

Title: Economic Activity of Public Bodies (Overseas Matters) Bill Lead department or agency: Department for Levelling Up, Housing and Communities Other departments or agencies:	Impact Assessment (IA)
	Date: 04/05/2023
	Stage: Final
	Source of intervention:
	Type of measure: Primary Legislation
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Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£m	£m	£m	Non qualifying regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

The Economic Activity of Public Bodies (Overseas Matters) Bill seeks to deliver the Government’s manifesto commitment to *"ban public bodies from imposing their own direct or indirect boycotts, disinvestment or sanctions campaigns against foreign countries"*. The announcement of the Bill and the intent to legislate this parliamentary session was included in the Queen’s Speech on 10 May 2022.

This legislation is required to stop public bodies pursuing their own foreign policy agenda, including with public money, and it will ensure that the UK Government (UKG) speaks with one voice internationally.

The Bill will also 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.

There have been calls for public bodies to carry out such campaigns, and recent examples of local authorities attempting to declare divestment policies. In order to stop public bodies becoming involved in BDS campaigns it is necessary to legislate in the UK Parliament.

What are the policy objectives of the action or intervention and the intended effects?

The intended outcome of the Bill is to ensure there is a consistent approach to UKG foreign policy and that the UKG speaks with one voice internationally.

The Bill will ban public bodies from imposing boycotts of suppliers on the basis that they are from certain countries and territories or are affiliated with certain countries or territories. It will also ban public bodies from considering country or territory of origin when making an investment.

The Bill will also apply to hybrid public bodies (e.g. universities and cultural institutions), except for when they are carrying out acts of a private nature.

The Bill will also provide a power for Ministers and enforcement authorities to direct, investigate and fine public bodies where there is a breach of the ban. We intend for the enforcement regime to act as a deterrent to public bodies to stop conducting boycotts, divestments or sanctions against foreign countries or territories.

Indicators of the Bill's success will include a reduced number of BDS campaigns and threatened campaigns across UK public bodies.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

'Do nothing' option: The Bill is required in order to meet the Government's 2019 manifesto commitment. If the Bill is not introduced then there is a risk that public bodies will be involved in BDS activity which undermines UK foreign policy.

We initially explored whether the policy could be fulfilled through primary or secondary legislation. We decided that the manifesto commitment would be better met primarily through primary legislation as this would allow for proper scrutiny of the Bill. Good parliamentary scrutiny of legislation can allow parliamentarians and civil society to highlight problems in bills before they become law.

We also considered whether relying on existing legislation such as Section 17 of the Local Government Act 1988, which prevents all UK local authorities or councils from implementing boycotts against all foreign countries and territories, would go far enough in fulfilling the manifesto commitment. However existing law only provides partial coverage in preventing boycotts across local authorities and does not include wider public bodies and divestment campaigns.

Is this measure likely to impact on international trade and investment?		Yes		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a	
Will the policy be reviewed? No. A review clause will not be included in the Bill. DLUHC will continue to monitor the impact of the Bill post Royal Assent.				

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible :		Date:	
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Summary: Analysis & Evidence

Policy Option 3 (Preferred Option)

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year XXX	PV Base Year XXX	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2022	2022	100	Low: Optional	High: Optional	Best Estimate: <£5m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate		<£5m		

Description and scale of key monetised costs by 'main affected groups'

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.

The details of the cost limit of the fines will be agreed in secondary legislation. This is necessary because it will allow considerations relevant to the imposition of monetary penalties under review and enable the Secretary of State to amend them if needed. We expect that over time the matters to which an enforcement authority must have regard, and the circumstances in which it is appropriate for the enforcement authorities to decide to impose a monetary penalty, may change. In addition, maximum monetary penalties may also need to be adjusted over time because of factors like inflation.

There may be additional costs to the bodies included in the Bill if they decide to take legal advice on the Bill, or if they choose to appeal a fine they have received from an enforcement agent or Minister.

Other key non-monetised costs by 'main affected groups'

We do not expect there to be any losses for any public and or hybrid body, from not being able to be involved in BDS activity. The body itself would face losses if they implemented a boycott or divestment campaign as they would have become focused on political campaigning rather than focusing on fulfilling its core purpose.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate		£0		

Description and scale of key monetised benefits by ‘main affected groups’	
N/A	
Other key non-monetised benefits by ‘main affected groups’	
Public bodies would have access to a wider range of suppliers, enabling more efficient choices in instances of purchasing and or investing. There will also be a community cohesion benefit.	
Key assumptions/sensitivities/risks	Discount rate (%)
	-
We assume the Bill will reduce the number of actual or attempted boycotts or divestments inconsistent with UK foreign policy.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: <£5m			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
£0	£0	£0	0

Evidence Base

Problem under consideration and rationale for intervention

1. Economic Activity of Public Bodies (Overseas Matters) Bill is required to ban public bodies from implementing their own direct or indirect boycotts or divestments against foreign countries and territories, where they are inconsistent with formal HMG legal sanctions, embargoes, and restrictions.
2. There is evidence of support for BDS campaigns in public bodies. This legislation will enable investigations to confirm, where there are good grounds to suspect otherwise, whether the exercise of public functions in relation to public supply or works contracts have been carried out lawfully.
3. The Bill will ban “public authorities” as currently defined in Section 6 of the Human Rights Act 1998 from conducting their own boycotts and divestment campaigns against foreign countries or territories. The ban will apply to, among others:
 - 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;
 - h. Cultural institutions

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

Overview

4. It is important to note that official boycotts and divestments are rare as a proportion of the large number of procurements and investments that public bodies carry out. There is some existing legislation that stops specific public bodies from undertaking boycotts. The Local Government Act 1988 (s.17) and Local Government (Miscellaneous Provisions (Northern Ireland) Order 1992 (art. 19) prevents UK local authorities or councils from implementing boycotts against all foreign countries and territories. However, this legislation only applies to some public bodies and the Foreign Affairs (EAPB) Bill will extend the ban to a wider group of public bodies and also to divestments.

Boycotts

5. 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. Even where public bodies currently decide not to boycott or divest, there is a risk of divisive internal and external campaigns for them to do so. Examples of BDS campaigns in public bodies primarily relate to disinvestment decisions by local authorities occurring alongside campaign pressure. For example UK East Sussex Pension Fund divested funds from Elbit Systems, Israel’s largest private arms manufacturer, in 2021.¹ This

¹ <https://www.brightonpsc.org/local-news-reports/east-sussex-pension-fund-divests-from-israeli-arms-manufacturer>

followed lobbying by scheme members and Palestinian human rights campaigners advocating for disinvestment from companies with business dealings in the Occupied Territories.²

6. However, rationale for disinvestment decisions are often difficult to confirm. Several pension funds have disinvested from the Israeli Bank Hapoalim, a target for Palestinian disinvestment campaigners.³ This includes: Lothian Pension Fund in 2021, Tayside Pension Fund in 2019, and Falkirk Council Pension Fund in 2018.⁴ Although campaign groups have suggested that these decisions relate to the Bank's activities in the "Occupied Palestinian Territories", in all cited instances this has either not been corroborated or denied by the Funds.⁵
7. This legislation will provide a power for Ministers and enforcement authorities to conduct investigations into suspected breaches of the ban to confirm whether the exercise of public functions in relation to public supply or works contracts have been carried out lawfully.
8. There are also examples of public bodies publishing statements expressing support for BDS or an intention to engage in BDS, even when it is not implemented. For instance, we have seen motions passed by Lancaster City Council in support of such campaigns in June 2021 (later amended to remove any suggestion of making or requesting any investment changes) and Leicester City Council to boycott goods from Israeli settlements in the West Bank in 2014.⁶
9. Jewish groups have repeatedly challenged public bodies, including in the courts, that have called for or attempted boycotts, divestment and sanctions campaigns.⁷ We expect the Bill to act as a deterrent to public bodies carrying out campaigns where attempts are made to declare policies for boycotts, divestment or sanctions at variance with Government policy.

Description of options considered

Option Summary

10. **Option 1 (Do nothing)** is not recommended because it will not meet the Government's 2019 manifesto commitment. Option 1 would continue to rely on Section 17 of the Local Government Act 1988 which prevents all UK local authorities or councils from implementing boycotts against all foreign countries and territories. It would also rely on the Government Procurement Agreement (GPA) which regulates the procurement of goods and stops discrimination against other GPA member countries. Option 1 runs the risk that the large number of public bodies not already captured will continue to be involved in BDS activity which undermines UK foreign policy.
11. **Option 2 (Do minimum)** partially meets the policy objective by covering institutions that are more traditionally viewed as public bodies, which would include: all local authorities, all central government agencies (except for ministerial departments), and all non-ministerial departments. Option 2 would also extend Section 100 of the Public Service Pensions and Judicial Offices Act 2022, to stop all local authorities and local government pensions schemes from divesting from all countries and territories. This option would not fully meet the policy objective as there would still be other public bodies that would be able to be involved in BDS campaigns including universities

² <https://bdsmovement.net/news/uk-east-sussex-pension-fund-divests-funds-from-elbit-systems>

³ <https://theferret.scot/lothian-pension-fund-drops-israeli-bank/>

⁴ <https://theferret.scot/lothian-pension-fund-drops-israeli-bank/>; <https://unison-scotland.org/stuc-demo-against-trumps-visit-to-scotland-2/>

⁵ <https://bdsmovement.net/news/tayside-pension-fund-scotland-drops-israels-bank-hapoalim>; <https://unison-scotland.org/stuc-demo-against-trumps-visit-to-scotland-2/>; <https://www.timetodivest.net/2018/07/30/falkirk-pension-fund-divests-from-bank-hapoalim/>; <https://www.falkirkpensionfund.org/news/investment-in-israeli-bank>; <https://theferret.scot/lothian-pension-fund-drops-israeli-bank/>

⁶ <https://committeeadmin.lancaster.gov.uk/mgAi.aspx?ID=45891>; <https://committeeadmin.lancaster.gov.uk/documents/s80484/FINAL%20Briefing%20note%20for%20the%20ethical%20Sustainable%20investment%20policy.pdf>; <https://cabinet.leicester.gov.uk/mgAi.aspx?ID=60004>

⁷ <https://www.bbc.co.uk/news/uk-england-leicestershire-44711708>

and cultural institutions. This option would not ensure that there is a consistent approach to UKG foreign policy.

12. **Option 3 (Preferred Option)** fully meets the policy objective by applying the boycotts and divestments ban to a wider range of public bodies than those covered in Option 2. Option 3 would include all public bodies in accordance with s6 Human Rights Act 1998. Ministers will also be able to later add in regulations, to identify any body or activity of a body that should be excluded in the ban, by affirmative resolution. This will ensure that foreign policy is reserved for the UK Government alone. Option 3 will also include a power to exempt specific countries or regions from the ban, for example, allowing public bodies to conduct boycotts and sanctions against that country or region. This would allow all public bodies to remain consistent with UK foreign policy and would meet the intended aim of the policy. Option 3 will repeal Section 17 of the Local Government Act 1988 and Section 100 of the 'Public Service Pensions and Judicial Offices' Act 2022 described above in Option 1.
13. Therefore, Option 3 is the recommended option as it meets the policy objectives, fulfils the Government's manifesto commitment, and ensures the UK Government speaks with one voice internationally. Option 3 also provides the biggest opportunity to stop BDS activity amongst public bodies by providing the power to investigate, issue compliance notices and issue monetary fines.

Primary / Secondary Legislation

14. We initially explored whether the manifesto commitment could be implemented in either primary or secondary legislation. After consideration it was decided that the majority of measures would be brought forward in primary legislation. Primary legislation would allow for proper scrutiny of the Bill and allow UKG to make clear that these measures will stop public bodies pursuing their own foreign policy agenda, including with public money, and ensure that the UKG speaks with one voice internationally. Good parliamentary scrutiny of legislation can allow parliamentarians and civil society to highlight problems in bills before they become law.
15. The Bill will contain 8 delegated powers plus the standard power to commence by regulations:
 - a. Secretary of State or Minister for the Cabinet Office to add exceptions to the ban 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, (iii) amend or remove a description of decision or consideration;
 - b. Secretary of State or Minister for the Cabinet Office to disapply the Bill in respect of a particular country or territory;
 - c. Secretary of State or Minister for the Cabinet Office to change the enforcement authority (including by providing there to be or not to be one) in relation to a particular description of decision or statement. Also, an enforcement authority will have the power to investigate suspected breaches, direct compliance and impose monetary fines;
 - d. Secretary of State to make provision about matters to which the enforcement authority must, or must not have regard in exercising its powers under on enforcing monetary penalties;
 - e. Secretary of State to set the maximum monetary penalty;
 - f. Secretary of State to make regulations in relation to the period before the coming into force of the Procurement Act 2023 for the purposes of the Bill's relationship with procurement legislation;
 - g. 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;
 - h. Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of this Act.

Non-legislative guidance

16. We have been communicating with the Charity Commission, the independent regulator of charities in England and Wales. The Charity Commission has confirmed their position on BDS activity within Student Unions. They have said that Student Unions can discuss BDS under their educational purposes, but that taking action would constitute political activity that the Commission would then consider in line with its normal processes, taking any regulatory action that is appropriate in the circumstances.

Interaction with existing legislation

17. The Bill will replace Section 17 of the Local Government Act 1988 and Local Government (Miscellaneous Provisions (Northern Ireland) Order 1992 (art. 19). The Bill will also replace Section 100 of the Public Service Pensions and Judicial Offices Act 2022. Both pieces of legislation are detailed in Option 1 above.
18. We will also look to amend specific sections of the Pensions Act 2004 relating to using The Pensions Regulator as an enforcement authority for the Bill.
19. The Procurement Bill was introduced to Parliament in May 2022 and we will monitor interactions between the Bills as they pass through Parliament.

Policy objective

20. The intended outcome of the Bill is to ensure there is a consistent approach to UKG foreign policy.
21. One of the main elements of the Bill is to stop public bodies from taking a different approach to UKG sanctions and impacting foreign relations. This will be in the form of preventing public bodies carrying out independent boycotts, divestments and sanctions against:
 - a. Foreign countries and territories, or those linked to them.
 - b. The sale of goods and services from foreign countries and territories.
 - c. UK firms which trade with such countries or territories, where such an approach is not in line with UKG sanctions
22. The Bill will also provide a power for Ministers and enforcement authorities to issue a compliance notice, investigate and fine public bodies where there is a breach of the ban. We intend for the enforcement regime to act as a deterrent to public bodies to stop boycotts, divestments or sanctions against foreign countries or territories.
23. The Bill will prevent divisive behaviour that undermines community cohesion across the country by stopping public bodies from imposing their own BDS campaigns. There are concerns that such boycotts may legitimise and drive antisemitism as these types of campaigns overwhelmingly target Israel. Evidence has shown that boycotts and/or divestment policies can be seen alongside hate crime.
24. We are unable to estimate the impact of this policy currently, as evidence can only be gathered through testing the instrument. We have looked at examples of hate crimes occurring alongside unofficial boycott and disinvestment campaigns in private bodies, and this may provide a proxy for the kinds of impact we might see from public sector organisations.⁸ However, at this stage we cannot say that these impacts will manifest similarly within the public sector.

⁸ <https://www.theguardian.com/business/2014/aug/17/sainsburys-removes-kosher-food-anti-israel-protesters>; <https://www.bbc.co.uk/news/uk-england-manchester-28645331>; <https://tellmamauk.org/boycott-divestment-sanctions-anti-muslim-backlash-kings-college-guys-campus/>; <https://www.theguardian.com/education/2020/dec/29/soas-repay-students-15000-fees-over-toxic-antisemitic-environment>

Summary and preferred option with description of implementation plan

Preferred option (Option 3 - in the consideration of options section)

25. The BDS measures will be in primary legislation and public bodies that do not follow the law will be open to judicial review. The Bill will also include an enforcement regime (further details below).
26. The Economic Activity of Public Bodies (Overseas Matters) Bill will:
- a. Ban “Public authorities” as currently defined in Section 6 of the Human Rights Act 1998 from conducting their own boycotts and divestment campaigns against foreign countries or territories, where inconsistent with official UK foreign policy as set by HMG. These include:
 - all central government agencies and non-departmental public bodies carrying out public functions as defined in section 6;
 - all non-ministerial government departments to the extent they are not covered by the a) above;
 - all UK Ministers and their departments;
 - all 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.
27. Provide the following powers:
- a. Secretary of State or Minister for the Cabinet Office to add exceptions to the ban 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, (iii) amend or remove a description of decision or consideration;
 - b. Secretary of State or Minister for the Cabinet Office to disapply the Bill in respect of a particular country or territory;
 - c. Secretary of State or Minister for the Cabinet Office to change the enforcement authority (including by providing there to be or not to be one) in relation to a particular description of decision or statement. Also, an enforcement authority will have the power to investigate suspected breaches, direct compliance and impose monetary fines;
 - d. Secretary of State to make provision about matters to which the enforcement authority must, or must not have regard in exercising its powers under on enforcing monetary penalties;
 - e. Secretary of State to set the maximum monetary penalty;
 - f. Secretary of State to make regulations in relation to the period before the coming into force of the Procurement Act 2023 for the purposes of the Bill’s relationship with procurement legislation;
 - g. 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;
 - h. Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of this Act.

How will the Ban be enforced?

28. The Bill will include an enforcement regime which provides powers for Ministers and regulators to investigate if they have strong grounds to suspect non-compliance; powers to issue a compliance notice; and powers to impose financial penalties on public authorities. However, the primary mechanism for the function of the Bill will be deterrence.
29. In the first instance the power to issue a compliance notice, investigate, and fine will where possible remain with an appropriate existing regulator that covers a group of public authorities. Where there is no appropriate regulator the power will fall to Ministers. It is important to note it is intended primarily as a deterrent to ensure public authorities included in the ban follow the law and we therefore expect the number of cases it deals with to be low.
30. There will not be a specific monitoring process. We expect potential cases of BDS activity to be identified through whistleblowing and through organisations contacting Ministers and enforcement authorities directly to flag potential breaches.

Timings

31. The Bill is due to be introduced to Parliament in March. We expect the Bill to be carried over to the Fourth Session and to achieve Royal Assent before the end of the Fourth Session.

Responsibility

32. DLUHC oversees the Bill and will retain overall management of the legislation.
33. As detailed above, enforcement authorities and Ministers will be responsible for issuing compliance notices, investigating and imposing financial penalties on public bodies which break BDS law.
34. We expect any enforcement cost to be small, and significantly less than £5m. DLUHC has agreed to cover any associated costs.

Scope for change

35. There will be the option to add additional measures into the Bill through secondary legislation. This includes powers for:
 - a. Secretary of State or Minister for the Cabinet Office to add exceptions to the ban 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, (iii) amend or remove a description of decision or consideration;
 - b. Secretary of State or Minister for the Cabinet Office to disapply the Bill in respect of a particular country or territory;
 - c. Secretary of State or Minister for the Cabinet Office to change the enforcement authority (including by providing there to be or not to be one) in relation to a particular description of decision or statement. Also, an enforcement authority will have the power to investigate suspected breaches, direct compliance and impose monetary fines;
 - d. Secretary of State to make provision about matters to which the enforcement authority must, or must not have regard in exercising its powers under on enforcing monetary penalties;
 - e. Secretary of State to set the maximum monetary penalty;
 - f. Secretary of State to make regulations in relation to the period before the coming into force of the Procurement Act 2023 for the purposes of the Bill's relationship with procurement legislation;
 - g. 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;

- h. Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of this Act.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

36. Where there are appropriate enforcement authorities already covering a group of public authorities, the enforcement regime will remain with them. However, where there is not, the power will fall to Ministers to issue a compliance notice, investigate and enforce penalties. We will not look to set up a new function for regulating this issue as this would be significantly more expensive. Instead we will use existing regulators, for example, The Pensions Regulator and the Office for Students (OfS). The publicity usually surrounding such breaches means there will not be a specific ongoing monitoring process which will mean there will be minimal costs. There could be further costs in the event of any legal challenges. Most of the costs in this section have not been fully monetised due to the limited evidence available around the frequency of enforcement required.

Welfare

37. For any public body that would wish to undertake a boycott, there would be a small welfare loss from not being able to make a political statement by boycotting or divesting. This benefit is non-monetised and likely to only be a small impact.

Efficiency

38. Authorities may make very small efficiency gains as a result of purchasing more efficient goods or investments they would not have if they had enforced boycotts and divestment. This benefit is non-monetised and likely to only be a small impact.

Overview

39. Any welfare or efficiency gains will be difficult to measure due to the conceptual nature of the impacts. Theoretically any losses from welfare would be larger than the efficiency gains as otherwise the public body would decide not to boycott/divest without the ban.

Costs

40. Any cost of this policy is expected to be less than £5m due to the low numbers of cases expected and due to using existing regulators where possible to enforce the ban.

Direct costs and benefits to business calculations

41. "Hybrid bodies" (i.e. those such as universities which have partly private and partly public functions in human rights law) would be banned from boycotting in respect of their "functions of a public nature" within the meaning of Section 6 of the Human Rights Act 1998. Very few businesses would be conducting public activity that brings them within the scope of the ban and any impacts on them would be small. These would include the welfare losses and efficiency gains mentioned previously.
42. If there were to be fines enforced, then these hybrid bodies may have to pay a financial penalty for not following the regulation if they were to boycott or divest. The details of the cost limit of the fines will be set out in secondary legislation after consultation with enforcement authorities on the appropriate levels.
43. There may be additional costs to the public bodies included in the Bill if they decide to take legal advice on the Bill, or if they choose to appeal a fine they have received from an enforcement authority or Minister.
44. These costs have not been monetised due to a lack of previous examples of similar policies, as well as uncertainty around the extent of enforcement required when this Bill is implemented.

Risks and assumptions

45. We are assuming there will be very few divestments or boycotts after the implementation of this Bill. The number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is currently relatively low, albeit with a high potential impact for each case as well as pressure for public bodies to conduct BDS campaigns. This assumption is also based on the fact there is also already existing legislation that stops some public bodies from undertaking boycotts. The Local Government Act 1988 (s.17) and Local Government (Miscellaneous Provisions (Northern Ireland) Order 1992 (art. 19) prevent all UK local authorities or councils from implementing boycotts against all foreign countries and territories. If there were to be a large spike in cases, the cost of enforcement would increase. However, as mentioned previously, we expect that the fines will offset the costs of the enforcement regime.
46. There are no clear comparisons between this Bill and any other legislation. Therefore there is limited evidence to use.

Impact on small and micro businesses

47. There would be minimal impact on small or micro businesses other than those mentioned above.

Wider impacts (consider the impacts of your proposals)

48. **Social value:** the Bill will prevent divisive behaviour that undermines community cohesion across the country by stopping public bodies from imposing their own BDS campaigns.
49. **Competition:** the Bill will allow for effective competition in public procurement which can reduce costs, raise quality and deliver value for money for taxpayers and service users. By stopping UK public bodies from boycotting or divesting from specific countries it will increase the opportunity for competition across public procurement contracts. It is worth noting that the Bill will only have a small impact on competition.

A summary of the potential trade implications of measure

50. There are potentially minor trade implications in cases where countries that would have been boycotted would now be able to sell goods to those boycotting authorities.
51. A contracting authority may consider whether the supplier (including its subcontractors) is a non-UK or non-treaty state supplier and may choose to disregard the tender due to the non-UK or treaty status of the supplier (Procurement Bill, clauses 18(3)(b) and 19(5)(c)). This Bill does not restrict that freedom as it only stops decisions motivated by political or moral disapproval of a foreign state. This ensures that whilst the Government's focus remains on value for money, contracting authorities are not always obligated to consider in their procurements non-UK and non-treaty suppliers, but of course must continue to act in accordance with the procurement principles (Procurement Bill, clause 11).

Monitoring and Evaluation

52. There will be no evaluation clause in the Bill, but DLUHC will continue to monitor the number of cases and use of the enforcement regime.

Annexes

Annex A – Equalities Impact Assessment

Consideration of equality impact

53. This document records the analysis undertaken by the department to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the department to pay due regard to the need to:
- a. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - b. advance equality of opportunity between people who share a protected characteristic and those who do not.
 - c. foster good relations between people who share a protected characteristic and those who do not.
54. The protected characteristics which should be considered are:
- a. age
 - b. disability
 - c. sex
 - d. gender reassignment
 - e. marriage or civil partnership
 - f. pregnancy and maternity
 - g. race
 - h. religion or belief
 - i. sexual orientation.

Overview of evidence

55. The data and evidence that supports this assessment have been obtained as follows:
- a. seeking the views of subject matter experts within the Foreign Commonwealth and Development Office, and the Department for Levelling Up, Housing and Communities;
 - b. reviewing data published by hate crime monitoring groups: Community Security Trust and Tell MAMA;
 - c. reviewing survey findings published by YouGov;
 - d. reviewing examples of BDS campaigns in public bodies, such as council motions and public statements; and
 - e. reviewing examples of unofficial BDS campaigns, including in private organisations.
56. There are several caveats to consider when reviewing this assessment:
- a. The EIA is a live document. Its assessment is ongoing, including in responding to changing dynamic situations and will be subject to further review and scrutiny.
 - b. There are gaps in our data and limitations to our understanding. We have reviewed a wide range of sources and have carefully considered the implications of the proposed legislation in this context.
 - Although there is significant evidence of BDS campaigns in public bodies and pressure on public bodies to join campaigns, the number of such campaigns is not

sufficient to make definitive assessments of the impacts of these types of policies on the relevant protected characteristics.

- Campaigns are disproportionately focused on Israeli actions in the “Occupied Palestinian Territories” (OPTs). Based on this, at present we are only able to identify communities associated with the Israel-Palestine conflict as potentially impacted by the proposed legislative changes:
 1. Some Muslim individuals and communities
 2. Some Jewish individuals and communities

However, given the above, we cannot definitively determine the level of impact from the available evidence.

- c. Where we do not have data, we have made assumptions. These have in many areas been guided by:
 - looking at examples of boycott and disinvestment campaigns; and,
 - reviewing this alongside available data on the prevalence of antisemitism and anti-Muslim hatred in the UK. Whilst we cannot say that these impacts will be replicated in public bodies, this enables us to identify potential risk areas.
- d. Operationalisation of the ban will provide opportunities to identify risks and implement safeguards where there is a risk of adverse impact. We will continue to assess as we put the ban into practice, to support analysis of potential impacts and mitigations against overall justifications.

Direct and indirect discrimination

57. This section sets out our analysis of whether the Bill could directly or indirectly constitute conduct prohibited by the Equality Act. We have considered the potential impact on all the protected characteristics which are:

- age
- disability
- sex
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sexual orientation
- marriage and civil partnership (but only in respect of the first aim of the Equality Duty).

58. Direct discrimination occurs when someone is treated less favourably because of their protected characteristic. This Bill regulates against public institutions pursuing their own foreign policy agenda, including with public money, and it is our assessment that the impact of the proposed legislation on the following protected characteristics will be neutral:

- a. age
- b. disability
- c. sex
- d. gender reassignment
- e. marriage or civil partnership
- f. pregnancy and maternity
- g. sexual orientation
- h. race
- i. religion or belief

59. Indirect discrimination occurs where a criterion, policy or practice applies across protected groups, but a particular protected group is put at a disadvantage and that disadvantage is not a proportionate means of achieving a legitimate aim. It is our assessment that the impact of the proposed legislation on the following protected characteristics will be neutral:

- a. age

- b. disability
- c. sex
- d. gender reassignment
- e. marriage or civil partnership
- f. pregnancy and maternity
- g. sexual orientation

60. Without a larger volume of evidence, we are unable to draw definitive conclusions regarding the impacts of the proposed legislation on indirect discrimination for 'race' and 'religion or belief'. However one of the intentions of the legislation is to stop the risk of BDS activity by public bodies dividing communities, including leading to anti-semitism. We will monitor this as we operationalise the legislation to minimise any potential risks.

61. At present, there is no data indicating the proportionate level of support that boycott and disinvestment policies receive based on 'race' and 'religion or belief.' This makes it hard to assess how far the proposed measures might in practice have an impact on a particular group

62. Should any negative impacts arise, we expect these to be strongly mitigated by the fact that the Government is not restricting any person or private organisation's right to free speech. This legislation is about creating consistent foreign policy.

Advancement of equal opportunity

63. This section sets out our analysis of whether the Bill could advance equality of opportunity for people sharing a relevant protected characteristic and people who do not. This includes removing or minimising disadvantages suffered by people due to their protected characteristic, taking steps to meet the needs of people who share a particular protected characteristic, and encouraging participation in public life. It is our assessment that the impact of the proposed legislation on the following protected characteristics will be neutral:

- a. age
- b. disability
- c. sex
- d. gender reassignment
- e. pregnancy and maternity
- f. sexual orientation

64. Without a larger volume of evidence, we are unable to draw conclusions regarding the impacts of the proposed legislation on advancing equality of opportunity for 'race' and 'religion or belief'. However, we have identified potential opportunities. A key objective of the legislation is to prevent public bodies from adopting their own foreign policy agendas, cohorts that might benefit are those that:

- a. **Face discrimination occurring alongside boycott and disinvestment campaigns.** There is some evidence to indicate that antisemitism and anti-Muslim hatred increases in response to increased coverage of the Israeli-Palestinian conflict during periods of escalation:
 - The Community Security Trust (CST) reports the highest ever monthly total of antisemitic incidents occurred at the peak of the Israeli-Palestinian conflict in May 2021. This follows the pattern of the second and third highest ever monthly totals combined, which were respectively reported during other sustained episodes of violence in the region. The most common single type of rhetoric evident in reported antisemitism across 2021 was language referencing Israel, Palestine, and the conflict (e.g. shouts of "free Palestine" at visibly Jewish people, "Zionist" and "Zionism" being used as a euphemism for Jewish people and Jewishness, and calls for the destruction of Israel).⁹

⁹ <https://cst.org.uk/data/file/f/f/Incidents%20Report%202021.1644318940.pdf>

- Although the relationship between escalations in the Israeli-Palestinian conflict and anti-Muslim hatred specifically is less documented, during the Israeli-Palestinian conflict and clashes at the al-Aqsa mosque in East Jerusalem in May 2021, Tell MAMA recorded a 430 per cent rise in reports of anti-Muslim hatred.¹⁰ This is likely explained by Tell MAMA's wider annual report that anti-Muslim hatred in the UK can be seen to spike in response to 'trigger events': "when attention is placed on Muslims, anti-Muslim incidents tend to rise".¹¹

Considering these findings, there is a risk that boycott and divestment campaigns can have consequences of encouraging antisemitism or anti-Muslim hatred by bringing attention to the Jewish and Muslim communities. To the extent that this policy prevents public bodies from participating in such campaigns, it will also minimise or prevent them from providing platforms for the types of discourse that have been seen to occur alongside discrimination.

- b. **Remove barriers to participation in public life.** Whilst we cannot say with certainty when or if a boycott and divestment campaign incites hate crimes or antisemitism and anti-Muslim hatred, there are examples of them occurring alongside each other. Examples include individuals with the protected characteristic 'religion or belief' feeling ostracised from their communities:

- Following Israel's military campaign in Gaza (2014), the increase in public protests reportedly led to supermarket chains removing products from their shelves amid fear of protests.¹² The Chief Constable of Greater Manchester Police at the time stated such protests risk "community cohesion" in the city, because "businesses selling Israeli goods have been targeted by protestors, with some alleging death threats".¹³
- In 2014, Tell MAMA reported that Muslim signs at King's College London were defaced, seemingly after a BDS motion was accepted.¹⁴
- In 2017, The Guardian reported that SOAS repaid a student's £15,000 fees after they abandoned their studies due to being the target of antisemitic abuse. The student claimed: "Jews and people who were pro-Israel were labelled as "Zionists", antisemitic graffiti and symbols were found on lockers, desks and toilet walls, and many people publicly stated their support for the BDS movement, which promotes boycotts, divestments and sanctions against Israel".¹⁵

As above, this is likely explained by BDS campaigns bringing attention to Jewish and Muslim communities. Whilst we cannot say that these impacts will manifest similarly in public bodies, we can reasonably assume that this is a risk. To the extent that this policy prevents public bodies from participating in campaigns that may discourage participation in public life amongst these cohorts, it will also advance their equality of opportunity.

- c. **Have differing needs from those who do not share the identified protected characteristics.** As previously noted, there is some evidence to indicate that antisemitism and anti-Muslim hatred can be seen to occur alongside increased coverage of the Israeli-

¹⁰ <https://www.newstatesman.com/politics/uk-politics/2021/05/how-uk-became-stage-hate-during-israel-palestine-conflict>; <https://www.independent.co.uk/news/uk/home-news/israel-palestine-conflict-uk-antisemitism-incident-b1850333.html>

¹¹ <https://tellmamauk.org/category/reports/>

¹² <https://www.theguardian.com/business/2014/aug/17/sainsburys-removes-kosher-food-anti-israel-protesters>

¹³ <https://www.bbc.co.uk/news/uk-england-manchester-28645331>

¹⁴ <https://tellmamauk.org/boycott-divestment-sanctions-anti-muslim-backlash-kings-college-guys-campus/>

¹⁵ <https://www.theguardian.com/education/2020/dec/29/soas-repay-students-15000-fees-over-toxic-antisemitic-environment>

Palestinian conflict. Boycott and disinvestment campaigns can bring increased attention to this issue. To the extent that the proposed legislation may prevent public bodies engaging in these types of campaigns, it may also minimise behaviour that has greater risks for Muslim and Jewish communities compared to those who do not share the protected characteristics 'race' and 'religion or belief'.

65. We will assess the extent to which these benefits are realised as the ban is operationalised.

Fostering good relationships

66. This section sets out our analysis of whether the Bill will foster good relations between people sharing a relevant protected characteristic and persons who do not. This includes tackling prejudice and promoting understanding. It is our assessment that the impact of the proposed legislation on the following protected characteristics will be neutral:

- age
- disability
- sex
- gender reassignment
- pregnancy and maternity
- sexual orientation

67. We have identified potential positive impacts for 'race' and 'religion or belief' with regards to increasing understanding between different groups. Insofar as the ban encourages public bodies to adopt alternative measures to addressing complex political issues, such as through educating the public, it may also help to foster good relationships between different groups with shared protected characteristics. We will explore what measures could be implemented in support of this.

Conclusion

68. The assessment did not identify any direct adverse impacts of the Economic Activity of Public Bodies (Overseas Matters) Bill on people with protected characteristics. Where this legislation may impact on the following, this will likely be limited to people sharing the protected characteristics 'race' and 'religion or belief':

- a. Advancement of equal opportunity; and
- b. Fostering good relationships.

69. However, without a large body of evidence, we are unable to draw definitive conclusions at this stage. Operationalisation will provide opportunities to identify risks and implement safeguards if there is a risk of adverse impact. We will continue to assess operationalisation plans as they are developed to support analysis of potential impacts and mitigations against overall justifications.