boycotts, disinvestment or sanctions campaigns against foreign countries. These undermine community cohesion.¹⁵

In a [statement published by the Cabinet Office alongside the December 2019 Queen’s speech](#), the Government said it would examine the “appropriate mix of legislative and other measures” to prevent public institutions from creating independent sanctions against:

- Foreign countries and those linked to them
- The sale of goods and services from foreign countries
- UK firms which trade with such countries.

The Minister for the Cabinet Office, Oliver Dowden, argued that some public institutions were “set[ting] foreign policy rules” that undermine a “coherent approach to foreign relations from all public institutions.” He cited concerns in some cases about antisemitism being legitimised through the censoring of some Jewish films and threatened bans against Jewish university societies.¹⁶

¹² Ministry of Housing, Communities and Local Government, [Putting a stop to town hall boycotts](#), 13 February 2017

¹³ Ministry of Housing, Communities and Local Government, [Revised best value statutory guidance](#), 13 February 2017, section 3

¹⁴ See Ministry of Housing, Communities and Local Government, [Revised best value statutory guidance](#), 27 March 2015

¹⁵ Conservative Party, [Get Brexit done, unleash Britain’s potential](#) (PDF), 2019, p20

¹⁶ Cabinet Office, [Government confirms commitment to preventing public institutions setting up their own international boycotts](#), 19 December 2019

2021 and 2022 Queen’s speech

The May 2021 Queen’s speech said the Government would introduce legislation in line with its 2019 manifesto commitments.¹⁷ However, no Bill was forthcoming.

A similar commitment for legislation was made in the Queen’s speech in May 2022.¹⁸ With the publication of the Bill in June 2023, the Government says it “fulfil[s] a 2019 manifesto pledge.”¹⁹

2022 Public Services and Judicial Offices Act

During the passage of the [Public Service Pensions and Judicial Offices Act 2022](#), Robert Jenrick MP (Con) moved an amendment with the intent of enabling “the Secretary of State to issue guidance to those authorities that administer public sector pension schemes, including the local government pension scheme, that they may not make investment decisions that conflict with the UK’s foreign and defence policy.”²⁰

Citing the Boycott, Divest and Sanctions movement against Israel (see below, section 2.1) he explained that the new clause would enable the government to issue guidance after the Supreme Court had ruled that previous guidance had been unlawful:

The Supreme Court raised two central arguments. One was whether the 2013 Act explicitly gave the Secretary of State the power to issue guidance with respect to investment decisions that conflicted with UK foreign and defence policy. The second point that some Supreme Court Justices raised was whether it was within the remit of the Secretary of State to speak to all public service pension schemes, including those that are funded and unfunded, particularly the Local Government Pension Scheme.

This new clause explicitly provides the Secretary of State with the power to issue that guidance.²¹

The new clause was added as section 100 of [the Public Service Pensions and Judicial Offices Act 2022](#) in the Commons with the support of the Government and the DUP, though opposed by other parties.²²

Spring 2023: Procurement Bill 2022-23

During the committee stage of the [Procurement Bill 2022-23](#), Alex Norris (Lab) proposed new clause 18 which would have allowed contracting authorities

¹⁷ Prime Minister’s Office, [Queen’s Speech 2021: Background briefing notes](#), 11 May 2021, pp151-2

¹⁸ Prime Minister’s Office, [Queen’s Speech 2022: Background briefing notes](#), 10 May 2022, pp133-4

¹⁹ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

²⁰ [Public Service Pensions and Judicial Offices Bill \[Lords\], As Amended \(Amendment Paper\) February 2022](#), NC1 (PDF)

²¹ [HC Deb 22 February 2022 c213](#)

²² [HC Deb 22 February 2022 c240-243](#)

(such as local authorities) to not buy goods or services from countries on the basis of their human rights record. The proposed clause was rejected in a vote in committee on 21 February 2023.

Shadow Minister for the Cabinet Office, Florence Eshalomi, said the proposed clause was not directed at individual countries but would mandate the Government to issue guidance outlining a framework for ethical considerations for authorities to develop their own policy within.²³

Parliamentary Secretary for the Cabinet Office, Alex Burghart, criticised the proposed clause as allowing contracting authorities to apply “blanket boycotts” of suppliers from a state, and would in certain circumstances contravene the UK’s international commitments. He said available guidance and the bill’s regime of exclusion of suppliers on grounds including involvement in modern slavery and human trafficking, would suffice.²⁴

Following the defeat of the amendment in committee, the Labour Party tabled a similar amendment (New Clause 14) for the report stage of the Bill, but the amendment was not voted on.²⁵

²³ HC Deb, [Procurement Bill \[Lords\] \(Ninth sitting\)](#), 21 February 2023, cc289-90

²⁴ HC Deb, [Procurement Bill \[Lords\] \(ninth sitting\)](#), 21 February 2023, c291. See Cabinet Office, [Procurement Policy Note PPN 02/23 - Tackling Modern Slavery in Government Supply Chains – Guidance](#), 27 April 2023

²⁵ HC Deb, [Procurement Bill \[Lords\] Report Stage](#), 13 June 2023, c181

2

Background: The Israeli-Palestinian conflict and boycotts

Much of the debate on the Bill and boycotting foreign goods has focused on Israel-Palestine. While there have been few cases of actual boycotts in UK publicly funded bodies, these have all been aimed at boycotting goods from Israel, Israeli settlements in the Occupied Palestinian Territories, or both.

As [introduced in June 2023](#), the Bill would allow the government to make regulations to exempt certain countries and territories from the restrictions. However, the government would not be allowed to use these regulations to exempt Israel, the Occupied Palestinian Territories and the Occupied Golan Heights (see section 3.2 of this research briefing, on clause 3).

In its reasoning for the Bill, the Government has cited boycotts against Israel and fears these may be linked to antisemitism.²⁶

This section provides background on suggested boycotts, including those associated with the Boycott, Divestment and Sanctions movement, and the position of the UK Government towards the Israeli-Palestinian conflict and trade with Israeli settlements in the Occupied Palestinian Territories.

The Commons Library research briefings [2023/24 Israel-Hamas conflict: UK and international response](#) and [Israeli-Palestinian conflict: A parliamentary reading list, 2020-23](#) provide more on the conflict between Israel and Hamas which began with the Hamas assault of 7 October 2023.

2.1

Past boycotts and debate

Boycott, Divestment, and Sanctions movement

One of the most prominent examples of a campaign to boycott Israeli-linked goods, services and companies in recent years has been the Boycott, Divestment and Sanctions (BDS) movement, founded in 2005. The BDS states it is a Palestinian-led movement opposed to Israel's actions in the Occupied Palestinian Territories and is calling for the right of Palestinian refugees to return and for Israel to end discrimination against Palestinian groups.²⁷

The BDS movement runs campaigns in universities, local government, and trade unions. It supports academic and cultural boycotts of Israel and Israeli-

²⁶ See above, section 1.2

²⁷ BDS Movement, [What is BDS?](#)

linked companies and institutions. It argues these steps will “pressure Israel to comply with international law.”²⁸

The UK Government says it is “strongly opposed” to the BDS movement and that engaging with Israel is the best means to support the peace process and a negotiated solution to the conflict.²⁹ The Leader of the Opposition, Keir Starmer has also said that Labour does not support BDS. He said that “it is counterproductive” and is “driving people apart.”³⁰

Israel’s Prime Minister Benjamin Netanyahu has previously described the BDS movement as “being on the wrong side of the moral divide.”³¹

The Board of Deputies of British Jews argues the BDS approach “unjustly places sole blame for the conflict [...] on Israel, while ignoring the reality that the BDS movement promotes intransigence on both sides, damaging the prospects for peace.”³²

International reaction and debate on the BDS campaign

The BDS’s role in encouraging boycotts of Israel has been controversial, as have attempts to limit such actions by the BDS movement and other groups, for example:

- In 2011, Israel’s parliament passed legislation enabling lawsuits against those that call for boycotts against Israel.³³
- Several US states have laws penalising companies that refuse to do business with Israel or Israeli settlements in the Occupied Palestinian Territories.³⁴
- In 2019, the German Parliament condemned BDS as antisemitic.³⁵
- In France, laws have previously been applied against those campaigning for boycotts of Israeli goods.³⁶

The BDS organisation strongly rejects allegations of antisemitism, and says it targets Israel “because of its responsibility for serious violations of international law”.³⁷ The BDS movement does not target other states, it says,

²⁸ BDS Movement, [Campaigns](#) and [What is BDS?](#)

²⁹ PQ 123 [[Israel: Sanctions](#)], 26 May 2021

³⁰ Sir Keir Starmer, [Exclusive: Why my Labour party will always stand up for Israel](#), The Jewish Chronicle, 17 November 2021

³¹ [Recognize Jewish Israel to show you want peace. PM tells Abbas](#), Times of Israel, 4 March 2014

³² Board of Deputies of British Jews, [A better way than boycotts](#) (PDF), 2021, introduction

³³ Human Rights Watch, [Dispatches: Israeli supreme court upholds anti-boycott law](#), 18 April 2015

³⁴ Human Rights Watch, US: [States use anti-boycott laws to punish responsible businesses](#), 23 April 2019

³⁵ [Lawmakers condemn “antisemitic” BDS movement](#), DW, 17 May 2019

³⁶ [European court rules against France in Israel boycott activist case](#), Reuters, 11 June 2020

³⁷ BDS Movement, [FAQs: Isn’t a boycott of Israel antisemitic?](#), undated

because it is a “Palestinian-led movement” and so “orient[s] their struggle towards Israel.”³⁸

Examples of support for boycotts and sanctions against Israel in the UK

The Government’s impact assessment, published to accompany the Bill in June 2023, states that the “number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is relatively low, albeit with a high potential impact for each case.”³⁹

Several councils have either passed, or considered, motions that would cause pension and other funds to divest from the Occupied Palestinian Territories, Israel, or both (several stress this would be insofar as UK law allows).⁴⁰

Motion in Wirral Council pensions committee, 2022

In 2022, a motion for Merseyside Pension Fund to consider its investment in nine Israeli companies linked to settlements in the Occupied West Bank was rejected at Wirral Council’s pensions committee. However, a motion calling on council officers to consider companies in all disputed territories in a later meeting, was passed.⁴¹

Motion to divest with pension funds, Lancaster City Council, 2021

The Council voted to “express its support for the BDS movement’s demands.” It would write to the Lancashire County Pension Fund (part of the Local Government Pension Scheme) and the Local Pensions Partnership urging them to “divest from all companies active in illegal Israeli settlements in Palestine and all arms companies that supply weapons to Israel.”⁴²

Motions to halt business with Israel or Israel-linked companies, 2010 to 2014

In 2014, Leicester City Council approved a motion not to purchase goods from Israeli-Occupied Palestinian territories, “insofar as legal considerations allow [...] until such a time as [Israel] complies with international law and withdraws from Palestinian Occupied territories.”⁴³

Earlier, in 2010, Swansea City Council passed a non-binding motion for the council not to do business with “any company in breach of international law

³⁸ BDS Movement, [FAQs: Doesn't BDS single out Israel?](#), undated

³⁹ Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, para 5

⁴⁰ See also [Israel boycott ban: The local authorities that imposed unofficial sanctions against “unethical companies.”](#) The Independent, 15 February 2016

⁴¹ [Bid to make Wirral council pension fund divest from nine Israeli firms is defeated](#), Jewish News, 24 February 2022 and [Plan to scrutinise pension fund’s investment in 9 firms delayed](#), Liverpool Echo, 23 February 2022

⁴² Lancaster County Council, [Agenda item: Motion on notice- BDS movement](#), 23 June 2021

⁴³ Leicester City Council, [Agenda and minutes](#), 13 November 2014

or UN obligations or demands, so long as to do so would not be in breach of any relevant legislation,” in the context of proposed contract with a company that worked in Israel. In 2014, Gwynedd Council also passed a motion which called for a trade embargo with Israel.⁴⁴

Leicester City Council’s decision was subsequently challenged but this was rejected by the Court of Appeal in 2018, noting that the motion allowed a boycott “insofar as legal considerations allow.” Proposed judicial reviews of Swansea City Council and Gwynedd Council were also rejected.⁴⁵

In 2019, Belfast City Council was due to vote on a motion on banning trade and investment with Israel, but this was withdrawn following opposition.⁴⁶

Actions of Scottish pension funds

The BDS movement cites three Scottish pension funds that have divested from Israeli Bank Hapoalim.⁴⁷ However, the funds have not issued statements substantiating that these decisions were linked to Israel’s actions.

For example, in 2018, it was reported the Falkirk Pension Fund, which manages funds for Stirling, Falkirk and Clackmannanshire councils, sold its holding in Bank Hapoalim.⁴⁸

However, the fund manager said no instructions were given to them to divest its £6 million holdings. They state the “fund does not invest to further ethical political aims but in order to meet its fiduciary responsibility to scheme members and sponsoring employers.”⁴⁹

Scottish Government policy note and local authority actions, 2014

In August 2014, the Scottish Government issued a policy note to contracting authorities which “strongly discourages trade and investment from illegal settlements.” The advice is no longer available online, but the accompanying press release stated an:

[e]xpectation and advises purchasers to seek assurances that any Israeli-based company they consider entering into a contact with, is not in any way involved in illegal settlements.⁵⁰

The news release also stated that the Scottish Procurement Policy Note was in line with advice published by the Foreign and Commonwealth Office at the

⁴⁴ [Antisemitic legal claim against Swansea and Gwynedd councils](#), BBC News, 3 May 2016

⁴⁵ [Judges reject appeal over motion boycotting produce from Israeli settlements](#), Local Government Lawyer, 3 July 2018; [Jewish Rights Watch Ltd R v Leicester City Council \[2018\]](#), EWCA Civ 1551, 3 July 2018

⁴⁶ UK Lawyers for Israel, [BDS motion at Belfast City Council withdrawn](#), 9 July 2019

⁴⁷ BDS, [Visualising Palestine: Growth of a movement: entry for 9 June 2021](#) (Lothian, Tayside and Falkirk)

⁴⁸ [Scotland’s Braveheart pension fund divests from Israeli Bank](#), Middle East Memo, 31 July 2018

⁴⁹ Falkirk Council Pension Fund, [Investment in Israeli Bank](#), 30 August 2018 and WhatDoTheyKnow, [FOI Falkirk Council](#), June 2020

⁵⁰ Scottish Government, [Advice against trade with illegal settlements](#), 22 August 2022

time.⁵¹ According to [a briefing by the Scottish Parliament Information Centre on a related petition to the Scottish Parliament in 2020](#), four Scottish councils voted for a boycott of Israeli goods following publication of the guidance: Clackmannanshire, Midlothian, Stirling and West Dunbartonshire. However, it said it was not clear if any of these boycotts were in place.⁵²

2.2

Actions within universities

Among the other public bodies that come under the Bill are universities when they are conducting public functions. The Government has cited concerns that some universities are “pressured by groups that want to impose their own subjective views about foreign policy,” accusing them of undermining free speech and education.⁵³

The Bill’s impact assessment cites two examples of antisemitic and antimuslim abuse in universities, potentially linked to BDS campaigns.⁵⁴

Several university student unions have supported the BDS movement and called for academic boycotts of Israel.⁵⁵ As the unions are charities, the Charity Commission has previously launched investigations to ensure student unions are not discriminating against students from a particular faith or belief group or ethnic group.⁵⁶

The Community Security Trust (a charity that protects British Jews from antisemitism and related threats) has published a report suggesting an increase in antisemitism on campus from 2020 to 2022. It noted moments of significant escalation in the Israeli-Palestinian conflict were correlated with these rises.⁵⁷

In 2023, an independent report into antisemitism in the National Union of Students (NUS) judged NUS support for “the BDS campaign along with initiatives on campuses such as Israel Apartheid Week [...] do impact negatively on Jewish students,” and that the Union should always consider taking steps to ensure “respectful politics is adhered to” when engaging with BDS and Israeli-Palestinian issues.⁵⁸

⁵¹ Scottish Government, [Advice against trade with illegal settlements](#), 22 August 2022

⁵² Scottish Parliament Information Service, [Petitions briefings: PE1803 right to boycott, divest and sanctions](#), 26 March 2020

⁵³ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

⁵⁴ Department for Levelling Up, [Housing and Communities, Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2022, para 64b

⁵⁵ [Concerns raised over students’ unions’ anti-Israel stance](#), BBC News, 27 April 2017

⁵⁶ [BDS: The boycott Israel movement spreading across universities](#), The Week, 27 April 2017

⁵⁷ Community Security Trust, [CST report shows 22% increase in campus antisemitism](#), 19 January 2023

⁵⁸ Rebecca Tuck KC, [Independent investigation into allegations of antisemitism within NUS](#) (PDF), January 2023, section 3.4

The NUS “welcomed the clarity” of the report and developed an action plan and advisory panel to oversee changes in response. These include plans for strengthening community relations and guidance on minimising harm in activity relating to Israeli and Palestinian issues within student politics.⁵⁹

2.3

The Israeli-Palestinian conflict

Antisemitism and anti-Muslim hatred linked to the conflict

The UK Government says one of its motivations for the Bill is to address antisemitism, which it notes rises when violence or tensions are high in the Israel-Palestinian conflict, echoing the pattern in anti-Muslim hatred.⁶⁰

The Bill’s impact assessment cites data collected by the Community Security Trust (CST) and Tell MAMA (the Measuring Anti-Muslim Attacks group) evidence of rising tensions in the Middle East leading to increases in such activity in the UK.⁶¹

The Bill’s impact assessment also notes that boycott or divestment campaigns and hate crimes and antisemitism “may occur alongside each other,” though says there is no evidence to substantiate that boycott or divestment campaigns incite hate crimes or antisemitism and anti-Muslim hatred.⁶²

Israel and the Occupied Palestinian Territories

The West Bank, Gaza and East Jerusalem have been occupied by Israel since 1967 and are collectively known as the Occupied Palestinian Territories (OPTs).⁶³

Gaza and the West Bank remained under full Israeli control until the mid-1990s, when the Palestinian Authority was created. The Authority controls some areas of the OPTs, but other areas remain under Israeli control.⁶⁴

⁵⁹ National Union of Students, [Independent investigation into antisemitism](#), 12 January 2023

⁶⁰ Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, para 64

⁶¹ See Community Security Trust, [Antisemitic incidents report](#), February 2023, and [earlier reports](#), and Tell Mama, which notes “trigger events” can lead to a rise in anti-Muslim hatred I. Awan and I. Zemapi, [We fear for our lives](#) (PDF) 2015; [Israel-Gaza conflict triggers spike in antisemitic and anti-Muslim hate in the UK](#), The Independent, 19 May 2021

⁶² Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, para 64

⁶³ For a short narrative of the Israeli-Palestinian conflict, see Council on Foreign Relations, [Israeli-Palestinian conflict](#), updated 25 April 2023

⁶⁴ Commons Library, [The OPTs: Recent developments](#), 2017, p6 and UN Security Council, [Resolution 2334 \(2016\)](#) (PDF), para 1

Israel annexed the Golan Heights in 1981. While the US recognised this in 2019 the UK and other countries have not.⁶⁵ Israel has also claimed the undivided city of Jerusalem as its capital since 1980, while Palestinian politicians have claimed East Jerusalem as the capital of a future Palestinian state.⁶⁶

Since 1967, Israel has supported the construction of settlements in the occupied West Bank and East Jerusalem. These settlements are considered illegal under international law by most of the international community, including the UK, though Israel disputes this.⁶⁷

Further reading on the Israeli-Palestinian conflict

- Commons Library, [The Middle East in 2023](#), February 2023. Section 2 covers Israel's new Government and the conflict (to February)
- Commons Library, [The Occupied Palestinian Territories: Recent developments](#), March 2017. Background on the conflict and topics such as a two-state solution.
- Commons Library, [2023/24 Israel-Hamas conflict: UK and international response](#), January 2024
- Commons Library, [Israel and the Occupied Palestinian Territories: A parliamentary reading list, 2020-23](#), December 2023

UK Government position on the conflict and Israeli settlements in the OPTs

The UK supports a negotiated two-state solution, based on 1967 lines with Jerusalem as a shared capital.⁶⁸ It is the long-standing position of the UK Government that Israeli settlements in the OPTs are illegal (links to UN resolutions added to the following quotation):

In line with international law, and relevant Security Council resolutions, notably [Resolutions 242](#) and [497](#), we do not recognise Israel's sovereignty over the territories occupied by Israel since June 1967, including the Golan Heights, and we do not consider them part of the territory of the State of Israel. Annexation of territory by force is prohibited under international law. Any declaration of a unilateral border change goes against the foundation of the rules-based international order and the UN Charter.⁶⁹

⁶⁵ [Golan Heights profile](#), BBC News, 17 January 2023

⁶⁶ [Basic Law: Jerusalem the capital of Israel](#), 1980 (PDF); Committee on the Exercise of the Ineligible Rights of the Palestinian People, [The Status of Jerusalem](#), 1997 (PDF), pp3-4

⁶⁷ FCDO, [Israeli settlements: Statement by France, Germany, Italy, Spain and the UK](#), 6 May 2021

⁶⁸ FCDO, [Situation in Israel and the Occupied Palestinian Territories: UK statement to the Security Council](#), 24 May 2023

⁶⁹ PQ HL 4835 [[Israel: Golan Heights](#)], 23 December 2021

If the settlements are legalised, the UK Government view is that it would:

undermine the viability of the two-state solution. They could leave Palestinian Territory in the West Bank as a series of disconnected urban areas, not a contiguous State.⁷⁰

2.4

UK trade with Israel and the OPTs

UK trade with Israel and the OPTs

In 2022, UK trade with Israel totalled around £7.2 billion, making it the UK's 39th largest trading partner.⁷¹

It is difficult to obtain accurate figures for UK trade to the OPTs as they are in a customs union with Israel, but it has been estimated as £59 million in 2022. Many goods destined for Israel have the OPTs as their final destination.⁷²

In 2020, and following a 2016 UN resolution, the UN Human Rights Office (OHCHR) published a database of 112 companies doing business in illegal Israeli settlements in the OPTs.⁷³ The majority were Israeli-linked companies, and three had links to the UK.⁷⁴

UK Government position on trade with Israeli settlements in the OPTs

Advises against trade on basis of legal, economic, and reputational risks

The UK Government's guidance on the business risk in trading with Israeli settlements in the OPTs states it "does not encourage or offer support to such activity," citing that such trade:

Entail[s] legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel's territory. [...]

UK citizens and business should be aware of the potential reputational implications of getting involved in economic and financial activities in settlements, as well as possible abuses of the rights of individuals.⁷⁵

⁷⁰ Foreign and Commonwealth Office, [Written evidence to the Foreign Affairs Select Committee](#), 26 April 2017, para 19

⁷¹ Department for International Trade (DIT), [Trade and investment factsheets: Israel](#), 21 June 2023

⁷² Department for Business and Trade and FCDO, [Overseas business risk: The OPTs](#), 24 February 2022; DIT, [Trade and investment factsheets: The OPTs](#), updated 21 June 2023

⁷³ UNOCHA, [UN rights office issues report on business activities related to settlements in the OPTs](#), 12 February 2020

⁷⁴ UN, [A/HRC/43/71.12 February 2020](#) (link opens word document)

⁷⁵ Department for Business and Trade and FCDO, [Overseas business risk: The OPTs](#), 24 February 2022, para 2.4

However, it also emphasises operating in the OPTs is ultimately the judgement for individuals or businesses:

We advise British businesses to bear in mind the British Government's view on the illegality of settlements under international law when considering their investments and activities in the region. Ultimately, it will be the decision of an individual or company whether to operate in settlements in the Occupied Palestinian Territories, but the British Government would neither encourage nor offer support to such activity.⁷⁶

No preferential tariff agreement with the UK for Israeli settlements in the OPTs

The UK has a Trade and Partnership Agreement (TPA) with Israel,⁷⁷ and a separate political, trade and partnership agreement with the Palestinian Authority.⁷⁸ The UK does not recognise the OPTs, including Israeli settlements, as part of Israel. Goods imported from the settlements are therefore not treated as goods from Israel and do not benefit from trade preferences under the UK-Israel TPA.

The Government says it has no plans to ban the import of products from Israeli settlements in the OPTs or address UK business investment in the OPTs.⁷⁹

UK and EU guidelines outline how products originating from these territories should be labelled “so as not to mislead the consumer.”⁸⁰

In 2017, the UK Government said differentiating between Israel and the Occupied Palestinian Territories in this way was in line with [UN Security Council Resolution 2334 \(2016\)](#), which:

Calls upon all States, bearing in mind paragraph 1 of this resolution [that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law], to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.⁸¹

⁷⁶ [Government response to petition “Introduce sanctions against Israel.”](#) 8 June 2021

⁷⁷ Foreign and Commonwealth Office, [UK/Israel: Trade and partnership agreement with Israel No.1/2019](#), 26 February 2019

⁷⁸ Department for International Trade, [UK-Palestinian Authority political, trade and partnership agreement](#), updated 5 November 2021

⁷⁹ PQ HL4915 [[Israel: Defence and Trade Agreements](#)], 23 December 2021; PQ 901260 [[Occupied Territories: Overseas trade](#)], 15 June 2021

⁸⁰ Department for Business and Trade and FCDO, [Overseas business risk: The OPTs](#), 24 February 2022, para 2.4

⁸¹ [UN Security Council Resolution 2334 \(2016\)](#) (PDF), 23 December 2016; Foreign and Commonwealth Office, [Written evidence to the Foreign Affairs Select Committee](#), 26 April 2017, para 19

UN resolution to differentiate between Israel and the OPTs

Responding to clause 3(7) of the [Economic Activity of Public Bodies \(Overseas Matters\) Bill 2022-23](#) (as introduced),⁸² the Palestinian Mission in the UK argues the Bill risks “erasing the distinction between Israeli-occupied territory and Israel [...] contravening international resolutions, including UN resolution 2334, rendering declarations of support for peace and two-state outcome moot.”⁸³

The Government states the Bill does not represent a change to the UK’s approach to the Middle East peace process, including its position that Israeli settlements are illegal under international law.⁸⁴

The Israeli Government criticised the 2016 UN resolution. It argued the country has “eternal rights” in Jerusalem and the vote undermined the possibility of peace.⁸⁵

⁸² [Economic Activity of Public Bodies \(Overseas Matters\) Bill, Bill 325 EN](#) (PDF), as introduced 19 June 2022

⁸³ State of Palestine Mission London, UK, [Anti-boycott Bill could shield international law breakers, human rights violators](#), 19 June 2023

⁸⁴ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

⁸⁵ UN, [Israel’s settlements have no legal validity, constitute flagrant violation of international law, security council reaffirms](#), 23 December 2016

3 The Bill: Introduction

Bill 325 2022-23, [The Economic Activity of Public Bodies \(Overseas Matters\) Bill](#), was first introduced into the House of Commons on 19 June 2023.

The Bill was carried over into the new session, as [Bill 005 2023-24](#).

No amendments have been made prior to third reading.

The Bill provides the legislative basis for preventing public bodies, such as local authorities, when making decisions about procurement and investment from considering a country or territory of origin or other territorial considerations in a way that indicates moral or political disapproval of a foreign territory. However, it will enable the Government to issue exemptions in respect of certain countries and territories (other than Israel, the OPTs and the occupied Golan Heights).

The Bill does not prevent public bodies from complying with formal UK Government legal sanctions, embargoes and restrictions.⁸⁶

The Bill will also apply to hybrid public bodies, such as universities, except for when they are carrying out acts of a private nature.

As introduced, the Bill contains 17 clauses and one schedule.

3.1 Overview of the Bill

A [Department for Levelling Up, Housing and Communities press release](#) issued to coincide with the Bill's presentation to the Commons in June 2023 lays out its intentions for the Bill to:

- Prevent councils and other publicly funded institutions “from pursuing their own foreign policy objectives” and targeting of businesses and organisations through boycotts, including those relating to the Israeli-Palestinian conflict.
- Introduce fines for those that break the rules and give ministers the power to conduct investigations into suspected breaches.
- Protect free speech within universities.

⁸⁶ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, paras 1 to 5

The Bill does not apply to individuals or private organisations, where they are not carrying out public functions.⁸⁷

The Government also states the Bill does not represent a change to the UK's approach to the Middle East peace process, including its position that Israeli settlements are illegal under international law.⁸⁸

As [introduced in June 2023, clause 3 of the Bill](#) allows for the Government to introduce regulations to exempt countries or territories from the restrictions, allowing public bodies to boycott or divest against those countries to express political or moral disapproval.

The Government [states it intends for Russia and Belarus to be except from the restrictions immediately on commencement](#) (PDF), reflecting its [previous calls for companies to divest from Russia following the invasion of Ukraine in February 2022](#).⁸⁹ However, Israel, the Occupied Palestinian territories, and the Occupied Golan heights may not be exempted in regulations made under clause 3.⁹⁰

3.2 Summary of key clauses

Part 1: Main provisions

Clauses 1 to 4 contains the key provisions of the Bill.

Clause 1: Ban on boycotts and divestment

Clause 1 (disapproval of foreign state conduct prohibited), subsection (2), would forbid public authorities from making decisions in a way that appears to be influenced by their moral or political disapproval of policies or conduct by foreign authorities.

Ban relates to procurement and investment decisions

Subsections 2(2) and 2(3), clarify that the ban in clause 1(2) would only apply to 'procurement decisions' and 'investment decisions' of public authorities. Procurement decisions relate to public authority purchases of goods, services and public works as set out in section 1.1 (on procurement) above. Investment decisions are decisions about the acquisition, management, retention and

⁸⁷ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

⁸⁸ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

⁸⁹ HM Treasury, [Chancellor calls on firms to stop investing in Russia](#), 13 March 2022

⁹⁰ [Economic Activity of Public Bodies \(Overseas Matters\) Bill 325 of 2022-23](#) [as introduced]

disposal of assets for investment purposes. This does not include decisions regarding operational assets such as office space used by a public body.⁹¹

Subsections (3) to (6) of clause 1 define the Bill's key terms such as "foreign state conduct" and "foreign state authority".

Subsection (7) of clause 1 clarifies that public authority decisions may not be influenced by a third party's, for example a campaign organisation's, moral or political disapproval of foreign state conduct.

According to the explanatory notes, clause 1 is meant to:

catch both open participation in boycotts, or divestment campaigns, and more subtle ways of singling out countries or territories that could produce similar results.⁹²

The explanatory notes say that this prohibition is not intended to stop higher education institutions such as universities from terminating a collaboration with a foreign university on the grounds of academic freedom, if they judge it necessary in line with their university's statutory duties in Part 1A of the Higher Education Act 2017 (duties to protect freedom of speech).⁹³

A 'public authority' is defined in clause 2(1) as in [section 6 of the Human Rights Act 1998](#) and includes any person performing a 'function of a public nature'. Bodies the Bill applies to include:

- a. All central Government agencies and non-departmental public bodies carrying out public functions as defined in section 6,
- b. All non-ministerial Government departments to the extent they are not covered by the above;
- c. All UK Ministers and their Government departments;
- d. Ministers in the devolved administrations in Scotland, Wales and Northern Ireland, and their departments and agencies;
- e. All local authorities;
- f. Local Government pension funds;
- g. Universities;

⁹¹ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, p7

⁹² [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 13

⁹³ These statutory duties were introduced by the [Higher Education \(Freedom of Speech\) Act 2023](#) which received Royal Assent on 11 May 2023; See Commons Library briefing, [Higher Education \(Freedom of Speech\) Bill: Progress of the Bill](#), CBP-9295

h. Cultural institutions.⁹⁴

The impact assessment to the Bill explains that the Government has chosen a broad definition of public authorities, to include organisations such as universities and cultural institutions (when carrying out their public functions).

However, ‘hybrid’ public authorities, such as universities, which carry out both public and private functions, would not be bound by the prohibition of boycotts, divestment and sanctions in relation to their private activities.⁹⁵

Clause 3: Exceptions to the ban on boycotts and divestment

Clause 3 makes exceptions to the prohibition, which are set out in the schedule of this Bill (see box 1), and creates several delegated powers (see box 2).

Subsection 3(2) would give the Secretary of State or Minister for the Cabinet Office power to update the schedule by regulations to change the exceptions, for example to remove certain other bodies, their activities or certain types of considerations from the ban.

The Bill’s delegated powers memorandum clarifies why such amendments may be needed:

There may, for instance, be certain environmental, social or governance considerations that we would not intend the Bill to catch, but where doubt could arise as to whether they cross the line into disapproval of foreign state conduct. This power would enable the Government to allay such concerns and clarify that certain considerations are always permissible.⁹⁶

Subsection 3(3) lists bodies that cannot be wholly excepted from the ban through regulations – this includes the UK and devolved Governments, as well as local authorities.

Subsection 3(5) would give the Secretary of State or Minister for the Cabinet Office power to disapply the Bill by regulation with respect to certain countries or territories. The Government intends to use this power only in exceptional circumstances, in line with its foreign policy.⁹⁷ For example, the Government is currently encouraging public bodies to wind down commercial relationships with Russian and Belarussian companies due to Russia’s invasion of Ukraine. This power would allow public authorities to boycott the

⁹⁴ Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, page 5

⁹⁵ Department for Levelling Up, Housing and Communities, [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, p2, para 12

⁹⁶ [Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee](#) (PDF), May 2023, para 21

⁹⁷ [Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee](#) (PDF), May 2023. Para 25

countries excepted by the Government, or divest in them “to express political or moral disapproval of the conduct of a foreign state”.⁹⁸

No boycott of or divestment in Israel and the OPTs

However, subsection 3(7) would provide that regulations under subsections (5) and (2) of clause 3 may not make exceptions to the prohibition relating ‘specifically or mainly’ to Israel, the Occupied Palestinian Territories or the Occupied Golan Heights. This clause effectively prevents bans of Israel and the above territories.⁹⁹ See section 2 above for discussion of the significance of the exemption for Israel and the OPTs.

The making of regulations under clause 3 would be subject to the [draft affirmative procedure](#), except for in urgent circumstances, where regulations could be passed by the [made affirmative procedure](#).

Clause 4: Prohibited statements

Clause 4 would prohibit public bodies from publishing statements indicating their intention to ban certain countries from their procurement or to prevent investment on moral or political grounds. It would also prohibit statements indicating public bodies would participate in boycott or divestment campaigns if it were lawful to do so.¹⁰⁰ However, UK Government ministers would be exempt from this prohibition when required to justify decisions to exempt countries and allow certain boycotts or divestment under subsection (5) of clause 3.

1 The schedule: exceptions to the prohibition of boycotts and divestment

Part 1 of the schedule lists excepted bodies and functions, meaning clauses 1 and 4 would not apply to decisions in relation to:

- Security and intelligence services
- Defence contracts
- Pension schemes. Corresponding restrictions would however be made for local Government pension schemes in clauses 12 and 13.¹⁰¹

Part 2 lists excepted considerations, which means that public authorities would be allowed to make decisions based on considerations in this schedule,

⁹⁸ [Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee](#) (PDF), May 2023, para 23

⁹⁹ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 29

¹⁰⁰ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 30

¹⁰¹ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 78

and the prohibitions of clauses 1 and 4 would not apply to them. The relevant considerations concern:

- Financial and practical matters such as the financial or practical value of the goods, services, works or asset in question
- National security
- International law (if a decision would mean the UK is in breach of international law)
- Bribery
- Labour-related misconduct, including offences related to modern slavery and human trafficking
- Competition law infringements, including anti-competitive agreements and abuse of dominant position, or
- Environmental misconduct

Part 2: Enforcement

Clauses 5 to 11 set out how the ban introduced by the Bill would be enforced.

Judicial review and specific enforcement

Clause 5 provides that the ban would be enforced by the courts. Relevant decisions by public bodies in scope of the Bill would be subject to judicial review (subsections (1) and (2)).¹⁰² In the UK, [judicial review](#) is the normal process for challenging many decisions by public authorities. It generally focuses on the way decisions are made rather than the actual merits. If a public authority is found to have acted unlawfully, the remedies available to a court include quashing (setting aside) the unlawful decision and in some circumstances awarding damages.¹⁰³

For decisions and statements which cannot be challenged by way of judicial review, clauses 5 to 11 would introduce a specific enforcement regime. Clause 5(4) would provide that the High Court (in England, Wales and Northern Ireland) or the Court of Session (in Scotland) would enforce the ban, in a procedure similarly to judicial review. This includes powers to make an order setting aside decisions of the public authority or to require the authority to stop doing something.

The court would accept applications from persons it considers having sufficient interest in the subject matter of the application, for example, if they

¹⁰² [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, paras 32-33

¹⁰³ Commons Library, [Constituency Casework: Judicial Review](#)

were affected by the decision in question.¹⁰⁴ Persons with sufficient interest could include a person who is affected by the decision (for example by being the subject of the decision) or an organisation interested in the issue.¹⁰⁵

Investigation by an enforcement authority and compliance notices

The Bill provides for the Ministers and regulators to investigate, issue compliance notices, and impose monetary fines.

Clause 6 (enforcement authorities) sets out that the Secretary of State or the Treasury would be enforcement authorities of the Bill. The Office for Students would be the enforcement authority in relation to higher education providers in England. Clause 13 would provide for the Pensions Regulator to enforce the ban against local Government pension schemes (see Part 3 below). There is no enforcement authority for decision or statement made by a Minister of the Crown.

Subsection (6) of clause 6 would give the Secretary of State or the Minister for the Cabinet Office power to change the enforcement authority for some decisions. This would be done by regulations made using the affirmative procedure.

The Bill's impact assessment explains that the Government intends to leave the powers to investigate suspected breaches, issue notices and fine public authorities with the existing regulators where possible. Where there is no appropriate regulator the power would fall to Ministers.¹⁰⁶

Clauses 7 to 9 would give an enforcement authority tools to investigate suspected breaches, request public authorities to comply with its decisions and issue penalties.

Clause 7 would give the enforcement authority power to issue written 'information notices', requesting a public authority to provide information about a decision it has taken. This would enable the enforcement authority to request the necessary information to assess whether the public authority has made a procurement or investment decision banned by clause 1, or published a statement prohibited by clause 4. The enforcement authority would also be able to issue an information notice if it has become aware of a forthcoming decision or a statement by an authority in breach of the Bill's prohibition. Subsections 7(6) and 7(7) would provide that the duty to comply with an information notice is subject to a review by the High Court or the Court of Session in Scotland.

If the enforcement authority would be satisfied that a public authority has contravened, or is likely to contravene clauses 1 and 4, clause 8 would give it

¹⁰⁴ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 35

¹⁰⁵ Public Law Project, [An introduction to Judicial Review](#), p3

¹⁰⁶ [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, para 29

power to issue a compliance notice. The offending public authority would be given an option to react before a compliance notice is issued.

Monetary penalty

As the ultimate step in case of non-compliance, the enforcement authority would be able to issue a ‘monetary penalty’ (a fine) to an authority as provided in clause 9 (monetary penalties: power). A fine could be issued if a public authority

- had breached clauses 1 or 4 and has failed to comply with the compliance notice, or
- had failed to comply with an information notice

Subsections 9(3) to 9(8) set out the procedure by which the enforcement authority would impose the fine. The enforcement authority would first inform a public authority about its intention to impose the fine, giving it a chance to respond. Subsection 9(7) contains power by which the enforcement authority may impose the fine. This should be done by written notice.

Clause 10 (monetary penalty: further provisions) would give the Secretary of State power to determine the maximum amount of fine and provides that a fine would carry interest.

Clause 11 sets out that the enforcement authority would be able to amend information, enforcement and penalty notices or revoke them.

The Government states there will be associated costs to deliver the enforcement regime to ensure compliance with the legislation, but enforcement action “will be relatively low” as the enforcement regime will “act as a strong deterrent.”:

The enforcement regime is primarily intended as an additional deterrent. If it is working effectively as a deterrent, we expect a relatively low volume of investigations and fines. The number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is relatively low, albeit with a significant impact for each case. We therefore expect any enforcement cost to be small, and significantly less than £5m. We also expect the enforcement costs to be offset by the fines which will be returned to the exchequer.

Based on similar enforcement regimes on those bodies in scope, we have provided an estimate that the cost of running an enforcement case which goes to a determination panel will be between £120,000 – £200,000. Given the low volume and the strong deterrence of the Bill, we think as a contingency we should allow for one or two cases per year. Using these estimates and on the assumption that an investigation by other enforcement authorities or Ministers/departments would incur similar costs, we suggest that the enforcement regime will cost between £120,000 and £400,000 per year.¹⁰⁷

¹⁰⁷ [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, page 3

Part 3: Local Government pension schemes

The Local Government Pension Scheme is a public service pension scheme.¹⁰⁸ It is a defined benefit scheme which provides a promised pension based on salary and length of service.¹⁰⁹ Members of the scheme and employers make contributions to the scheme which are invested into a fund used to pay pensions in retirement.¹¹⁰ This is unlike the other main public service pension schemes, such as the civil service, armed forces and NHS pension schemes, where pension contributions are paid to the sponsoring Government department which then meets the costs of pensions in payment directly.

Further detail is available in the Library briefing [Local Government Pension Scheme investments](#).

The Pensions Regulator is responsible for regulating occupational pensions in the UK.

Part 3 (clauses 12 and 13) of the Bill would apply the restrictions on procurement and investment decisions in Part 1 of the Bill to local Government pension schemes. Clause 13 would also allow the Pensions Regulator to use its existing enforcement powers to enforce the ban against local Government pension schemes.

Part 4: Supplemental and general provision

Disregarding or excluding foreign suppliers from procurement

Clause 14 sets out how this Bill relates to procurement legislation.

Clause 19(3)(b) of the Procurement Bill 2022-23 currently going through Parliament would allow contracting authorities to disregard tenders from foreign suppliers or sub-contractors that are not from states with which the UK has a trade agreement on procurement ('treaty state' suppliers).¹¹¹ Examples include suppliers from China, Saudi Arabia and India – countries, which do not have a free trade agreement with the UK nor are currently a party to the World Trade Organisation [Agreement on Government Procurement](#).¹¹² Clause 20 (5)(c) and (d) of the Procurement Bill would allow contracting authorities to exclude non-treaty-state suppliers or sub-contractors from procurement.

¹⁰⁸ Local Government Pension Scheme, [About the LGPS](#) [accessed 22 June 2023]

¹⁰⁹ [As above](#)

¹¹⁰ [As above](#)

¹¹¹ Clause numbers as in [Procurement Bill 2022-23 \(Bill 249\)](#) (PDF) as amended in Public Bill Committee

¹¹² China and Saudi Arabia have applied to accede to the GPA.

The impact assessment says that this Bill would not restrict that freedom to disregard non-treaty-state suppliers, as it “only stops decisions motivated by political or moral disapproval of a foreign state”.¹¹³

The explanatory notes say further that clause 14(2):

sets out that powers conferred by the Procurement Act 2023 in relation to excludable suppliers are subject to clause 1 of this Act in a case where the exclusion ground relied on is “professional misconduct”.

The Procurement Bill 2022-23 proposes a new supplier exclusion regime, which would protect contracting authorities from engaging with unfit suppliers.¹¹⁴ The detailed mandatory and discretionary grounds, that is, the grounds on which suppliers must or may be excluded from procurements, are listed respectively in schedules 6 and 7 of the Procurement Bill. Clause 62 of the Procurement Bill would establish a debarment list for excluded and excludable suppliers and give a Minister of the Crown power to add or remove a supplier from the debarment list.

One of the discretionary grounds of exclusion in schedule 7 of the Procurement Bill relates to professional misconduct (paragraph 11 of schedule 7), which is defined as dishonesty, impropriety or a serious breach of ethical or professional standards.

Subsection 14(2) of the Economic Activity of Public Authorities Bill effectively clarifies that deciding to exclude a supplier due to professional misconduct, a contracting authority would be prohibited from considering its own moral or political disapproval of policies of the foreign country the supplier comes from or is associated with.

Equally, the Minister of the Crown, when deciding to add or remove a supplier from the debarment list due to its professional misconduct, would not be allowed to consider conduct of the foreign country the supplier is associated with (subsection 14(3)).

Subsection 14(6) would introduce a delegated power of the Secretary of State to make additional and related regulations (by the affirmative procedure) in relation to:

- legislation to be repealed, revoked or modified by the Procurement Bill before it becomes law. This would cover the interim period before the Procurement Act comes into effect as expected in October 2024;
- the Procurement Reform (Scotland) Act 2014 or regulations made under it in case of a conflict with Scottish procurement law.

¹¹³ [Impact Assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), 4 May 2023, para 51

¹¹⁴ Clauses 26 to 28 of the Procurement Bill 2022-23; Clause 57 of this Bill defines ‘excluded suppliers and “excludable suppliers”. Schedules 6 and 7 list mandatory and discretionary grounds on which suppliers must or may be excluded.

Relation with the Local Government Act 1988

Clause 15 would amend Section 17 of the 1988 Local Government Act.

As set out above in section 1.1, [Section 17 of the 1988 Local Government Act](#) generally prohibits local authorities in England, Wales and Scotland (and some other authorities defined in schedule 2 of the Act) from taking into account non-commercial considerations in procurement decisions.¹¹⁵

In Subsection 17(5), the Act lists the relevant non-commercial matters, including:

- the country or territory of origin of goods, or the location in any country or territory of the business activities or interests of the supplier (paragraph (e));
- the political, industrial or sectarian affiliations or interests of suppliers or their management and staff (paragraph (f)).¹¹⁶

Subsection 15(1) would delete the paragraph (e) from the list of non-commercial matters that should not be taken into account in procurement decisions in section 17(5) of the Local Government Act 1988. The ban in this Bill would replace this.

Subsection 15(2) would amend the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 to make similar provisions in relation to Northern Ireland.

The ban on “having regard to a territorial consideration in a way that indicates moral or political disapproval of a country or territory’s foreign state conduct” proposed in this Bill is different to Section 17 of the 1988 Local Government Act in that:

- it covers investment, as well as procurement
- it is binding to the wider public sector, not only local authorities
- it focusses only on “territorial considerations”, those “that [relate] specifically or mainly to a particular foreign territory” – rather than the wider range of non-commercial matters that feature in Section 17 of the Local Government Act 1988.
- it covers wider divestment campaigns.

Subsection 15(3) would give the Secretary of State additional technical power relating to paragraph (f) in Section 17(5) of the Local Government Act 1998

¹¹⁵ [Local Government Act 1988](#)

¹¹⁶ [Section 17 of the Local Government Act 1988](#)

and other acts, essentially to ensure that this does not get in the way of exceptions to the ban.¹¹⁷

The Bill's explanatory notes add that Section 17 of the Local Government Act 1988 has been disapplied in relation to procurement contracts with entities based in or linked to the Russian Federation and Belarus.¹¹⁸ Contracting authorities may now, for example, consider terminating existing contracts with such entities where possible.¹¹⁹ The Government's intention is to except Russia and Belarus from the ban on boycotts, divestment and sanctions immediately on commencement of the new legislation (see section 2 above).

Provisions on regulations

Clause 16 sets out the procedures applicable to regulations made under this Bill (see box 2 Delegated powers). All regulations except those in relation to clause 17 (general provisions) would be made following the [draft affirmative procedure](#), that is, requiring approval by each House of Parliament. However, in urgent cases, regulations under clause 3 (exceptions) would be made using the [made affirmative procedure](#), which means that if each House does not approve the regulations within 28 days after its coming into force, it would cease to have effect.

Subsection (8) clarifies that power to “alter the enforcement power and to make consequential, incidental or supplementary provision” under clause 6(6) includes power to amend any act of the UK and devolved parliaments. This would be required to allow enforcement authorities in England, Wales, Scotland and Northern Ireland to take on their functions under this Bill.¹²⁰

2 Overview of delegated powers

The Bill contains the following delegated powers for:

- a) the Secretary of State or Minister of the Cabinet Office to amend the Schedule on exceptions for certain bodies and functions and for certain types of consideration to (i) add a description of decisions on exceptions for certain bodies and functions, (ii) add description for certain types of consideration, and (iii) amend or remove a description of decision or consideration (clause 3(2)).
- b) the Secretary of State or Minister of the Cabinet Office to disapply the Bill in respect of a particular country or territory (clause 3(5)).

¹¹⁷ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para, para 9

¹¹⁸ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, para 9

¹¹⁹ Local Government (Exclusion of Non-commercial Considerations)(England) Order 2022 (S.I. 2022/741) and Explanatory Memorandum to the Local Government (Exclusion Of Non-Commercial Considerations) (England) Order 2022, paras 7.10-7.11

¹²⁰ [Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee](#) (PDF), May 2023, paras 32-33

c) the Secretary of State or the Minister for the Cabinet Office to change the enforcement authority (including by providing for there to be or not to be one) in relation to a particular description of decision or statement (clause 6(6)). Also, an enforcement authority will have the power to investigate suspected breaches, direct compliance and impose monetary fines.

d) the Secretary of State to determine, by regulations, the maximum monetary penalty for a person in scope of the Bill in breach of the provisions (clause 10(1)).

e) the Secretary of State to make provision about matters to which the enforcement authority must, or must not have regard in exercising its powers under clause 9 to impose monetary penalties (clause 10(2)).

f) the Secretary of State to make regulations in relation to (a) legislation repealed, revoked or modified by section 118 by the Procurement Act 2023 (repeals etc) before that Act comes into force, for the purposes similar to clause 12 on the relationship with procurement legislation or paragraph 2 of the Schedule, or (b) the Procurement Reform (Scotland) Act 2014 or any regulations under that Act (clause 14(6));

g) the Secretary of State to make regulations to exclude certain matters from the scope of section 17(5)(f) of the Local Government Act 1988 or Article 19(4)(f) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 (S.I. 1992/810 (N.I. 6)) (clause 15(3));

h) Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of this Act; and such regulations may make different provision for different purposes (clause 17(5)).

Powers (a), (b), (c), (f) and (g) are [Henry VIII powers](#) that could be used to change an Act of Parliament using secondary legislation.¹²¹

Government's [Memorandum to the Delegated Powers and Regulatory Reform Committee](#) (PDF) sets out its justification for taking these powers.¹²²

3.3

Territorial extent and commencement

All the Bill's clauses extend to England and Wales, Scotland, and Northern Ireland.¹²³ The Government has stated that the Bill's provisions fall within the international relations/foreign policy reservation, and that it will seek legislative consent motions from all three legislatures to the extent that the Bill modifies the executive competence of devolved ministers.¹²⁴ For more

¹²¹ [Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee](#) (PDF), May 2023

¹²² As above

¹²³ [Economic Activity of Public Bodies \(Overseas Matters\) Bill, Bill 325 EN](#) (PDF), as introduced 19 June 2022, clause 17

¹²⁴ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, paras 1 to 5

detail see [Annex A of the Bill's Explanatory notes](#) (PDF), as introduced in June 2023.¹²⁵ Section 6 of this briefing sets out the opposition of the Scottish and Welsh Governments to their legislatures giving consent to the Bill.

Clause 17 also provides that (except for clauses 3, 6(6), 10(1) and (2), 14(6), 15(3) to (5), 16 and 17 which will come into force when the Bill receives Royal Assent) the provisions of the Bill will come into force on a date provided in regulations made by the Secretary of State.¹²⁶

3.4

Further information on the Bill

- [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), as introduced into the Commons on 19 June 2023
- The [Bill page on Parliament.uk](#). this includes amendments to the Bill and updates on its progress in Parliament.
- [Hansard: second reading debate](#) on 3 July 2023
- [Public Bill Committee proceedings](#) (PDF), with details of proposed amendments (though none were accepted at this stage)
- [Hansard: report stage debate](#) on 25 October 2023. No amendments were made at this stage.
- [Written evidence from outside organisations and individuals](#) for the committee stage is published on the Bill's pages of the UK Parliament website.
- Commons Library, [Local authority boycotts](#), March 2016. Background on past proposals to restrict the ability of local authorities to conduct boycotts.

¹²⁵ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, Annex A

¹²⁶ [Economic Activity of Public Bodies \(Overseas Matters\) Bill, Bill 325 EN](#) (PDF), as introduced 19 June 2022, clause 17

4 Second reading debate

[Second reading](#) of the Economic Activity of Public Bodies (Overseas Matters) Bill took place on 3 July 2023. A reasoned amendment in the name of the Leader of the Opposition, Sir Keir Starmer, was proposed to decline a second reading to the Bill but rejected following a vote. The Bill was granted second reading unamended following a further division, alongside a programme motion sending the Bill for consideration in Public Bill Committee.

4.1 The Government's approach

Introducing the Economic Activity of Public Bodies (Overseas Matters) Bill, Michael Gove, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, said the Bill:

honours a manifesto promise to which this Government recommitted in the last Queen's Speech; it affirms the important principle that UK foreign policy is a matter for the UK Government; it ensures that local authorities concentrate on serving their residents, not directing resources inefficiently; and, critically, it provides protection for minority communities, especially the Jewish community, against campaigns that harm community cohesion and fuel antisemitism.¹²⁷

He told the House that the Bill does not limit free speech, conflict with the European Convention on Human Rights, or impede local authorities from exercising due diligence based on a supplier being involved modern slavery, among other topics:

[The Bill] does not restrict local authorities adopting policies in line with formal, agreed Government sanctions, embargoes and restrictions. It does not impede local authorities considering legitimate commercial factors related to business with a foreign state, and exercising due diligence in the award of contracts. And it does not prevent a local authority from exercising due diligence when considering whether a supplier or investment target might be involved in environmental misconduct, bribery, competition law infringements or labour misconduct, including human trafficking and modern slavery. In no way does the Bill circumscribe anyone's right to freedom of speech or conscience.¹²⁸

The Secretary of State also rejected concerns that the Bill would restrict the ability of public authorities to take "appropriate action" against concerns in

¹²⁷ HC Deb, [3 July 2023](#), c586, c588

¹²⁸ HC Deb, [3 July 2023](#), c587

China over the treatment of the Uyghurs, Russia’s invasion of Ukraine, or in response to human rights abuses in Myanmar.¹²⁹

Position on potential amendments

Mr Gove said the Government was “completely open to the consideration of any amendments” that “give better effect to the shared intentions that we have across the House to deal with this [the BDS] movement.”¹³⁰

However, he said primary legislation is needed to act against the BDS movement, arguing that attempts through “guidance have not been sufficient.”¹³¹ Section 1.2 of this briefing provides a timeline of recent legislation and guidance.

4.2

Reasoned amendment

Moving of reasoned amendment and content

Lisa Nandy, then Shadow Secretary of State for Levelling Up, Housing, Communities and Local Government, moved a reasoned amendment in the name of the Leader of the Opposition to deny the Bill a second reading.

A [reasoned amendment](#) is one that sets out reasons why a bill should not continue at second or third reading.

She said the Official Opposition “recognise[s] the problem” that the Government says the Bill is designed to address and argued the BDS movement “offered no meaningful route to peace” for Palestinians and Israelis.¹³²

The reasoned amendment stated the House declined to give a second reading to the Bill, while emphasising it opposed any discrimination or prejudice in the economic activities of public bodies. The amendment stated the Bill:

- “Risks significantly undermining support for groups around the world facing persecution.”
- Is incompatible with international law and due diligence of public bodies.
- Undermines the UK’s position on the Occupied Palestinian Territories and Golan Heights, including its adherence to UN Security Council Resolutions.

¹²⁹ HC Deb, [3 July 2023](#), c592

¹³⁰ HC Deb, [3 July 2023](#), c593

¹³¹ HC Deb, [3 July 2023](#), c592

¹³² HC Deb, [3 July 2023](#), c597

- Gives “unprecedented powers” to the Secretary of State to enforce the Bill’s provisions.
- Places “unprecedented restrictions” on public bodies to express a view on current and proposed policy.
- Limits freedom of speech.¹³³

Debate

Lisa Nandy argued the Bill is “needlessly broad, with sweeping, draconian powers and far-reaching effects.”¹³⁴ She questioned the Bill’s treatment of investment and procurement decisions, activities of local authorities, and the inclusion of the Golan Heights and the Occupied Territories alongside Israel in clause 3(7) of the Bill:

It is not, in our view, wrong for public bodies to take ethical investment and procurement decisions [...] In the case of elected councils, their electors often expect them to do just that. There is a difference between legitimate criticism of a foreign state’s Government and what some individuals and organisations have tried to do in recent years, which the Secretary of State outlined well. To seek to target Israel alone, to hold it to different standards from other countries, to question its right to exist, to equate the actions of the Israeli Government with Jewish people, and in doing so create hate and hostility against Jewish people here in the UK is completely wrong.

The Shadow Secretary of State also cited [legal advice commissioned by the Labour Party from Richard Hermer KC](#) on the legal implications of the Bill, including on the UK’s international obligations.¹³⁵

Several Labour MPs spoke in favour of the reasoned amendment, including Dame Margaret Hodge, Andy Slaughter, Kim Johnson, and Andy McDonald.¹³⁶

The SNP supported the reasoned amendment, as did the Liberal Democrats.¹³⁷ Chris Stephens (SNP) argued the amendment was “missing one key part: the attacks on the devolved administrations” and said actions in Scotland “should be taken with full consideration of moral and ethical duties to communities around the world.”¹³⁸

Responding for the Government, Felicity Buchan, Parliamentary Under Secretary of State in the Department for Levelling Up, Housing and Communities, opposed the amendment. She argued the Bill “is a robust and proportionate means” of addressing “divisive campaigns” by public bodies.

¹³³ HC Deb, [3 July 2023](#), c595

¹³⁴ HC Deb, [3 July 2023](#), c596

¹³⁵ See Matrix Law, [Richard Hermer KC publishes opinion on Economic Activity of Public Bodies \(Overseas Matters\) Bill](#), 3 July 2023, HC Deb, [3 July 2023](#), c596

¹³⁶ HC Deb, [3 July 2023](#), cc616, 624, 629, 638

¹³⁷ HC Deb, [3 July 2023](#), c630

¹³⁸ HC Deb, [3 July 2023](#), c608

Addressing the specific reasons set out in the amendment, the Minister argued:

- Existing legislation keeps suppliers involved in misconduct in the labour market, including modern slavery, out of public sector supply chains.
- The right to free speech of private individuals and bodies are not affected by the legislation and the free speech of councillors is protected “except when they talk expressly on the behalf of their local authority.”
- Clause 4 of the Bill on making statements of intent to boycott or divest by public authorities does not prevent them from disagreeing with the legislation nor bans “ethical, religious or socially conscious funds” from making investment decisions on these grounds “unless there are issues that are country-specific.”
- The enforcement powers of the Secretary of State are not “unprecedented” and are instead modelled on existing regulators such as those of the Office for Students.¹³⁹

Mr Gove also criticised the legal advice obtained by the Official Opposition, as “flawed.”¹⁴⁰ Mr Hermer later gave evidence to the Public Bill Committee on the Bill (see next section for committee proceedings).¹⁴¹

Negative vote on the amendment

The House divided 212 to 272 against the reasoned amendment.¹⁴²

4.3 Israel and the Occupied Palestinian Territories

Clause 3(7) of the Bill provides that regulations may not be made exempting Israel, the Occupied Palestinian Territories, or the Occupied Golan Heights from the restrictions on making divestments or boycotts by public authorities.

Section 2.4 of this briefing sets out UK and UN policy towards Israel and the Occupied Palestinian Territories.

Several Members raised concerns that this clause undermines UK foreign policy and its adherence to UN Security Council Resolution 2334 (2016). The resolution states countries should treat Israel and the Territories as distinct entities. Alicia Kearns (Con), the Chair of the Foreign Affairs Committee argued:

¹³⁹ HC Deb, [3 July 2023](#), cc655-7

¹⁴⁰ HC Deb, [3 July 2023](#), cc 588 and 592

¹⁴¹ Public Bill Committee, [Economic Activity of Public Bodies \(Overseas Matters\) Bill](#), 7 September 2023

¹⁴² HC Deb, [3 July 2023](#), cc658-61

The impact of the Bill would be significant. It will undermine our position as a respectable and reliable multilateral partner, committed to upholding UN Security Council resolutions as we should as a permanent member. It risks our losing the support of Arab states on shared issues, and their vote at the UN. [...]

We must ensure that all legislation makes a clear distinction between Israel where we support no boycott and the illegal settlements on occupied land where a boycott would be consistent with our position on UNSCR [Security Council Resolution] 2334.¹⁴³

William Wragg (Con) and Flick Drummond (Con) were among the Members to raise similar concerns on the UK's commitments under the UN Security Council resolution.¹⁴⁴

Mr Gove said that “across government,” including from the Foreign Secretary, there was support for the Bill and said it does not affect the UK's long-standing support for a two-state solution, Resolution 2334, or its view on the illegality of Israeli settlements in the Occupied Palestinian Territories.¹⁴⁵

4.4 Opposition and backbench views

The Parliamentary Chairman (Commons) of the Conservative Friends of Israel, Stephen Crabb, spoke in favour of the Bill as a means of addressing the BDS movement and antisemitism in the UK.¹⁴⁶ Sir Simon Clarke (Con) also backed the Bill as a means of ensuring the UK Government remains responsible for foreign policy, rather than local authorities, and to address the BDS campaign.¹⁴⁷

These positions were echoed by Andrew Percy (Con) and Theresa Villiers (Con), among other government backbenchers,¹⁴⁸ as well as Jim Shannon (DUP).¹⁴⁹

Several Members including Kit Malthouse (Con), Alicia Kearns (Con), Joanna Cherry (SNP) and Dame Margaret Hodge (Lab) raised concerns for the impact of the Bill on freedom of speech and the UK's commitments to the European Convention of Human Rights. Members raised concerns that clause 4 would potentially hinder local authority or university leaders and managers of private companies delivering public services from making statements of an intention to boycott or divest on the grounds prohibited by the Bill.¹⁵⁰

¹⁴³ HC Deb, [3 July 2023](#), c605

¹⁴⁴ HC Deb, [3 July 2023](#), c594

¹⁴⁵ HC Deb, [3 July 2023](#), c595

¹⁴⁶ HC Deb, [3 July 2023](#), c630

¹⁴⁷ HC Deb, [3 July 2023](#), c616

¹⁴⁸ HC Deb, [3 July 2023](#), c612 and c624

¹⁴⁹ HC Deb, [3 July 2023](#), c649

¹⁵⁰ HC Deb, [3 July 2023](#), c607, c608, c616 and c619

Co-Chair of the All-Party Parliamentary Group on British Jews, David Simmonds (Con) said the legislation was necessary but also hoped the government would remove clause 4(1)(b) to protect free speech.¹⁵¹

Chris Stephens (SNP) said the party did not support the Bill and called for the Government to withdraw it if the Reasoned Amendment was not passed. He argued the Bill makes it illegal to “divest from or boycott fossil fuel companies” and stop organisations from campaigning against or boycotting Chinese goods on the treatment of Uyghurs.¹⁵²

Helen Morgan (Liberal Democrat) said the party did “not believe that this piece of legislation is going to help antisemitism,” and could be “counterproductive.” She raised concerns including:

1. Restrictions on the ability of public bodies to take action against human rights abuses or to take decisions for themselves.
2. Restrictions on freedom of speech on public bodies in clause 4.
3. The treatment of the Occupied Palestinian Territories in clause 3.¹⁵³

Stella Creasy (Lab) and Alex Norris (Lab) also argued the Bill should include an exemption to allow public authorities to conduct boycotts or divestments in response to acts of genocide.¹⁵⁴

Hywel Williams (Plaid Cymru), Beth Winter (Lab) Chris Stephens (SNP) were among those Members who raised concerns for the treatment of devolved administrations in the Bill.¹⁵⁵

Mr Williams said that the Bill’s impact assessment should have considered specific Welsh approaches, as public sector investment and procurement are devolved.¹⁵⁶ Section 6 of this briefing describes the approach of the Scottish and Welsh Governments to the Bill.

¹⁵¹ HC Deb, [3 July 2023](#), c640

¹⁵² HC Deb, [3 July 2023](#), c608-11

¹⁵³ HC Deb, [3 July 2023](#), c629-30

¹⁵⁴ HC Deb, [3 July 2023](#), c592 and c651

¹⁵⁵ HC Deb, [3 July 2023](#), c648

¹⁵⁶ HC Deb, [3 July 2023](#), c609

5 Committee stage

The Public Bill Committee considered the Bill in six sittings between 5 September and 14 September 2023.

Three evidence sessions took place on 5 and 7 September. The remaining sittings on 12 and 14 September were reserved for line-by-line scrutiny of the Bill.¹⁵⁷

The Government did not table any amendments for the Committee. [Opposition parties tabled 33 amendments](#) and one new clause. The committee rejected 17 amendments and the new clause after a vote. Three amendments were withdrawn after debate, 12 were not voted on and one was not selected. The Bill was reported unamended.

The main themes debated in the committee included the Bill's application in Scotland, Wales and Northern Ireland, the Government's powers to add exceptions to the ban on boycotts and divestment and taking decisions related to Israel and the Occupied Palestinian territories. MPs also debated the Bill's relationship with the Human Rights Act 1989 and the freedom of expression.

The following section summarises key debates and amendments voted on. A compilation of transcripts of evidence sessions and committee debates is included in [Public Bill Committee proceedings \(PDF\)](#) document. [Overview of Bill proceedings \(PDF\)](#) sets out what happened to each clause, schedule, amendment and new clause in committee.

[Annex 1](#) of this briefing contains a list of the committee members.

5.1 Committee debate

MPs from the Conservative Party, the Labour Party and the SNP shared concerns about the contribution of BDS campaigns to rising antisemitism in the UK.¹⁵⁸ Opposition MPs expressed their overall support for legislation to address the issues raised by sanctions and divestment campaigns

¹⁵⁷ A [list of witnesses](#), evidence session recordings and [written evidence submissions](#) are available on the Bill's page on Parliament website.

¹⁵⁸ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c127

traditionally singling out Israel, however, they disagreed with the approach of this Bill.¹⁵⁹

Qaisar Anum (SNP spokesperson for levelling-up) said the Bill was “in need of significant amendment to tackle its current flaws”.¹⁶⁰ Alex Norris, Labour shadow minister for the Home Office (policing), said the Bill was too broadly drawn and in places ambiguous.¹⁶¹

Alex Norris said Labour’s longstanding position was not to support BDS-type activity singling out Israel and applying different standards to it than to other countries. However, he said, it would not be “wrong, in itself, for public bodies to take ethical investment and procurement decisions” and to have legitimate criticism of a foreign state’s government.¹⁶²

Labour MPs reiterated the Official Opposition was willing to work with the Government to find a common approach.¹⁶³

Felicity Buchan, Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities, said foreign policy was a reserved matter for the UK Government. Therefore, she said, it was essential for the Bill to apply to public authorities across the entire of the UK.¹⁶⁴ The Bill would prevent divisive BDS policies capable of undermining community cohesion.¹⁶⁵ It would also prevent public authorities from “being distracted from their core duties by divisive debates and policies”.¹⁶⁶

Key opposition amendments

Disapproval of foreign state conduct prohibited

Clause 1 would forbid public authorities from making procurement and investment decisions in a way that appears to be influenced by their moral or political disapproval of policies or conduct by foreign authorities.

Opposition MPs had concerns about the ambiguity of clause 1 as to the objectives of the Bill. Qaisar Anum (SNP) said clause 1 was “needlessly broad, with sweeping powers and far-reaching effects”, capable of reducing the autonomy of local councils and the devolved nations to speak out on human rights matters.¹⁶⁷

¹⁵⁹ [As above](#) cc106, 108, 127

¹⁶⁰ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c105

¹⁶¹ [As above](#) c125

¹⁶² [As above](#) c108

¹⁶³ [As above](#) c127

¹⁶⁴ [As above](#) c118

¹⁶⁵ [As above](#) c109

¹⁶⁶ [As above](#) c124

¹⁶⁷ [As above](#) cc106, 113

The Bill says a decision-maker (for example a procurement officer) must not have regard to a territorial consideration when making their decision.

Qaisar Anum argued this could be interpreted in such a way that matters not related to territorial issues might fall outside the scope of the Bill and so continue to be regarded by decision makers.

She referred to an example provided by Richard Hermer KC where the Bill might be interpreted in such a way that public bodies could refuse to procure goods from China due to its general human rights record, but could not refuse goods from China if citing its use of forced labour in Xinjiang region specifically.¹⁶⁸

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan) said removing a reference to “territorial matters” as proposed in amendment 22 would broaden the scope of the Bill. It could prevent public authorities from having any considerations influenced by political or moral disapproval of foreign states including for example environmental considerations, which are universal. The Bill’s intention was to ban only decisions that are country specific. The Minister clarified that the term “territorial consideration” would not apply only where there was a territorial dispute.¹⁶⁹

The Public Bill Committee rejected amendment 22 with 10 votes to two.

Devolved competences

In relation to clause 2 (application to procurement and investment decisions) the SNP and Labour Party tabled several amendments pertaining to the application of the Bill in Scotland, Wales and Northern Ireland. SNP amendment 30 would have removed decisions of Scottish Ministers from the scope of the Bill.¹⁷⁰

Qaisar Anum and Chris Stephens (SNP) argued the Bill did not address an actual problem because Scotland had a record of always acting in line with UK Government’s international commitments. Since procurement was a devolved matter, Qaisar Anum said, people in Scotland were right to expect the Scottish Government’s procurement decisions to be based on ethical and moral considerations.¹⁷¹

Labour’s amendment 1 to clause 17 would have made legislative consent of the devolved legislatures a legal requirement for the Bill to apply. Wayne David (Labour) said the amendment intended to clarify the process agreed under the [Sewel Convention](#) which involves obtaining devolved legislative consent when the UK Parliament intends to legislate in a matter of devolved

¹⁶⁸ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c106

¹⁶⁹ [As above](#) cc109-110

¹⁷⁰ Related amendments 16 and 17

¹⁷¹ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) cc 115-116

competence.¹⁷² Section 7 below covers devolved legislative consent for this Bill in more detail.

The minister responded saying it was essential for the Bill to apply to the whole of the UK as foreign policy was a reserved matter. She said amendment 1 would undermine the sovereignty of the UK Parliament. Therefore, putting a political convention in legislation as a precondition for a bill to be enacted was unnecessary.¹⁷³

The committee rejected amendments 30 and 15 by 10 votes to two. Amendment 1 was rejected at a later sitting by nine votes to seven.¹⁷⁴

Exceptions to the ban on boycotts and divestment

Clause 3 makes provisions for exceptions to the proposed ban, meaning it would permit certain conduct to be led by ethical considerations, such as environmental concerns. The exceptions are set out in the Bill's schedule.

Clause 3(2) gives the Secretary of State power to add to this list of exceptions by regulation (secondary legislation), and remove from the list those exceptions added by regulation (though not those included in the schedule at the time of the Bill's original passing through Parliament).

Alex Norris (Labour) described the clause as allowing "a rather unacceptable and significant power grab by the Secretary of State over the ethical procurement decisions that a public body may wish to make". Labour amendment 4 in clause 3 would have removed this power from the Bill.¹⁷⁵

The Government said the power was necessary to ensure the ban could evolve over time: for example, if it had unintended consequences and prevented a public body from delivering its core functions or needed amending in reaction to international developments. It said any changes would be subject to the [affirmative resolution procedure](#), giving Parliament a say.

The committee rejected amendment 4 with 10 votes to six.

The Labour Party's amendment 2 would have introduced an alternative approach to exceptions. The amendment would have allowed a public body would have exempted public bodies from the prohibition in clause 1, where the decision would have been made in accordance with a Statement of Policy Relating to Human Rights. This would have allowed a public body to produce a document setting out its policy on procurement and human rights. This statement would have to be made in accordance with government guidance. Alex Norris said this would allow for consistent policy and prevent singling out individual countries: public bodies would be able to act against a particular state based on its human rights record only if the same principles would

¹⁷² [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c117

¹⁷³ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c120

¹⁷⁴ [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#)

¹⁷⁵ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) cc122-123

apply to all states. Alex Norris said this had been a relatively long-held Labour policy and noted a similar amendment was tabled to the Procurement Bill.¹⁷⁶

The minister, Felicity Buchanan, was concerned amendment 2 would give public authorities too much discretion to apply blanket boycotts. She said the Procurement Bill already contained a robust regime for the exclusion of suppliers unfit to deliver public contracts. This Bill mirrored the exclusion grounds of the Procurement Bill, including an option to ban suppliers linked to modern slavery and human trafficking.¹⁷⁷

Amendment 2 was rejected by 10 votes to six.

Decisions on Israel to be made via primary legislation

Subsection 3(7) would provide that the minister may not make exceptions to the ban relating ‘specifically or mainly’ to Israel, the Occupied Palestinian Territories or the Occupied Golan Heights. The minister said this clause would prevent the government from allowing public bodies to lawfully consider territorial issues relating to these areas when making procurement and investment decisions by secondary legislation and would require primary legislation and full parliamentary scrutiny.¹⁷⁸

As raised during the second reading debate (see section 4.2 above), MPs representing the Labour Party and SNP argued that provisions of subsection 3(7) appeared to contradict the Government’s longstanding foreign policy of supporting a two-state solution and established international law by conflating Israel with the Occupied Palestinian Territories and the Golan Heights.¹⁷⁹

Amendments 5 and 6 to clause 3 moved by Wayne David (Labour) would have removed the special provision for Israel, the Occupied Palestinian Territories and the Occupied Golan Heights. Steve McCabe (Labour) did not fully support the drafting of the amendments and pointed to possible “unintended consequences” of removing the additional safeguards for Israel from the Bill.¹⁸⁰ However, there was broad cross-party support for the Government’s intention to prevent BDS action subjecting only Israel to boycott campaigns. Bob Blackman (Conservative) said there were examples of such campaigns leading to worse outcomes for Palestinian livelihoods in the Occupied Territories.¹⁸¹

The minister said the Bill does not change the UK’s policy on the Middle East. As stated on second reading the Government’s position was that the Bill is

¹⁷⁶ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) cc126-127; see Commons Library research briefing, CBP-9810 [Procurement Bill: Progress of the Bill](#), p37

¹⁷⁷ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c128

¹⁷⁸ [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) c139

¹⁷⁹ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c131

¹⁸⁰ [As above](#) cc133-134

¹⁸¹ [As above](#) c132

compliant with international law and the UK's obligations under UN Security Council resolutions.

Amendments 5 and 6 were rejected by nine votes to five.¹⁸²

New exceptions to the ban

The schedule to the Bill lists exceptions to the ban on boycotts and divestment, permitting public authorities to consider issues such as national security, labour-related or environmental conduct, or bribery.

The SNP and the Labour Party tabled a group of amendments which would have added new considerations to the permitted list:

- breaches of international law
- the crimes of genocide
- ethnic cleansing and
- apartheid.¹⁸³

This would have allowed public authorities to choose not to buy from or invest in a company if that would reward financially, economically or otherwise “a party” that has breached international law or committed crimes against humanity.¹⁸⁴

The Government's view was that judgement on whether a country is guilty of a violation of international law is not a decision for public authorities. Similarly, the minister said, judgement as to whether genocide or a crime against humanity has been committed is for a competent national or international court and not for the UK Government and “certainly not for public authorities to decide”.¹⁸⁵

SNP amendments 18, 20 and 21 were negatived with nine votes to two. Labour amendment 14 was rejected by six votes to nine.

Prohibited statements and freedom of expression

Clause 4 would prohibit a public body from publishing statements indicating its intention to ban certain countries from its procurement or to prevent investment on moral or political grounds. It would also prohibit statements indicating the public body would participate in boycott or divestment campaigns if it were lawful to do so.

¹⁸² [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#)

¹⁸³ [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) cc141-142

¹⁸⁴ [As above](#) cc142-144

¹⁸⁵ [As above](#) c144

Both SNP and the Labour Party did not support clause 4 being part of the Bill.¹⁸⁶

The committee debated SNP amendment 24, which would have sought to prevent any provisions under clause 4 conflicting with the Human Rights Act 1998. This act incorporates the European Convention on Human Rights (ECHR), including its Article 10 (right to freedom of expression) into UK domestic law.

Speaking to amendment 24 Anum Qaisar said the “gagging clause” appeared to disproportionately interfere with the freedom of speech:

My understanding is that, even if the Bill was clear that “decision maker” referred only to a public authority, its wider chilling effect is likely to engage article 10 [of the European Convention on Human Rights (ECHR)]. That is because individuals who might influence the decision maker’s position would be heavily deterred from expressing views that could then be interpreted as influencing the decision maker based on political or moral disapproval.¹⁸⁷

Anum Qaisar referenced Universities UK recommendation for clause 4 to be left out of the Bill. Universities UK argues the prohibition of statements in clause 4 contradicts with duties placed on universities by the Higher Education (Freedom of Speech) Act 2023 to uphold freedom of speech and academic freedom.¹⁸⁸

The minister said amendment 24 was unnecessary. According to Government's assessment the Bill is consistent with the Human Rights Act 1998 and the ECHR, including Article 10.

The Government’s position is that the Bill is compatible with the ECHR because public authorities within the scope of the Bill do not have rights under the convention.¹⁸⁹ The minister clarified in the committee:

The purpose of the European convention on human rights, which the Human Rights Act implemented into domestic law, is to regulate the relationship between the state and the individual and specifically to protect private persons’ fundamental rights from potential interference by the state. This includes private persons’ article 10 right to freedom of expression. Public authorities, which form part of the state or perform the state’s functions, are the potential perpetrators of ECHR violations and therefore do not have these rights.¹⁹⁰

¹⁸⁶ [As above](#) cc147, 150

¹⁸⁷ [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) c148

¹⁸⁸ As above;

[PBC \(Bill 325\). Written evidence submitted by Universities UK \(EAPBB05\)](#)

¹⁸⁹ [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF) paras 86-87

¹⁹⁰ [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) 154

Legal expert commentary on convention rights

Legal experts heard by the committee are not in agreement regarding the Bill's compatibility with Article 10 ECHR.

Barrister Jonathan Turner, chief executive of the organisation UK Lawyers for Israel, has a similar view to the Government that by binding public authorities the Bill does not engage the ECHR.¹⁹¹

Professor Adam Tomkins of Glasgow University says clause 4 was narrowly drawn and by addressing only statements about procurement and investment it seemed “perfectly compatible” with the ECHR and the UK domestic standards for free speech.¹⁹²

Richard Hermer KC, who was commissioned by the Labour Party to give advice on the legal implications of the Bill, argues the Bill is likely to contravene the ECHR in two ways: it may restrict the freedom of expression of public officials and the right of the public to access certain information:

The clause [4] if enacted is highly likely to be deemed incompatible by the Courts with Article 10 of the ECHR, in particular (i) the relevant public official's right of freedom of expression and (ii) the right of the public to receive information on matters of public interest/importance. Article 10 is a qualified right – freedom of expression can be limited in a democratic society – but any such limitations are very carefully circumscribed and must fall within the exceptions provided by Article 10(2)¹⁹³

Richard Hermer is of a view that it was unlikely the Government would be able to demonstrate Clause 4 was necessary under one of the established justification grounds in Article 10(2) including national security, public safety, the prevention of disorder or crime and the protection of health or morals.¹⁹⁴

Dr Bryn Harris, chief legal counsel at the Free Speech Union, notes in his evidence:

This Bill very clearly targets expressions of political and moral conscience, which is to say the form of expression that is most highly protected by article 10.¹⁹⁵

Mr Harris disagrees with the Government's assessment that no public authority within the scope of the Bill would have convention rights. He notes some hybrid public bodies, “which may well include universities”, could have such rights.¹⁹⁶

¹⁹¹ [PBC \(Bill 325\) \(Third sitting\) Deb 7 September 2023](#) c81

¹⁹² [PBC \(Bill 325\) \(Second sitting\) Deb 5 September 2023](#) c61

¹⁹³ Matrix Law, [Richard Hermer KC publishes opinion on PBC \(Bill 325\)](#), 3 July 2023, para 34; see also [PBC \(Bill 325\) \(Third sitting\) Deb 7 September 2023](#) c95

¹⁹⁴ [PBC \(Bill 325\) \(Third sitting\) Deb 7 September 2023](#) c95

¹⁹⁵ [PBC \(Bill 325\) \(Second sitting\) Deb 5 September 2023](#) c38

¹⁹⁶ As above

Freedom of expression of public officials

MPs asked the minister to clarify how the Bill would bind individuals such as local council leaders or academics, and whether it would prevent them from debating or expressing disapproval of certain foreign countries' policies when speaking on behalf of public bodies.¹⁹⁷

The minister, Felicity Buchan, said the prohibition in clause 4 did not capture individuals, including local councillors, speaking in their private capacity. However, it would cover such individuals when they were speaking on behalf of the public authority:

The scope of the Bill is strictly limited to the actions of public authorities, and only affects individuals when they make statements or take action on behalf of public authorities.¹⁹⁸

The minister also clarified that, if decisions were taken in contravention to clause 1 or statements were made in contravention to clause 4, the public body would be liable, and not the individual taking those decisions or making the statement.¹⁹⁹

Felicity Buchan committed to including additional guidance in the Bill's explanatory notes.

The committee rejected amendment 24 with nine votes to six.

Enforcement

In relation to clause 6 (enforcement authorities) members of the committee debated what would be the appropriate enforcement authority in relation to local authorities. The Labour Party proposed through amendment 8 to entrust the Office for Local Governments with this role instead of the Secretary of State or the Treasury named in the Bill. However, it withdrew amendment 8 after debate.²⁰⁰

Clause 7 would provide power for enforcement authorities to issue information notices to require information from a relevant public body relating to a decision or a statement in respect of the Bill.

Providing information to enforcement bodies

Voicing concerns about the freedom of expression, the SNP proposed a group of probing amendments to clarify the working of the enforcement regime. Amendments 25 to 29 to clause 7 (information notices) would have removed

¹⁹⁷ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c111;

[PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) c148

¹⁹⁸ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c112, see also [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) cc154-156

¹⁹⁹ [PBC \(Bill 325\) \(Fourth sitting\) Deb 12 September 2023](#) c112

²⁰⁰ [PBC \(Bill 325\) \(Fifth sitting\) Deb 12 September 2023](#) cc 158-160

enforcement authorities’ power to send information and compliance notices prior to an investigation into a contravention of the ban.²⁰¹

The minister said the powers given to enforcement authorities were intended to prevent divisive activities, capable of disrupting local communities, such as activities against Israel. She said this did not mean public authorities would be actively monitored. Enforcement bodies would come into action after potential breaches would be flagged to them. The minister disagreed the enforcement regime gave “unprecedented powers” and said they were based on the existing powers of bodies such as the Office for Students and the Pensions Regulator.²⁰²

The Committee rejected each amendment in this group with two votes to nine.

Alex Norris (Labour) expressed concern that the power to issue information notices would “not only require all information to be handed over”, but would “override normally protected duties of confidentiality, safeguarding or legal privilege”.²⁰³

The minister responded saying the Bill’s enforcement provisions would not place an undue burden on public bodies and sought to reassure the Committee that no information would have to be provided in contravention of the data protection legislation. She said with respect to these aspects, the Bill’s wording was similar to standard provisions included in other recent acts. The minister also reassured no information would have to be provided in contravention of the data protection legislation.²⁰⁴

Remaining clauses

MPs debated the effects of government requests under clause 7 to issue information on the duty of confidentiality and compliance with data protection laws. The minister said this would be clarified in explanatory notes. Relevant amendments were withdrawn.

In relation to clause 12 (application of prohibitions) Alex Norris (Labour) said that including the local government pension scheme in the scope of the Bill was “an overreach” and created an extra burden. He said the pension scheme took its duty to deliver the best possible pension for the prospective beneficiaries of the scheme very seriously. He expected the issue to be debated in the House of Lords.²⁰⁵

New clause 1: impact assessment

The SNP proposed a new clause 1 requiring the Government, within six months of the passage of the Bill, to assess the impact of the act on the UK’s trade

²⁰¹ [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#) c165

²⁰² [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#) c166

²⁰³ [As above](#) cc167-171

²⁰⁴ As above

²⁰⁵ [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#) c173

and diplomatic relations with countries identified by the Foreign, Commonwealth & Development Office as human rights priority countries.²⁰⁶

The minister said the new clause was unnecessary as the Government's trade position and diplomatic relations would not be affected by the Bill. Its intent was to ensure "the UK speaks with one voice internationally", not to change UK foreign policy. As with any Bill, it would also be open to post-legislative scrutiny by a parliamentary select committee.²⁰⁷

²⁰⁶ [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#) cc 174-175

²⁰⁷ [PBC \(Bill 325\) \(Sixth sitting\) Deb 14 September 2023](#) cc 174-175

6 Report stage debate

[Report stage of the Bill](#) was held on Wednesday 25 October 2023. The below provides a short summary to the debate centred on the four amendments that were put to a vote and statements by the Secretary of State.

6.1 Rejected amendments

Amendment 13

The Shadow Secretary of State for Levelling Up, Housing, and Communities, Angela Rayner, moved amendment 13 to Clause 3.

This would have allowed public bodies to produce a document setting out their policy on procurement and human rights, and use this to inform procurement or investment decisions. The document would be subject to guidance issued by Ministers to ensure a consistent approach between public bodies.

The Shadow Secretary of State said a public body would be acting unlawfully under the amendment to single out a specific state, such as Israel, in its procurement policies.²⁰⁸

This amendment was similar to Labour amendment 2 rejected in the committee (see section 5.1, above, “Exceptions to the ban on boycotts and divestment”).

The amendment failed to pass, being defeated by 276 votes to 197.²⁰⁹

Amendment 14

Amendment 14 to clause 3, mirroring Labour amendment 14 in the committee, would have removed provisions allowing Ministers to amend the schedule via regulations to add or remove a description or consideration. It was moved by the Official Opposition.²¹⁰

The schedule could be amended, for example, to remove certain other bodies, their activities or certain types of considerations from the ban (see above, section 3.2 for the schedule). See section 5.1 of this research briefing,

²⁰⁸ HC Deb, [25 October 2023](#), c884

²⁰⁹ HC Deb, [25 October 2023](#), c926-8

²¹⁰ HC Deb, [25 October 2023](#), c885

“Exceptions to the ban on boycotts and divestment”, for the debate in committee.

The amendment was defeated by 273 votes to 200.²¹¹

Amendment 7

The amendment to clause 3 would have removed the prohibition on the Government specifying Israel, the OPTs or the Occupied Golan heights as a country or territory to which the prohibition on a boycott would not apply.

The amendment failed to pass, being defeated by 269 votes to 207.²¹²

The amendment was moved by Kit Malthouse MP (Con) and had the support of several Conservative, SNP, Liberal Democrat and Labour MPs. It reflected concerns raised at the Bill’s earlier stages, including UK adherence to UN Security Council Resolution 2334 (2016) (see above, section 4.3 and section 5.1 “Decisions on Israel to be made via primary legislation”, for the debate in committee).²¹³

The Secretary of State, Michael Gove, said the Bill “makes it clear there is a separation between Israel, the OPTs and the Golan Heights” and the UK Government retains an “absolute commitment to a two-state solution”.²¹⁴

Amendment 28

The amendment, which was moved by the SNP Spokesperson, Chris Stephens, stated that nothing in clause 4 would conflict with rights and freedoms set out in the Human Rights Act 1998. The SNP moved a similar amendment 24 in the committee (see above, section 4.3, for clause 4 and section 5.1 “Prohibited statements and freedom of expression”).²¹⁵

The amendment was defeated by 275 votes to 197.²¹⁶

6.2

Government to consider amendments on human rights

The Secretary of State, Michael Gove, said that the Government would consider the need to add “specific human rights considerations” in the Lords and “noted” two specific contributions to the debate:

²¹¹ HC Deb, [25 October 2023](#), c922-24

²¹² HC Deb, [25 October 2023](#), cc929-32

²¹³ HC Deb, [25 October 2023](#), c904

²¹⁴ HC Deb, [25 October 2023](#), c919

²¹⁵ HC Deb, [28 October 2023](#), c877

²¹⁶ HC Deb, [28 October 2023](#), cc933-36

The Bill makes it clear that legitimate human rights considerations, provided that they are non-country-specific, should be taken into account. I note the point made by my right hon. Friend the Member for Camborne and Redruth (George Eustice) about animal welfare. If specific human rights considerations need to be added to the Bill, we will consider that in the Lords. I also note the comments made by the hon. Member for Brighton, Pavilion (Caroline Lucas). We want to ensure that there is a robust way of ensuring that local authorities can uphold human rights on a non-country-specific basis.²¹⁷

The former Secretary of State for Environment, Food and Rural Affairs, George Eustice (Con) raised the absence of animal welfare in the Bill's schedule and argued that "there will be times when public bodies will take a procurement decision based on animal welfare [and] they need to be free to do that".²¹⁸

Caroline Lucas (Green) had proposed three amendments to the Bill to expand the environmental grounds on which a public body could make procurement decisions. None of the amendments were put to a vote. She noted that while the Bill provides an exemption for environmentally harmful behaviour which "amounts to an offence" under UK law or the laws of other countries or territories, "much environmentally destructive activity takes place entirely legally", and argued the Bill should be expanded to acknowledge this.²¹⁹

²¹⁷ HC Deb, [28 October 2023](#), c917

²¹⁸ HC Deb, [25 October 2023](#), c887

²¹⁹ HC Deb, [25 October 2023](#), c899

7

Legislative consent motions

There is a constitutional convention that the UK Parliament normally only legislates on devolved matters with the consent of the devolved legislature.

The convention is in place to protect the constitutional spheres of authority of devolved parliaments and to seek to prevent the UK Parliament from unilaterally changing devolved powers or overriding decisions made by devolved institutions.

Legislative consent is rarely withheld by devolved Parliaments. Constitutionally, however, the UK Parliament can seek royal assent for bills that have had a devolved legislature withhold its consent.²²⁰ This has happened several times in recent years.²²¹

Intention to seek consent motions

All clauses of The Economic Activity of Public Bodies (Overseas Matters) Bill extend to England and Wales, Scotland, and Northern Ireland. The UK Government says it will seek legislative consent motions from all three legislatures to the extent that the Bill modifies the executive competence of devolved ministers.²²²

[Annex A of the Bill's Explanatory notes](#) (PDF), as introduced in June 2023, states the UK Government is seeking consent motions on clause 1 (banning boycotts and divestments on moral or political grounds by public bodies) and clause 4 (prohibiting public bodies from publishing certain statements). It argues the remainder fall within the reserved responsibilities of the UK Government/Parliament for international relations and foreign policy.²²³

Response by Welsh and Scottish Governments

The Welsh Government is recommending that the Senedd withholds its legislative consent to the Bill on four grounds:

²²⁰ Commons Library Insight, [Legislative consent: What, why and how?](#), 13 April 2018

²²¹ [The Sewel Convention: What happens to UK laws rejected by the Senedd?](#) Senedd Research, Welsh Parliament, 10 July 2023

²²² [Explanatory Notes to the Economic Activity of Public Bodies \(Overseas Matters\) Bill \[Bill 325\]](#) (PDF), as introduced on 19 June 2023, paras 1 to 5

²²³ As above, Annex A

1. There are already “significant protections in place which require fair and equal treatment of bidders from countries where a relevant trade agreement applies.”
2. The Welsh Government has implemented trade restrictions against Russia following its invasion of Ukraine in February 2022, in line with UK Government policy.
3. The Bill limits the executive competency of Welsh ministers in making decisions on procurement and investment.
4. “Questions remain” on the compatibility of the Bill with the European Convention on Human Rights and international law.²²⁴

The Welsh Government also argues legislative consent is needed for more than clause 1 and 4 of the Bill, as the UK Government intends. For a full list, see paragraphs 10 to 38 of the Welsh Government’s [Memorandum on the Bill](#) (PDF), 8 September 2023.

The Senedd’s Legislation, Justice and Constitution Committee [laid its report on the Bill on 22 November 2023](#). It said it agreed with the Welsh Government’s “assessment that clauses 1 to 11 and 14 to 16 of the Bill, and Part 2 of its Schedule, require the consent of the Senedd”. It also said it shares the Welsh Government’s concerns on the compatibility of the Bill with international law and the European Convention on Human Rights.²²⁵

The Scottish Government is also recommending the Scottish Parliament withholds its consent on three grounds:

1. Lack of clarity on the purpose of extending the Bill’s scope to Scottish Ministers and lack of evidence the Scottish Government has not acted in line with the UK’s international commitments. Protections exist in Scottish procurement legislation which require equal treatment to be extended to bidders from countries with which the UK has a trade agreement.
2. The importance of a “values-based approach to international engagement”; while Scottish Ministers will adhere to international obligations “decisions should not be made in an ethical or moral vacuum.”
3. Threats to democratic expression by the Scottish Government and risks of fines.²²⁶

The Scottish Parliament’s Economy and Fair Work Committee and Delegated Powers and Law Reform Committee have considered the Bill. There was division within the Committees on whether to withhold legislative consent and

²²⁴ Welsh Government, [Legislative consent memorandum](#), 8 September 2023, paras 42-43

²²⁵ Legislation, Justice and Constitution Committee, [The Welsh Government’s legislative consent memorandum on the Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) (PDF), November 2023, paras 26, 38

²²⁶ Scottish Government, [Legislative consent memorandum](#), 19 July 2023, paras 15-20 and 23-4

on the position of the Scottish Government. However, a majority of both Committees agreed with the Scottish Government's recommendation for the Parliament not to consent to the relevant provision of the Bill.²²⁷

No executive has been formed in Northern Ireland and its Assembly is not sitting.

²²⁷ Scottish Parliament, [Report on the legislative consent memorandum for the Economic Activity of Public Bodies \(Overseas Matters\) Bill](#), 15 December 2023, para 16

8

Responses to the Bill, to July 2023

As noted in section 2.1 above, opposition to the BDS movement has been expressed by both the Government and Shadow Cabinet. However, there were concerns raised both inside and outside Parliament about the potential impact of measures in the Economic Activity of Public Bodies (Overseas Matters) Bill.

Ability to take actions against China

In June 2023, the Shadow Secretary of State for Levelling Up, Housing and Communities, Lisa Nandy MP (Lab) expressed opposition to the Bill in a letter to Secretary of State, Michael Gove. The Financial Times reported she said that the Labour party opposed the policy of the BDS movement but warned the legislation would prevent public bodies from taking action in response to China's treatment of Uyghurs.²²⁸

Concerns the Bill, as introduced, could have a significant effect for those seeking to address reported human rights abuses in China were echoed by former Conservative party leader, Sir Iain Duncan Smith, who argued the proposed Bill potentially “clashes” with modern slavery legislation.²²⁹

In his response to the letter from Lisa Nandy in June 2023, Michael Gove said that Bill would not:

hinder any of the action we are taking in relation to Government action to support the Uyghur minority. [...] the Bill will also not prevent public bodies from considering modern slavery and other labour misconduct in procurement or investment decisions, even if this involves political or moral disapproval of foreign state conduct.²³⁰

Approach to the Israeli-Palestinian conflict

In June 2023, Alicia Kearns (Con), Chair of the Commons Foreign Affairs Select Committee, said that while she supported “the principle that taxpayers’ money should not be politicised and should not be used to undermine the

²²⁸ [British MPs warn Israel anti-boycott law could also stifle criticism of China \(lexis.com\)](#), Financial Times, 24 June 2023

²²⁹ As above

²³⁰ [Letter from the Secretary of State to Lisa Nandy, 23 June 2023 - GOV.UK \(www.gov.uk\)](#)

Government’s foreign policy,” she was concerned that the Bill specifically named Israel and that country specific legislation may undermine the UK’s foreign policy.²³¹

The Palestinian Mission to the UK has criticised the Bill for its specific references to the Occupied Palestinian Territories alongside Israel. It argued this risks “erasing the distinction between Israeli-occupied territory and Israel” and has broader implications for UK policy towards Israel and the Occupied Palestinian Territories and its commitment to peace and a two state solution.²³²

The Government has emphasised the Bill does not represent a change in its position towards the conflict or status of the OPTs: See above, section 2.4.

Statements by Jewish groups in the UK on the Bill

The Bill has been supported by several Jewish groups and organisations. The Board of Jewish Deputies and Jewish Leadership Council have supported legislation as a means of ensuring cohesion in British communities and in the UK’s foreign policy.²³³ Upon publication of the Bill in June 2023, [the Board of Deputies of British Jews welcomed the legislation](#) as preventing “divisive local situation[s]” and hindering the “unnecessary and inappropriate targeting of Israel” by councils and others.²³⁴

[The Jewish Leadership Council, Labour Friends of Israel and Conservative Friends of Israel also support the legislation.](#) The Conservative Friends of Israel group, chaired by Stephen Crabb MP and Lord Pickles, has welcomed the legislation as “a watershed moment” in addressing BDS activity and support for improved community cohesion.²³⁵

However, several Jewish youth movements have expressed opposition to the Bill, stating that while they oppose the BDS movement, the Bill restricts freedom of speech and non-violent protest.²³⁶

²³¹ [Letter from the Secretary of State to Lisa Nandy, 23 June 2023 - GOV.UK \(www.gov.uk\)](#)

²³² Palestinian Mission UK, [Anti-Boycott Bill could shield international law breakers, human rights violators - Palestinian Mission to the United Kingdom \(palmissionuk.org\)](#), 19 June 2023

²³³ Jewish Leadership Council, [Policy positions](#), January 2023, p7

²³⁴ Department for Levelling Up, Housing and Communities, [UK public bodies banned from imposing their own boycotts against foreign countries](#), 19 June 2023

²³⁵ [CFI praises Government’s “ground-breaking” anti-BDS Bill](#), Jewish News, 19 June 2023

²³⁶ [Opinion: Banning BDS in public bodies is not the way to advocate for Israel](#), Jewish News, 19 June 2023

Civil society statements on the Bill and wider campaigning

Some civil society groups, such as Human Rights Watch, and groups including some Uyghur exiles from China, have echoed concerns about the impact of the Bill on public bodies wishing to make ethical choices on investments and procurement.²³⁷

In a joint statement, more than 70 organisations, including Friends of the Earth, Green Peace, and Liberty, expressed opposition to the Bill. They argued that the legislation would threaten a range of campaigns and wider attempts to invest and trade ethically:

If passed, this law will stifle a wide range of campaigns concerned with the arms trade, climate justice, human rights, international law, and international solidarity with oppressed peoples struggling for justice. The proposed law presents a threat to freedom of expression, and the ability of public bodies and democratic institutions to spend, invest and trade ethically in line with international law and human rights.²³⁸

Another issue raised by organisations such as Friends of the Earth is the impact the Bill may have on local authorities and other public bodies' attempts to divest from the fossil fuel industry.²³⁹

²³⁷ Ali Mitib, [Uighurs say anti-boycott Bill lets Xi off the hook](#), The Times, 20 June 2023

²³⁸ Right to Boycott, [Protect the right to boycott](#), accessed 21 June 2023

²³⁹ Friends of the Earth (@Friends_earth), The Bill also creates an environment in which our public bodies will have less power to make investment decisions based on climate justice. One way our network of community groups pushes public bodies to do this is divesting from fossil fuels, Available from: www.twitter.com/friends_earth/status/1518939809418555392

Annex 1: Members of the Public Bill Committee

Chairs: Dame Caroline Dinenage, Sir George Howarth

Blackman, Bob (Harrow East) (Con)

Buchan, Felicity (Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)

Clarke-Smith, Brendan (Bassetlaw) (Con)

David, Wayne (Caerphilly) (Lab)

Evans, Dr Luke (Bosworth) (Con)

Fletcher, Colleen (Coventry North East) (Lab)

Holmes, Paul (Eastleigh) (Con)

Jenkinson, Mark (Workington) (Con)

Leadbeater, Kim (Batley and Spen) (Lab)

McCabe, Steve (Birmingham, Selly Oak) (Lab)

Nici, Lia (Great Grimsby) (Con)

Norris, Alex (Nottingham North) (Lab/Co-op)

Qaisar, Ms Anum (Airdrie and Shotts) (SNP)

Richards, Nicola (West Bromwich East) (Con)

Smith, Greg (Buckingham) (Con)

Stephens, Chris (Glasgow South West) (SNP)

Young, Jacob (Redcar) (Con)

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