



HL Bill 38 of 2023–24

Economic Activity of Public Bodies (Overseas Matters) Bill

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The [Economic Activity of Public Bodies \(Overseas Matters\) Bill](#) is a government bill that aims to prevent public authorities participating in boycott, divestment and sanctions campaigns. This is set out in clause 1 of the bill, which would prohibit public authorities from boycotting goods from, or disinvesting from, states or territories if to do so could be construed as being based on moral or political disapproval. The bill would also ban public authorities from stating that they intended to contravene clause 1, or from saying they would have contravened it had the law not been in place.

There are provisions in the bill that would allow the government to make regulations specifying countries to which the measures would not apply. The government has said it intends to use this power to exempt Russia and Belarus from the ban, meaning public authorities could boycott or disinvest from these countries. A controversial clause in the bill states that Israel, the Occupied Palestinian Territories and the Occupied Golan Heights could not be exempted by regulations; for these territories to be exempted would require primary legislation. These are the only territories named specifically in the bill.

The government has stated that the bill is particularly intended to stop public authorities from supporting, or being pressured into supporting, the boycott, divestment and sanctions (BDS) campaign that specifically targets Israel. It argues the BDS movement undermines community cohesion. During the bill's passage through the House of Commons, most members participating in the debates expressed disapproval of the BDS campaign. However, the Labour Party, SNP and Liberal Democrats opposed the bill. Grounds for this opposition included that it would stop public authorities from expressing disapproval of states committing human rights abuses, and that it would contravene international law by conflating Israel with the Occupied Palestinian Territories and the Occupied Golan Heights.

The bill passed its Commons stages unamended.





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I. Overview

The Economic Activity of Public Bodies (Overseas Matters) Bill is a government bill introduced in the House of Commons on 19 June 2023, in the 2022–23 parliamentary session. It was subject to a carry-over motion and completed its third reading in the House of Commons on 10 January 2024, in the 2023–24 session.¹ The bill was introduced in the House of Lords on 11 January 2024. Its second reading is scheduled to take place on 20 February 2024.

The bill would implement the following Conservative Party manifesto commitment from the 2019 general election:

We will ban public bodies from imposing their own direct or indirect boycotts, divestment or sanctions campaigns against foreign countries. These undermine community cohesion.²

The bill's provisions aim to prevent public bodies from becoming involved in boycott, divestment and sanctions campaigns. Such campaigns seek to convince organisations not to buy goods or services associated with a given country. The bill would do this by preventing public authorities from considering a country or territory of origin or other territorial considerations in a way that indicated political or moral disapproval when making decisions about procurement and investment.

One of the government's reasons for introducing the legislation is to prevent public bodies "pursuing their own foreign policy agenda, including with public money".³ The government argues that it is not appropriate for public authorities to impose their own boycotts, divestments and sanctions "except where to do so is positively consistent with the UK's foreign policy as determined by the government".⁴ Specific concern has been raised about the impact of boycotts, divestments and sanctions campaigns on the Jewish community. The government believes that such campaigns can be divisive, and the bill would help prevent this:

¹ By default, a bill falls at the end of a parliamentary session if it has not received royal assent. A carry-over motion allows a bill to retain its progress and continue into the following session.

² Conservative Party, '[Conservative Party manifesto 2019](#)', November 2019, p 20. A version of the bill was originally announced in the 2022 Queen's Speech as the Boycotts, Divestment and Sanctions Bill (Prime Minister's Office, '[Queen's speech 2022: Background briefing notes](#)', 10 May 2022).

³ Department for Levelling Up, Housing and Communities, '[Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)', 4 May 2023, p 1.

⁴ [Explanatory notes](#), para 6.



The bill will [...] prevent divisive behaviour that undermines community cohesion across the country by stopping public bodies from imposing their own boycotts, divestments and sanctions (BDS) campaigns. There are concerns that such boycotts may legitimise and drive antisemitism as these types of campaigns overwhelmingly target Israel. There is some evidence to show that hate crimes can be seen to occur alongside boycott and/or divestment campaigns.⁵

The bill would allow the government to make regulations exempting certain countries from the measures. However, the government would not be able to add Israel, the Occupied Palestinian Territories (OPT) or the Occupied Golan Heights to the list of exemptions by regulations.⁶ This would require primary legislation.

2. Boycott, divestment and sanctions movement

2.1 Background

Many of the debates about boycotts have focused on Israel. The Palestinian-led ‘boycott, divestment and sanctions’ (BDS) movement aims to “end international support for Israeli violations of international law by forcing companies, institutions and governments to change their policies”.⁷ It campaigns for a range of outcomes. These include for universities, councils and other institutions and individuals to boycott international companies “engaged in violations of Palestinian human rights” and Israeli cultural and academic institutions that it deems “complicit”; for banks, councils, pension funds and others to withdraw investments from the state of Israel and companies linked to its policies towards Palestinians; and for governments to issue sanctions against the state of Israel.

The government is against the BDS movement. In May 2021, in response to a parliamentary question, it said:

The UK is strongly opposed to the boycotts, divestment and sanctions movement

⁵ Department for Levelling Up, Housing and Communities, [‘Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 4 May 2023, p 1.

⁶ The UK government recognises land that came under Israeli control in 1967 and continues to be controlled by Israel as the Occupied Palestinian Territories, in keeping with the UN’s position (UN, [‘Background: The question of Palestine’](#), accessed 29 January 2024; and HM Government, [‘The Occupied Palestinian Territories and the UK’](#), accessed 29 January 2024).

⁷ BDS, [‘What is BDS?’](#), accessed 11 January 2024.



against Israel. While we do not hesitate to express disagreement with Israel whenever we feel it necessary, we are firmly opposed to boycotts/sanctions.

We believe that open and honest discussions, rather than imposing sanctions or supporting anti-Israeli boycotts, best supports our efforts to help progress in the peace process and achieve a negotiated solution.⁸

2.2 Support among local authorities

The government's impact assessment for the bill states that while the number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is relatively low, there is "a risk of divisive internal and external campaigns".⁹ It states that motives behind divestments are often not stated publicly. For example, it has highlighted instances of local government pension funds divesting from Israeli companies and banks but not corroborating or denying that these decisions were linked to views on the state of Israel.

In recent years several councils and council pension committees have passed or considered motions boycotting or divesting from the OPT, Israel or both. In 2022 Wirral Council's pension committee debated a motion that would have required the Merseyside Pension Fund to consider its investments in Israeli companies linked to settlements in the OPT.¹⁰ It was not passed. However, the council later passed a motion calling on council officers to look at companies in all disputed territories.¹¹

In 2021 Lancaster City Council voted to approve a motion resolving to "express its support for the boycott, divestment, sanctions (BDS) movement's demands that Israel ends injustices that infringe international laws and Palestinian rights".¹² The motion also called upon the council to write to the Lancashire County Pension Fund and the Local Pensions Partnership "urging that they adopt policies requiring them to divest from all companies active in illegal Israeli settlements in Palestine and all arms companies which supply weapons to Israel".

⁸ House of Lords, '[Written question: Israel: Sanctions \(HL123\)](#)', 26 May 2021.

⁹ Department for Levelling Up, Housing and Communities, '[Economic Activity of Public Bodies \(Overseas Matters\) Bill: Impact assessment](#)', 4 May 2023, p 5.

¹⁰ Pensions Expert, '[Merseyside Pension Fund delays Israeli investments decision](#)', 25 February 2022.

¹¹ Lee Harpin, '[Bid to make Wirral council pension fund divest from nine Israeli firms is defeated](#)', 24 February 2022.

¹² Lancaster City Council, '[Agenda item: Motion on notice—boycott, divestment and sanctions \(BDS\) movement](#)', 23 June 2021.



2.3 Views on legislation to counteract the BDS campaign

The Board of Deputies of British Jews, an organisation representing many synagogues and community groups, has said that it “has long advocated for legislation which would address attempts to use local government to promote BDS policies”.¹³ It has highlighted that Israel has been the primary target for such campaigns and that local authorities have not supported boycotts against other countries such as Russia, Iran, North Korea and China.

However, some Jewish groups have expressed opposition to legislation that would prevent local authorities aligning themselves with the BDS movement. In June 2023 Jewish News published a letter from a group of leaders of Jewish youth organisations. It said that, while those groups disagreed with the BDS movement, they opposed the legislation because it would restrict freedom of expression.¹⁴ It argued the measures would “disempower our young members and prevent them from affecting change in the Jewish community and beyond, including at their universities and local councils”.

In October 2023 the Muslim Council of Britain released a statement expressing its “profound concern” about the bill.¹⁵ It said the BDS movement was “an exercise in peaceful protest and very much in-line with the principles of freedom of expression” and that the bill would “serve to further undermine the right to protest and freedom of expression as a whole”.

3. Legal background to the bill

Local authorities and public bodies in the UK are already subject to some legal restrictions on investment and procurement decisions, as outlined below.

3.1 Local Government Act 1988

Section 17 of the Local Government Act 1988 prohibits local authorities or councils in England, Wales and Scotland from taking non-commercial considerations into account in

¹³ House of Commons Public Bill Committee, [‘Written evidence: Economic Activity of Public Bodies \(Overseas Matters\) Bill \(EAPBB26\)’](#), 6 September 2023.

¹⁴ Jewish Youth Group Leaders, [‘Opinion: Banning BDS in public bodies is not the way to advocate for Israel’](#), 19 June 2023.

¹⁵ Muslim Council of Britain, [‘Anti-BDS Bill: An assault on peaceful protest and freedom of expression’](#), 24 October 2023.



procurement decisions. Matters that these bodies must not take into account include:

- terms and conditions of employment by contractors of their workers
- conduct of contractors or workers in industrial disputes
- country or territory of origin of the contractor or their supplies
- political, industrial or sectarian affiliation of contractors or parties associated with them such as directors

The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 provides the same restrictions for Northern Ireland.

These measures have already been disapplied for procurement relating to Russia or Belarus.

However, the government has argued that the 1988 act “only provides partial coverage in preventing boycotts across local authorities and does not include any wider public bodies and divestment campaigns”.¹⁶

The Economic Activity of Public Bodies (Overseas Matters) Bill would remove the stipulation in the 1988 act that local authorities must not consider the country or territory of origin of the contractor or their supplies in procurement decisions and replace them with new measures. The new restrictions provided for in the bill would differ from the existing law in that they would cover investment as well as procurement. They would also apply to the wider public sector as well as local authorities.

3.2 Procurement Act 2023

The Procurement Act 2023 also contains measures relevant to public authority procurement. It allows contracting authorities to exclude from procurement foreign suppliers or sub-contractors that are from a state the UK does not have a trade agreement on procurement with (this includes bilateral treaties and parties to the World Trade Organisation Agreement on Government Procurement, or GPA).¹⁷ The Economic Activity of Public Bodies (Overseas Matters) Bill’s impact assessment says that the bill would not restrict

¹⁶ Department for Levelling Up, Housing and Communities, [‘Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 4 May 2023, p 2.

¹⁷ [Procurement Act 2023](#), s 57.



the freedom to disregard non-treaty-state suppliers as it “only stops decisions motivated by political or moral disapproval of a foreign state”.¹⁸

The Procurement Act 2023 also sets out grounds on which procuring authorities can decide to exclude suppliers. One of these is “professional misconduct”.¹⁹ This includes conduct involving dishonesty, impropriety, or serious breaches of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not). Measures in clause 14 of the Economic Activity of Public Authorities (Overseas Matters) Bill would mean that the procuring authority would not be able to include its own political or moral disapproval of a state in making a decision about professional misconduct.

3.3 Guidance and recent court cases

In 2016, before the enactment of the Procurement Act 2023, the government published guidance for contracting authorities on their “international obligations when letting public contracts”.²⁰ This stated that under the GPA and UK procurement rules contracting authorities must treat EU and GPA suppliers equally. It also stated that in addition to potentially being unlawful, boycotting tenders could have other negative impacts:

Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK government. There are wider national and international consequences from imposing such local level boycotts. They can damage integration and community cohesion within the United Kingdom, hinder Britain’s export trade, and harm foreign relations to the detriment of Britain’s economic and international security.²¹

The press release accompanying this guidance highlighted that Israel is a signatory to the GPA.²²

¹⁸ Department for Levelling Up, Housing and Communities, ‘[Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, 4 May 2023, p 12.

¹⁹ [Procurement Act 2023](#), sch 7, para 11.

²⁰ Crown Commercial Service, ‘[Procurement policy note: Ensuring compliance with wider international obligations when letting public contracts](#)’, 17 February 2016, p 1.

²¹ As above, p 2.

²² Cabinet Office et al, ‘[Putting a stop to public procurement boycotts](#)’, 17 February 2016.



In 2016, the government also released guidance, now archived, on local government pension scheme investment strategies.²³ It stated that schemes should consider the impact of social, environmental and corporate governance factors on their scheme's long-term performance. However, the government also said that using pension policies "to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries" was "inappropriate" except where the government had put in place formal legal sanctions, embargoes and restrictions.

In 2017 the government withdrew and replaced this guidance in response to legal proceedings brought against it. These were initiated in 2017 and, after successful appeals, reached the Supreme Court and were heard in 2019 with the judgment delivered in 2020.

The Supreme Court's 2020 judgment ruled, by a three-two majority, that the secretary of state for housing, communities and local government had exceeded their powers in issuing the 2016 pension scheme guidance.²⁴ The case was brought by the Palestine Solidarity Campaign. Delivering the judgment, Lord Wilson said the relevant passages of the guidance went beyond identifying the procedures and strategy that the pension administrators should adopt and was "an attempt to enforce the government's foreign and defence policies". He said the government may have been under a "misconception" that the scheme administrators were part of the machinery of state. He said the fund comprised contributing employees' money, not public money. Further information on these cases can be found in the House of Commons Library briefing 'Local government pension scheme investments' (February 2022).²⁵

In response to the court judgment, the government moved an amendment concerning pension schemes guidance to the Public Service Pensions and Judicial Offices Bill that was going through Parliament at that time. The Public Service Pensions and Judicial Offices Act 2022 now states that the secretary of state has powers to issue guidance to pension schemes not to make investment decisions that conflict with UK foreign and defence policy.

Clause 12 of the Economic Activity of Public Bodies (Overseas Matters) Bill would apply the bill's main provisions to local government pension schemes.

²³ Department for Communities and Local Government, '[Local government pension scheme: Guidance on preparing and maintaining an investment strategy statement](#)', September 2016, p 2.

²⁴ Local Government Lawyer, '[Supreme Court rules against government on LGPS and ethical divestment](#)', 29 April 2020.

²⁵ House of Commons Library, '[Local government pension scheme investments](#)', 23 February 2022, pp 16–18.



4. Overview of the measures in the bill

The Economic Activity of Public Bodies (Overseas Matters) Bill has 17 clauses and one schedule. Its provisions would extend to England and Wales, Scotland and Northern Ireland.

4.1 Main provisions

Clauses 1 and 2 contain provisions to implement the bill's main policy objective of prohibiting public bodies from expressing disapproval of the conduct of foreign states through their procurement and investment decisions.

Clause 1(2) of the bill sets out a general prohibition on a decision-maker's ability to have regard to a territorial consideration when making a decision where a "reasonable observer" would consider that this decision was influenced by political or moral disapproval.

Clause 2 states that clause 1 applies to procurement decisions and investment decisions and provides definitions for both these types of decision.

Clause 2(1) states that clause 1 applies to decision-makers that are subject to section 6 of the Human Rights Act 1998. These are public authorities, and private authorities in so far as they are carrying out public functions. The explanatory notes state that private bodies that are public authorities because they are performing a public function would not be in scope of the bill in relation to their private functions and acts.²⁶ The government's impact assessment states that the bill would apply to, among others:²⁷

- all central government agencies and non-departmental public bodies carrying out public functions as defined in section 6 of the Human Rights Act 1998
- all non-ministerial government departments to the extent they are not covered by the above
- all UK ministers and their government departments

²⁶ [Explanatory notes](#), para 21.

²⁷ Department for Levelling Up, Housing and Communities, '[Economic Activity of Public Bodies \(Overseas Matters\) Bill: Impact assessment](#)', 4 May 2023, p 5.



- ministers in the devolved administrations in Scotland, Wales and Northern Ireland, and their departments and agencies
- all local authorities
- local government pension funds
- universities
- cultural institutions

Under clause 1(7) the disapproval referred to in clause 1(2) includes both the decision-maker's disapproval and also disapproval on the part of "any person seeking to persuade the decision-maker to act in a certain way". The bill's explanatory notes describe clause 1(7) as follows:

Clause 1(7) sets out that, when making procurement or investment decisions, public authorities must not have regard to a third-party's moral or political disapproval of a country or territory's foreign state conduct if that third party is trying to persuade the decision-maker to act. This applies even when the decision-maker is not influenced by its own political or moral disapproval of foreign state conduct.²⁸

Clause 1(7) also states that the decision-maker can be an individual working for a public authority.

Both clause 1 and 2 are subject to clause 3, which introduces the bill's schedule. The schedule sets out exceptions from clause 1. Under part 1 of the schedule, clause 1 would not apply to:

- a decision of someone acting for the Security Service, the Secret Intelligence Service or Government Communications Headquarters
- a defence authority contract within the meaning of the Procurement Act 2023 (see section 7(4) of the act)
- pension schemes (within any of the definitions of section 1 of the Pensions Schemes Act 1993 or section of the Pensions Schemes (Northern Ireland) Act 1993); however, clause 12 of the bill makes provision for local government pension schemes

²⁸ [Explanatory notes](#), para 19.



Under part 2 of the schedule, clause 1 would not prevent a decision-maker taking a factor into account so far as they reasonably considered it relevant to:

- the financial value or practical utility of the goods, services, works or asset in question; or arrangements under contemplation with respect to those goods, services or works or that asset
- the national security of the UK
- whether the decision (or anything done further to it) would place the UK in breach of its obligations under international law

Part 2 of the schedule would also not prevent a decision-maker taking a factor into account so far as it related to:

- bribery
- labour-related misconduct, including “conduct that could result in, or could if carried out in any part of the United Kingdom result in, the making of a relevant labour misconduct order”
- competition law infringements
- environmental misconduct

Clause 3(2) would grant the secretary of state or the minister for the Cabinet Office certain regulation-making powers to amend the schedule:

- (2) The secretary of state or the minister for the Cabinet Office may, by regulations, amend the schedule so as to—
- (a) add a description of decision to part 1 of the schedule (exceptions for certain bodies and functions),
 - (b) add a description of consideration to part 2 of the schedule (exceptions for certain types of consideration), or
 - (c) amend or remove a description of decision or consideration added under previous regulations under this subsection.



Under clause 3(3) the regulations could not relate to a decision of:

- (a) a minister of the crown, within the meaning of the Ministers of the Crown Act 1975,
- (b) the Scottish ministers,
- (c) the Welsh ministers,
- (d) a Northern Ireland department,
- (e) an authority listed in Schedule 2 to the Local Government Act 1988 (public authorities subject to the contracting restrictions in section 17 of that Act),
- (f) a district council in Northern Ireland, or
- (g) the scheme manager of a funded local government scheme (within the meaning of [clause] 12).

The delegated powers memorandum published alongside the bill contends that the regulation-making powers in clause 3(2)(a) and (c) would allow ministers to “respond to changes and ensure that the scope of public bodies and activities covered by the ban is up to date”.²⁹ The memorandum also says that defining public bodies by reference to section 6 of the Human Rights Act 1998, as in clause 2, could create uncertainty, and that regulation-making power would help the government address any issues that could arise over time.

The memorandum also argues that the powers in the bill would help the government respond to any potential conflicts of law where a UK public body is operating overseas:

For example, a UK body could theoretically find itself in a situation where its obligation to comply with the bill contravenes the local law of the jurisdiction where it is operating overseas. Accordingly, the power to remove public bodies or certain functions of public bodies from the scope of the ban would help to deal with such potential circumstances because the ban can be adapted where ministers, with Parliament’s consent, want to ensure that there is no conflict of law with the relevant overseas jurisdiction.³⁰

The government contends that the power in clause 3(2)(b) is required for similar reasons as

²⁹ Department for Levelling Up, Housing and Communities, ‘[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)’, May 2023, para 8.

³⁰ As above, para 13.



those for clauses 3(2)(a) and (c) and to account for the Procurement Bill:

The department considers that a delegated power is necessary to ensure that only appropriate considerations are banned or permitted by the bill.

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.

In particular, the power would enable the government to make sure that the bill operates in a way that is consistent with the intended operation of the Procurement Bill [now the Procurement Act 2023], which provides for certain exclusion grounds relating to matters arising overseas. This delegated power will ensure that this bill will continue to operate in harmony with current and future legislation.³¹

Under clause 3(5) the secretary of state or minister for the Cabinet Office could also make regulations to specify a country or territory to which clause 1 would not apply. The power is intended to allow public bodies to make such decisions only when they are in line with the government's foreign policy:

The aim of the bill is to stop boycotts and divestment campaigns of public bodies that are not in line with UK foreign policy. However, there will be instances where a boycott or divestment campaign by a public body is in line with UK foreign policy. 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. Thus, the purpose of the power is to enable the secretary of state or minister for the cabinet to exempt such countries from the ban ie to allow public bodies to boycott or divest against those countries to express political or moral disapproval of the conduct of a foreign state.³²

³¹ Department for Levelling Up, Housing and Communities, '[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)', May 2023, paras 20–2. The [Procurement Bill](#) received royal assent on 26 October 2023.

³² Department for Levelling Up, Housing and Communities, '[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)', May 2023, para 23.



The government intends to except Russia and Belarus from the ban immediately upon the bill's commencement.³³

Clause 3(7) specifies, however, that these regulations could not specify Israel, the OPT or the Occupied Golan Heights. In addition, clause 3(7) specifies that regulations made under clause 3(2) (amending the schedule) could not result in a description of decision or consideration relating specifically or mainly to Israel, the OPT or the Occupied Golan Heights.

Clause 16 states that regulations under the bill would normally be made by statutory instrument and would generally be subject to the affirmative procedure. However, an instrument containing only regulations made under clause 3(2) or (5) could be subject to the made affirmative procedure.³⁴ The delegated powers memorandum argues this is appropriate in cases where the government may want to respond quickly, for example as in the case of Russia's invasion of Ukraine.³⁵

Clause 4 would prohibit a person subject to clause 1 from publishing a statement indicating, in whatever terms:

- (a) that the person intends to act in a way that would contravene section 1, or
- (b) that the person would intend to act in such a way were it lawful to do so.

The clause would not apply to a statement by a minister of the crown in relation to any exercise of powers in clause 3. The explanatory notes state that clause 4 would stop “public bodies from expressing support for themselves engaging in boycotts and divestment campaigns”.³⁶

The explanatory notes state that clause 4 would not apply to people who work for a public authority, except when speaking on its behalf:

³³ Department for Levelling Up, Housing and Communities, '[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)', May 2023, para 24.

³⁴ Under the made affirmative procedure, an SI is made into law (signed by the minister) before Parliament has considered it. However, it cannot remain law unless it is approved by Parliament within a certain time period.

³⁵ Department for Levelling Up, Housing and Communities, '[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)', para 31.

³⁶ [Explanatory notes](#), para 31.



Only a person “subject to section 1” is in scope of clause 4. As only public authorities are subject to clause 1, this clause is strictly limited to the actions of public authorities. It only affects individuals when they are a public authority (for example a minister of the crown) or when they make statements or take action on behalf of public authorities. Even when an individual is speaking on behalf of a public authority, the ban only applies to the public authority itself and there is no personal liability for the individual.³⁷

4.2 Enforcement

The bill includes provisions on the enforcement of the ban. This includes through judicial review under clause 5, or through an enforcement regime set out in clauses 6 to 11.

Where the decision or subject matter of the statement was amenable to judicial review, clause 5 would make provision for the ban to be enforceable through this process. Where the decision or subject matter of the statement was not amenable to judicial review, clauses 5(3) to (9) would provide for the bill’s provisions to be enforceable “by application to the High Court (or the Court of Session in Scotland) in a manner analogous to judicial review”.³⁸ Applications would only be accepted if the court considered the applicant had sufficient interest in the subject matter of the application, for example, “if they were affected by the decision in question”.³⁹

Clauses 6 to 11 would create an enforcement regime where an enforcement authority was given certain powers to issue information notices and compliance notices, as defined in the bill. The authority would also be able to issue monetary penalties subject to certain conditions.

Clause 6 defines which bodies are considered enforcement authorities for the purposes of the bill. By default, the enforcement body would be the secretary of state for the Treasury, unless otherwise provided for. For decisions or statements made by or for the purposes of a registered higher education provider, the enforcement authority would be the Office for Students. Under clause 6(3) there would be no enforcement authority in relation to a decision or statement made by a minister of the crown. Clause 6(6) would provide a regulation-making power to allow the secretary of state or the minister for the Cabinet

³⁷ [Explanatory notes](#), para 32.

³⁸ As above, para 37.

³⁹ As above, para 38.



Office to amend clause 6 in order to change the enforcement authority in relation to a particular description of a decision or statement.

Clause 7 would grant enforcement authorities the power to issue information notices requesting information from public bodies that have made, or that might be about to make, a decision or statement in contravention of sections 1 or 4. The duty to comply with an information notice would be enforceable by judicial review or, if the recipient of the notice is not amenable to judicial review, enforceable by the High Court or Court of Session in Scotland.⁴⁰

Amongst its other measures, clause 7 would provide that giving information in compliance with an information notice would not breach any obligation of confidence owed by the person in respect of the information or any other restriction on the disclosure of the information. The explanatory notes clarify that clause 7 does not require the disclosure of legally privileged information.⁴¹

Clause 8 would allow enforcement authorities to give a person a written notice called a compliance notice if it was “satisfied that a person has contravened, or is likely to contravene, section 1 or section 4”. The compliance notice would have to set out the authority’s reasons for making this assessment and the actions it considered the person should take, or refrain from taking, in order to avoid contravening or further contravening section 1 or section 4. The notice would have to inform the person that failure to comply could lead to a monetary penalty under clause 9. Under clause 8(4), the authority would have to inform the person that it intended to issue a compliance notice in order to give them the opportunity to make representations.

Clause 9 would allow the enforcement authority to impose a monetary penalty on a person subject to clause 1 if they had contravened clauses 1 or 4, had been given a compliance notice before the contravention and the contravention would have been avoided had the person done as advised in the compliance notice. Clause 9 would require the enforcement authority to give notice of its intention to impose a penalty and consider any representations.

Clause 10 would require the secretary of state to make regulations prescribing the maximum penalty that could be issued under clause 9. These penalties would be subject to interest.

⁴⁰ [Explanatory notes](#), para 46.

⁴¹ As above, para 49.



Clause 11 would allow an enforcement authority to vary or revoke a notice given under clauses 7, 8 or 9 by further notice.

The bill's impact assessment sets out that the enforcement regime is intended to act as an "additional" deterrent. The government expects "a relatively low volume of investigations and fines" if the regime works effectively in that regard.⁴² The government does not intend to operate a specific monitoring process.⁴³ It expects potential cases of boycott, divestment and sanctions activity to be identified through whistleblowing and organisations contacting ministers and enforcement authorities directly about any suspected contraventions of the legislation.

4.3 Local government pension schemes

While paragraph 3 of the bill's schedule would provide that clause 1 would not apply to a managers or trustees of a pension scheme, this would be subject to clause 12 concerning local government pension schemes.⁴⁴ Clause 12 would apply the restriction on procurement and investment decisions set out in clauses 1 and 4 to local government pension schemes.⁴⁵ The exemptions and exclusions provided for in clause 3 would also apply.⁴⁶

Clause 13 would make provision for the Pensions Regulator to oversee enforcement of the ban for local government pension schemes.

4.4 Supplemental and general provision

Clause 14 sets out the bill's relationship with procurement legislation, specifically the Procurement Act 2023.

Clause 14(2) would provide that the power in the Procurement Act 2023 to exclude suppliers on the basis of "professional misconduct" would be subject to clause 1 of the bill. This would mean that a decision-maker would not be able to include its own political or

⁴² Department for Levelling Up, Housing and Communities, '[Impact assessment: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)', 4 May 2023, p 3.

⁴³ As above, p 10.

⁴⁴ Under paragraph 3 a pension scheme would mean "a scheme within any of the definitions in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993".

⁴⁵ [Explanatory notes](#), para 66.

⁴⁶ As above.



moral disapproval of a state in making a decision about professional misconduct. Professional misconduct includes conduct involving dishonesty, impropriety, or serious breaches of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not).

Clause 14(6) contains a power to make regulations to amend existing legislation relating to the Procurement Act or the Procurement Reform (Scotland) Act 2014. The Procurement Act received royal assent on 26 October 2023. However, when the Economic Activity of Public Bodies (Overseas Matters) Bill was introduced, the Procurement Bill was awaiting committee stage in the House of Lords. The Economic Activity of Public Bodies (Overseas Matters) Bill was drafted to reflect the fact that the Procurement Act 2023 had not yet completed its passage through Parliament.

Consequently the delegated powers memorandum set out why such the powers in clause 14(6) were required:

The department considers this power necessary as it is not yet clear whether the Procurement Bill or this bill will be commenced first. It allows the secretary of state to apply the bill to the legislation that the Procurement Act 2023 is replacing or changing if it remains in force when this bill is commenced.

The department also considers this power necessary as, following discussions with Scottish government's procurement team, they advised that this bill needed to be deconflicted with their procurement law regime.⁴⁷

The government expects the provisions in the Procurement Act to come into effect in October 2024.⁴⁸

Clause 14 would also ensure that the provisions of the bill applied to certain additional provisions of the Procurement Act 2023:

Clause 14(3) sets out that the ban will apply to decisions of a minister of the crown to

⁴⁷ Department for Levelling Up, Housing and Communities, '[Delegated powers memorandum: Foreign Affairs \(Economic Activity of Public Bodies\) Bill](#)', paras 48–9.

⁴⁸ Government Commercial Function, '[The Procurement Act 2023: A short guide for suppliers](#)', 13 November 2023.



add or remove a supplier from the debarment list on the basis of professional misconduct—as set out in paragraph 11 of schedule 7 of the Procurement Act 2023. The debarment list is a list of suppliers where a minister of the crown has made a determination to exclude a supplier from public procurements.

Clause 14(4) also sets out that clause 1 of this act will not prevent giving effect to the provisions of the Procurement Act 2023 about excluded and excludable suppliers, and clause 14(5) cross-references section 57 of that act for the meaning of excluded and excludable supplier.⁴⁹

Clause 15 would make amendments to the Local Government Act 1988. Section 17 of the Local Government Act 1988 imposes a duty on certain public authorities to not consider specified non-commercial matters when carrying out procurement decisions. Under section 17(5)(e) this includes “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”. Clause 15(1) would remove paragraph 17(5)(e) from the 1988 act because the government intends for the requirements of the bill to replace these provisions.⁵⁰

Section 17(5)(f) of the 1988 act also includes the following matters: “any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees”. Clause 15(3) of the bill would grant the secretary of state a power to make regulations providing for certain matters to be treated as falling outside section 17(5)(f) of the 1988 act.⁵¹

Clause 16 sets out the procedures for the bill’s regulation-making powers.

Clause 17 sets out the bill’s general provisions.

5. Devolution

The bill’s core provisions would extend and apply to England and Wales, Scotland and

⁴⁹ [Explanatory notes](#), paras 69–72.

⁵⁰ [Explanatory notes](#), para 75. Clause 15(2) would remove similar provisions from article 19(4) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.

⁵¹ Regulations could also be made for the similar provisions in article 19(4)(f) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992.



Northern Ireland. The government has said that it will seek legislative consent motions from the devolved legislatures.⁵²

Both the Welsh and Scottish governments have recommended their parliaments withhold legislative consent.⁵³ In their respective legislative consent memorandums, both Welsh and Scottish governments said the bill was “disproportionate and unnecessary”. They said it was unnecessary because their governments had always “acted responsibly” in meeting the UK’s international commitments, and because it limited their executive competency. They also said existing laws and agreements provided sufficient protection.

Rebecca Evans, minister for finance and local government in the Welsh government, also objected to the bill on the grounds that “questions remain as to the compatibility of the bill with convention rights and international law”.⁵⁴

In addition, the Scottish government said the bill would not allow it to “take a values-based approach to international engagement”, and that the provisions in clause 4 were “an assault on democratic expression” and would “stifle the ability for democratic debate”.⁵⁵

6. Consideration of the bill in the House of Commons

Consideration of the bill at report stage and third reading in the House of Commons took place after the outbreak of the recent crisis in Gaza. This paper focuses upon the bill itself. For information on the conflict in Gaza, see:

- House of Commons Library, ‘[2023/24 Israel-Hamas conflict: UK and international response](#)’, 5 January 2024
- House of Lords Library, ‘[Israel-Hamas conflict: Latest developments](#)’, 20 October 2023
- Congressional Research Service, ‘[Israel and Hamas Conflict in Brief: Overview, U.S. Policy, and Options for Congress](#)’, 11 January 2024

⁵² [Explanatory notes](#), annex A.

⁵³ Welsh government, ‘[Legislative consent memorandum: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, 8 September 2023, para 43.

⁵⁴ As above.

⁵⁵ Scottish Government, ‘[Legislative consent memorandum: Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, July 2023, paras 16–9.



6.1 Second reading

Introducing the bill at second reading in the House of Commons on 3 July 2023, Michael Gove, secretary of state for levelling up, housing and communities, said that the bill would:⁵⁶

- implement the Conservative Party’s manifesto commitment
- affirm the “important principle that UK foreign policy is a matter for the UK government”
- ensure that “local authorities concentrate on serving their residents, not directing resources inefficiently”
- provide “protection for minority communities, especially the Jewish community, against campaigns that harm community cohesion and fuel antisemitism”

The Labour Party tabled a reasoned amendment to the motion to grant the bill a second reading in the House of Commons, which read:

[...] this House, while opposing any discrimination or prejudice in the economic activities of public bodies, believing that all such bodies must act without bias or selectivity when making ethical decisions on procurement and investment and recognising the impact selective and biased campaigns have had on the Jewish community in particular, declines to give a second reading to the Economic Activity of Public Bodies (Overseas Matters) Bill, because the bill risks significantly undermining support for groups around the world facing persecution, for example the Uyghur, who are currently victims of grave and systemic human rights abuses, is incompatible with international law and the due diligence of public bodies, undermines the UK’s long-standing cross-party position in respect of the Occupied Palestinian Territories and Golan Heights by conflating these with the state of Israel and running counter to UN security council resolutions, singles out the state of Israel in effect creating the issue it intends to solve, seeks to enforce its provisions by giving unprecedented powers to the secretary of state beyond those enjoyed by the police and the security services, places unprecedented restrictions on the ability of public bodies, many of them directly elected, to express a view on policy, current, proposed and desired, has potential widespread and negative impacts on local government pension funds, limits freedom of speech and is likely to be subject to repeated and extended legal challenge by reason of

⁵⁶ [HC Hansard, 3 July 2023, col 586.](#)



its conflict with established legal principles; and therefore urges the government to bring forward alternative proposals.⁵⁷

The amendment was supported by the SNP and Liberal Democrats.

Moving the amendment, the then shadow secretary of state for levelling up, housing, communities and local government, Lisa Nandy, said the opposition recognised the problem Mr Gove said the bill was designed to tackle. She also said that the Labour Party had long opposed the BDS movement, and that to single out Israel and hold it to different standards than other countries was wrong.⁵⁸ She said it was, however, “deeply frustrating that the government have introduced a bill that is needlessly broad, with sweeping, draconian powers and far-reaching effects”.

Ms Nandy said the bill would ban public authorities from having regard to human rights violations of foreign governments unless they were expressly permitted by the UK government.⁵⁹ While there would be exceptions for the matters listed in the schedule, such as labour rights, bribery and the environment, she noted these did not include genocide, systematic torture or “grave breaches of the Geneva convention”.

Many members, including Ms Nandy, argued that the bill would make it impossible for public bodies to boycott goods from China because of its treatment of the Uyghur population, and from other states that were committing human rights abuses against certain groups, such as against the Rohingya in Myanmar.

Ms Nandy also questioned why the OPT and Occupied Golan Heights were listed along with Israel as territories the government could not put on a list of exemptions from the bill. She said this contradicted government policy by “according the occupied territories the same protected status as Israel and in effect conflating the two”. She said it was possible this would go against UN resolutions.

The chair of the House of Commons Foreign Policy Committee, Alicia Kearns (Conservative MP for Rutland and Melton), argued that the bill would put the UK in breach of UN Security Council Resolution 2334 (2016), which states that in relevant dealings countries must distinguish between the territory of the state of Israel and the territories occupied since

⁵⁷ [HC Hansard, 3 July 2023, col 595.](#)

⁵⁸ [HC Hansard, 3 July 2023, col 596.](#)

⁵⁹ [HC Hansard, 3 July 2023, col 599.](#)



1967.⁶⁰ Ms Kearns argued that under the bill the UK would not distinguish between its treatment of Israel and the OPT.

Several members expressed concern about the impact of clause 4 on a person deemed to be an individual making the decision under clause 1(7). Ms Kearns argued that “clause 4(1) states that if a local council leader, university vice-chancellor or even the chief executive of a private company delivering public services speaks in a way that contravenes clause 1, they have broken the law”.⁶¹ Responding to these concerns, Felicity Buchan, parliamentary under-secretary of state for levelling up, housing and communities, said the bill would only apply to public authorities. She said the bill would “not place restrictions on local councillors, except when they talk expressly on the behalf of their local authority”.⁶²

On the issue of supporting the Uyghur population, Ms Buchan said the government was concerned about the issue of Uyghur forced labour in supply chains and was taking robust action. She said there were relevant exceptions in the bill:

The exceptions in this bill, alongside the exclusion grounds in the Procurement Bill, will keep suppliers involved in labour market misconduct, including human trafficking and modern slavery, no matter where they are in the world, out of public sector supply chains.⁶³

She also said the bill was compliant with UN Security Council Resolution 2334 because Israel and the OPT were listed separately. She said the government was strongly opposed to the settlements, stating:

[...] our position on settlements is clear: they are illegal under international law; present an obstacle to peace; and threaten the physical viability of a two-state solution. Our position is reflected in our continued support for UN Security Council Resolution 2334, with which the bill is compliant.⁶⁴

⁶⁰ [HC Hansard, 3 July 2023, col 604.](#)

⁶¹ [HC Hansard, 3 July 2023, col 606.](#)

⁶² [HC Hansard, 3 July 2023, col 655.](#)

⁶³ [HC Hansard, 3 July 2023, col 656.](#)

⁶⁴ [HC Hansard, 3 July 2023, col 656.](#)



She added, however, that the government was open to discussions about the bill:

UN Security Council Resolution 2334 asks countries to differentiate between Israel and the occupied territories. We have done that in this clause; they are clearly separated out in different paragraphs. However, as the secretary of state said in his opening remarks, we are open to any discussions on the bill and of course we want the best legislation here.⁶⁵

Labour's reasoned amendment was defeated on division by 272 votes to 212.⁶⁶

6.2 Committee

A House of Commons public bill committee considered the bill in six sittings in September 2023. The government did not table any amendments to the bill. Opposition parties tabled 33 amendments and one new clause. The committee voted on 17 amendments and the new clause. All were rejected, and no amendments were made to the bill.

Matters that were the subject of proposed amendments at committee stage included:

- the application of the bill to Scotland, Wales and Northern Ireland and legislative consent
- the regulation-making powers for the government to amend the list of exceptions in the schedule
- the inclusion of the OPT and Occupied Golan Heights in clause 3(7) and the special status accorded to them and Israel
- proposed additions to the list of exceptions, such as breaches of international law and genocide
- prohibitions in clause 4 on making statements indicating intention to boycott or divest

⁶⁵ [HC Hansard, 3 July 2023, col 656.](#)

⁶⁶ [HC Hansard, 3 July 2023, cols 658–61.](#)



6.2.1 Application of the bill to devolved nations

The Labour Party and the SNP both tabled amendments to the bill concerning its application to the devolved nations. Labour's amendment 1 would have introduced a requirement for legislative consent to be given by the devolved legislatures before the bill could take effect.⁶⁷ Wayne David, shadow minister for the Middle East and North Africa, said this was consistent with the devolution settlement and "simply sets out what is legally the case" because "the bill impinges on at least some of the competencies of the ministers of the devolved institutions".

In response, Ms Buchan argued it was "not appropriate to write such a political convention to seek consent into the legislation as a legal precondition for the bill to apply to devolved ministers". She added that "the codification of the Sewel principles, which are already written in statute, is unnecessary".⁶⁸

This amendment was defeated by nine votes to seven.⁶⁹

The SNP's amendment 30 would have stated that clause 1 did not apply to decisions of Scottish ministers.⁷⁰ Anum Qaisar (SNP MP for Airdrie and Shotts) said this was necessary because procurement was a devolved power and Scotland had its own law governing this area. Ms Buchan responded that it was essential that the bill's provisions extended to the whole of the UK because foreign policy was a reserved matter.⁷¹ She also argued that BDS campaigns caused division in all the nations of the UK.

The amendment was defeated by 10 votes to two.⁷²

6.2.2 Removal of regulation-making powers to amend the bill's schedule

The Labour Party tabled amendment 4, which would have taken subclauses 3(2) and 3(3) out of the bill. This would have removed the power of ministers to amend the bill's schedule by regulations in order to add a description of decision or consideration, or to amend or

⁶⁷ House of Commons Public Bill Committee, '[Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)', 12 September 2023, session 2022–23, 4th sitting, col 117.

⁶⁸ As above, col 120.

⁶⁹ As above, col 174.

⁷⁰ As above, col 113.

⁷¹ As above, col 118.

⁷² As above, col 122.



remove considerations added under previous regulations. Speaking for the Labour Party, Alex Norris, former shadow minister for levelling up, housing communities and local government, said they supported the principle of allowing certain conduct to be in scope of ethical decision-making and made specific reference to supporting the bill's provisions on labour rights. However, he described the provisions in clause 3(2) and (3) as “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”.⁷³ Mr Norris expressed concern that the regulation-making power in the clause would allow the government to undermine the purpose of parliamentary scrutiny:

What we are being asked to do in the light of clause 3 and the schedule is to divine whether we think the range of exceptions is right. Is it broad enough? Is it too broad? Should we add any more? Should we take any out? That is the purpose of Parliament and parliamentary scrutiny. Yet we are being asked to put a provision in the bill that the secretary of state can just change that anyway via secondary means. That creates an unacceptable imbalance between the executive and the legislature.⁷⁴

Mr Norris contrasted this with the regulation making power in clause 3(5), which would allow the government to specify countries to which the ban would not apply. He said Labour had not tabled amendments to that clause because it accepted that foreign affairs changed over time and the government may need to make changes swiftly:

That is entirely reasonable in the case of foreign affairs and entirely unreasonable in the case of exempted activities, because they will not change quickly. Environmental and labour concerns are anchor issues that will dominate debates long after all of us are gone. The secretary of state and the government more generally do not need the power to vary that quickly.⁷⁵

Responding for the government, Felicity Buchan said that the power would help prevent unintended consequences:

In the event that the ban has unintended consequences for a public authority and impacts on its ability to deliver its core functions, however, this power will allow the secretary of state to exempt the body, or a function of that body, from the ban via a

⁷³ House of Commons Public Bill Committee, ‘[Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, 12 September 2023, session 2022–23, 4th sitting, col 123.

⁷⁴ As above, col 123.

⁷⁵ As above, col 123.



statutory instrument. The exercise of the power will be subject to affirmative resolution by both Houses.⁷⁶

She also argued it might be necessary to make changes to the bill's schedule to ensure the ban operated as intended and that using primary legislation in this context could be too slow:

In the drafting of this legislation, my officials have been careful to ensure that the bill applies only to appropriate bodies and types of considerations. However, the government may also decide that a certain consideration should be made exempt from the ban so that the bill can operate as intended. The secretary of state requires the power so that he can respond effectively to potential unintended consequences that the bill might have on a public authority without the need for primary legislation. If that had to be done through primary legislation, a public authority might have its ability to carry out public functions hindered for an extended period.⁷⁷

Mr Norris said it was “deeply concerning” that the provision was about avoiding unintended consequences. He argued that the bill would “roll in ways that we cannot conceive of, because it is so broadly drawn and, in places, so erratically drawn”.⁷⁸ He said that Labour supported looking at how the bill could be redrafted whilst still achieving its aims:

That is a reason for not proceeding with the bill in this form, and for coming back together to produce—as we are all keen to—something that is less broad and wide-ranging, but delivering a solution to the problem that we are seeking to tackle.⁷⁹

The amendment was defeated on division by 10 votes to six.⁸⁰

6.2.3 Introducing new human rights statements

The Labour Party's amendment 2 would have inserted new subclauses 4(A) to (D) into clause 3. The effect would be to exempt public bodies from the prohibition in clause 1 if a relevant decision had been made in accordance with a statement of policy relating to human

⁷⁶ House of Commons Public Bill Committee, '[Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)', 12 September 2023, session 2022–23, 4th sitting, col 124.

⁷⁷ As above, col 124.

⁷⁸ As above, col 125.

⁷⁹ As above.

⁸⁰ As above.



rights. Such a statement could not single out individual nations, but would have to be applied consistently, and in accordance with guidance published by the secretary of state.

Mr Norris said this would “ensure consistency in how contracting authorities—or public bodies more generally—decide on such matters, and inconsistent application would be prohibited”.⁸¹ He said this would make it “unambiguous” that if a public body did not wish to procure goods from Russia because of human rights abuses in Ukraine, or from Xinjiang because of its treatment of Uyghur Muslims, the “law will be on its side”.

Responding, Ms Buchan argued against the amendment on two grounds. Firstly, she expressed concern that it would grant public authorities discretion to apply blanket boycotts. Secondly, she argued that the provisions in what is now the Procurement Act 2023 made it unnecessary. On those provisions, she said:

The Procurement Bill already contains a robust regime for the exclusion of suppliers that are unfit to hold public contracts. That bill sets out a wide range of exclusion grounds that target the most serious risks to public procurement, including modern slavery and human trafficking. The Cabinet Office has strengthened the way in which these terms are defined, so that suppliers may be excluded where there is sufficient evidence that they are responsible for abuses anywhere in the world, whether or not they have been convicted of an offence.

We have mirrored in this bill the exclusion grounds in the Procurement Bill that pose the most significant risk to public procurement as exceptions to the ban, including for modern slavery and human trafficking. This means that public authorities will be allowed to make a territorial consideration that is influenced by moral or political disapproval of foreign state conduct in so far as it relates to one of the considerations listed in the schedule.⁸²

On the concerns about the amendment allowing public authorities to apply boycotts, the minister argued:

The amendment would allow authorities to exclude suppliers from entire nations without proper consideration of whether a supplier itself had had any involvement in

⁸¹ House of Commons Public Bill Committee, ‘[Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, 12 September 2023, session 2022–23, 4th sitting, col 126.

⁸² As above, col 128.



the abuse. To exclude suppliers based solely on where they are located conflicts with the open principles of our procurement regime and would in some cases be contrary to the UK's international obligations, such as non-discrimination requirements set out in the World Trade Organisation Agreement on Government Procurement.

As I have previously stated, foreign policy is a matter for the UK government and not an issue for public bodies. It is not appropriate for public bodies to be producing their own policies on human rights in relation to other nations. This amendment would undermine the intentions of the bill, leaving public authorities distracted by questions and debate about their human rights statements and the foreign policy that lies behind that.⁸³

The amendment was defeated on division by 10 votes to six.⁸⁴

6.2.4 Removing measures exempting Israel, the Occupied Palestinian Territories and the Occupied Golan Heights

Labour Party amendments 5 and 6 would have removed clause 3(7), which would have prevented Israel, the OPT and the Occupied Golan Heights from being added to the list of exemptions by regulations. Wayne David said:

In summation, clause 3(7) is incompatible with international law, for two very solid, basic reasons. First, it gives special protection to goods and services from both Israel and the Occupied Palestinian Territories. Moreover, it gives greater protection to illegal settlements in the OPT than it does to any other state in the world except Israel.⁸⁵

In response, Ms Buchan said the clause was needed because BDS campaigns gave rise to antisemitism, and these “often target the settlements in the Occupied Palestinian Territories”.⁸⁶ She said that because of this “it is vital that should a future government choose to allow public authorities to engage in boycotts or divestments against Israel, it is

⁸³ House of Commons Public Bill Committee, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 12 September 2023, session 2022–23, 4th sitting, col 129.

⁸⁴ As above, col 130.

⁸⁵ As above, col 132.

⁸⁶ House of Commons Public Bill Committee, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 12 September 2023, session 2022–23, 5th sitting, col 139.



done through a change to primary legislation and is thus subject to full parliamentary scrutiny”.

Both amendments were defeated by nine votes to five.⁸⁷

6.2.5 Additional excepted considerations

The SNP and the Labour Party tabled a group of amendments which would have added new considerations to the list in schedule 1 of things public authorities could consider when taking a relevant decision.⁸⁸ The SNP amendments (amendments 18–21) would have added the following:

- breaches of international law
- the crimes of genocide
- ethnic cleansing
- apartheid

Speaking to these amendments, Chris Stephens (SNP MP for Glasgow South West) said they would “embed” into the bill the principle that “a person or body engaged in breaching international law should not gain any financial, economic or other reward from such breaches”.⁸⁹

The Labour Party’s amendment 14 would have also added genocide to the list of things that could be considered, but not the other conditions proposed by the SNP. Mr David argued such an amendment was necessary to protect the Uyghur population, among other groups.

Responding for the government, Ms Buchan said that “judgement on whether a body is guilty of a violation of international law is not a decision for public authorities”. She added that if a competent court determined otherwise the government would review its response.

⁸⁷ House of Commons Public Bill Committee, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 12 September 2023, session 2022–23, 5th sitting, col 140.

⁸⁸ As above, col 143.

⁸⁹ As above, col 142.



The SNP amendments were both defeated by nine votes to two, and the Labour amendment by nine votes to six.⁹⁰

6.2.6 Amending clause 4 to include reference to the Human Rights Act 1998

The SNP tabled an amendment to specify that nothing in clause 4 would require “any act or omission that conflicts with the rights and freedoms guaranteed under the Human Rights Act 1998”, which incorporates the European Convention on Human Rights (ECHR) into UK law. Speaking to the amendment, Anum Qaisar described clause 4 as “simply unworkable and not practical”.⁹¹ She argued that the legislation could have a wider impact on individuals:

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 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.⁹²

Alex Norris said that Labour also believed clause 4 should not stand part of the bill.⁹³ He argued that the bill would still operate without the clause and the bill’s overall goal would not be affected.⁹⁴

Responding, the minister contended that the amendment was unnecessary because the bill’s provisions were consistent with the Human Rights Act and the ECHR.⁹⁵ This included article 10.

Ms Buchan further argued that it was important for the bill to focus on public bodies in order not to restrict the rights of individuals. She said:

We talked earlier about the difference, and the simplest way to express that is that if an individual is speaking on their own behalf, they are speaking as a private individual.

⁹⁰ House of Commons Public Bill Committee, ‘[Economic Activity of Public Bodies \(Overseas Matters\) Bill](#)’, 12 September 2023, session 2022–23, 5th sitting, cols 145–6.

⁹¹ As above, col 147.

⁹² As above, col 148.

⁹³ As above, col 150.

⁹⁴ As above, col 152.

⁹⁵ As above, col 154.



However, if I say that I am speaking on behalf of my university or my local authority, then I speak on the behalf of a public body.⁹⁶

The minister argued that declarations of boycotts and divestments were divisive and undermined community cohesion. She cited an example of a public body making a declaration to boycott and divest as far as the law allowed:

We have seen examples of public bodies making declarations to boycott and divest as far as the law allows. Recent cases of declarations of anti-Israel boycotts that are not intended to be implemented, such as in Leicester, Swansea and Gwynedd councils, have been strongly opposed by Jewish groups. Such declarations are harmful even where the law does not allow boycotts and divestments. Therefore, such declarations cannot be made under the clause.⁹⁷

She said the government wanted to make it “very clear” that there was a real concern that recent declarations of anti-Israel boycotts, even when they were not implemented in practice, had driven and contributed to “rising antisemitism”.

Mr Norris expressed concern that the clause would not provide much benefit:

We agree with everything she said about that hateful speech, but the problem is that she just said, a minute before, that so long as a person essentially walks out of the council building, or says, “I am talking in an individual capacity”, despite being the leader of the council, they can say all those things and there is no protection under the clause. What meaningful advantage does the clause actually provide?⁹⁸

Ms Buchan gave further information about how clause 4 would impact individuals:

Under the clause, individuals, including councillors, are not prevented from making statements of their personal opinions freely in their own capacity. Councillors are not a public authority and, therefore, they will not be prevented from expressing their support for or voting in favour of a BDS motion. For example, representations made

⁹⁶ House of Commons Public Bill Committee, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 12 September 2023, session 2022–23, 5th sitting, col 155.

⁹⁷ As above, col 155.

⁹⁸ As above, col 156.



by councillors during a debate that indicate that they would be in favour of their local authority engaging in boycotts or a divestment campaign will not be captured by the clause. It will apply only to statements made on behalf of a local authority. Therefore, if a local authority published the minutes of a debate or a meeting in which a councillor said that they would be in favour of their local authority engaging in such campaigns, this would not be captured.⁹⁹

The amendment was defeated by nine votes to two.¹⁰⁰

The committee divided on clause 4 standing part of the bill; it was agreed to by nine votes to six.

For further detail on House of Commons committee stage proceedings please see the House of Commons Library briefing [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill 2022–23’](#) (9 January 2024).

6.3 Report

Report stage of the bill took place on 25 October 2023.¹⁰¹

6.3.1 Introducing new human rights statements

Amendment 13 was tabled by Angela Rayner, shadow secretary of state for levelling up, housing, communities and local government. This repeated amendment 2 tabled by the Labour Party at committee stage. It would have inserted provisions to exempt public bodies from the prohibition in section 1 where a decision had been made in accordance with a statement of policy relating to human rights. Such a statement could not single out individual nations.¹⁰²

⁹⁹ House of Commons Public Bill Committee, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill’](#), 12 September 2023, session 2022–23, 5th sitting, col 156.

¹⁰⁰ As above, col 157.

¹⁰¹ [HC Hansard, 25 October 2023, col 872.](#)

¹⁰² House of Commons, [‘Economic Activity of Public Bodies \(Overseas Matters\) Bill: Report stage decisions’](#), 25 October 2023, p 5.



Ms Rayner argued that the bill “has needlessly broad and sweeping draconian powers and far-reaching effects”.¹⁰³ She agreed that it was wrong for public authorities to single out Israel, but she also said that it was not wrong for public bodies to take ethical investment and procurement decisions:

[...] to target Israel alone; hold it to different standards from other countries; question its right to exist; and equate the actions of the Israeli government to Jewish people and in doing so, create hate and hostility against Jewish people here in the UK. That is completely wrong.¹⁰⁴

Ms Rayner said that amendment 13 would address this problem:

It would allow public bodies to produce a document setting out their policy on procurement and human rights. The policy would be cemented in a framework, based on principles that apply equally to all countries, rather than singling out individual nations. Such a statement of ethical policy would ensure consistency in how public bodies decide on these matters, and would be subject to guidance issued by elected ministers and laid before this House. Any inconsistent application would be prohibited. Under Labour’s proposals, if a public body were to act only against a particular state—for instance, the world’s only Jewish state—and failed to comply a consistent approach to human rights everywhere, such actions would be unlawful.¹⁰⁵

In his closing speech, Mr Gove said the bill would “not prevent human rights considerations from being taken into account by local authorities”.¹⁰⁶

The amendment was defeated on division by 276 votes to 197.¹⁰⁷

6.3.2 Removal of regulation making powers to amend the bill’s schedule

Amendment 14, also tabled by Ms Rayner, repeated the opposition’s amendment 4 debated at committee stage. It would have removed subclauses 3(2) and 3(3) from the bill. This

¹⁰³ [HC Hansard, 25 October 2023, col 883.](#)

¹⁰⁴ [HC Hansard, 25 October 2023, col 884.](#)

¹⁰⁵ [HC Hansard, 25 October 2023, col 884.](#)

¹⁰⁶ [HC Hansard, 25 October 2023, col 917.](#)

¹⁰⁷ [HC Hansard, 25 October 2023, cols 926–8.](#)



would have taken away ministers' power to amend the bill's schedule through regulations.

Speaking to her amendment, Ms Rayner argued that the provisions as drafted would grant the secretary of state "unprecedented power to change the scope and application of the bill through regulations".¹⁰⁸

The amendment was defeated on division by 273 votes to 200.¹⁰⁹

6.3.3 Removing the measures exempting Israel, the Occupied Palestinian Territories and the Occupied Golan Heights from clause 3(5)

Amendment 7 was tabled by Kit Malthouse (Conservative MP for North West Hampshire) and had cross-party support. Ms Rayner said that the Labour Party welcomed the amendment.¹¹⁰

Amendment 7 would have removed clause 3(7) from the bill. This is the provision which would provide that Israel, the OPT and the Occupied Golan Heights may not be specified in regulations under clause 3(5) setting out countries or territories to which clause 1 did not apply.

Mr Malthouse argued that the bill's unique distinction for these territories was "playing into the antisemitism we have seen rise in this country over the past few weeks". He quoted Jonathan Freedland writing in the Jewish Chronicle:

What is the favourite refrain of the antisemites? That Israel is the one country you're not 'allowed' to criticise. This bill takes a canard and, in the case of boycotts, turns it into the law of the land.

Mr Malthouse said that the impact of the bill would not be changed if amendment 7 were agreed, only that "Israel would merely be treated as all other countries in the world would be treated for the purposes of our legislation".¹¹¹

¹⁰⁸ [HC Hansard, 25 October 2023, col 885.](#)

¹⁰⁹ [HC Hansard, 25 October 2023, cols 922–4.](#)

¹¹⁰ [HC Hansard, 25 October 2023, col 885.](#)

¹¹¹ [HC Hansard, 25 October 2023, col 905.](#)



Mr Malthouse also said amendment 7 related to legal concerns that had been expressed about the impact of the bill under international law, specifically in relation to the UK's undertakings at the UN and "about the conflation of the three territories and the signal it sends not only to Palestinians living in the West Bank, but to those who occupy the Golan Heights".¹¹² He expressed concern that, were clause 3(7) to remain part of the bill, it would "end up in the courts, and there will be wrangling for years before it is given any kind of effect".

Mr Gove addressed the concerns that the specific mention of Israel in the bill could increase polarisation and antisemitism in his closing remarks of the debate. He argued that the House of Commons should listen to the Jewish community:

In its [the Jewish Leadership Council's] submission to the committee considering this bill, it said:

"The inclusion of clause 3(7) recognises this unique nature of the BDS campaign against Israel".

It stated its belief that if that provision were excised, as one amendment seeks to achieve,

"the very purpose of the bill would be undermined. Such a change would...convert a bill aiming to prevent anti-Israel BDS campaigns from abusing our public bodies into a tool to facilitate it."

It is debatable, of course, whether this is the right way forward—the Jewish Leadership Council is very clear that it is—but I simply ask: after everything we have seen in the past three weeks, if this House were now to remove a specific protection for the state of Israel at this time, what message would it send? I submit to every member of this House that we should listen to the Jewish community and the clarity with which they speak.¹¹³

Mr Gove said that the bill was drafted to make clear that there was a separation between Israel, the OPT and the Occupied Golan Heights. He said that "the fact that they are listed

¹¹² [HC Hansard, 25 October 2023, col 905.](#)

¹¹³ [HC Hansard, 25 October 2023, col 918.](#)



separately and individually affirms the absolutely principal purpose of treating them individually and separately”.¹¹⁴

He also argued that the clause was consistent with the UK’s existing foreign policy and did not breach international law:

It is also the case that, by making that distinction, the clause—and the bill overall—reserves to the UK government the role of maintaining, as we do, our absolute commitment to a two-state solution. As framed, then, the bill is absolutely not in breach of international law. It enables the UK government to speak with one voice on behalf of the entire United Kingdom in our determination to secure a two-state solution, however distant that prospect may be at the moment.¹¹⁵

Amendment 7 was defeated on division by 269 votes to 207.¹¹⁶

6.3.4 Amending clause 4 to include reference to the Human Rights Act 1998

SNP amendment 28 would have inserted the following subclause into clause 4:

(4) Nothing in this section requires any act or omission that conflicts with the rights and freedoms guaranteed under the Human Rights Act 1998.¹¹⁷

Chris Stephens spoke to the amendment. He argued the bill would infringe on human rights:

In their assumed aim of defending the rights of Israel, the government are attacking the rights of many sectors of our own society, ranging from the legislative and judicial rights of the devolved parliaments to the democratic rights of elected local authorities, and cutting a swathe through the individual human rights of all people across these islands.¹¹⁸

¹¹⁴ [HC Hansard, 25 October 2023, col 919.](#)

¹¹⁵ [HC Hansard, 25 October 2023, col 919.](#)

¹¹⁶ [HC Hansard, 25 October 2023, col 885.](#)

¹¹⁷ [HC Hansard, 25 October 2023, col 874.](#)

¹¹⁸ [HC Hansard, 25 October 2023, col 878.](#)



The amendment was defeated by 275 votes to 197.¹¹⁹

6.3.5 Further human rights considerations

Mr Gove also rebutted arguments that the bill would not allow public authorities to take human rights issues into account.¹²⁰ However, he noted contributions from George Eustice (Conservative MP for Camborne and Redruth) and Caroline Lucas (Green Party MP for Brighton Pavilion) expressing concern that the bill would prohibit consideration of animal welfare and environmental protection respectively in relevant decision-making. He said that the government wanted “to ensure that there is a robust way of ensuring that local authorities can uphold human rights on a non-country-specific basis”, and that “if specific human rights considerations need to be added to the bill, we will consider that in the Lords”.

6.4 Third reading

The bill had its third reading in the House of Commons on 10 January 2024.¹²¹

6.4.1 House of Commons third reading debate

Mr Gove opened the debate at third reading by acknowledging that the recent stages of the bill had been debated “in the dark shadow of the events of 7 October and the continuing conflict in Israel and Gaza”.¹²² He thanked all members of the House for the “thoughtful” way they had contributed to that debate. He said that all members were united in a desire to fight antisemitism and see peace in the Middle East:

Everyone in this House is committed to ensuring that we act against antisemitism, everyone in this House is committed to ensuring that we can see a peaceful solution to the conflict in the Middle East, and everyone in this House is committed to a two-state solution as the means by which we can bring peace to that troubled region.¹²³

¹¹⁹ [HC Hansard, 25 October 2023, cols 933–60.](#)

¹²⁰ [HC Hansard, 25 October 2023, col 917.](#)

¹²¹ [HC Hansard, 10 January 2024, col 386.](#)

¹²² As above.

¹²³ As above.



Mr Gove again addressed concerns about the inclusion of clause 3(7), which specifies Israel, the OPT and the Occupied Golan Heights as territories which cannot be exempted from the bill through regulations. He said the clause would “not contravene in any way our foreign policy or inhibit in any way the UK government’s taking action if we believe there is activity in the Occupied Palestinian Territories that requires to be called out”.¹²⁴

Several members argued that the UK’s position on illegal Israeli settlements conflicted with the bill’s requirement for public bodies not to disinvest from the OPTs. For example, Richard Fuller (Conservative MP for North East Bedfordshire) said:

UK foreign policy is clear that illegal Israeli settlements in the occupied territories are against international law. This bill would provide that, if a pension fund were given an investment policy for expanding, say, an infrastructure fund proposal in the occupied territories, it would have no moral basis for refusing to invest, although that investment would be expanding Israeli policies contrary to UK foreign policy.¹²⁵

Mr Gove responded:

It is specifically the case that public bodies, including the local government pension scheme and local authorities, should not be taking decisions that conflict with UK government foreign policy, and we are absolutely clear that it would conflict with UK government foreign policy if they were to engage in freelance activity of that kind. However, it is perfectly open to any representative, including any elected representative, to express their personal disapproval of the activities of the Israeli government or any organisation that operates within the settlements.¹²⁶

Mr Gove argued that the “clear intention” of the bill was to “deal specifically” the BDS campaign and that the government would criticise the Israeli government when it considered it appropriate.

The Labour Party said it had “come to the House with an alternative approach”, and that because the government had rejected these proposals the party had tabled a fatal

¹²⁴ [HC Hansard, 10 January 2024, col 386.](#)

¹²⁵ [HC Hansard, 10 January 2014, col 387.](#)

¹²⁶ As above.



amendment to the motion to approve the bill. Angela Rayner moved the amendment that would have declined to give the bill a third reading:

[...] this House, while opposing any discrimination or prejudice in the economic activities of public bodies, believing that all such bodies must act without bias or selectivity when making ethical decisions on procurement and investment and recognising the impact selective and biased campaigns have had on the Jewish community in particular, declines to give a third reading to the Economic Activity of Public Bodies (Overseas Matters) Bill because it does not effectively address the problem it rightly seeks to solve, is incompatible with international law and UN security council resolutions, risks undermining support for groups around the world facing persecution, includes needlessly broad and sweeping draconian powers while placing unprecedented restrictions on public bodies to express a view on current and proposed policy and represents a major departure from the UK government's long-established diplomatic position on the Occupied Palestinian Territories and Golan Heights, in a way that undermines the UK's future credibility and capacity to support diplomatic negotiations towards a just and lasting peace in Israel and Palestine based on a two-state solution, at a time when consistent support for that objective is more important than ever.¹²⁷

Ms Rayner emphasised that the Labour Party disagreed with the BDS movement. She said, however, that the party opposed the bill because it was “deeply flawed”. She said the opposition disagreed with the bill because it included:

[...] provisions that would ban public bodies from making procurement decisions based on a country's use of forced labour; a completely unprecedented clause that makes it illegal for public bodies, many of them directly elected, to express their view on policy; a new power for the secretary of state himself to call in and interrogate those he suspects fall foul of the bill; and, at its heart, a measure that is incompatible with both the government's own long-standing foreign policy and international law, flying in the face of the UK's obligations.¹²⁸

Ms Rayner said that the Labour had tabled the third reading reasoned amendment, which she acknowledged was “highly unusual”, as a “final plea to the secretary of state to reconsider”.

¹²⁷ [HC Hansard, 10 January 2024, col 389.](#)

¹²⁸ [HC Hansard, 10 January 2024, col 390.](#)



Chris Stephens, speaking on behalf of the SNP and Layla Moran, speaking on behalf of the Liberal Democrats, also said they would not support the bill. Mr Stephens said the bill “clearly conflated” Israel, the OPT and the Golan Heights and risked undermining devolution settlements.¹²⁹ He drew parallels with Glasgow’s recognition of Nelson Mandela and support of boycotts during South Africa’s apartheid, arguing that under the bill the city would not have been able to do this.¹³⁰

Layla Moran said the current conflict had led to increases in antisemitism and anti-Muslim hate, both of which were “unacceptable and must be called out”.¹³¹ She said the bill “does not respect directly elected bodies and those representatives”. She said there was also an issue about timing, referencing the current conflict and the humanitarian situation in Gaza. She highlighted that the International Court of Justice would be considering a case brought by South Africa alleging that Israel had violated its obligations under the genocide convention.

The Labour Party’s amendment was defeated by 284 votes to 228.¹³² The bill passed its third reading by 282 votes to 235.

¹²⁹ [HC Hansard, 10 January 2024, cols 392–3.](#)

¹³⁰ [HC Hansard, 10 January 2024, col 392.](#)

¹³¹ [HC Hansard, 10 January 2024, col 395.](#)

¹³² [HC Hansard, 10 January 2024, cols 404–11.](#)

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