PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

First Sitting

Tuesday 5 September 2023

(Morning)

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not later than

Saturday 9 September 2023

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Witnesses

Jo Donnelly, Head of Pensions, Local Government Association

Jon Richards, Vice Chair, Local Government Pension Scheme Advisory Board

Russell Langer, Head of Policy and Research, Jewish Leadership Council

Daniel Sugarman, Director of Public Affairs, Board of Deputies of British Jews

Councillor Bob Deering, Executive Member, Resources & Performance, Hertfordshire County Council

Councillor James Jamieson, Former Chairman of the LGA

Hannah Weisfeld, Director, Yachad

James Gurd, Executive Director, Conservative Friends of Israel

Public Bill Committee

Tuesday 5 September 2023

(Morning)

[Sir George Howarth *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

9.25 am

The Chair: Before we begin, I have a couple of preliminary announcements. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

We will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication, and a motion to allow us to deliberate in private about our questions before the oral evidence session. In view of the time available, I hope we can take those matters formally, without debate.

I call the Minister to move the programme motion standing in her name, which was discussed yesterday by the Programming Sub-Committee.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 5 September) meet—

(a) at 2.00 pm on Tuesday 5 September;

(b) at 11.30 am on Thursday 7 September;

(c) at 9.25 am and 2 pm on Tuesday 12 September;

(d) at 11:30am and 2 pm on Thursday 14 September;

(2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

Date	Time	Witness
Tuesday 5 September	Until no later than 9.55 am	Local Government Association; Local Government Pension Scheme Advisory Board
Tuesday 5 September	Until no later than 10.25 am	Jewish Leadership Council; Board of Deputies of British Jews
Tuesday 5 September	Until no later than 10.55 am	Councillor Bob Deering; Councillor James Jamieson
Tuesday 5 September	Until no later than 11.10 am	Yachad
Tuesday 5 September	Until no later than 11.25 am	Conservative Friends of Israel
Tuesday 5 September	Until no later than 2.30 pm	Henry Jackson Society; Free Speech Union
Tuesday 5 September	Until no later than 2.45 pm	World Uyghur Congress
Tuesday 5 September	Until no later than 3.00 pm	Stephen Cragg KC
Tuesday 5 September	Until no later than 3.45 pm	Francis Hoar; Professor Andrew Tettenborn; Professor Adam Tomkins
Tuesday 5 September	Until no later than 4.00 pm	Balfour Project
Tuesday 5 September	Until no later than 4.30 pm	UNISON; Scottish Trades Union Congress
Thursday 7 September	Until no later than 12.00 pm	UK Lawyers for Israel; Steven Barrett
Thursday 7 September	Until no later than 12.30 pm	Human Rights Watch; Friends of the Earth; Amnesty International
Thursday 7 September	Until no later than 12.45 pm	Richard Hermer KC
Thursday 7 September	Until no later than 1.00 pm	Melanie Phillips

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3; the Schedule; Clauses 4 to 17; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 14 September.—*(Felicity Buchan.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Felicity Buchan.)*

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Felicity Buchan.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room and circulated to Members by email. We will now go into private session to discuss lines of questioning.

9.27 am

The Committee deliberated in private.

Examination of Witnesses

Jo Donnelly and Jon Richards gave evidence.

9.28 am

The Chair: We are now sitting in public again and the proceedings are being broadcast. Before we hear from the witnesses, do any Members wish to make a declaration of interest in connection with the Bill?

Jacob Young (Redcar) (Con): I have been to Israel on a trip paid for by the Conservative Friends of Israel, and I have a personal friendship with James Gurd, who will give evidence.

Chris Stephens (Glasgow South West) (SNP): I declare my membership of Unison. I understand that an individual from Unison will give evidence at this session.

Ms Anum Qaisar (Airdrie and Shotts) (SNP): As per my entry in the Register of Members' Financial Interests, I recently visited the occupied territories. The visit was paid for by Amnesty, who will join us later this week.

Paul Holmes (Eastleigh) (Con): I have been on a Conservative Friends of Israel trip, and James Gurd is a personal friend of mine.

Nicola Richards (West Bromwich East) (Con): I have also been on a Conservative Friends of Israel trip, James Gurd is a friend of mine, and I used to work at the Jewish Leadership Council.

Steve McCabe (Birmingham, Selly Oak) (Lab): I am the parliamentary chair of Labour Friends of Israel. It is a non-pecuniary position, but I have also been to Israel with Labour Friends of Israel.

Greg Smith (Buckingham) (Con): As per my entry in the Register of Members' Financial Interests, I have been on a trip to Israel funded by Conservative Friends of Israel, and James Gurd is personally known to me.

Mark Jenkinson (Workington) (Con): As per my entry in the Register of Members' Financial Interests, I have been on a trip to Israel funded by Conservative Friends of Israel, and James Gurd is personally known to me.

Wayne David (Caerphilly) (Lab): I have been to Israel on a visit funded by Labour Friends of Israel, but that was many years ago.

The Chair: I suppose, for the sake of completeness, that I should say I too have been on a trip to Israel with Labour Friends of Israel. However, as with Wayne David, that was many years ago.

Brendan Clarke-Smith (Bassetlaw) (Con): I have also been on a trip funded by Conservative Friends of Israel, and I am also a friend of James Gurd.

Kim Leadbeater (Batley and Spen) (Lab): I have been on a trip funded by Caabu, who are not giving evidence this morning, but I believe they are later on.

The Chair: Are there any more? I do not think there are any more Members!

We will first hear oral evidence from Jo Donnelly, who is the head of pensions at the Local Government Association, and Jon Richards, who is vice-chair of the Local Government Pension Scheme Advisory Board. Before calling the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill, and we must stick to the timings in the programme order the Committee has agreed. For this panel, we have until 9.55 am. To begin with, could the witnesses please introduce themselves for the record?

Jo Donnelly: I am Jo Donnelly, head of pensions at the Local Government Association.

Jon Richards: I am Jon Richards, vice-chair of the Local Government Pension Scheme Advisory Board. In my day job, I am assistant general secretary for Unison, the public services union, although I am here specifically in my role as vice-chair.

The Chair: I would like to call the first Member to ask a question—Minister.

Q1 The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): Thank you, Chair. It is a pleasure to serve under your chairmanship. I would like to thank our witnesses for their time and expertise.

There have been instances where local government pension schemes have come under pressure from civil society groups to divest from a particular country or territory. Is that something you are aware of? What kind of pressure have you faced? Do you think that the Bill will allow pension schemes to focus on delivering value for their members, rather than being distracted by political campaigns?

Jon Richards: Perhaps I can start. Thank you very much for the question and for inviting us here. There have been limited incidents where there have been local attempts to push forward BDS at local levels. As a pension scheme, we are clear that this is a scheme about delivering pensions. Its fiduciary duty is on members to deliver what members want and expect. If, at any time, there are questions raised, we remind people of the fiduciary duty, which is the most important thing that drives matters.

Unfortunately, in recent years, we have seen a number of attempts by Governments and even suggestions by both the main parties that we should invest in various things—private equity and all the rest. That interferes with our duty to deliver pensions, and that is what drives us. So there have been a few small attempts, but they have not taken place. We have also seen some global investment managers making separate decisions, which our pension funds do not have any control over. Those are outwith our ability—we cannot do anything about it if they make those decisions, because it is a global investment association.

What we are fundamentally saying is that our primary duty is our fiduciary duty. Unfortunately, this Bill will interfere in that, and that is what our concern is. It has the potential to increase our administrative costs, as we have to monitor whatever we are asked to do, but also potential legal challenges, which we expect, because we know this is a very difficult minefield. So we have real concerns about the administrative governance and financial costs that this will put on us.

Q2 Felicity Buchan: But do you agree that it is not for pension funds to run your own foreign policy?

Jon Richards: Our primary aim is our fiduciary duty to deliver pensions, and you will hear us say that probably 10 more times throughout this session.

Q3 Felicity Buchan: Absolutely. Jo, do you want to come in on those questions?

Jo Donnelly: It is not a technical matter. My role here today is to assist you on the technical pension side of things.

Q4 Felicity Buchan: Great. Some may argue that the existing legislation is confusing and not comprehensive enough, as it does not deal with divestments—it deals with investment procurement decisions. In your opinion, does the Bill do enough to improve on existing legislation and prevent divestment campaigns?

Jo Donnelly: I think there are concerns around the clarity of a number of the provisions in the Bill and around how that will be dealt with in practice by pension committees, who are primarily making the decisions in the LGPS around investments and around strategy.

On the procurement side of things, I have taken some advice from my procurement colleagues in the LGA—obviously, I am not a procurement expert—and they have told me that, on the procurement side of things, there is nothing here that would cause any problems. The thing that is asked for is some more clarity around how the provisions on procurement in this Bill would interact with the Procurement Bill, which is currently going through Parliament as well. I think there is the potential for some confusion about how the provisions of each Bill interact with each other. So there is a request for some clarity and for clear communications to local authorities, and the LGA is happy to assist with that clarity on the procurement side of things.

Q5 Felicity Buchan: But you are happy that, given clear guidance on the harmony between the Procurement Bill and this Bill, this is very operable.

Jo Donnelly: On the procurement side, yes.

Felicity Buchan: Absolutely, yes.

Jon Richards: But not on the pension side. That is the difference: with procurement and pensions, this Bill will have a different impact on the ability in procurement, as opposed to the fiduciary duty, as I will say many times, versus pensions trustees.

Felicity Buchan: Clearly, this Bill is not—

The Chair: Before the Minister proceeds, could I just remind her that we have a fairly tight timetable? Perhaps she could take that into account in future questioning.

Q6 Felicity Buchan: Indeed. I just have one final question on the regulator. We have the Pensions Regulator in the Bill as the appropriate body for enforcing the ban, and they are clearly accustomed to similar roles. Do you think that that is the right regulator?

Jo Donnelly: There are not that many options in the pensions space for the LGPS. The Pensions Regulator already has a role in relation to the administration and governance of the LGPS, but it does not have a role in the investment side of the LGPS—it does with other, private sector pension schemes, but not the LGPS. So the provisions in the Bill would expand TPR's powers over some investment-type decisions in the LGPS. Our main concern around the regulator's role is that they ensure that they limit their oversight of investment decisions to the provisions of the Bill and that they are properly resourced and trained to do that role, because it is quite different to what they are used to doing already.

Felicity Buchan: Thank you, Chair.

Q7 Alex Norris (Nottingham North) (Lab/Co-op): Thank you to our witnesses for their time. In opening, you were very clear, Jon Richards, about what your job is and what your job is not, and I think the Committee will have taken some comfort from that. Do you feel you need extra tools or controls do that job?

Jon Richards: I do not think we do. I think we think that the level of regulation of the LGPS is also already very high. You will have seen that the Government have just introduced a whole series of additional pension consultations, which we have to do—which poor Jo has to deal with and spend a long time on. Again, we think there is significant regulation. We have a regulator and we have a clear fiduciary duty. Trustees have clear responsibilities, including training responsibilities. They have a clear understanding of what should be done. There is a need for improving governance, and we have been doing a lot of work on that, including training. We have also tried to issue guidance on the need to be clear that, if there are challenges, or attempts to move people away from the fiduciary duty, we need to drag people back to that, and they should not be diverted by some of the political games that are potentially out there.

Q8 Alex Norris: You mentioned legal challenges. Could you say what your anxieties are there?

Jon Richards: There is some wording in some bits of the Bill. For instance, it talks about being substantially "influenced", a "reasonable observer" and "moral disapproval". There is a series of phrases. These are very open, vague phrases. It is a lawyers' charter. It really makes it difficult for us. We have already seen an increase in the number of legal challenges around this issue. You can see the pressures around a whole series of environmental issues. We face a whole series of pressures. Every new regulation, particularly if it is as openly worded as this, potentially makes it more difficult for us to deliver our fiduciary duty.

Jo Donnelly: Could I add something to that? The concerns about the judicial review and the court processes, in particular, are quite key for us, because it does appear that there could be dual running, effectively—enforcement action from the regulator alongside an interested party potentially bringing a judicial review or a High Court claim. The definition of an interested party is something that we would like to be clearer—for example, whether they need to be a scheme member or a local taxpayer. Some kind of clarity around the definition of who that could be would be helpful.

There is a real concern about the possibility of a local authority having to deal with a regulator investigation as well as a High Court claim. If a High Court claim was brought, that would be the first point of action. Normally, a High Court claim would be the end point; it would be the last resort. In this case, it could potentially be the first part of action, so the courts would be undertaking an investigation that we do not think would be helpful for them or the local authorities that are the subject of the action. That is a key concern for us as well.

Jon Richards: Can I add one thing, please, Chair? There is another issue about statements being made by particular people. If someone makes a statement, say, during a pensions committee meeting, and it is minuted, it is not clear whether the challenge is against the pensions committee, or the individual or whatever. There is some wording about the dangers of someone expressing themselves in a pensions committee meeting, and the potential impact of someone taking a challenge against the whole committee. Again, there is very loose and worrying wording for us.

Q9 The Chair: Before I bring in Chris Stephens, can I ask something? Of the various options for dealing with that problem that you mentioned, which do you think is likely to be the most effective?

Jo Donnelly: What we would like to see is a change in the Bill that would lead to the judicial review option or the High Court claim being possible only against the decision of the enforcement authority. Effectively, the decision that the regulator makes is what can be then challenged in court, rather than the decision—the alleged breach of the law—by the authority in the first place. Ideally, it would proceed as relatively normal, which is that a decision of an enforcement authority is what is challenged in law, rather than the original decision.

The Chair: Thank you. Chris Stephens.

Q10 Chris Stephens: Let me confirm my membership of Unison; that has been declared. I should also declare that I am a member of the Scottish local government pension scheme from my time working for Glasgow City Council.

Talking about green pensions, Lloyds Banking Group says:

"UK adults believe the biggest benefit of investing in a 'green' or 'sustainable' pension is the improvement that it would make to the lives of future generations...followed by the fact it could help save the planet".

Are there any parallels between ethical investments in the environment and ethical investments in international human rights?

Jon Richards: It is a very tricky area. It is a difficult tightrope that we walk as pensions trustees and pensions administrators. Let us just say that there are no pensioners on a dead planet, so you can see a clear long-term approach to understanding how you need to deal with potential investments, knowing the potential issues. I should admit that many years ago, I trained as a geologist and I was somewhat sceptical of climate change. I see humanity as a very small part of the overall 4.5 billion years that the Earth has been going. I looked at the different overall increases in temperature, and I think it is now quite difficult to argue against the scientific evidence in that context. That is my view; I understand others have not, but I have changed my view over the years.

Clearly, there is a logic behind environmental and a wish on the part of members to do that. I go back to what we said before: we are there to deliver on behalf of the members. That is our fundamental requirement. Clearly, we can see a desire among the membership to do something about ESG, so there is an understanding and a need to deal with that, because it deals with the wider investment and member issue. This is not the same type of political issue, and we wish to avoid, as much as possible as a pension scheme, getting tied into political issues. Unfortunately, this Bill does that to us.

Q11 Chris Stephens: Jon, you mentioned challenges that you have had. Are they coming from members of the scheme or people outwith the scheme? Can you maybe also talk about how members would raise a concern they had about an investment?

Jon Richards: Again, I do not want to get too dragged into this, because whenever you get involved in these, you always end up arguing about the extremes, as opposed to the thing. As I have said, there have been a very small number of attempts where this has happened. We are aware of one attempt where an external councillor sought to intervene. As I have said, there are some areas where investment managers have made decisions that have had an impact on the problem. Members have sought to do so, and some Unison branches and members have also made some attempts, but whenever they get through to the fiduciary duty, that is fundamentally where the decision is taken, and they have not been anywhere near meeting those requests at this time. They may do; people and members may change their minds. At the moment, we have not reached that threshold of decision making.

The Chair: Thank you. I have registered two other Members as signalling that they would like to ask questions. Have I missed anybody? No. In which case, I call Steve McCabe.

Q12 Steve McCabe: It has been suggested that there may be some confusion or a discrepancy between the schedule in the Bill that is designed to exclude pension schemes and clause 12, which deals specifically with the local government pension scheme. Do you regard that as a discrepancy, and what implications do you think it might have?

Jo Donnelly: I think it is just a feature of how the law has to be drafted in order to exclude all pension schemes except the local government pension scheme, because the law applies to bodies under section 6 of the Human Rights Act, which includes education institutions such as universities, and obviously there is a pension scheme associated with universities. The law needs to exclude those pension schemes but specifically include the LGPS. I just read this as the best way that the drafters have found to make that clear, so I do not see it as a problem; it is just that the way in which the drafting has to work is sometimes a little clunky.

Q13 Steve McCabe: Is it a legitimate course of action to treat pension schemes differently?

Jon Richards: This is one for me, isn't it? We would prefer it if the local government pension scheme was not subject to this Bill, as that interferes with our fiduciary duties.

The Chair: I think this will be the last question.

Q14 Kim Leadbeater: Thank you, Chair, and thank you to the witnesses for joining us this morning. You have said that you are there to deliver on behalf of the members of your schemes. Many of my constituents will have pension funds and some may well have a view

on how those funds are invested, which is surely right. How will this legislation affect the ability of fund managers to respond to those concerns of members?

Jo Donnelly: It depends on the terminology. I would interpret "fund managers" as the asset managers: the investment professionals who manage the money in the pension scheme. They are tasked and given a mandate by the administering authority, by the pensions committee, which makes the decision as a collective. There is no individual decision making in the LGPS; it is all done as a collective by committee, which is one reason why there is some confusion for us about who the decision maker is, because that is never an individual in the LGPS.

In terms of fund managers as investment managers, they will continue to operate in line with the mandate that they are given by their client, which is the local authority or, in some cases, the investment pool, if it is one of the eight LGPS pools that exist in England and Wales. As long as those mandates do not breach the law, they will continue to operate as they do now. They make day-to-day commercial decisions about investments, taking into account all the relevant risk factors. If asset managers feel that there needs to be a change in an investment profile because of risk factors, they will make those decisions, normally without having to check that with the client—the authority that has invested the money.

Jon Richards: Can I just add that we have a series of oversight bodies that take those decisions? Obviously there is a pension fund committee in the council, which has the administerial authority. We also have separate pension boards which have half representatives of employers and half of employees, which again matches what we have at national level, where our board is six councillors and six member representatives. The chair is a Conservative councillor, the chair of the employers' side is a Conservative councillor and I am a trade union official.

We have never had to vote at the national level. We have voting powers, but we have never used them because we have never needed to: we understand that we have a fiduciary duty. That is where we agree with Conservative councillors. We disagree very heavily on politics and all sorts of things, but when it comes to the committee we are pretty clear about what it is we need to do, and also about the need to improve governance to ensure that members' representatives and members' views are taken into account when people make those investment decisions.

Q15 Kim Leadbeater: You do not think this legislation will have a negative impact on that process?

Jon Richards: I do not think so. I think there are wider problems with this legislation. There are ways of dealing with governance and how members can feed in and put their views forward at local and national level. The Bill has a series of other difficulties that will cause us significant administrative, governance and legal problems.

Jo Donnelly: I think there are some concerns about the exceptions and how they work. In the schedule, there are exceptions to permit considerations around environmental, social and governance factors, which are obviously now standard practice to consider when looking at investments. But there are some concerns about the wording of those provisions, whether they will allow things to continue to operate, and whether committees will be able to consider specific concerns brought by scheme members.

The Chair: I am afraid we have reached the end of the time allotted to the Committee to ask questions. On behalf of the Committee, I thank the witnesses, who have been very clear and helpful in drawing our attention to some of the dilemmas and difficulties faced. I am sure when we come to deliberate on amendments and alterations to the Bill we will take very seriously the advice that has been given.

Examination of witnesses

Russell Langer and Daniel Sugarman gave evidence.

9.53 am

The Chair: We will now hear oral evidence from Russell Langer, head of policy and research at the Jewish Leadership Council, and Daniel Sugarman, director of public affairs for the Board of Deputies of British Jews. For this session, we have until 10.25 am. Would the witnesses please introduce themselves for the record?

Russell Langer: I am Russell Langer: I am the head of policy and research at the Jewish Leadership Council.

Daniel Sugarman: I am Daniel Sugarman: I am a director of public affairs at the Board of Deputies of British Jews.

The Chair: Thank you. I will now bring in the first Member with a question.

Q16 Wayne David: Thank you, Chair, and good morning to you both. Your organisations support the legislation. I have read your submissions, and it is quite clear that you are supportive of the various aspects of it. But can you tell us, hand on heart: if you had a blank sheet of paper before you, would this be the approach that your organisations would be in favour of?

Russell Langer: I judge the legislation based on whether or not it adequately prohibits BDS in public bodies, and I believe it does; whether or not it covers the correct public bodies within its scope, and it does; and whether or not it has the appropriate enforcement powers to ensure that the Bill will have the intended effect, and it does. I did not draft the legislation—I saw the legislation at probably a similar time to you—but on those bases, it is something that I am very comfortable in supporting.

Daniel Sugarman: Similarly, we had no role in drafting the legislation, of course; we saw it at probably around the same time as many of you did. This is a policy area that we have been very interested in for quite a while now, and I think that the Bill as it stands addresses the concerns that we have, although of course if amendments are raised, we will watch them with interest, as will other people.

Q17 Wayne David: But let us say that there had been formal consultation with you before the publication of the draft legislation. Are there any specific points that you would have asked to be included in the legislation and which you do not find before you now?

Russell Langer: If we had amendments that we were proposing, we would have included them in our written submission, and I do not believe either organisation has. I look forward with interest to seeing amendments as they come forward, and we will consider them on their merits, but we are happy, as it stands, with the Bill.

Q18 Wayne David: Could I ask just one further question? I think that both organisations are in favour of a two-state solution to the Israel-Palestine conflict. One thing in this legislation that is different from any other legislation that I have seen from this Government or any other British Government is that it equates the state of Israel with the Occupied Palestinian Territories. It has been suggested that that coupling, that equality of treatment, for the first time by a British Government, calls into question their commitment to a two-state solution. What is your view on that?

Daniel Sugarman: I think that we have to accept the circumstances as they currently are, and the circumstances currently are that there are hundreds of thousands of Jewish people living beyond what one might call the green line. There has been already a firm understanding among different parties to peace negotiations that there will have to be land swaps in terms of the future two-state solution that we hope and pray for. Given that that is the case, to penalise people who are living, essentially—there is a difference between hilltop settlements and towns, essentially, connected to Jerusalem where tens of thousands of people live. I think that the way things have worked up until now has led to everything being tarred with the same brush, and I am not sure that that is particularly helpful.

Russell Langer: If I can add this, I disagree with your assessment that the legislation paints it all in the same way. First, very clearly, Israel, the Occupied Palestinian Territories and the Golan heights are listed separately in the Bill, and I am pretty sure that if you were to ask the Israeli Government, they would see that as them being listed separately. But more importantly, the UK Government have been clear that this does not change UK policy. UK policy on Israel and the settlements is something that is a reserved matter for the national Government and something that gets debated in this place on a regular basis. What we do not require is for that debate to happen in every public body around this country, especially when it is usually—it tends to be—the only foreign policy debate that happens in public bodies around the country. I think that is the really key—important—part here. To me, this is not a discussion about settlements. That is a legitimate conversation to happen in Parliament; we do not need to be having that conversation in every public body around this country.

The Chair: Thank you. Minister?

Q19 Felicity Buchan: Can you set out why you think that this legislation is necessary and also touch on the links between BDS campaigns and antisemitism?

Russell Langer: Sure. The boycott, divestment and sanctions campaign—BDS—against Israel is a pernicious campaign, which seeks to single out the world's only Jewish state for unique treatment. As I just said in the previous answer, when we look at the picture in public bodies around this country when it comes to foreign policy discussions, Israel is the only country that is singled out in this way. That was something that was made clear in the House of Commons Library briefing, prepared ahead of Second Reading, as well. I therefore believe that the legislation is necessary to end the practice of Israel being singled out in that way by public bodies around the country.

On the links to antisemitism, the link between antisemitism here in the UK and the situation in Israel is clear—it is clear in the statistics, in the months with the highest levels of antisemitism on record, which all correspond to the months in which conflicts have happened in Israel. That link is clear.

When the Jewish community is most vulnerable in this country and when antisemitism is at its highest, we tend to see public bodies under intense pressure from campaign groups to get involved by boycotting Israel. That comes back to the point that I made about it being the only time that they are usually asked to get involved in such foreign policy. The legislation will therefore allow public bodies such as local authorities, higher education institutions and cultural organisations to focus on improving community cohesion at a time when it is at its most threatened. The legislation is helpful to that.

Daniel Sugarman: If I might add to that, on the links to antisemitism, there are a few points to consider, the first of which is the somewhat questionable double standards. People who take an extreme interest in the Israeli-Palestinian conflict and call for a full boycott of Israel seem rarely, if ever, to call for boycotts of any other country. It appears to be just the world's only Jewish state that gets that sort of treatment.

The history of boycotts against Jews is a painful one, linking directly back to Nazi Germany, and it is clear that at least for a significant percentage of the community, when we hear about boycotts against Israel, that is a link that is raised. We have also had cases, unfortunately, where people participating in BDS campaigns have gone beyond Israel. For example, in a supermarket, a bunch of BDS campaigners went in and started defacing products that they felt were Israeli-linked, but of course they went straight for the kosher food section, not appearing to distinguish. That sent a clear signal.

I will make two more quick points, if I may. First, polling suggests that more than 80% of British Jews see Israel as either central or important to their Jewish identity. There is a very strong link between the Jewish community and Israel. When Israel and Israel alone is targeted in such a manner, that really has a strong impact on the Jewish community.

The other thing to consider is that the co-founder of the BDS campaign has been very clear about what he sees as the end goal, which is not a two-state solution, but the destruction of Israel as a state and its replacement with a state in which Jews are a minority. Given that in the past 50 or 60 years we have seen exactly what has happened to every single other Jewish community in the Middle East that was a minority, I think that the Jewish community here and elsewhere is right to be profoundly concerned.

Q20 Felicity Buchan: I have one more question. Clause 4 prohibits a statement of intent to boycott. Do you agree that that is a necessary addition to the Bill? One further question on enforcement: do you think that the enforcement regime is necessary?

Russell Langer: On clause 4, as I said, with BDS in public bodies, that is something we have seen over the course of several years. Often, while the results have an impact on the Jewish community, that impact is not limited to the implementation of BDS; it is part of the febrile nature of the debate, bringing it into our public bodies. Once again, the specific point is that that tends

to be the only foreign policy with such debate in our public bodies in this country. Therefore, I understand the purpose of the clause, and to that extent definitely see the need for something.

In terms of the enforcement powers, absolutely—this Bill would have little merit without having adequate enforcement powers. Without them, it would lean towards a situation that we have now, whereby it is up to individual campaigners to raise these issues through judicial review and so on. Therefore, one of the key parts of this Bill is having proper enforcement powers to ensure that it is enforced.

Q21 The Chair: Before I bring in another Member, I think that this question has been partly answered but I would like to see whether we can get a clearer answer. Is there a distinction to be made, in terms of the provisions of the Bill, between on the one hand questioning the right of the state of Israel to exist and on the other hand being free to criticise the actions of the Israeli Government at any given moment in time?

Russell Langer: Absolutely—I am tempted to give you that one-word answer. There is absolutely no issue here in the Bill in terms of criticising Israel. The UK should have robust foreign policy on all issues, including Israel, and I do not think that anything should get in the way of that. However, what we have seen is a problematic picture, whereby the only country that any public body seeks to wish to criticise tends to be the one Jewish state in the world, and that I have an issue with. Nevertheless, I am not getting in the way of anyone here criticising Israel should they wish to do so.

The Chair: Thanks. That is very helpful. Chris Stephens.

Q22 Chris Stephens: That was going to be my first question, so I will ask my second question instead. There is obviously a debate about this Bill, including within the Jewish community, and we have some representatives of the Jewish community who will put to us their view of the Bill, namely that it restricts freedom of expression rather than directly addressing the issue of antisemitism. I presume that both of you disagree with that. So, would you tell us why you disagree with other Jewish representatives who will give evidence to this Committee?

Daniel Sugarman: First, I would say that we do not believe that the Bill prevents freedom of expression, in that any individual and any private organisation will still have the absolute right to adopt a BDS motion or to carry forward the idea of BDS. We are essentially concerned that public bodies, which receive public funding, are being used to promote a foreign policy agenda that is different from that of His Majesty's Government. We find that extremely troubling and the idea that it is a freedom of speech issue is—I think for both of us, although I cannot speak for Russell—appears to be extremely misleading.

Russell Langer: Exactly. I will just add something to that. Neither of us would claim that the Jewish community is a homogenous community that will agree a single position on any piece of legislation, let alone this one, but we both sit here as representatives of national representative bodies, and this is the position that we have considered and come to.

Q23 Kim Leadbeater: Thank you for joining us this morning. Like all my colleagues, I abhor antisemitism, and I agree that if further measures are needed to eradicate it from public life, of course we will support them. However, is there not a risk that because this Bill very publicly singles out the state of Israel as a special case, it may provoke greater antisemitism, which is the very thing that none of us want to see?

Russell Langer: I have heard this argument and it is really important that it gets a clear answer, which is that antisemitism is not a response to Government legislation. It is not a criticism of the Israeli Government; antisemitism is the hatred of Jews. And I am really cautious about any argument that this piece of legislation would increase antisemitism. I think that it is an argument that we really need to steer clear of.

Daniel Sugarman: I would add that, from our point of view, the reason why it is right that Israel is singled out here is because, as far as I am aware, Israel is the only country that is regularly targeted for such boycotts via public bodies. No other country is targeted in such a manner. Therefore, it seems correct that there is some acknowledgement of that and some way to ensure that it does not happen.

Q24 Kim Leadbeater: And you do not have any concerns that this Bill could have a negative impact on communities within the UK?

Russell Langer: I think it will have a positive impact on communities here in the UK. Unfortunately, what we see here in the UK—it happens with other foreign issues, but it happens specifically with the Israeli-Palestinian conflict—is that we see a foreign conflict affecting intercommunity relations here in the UK. Worst of all, we then see public bodies—it is a minority, but some public bodies—seeking to then get involved in that debate and make those tensions worse, when I think they should be getting involved to improve the situation. I completely agree with you, but I think I come to a different point.

Daniel Sugarman: It will certainly make things better for Jewish communities—particularly small Jewish communities—who have been in positions where they sometimes feel that, unless they vocally criticise Israel, as Jews, they will not get a hearing. I admit, I do not have a huge amount of sympathy for people who might feel that they no longer have the means to make such Jewish communities feel uncomfortable.

Q25 Steve McCabe: Good morning. When I first heard about the Government's intentions to legislate in this area, I understood it to be legislation to prevent public bodies from boycotting the state of Israel, which I welcomed. I just wonder whether you think that the Government have made life easier or more difficult for themselves by extending the range and scope of the Bill, or whether it would have been better to have concentrated on preventing the boycott of the state of Israel.

Daniel Sugarman: That is an excellent point, but I think that, had the Government focused specifically on Israel, and not on anything else, we would have seen some of the same people who are raising questions in general—well-meaning questions as to why Israel is singled out specifically in the Bill—and I think that the questions as to why only Israel was being focused on

would have been 1,000 times louder. I think it makes sense that the Government have widened the scope for this, while singling out Israel within the wider Bill.

Russell Langer: I would add that part of our reasoning to believe that public bodies should not be boycotting Israel is that it contravenes UK Government policy, and that it is a foreign-policy issue being taken up by public bodies. Therefore, I can understand the wider scope to tie that in to that national picture of public bodies not taking foreign-policy decisions contrary to national Government.

The Chair: Are there any further lines of questioning? We have time available if anybody wishes to pursue anything. In that case, although we did not take up a lot of your time, I think it gave members of the Committee an opportunity to air some of the points of principle as they presented, and to look at alternative points of view on. That has been really helpful, and, of course, you bring a perspective to this that is very focused on one specific community, but that is as it should be. We are very grateful for the light you have been able to shine on some of those difficult issues, which I know people are trying to cope with by being even-handed but also by operating on good, solid principles. Thank you very much indeed.

Russell Langer: Thank you very much for inviting us.

The Chair: Given that we are a little ahead of time, and one of the witnesses for the next session is not currently available, we will pause the proceedings.

10.13 am

The Committee deliberated in private.

Examination of Witnesses

Councillor Bob Deering and Councillor James Jamieson gave evidence.

10.24 am

The Chair: We will now hear evidence from Councillor Bob Deering, the executive member for resources and performance at Hertfordshire County Council, and Councillor James Jamieson, the immediate past chair of the Local Government Association, who joins us via Zoom. We have until 10.55 am for this session. Can the witnesses kindly introduce themselves, so that we have it on the record?

Councillor Deering: My name is Bob Deering. As you have just said, I am the cabinet member for resources and performance at Hertfordshire County Council, which essentially means money.

Councillor Jamieson: Good morning. I am James Jamieson. I am a councillor in Central Bedfordshire. As noted earlier, I was the chairman of the Local Government Association until July, when my four-year term expired. Previously, I have been the leader of Central Bedfordshire Council.

The Chair: Just before we get into the questions, I think Bob Blackman would like to make a declaration of interest.

Bob Blackman (Harrow East) (Con): Thank you, Chair; apologies for being late at the beginning. I want to put on record that I am a vice-president of the Local Government Association; obviously, we have witnesses here from the LGA. I am also the secretary to the all-party parliamentary group on British Jews, and I chair the all-party Britain-Israel parliamentary group. I am an officer of Conservative Friends of Israel, and I have been on trips to Israel sponsored by the Conservative Friends of Israel. I have also been on trips to the west bank and on others sponsored by other groups.

The Chair: Thank you.

Q26 Felicity Buchan: Can you tell us about previous attempts by councils to pass motions to boycott Israel? Do you agree that this legislation will help local councils to remain focused on their core functions, rather than being distracted by BDS campaigns, and give them clarity that they should avoid BDS campaigns?

Councillor Deering: I do not know whether it will disappoint you, but in Hertfordshire we have had very little agitation—if I can use the word—of this type. Ahead of me coming here today, we did the best that we could to check our records, and we think that there may have been some form of question or petition that may have come through in 2022 related to Israel. We then had something post the Ukrainian issue that related to Russia. We think that that is just about the limit of our experience in recent times, so maybe we do not have a lot of experience to draw on. We would say that that is a good thing, because in Hertfordshire we are trying to manage our finances in an objective and hopefully sensible way for the benefit of the residents of Hertfordshire, not for any particular lobby group, whichever it may be. My answer to your question is yes: what you are looking at here probably would be helpful.

If I may just add a rider, there is some crossover between what you are looking at here and procurement. I think we would be keen that no grey area emerges across those two areas of interest.

Q27 The Chair: Councillor Jamieson, is there anything you wanted to add to that, or are you happy with it?

Councillor Jamieson: I would also reflect that my personal experience in Central Bedfordshire is that we have not had motions of this nature relating to countries. Interestingly, we have had, on occasion, motions that would not be covered by this Bill, but which I would say were of a broader political nature and did not focus on what local government should be doing, which is delivering for our residents locally. My own personal view is that that is what councils should be focused on. Foreign policy really should be a matter for Government.

Q28 Felicity Buchan: There are exceptions in the Bill that permit investment decisions, such as labour market misconduct or environmental misconduct. Do you think that those are appropriate and are the right balance to strike?

Councillor Deering: That is quite a big question. I am conscious that you will be taking evidence from all sorts of people. I might provide you with a neutral answer, if I may. We can see why they are there. Again, I do not wish to be repetitious or boring, but really we simply try to run our finances as best we can. In principle, we do not want awkward issues to come up that make it difficult for us to run our finances in the way that we think is best for our residents.

Councillor Jamieson: I do think that it is important that pension funds—as is currently the regulation for pension funds—can take into account issues that would be of concern to their pension holders. That is right, and that is a carve-out, albeit it also has the carve-out—I cannot remember the exact wording— that effectively it must not have a significant financial impact. I think that is right. For instance, with things around the environment, people might have concerns when investing in certain companies. Local government has a public health duty and I could completely understand if certain councillors wanted to avoid investments in businesses that they deemed were harmful for public health. A classic example would potentially be the tobacco industry. I think it is important that we can still make those decisions.

Q29 Felicity Buchan: One final, holistic question: are you supportive of the Bill and why?

Councillor Deering: I think we are. I think we would support it for the central reason, which is that this country's foreign policy, it seems to us, should be made by Government and should therefore be a coherent, unified foreign policy, rather than being fragmented across goodness alone knows how many organisations across the country, thereby becoming disparate. So yes, we are supportive.

May I come back on something the previous witness has just said in relation to pensions? Our experience is that if we find that there is some degree of pressure, it is more likely to come in relation to pensions. Our pension fund is valued currently at about £6 billion, which is a lot of money. We have 115,000 members and 400 employers. We take our responsibilities for our pension extremely seriously and I have been on our pension committee for a number of years. We have from time to time had situations where people, exactly as has just been said, come along and say that we should not be investing in x or we should not be investing in y because. There is a degree of difficulty with that because we understand always where people are coming from, but clearly, in the pension world, we have a fiduciary duty to deliver—to put it loosely but broadly—the best pension we can for all the prospective beneficiaries of our pension scheme. That comes up from time to time.

At Hertfordshire, we have an extremely good pensions committee. It is cross-party, as you would expect, but it is not party political. The reason I have come back to this is because, of course, environmental, social and governance is an issue in all investment these days. All the advisers that advise us in relation to our pension investments have some facility to advise on ESG. It might be thought that that strays into that area—tobacco, coal or whatever it is—but ESG works its way through to value and you start to realise that, actually, it is an investment criterion because it affects the value of what you are investing. I thought I should just say that because that is probably our biggest experience in this area.

Q30 Felicity Buchan: Just a point of clarification: the Bill only prevents decisions being made on the basis of moral or political disapproval of states as opposed to banning fossil fuels or environmental matters. It does not cover that.

Councillor Jamieson: I am speaking personally here. This is not an LGA view, just to be clear. I think the principle of this legislation is absolutely fine and, in many ways, helpful because it enables people on a pension committee to be very clear that they cannot consider countries when looking at this. However, my caveat is that there are some details in the regulations that need clarifying and those are quite concerning. It is not the principle but some of the details and we just want to make sure that some of those are right.

Q31 Alex Norris: I would like to start by putting on record the thanks of Members of the Opposition Front Bench to Councillor Jamieson for his leadership of the Local Government Association. It is safe to say that it is a broad family of all parties and none, so that leadership in a single person is an exceptionally tricky job and I think you did a very good job of it. As I say, we are grateful for your leadership and your candour with us when we have asked you questions in the past. Thanks again for your and Councillor Deering's presence.

We speak a lot in this Parliament about transferring power from here to local communities, namely our local councils. The Bill very much transfers power from our local councils to this place. How do colleagues in the local government family feel about that?

Councillor Jamieson: Thank you very much for your kind words. As I should have mentioned in my little statement a moment ago, I am very vexed—and was very vexed as chairman of the Local Government Association—by the underlying trend of giving powers to local government with one hand and taking them away with multiple hands. I can genuinely understand why it is being done, but I do not like the fact that it is another example of central Government just eating away at the freedoms and devolution of local government, but there are far more contentious areas than this one in which I would argue that the Government have taken back powers.

Councillor Deering: My view is very similar. I do not know that in Hertfordshire we feel particularly that this is a power grab from us; I think we understand the rationale of the Bill, or the proposal. If we had more experience of problems in the area, maybe we would feel differently, but I think we would say that we are fairly relaxed about this.

Q32 Alex Norris: Clause 4 will restrict your ability not only to act, but to talk about whether you would have been inclined to act. That is quite a significant fetter on your free speech. How do you and your colleagues feel about being told by central Government what you can and cannot say?

Councillor Deering: My answer is very similar. Again, it could be because our experience of problems arising is quite limited, but we are broadly relaxed about the point that you are making. We can see the overarching objective of the proposed legislation.

Councillor Jamieson: This was one of the areas of detail about which I had a concern, because I think it only right that in a committee meeting people should be free to express views. The key question is what the decision of that committee is. That is what should be held to account, rather than the views that are expressed and rightly debated in the meeting.

We have two concerns. One is about the freedom to express those views in an appropriate manner during the meeting. The second concern is that we publish minutes of meetings. If those minutes faithfully record what somebody has said, would that breach the rules on expression of views? Those are two details that need to be sorted out, because we do want debate in a meeting. People should be able to express their view; the point is that when they come to make a decision, it is the decision that should be held to account, not what people said in the meeting.

The Chair: Six members of the Committee have indicated that they want to ask a question, so I will initially confine them to one question each. I am sure that members of the Committee have enough intellectual flexibility to be able to get everything they want to find out into a single question.

Q33 Bob Blackman: James, in your former role as chairman of the LGA, were you aware of circumstances that were discussed and debated by local authorities, or decisions that were made, that would be in contravention of the Bill when it becomes an Act?

Councillor Jamieson: I think the key question is the one that I have just spoken about. I am not particularly aware of any decisions, but I am aware that there have been debates. The key point that I am worried about is that I do not want those debates to be caught out, because it is right to debate things.

Q34 Bob Blackman: Can I just follow up on that point? There was an issue about Leicester. I wonder whether that was something that the LGA considered.

The Chair: I think that counts as a second question.

Bob Blackman: Well, it is a clarification.

The Chair: I did say that I was not going to allow second questions, but can somebody give a quick answer?

Councillor Jamieson: I will have to come back to you on that, Bob. I do not have the details of the Leicester discussion.

Bob Blackman: Okay.

Q35 Steve McCabe: As I understand it, any financial penalties for a local authority that falls foul of this legislation will fall on the council, which means that they will fall on the council tax payer. Do you think that that is fair? Is that likely to deter highly motivated individuals or groups?

Councillor Deering: I think it is my turn to go first, isn't it? Do I think it is fair? That is a very good question. I think ultimately it is the decision that Parliament will make on this on this Bill. As a broad matter of principle, I do not think it is inappropriate that if a standard is set and there is a failure to meet the standard, some consequence will follow, but it is for Parliament to determine quite what that standard will be and quite what the consequence will be. As a principle, I do not think we would have any difficulty with that. On the second part of your one question, I would not think that this issue would deter people from coming into public life in local government. That would be my personal view.

Q36 Dr Luke Evans (Bosworth) (Con): Councillors Deering and Jamieson, this question is to both of you. Councillor Deering, you said the point around pensions should not be political. In your experience as councillors, how much of an increase have you seen in talk about, for example, previous slavery, the environmental side, Israel and Palestine, China and Russia? How much more of this debate is happening at a local council level, as opposed to 10 years ago? Was this debate happening then? Is it becoming more prevalent?

Councillor Deering: Well, I do not quite go back 10 years in local government, so I cannot quite answer for that period. I became a county councillor in 2017, I think, but I have been involved in the finance and performance side more or less ever since day one. I would say that the answer to your question is: a bit. Not only is there slightly more of this discussion because of general issues and political issues, but also in part because all councils are under financial pressure and every now and again there is a view expressed by someone—from wherever they might be on the political spectrum—that, "There seems to be an awful lot of money in the pension fund, and can't that somehow be used?" Obviously that is inappropriate. In our council, everybody understands that, but it is a frustration that is expressed from time to time. Coming back to your question, yes, there is a little bit more of what you asked about, but maybe that is because there are an increasing number of events in the world that might lead to the thought being ventilated.

Councillor Jamieson: The modern world—with the increase in social media, the ability for electronic petitions and so forth—has meant that councils are subject to more petitioning and more demand from groups of the public. It is easier to put these things on the agenda than it was in the past, so I think it is inevitable that we are seeing more of whatever it is that we are talking about compared with 10 years ago; in fact, I can go back 14 years, so compared with 14 years ago.

Q37 Kim Leadbeater: I will pick up on a point that has kind of been covered already. Do you have anything further to add on the issue of freedom of speech, or any further concerns that this Bill will undermine local democracy by restricting what councils and councillors can say and do? You are very fortunate in your area if you have not been impacted by some of the more contentious issues that the Bill covers, but I have some concerns around freedom of speech for local representatives and undermining local government autonomy. Is there anything else you want to add?

Councillor Deering: Personally, I am a very big believer in freedom of speech, and just freedom. If I might make a huge point, it is one of the things that this country is pretty good at, actually. I am very strongly in favour of it and would not want to see it impinged, but we all need to find a way to work together and achieve objectives. I repeat that our institution is not particularly vexed about the issue that underlies your question; we can see it, but I do not know that we are vexed by it.

Councillor Jamieson: If I can come back to this—I am in danger of repeating myself—I do think it is important that there are some tweaks to the legislation. One is that writing the minutes of a meeting that reflect a view expressed in the meeting should not be a reason to be referred to the Pensions Regulator or for judicial

review. Also, if the reference to a decision having been "influenced" was changed to "substantially influenced", that would make life a lot easier.

I also have a big concern with judicial reviews. My biggest area of experience with judicial reviews is in the planning system, where they can be hugely expensive and time-consuming. I really do not like the fact that councils will be subject to judicial reviews, which will make vexatious JRs and so forth much easier. We are covered by the Pensions Regulator, and if the legislation were changed to say that it is the Pensions Regulator that makes the decision, and the Pensions Regulator could then be judicially reviewed if somebody felt it had not made its decision correctly, that would reduce the risk of vexatious JRs. That should also be linked to who can claim that they have been impacted. At the moment, pretty much anybody in the UK is in a household where there is a ratepayer; does that mean that anybody can mount a challenge just on the basis that they are potentially influenced or potentially a taxpayer?

The definition of who can mount a JR should be tightened, then, but ideally we should remove the ability to JR councils for the decisions. We should be monitored by the regulator and complaints should be made to the regulator, which should make that decision. If the regulator makes a decision and a member of the public is not happy with that decision, they should JR the regulator, not the council. I think that would make people feel a lot more comfortable about expressing their views and not having a vexatious JR or worrying about whether a minute in a meeting might contravene the rules or whatever.

The Chair: The regulator might consider itself to be an exception to that rule.

Q38 Brendan Clarke-Smith: Some have suggested that it is rather pointless to implement a ban if you have a toothless enforcement regime. Do you agree that it therefore needs to be sufficiently robust if we are to introduce this regime?

Councillor Deering: If I may say so, I thought that Councillor Jamieson's response to the previous question was very good, because the question went to freedom of speech but Councillor Jamieson talked about judicial review, and in effect you are talking about enforcement through judicial review.

I substantially endorse what Councillor Jamieson just said. From the practical point of view of a councillor—forgive me: no doubt some of you in the room have this experience, but perhaps some of you do not—JRs may very well not be vexatious but my goodness me they give rise to a huge amount of work. They involve huge cost exposures and they are very, very demanding on a council's capacity. If there is to be a JR backdrop to this, it needs to be put together in a thoughtful and careful way.

Subject to that, of course, if you are creating a regime that requires application, there does need to be some enforcement mechanism. Yes, I agree with that.

Councillor Jamieson: There does need to be an enforcement mechanism, which is the whole point of the Pensions Regulator. That should have sufficient teeth. It covers a whole range of issues—not just this but other things—and in general it works reasonably well.

Q39 Chris Stephens: Do you both accept the principle of a political party stating in its manifesto prior to a council election how it would use procurement and investment policies to incentivise ethical business conduct that is human rights compliant? How would you answer those who have responded to this Committee and their criticism of the Bill that it will

"make it almost impossible for public bodies to use their procurement and investment policies to incentivise ethical business conduct that is human rights compliant"?

Councillor Deering: I did not quite catch the very first part of your question—

Chris Stephens: I can say it again.

Councillor Deering: It is okay; I think I got the gist of it. In a way, that goes perhaps not to the heart of the Bill but somewhere reasonably close to its heart, doesn't it? In effect, it goes to the question of whether local authorities or public bodies should be campaigning bodies. There are some interesting questions there, aren't there? Of course, in the case of local authorities, their funding is all taxpayer funding, so there needs to be some balance to make sure that taxpayers' money is spent in an appropriate manner. It seems to me, essentially, that that is one of the things that your Committee will be considering when you consider the Bill.

Personally, I would come back to the objective of the Bill, and I would say, as I have already said in this session, that it seems to me and us that the objective of the Bill is understandable: in so far as the country has foreign policy, that policy should be made centrally, and it should not be fractured into all sorts of different variations across the country.

Q40 The Chair: Councillor Jamieson, is there anything you want to add to that?

Councillor Jamieson: I think that, as with all these things, there are grey areas in this, but as a broad principle, national Government set foreign policy. I think that is appropriate and right. Local government provides services for its residents, and we want them to be the best that they possibly can be within the financial envelope, but we do have a wider responsibility, as Councillor Deering said earlier. ESG is a key part of some of our procurement and investment decisions, and procuring to support local businesses is also something that is really important. We need to be clear that those things are still allowed, but speaking personally, I would not support every local council having its own foreign policy. That would be inappropriate.

The Chair: We have a couple of minutes left in this session, if anybody has a question that they have not had the opportunity to ask. I call the Minister.

Q41 Felicity Buchan: There has been quite a lot of talk as to whether councillors can express their own views. The Bill applies only to public bodies, so a councillor can express their own view; it is simply that, if a councillor is talking on behalf of the local authority, they are covered by the Bill. In the light of that, are you comfortable with the Bill?

The Chair: Before I bring in the witnesses to answer that question, Bob Blackman has a very quick point.

Bob Blackman: It was a very quick point to Councillor Jamieson: could you clarify exactly what changes might be made to the Bill to clarify the regulations that you spoke about earlier?

The Chair: Thank you. Over to our witnesses.

Councillor Jamieson: First, I will write formally, Bob, so that there is no ambiguity on any of those changes, if that helps.

Minister, on the point about being able to speak freely, the question is, if someone is speaking in a debate and it is minuted, what does that mean? There needs to be clarity about what represents speaking as a councillor or speaking on behalf of a council. Minutes of a meeting are one area where, at the moment, it is ambiguous, so we need to be very clear that minutes of a meeting and opinions expressed in those minutes do not represent the views of the council; they are the views of the councillors, if that makes sense. That just needs clarifying.

On the couple of points I was making to you earlier, Bob, in order for a decision that has been made to be called into the Pensions Regulator, or whatever, it needs to have been substantially influenced, not just influenced. My third key point is that we should be regulated by the Pensions Regulator. You should not be able to JR a council on this matter. If you do not like the decision of the Pensions Regulator, you should JR the Pensions Regulator. That would save an awful lot of potentially vexatious JRs.

The Chair: Councillor Deering, is there anything that you briefly want to add?

Councillor Deering: I am sorry to embarrass Councillor Jamieson, but I think the points he has just made are very sound and sensible. Coming back to the question that led to that answer, yes, there is clearly a distinction between a council and councillors. Quite clearly, they are not the same thing.

The Chair: I am afraid that that brings us to the end of the time allotted for the Committee to ask questions. I thank both the witnesses, on behalf of the Committee, for steering an important path between freedom of speech and the responsibilities that pension funds have to pension fund holders past, present and future. It has been a really useful and informative session and I would like to thank you both very much for your contributions.

Councillor Deering: Thank you very much indeed.

Councillor Jamieson: Thank you.

Examination of witness

Hannah Weisfeld gave evidence.

10.55 am

The Chair: We will now hear oral evidence from Hannah Weisfeld, director of Yachad. For this session we have until 11.10. Could the witness introduce herself, for the record?

Hannah Weisfeld: I am Hannah Weisfeld, the executive director of Yachad.

Q42 Felicity Buchan: I understand that Yachad does not support the BDS movement. Can you explain why?

Hannah Weisfeld: I guess I should start by clarifying who we are and what we do. We are a British Jewish organisation that works within the mainstream of Anglo-Jewry to build support for a political resolution to the Israel-Palestine conflict.

We do not support or advocate for the BDS movement, because we believe that putting pressure on one side does not necessarily bring about a resolution to the conflict. However, we are very clear that we support the right to non-violent protest. While we do not support or advocate for the BDS movement, we support the rights of individuals to adopt methods of non-violent resistance to Israeli Government policy—and in fact to the policy of any Government anywhere in the world. So, we would not advocate for the movement, but we would absolutely advocate for the right of people to express their opinions and to apply pressure in a non-violent way.

Q43 Felicity Buchan: So do you think it is appropriate for councils to support the BDS movement, with all the implications of them getting distracted from their core function—clearly, foreign policy is a reserve function for the UK Government—and also the consequences in terms of bringing dissension to local communities?

Hannah Weisfeld: Well, I know that one of the motivations for this piece of legislation has been around community cohesion and the idea that debating issues that are contentious at a local level creates community dissonance and disagreement. There is a reverse to that, which is that when you crack down on the ability of people to express their opinion and to express it in local democracies, you can do the exact opposite, which is that rather than bring people together, you can create real disharmony among communities. That has been mentioned already in the Committee this morning. There has been a tiny number of examples of there being what we would refer to as BDS motions at a local government level and in public bodies. I would not be overstating the reality if I said that if this legislation passes in its current form, there will be BDS motions in public bodies all across the country where people try to test this legislation because they are so frustrated that their right to express an opinion has been clamped down on. If the motivation here is to create community cohesion, there is a very real worry that this is going to do the exact opposite.

Q44 Felicity Buchan: But this Bill does not apply to private individuals or private companies; it applies only to public authorities. The motivation behind the Bill is to have one reserved foreign policy that is run by His Majesty's Government, rather than local authorities which are tasked with providing local public services getting distracted away from their core functions.

The Chair: Could I just say that that is a statement, rather than a question?

Felicity Buchan: I am sorry; I was just about to say, do you agree?

Hannah Weisfeld: I do not think we have evidence, and the Committee has not just heard that the people representing local government have been particularly distracted. To me, the Bill is not really about that issue; it is about creating what I think will become quite a

nasty debate around Israel-Palestine, and I do not think that that is going to benefit the Jewish community particularly.

The Chair: This is a very short session and three people have signified that they want to ask questions. I will bring in Wayne David. Again, I ask Members to be concise in their questions and our witness to be equally concise in her answers.

Q45 Wayne David: Hannah, we have heard from the JLC and the Board of Deputies of British Jews that they are broadly supportive of the legislation as it stands. You have expressed your concern and reservations about it. Could you objectively give us an indication of what the feeling is among other Jewish organisations in Britain, and also among progressive voices inside Israel itself?

Hannah Weisfeld: Yes. This has been mentioned by colleagues, but there is obviously not a homogeneous opinion about anything inside the Jewish community, as there is not in any faith or minority community. I think it is important to mention, though, that Yachad is a member of the Board of Deputies, and there are a number of other organisations that are members of the Board of Deputies, or whose parent organisations are members of the Jewish Leadership Council, that have been very publicly opposed to this legislation.

I want to draw your attention particularly to the Union of Jewish Students, which is the main Jewish student body in the UK. It represents more than 9,000 students and more than 70 Jewish societies. At its last conference, which I think was in April, it passed a unanimous motion—among all 400 students, there was not one dissenting voice—that said:

"UJS reaffirms its support for the democratic right to non-violently protest and opposes the government's proposed Boycott Bill which is a curtailment of that right, as well as presenting a risk to British Jewish communities and a setback to Israeli-Palestinian peace."

One thing that has often been expressed is a concern about what is happening to young Jewish students on campus and the way that BDS affects them and interacts with their student experience. I do not think that there is a clearer expression of concern against this legislation than the one that I have just read to you. That has been echoed by four of the major Jewish youth organisations.

I should say that Jewish youth provision is very organised in the Jewish community. It is where Jewish youth groups produce the future leadership of the Jewish community; I think that if you were to speak to many people running Jewish communal organisations today, that is where they grew up inside the Jewish community. Four of the seven or eight major mainstream ones have come out very publicly against this legislation. Of those, three are the youth organisations of the major religious denominations within our community—the Reform movement, the Liberal movement and the Masorti movement, which are three of the four major strands of Jewish denominations.

So there is not unanimous support for this legislation. We are, obviously, also against it. There is a very ferocious debate, I would say, about the merits of whether the way in which you protect Jewish life in this country is by legislating against opinions that we do not agree with.

Q46 Chris Stephens: Hannah, I think you were present when I put this question earlier. You mentioned the Union of Jewish Students. As I understand it, your organisation and the Union of Jewish Students are on record as saying that this Bill restricts freedom of expression rather than directly addressing the issue of antisemitism, and you are both on record as saying that it does not address the very epidemic—that is, the evil of rising antisemitism—that it claims it wants to tackle. Could you expand on that further, please?

Hannah Weisfeld: I am not sure whether that is a direct quote—I am not sure whether those were our words or the words of the Union of Jewish Students—but our sense is that the Bill will severely limit freedom of speech, as has been mentioned a lot this morning. Clause 4 already gags the ability of local democracies to express their opinions. That is very troubling in a democratic society—the idea that we legislate against free speech. As Jews, we don't do well in societies that clamp down on free speech, and I think that there is a really big debate in the community about that. There is a very big debate inside Israel about that, and inside Jewish communities in America, where there has been similar legislation.

I think it is worth drawing your attention to anti-boycott legislation that the Israeli Government passed in the Knesset in 2011. Some very mainstream Israeli political figures—people you will know—came out very strongly against it, such as Ruvi Rivlin, who was the last President of Israel, and Tzipi Livni and Dan Meridor. They were all very clear that clamping down on boycotts and doing so in a legislative way does not help Israel and does not solve questions of antisemitism. Dan Meridor, who was the Likud Deputy Prime Minister, said:

"This law helps in delegitimising Israel, and makes Israel look like a country that prohibits free speech. It is useless. Those who boycott are a small group of people. I oppose boycotts, but they should not be illegal."

That is the kind of sentiment that we echo.

Going back to the Minister's question about why we do not support BDS, it is possible to say that we do not support something but that we protect the rights of other people to have that opinion. That is a very important principle in a democratic country, and it is one that we—as an organisation that is committed to Israel, committed to Jewish life in Britain and committed to democracy—want to see being upheld, which is why we have an issue with this legislation.

Q47 Kim Leadbeater: You have talked a little bit about your concern about community relations in the UK as a result of this Bill; I think that that has been heard. What impact will the Bill have on your organisation's work in Israel and Palestine?

Hannah Weisfeld: I do not know whether people have seen it, but a letter was sent by 14 human rights and civil society organisations in Israel that went both to the Opposition and to the Government. They were very clear—I think this is very important—that the current political climate in Israel, which people may or may not be following closely, is extremely dangerous. It is very, very problematic. There are hundreds of thousands of people protesting on a weekly basis. I read yesterday that the police estimate is that there have been 7 million attendees at protests for 35 weeks—not 7 million individuals, but 7 million appearances at protests—and there are very severe clampdowns on free speech.

In the last year, civil society organisations in Israel have already faced two attempts, I think, to severely curtail their funding and to shut down dissent against the Israeli Government. What our partners in Israel wrote to the Government here and to the Opposition is worth quoting from: "We know all too well the consequences of shutting down dissent and disagreement. Today in Israel, there is significant civil unrest involving weekly protests of hundreds of thousands of people, reservists refusing to show up for military service and companies divesting their funds out of Israel. This legislation is giving in to Israel's far-right Government's desire to shut down debate, protest and dissent." Certainly on the ground in Israel, civil society organisations involved in protests see this legislation as a gift to the Benjamin Netanyahu Government.

I should add that there is huge concern in the Jewish community here about the ascendancy of Benjamin Netanyahu's Government and the far right. Today, literally about two minutes ago, the Government Minister for Diaspora Affairs was just uninvited from JW3, the main Jewish community centre in London, because of his opinions and because of his far-right position. He was due to have a tour there at, I think, 5 or 6 o'clock this afternoon, but about five minutes ago he was uninvited. That is the depth of feeling in this community: 79% of people who were polled in July said that they disapprove of Israeli Prime Minister Benjamin Netanyahu.

We have a community here and partners on the ground in Israel who are deeply worried about the direction of travel. What this Bill will do is say, "It is business as usual—not only business as usual, but we will give you a gift, which is forever to put Israel and the occupied territories beyond public scrutiny." By keeping the clause that specifically lists Israel, the OPTs and the Golan Heights, we are saying that despite the fact that there are now Israelis divesting and dissolving companies and moving them outside Israel, there can never be any circumstances in which it is OK for public bodies in Britain to do that. I think that that is very, very troubling, given that I think everybody here is committed to Israel's existence as a democratic and Jewish state.

The Chair: I am afraid that that brings us to the end of the allotted time for the Committee to ask questions. On behalf of the Committee, may I thank the witness for taking a position that does not necessarily conform to some of the other views that we have heard but that makes it absolutely clear what you stand for? We are very grateful for that.

Hannah Weisfeld: Thank you for inviting me.

Examination of witness

James Gurd gave evidence.

11.9 am

The Chair: We will now hear oral evidence from James Gurd, executive director of Conservative Friends of Israel. We have until 11.25 am for this session. Could the witness please introduce himself for the record?

James Gurd: With pleasure. Good morning. My name is James Gurd, and I am the executive director of Conservative Friends of Israel, which works to promote a strong bilateral relationship between the United Kingdom and Israel.

Q48 Felicity Buchan: Can you set out why you think this Bill is needed?

James Gurd: I think this Bill is a very welcome piece of legislation and will go a long way towards reasserting the UK Government's reserved foreign policy powers. In recent years—over the past decade, really—we have seen that being challenged by an increasing number of public bodies pursuing very divisive BDS activities in the UK. Indeed, the Government have made repeated efforts through the issuance of guidance to try to challenge that; I think the Government have now finally, rightly, reached the decision that legislative action is required.

Those BDS activities, as we have heard from a number of other witnesses this morning, have led to community division. I do not see it as the place of public bodies to be, effectively, picking one side in a dispute over a foreign policy matter that is several thousand miles away. The Jewish community—I believe, as a non-Jew—has felt increasingly isolated in the United Kingdom throughout this process. It is probably worth stating that no UK political party is on the record as supporting BDS, so I would hope that there will be broad support for this.

I believe that this legislation will also have a positive effect for the UK. The UK has very strong economic relations with Israel. Israel makes a very important contribution to this country's national health service, for example, and BDS has had a chilling effect on those relations and on the prospect of further improved relations over recent years. I know that that is something that CFI certainly welcomes in the Government's efforts to secure a free trade deal with Israel.

I believe that the Bill would also support the UK Government's belief in a two-state solution. That is something that I believe is undermined by BDS. It is a movement that is, I believe, associated more with extremists. Certainly you can look at the Palestinian BDS National Committee, which is the organising body over in the Palestinian territories. That body includes organisations such as Hamas and Palestinian Islamic Jihad, which are terror groups proscribed here in the United Kingdom. Within the UK context, the Palestine Solidarity Campaign is seen as one of the most prominent organisers of the BDS activities here in the United Kingdom. It is an organisation that until a few years ago—I feel this is probably worth putting on the record—had a logo presenting a future Palestinian state on top of a state of Israel. So I believe that the Bill will have a number of positive implications.

Q49 Felicity Buchan: You have addressed the impact that BDS campaigns can have on community cohesion and, clearly, in driving antisemitism. Do you therefore think it important that we specify in the Bill that Israel can only be exempted from this Bill through primary as opposed to secondary legislation?

James Gurd: I believe that that is a reasonable approach that the Government have decided to take, and I believe it is a reaction to the fact that BDS is unique in its singular focus on the state of Israel. We have seen, as a number of others have referred to this morning, a House of Commons briefing note that pointed out that of all recorded examples of boycott activity pursued by public bodies in the United Kingdom, they are targeting exclusively Israel, so there is clearly a unique problem here.

When you look at the Bill in a broader sense, it is a Bill that has universal application. Foreign policy is a reserved matter for the UK Government; it is not, I believe, the place of public bodies to be pursuing that. They are there to represent all their diverse communities equally and to ensure that they are fiduciarily responsible in how they deliver that.

Q50 Nicola Richards: We have heard concerns from others giving evidence today about people who wish to disagree politically with things that happen in Israel. People should have the right to freedom of speech on those matters. In your evidence, however, you make it clear that the aims of BDS are to cut off economic and cultural ties. Do you believe that the nature of BDS is totally different from making a political argument against a Government and policies and activities that happen in another state? Is it that difference that makes it so damaging to the Jewish community, in your view?

James Gurd: We have seen a growth in BDS activities in public bodies over the last decade. As I have referred to before, BDS is uniquely discriminatory in nature, as it only targets Israel.

I first encountered BDS while I was at university. I was at King's College in '09, which coincided—as is so often the case when there is conflict in Israel and the Palestinian territories—with a spike in BDS interest. That led to a series of BDS activities, which students were perfectly entitled to do and which they will be able to continue to do under the Bill, but it led to a series of antisemitic incidents on campus. The head of the university had to send around a communication to all members of the student body to call it out. It has since gone mainstream, in the sense that it has left the student body politic and entered public bodies here in the UK, so it has grown as a challenge.

Having said that, it is worth putting it on the record that the Bill will in no way challenge the right of a private individual or a private company to pursue BDS. They are perfectly entitled to do so if they wish.

Q51 Wayne David: I think everyone would agree that foreign policy is a reserved matter in the United Kingdom, but there is a danger of assuming that the United Kingdom is still a unitary state, which it is not. We can talk about foreign policy on the one hand, but on the other hand we talk about procurement policy, much of which is devolved, whether that is to the Scottish Parliament, the Welsh Senedd or the Northern Ireland Assembly. There have been frictions, for example over Brexit, about where exactly the line is drawn in terms of a devolution settlement.

Do you see it as a difficulty that there is a lack of clarity in the legislation, because the assumption is that Britain is Britain? Well, Britain is not Britain; Britain is a number of nations. There is a concern, certainly among the Welsh Senedd, that that factor has not been taken into account with regard to the legislation.

I will give a specific example of a concern from Northern Ireland, where public service pension schemes are devolved to the Northern Ireland Assembly. For this legislation to be introduced in Northern Ireland requires a legislative consent motion. The trouble is that there is not a Northern Ireland Assembly sitting to give it. I therefore presume that this legislation would not apply to Northern Ireland. Is that your understanding? Do you think that the issue of devolution and the nations of the United Kingdom is not fully taken into account in the Bill?

James Gurd: I am not sure that I am perfectly placed to comment on Stormont not sitting or on devolution, but I believe that the UK Government are right in taking a UK-wide approach on this. It was a manifesto commitment made in 2019 to all citizens of the United Kingdom.

If we look at the evidence, it is in Wales and Scotland that we have seen perhaps the most BDS activities by public bodies. That includes anything from West Dunbartonshire banning the inclusion of the books of Israeli authors in its libraries in 2009, through to the Labour Welsh Government two years ago, I believe, announcing their intention to release a procurement advice note in relation to economic activities in procurement practices with Israeli settlements, the sole thing identified as a problem within that process. That was subsequently dropped following a backlash from organisations including the Jewish Leadership Council and the Board of Deputies. The First Minister of Wales met them to hear their concerns. This is clearly a very live problem, but it is a UK-wide problem. I would support the UK Government in whatever approach they deemed best to tackle it.

Wayne David: Can I ask a brief supplementary?

The Chair: Before you do, is there anybody else? *[Interruption.]* I will bring in Chris Stephens and come back to you if there is time.

Chris Stephens: I will yield to Mr David to pursue his supplementary.

Q52 Wayne David: I am someone who has been on record many, many times as being totally opposed to BDS, but I also respect the devolution settlements. Irrespective of the issue, is it not right for the devolved institutions to exercise the powers that they have without an overbearing influence from central Government?

James Gurd: My understanding is that foreign policy is still a reserved matter for His Majesty's Government in those situations. It is only right and proper that the democratically elected Government of this country get to determine what those foreign policy positions are. To repeat what I said earlier, this will have a very significant effect in countering the divisive nature of BDS in all corners of the United Kingdom.

We have seen the Jewish community on the receiving end of repeated efforts to pursue boycotts of Israel or indeed companies operating within the contested territories—the Occupied Palestinian Territories—but that has often led to the targeting of the Jewish community directly. This is not just an Israel-Palestine issue; it feeds into the persecution of and discrimination against the UK's Jewish community. The Tricycle Theatre in London cancelled its hosting of the UK Jewish Film Festival one year. As was cited earlier, there was the case of Sainsbury's in Holborn removing kosher goods from its shelves due to pressure from BDS activities. This is a problem that has been left unaddressed for too long. There is a clear problem, and I believe that this is the right approach to respond to it.

Q53 Chris Stephens: James, you said in answer to one of my colleagues' questions that you believe the Bill would help to solidify international support for a two-state solution, which was a curious statement. The international community broadly supports a two-state solution for Israel and Palestine and opposes the continued occupation of Gaza, the west bank and East Jerusalem. What rights and methods should I and public bodies pursue to press for that change?

The Chair: I am going to close the session in two minutes, so it would be good to have a concise answer, please.

James Gurd: Understood, Chair, but that is a big old question. I do believe that the Bill will contribute to wider efforts to promote peace. The UK Government are committed to a two-state solution. I believe that BDS is inherently divisive. As I have said already, the organisations affiliated with it within the Palestinian territories include the likes of Hamas and Palestinian Islamic Jihad, which are proscribed terror groups here in the UK.

To cite a personal experience, I visited SodaStream, which is an Israeli company that makes products that have the ability to make fizzy drinks. It was based in the west bank, but following pressure from BDS activities over a sustained period, it had to move. The factory employed 600 Palestinian workers, who would have received greater work benefits and salaries than anywhere in the Palestinian economy. It had to be moved to Israel, where only 100 of those Palestinian workers were able to continue working. I spoke to some of those Palestinian workers myself on a CFI visit to Israel, and they were deeply unhappy about the fact that so many of their family and friends had lost their jobs as a result of that BDS activity.

Indeed, Mahmoud Abbas, the Palestinian Authority President, is on record as having said that he is also opposed to BDS. This is not some sort of peace movement. It is a deeply divisive movement that seeks to delegitimise the state of Israel. The UK and the UK Government should have absolutely no truck with it.

The Chair: With excellent timing, that brings us to the end of this session.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Second Sitting

Tuesday 5 September 2023

(Afternoon)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 9 September 2023

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Witnesses

Dr Bryn Harris, Chief Legal Counsel, The Free Speech Union

Dr Alan Mendoza, Executive Director, Henry Jackson Society

Rahima Mahmut, UK Director, World Uyghur Congress

Stephen Cragg KC, Doughty Street

Francis Hoar, Field Court Chambers

Professor Andrew Tettenborn, University of Swansea

Professor Adam Tomkins, Glasgow University

Andrew Whitley, Chair, Balfour Project

Mark Beacon, International Officer, UNISON

Rozanne Foyer, General Secretary, Scottish TUC

Public Bill Committee

Tuesday 5 September 2023

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

Examination of Witnesses

Dr Bryn Harris and Dr Alan Mendoza gave evidence.

2 pm

The Chair: Good afternoon, everybody. Welcome to the second sitting of evidence on the Bill. We will hear from six panels of witnesses this afternoon. Gentlemen are more than welcome to remove their jackets; it is quite warm in here.

First we will hear from Dr Bryn Harris, chief legal counsel at the Free Speech Union, and Dr Alan Mendoza, the executive director of the Henry Jackson Society. Presumably Dr Bryn Harris will be brought in when he arrives, but meanwhile, Dr Mendoza, if you are happy for us to do so, we will start by directing our questioning to you. We have until 2.30 pm for this panel. Could you please introduce yourself for the record?

Dr Mendoza: Yes, I am Dr Alan Mendoza, the executive director and a founder of the Henry Jackson Society, which is a foreign and security policy think-tank.

Q54 The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): The Government's assessment is that the Bill does not breach anyone's rights under article 10 of the European convention on human rights, as the ban that it introduces applies only to the public functions of public authorities. For example, councillors, when they are not representing the council, can express their own views and can support boycotts and divestments. Do you agree with that position?

Dr Mendoza: Thank you, Minister. The answer is very simple: yes. I think it is quite obvious that the Bill does not preclude any individual councillor, or indeed anyone working for a public body, from expressing their personal opinion on a boycott or something similar. It merely prevents bodies that really have no jurisdiction in such areas from passing formal motions on them. That is quite clearly laid out in the legislation, and the ECHR would agree.

Q55 Felicity Buchan: Statements of intent to boycott, even when not implemented, can undermine community cohesion, so do you think it makes sense to prohibit statements of intent to boycott, as we do under clause 4?

Dr Mendoza: Yes, again, I agree. First, if you are stopping the ability to boycott, there is no point having the ability to talk about those issues collectively. Secondly, if you have a debate about that, it can inflame community tensions. We have seen lots of examples in the past few years where even discussing these matters—alleging or suggesting that one country might be responsible for x, y or z—lends itself to an increase in community tensions on the ground; people take it as an excuse to go into worse forms of hatred. There is evidence that that has happened. If we are saying that public bodies that are not the UK Parliament or UK Government should not have control over foreign policy decisions, it makes sense to stop them having the ability to talk about the intent to do something that they will not be allowed to do.

Q56 Felicity Buchan: Dr Harris, I do not know if you heard the questions and want to add anything.

Dr Harris: If you could repeat the questions, that would be helpful.

Felicity Buchan: The first question was about the Government's assessment that the Bill does not breach article 10 of the ECHR because it applies only to public authorities while they are carrying out public functions, and private individuals can express views, and choose to boycott and divest. The second question was on clause 4, and on whether stating an intent to boycott has similar impacts on community cohesion to boycotting.

Dr Harris: Thank you. To state my position generally, the goal in clause 1 is broadly okay and compatible with free speech; clause 4 is not. I disagree with some of the Government's analysis. The explanatory notes state that public bodies do not have article 10 rights. That is certainly true of core public bodies—the police, the NHS, Whitehall—but my understanding is that that is not true of hybrid public bodies, which may well include universities. Certainly, the European Court has held that boycott is, or can be, an exercise of the right to freedom of expression, as in the 2020 case of Baldassi and France, and so free speech rights are certainly engaged. This Bill very clearly targets expressions of political and moral conscience, which is to say the form of expression that is most highly protected by article 10. I think there are some very real problems, and perhaps there will be time to develop my view on what those issues are.

Regarding clause 1, as I say, I think it is acceptable, first, that Parliament sets out the relevant considerations that a public authority may have in mind in making a decision. The public law—the common law—already does that, so I think that is perfectly acceptable in principle. I think it is right as well that the UK should not be embarrassed by perhaps rather adolescent campaigning issues, rather overstated campaigns that perhaps unfairly denigrate friendly countries; I think that is completely understandable.

The problem I have with clause 1 is the justification, and that would go to any assessment by a court were there to be a compatibility challenge. On that justification—that the UK should have a single front or a single, agreed foreign policy—I am not sure that the full range of public authorities owe, or should owe, any duty of fidelity to central Government's foreign policy. In fact, I think the opposite: that our public debate is likely to be enriched and informed by greater diversity. I think that that justification is questionable and would go into the article 10 assessment were there a challenge.

I very much agree that the second justification—of preserving community cohesion—is a legitimate aim. I think it is entirely foreseeable, and probably has occurred,

that some BDS campaigns have been informed by malice against Jewish people. However, it is to be noted that this Bill will do far more than merely target and limit those divestment campaigns that are malicious. It would cover, for instance—and I draw no parallel here with BDS—the anti-apartheid movement of the 1980s.

I will move on to clause 4 because you did raise that. My position is that clause 4 really needs to go in its entirety. To take clause 4(1)(a), which is the prohibition on statements of intent, there is no need—I think it is not necessary either politically or perhaps even legally—to prohibit statements. The mischief that is to be prohibited is the threatened act. The law will already help there. If a local authority were to resolve that it is going to divest the goods of a certain country, there would be the option of a prohibiting order by way of judicial review, and that targets the act. The court would be able to say, "You may not carry out this act that you threaten to carry out." It is not clear to me that the law needs to go further in prohibiting statements. That is not to say that the law could not go a bit further, but I think there is a question regarding the necessity of this measure and the necessity of interfering with the freedom to make political and moral statements.

Clause 4(1)(b), as you can probably imagine, is the most problematic. I do not think the Government, from what I have seen, have put forward any rationale for why hypothetical statements are a mischief. It seems to me a huge overreach concerning political speech. I see very little harm that it would do, and I think it is going to cause serious defensiveness and caution in debates on the governance of universities and local authorities, which perhaps may be well worth having, but I will leave it there for now.

Q57 Felicity Buchan: I have a few follow-up questions and a couple of points for clarification. I want to clarify that the Bill would apply to hybrid institutions when they are working in a public function but not in a private function.

Dr Harris: Correct.

Q58 Felicity Buchan: You said that clause 4 would affect freedom of speech. Again, I want to clarify that clause 4 applies to the council only when it is talking in a council capacity, and not to the individual councillors when they talk in a private capacity.

Just a few quick follow-up questions. The Bill contains the power to exempt certain countries as time goes on so that foreign policy can be adaptive. Do you agree with that? Secondly, briefly, do you think that the BDS movement has been successful in pressurising Israel?

Dr Harris: Sorry, can you repeat the first question? I am so sorry; it skipped my mind.

Felicity Buchan: The first question was about the Bill containing the power to exempt certain countries as time goes on, so it can be adaptive to foreign policy.

Dr Harris: I see. I accept that. Again, I will go to the example of the anti-apartheid movement. I want to make it clear that I think it is entirely wrong to compare the only democracy in the middle east, Israel, to apartheid South Africa, but for the purposes of the Bill, the anti-apartheid movement in the '80s is relevant. In the debate that occurred there, there was a broad disagreement between central Government and their foreign policy, and a wider civil society movement of churches, trade unions and, eventually, a large number of local authorities —about 120. It was eventually curbed in 1988 with the Local Government Act, but the question is: was that debate and that tension productive? Did it inform the public debate? Did it aid the global movement against apartheid? I think it surely did.

It is beyond doubt that the British anti-apartheid movement led the world outside South Africa. For me, that is a great victory of British decency—of British soft power and, of course, British free speech. Going back to the power that you mentioned, whereby the Minister can, by regulation, add countries to the list, that debate and that soft power would be considerably diminished, especially in their legitimacy, if they were essentially licensed by the imprimatur of the Minister saying, "These are debates you can have." For me, that would really reduce the power of that bottom-up movement.

Q59 Felicity Buchan: I am conscious of time. Dr Mendoza, do you want to come in on those final questions and then I can hand over?

Dr Mendoza: Yes. I disagree a bit with Dr Harris. I am not for a moment saying that the anti-apartheid movement in civil society was not valuable or successful—it hugely was—but let us focus on what we are talking about: a tiny sliver of institutions looking at the question of boycotts, as opposed to forbidding the discussion of boycotts in public, which sounds like where Dr Harris is heading in this sort of discussion. That is not what the Bill prevents. In fact, you can talk about any foreign policy aspect and any country, even in areas where a local authority or university has no power or authority to particularly affect a policy, and that will not be stopped. We need to focus very much on the narrowness of the Bill, which relates purely to boycotts and the sanctions policy.

Casting our minds back to the 1980s, had that been forbidden, would it have had any effect on the effectiveness of the anti-apartheid movement? I think absolutely not. There was enough out there that would have driven it anyway in terms of foreign policy; there would have been that debate. We are not talking about having any curbs on the freedom of speech of individuals.

I can guarantee that, in today's society, with the 24/7 focus on social media and with so many outlets to talk about things, all the Bill is trying to do is, essentially, keep authorities that have no particular purpose in looking at specific foreign policy issues in the form of boycotts from wasting their time and public money in doing so. Again, privately, they will be perfectly able to do it: publicly, there is no call for it and there is no need for it, given that it will be covered elsewhere. This House is where you should be debating foreign policy—not in local councils, not in devolved Assemblies. I speak as a local councillor in that regard. I can assure you that were I to be speaking on my area of expertise—foreign policy—in the council chamber of my local authority, my residents would rightly ask, "What on earth are you doing wasting council time like this?"

Let us get back to the focus of what we are trying to do, which is something very narrow, to reflect the proper place of foreign policy in this country and the proper people entitled to make decisions on it, without compromising anyone's ability to talk about, argue and discuss it, and tear it apart if necessary, in a private capacity.

Dr Harris: If I can briefly follow up, I defer entirely to Dr Mendoza on the effectiveness of the BDS movement: I do not know.

I omitted to say that I accept that the clause 4 prohibition is on a person who is subject to clause 1. The difficulty—and this is perhaps a drafting point—is that clause 1 concerns decisions, and therefore it squarely fits within section 6 of the Human Rights Act. Then, in clause 4, we go to persons who are subject to clause 1. What is unclear to me—and I trust this is not my misreading of the Bill—is when the clause 4 duty bites on that person. Does it only bite on them when they are exercising the decision-making power in clause 1, or does it bite on them if they hold that power? If they generally have that power by statute, are they therefore constantly under that clause 4 duty? The scope of clause 4 is unclear at the moment and, as with any restriction on liberty, it should be narrowly stated and certainly be narrowly construed by the courts.

Dr Mendoza: Dr Harris has reminded me that I did not answer the BDS effectiveness question. It has been entirely ineffective as a campaign globally, so much so of course that it is not shared formally by the Palestinian Authority itself as a policy. That should tell you that this is a fringe movement that has no purchase even with the elected authority within the PA.

Dr Harris: If I could quickly come back—there is a bit of a double act going on with Dr Mendoza—

The Chair: Just a reminder that this panel is due to conclude at 2.30 pm and I have three more Members who have indicated that they wish to contribute. If anyone wishes to contribute, please waggle your fingers at me. Do you want to add anything further, Dr Harris?

Dr Harris: Briefly, I agree with Dr Mendoza. The justification here should be the limitation of vires—of the powers—of these bodies. That is the way to justify clause 1 for me. The justification is not, "Get behind Government policy" or "Do not make these moral or political statements": it is vires and powers. We can come back to that in further questions.

Alex Norris (Nottingham North) (Lab/Co-op): I have just one question, about clause 7, which governs the information notices—the mechanism by which the Government can compel information from public bodies to find out if they have made, or are about to make, a decision that would contravene clause 1. In clause 7(8), those notices override any obligation of confidence, so if it is a conversation between someone and their lawyer, the Government can compel that information. That seems to me to be a very strong power. What is your opinion?

Dr Harris: My reading of that, on its face, is that it would be something like the whistleblowing protection, whereby a whistleblower is exempted from duties of confidence to their employer. Without more, it would strike me as extremely unlikely that this would override the privilege between a lawyer and client.

Alex Norris: Even though it says "any obligation" on the face of the Bill?

Dr Harris: Yes.

Dr Mendoza: I have a slightly different response. I am slightly perplexed by the question. What were you thinking that was so secretive and furtive in nature that would even require a lawyer/client confidentiality level? We are talking about a simple foreign policy discussion, not about someone's secret actions.

Q60 Alex Norris: What I would say is that you would know, as a local authority councillor, that local authorities routinely take legal advice about their actions, certainly if they thought they might be an edge case in such legislation. On a fair reading—I would be delighted if I were wrong—this would permit the extraction of such information, which we would normally consider privileged, by dint of a Government information notice, and I wondered if you felt that was proportionate.

Dr Harris: It is important to note that it does not say that the enforcer can demand information that is confidential. All that happens is that the person disclosing will not be liable if they breach a right of confidence. It is not a right to extract the information, or a power of the Government; it is simply a freeing from liability of the discloser.

Dr Mendoza: I would agree with that reading. It says:

"A person providing information in compliance",

so I think that is the correct reading of that clause.

Dr Harris: There is one, perhaps related, problem for me. Clause 4 states:

"A person who is subject to section 1 must not publish a statement",

and that can include statements of intent or hypothetical intent. Consider, for instance, a university governing body—senate or council—making a decision about divestment. Let us say that there is a meeting, there are minutes and they are kicking ideas around. They may well benefit from a degree of those deliberations not being public.

The problem I have is that my understanding is that an FOI disclosure would constitute publication. If you look at section 79 of FOIA, it is explicitly called "publication". This body would be in a position whereby it would say, "Well, we have to comply with FOIA, because we have to disclose, and if we do disclose, we may be breaching the law by publishing a statement whereby we say that we intend to act in a certain way." It is a drafting point, I think, but that needs to be cleared up. We do not want over-defensiveness in these deliberations by public authorities.

Dr Mendoza: I agree. That is an interesting technicality that probably should be taken note of by the Committee.

Q61 Chris Stephens (Glasgow South West) (SNP): I have a question for you, Dr Mendoza, and then a separate question for Dr Harris. The Henry Jackson Society, the organisation that you represent, is described as being

"focused primarily on supporting global democracy in the face of threats from China and Russia".

Does your organisation in any way support divestment in China, particularly regarding the treatment of Uyghur Muslims?

Dr Mendoza: I would say, on that point, absolutely. The position that we adopt with China is very simple. I believe that you have a witness who will be able to tell

you about the experiences of her family, her relatives and, indeed, her people in what are effectively modern-day concentration camps, to the point that many among us believe that the Chinese Government are practising genocide against this particular group in Xinjiang. If we look at what is actually happening there—the eradication of their culture, the imprisonment of people for forced labour and that sort of activity—on that basis, we are essentially talking about modern-day slavery. You will be aware that the Bill will be superseded by modern slavery actions and the UK's sanctions regime on this. Yes, we do believe that there ought to be accountability from the Chinese Government on this score, and I personally would not be buying things from Xinjiang province.

Q62 Chris Stephens: I welcome your comments. I think we will be having a debate about what the Bill actually says in relation to that.

Dr Harris, you mentioned the anti-apartheid movement. Obviously, Glasgow has a history around that: Glasgow District Council renamed a street, gave Nelson Mandela the freedom of the city and, like many other local authorities, boycotted South African goods and services. If this Bill had been in operation then, it would have prohibited Glasgow District Council from taking such actions, wouldn't it?

Dr Harris: Yes, that is my understanding. As you say, Strathclyde local authority was one of the first in the UK, along with Sheffield, to divest from South African goods. My understanding is that it certainly would have prevented the divestments, and also the discussion around them. There is a debate to be had, on which I have no expertise, as to how effective the anti-apartheid movement was in terms of pure efficacy—in terms of pure pressure on the South African Government—but my understanding is that, were the Bill in place during the '80s, had the Government not added South Africa to the roster, as it were, by way of regulations, you would be correct. While it would also prohibit perhaps slightly more—forgive me—adolescent campaigns, or ones that are perhaps less well-reasoned, it would also prohibit those that have greater moral force behind them.

Chris Stephens: Thank you.

Q63 Kim Leadbeater (Batley and Spen) (Lab): Clause 4 prevents public bodies, and anybody representing them, from saying that they would support a boycott if it was legal to do so. Do you agree that, on the face of it, that feels like a limit on freedom of speech? Is it compatible with free speech for it to be legal to say that you are against something—in this case, any kind of boycott—but illegal to say that you are in favour of it?

Dr Mendoza: I would go back to the question that Dr Harris posed. It is really a question of vires; it is about what a public body collectively should or should not be doing. A public body should not be making decisions in contrast to UK foreign policy on something like a boycott, basically. Individual members—individual fellows or whatever it might be—have every ability and right, still, to say what they like on the subject, but they cannot speak on behalf of their institution or their authority to do that. However, when it comes to opposing a boycott, there are rights and abilities there. That is something that public bodies are not allowed to do, so that would be in keeping with that.

I think there is a clear distinction between the two things. One is something that the body is not competent, or does not have the jurisdiction, to legally carry out; on that basis, what is the purpose of speaking on it? The other—opposing a boycott—is something it can do, because that is the norm and the effective position, in law, for that authority. I therefore see no problem, or indeed contradiction between the two things.

Dr Harris: Again, as I have said, it certainly conflicts with the spirit of free speech, and I suspect also with the law regarding freedom of expression. As I said, the European Court of Human Rights, at least in one case—that of Baldassi in France, which I hope the GLD will have taken on board—certainly does say that a boycott is a protected act of protest. The very interesting thing about that case is that the court said that justification for the restriction of political speech is key; there needs to be a tight justification for it. That is entirely in keeping with the common law in this country, and the political philosophy of this country, that political speech, especially, must merit the utmost protection in law.

I think that there is a point on which the Government are on safer ground. Let us say that they want to avoid the embarrassment of legal challenge—they might reasonably wish to, and I am sure that they do. I would certainly say that the community cohesion point is a stronger justification, and the European court makes that distinction very clearly too. As I have said, BDS, especially in the light of recent events, clearly goes to community cohesion, but it is entirely foreseeable that there may be future foreign policy controversies where that is not an issue and the Bill will still apply to them. That raises the question of proportionality: because it will cover even cases where community cohesion is not in play, is there overreach?

Let me quickly say on vires, because I think it is quite important, that it is entirely right for the law and Parliament to say to subordinate bodies, "This is the extent of your power; you serve the public interest in this way, to this extent, and you use your resources for this purpose." I think it is entirely right for Parliament to say, as it already does, "If you're a local government authority, foreign policy isn't really what you should be spending your money on." I think it is right to say that to other bodies. However, I think it is extremely provocative for Parliament to say that to universities. This Government and Parliament have done excellent work protecting academic freedom, but there is a second limb to academic freedom, which is the autonomy of academic institutions, and I think it is extremely questionable to challenge that.

Q64 Kim Leadbeater: Can I follow up on the point about community cohesion? Do you think that the Bill will have a positive or negative impact on community cohesion?

Dr Harris: It is a good question. I am not entirely sure. It is obvious that in some areas, where perhaps there is a certain degree of activism in the local authority, it could lead to some members of the community—I mean Jewish members of the community specifically—feeling like there is less pressure, and feeling less victimised and targeted. But as I say, there is going to be a significant number of cases where this justification will not apply because there is not an issue of community cohesion. Take the Ethiopian and Eritrean war: how likely is that to raise questions in this country of community cohesion?

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions—I apologise. I thank our witnesses on behalf of the Committee.

Examination of Witness

Rahima Mahmut gave evidence.

2.30 pm

The Chair: Welcome. We will now hear from Rahima Mahmut, the UK director of the World Uyghur Congress. We have until 2.45 pm for this session. Would the witness introduce herself for the record?

Rahima Mahmut: I am Rahima Mahmut. I am Uyghur. I have been living in the UK since 2000, and I am a human rights activist. I have not been able to return home for the last 23 years. Since the implementation of the genocidal policy in my country in 2016, I have been heavily involved in leading the campaign in this country. I am the UK director of the World Uyghur Congress and the executive director of Stop Uyghur Genocide. That is all I can tell you about me, but if you want to know more I am happy to continue.

The Chair: Thank you very much. I call the Minister.

Q65 Felicity Buchan: Thank you for being here and sharing your thoughts and experiences, which I imagine are very painful. One of the purposes of the Bill is to say that we should have one foreign policy. It does not prevent our central Government from having sanctions regimes, for instance. Do you agree that foreign policy should be reserved for the UK Government, rather than local authorities making up independent foreign policies?

Rahima Mahmut: All my life, I have been fighting for freedom of speech and the freedom to make decisions. I do believe that foreign policy is not necessarily fair. For example, since 2016 and especially since 2017, mass arrests have started in my country. The UN said that up to 1 million people are in concentration camps but we believe that it could be up to 3 million people. I have lost contact entirely with family members since January 2017. In April, I learned that my sister had died in March—one month earlier—and I was told not to contact anyone in case I put their life in danger. I learned that my brother was in a camp for over two years and released because he was almost dying.

I have been campaigning in Parliament, and it has passed a motion declaring that genocide is happening. The independent UK Uyghur tribunal, led by Sir Geoffrey Nice KC, also found evidence of genocide based on the forced sterilisation, forced abortion, and prevention of future births of Uyghur children. There is also forced labour, family separation, children being taken away, cultural destruction, and so on. We have a huge amount of evidence gathered by the Uyghur tribunal, yet we have not really seen the UK take active policy decisions on trade or anything else.

It really pains me to see this kind of inactivity from the politicians because of the UK's economic dependency on China and its diplomatic relationship. Our Foreign Secretary visited China only last week, after which I penned two op-eds: one was in *The Spectator*, in which I said that this is a betrayal of the Uyghurs; the other was in *The Guardian*. I recommend that you read them if you have time. I laid out the reasons why this is so unfair and why it just does not really align with the human rights that we believe the UK upholds.

In this kind of situation, I do believe that local authorities and other bodies should have those powers. We campaign, for example, about solar panels, an area that is heavily tainted by Uyghur slave labour. We know that local authorities make decisions on buying those products, and we believe that if we can convince the local authorities, they can decide not to buy solar panels tainted by slave labour.

Q66 Felicity Buchan: I am very sorry to hear what has happened to your sister and brother, and I appreciate your passion. The upcoming procurement legislation will further strengthen our approach to exclude suppliers where there is clear evidence of the involvement of forced labour and other modern slavery practices, such as in Xinjiang. Given that, and given that this Bill will sit in harmony with the Procurement Bill, so there will be the ability to exclude suppliers on modern slavery and labour misconduct grounds, are you more comfortable with the situation with this Bill?

Rahima Mahmut: No. For example, we are also campaigning against Hikvision cameras, which are made in China. Hikvision is one of the biggest CCTV companies, and its cameras cover internment camps and the entire Uyghur region. I always call this genocide against my people the first high-tech genocide. We are campaigning against Hikvision because it is complicit in this genocide, but we cannot necessarily prove that Hikvision cameras are made using slave labour. If the Government do not recognise this as genocide, then local governments and public bodies cannot make the decision to boycott or to stop such products coming into this country.

Felicity Buchan: There will be the ability to exclude on modern slavery and labour misconduct grounds under the Procurement Bill and in this Bill, but perhaps, in the interest of time, I should allow colleagues to come in.

Q67 Wayne David (Caerphilly) (Lab): We have a great deal of sympathy with what you have expressed to us this afternoon. One problem that many people have with the Bill is that although it was billed as a Bill to prevent BDS against Israel, it is not country-specific. It applies to all countries, including Myanmar and China, and will have a direct impact on the solidarity that is capable of being shown to the Uyghur minority. It is ironic, really, that although one of the impressive things we have seen over the last couple of years is the solidarity from the Jewish community in Britain with the Uyghur minority, we have this Bill that some would suggest actually prevents local authorities from expressing that collective, community, material solidarity with people who are oppressed in China. Do you think that is a fair characterisation of your concerns?

Rahima Mahmut: First, thank you for that question. I thank the Jewish community from the bottom of my heart for the support we have received—Stop Uyghur Genocide received its first fund from the Pears Foundation. As people who have experienced this absolute horror in the past, the Jewish community can relate and understand the pain.

When it comes to the legislation, I am not a lawyer. I only look at whether a piece of legislation will benefit my community. So far, from my own understanding of this Bill, I do not see that it will have any kind of positive outcome. As I have explained, this is because of the power that China has due to the economic dependency that this country and many others have on it, which is why we could not really mobilise Governments to recognise it and take any meaningful action. Therefore, I strongly oppose this Bill. This is not just me; I represent the Uyghur community, which also opposes this Bill. We do not want this Bill to one day prevent our campaign from being successful.

Wayne David: That was very clear, thank you.

The Chair: I am afraid that this will probably have to be the last question to the witness. I call Chris Stephens.

Q68 Chris Stephens: Thank you for your testimony today, Rahima. I have Uyghur constituents, and I have heard a lot about what is going on from them.

I have just got a simple question for you. George Peretz KC observed that the Bill would prohibit public bodies and local authorities from imposing their own bans on, for example, products and services imported from China, based on boycotting unethical production chains that use Uyghur forced labour. Is your opinion the same as that of George Peretz KC? Is there anything else you would like to add before we close?

Rahima Mahmut: We hear a lot about Uyghur forced labour at the moment, from cotton products to solar panels, and much more. But one thing is very clear: no one can go inside the region to carry out any kind of meaningful due diligence. The Chinese Government always have their own ways of manipulating these processes of examination, such as changing goods made in so-called Xinjiang to say, more broadly, "made in China".

This is a very uphill battle. We have over 300 organisations united as End Uyghur Forced Labour, but we are not really achieving the goal that we would like to achieve. I believe that the most powerful and important outcome would be for the UK Government to bring in a ban on imports from the region, and to spare some resources to control and sanction China. We know that Russia has been sanctioned, and we know the reasons—you can see the bombardment and the people dying. You can see the visual sights. Although you do not see the scenes, my people are dying in camps in large numbers, and there is no investigation or action. I therefore believe that action should not just be limited to certain Bills—we would like to see accountability overall.

The Chair: That brings us to the end of the time allotted for the Committee to ask questions on this. I would like to thank our witness very warmly on behalf of the Committee.

Examination of Witness

Stephen Cragg KC gave evidence.

2.45 pm

The Chair: We will now hear from Stephen Cragg KC. We have until 3 pm for this session. Would the witness introduce himself?

Stephen Cragg: I am Stephen Cragg KC. I am a barrister at Doughty Street Chambers specialising in public and human rights law.

Q69 Felicity Buchan: The Government's assessment is that the Bill does not breach anyone's rights under article 10 of the ECHR. The ban applies only to the public functions of bodies defined as public authorities, so it would not affect individuals or private companies. It would not affect a councillor acting in an individual capacity—only a councillor who was speaking on behalf of his council as a local authority. Given this, do you agree with that assessment, and that the Bill is compatible with the ECHR?

Stephen Cragg: First of all, it is unclear whether that is the case or not.

That is something which needs to be clarified—if that is the intention, it should be spelt out. The concern is that the right to freedom of speech of councillors speaking about matters in council chambers, for example, might be affected—that is unclear from the Bill at the moment. In article 10, the right to freedom of speech also involves the right of the public to receive information. It is interesting that local councillors, for example, might feel restrictions on saying things in debates in council chambers because they are afraid of falling foul of some of the provisions in this Bill. Michael Gove said in a statement that it does not apply to individuals—on the face of it, I can see that argument, but I think it is very unclear and needs to be clarified if that is the intention.

Q70 Felicity Buchan: Thank you. The Bill provides powers for enforcement authorities to issue compliance notices and investigate and fine public bodies where there is a breach of the ban. These powers are based on existing powers for regulators of public bodies. Do you think the powers given to enforcement authorities are reasonable and proportionate?

Stephen Cragg: I recognise that these are the kinds of powers regulatory authorities often have. There is concern about the fact that there are also judicial and quasi-judicial review remedies in the measure and about the effects of the regulatory provisions, which involve possibly preventing someone from making a statement in advance. There is also concern about the information notices provision in clause 7. I was in the room when the question about legal professional privilege was asked. I cannot see anything in clause 7(8) which provides any protection for legal professional privilege. It was also said that it gives people the power to provide that information, but that is not right either because clause 7 is all about complying with a notice—people do not have any discretion as to whether they disclose the information or not. There are concerns about the provisions in clauses 6 to 10.

I also note that there is no clue at all about the kind of monetary penalty that might be imposed as well—whether it will be something like the Information Commissioner has, which can go to hundreds of thousands of pounds, if it will be £100 or if it will be a rap on the knuckles and being told, "Don't do it again." All that needs to be clarified, and it is not clear at the moment.

Q71 Felicity Buchan: On the legally privileged point, the Government's view is that the information power does not extend to legally privileged information, on the back of the fact that that is a fundamental common law right and would need specific words to override.

Stephen Cragg: In my view, those specific words are there in clause 7(8):

"A person providing information in compliance with an information notice does not breach any obligation of confidence owed by the person in respect of the information, or any other restriction on the disclosure of information (however imposed)."

I do not see how you can get much clearer than that.

Q72 Felicity Buchan: Just to summarise, you would want clarification on that point and on councillors acting in their own capacity.

Stephen Cragg: If that is the intention—that legal professional privilege is excluded—it needs to say that.

The Chair: Thank you, Minister.

Q73 Ms Anum Qaisar (Airdrie and Shotts) (SNP): Thank you for joining us this afternoon, Stephen. Can you clarify how the Bill will impact the UK's long-standing position on illegal settlements? Will the Bill stop public bodies from adopting a stance of not buying and trading goods from illegal settlements, bearing in mind that those settlements are illegal under international law?

Stephen Cragg: I think the position is that advisory opinions are provided by international courts that say that providing support for settlements etc is something that should not be done. One of the concerns is that this is something that might get fought out in the courts under the Bill—councils thinking that they can take things into account that mean that they are not breaching the UK's international human rights and law obligations but being unsure about that and seeking clarification from the courts, and individuals and bodies thinking that there will not be a breach of the UK's international law obligations fighting that case or raising their points of view in the courts and the courts having to resolve those issues. One can see that that is something that might happen quite quickly.

Q74 Ms Qaisar: Is that a concern that you have? Richard Hermer KC has raised concerns that UK courts would potentially have to rule on the legality of Israeli settlements in the Palestinian territories.

Stephen Cragg: Yes, because there are competing views on that. If there are competing views, local authorities might want to seek a view from the courts on whether their view is correct. It is then all up for grabs in the High Court and beyond after that—something that the courts have tried to avoid getting embroiled in.

Q75 Alex Norris: You mentioned the use of regulations for setting the fining regime. That is a common theme of this Bill. It also allows the Secretary of State to vary the schedule that sets out the important exceptions to the Bill and to vary enforcement authorities. That is a theme of the Bill. Do you think that those things and that degree of reserved power for the Secretary of State should be on the face of the Bill, or are they proportionate and necessary for the effectiveness of the Bill?

Stephen Cragg: What the Bill does is give very wide powers to the Secretary of State to change lots of aspects of this—which countries are involved, which conditions and the like. The concern when you have secondary legislation powers is always, "All right, this Government might not use them in a way that you would not agree with, but Governments down the line may use the powers they have here to mould a system where countries that they agree with are excluded under the Bill, and countries and issues that they do not agree with are the ones that things will be focused on." There is always a concern about that. In something as important as this, it seems to me that that should be on the face of the Bill; it would give me a lot more reassurance as a lawyer if it were on the face of the Bill.

Q76 Alex Norris: Secondly, to finish the points you made in a fulsome way on clause 7, for my own clarity. You are saying that you would have greater confidence in the provisions in clause 7 if it was on the face of the Bill that privileged information between clients and their legal representation was exempted from that information-gathering power?

Stephen Cragg: Yes. I read out the terms of clause 7(8) and it seems to say that there is no restriction on the information which can be requested, as far as I can see. If that is not the Government's intention, it is simple to put that right.

The Chair: Thank you very much. If there are no further questions from Members, I thank the witness and we will move on to the next panel.

Examination of Witnesses

Francis Hoar, Professor Andrew Tettenborn and Professor Adam Tomkins gave evidence.

2.56 pm

The Chair: We will now hear from Francis Hoar, of Field Court Chambers, Professor Andrew Tettenborn of the University of Swansea and Professor Adam Tomkins of Glasgow University, who joins us via Zoom. We have until 3.45 pm for this session. Can the witnesses please introduce themselves, for the record, starting with Mr Hoar?

Francis Hoar: Good afternoon, I am Francis Hoar. I am a barrister from Field Court Chambers and specialise in public law.

Professor Tettenborn: Good afternoon, I am Andrew Tettenborn. I am a professor of law at Swansea University and also a member of the Free Speech Union.

Professor Tomkins: Good afternoon, I am Adam Tomkins. I hold the John Millar chair of public law at the University of Glasgow. I am a specialist in constitutional law with a longstanding interest in the issues of the Bill. I am also a former elected member of the Scottish Parliament.

The Chair: I call the Minister to ask the first question.

Q77 Felicity Buchan: One of the motivations for the Bill was to have one reserved foreign policy. Given that, do you agree that it is vital that this ban applies to the devolved Administrations and devolved public bodies? Adam, since you are sitting in Scotland, may I go to you first?

Professor Tomkins: Yes, absolutely. I agree strongly that the Bill should have UK-wide extent and application and should apply to all public bodies throughout the

United Kingdom, including devolved Administrations—arguably, perhaps especially devolved Administrations. The Bill has two fundamentally important policy motivations. One is with regard to community cohesion. Community cohesion is a responsibility of the United Kingdom Government and, indeed, of the United Kingdom Parliament throughout the whole of the United Kingdom. The other is of course to safeguard the integrity and singularity of the UK's established foreign policy, which is set exclusively for the whole of the United Kingdom by the United Kingdom Government, accountable as it is to the United Kingdom Parliament. The devolution settlement sits on top of those constitutional fundamentals and is not an exception to those constitutional fundamentals. For all those reasons, it is vital that the Bill applies and extends to all four nations of the United Kingdom.

Felicity Buchan: Andrew or Francis, do you want to come in?

Professor Tettenborn: I certainly back what Adam Tomkins has said. If we put the boot on the other foot, imagine that we are negotiating with the State Department over something very delicate, and the answer comes back from the State Department, "We will give you support—we will put pressure on this country—but we can't answer for California or Colorado, who might have a different official view." I do not think we would be very happy about that. Again, we could ask the German Government and they could say, "We are of this view, but the Government of Bavaria or Baden-Württemberg think differently." We owe it to our foreign partners to speak with one voice, in the same way as we might expect them to.

Francis Hoar: In principle, I agree with that. I do have concerns about the Bill on which I shall extend later, but in principle yes, the United Kingdom should speak with one voice. I think it is fair for Her Majesty's Government to deprecate and to attempt to restrict, within their powers and within the devolutionary settlement, as I think they are, the attempt by the Scottish Government in particular to have a separate and independent foreign policy through having missions abroad and making statements and, perhaps, investment decisions.

It is also appropriate to remember that there used to be a convention that when speaking abroad, Her Majesty's Opposition would not contradict the foreign policy of the day. That is not to say that they did not, as they of course did, object to foreign policy in Parliament, when legislation was proposed and also in the sense of Government decisions. That was something that Clement Attlee and others were extremely keen on furthering. I regret that in the past 20 years in particular, and perhaps particularly since 2016, that has not been something with which Her Majesty's Opposition have complied. They frequently negotiated with representatives of foreign states in the Brexit process, which I think is regrettable. That goes well beyond the scope of the Bill, but I think the policy objective of ensuring that the UK speaks with one voice is an appropriate one.

Q78 Felicity Buchan: Do you agree that in order to ensure that the ban operates effectively, it needs to cover a wide range of public institutions, including universities?

Professor Tettenborn: I am probably in the firing line here as I come from a university.

Felicity Buchan: Yes, absolutely.

Professor Tettenborn: I think it probably should, but perhaps for reasons different from those for other public authorities. The issue of free speech in universities is very much an issue of free speech for individual scholars within those universities. It seems to me rather inappropriate that a university should have a corporate view on a particular matter of foreign policy. It should, if you like, hold the ring between individual academics. So when it comes to universities I think there is a specific justification.

When it comes to public authorities, I simply go back to the idea that public authorities should regard it as off limits—ultra vires, if you like—to have their own foreign policy and their own views on what individual foreign Governments should be doing. That is particularly because, as was mentioned earlier, if you have, for example, large numbers of people from India and Pakistan in a particular local authority area, there is nothing that is going to make dissension worse than a public authority that is seen to favour Pakistan, say, over Kashmir.

Felicity Buchan: Francis or Adam, do you want to come in on that point?

Francis Hoar: Maybe I will let Adam conclude on this, and I will be much more brief. I am ambivalent about universities, to be honest, for the reasons that Dr Harris, whose evidence I heard, set out. I appreciate your point, Minister, which is that the legislation applies only when the university is acting as a public body. I appreciate that distinction, which can perhaps be fine. That is the kind of issue that might be teased out in the courts, but I suppose that is part of the nature of such a Bill. I sympathise and agree, to a certain extent, with Professor Tettenborn's point about it not really being appropriate for universities to have corporate identities, but whether that should be in public legislation is a different matter.

Professor Tomkins: I agree with what Andrew Tettenborn just said. I should probably have said at the beginning that I am also a member of the Free Speech Union; indeed, I am on its Scotland advisory panel. I do not like disagreeing with Bryn Harris, but I am afraid I disagree with quite a lot of what he had to say about the Bill this afternoon, not only with regard to the universities question, but with regard to clause 4 more generally.

In the law of the United Kingdom, we do not have a single definition of the public sector or the public sphere, but we do have a very workable template that has been used for more than 20 years now in the Human Rights Act, which is what the Bill validly seeks to borrow from. That brings within its scope hybrid authorities such as universities when they are acting in a public capacity. It is a way of understanding the scope of the public sphere or public sector that has not caused particularly difficult problems in litigation at the High Court or at a higher level in the more than 20 years during which the Human Rights Act has been in force. That is not to say that it has not been litigated at all—of course it has—but it has not caused particular problems.

I think it eminently sensible that the Bill seeks to use that template in this context. I am very relaxed about universities and other public authorities being captured within the scope of the Bill in the same way as local authorities and devolved Administrations. I do not have any issues or concerns in that regard.

Q79 Felicity Buchan: So you are happy with how the Bill is drafted to apply only to public institutions, not to private individuals.

Professor Tomkins: Absolutely, yes.

Q80 Felicity Buchan: Does anyone on the panel have a view as to how the Bill compares with other examples of anti-BDS legislation in other jurisdictions across the world?

Professor Tomkins: Perhaps I can address that question, Minister; I have done quite a lot of work on how the Bill would compare with the position in France and in a number of the states of the United States.

The Bill is very modest indeed in comparison with what has been happening in France and in the United States. French authorities, for example, are seeking to criminalise various forms of BDS activity, which the Bill emphatically does not. In the United States, where I think the states that have enacted anti-BDS legislation are now in the majority, that legislation varies from state to state but its general tenor is that public authorities are prevented by force of law from contracting at all with American companies unless those American companies declare that they do not boycott either Israel or the occupied territories. Again, that is going much further than the Bill will go in the UK. When understood comparatively in terms of the way in which our closest friends and allies are taking legal action to clamp down on very counterproductive and unhelpful BDS campaigns, the Bill is very modest, but it is not without importance and is not ineffective.

It is worth remembering—I listened to the exchanges with other witnesses earlier—that of the boycott campaigns that have been targeted against a foreign power by public authorities in the United Kingdom, every single one has been targeted at Israel, so analogies with what happened 30 years ago or more with regard to South Africa are perhaps a little inapt. It is true that the Bill is of general application and is not specifically about Israel, but the facts on the ground are that, as matters stand, every single one of the publicly funded anti-BDS campaigns in the United Kingdom has been targeted at Israel.

The Bill is very important and I unqualifiedly support it, but in comparison with what our closest friends and allies are doing elsewhere in the world, it is a rather modest measure. It could—some would say should—have gone a lot further in clamping down on BDS activities, which have the effect not only of undermining the cohesion of UK foreign policy, but of significantly undermining community relations.

Q81 Felicity Buchan: Does the rest of the panel want to come in, either on the comparative point or on the point about ECHR article 10?

Professor Tettenborn: I might have something to say about ECHR article 10. I am not as much of a human rights expert as the gentleman from Doughty Street Chambers—I give way to him pretty willingly—but I do not think that there is a strong article 10 right in public authorities speaking as public authorities. Public authorities are normally the people who get sued for breaking article 10, rather than the people who sue because somebody has stopped them saying what they want. As I read the Bill, it is very carefully drafted to say that if a councillor or a Scottish Minister says, "I think this is a rotten piece of legislation and I think Israel, in any decent society, ought to be made a pariah," and makes it clear that they are speaking in a private capacity and not officially on behalf of the council, they are in no danger at all.

Francis Hoar: I defer to Professor Tomkins on the international comparisons. In respect of article 10 of the ECHR, there are three stages: first, whether it is engaged; secondly, whether the Bill contravenes article 10, paragraph 1, which concerns whether or not it is a legally enforceable prohibition; and, thirdly, whether the Bill is proportionate.

In some respects, in my view, the Bill does not engage article 10. I do not believe that the power to make investment decisions is engaged by that. On the other hand, statements clearly are. Clearly, the Bill in itself would prohibit the conduct, and it is sufficiently clear for it to be very unlikely that the courts would be forced to interpret the legislation in such a way that was compatible, even if it strained the usual interpretative norms.

So article 10, paragraph 1 does not apply; the question is whether the Bill is proportionate. Dr Harris referred to one recent Strasbourg court decision, Baldassi, which concerned a non-public body. In that case, it was found that prohibitions by the French state on that non-public body were disproportionate. But in the earlier case of Willem *v.* France, which concerned a mayor, there was no violation. In other words, the criminalisation—the legislation went much further, as Professor Tomkins said, even back in 2009—was found to be proportionate because of the community cohesion point.

That said, I agree with Dr Harris about clause 4. I do not see the need for it. The mischief the Bill is designed to address is divestment, procurement decisions and so on. I do not see why it is necessary to prohibit councils from saying that they would like to divest if they were lawfully able to do so, and even that they intend to do so. As Dr Harris said, if a council passes a resolution that has effect, that is ultra vires. I agree, as I said at the outset, that it is desirable that the United Kingdom speaks with one voice and that public bodies that do not have foreign policy powers do not contravene that, but I do not see the necessity of clause 4.

I do not think the clause would necessarily be disproportionate. The Willem *v.* France decision in the Strasbourg court suggests that it would be found to be proportionate, and in any event the background fact speaks against disproportionality—if it were to come to a challenge, the background fact is that this is a public body that has no powers in respect of foreign policy—but I do not see the need for clause 4, and I would advise the House to reject it.

Q82 Felicity Buchan: Do you not think it is needed for community cohesion? These statements can be very inflammatory.

Francis Hoar: Yes, of course they can, but as Professor Tettenborn said, that does not stop councillors making them on the campaign stump, and it does not stop the Mayor making them in a personal capacity. I am afraid I do not find that a convincing argument at all.

Q83 Alex Norris: I want to follow that point through, with all three panellists, if possible. You have all indicated support for the Bill in generality, and in particular for what clause 1 tries to achieve. Do you think you have to have clause 4 for the Bill to be effective?

Francis Hoar: I have answered that.

Alex Norris: Yes, I think you have addressed that point, but what about the two professors?

Professor Tettenborn: I must admit that I am a little more friendly to clause 4. I will tell you why. It comes out in the old saying that a nod is as good as a wink to a blind horse. Sorry, that was a bit flippant, but if you have a statement by a large number of councillors, "We really don't like it. We're not saying that we might disinvest from it, and we're not saying that this is going to influence what we do, but you realise what our views are," that is going to come across to a lot of other people as being very much the same thing. I gather that that was what this particular clause was getting at. I confess that I am a little less happy about conditional statements, but if a person says, "We would like to do it—okay, it's illegal, but we would like to do it—but we are not saying we are going to do it," I think there is a strong case for saying that they should not say that.

One always has to remember that, as Professor Tomkins pointed out, this is not something that criminalises a statement. Basically, something can only happen to you when you make a statement once you have been warned—once you have received a notice: "Oi, don't say that again." Now, you might want to challenge the notice or whatever, but that is a relevant feature of the legislation. It is a feature that I find attractive, as against the rather fierce legislation that they have in quite a lot of American states.

Q84 Alex Norris: Professor Tomkins, could you address that point?

Professor Tomkins: I will make two quick points about clause 4, if I may. First, in my career I suppose I have worn two hats: one as an academic lawyer and the second as a practising politician. What you have heard from the other two witnesses on this panel are legal responses to clause 4, and there is nothing wrong with that at all—I do not mean that as anything other than a compliment—but perhaps a political response to it would be to remind this room of politicians that, in these matters, it is not just what happens that matters: it is also about the optics of what happens, particularly with regard to the undermining of community cohesion.

The Jewish community in Scotland—which happens to be a community that I know rather well, for personal reasons—is a very small community. It is a community that is very easily frightened, not necessarily by things that are done, but by things that are said. If we are serious about protecting community cohesion, and I think the Government are serious about that, and they are right to be, and if we are also serious about maintaining the integrity of British foreign policy, we need to be careful about what is said by people in their official capacities—not as private citizens but in their official capacities. For those reasons I am much more enthusiastic about clause 4 than most of your other witnesses have been.

With my legal hat on, I am certain that there is not an article 10 problem here, because clause 4 is targeted at speech that is uttered only by officials in their official capacity and, moreover, is targeted only at a very narrow range of potential statements, which are statements with regard to procurement decisions and/or investment decisions, rather than, as we heard in earlier sessions, statements that are in their generality critical of Israeli policy or, indeed, of British policy with regard to the middle east. For all those reasons, there is not a legal problem with regard to clause 4, but there is a political imperative behind clause 4, and if I had a vote on the matter, which I do not, I would vote for it enthusiastically.

Q85 Alex Norris: On multiple occasions on the face of the Bill, the Secretary of State has reserved powers to change provisions in the Bill by regulations. Do you think that approach has been used too liberally? Has it been used appropriately? Are you comfortable with that degree of ability for the Secretary of State to vary things later down the line?

Professor Tomkins: I think I am. It is always a delicate balance between what goes into primary legislation—what goes on the face of the Bill, as we say—and what can be done after an enactment by Secretaries of State or Ministers, using the various powers that are crafted by the Bill. The balance that has been struck in the Bill is appropriate and reasonable—yes, I think it is.

Francis Hoar: I think it goes too far in some respects. Generally speaking, Parliament has been too ready—this goes back over many decades and is certainly not just the case under this Government and in this Parliament—to give the Government powers to give devolved legislation, particularly with Henry VIII powers, which the Government accepts there are in this case. I think Mr Cragg KC mentioned the unlimited power of the Minister to order the maximum financial penalty, and there is good reason for the House of Commons to restrict that to a particular maximum.

The particular concern I had was that although, wisely, the Bill does require advance scrutiny of the regulations, there is an exception in clause 3(2) and (5). The Government have given a good explanation as to why they may wish to add a country or territory to the list—the approved list or the disapproved list, whichever way you want to look at it—because, of course, Russia might invade Ukraine, and that is an obvious example. But they have not provided any explanation—certainly not a credible explanation—as to why we need clause 3(2), which includes adding, removing or amending a description of a type of consideration that can be taken into account by a local authority. There is absolutely no reason why that would ever be so urgent as to be needed without the advance scrutiny of the House of Commons. So clause 3(2), in my view, should not have an emergency provision. In clause 3(5), there is a very good reason for that; if the Bill is passed, one accepts the principle, and if one accepts the principle, these things should be able to happen.

Professor Tettenborn: I am entirely with Francis on that one. Certainly, the power to add countries actually is, again, quite skilfully guarded. I think people around this table will have noticed that it is subject to affirmative resolution—that is, it cannot pass merely by everybody not noticing when it is placed on the Table and not objecting to it; it cannot pass by inertia. I think that is a very sound part of the Bill indeed.

Q86 Ms Qaisar: Thank you to the panel for joining us today. I want to stick to clause 4, because I was really interested in the discussions on it. Some stakeholders

have called it a gagging clause. I am really interested to learn what other options the Government could bring forward to achieve the clause's aims. It is my understanding that if a Scottish Government Minister, for example, wanted to speak out against it, they would be unable to do so. They would have to turn around and say, "I'm not speaking on behalf of the Scottish Government, I'm speaking as an individual," even if they were stood in the Scottish Parliament.

Francis Hoar: I have answered this fairly fully, but I think that that encapsulates why I am not convinced about clause 4, although I agree with both my colleagues on the panel that it is not likely to be disproportionate, because it falls within the earlier Strasbourg/French authority. These are public bodies, and there is a good reason why it would be proportionate to restrict them, but you have encapsulated why the provision is pretty useless: because all the Minister needs to say is, "I'm not going to speak on behalf of the Scottish Government."

Now, I can absolutely see the logical reason why it is a good prohibition, because it is right, on the view of the Bill on this panel—although not among all your other witnesses—which is that the general objective is a sound objective. If that is right, it is fair enough to prevent Ministers in Scotland or Wales from making those sorts of pronouncements. But, in reality, what is it going to do? It is just going to mean that, basically, I will say that I am going to speak in a personal capacity.

Incidentally, on the drafting of the Bill, I am not entirely clear—I agree, again, with Mr Cragg on this—as to the relationship between clauses 4 and 1. Purely from a drafting point of view, that needs to be made clear. If the Government are suggesting that that should not apply to an individual speaking in an individual capacity, there is no reason why the Bill cannot say so. I am just not clear. The wording of clause 4(1) is that

"the person intends to act in a way that would contravene section 1".

I am not convinced that it applies only if that person has been given a notice. As Andrew said, I do not read that from the Bill. I am not entirely clear what that means. It needs to be clarified as a matter of drafting if clause 4 is to stay.

Professor Tettenborn: I would like a clarification there as well, I must admit. It seems to me that there may be quite an important difference between someone who makes a pronouncement and someone who says something and adds, "but I am speaking personally." That concerns how we are viewed abroad. It is very good for the conduct of the foreign relations of this country that people abroad know that they can deal with the UK Government as a UK Government. They obviously know that there will be people who disagree with the Government's foreign policy, but I see nothing wrong in saying that if an official is going to do that, it might be a good idea if they said, "I am speaking in a private capacity."

Ms Qaisar: Professor Tomkins, do you want to come in?

Professor Tomkins: Yes, thank you. First, this is not a gagging clause. Anybody who thinks it is does not know what a gagging clause looks like. Nothing in clause 4 prevents the current First Minister of Scotland, or any Minister or councillor, from saying whatever they want about the appropriateness of foreign policy, or indeed the appropriateness of policy in a foreign state. The prohibition is simply and narrowly focused on making statements that proclaim that a Minister or a councillor would have decided to do something unlawful if they had been able to do so, which they cannot do anyway. The idea that this is a gagging clause needs to be firmly scotched, if I can put it that way.

Beyond that, I do not have much more to say, except to repeat a point that was made in an earlier session. Councillors should not be wasting their time opining about foreign policy, because it is not their job. Neither should Ministers of devolved Administrations, because it is not theirs either.

Q87 Ms Qaisar: Thank you so much for that, Professor Tomkins. I have a couple more questions. We are under time pressure, so if you could all stick to short contributions, that would be appreciated.

The people of Scotland have a strong history of being at the forefront of political campaigns. As was said earlier, Glasgow proudly stood against South Africa's apartheid in the 1980s. In 2014, the University of Glasgow became the first university in Europe to divest from the fossil fuel industry. Given that public bodies such as universities would now be prevented from taking such a stance, is the Bill compatible with the free speech protections in the European convention on human rights?

Professor Tettenborn: I am sorry; I did not hear what Glasgow University had divested from.

Ms Qaisar: The fossil fuel industry.

Professor Tettenborn: Well, that would not be affected. That is not what the Bill is about. It is far worse, if I may say so, for a public authority in this country to have a foreign policy than for it to have an environmental policy. I know that it probably will not go down very well north of the border in Shotts, but I do not think it is the business either of the Scottish devolved Government or of Scottish local authorities to engage in foreign policy. I have no enormous objection to any public body saying, "We will not invest in fossil fuels."

Q88 Ms Qaisar: Does anybody else want to come in? If not, I will move on to my last question.

Okay. Professor Tomkins, you have spoken about the fact that you were a Member of the Scottish Parliament, and I understand that you are a former adviser to a Secretary of State for Scotland. Constitutional law is your area of expertise, and you have said that you are keen to see this legislation implemented across all four nations of the UK. I am interested in learning a little bit more about what impact the Bill will have on the independence of Scotland's Parliament and, by extension, our Government in Holyrood.

Professor Tomkins: I do not think that it will have any impact on that at all. The Scottish Parliament is democratically elected to pursue policy objectives within its legislative competence. That legislative competence is set by the United Kingdom Parliament in the Scotland Acts, as amended. It is absolutely clear that that legislative competence does not extend to foreign policy. The Bill has no impact at all on the powers and competences of the democratically elected Scottish Parliament—none at all.

Q89 Dr Luke Evans (Bosworth) (Con): Professor Tomkins, you talked about the different comparisons out there. Which country has the best example of this type of legislation and why?

Professor Tomkins: The states in the United States that have pursued anti-BDS legislation have probably gone further than anybody else I am aware of, although perhaps there are jurisdictions that I am not aware of; my research has been restricted to the United States, France and the UK. There would be, I think, significant human rights implications for the United Kingdom, given its commitments under the ECHR, were the UK to pursue the sort of anti-BDS policy that we see in some of those states. I think some significant article 10 issues would arise in relation to that sort of policy. I cannot speak for the Government, but that might very well be why the UK Government have elected not to proceed with that sort of policy.

The approach that the French authorities have been taking is very different, again, from what the present Bill envisages. The French seem to have seen the issue much more as one of public order and freedom of assembly, and are going directly after those who engage in anti-BDS demonstrations and protests in France. What we have in front of us is a Bill that is much more carefully—certainly much more narrowly—targeted on the two specific areas where public authorities in the UK, unfortunately in my view, have engaged in anti-BDS campaigning targeted at Israel and the occupied territories with regard to investment and procurement decisions.

This is not a general "Let's ban BDS" Bill, or even a specific one with regard to public authorities. It is specifically and carefully targeted at the two core areas where, historically in the UK, public bodies have engaged in anti-BDS activities with regard to Israel when it comes to procurement and investment. Because it is carefully targeted for the UK, my answer to your question is that for the UK this is the best Bill.

Q90 Dr Evans: That is very useful. Thank you.

I have a wider question for the whole panel. This is written in the negative, in the sense that it indicates political or moral disapproval for foreign states. Do the panel have any thoughts about writing it neutrally, so that neither the pro nor the anti side fit in? In other words, a public body should not get involved in these kinds of arguments at all. Is that a position you agree with, Professor Tettenborn?

Professor Tettenborn: That is a very good question. Speaking as a professor in an ivory tower, I would immediately agree with you; speaking as a practical man, I would say that you are making a rod for your back if you start imposing abstract legal obligations of neutrality. I think it makes enforcement far easier and life far more difficult for clever lawyers if you do what is done in this Bill: "Thou shalt not say that you disapprove of a particular regime." I do not think there is a problem of local authorities saying, "We think Venezuela is the best thing since sliced bread, and we will do whatever." The Bill does answer the mischief.

Q91 Dr Evans: That is very useful. Mr Hoar, what do you think? The civil servant is supposed to be neutral, for example. We have already discussed the realms of where this body goes and who is actually in charge. All the panellists stated that they were not sure where the role of Ministers went. For the likes of the NHS or the police, is there not an argument for saying that there should be neutrality when it comes to foreign policy that deals with issues such as those in front of us?

Francis Hoar: There is an argument, and you have made it, but I do not think that it is a good enough argument for legislating, because you need to be very careful when you are legislating in respect of what is enforceable. Adam has given some examples of quite extreme—I think very extreme—classically American approaches that go very far down the line in terms of enforcement in another direction, in respect of companies that have or do not have dealings with Israel. To require and enforce neutrality would go far further than is needed. The mischief that the Bill addresses is the divestment campaign, based on political objectives that are potentially contrary to UK foreign policy, and that is where it should lie.

I just want to put down a marker that—if you will allow me, Dame Caroline—I have something to say about legal professional privilege.

The Chair: Yes, but do keep an eye on the clock, because there are two more Members who have indicated that they want to ask a question, and we have only 10 more minutes.

Francis Hoar: Thank you. On legal professional privilege, the answer is not quite as straightforward as has perhaps been represented. I think that the Government's line is that the answer is in clause 7(9), which is to defer to the data protection legislation. The Data Protection Act 2018 has various provisions that restrict the requirement to provide legally professionally privileged information. For example, schedule 11 has a tailor-made restrictive provision:

> "The listed provisions do not apply to personal data that consists of…information in respect of which a claim to legal professional privilege…could be maintained".

I think legal professional privilege is extremely important; I entirely agree with Mr Norris about that. Obviously local authorities and other public bodies will be receiving advice on what could be quite complicated circumstances. I think it would be far more straightforward, though, to mirror that legislation in clause 7: you could just add a provision copied straight from paragraph 9 of schedule 11 to the 2018 Act. That is what I suggest that Parliament should do.

Professor Tettenborn: You will get exactly the same answer from me—he has taken the words out of my mouth.

Dr Evans: I have no further questions.

Q92 Kim Leadbeater: Almost reluctantly, I return to clause 4. I have been thinking about the practical repercussions of the Bill, and I have to say that my feeling this afternoon is that this is going to be pretty messy. If we are asking elected officials in council chambers up and down the country to say, "Now I am speaking in a personal capacity, and now I am speaking in my capacity as an elected official," it feels like that would be very messy. Surely, as advocates of freedom of speech—as a number of members of the panel have said—that can only have a worrying effect in shutting down debate and discussion. That can only have an undemocratic outcome.

Professor Tettenborn: That is a very interesting point, if I may say so. There might be a simple way around it: we could have an extra subsection in clause 4 that said, "Nothing in this Act affects the right of any member of a public authority to speak in a private capacity." Just saying it out loud provides a safe harbour; it means that people do not have to go to a lawyer to look up a law, or at least they do not have to go to so many lawyers. I think that might be helpful.

Professor Tomkins: I share everybody's concern that we must take freedom of speech very seriously—I think that that is a very important set of concerns to raise—but there are two things to say.

First, what Professor Tettenborn has just described is already the state of the law. The way in which we approach rights under the Human Rights Act is that rights are stated generally, and any exceptions to those rights must be narrowly tailored and stated specifically. If there is doubt or ambiguity, it falls on the side of the right, not on the side of the exception. That is already, in broad terms, the legal position through the United Kingdom—as it should be, in my view. Adding extra words to clause 4 to deliver that effect will not have any effect, because it is already the legal position.

I remind the Committee that clause 4 is very narrow in scope: all it says is that somebody who is subject to section 1 may not say that they would have made a procurement decision or an investment decision different from the procurement decision or investment decision that they have made, by force of this legislation. It seems to me that all the members of this panel are of the view that that is perfectly compatible with article 10 of the ECHR, for all the reasons that we have rehearsed; and if it is compatible with article 10 of the ECHR, it is also compatible, I think, with our domestic standards with regard to free speech. For all those reasons, and notwithstanding the fact that I take free speech incredibly seriously, I genuinely do not think that there is a free speech issue with regard to this Bill.

Q93 Wayne David: Partly because our two professors are from Wales and Scotland, I want to ask about devolution. Most of would agree, I think, that foreign policy is exclusively a reserved matter, but we are not just talking about foreign policy now; we are talking about procurement responsibilities and public service pension schemes, the responsibility for which is, to a large extent, in different ways, devolved to the devolved Governments. I am mindful of a statement in the House of Commons Library brief that the Bill as it stands will modify

"the executive competence of devolved ministers",

and because of that the devolved institutions will need to pass a legislative consent motion. That might be politically contentious; therefore, the Act might not automatically apply to the three parts of the United Kingdom we are talking about. Also, in Northern Ireland, public services pension schemes are exclusively in the hands of the Northern Ireland Assembly, which is not currently meeting. How will it agree a legislative competence order? Presumably, unless the Secretary of State takes powers that are not prescribed in the Bill, this legislation will not apply to Northern Ireland. Would you care to comment on that?

Professor Tomkins: With your permission, I will jump in on that. First, I have to say that the question of legislative consent has got a long way out of control. By that I mean this: absolutely, the United Kingdom Parliament should seek and obtain the legislative consent of the devolved Administrations and devolved Parliaments if the United Kingdom is seeking to legislate on matters which it has chosen to devolve to democratically elected legislatures away from Westminster, but that is not what is happening here—

Q94 Wayne David: The House of Commons Library disagrees with you.

Professor Tomkins: No it doesn't.

Wayne David: I just read it out.

Professor Tomkins: No, what you said is that this legislation trespasses on executive competence of Ministers, not on legislative competence of the Scottish Parliament. There is not a single aspect of devolved competence on which this legislation touches or trespasses. I do not think there is any question of legislative consent—but it is an unfashionable view these days that this has got out of control in that the United Kingdom Parliament now thinks it needs to seek legislative consent on a whole range of issues that are not actually devolved to Scotland, Wales or Northern Ireland. In my view, on a proper understanding of the scope of the Sewel convention—that is to say, as Lord Sewel would have understood it when he introduced the convention in the House of Lords back in 1999—there is no question of legislative consent on this legislation.

The Chair: We do not have time for another question in the time allotted for this panel. Let me say on behalf of the Committee that we are grateful to our witnesses for their evidence.

Examination of Witness

Andrew Whitley gave evidence.

3.45 pm

The Chair: We will now hear from Andrew Whitley, chair of the Balfour Project. We have until 4 pm. Would you introduce yourself for the record, Mr Whitley?

Andrew Whitley: My name is Andrew Whitley. I am the chair of the Balfour Project, a Scottish registered charity that advocates for peace, justice and equal rights in Israel and Palestine. We have a particular focus on Britain's responsibility, historically and currently, for the situation Israel and Palestine. I myself have followed the situation for almost 40 years now, in different professional capacities, including living in the region—in Gaza and Jerusalem—for seven years.

Q95 Felicity Buchan: In your written evidence, you raise concerns that the Bill could prevent ethical procurement or divestment decisions. Do you acknowledge that there are exemptions for the likes of labour-related misconduct and environmental misconduct, and that the Bill relates only to moral or political disapproval of countries and territories, so it would not in any way prevent, for instance, divestment from fossil fuels?

Andrew Whitley: Yes, that is the case, but I think it is difficult to draw a distinction between divestment in certain areas and not others. It is possible to have divestment from Russia over its invasion of Ukraine,

for example, and we can refer to aspects of boycotts and divestments that go back to the time of the slave trade. There is a long and distinguished record of being able to use these tools. I am not saying that our organisation advocates for BDS to be applied in this particular case, but we do advocate for the right of others to speak and to say that this is a legitimate tool. What concerns us as an organisation is that this Bill singles out Israel and the Palestinian territories as the sole area in which it applies, and our concern relates in particular to the conflation of Israel proper with the occupied territories in the Golan Heights, the west bank, Gaza and east Jerusalem.

Q96 Felicity Buchan: The Bill will apply to all countries; the only reference to Israel is that if in future you want to exempt countries, that can be done by secondary legislation except in the case of Israel, which requires primary legislation. The reason for that is that we want greater parliamentary scrutiny, because, as we have heard from other witnesses, Israel has been the sole focus of so many BDS campaigns. Given the fact that these campaigns are targeted against Israel, we think that greater level of parliamentary scrutiny is required. In the light of that, do you feel more comfortable?

Andrew Whitley: I would not advocate in favour of BDS against Israel per se. I would argue that BDS is a legitimate tool to make a distinction between Israel and the occupied territories. I think that is an important distinction that always has to be maintained. In our view, this is the central flaw in the way the Bill is drafted.

Q97 Felicity Buchan: So that I understand your position, do you think that BDS is additive in the middle east? Every witness we have heard so far says that BDS does not add anything to the situation regarding peace in the middle east, and that actually its effect is negative because it leads to problems with community cohesion in the UK.

Andrew Whitley: I am not sure that I agree that it creates community friction in this country. I recognise fully that there are those who are concerned about anything that could lead to antisemitism, and that is a scourge that must be utterly condemned, but I am not sure that advocating for BDS does that. It is a legitimate tool of non-violent action to influence a Government's behaviour when they are committing illegal acts, and the occupation of a foreign country or a foreign territory is an illegal act, whether it is in Ukraine or Palestine.

Q98 Felicity Buchan: The Government's view is that the settlements are illegal; however, we do not support boycotts and divestments against Israel because we do not think that they contribute towards peace in the middle east. Do you disagree?

Andrew Whitley: I would not advocate for boycotts against Israel.

Q99 Wayne David: Andrew, you will have heard the last question in the last session, which touched on foreign policy. I made a statement that foreign policy is a non-devolved matter, but human rights is an issue that belongs to central Government, local government and devolved Government—it belongs to all citizens in a sense. Is that your view as well, and if it is, would you care to elaborate to say why you have fundamental concerns about this piece of legislation?

Andrew Whitley: Human rights are universal, and they need to be applied even-handedly and in a systematic fashion; there can be no quarrel or disagreement over that. Any attempt to try to make distinctions over how human rights should apply in one territory or another undermines the authority of those who are attempting to enforce them, and it makes a mockery of the application of human rights if they are applied selectively. I believe it is the responsibility of all citizens, as well as public bodies, to be able to apply ethical, moral human rights considerations in their decisions, and those can apply to political matters and they can apply to other matters. Human rights also cover the provision of shelter, the provision of water supplies or adequate education; these are all basic fundamental human rights. I think it is the responsibility of all bodies in this country to take human rights considerations into account and to apply them in a consistent manner.

Q100 Ms Qaisar: Thank you so much for joining us today, Andrew. You have spoken about the historical influence of Britain, so I am interested to learn a little bit about what impact you think the Bill will have on the UK's relationship with the occupied territories, and with Palestinians across all four nations here who wish to exercise their freedom of expression so that the Israeli Government can be held to account for their actions?

Andrew Whitley: I think the impact of the Bill will be to hearten the most extreme nationalistic, racist Government that have ever been in place in Israel. I think that it will cheer Bibi Netanyahu and his Ministers and will provoke divisions within Israel. I should put it on the record here that a large number of sensible, middle-of-the-road Israelis are deeply troubled by the situation in the occupied territories and by their own Government's actions, including the expansion of the settlements. We should be supporting those people, not the extremist Government, who are inflaming hatred in the country. As far as the Palestinians are concerned, I regret to say this, but I am afraid they will see the passage of this Bill as yet another act of betrayal on the part of Britain.

Q101 Ms Qaisar: The UK Government have a long-standing position on illegal settlements. Would the Bill stop a public body from taking a stance of not buying and trading goods from illegal settlements, bearing in mind these settlements are of course illegal under international law?

Andrew Whitley: I am sorry; would you mind repeating the question? I am having a little difficulty hearing.

Ms Qaisar: That is fine; I will also speak more slowly, just in case it is my accent. I was asking if you could clarify how the Bill will impact the UK's long-standing position on illegal settlements. Would the Bill stop a public body from taking a stance of not buying and trading goods from illegal settlements within the OPT, bearing in mind the settlements are legal under international law?

Andrew Whitley: Members of this Committee will be well aware that the United Kingdom played an important role in the passage of UN Security Council resolution 2334 in December 2016. That is the last and most important resolution that refers to the absolute prohibition

on the building of settlements in the occupied territories. As the UK supported that law, I would hope that it would take action to be able to continue to defend its implementation, which has been sadly lacking. Certain forms of pressure, I believe, are appropriate to encourage changes of behaviour, because there are many, including many Israeli friends of mine, who would argue that only through the exercise of meaningful pressure by Governments who can have influence over Israel is it likely to rethink its direction. I think that would certainly apply to the continued expansion of settlements, which are making a two-state solution impossible.

Q102 Ms Qaisar: Finally, what impact will the Bill have on your organisation's work out in Israel and the occupied territories?

Andrew Whitley: It will not have a direct impact on our work. Our focus, as I said at the beginning, is on educating the British public and encouraging the British Government and decision makers in the United Kingdom, including Members of Parliament, to act in a way that upholds Britain's historical responsibility. We believe that Britain has an important responsibility, not just as a legacy from the past, but today. We think that the passage of the Bill, if it has the effect that many argue it will have—to chill free speech and to prevent arguments that there are legitimate non-violent tools that can be used to encourage a change of behaviour on the part of Israel—would be deleterious to our work.

The Chair: I am mindful of the fact that we have to conclude this part of the session at 4 pm.

Q103 Wayne David: My question follows on from what you have just said, Andrew. The Government say they are committed to a two-state solution. We as the Opposition, and I think the British Parliament, are strongly in favour of that. However, there is great deal of concern about the conflation of Israel and the occupied territories and the Golan Heights. I believe I am correct in saying that this is the first time that has ever happened in a piece of British legislation. It does, perhaps not legally, but it certainly sends out the message that somehow the Government's commitment to a two-state solution is not as firm as they say it is. Do you think that is the case?

Andrew Whitley: The lip service to a two-state solution continues, but I think there is a great deal of make-believe—or perhaps deliberate pretence—on the part of those who say that a two-state solution is still viable. It is looking increasingly impractical. If I can quote the words from the UN resolution—I was a senior UN official in the region for many years—the UN calls for "a sovereign, contiguous" Palestinian state. That is not the case at the moment and it is highly unlikely to be the case. The difficulty is in facing up to the alternatives, which are considered unpalatable. Members of the Elders delegation, Ban Ki-moon and Mary Robinson, who visited two months ago said that, to date, we are living in "a one-state reality"—not a one-state solution, but a one-state reality. That is what needs to be addressed.

It may be that the Government are privately edging away from their commitment while maintaining the rhetoric of support for a two-state solution. There are certainly hard choices to be made. However, from my personal perspective as someone who has followed the spread of these settlements for 40 years and seen the number of settlers grow from 50,000 to 700,000 in that period, it is increasingly difficult to see that it will actually transpire in that way.

The Chair: Order. I am afraid that that brings us to the end of the time allotted for the Committee to ask questions. May I thank our witness on behalf of the Committee? We will now move on to the next and final panel.

Examination of Witnesses

Mark Beacon and Rozanne Foyer gave evidence.

4 pm

The Chair: We have until 4.30 pm for this session. Could the witnesses start by introducing themselves for the record?

Mark Beacon: My name is Mark Beacon. I am an international officer at Unison. Unison is the largest trade union in the UK, representing 1.3 million workers working in public services. Although our members are UK-based, we take a very keen interest in and recognise the importance and value of working collectively internationally to uphold human rights and workers' rights. That is one of the key reasons why the Bill is of interest to us.

Rozanne Foyer: My name is Rozanne Foyer. I am general secretary of the Scottish Trades Union Congress. STUC is Scotland's federation for trade unions. We have over 600,000 members in Scotland.

Q104 Felicity Buchan: First, can I ask whether you support the BDS movement?

Mark Beacon: Unison has consistently advocated for a two-state solution—for a viable Palestinian state alongside Israel. We support boycott, divestment and sanctions as a method to put pressure on the Israeli Government to bring about peace and a viable two-state solution. In terms of the work we are talking about here around pension fund engagement and investment, we have been calling for the local government pension scheme to begin the process of divestment from companies on the United Nations list of business enterprises involved in and with the illegal settlements, and to begin the process of time-limited engagement with other companies that are contributing to violations of human rights. Of course, our focus is very much on the Occupied Palestinian Territories and upholding human rights and international law within that context.

Q105 Felicity Buchan: We have heard an awful lot of evidence today that the BDS movement has not contributed to peace in the middle east, but that it has simply targeted Israel and led to community friction in the UK. Do you agree with those sentiments that have been expressed very broadly today?

Mark Beacon: If you look specifically at our work on this, it is very much targeted at the Occupied Palestinian Territories. We are focusing on companies that are contributing to a grave violation of international law and breach of the Geneva conventions. It is also worth adding that BDS is not something we have used exclusively in the context of Palestine and the Occupied Palestinian Territories. You can look to examples such Myanmar

and Western Sahara and, historically, countries such as South Africa. It has played a big role. Trade unions throughout the world use it. When it comes to boycott, divestment and sanctions—mainly divestment in this case—what we do is listen to the calls of our trade union partners around the world and ensure that what we are doing is reflecting their demands in these areas.

Q106 Felicity Buchan: Rozanne, can I bring you in on those points?

Rozanne Foyer: The STUC has a long-standing policy of support for a peaceful two-state solution to the Israel-Palestine conflict. We also have, since 2009, supported BDS as a policy and a campaigning method. Basically that has been part of our international campaigning for decades, not just in relation to Israel. Fifty years ago we supported Rolls-Royce workers who refused to repair the aeroplane engine—*[Inaudible.]*

The Chair: Rozanne, I do apologise. We are struggling to hear you. Do you have a microphone available that you could plug in?

Rozanne Foyer: No, I do not.

The Chair: It is quite difficult to pick up what you are saying. You do not have a headset?

Rozanne Foyer: No, sorry, I do not.

The Chair: As long as the Committee is content to carry on. Sorry, I apologise for interrupting you; I just wanted to see whether we could improve the sound quality.

Rozanne Foyer: I will try to speak closer to the monitor to use the microphone in there.

The Chair: That is a bit better.

Rozanne Foyer: Through the 1980s, we played a key role in the anti-apartheid movement. Boycott, divestment and sanctions also played a key role in that movement. The trade union movement in Scotland was quite instrumental in encouraging local authorities such as Strathclyde and Glasgow City to take steps to support Nelson Mandela. That was at a time when he was still considered a terrorist by the UK Government. I just want to make the point that, generally, support of that type of activity is something that our movement has been involved in.

In 2009, we sent a factfinding delegation to Palestine. It talked to all parties—Israeli trade unionists and Palestinian trade unionists—and produced a report. On the back of that report, we agreed a policy of boycott, divestments and sanctions against the Israeli state. The aim was to create pressure to end Israel's illegal occupation and establishment of settlements classed as illegal under international law. It was also to campaign against the violation of the human rights of Palestinians by the Israeli state as defined by the United Nations. We worked with our affiliates to support BDS strategy and we produced guidance on it in 2019. Our BDS policy is fully supported by the Palestinian General Federation of Trade Unions.

In 2022, the STUC supported a delegation from Dundee Trades Council to Palestine, which met again with both Palestinian and Israeli trade unionists. Following the reports received from that delegation about the situation on the ground for workers, and the continued human rights violations of Palestinian workers, the STUC Congress reaffirmed its policy to support BDS in 2023. We are not formally affiliated with any BDS movement, as you described it, and we do not wish our support for BDS to be interpreted as blanket support for any of the policies or views of other bodies or organisations that might identify with the wider BDS movement.

Q107 Felicity Buchan: Thank you. I understand that one of Unison's concerns is freedom of expression for elected officials. The Government's view, which I think has been backed up by most of the legal witnesses we have heard today, is that the Bill does not apply to private individuals or private companies, so it does not apply to elected councillors if they are operating in a private capacity. In the light of that, do you not think that councillors should be focused on running their local authorities as opposed to making foreign policy statements?

Mark Beacon: We do not see this as an issue about foreign policy or local authorities having a jurisdiction over any form of foreign policy. What it is about is public bodies upholding internationally recognised norms regarding human rights, labour rights and international law.

Q108 Felicity Buchan: Do you think that the BDS movement has contributed towards peace in the middle east?

Mark Beacon: If you look at the situation now and how it has eroded and if you look at the plans of the current Government—the coalition agreement, for example, has a section in it that focuses on annexation of huge swathes of the west bank—Palestinian society is in a very difficult position at the moment, because the prospects for peace and a viable two-state solution sadly seem to be diminishing. We hope that international pressure and voices from the trade union movement and other civil society organisations will raise that up the international agenda and bring about more realistic prospects of a viable two-state solution.

Q109 Felicity Buchan: Do you think that one local authority in the UK can raise that up the public agenda? We have seen with Russia and Ukraine that we need concerted international action at a Government level.

Mark Beacon: Of course, it takes many small steps. In local authorities, we are talking generally about a response to the requests or concerns of members of pension schemes. Local authorities and pension committees take on those legitimate concerns of members on how investments are made, and act on those. A single local authority will of course not make a massive difference, but if that is taking place across the UK and internationally, it will add to pressure and encourage the UK Government to take a stronger position on some of the issues.

The Chair: Five Members have indicated that they would like to ask questions, and we need to conclude by 4.30 pm—just so everyone is aware.

Q110 Ms Qaisar: Thank you for joining us. Mark, I have to be honest, I am a member of Unite, not Unison—do not hold that against me. Scotland has a proud history

of promoting social justice, human rights and respect for international law on the world stage. In 1981, Glasgow City Council decided to award Nelson Mandela freedom of the city. It was the first city in the world to do so. In 1986, St George's Place in the city centre was renamed Nelson Mandela Place. Had this Bill been introduced in the 1980s, the legislation would have stopped Glasgow City Council from taking those steps. Why is that so concerning?

Rozanne Foyer: It is really concerning. Based on what some of the other expert panellists have said today, I have to say that I fundamentally disagree with some of them, particularly Mr Tomkins's assessment of devolution. We need to understand the point of view. This is not about local authorities or devolved Government setting foreign policy; this is about procurement policy, democracy and taxpayers' money. It is arguable that with the anti-apartheid movement, Glasgow City Council started a wave that the UK Government and the rest of the world eventually had to listen to and go with. I believe strongly that democracy starts on the ground with the people and moves up from them. The Bill centralises reserved powers. It does the opposite of devolution and of giving power to the people. That is really concerning. With the Bill, we would certainly not have got to that position, and that important work that happened in the '80s would not have been able to take place.

My member is a member of the pension scheme, and has a democratic right in workplace democracy to have a say on what happens to their reserved pay. It is their money that sits in the pension scheme. They have a right to have a say in how that money is spent and to ensure that it is spent ethically. My members are citizens of local authorities and pay their taxes to local authorities and to the Government. They have a right to demand that their local authority and Government adhere to human rights policy, and adhere to the best standards of employment policy and of policy on procurement. Procurement is devolved, and so are human rights, so are things like economic development. It is not as simple as saying that these devolved authorities cannot talk about, or make policies that relate to, foreign policy. What we are talking about here is procurement policy and how citizens' taxes and pension moneys are spent. As far as I am concerned, the Westminster Government and the Secretary of State have no business in telling us how to do that.

The Chair: Just to interrupt very quickly, Rozanne, we are struggling to hear you and *Hansard* is struggling to pick up what you are saying for the record. Please can you do whatever you can to speak as loudly as possible into the microphone to try to help us?

Rozanne Foyer: I will do what I can.

Q111 Ms Qaisar: Mark, do you want to add anything?

Mark Beacon: Not really, apart from the fact that I do not think many people would look back now on the actions that local authorities took around the anti-apartheid movement—their involvement in action against apartheid—and the investment and procurement decisions they took and say that that was wrong. Of course, we are now in a situation in which procurement is far greater; in the UK, we are talking about public bodies procuring up to £380 billion of goods and services. It is amazing to think of the positive impact that that procurement could have internationally if public bodies were to utilise it to encourage companies to uphold the UN guiding principles on business and human rights, for example.

Q112 Ms Qaisar: A final question from me: unions have historically been at the forefront of political causes, so will the Bill impact the ability of members of trade unions to take a stand on issues such as human rights abuses? Mark, would you like to start?

Mark Beacon: Yes, it will. If you look at Unison's international work, we work as a key part of Public Services International, which is the global trade union federation for public service workers, and we campaign on a wide range of international issues. Palestine is one of our priorities at the moment, but there are also Turkey, Brazil, Colombia, and business and human rights. We work on Zimbabwe and a range of other issues. As public service workers, that is really important. Our members will be very concerned about, first, how their pensions are invested and, secondly, procurement decisions and the impact that they have internationally. For example, uniforms and PPE—those kinds of issues—and where resources are acquired are major issues. It is the same for members of the public, who will share some of those concerns. The Bill prevents us from acting on those where there is a potential for political or moral disapproval of the policy or conduct of a public authority in a foreign state. It is extremely far reaching and will infringe on quite a lot of our work.

Q113 Ms Qaisar: Thank you. Roz, do you have anything to add to that?

Rozanne Foyer: Trade unions have been using these policies, as I said, for quite some time in a range of situations. I think that we would want to be able to continue to operate in that way. It is an important part of our democracy that our members and citizens are able to influence public bodies and elected officials at all sorts of levels. It is very important. One of the things for which trade union members in Scotland campaigned for a long time was a Scottish Parliament, and another big concern for us is the way that devolution to that Parliament is being potentially undermined by this piece of legislation. That is another area where we have some key concerns about this Bill.

Wayne David: I apologise if the speakers have already touched on this; I did not pick up everything that was said from Scotland. Mark, you have written a very detailed paper, and I thank you for it. One of the very important points you make in that paper is the fact that public bodies in Wales and Scotland are already obliged to follow ethical practices with regard to employment, for example, and need to take into account human rights considerations. My concern is that the Government have perhaps not fully appreciated that fact. This legislation, which will apply—so they tell us—to all parts of the United Kingdom, does not take into account what already exists, and it might inadvertently cut across or undermine existing regulations. Is that your view? If it is, can you say a bit more?

Mark Beacon: Yes, we share those concerns. Some positive work is taking place in Wales around procurement, primarily focusing on labour rights but branching out

into other areas. Again, there is some positive work in Scotland and, I believe, in Northern Ireland. We are deeply concerned about the impact that the Bill will have on that work in devolved nations, particularly considering that both investment and procurement are devolved responsibilities. When we look at areas such as labour rights, which are obviously fundamental to us, and at exceptions in the schedule, they are very narrowly defined. They are primarily focused on areas around modern slavery and so forth, and there are references to the minimum wage as well, but they do not go anywhere near meeting the International Labour Organisation core conventions. Areas such as child labour, equal remuneration, the right to collective bargaining, freedom of association and so forth are not referred to at all in there, so it will undermine that work.

Rozanne Foyer: We have a range of devolved policies in Scotland that relate to our Fair Work First approach to commissioning and contracting. We do not have devolved employment law, but we have an extensive range of guidance and benchmarks that we expect all contractors who want to get public money to adhere to. The Scottish Government also has a vision for trade that sets out fair work indicators as well. Although we cannot implement laws, because employment law is not devolved, we fully use our right to implement and use the money as leverage. I believe that is a very legitimate way to create a landscape of better employment rights and good practice, both domestically and internationally, and that work would be severely undermined by the current proposals.

In terms of the other area I think could be really undermined, we must remember that in Scotland we have a Parliament where just over half of the representatives—the majority of representatives—support full independence. It would be legitimate and in the public interest for citizens and members of the public to know and understand what the Scottish Government might choose to do in the context of independence if they had the power to have particular international procurement policies. It is very disturbing to me that clause 4 of the Bill might well prevent that sort of debate or announcement from taking place. At the moment, the Scottish Government are producing a series of papers that look at the detail of what an independent Scotland might look like. The STUC does not have a policy on independence, but you can bet your bottom dollar that we are looking very closely at what the potential proposals might be and thinking about how they might impact our members. I would not like the Bill to preclude the Scottish Government from making us aware of what their intentions might be.

Q114 Chris Stephens: I refer to the declaration that I made this morning: I am a member of Unison, as Mark knows, and I think I am not the only one. You touched on this in answer to my colleague Wayne David's question, but do you believe that the exceptions that this Bill allows to consider elements of human rights, labour rights and environmental misconduct would grant public bodies and their representatives enough leeway to effectively make ethical decisions?

Mark Beacon: Absolutely not. It is phenomenally weak in terms of the exceptions. If we start with international law, there is a requirement in it that basically violates the UK's obligations under international law rather than considering, for example, that the activity of a company might be contributing to a violation of international law, so that section is extremely weak. There is a total absence of any reference to human rights within the exceptions there, which is of deep concern, particularly as you do not have labour rights without human rights. Then, for the reasons I have mentioned, the section on labour rights is extremely weak—not meeting those ILO core conventions, which are the absolute basic minimum enabling rights for workers.

The Committee might want to look at areas around procurement and the activities of organisations like Electronics Watch, which I believe Crown Commercial Services is affiliated to, that look at areas like electronics and mining and how you can get better practice in procurement in those areas. On environmental concerns, again, we are concerned that there is that double threshold there: not only must it be environmental misconduct, but it has to violate the law as well. There are plenty of exceptions to that, such as in issues around the pollution of watercourses or around logging or deforestation, where the conduct or policy of a public authority permits that to go on.

Rozanne Foyer: I will not say too much on this. I think that the points were very well made there. The ILO conventions missing is the most disturbing feature here for any sort of credible nod to good employment standards. The fact that they are not there is incredibly disturbing. It is not going to help us take forward environmental agendas. It is not going to help us take forward ethical or human rights agendas or labour rights agendas on an international basis. It is a travesty if we cannot use all of our public bodies to help us push that agenda forward.

The Chair: This will have to be the last question as we need to conclude at 4.30 pm.

Q115 Nicola Richards (West Bromwich East) (Con): We heard in earlier evidence that when one BDS campaign against SodaStream was successful, about 500 Palestinians lost their jobs. I was just wondering whether that was the sort of outcome that you would count as positive. What proportion of your members see that as a priority from their union?

Mark Beacon: When it comes to workers' rights or the situation of workers within the illegal settlements, it is an area we have done substantial work on. We support and provide funding for a trade union called Ma'an, an Israeli trade union, to help them organise workers within the illegal industrial zones. It highlights phenomenal challenges there. Workers are paying extraordinary fees to labour brokers. They are being paid beneath the Israeli minimum wage. They are consistently not getting their labour rights under Israeli law. Health and safety is appalling and so forth.

We also support Kav LaOved, the workers hotline—again, an Israeli NGO—to support and educate workers and campaign for them in the illegal agricultural areas in the occupied west bank. Again, we see the same labour problems there, major health and safety problems, particularly involving people picking dates and the injuries they face, being dumped at checkpoints with injuries and so forth, and major problems with child labour.

The quality of that work is not amazing by any means, and there are major problems, but the other issue is the impact that those settlements have on the prospects of a viable—

The Chair: Order. I am sorry to cut you off mid-flow, but that brings us to the end of the allotted time for the Committee to ask questions. On the Committee's behalf, I thank all our witnesses today, particularly the last two, for all their evidence.

Ordered, That further consideration be now adjourned. *—(Jacob Young.)*

4.30 pm

Adjourned till Thursday 7 September at half-past Eleven o'clock.

Written evidence reported to the House

EAPBB01 UK Lawyers for Israel (UKLFI)

EAPBB02 We Believe in Israel

EAPBB03 Amnesty International UK

EAPBB04 Ethical Consumer Research Association (ECRA)

EAPBB05 Universities UK (UUK)

EAPBB06 Pensions and Lifetime Savings Association (PLSA)

EAPBB07 Anti-Slavery International

EAPBB08 City of London Corporation

EAPBB09 Balfour Project

EAPBB10 Jews for Justice for Palestinians

EAPBB11 Council for Arab-British Understanding (Caabu)

EAPBB12 Quakers in Britain

EAPBB13 Diaspora Alliance UK

EAPBB14 Liberty

EAPBB15 Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC)

EAPBB16 The Methodist Church in Britain and the United Reformed Church

EAPBB17 Labour Friends of Israel

EAPBB18 Palestine Solidarity Campaign

EAPBB19 Jewish Leadership Council

EAPBB20 Independent Jewish Voices, Jewish Network for Palestine, and Jewish Voice for Labour (joint submission)

EAPBB21 Institute of Race Relations

EAPBB22 International Centre of Justice for Palestinians

EAPBB23 Conservative Friends of Israel

EAPBB24 Scottish Palestine Solidarity Campaign

EAPBB25 UK Israel Business

EAPBB26 Board of Deputies of British Jews

EAPBB27 Muslim Association of Britain

EAPBB28 Corporate Justice Coalition

EAPBB29 Brunel Pension Partnership Limited and London LGPS CIV Ltd

EAPBB30 War on Want

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Third Sitting

Thursday 7 September 2023

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 11 September 2023

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Witnesses

Jonathan Turner, CEO, UK Lawyers for Israel

Steven Barrett, Barrister, Radcliffe Chambers

Yasmine Ahmed, UK Director, Human Rights Watch

Dave Timms, Head of Political Affairs, Friends of the Earth

Peter Frankental, Programme Director Economic Affairs, Amnesty International UK

Richard Hermer KC, Matrix Chambers

Melanie Phillips, Times columnist

Public Bill Committee

Thursday 7 September 2023

[Sir George Howarth *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

11.29 am

The Chair: I had not thought that there would be any need for a private session, but one Member has something that he wants to raise, so I think we should have a very brief private session. However, I should point out that the time that we take up by sitting in private will eat into the time for the witnesses.

The Committee deliberated in private.

Examination of witnesses

Jonathan Turner and Steven Barrett gave evidence.

11.36 am

The Chair: I apologise to the witnesses and members of the public who are attending today, for allowing them in before unfortunately having to ask them to withdraw while we sat in private. There was an issue that the Committee wanted briefly to discuss before we went into the formal, public part of the proceedings.

We will first hear evidence from Jonathan Turner, the chief executive of UK Lawyers for Israel, and Steven Barrett, a barrister at Radcliffe Chambers. I remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick rigidly to the timings in the programme motion that the Committee has already agreed. For this panel we have until midday. Could the two witnesses briefly introduce themselves for the record?

Jonathan Turner: I am Jonathan Turner, chief executive of the organisation UK Lawyers for Israel and a barrister.

Steven Barrett: I am Steven Barrett. I am a barrister; I write sometimes in the press on law, and I occasionally appear in the media on law.

The Chair: Thank you very much.

Greg Smith (Buckingham) (Con): Before we begin, may I say for the sake of transparency—I do not think that this is a fully declarable interest—that Steven Barrett is known to me as a councillor in Buckinghamshire?

Richard Hermer: For the sake of transparency, I am a Conservative councillor in Buckinghamshire unitary authority. That will not form part of any of the evidence that I give to this Committee. I am a parish councillor in Chepping Wycombe, but that role is not party-affiliated.

The Chair: You are clearly a very busy man.

Richard Hermer: That is very kind of you.

Q116 The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): As we know, the Bill does not in any way change the UK's foreign policy approach to the middle east. Would you agree that the Bill is in line with the Government's obligations under international law?

Jonathan Turner: Yes, I would. I would go further and say that it has the beneficial effect of securing the UK's compliance with international law, particularly with World Trade Organisation agreements, which impose restrictions on the UK central Government and a very wide range of public bodies. The Bill and its enforcement will ensure that activities or decisions of subordinate public authorities will not put the UK in breach of, particularly, the Government procurement agreement, which is part of the World Trade Organisation collection of agreements.

Felicity Buchan: Steven?

Steven Barrett: Yes, although I hesitate to reply on that because complying with international law is a political position. What I would perhaps like to make clear and explain to the Committee is our constitution and how we work. It is really important that this is understood. It was clarified recently by the Supreme Court, so we are back to now understanding the constitution, and we have a unique relationship with international law. If you wanted, we could all go to the British Museum and look at some 2,500-year-old international law—in fact, it is older than that. There are great masses of it. Absolutely no legal jurisdiction in the world makes all of it binding on that jurisdiction.

If you take a European-style constitution after the war, it will use a constitutional court to choose which bits of international law it wants and does not want. It makes it the job of its judges and courts to do that. When we were in some constitutional confusion after coming out of the EU, I wondered whether that was the system that we would use, but what then happened was quite clear.

You may all remember the Northern Ireland case about the impacts of the protocol on the Acts of Union: it went to the courts, and the courts very clearly said, "No, this is not for us." We are clear that we do not have a continental-style system in which a court can break international law or exit it for us. We have a system where you deal with it. This Parliament deals with international law, and we draw a line that we call incorporation.

Incorporated international law is binding upon us. You will all remember Miller 1 and the fuss that the Government had where they pretended that they could get out of the EU without passing an Act. No! The part of international law that made up the EU was incorporated international law. To get rid of incorporated international law, they had to use an Act of Parliament. If it were unincorporated, that would be entirely different.

That is the line that we draw. It is really important that people start remembering it. We have not really needed to know about it since the '60s. In his speech clarifying this, Lord Reed, the President of the Supreme Court, was very forgiving: he just called it a misunderstanding that had arisen. I like to call it a confusion, because nobody should feel guilty about this: these are bits of the constitution that we have not had to wield for decades. How was anybody supposed to know instantaneously that when we left the EU, this was what would happen? But that is what happened.

It is the role of Parliament, not Government, to control the operation of international law, and you do that through Acts of Parliament. This Bill is lawful—of course it is—because it is simply a mechanism for doing that. In his most recent note, I note that Mr Hermer concedes that. The only relevant part to come out of a lawyer's lips is whether you can or cannot do something; whether you should or should not is entirely for you. He says that you can, and I think that that is enough from any lawyer.

The Chair: Given the constraints on time, I will bring in other members of the Committee. If there is time at the end, I will bring the Minister back in.

Felicity Buchan: I just have a quick segue from that.

The Chair: A very quick one, then.

Q117 Felicity Buchan: Today we will be hearing from Richard Hermer KC, who has provided legal advice to the Labour party. Could you quickly give your views on that advice? I turn to Jonathan, since Steven has already addressed that.

Jonathan Turner: Most of his advice, I think, is wrong. I have set out detailed reasons why his opinion that was published and circulated at the time of Second Reading was wrong, but I would like to take the opportunity to address the note that he sent round last night, because I am afraid to say that it is still wrong.

One of the points that he made before claimed that this Bill would effect a profound change in the autonomy of local government. That is just not correct: there are existing, very substantial restraints on the autonomy of local government when it comes to procurement and investment. Some of those will be replaced by the Bill and some will continue, but it is simply not the case that this makes a sudden and enormous change. He has accepted that section 17 of the Local Government Act 1998 effected a substantial restriction on local government bodies, but he has ignored—even though I have sent him two emails pointing this out—the EU legislation, which effected a very substantial restriction.

He goes on to say that the Local Government Act applied only to local government bodies, not to other public authorities, but the EU legislation applies to a very broad range of public authorities. The regulations implementing the EU directives in England and Wales and Northern Ireland are to be repealed by the Procurement Bill, which is in its final stages. It does not affect the regulations implementing the EU directives in Scotland, which will apparently continue in force; the memorandum from the Scottish Government to the Scottish Parliament suggests that that will continue to be the case.

The position is that this Bill effectively replaces that EU legislation as far as England and Wales and Northern Ireland are concerned, within its terms, in relation to territorial matters. What the Bill really does—the most important aspect of the Bill—is transfer a matter that was regulated by EU law into a matter that is regulated by national law, and set out the national law governing this particular matter. It is part of the Brexit agenda of, if you like, taking back control: you may agree or disagree with the decision that the British people made, but it was made. A major part of the function of this Bill is to replace pre-existing EU-based legislation with UK-based legislation, together with the Procurement Bill.

Wayne David (Caerphilly) (Lab): On a point of order, Sir George.

The Chair: I hope it is a point of order.

Wayne David: I hope so, too. I just want to ask your advice. Is it appropriate for a witness to this Committee to give evidence in the form of attacking another witness who does not have the opportunity to respond to those comments because he is not here? Surely a witness should be giving positive remarks about why something should be done, rather than criticising another witness.

The Chair: It is an interesting point, but it is not a point of order for the Chair. It is in the hands of the witnesses themselves to give their evidence in the way that they think most appropriate, and if that involves commenting on evidence that we have already heard, it is certainly acceptable for them to do so. You might not like it—

Wayne David: No, and I don't think many people will.

The Chair: But it is the system. I am going to move swiftly on now. A number of Members have indicated that they want to take part. I call Alex Norris.

Q118 Alex Norris (Nottingham North) (Lab/Co-op): The key test in clause 1 for the action of a decision maker is whether it

"would cause a reasonable observer of the decision-making process to conclude that the decision was influenced by political or moral disapproval".

Are you content with the phrase "reasonable observer"? Do you think it is tight enough? Could it be clearer?

Jonathan Turner: Yes. "Reasonable observer", or "reasonable person", is used throughout English and Welsh law and so on. It is the basis of the law of negligence. You interpret contracts with reference to how they are understood by the reasonable person. In legislation, similarly, and in lots of other documents it provides an objective test, instead of looking at the subjective intention of the maker of a statement. That has the benefit of greater certainty and greater clarity, which is why it is used.

I am very happy with it being the formulation that is used. I do not think that there is any problem with it at all; I think it is the best way of doing it. You would have terrible difficulties if you tried to do things in terms of the subjective intention of people adopting the decision.

Q119 Alex Norris: So can we have confidence in it as essentially a term of art that will be easily understood by the courts and is not likely to lead to a series of cases based on whether or not one is reasonable? Is that likely to be tested?

Steven Barrett: It is not likely to be tested, because it is quite a settled test. It is a legal mechanism for taking subjectivity and turning it into objectivity, which is what law does—and which is why when I speak in public on law I have the unique and remarkable opportunity to annoy everyone. It is an acceptable test and I would not worry about it. The courts are familiar with it.

Q120 Dr Luke Evans (Bosworth) (Con): There has been much discussion with other witnesses about the need for clause 4. I have a question for Jonathan Turner: do you agree that clause 4 is necessary, and do you think it is compatible with article 10 of the European convention on human rights?

Jonathan Turner: Certainly parts of it are necessary. Otherwise, you have the Leicester City Council type of approach of saying, "We are supporting boycotts. We want goods from a particular territory to be boycotted as far as the law allows."

That is deeply problematic. First, it has the same impact on community cohesion as any other BDS measure that targets a particular country and indirectly targets a particular ethnicity. Secondly, it creates a degree of confusion and difficulty for the staff who have to implement it: they have to work out what the law does allow in terms of boycotting, they have to find out what the facts are, they have to go to the lawyers, and there will be arguments about it. The whole thing becomes a mess and discourages them from accepting certain tenders. They are further discouraged by the fact that they might offend some of the councillors who were so vehement about passing the measure. It has a chilling effect on the public authority and the staff who are left dealing with it. That is what I see as the primary target of this provision.

As to whether it conflicts with human rights requirements: no, it does not. It only binds public authorities. It does not stop individual members saying, "I support BDS. I don't like what such and such a state is doing." It only stops a public authority saying that. Public authorities, as we know from the House of Lords decision in the Aston Cantlow case, do not have human rights under the European convention on human rights and the Human Rights Act. I think that is why they have chosen to do this by reference to section 6 of the Human Rights Act and its definition of "public authority".

The Chair: Mr Barrett, is there anything you want to add?

Steven Barrett: No, because I cannot answer the necessary question because I think that would be a personal and political opinion. I can say that it is lawful and that I agree that it would not breach article 10.

Q121 Chris Stephens (Glasgow South West) (SNP): My trade union training tells me that if you have two lawyers in the room and you ask them a question, you get at least three opinions, but I am going to try one question anyway.

The Scottish Government oppose the BDS campaign, but also strongly discourage trade with companies active in the Occupied Palestinian Territories—an occupation that was recognised as illegal under international law and by the UK Government. How would you both respond to the concerns people have that the Bill effectively condones what many would regard as illegal occupation?

Jonathan Turner: First, I do not accept that it is an illegal occupation. Many international lawyers will say that the settlements are illegal. This is based on article 49 of the fourth Geneva convention, which prohibits a state—an occupying power—from transferring part of its population into an occupied territory. But conducting a business is not transferring population.

It is not just me who says this. The Supreme Court said it in Richardson *v*. Director of Public Prosecutions. It said that conducting a business in the west bank does not make the private operator of a factory a person who is promoting the transfer, by the state, of people into occupied territory. Running a business is not transferring people. It is sloppy thinking to say that the settlements are illegal. Companies operating in the vicinity of settlements do not normally operate in residential areas anyway; they normally operate in trading estates outside the residential areas. It is sloppy thinking to say that operating the factory, selling the goods or buying the goods is illegal under international law. It is not.

Steven Barrett: All I would say is that what you think about the situation in the middle east is a personal political opinion. As law, it is important that we get back to a healthy relationship with international law, which is understanding the role of incorporation and your role in controlling the flow of international law into this jurisdiction.

When the President of the Supreme Court corrected this for us lawyers, presumably to pass on to people like you, he speculated that it might be because we are so used to the EU. For 40 years, EU law was supreme here, which meant its being in charge. That meant that Ministers could be told, "No, Minister, that policy is illegal," or "No, Minister, you cannot do this." That has been going on for so long that many of us, simply by a form of muscle memory or attachment to that, are used to groping for some legal reason not to do things.

Now the EU has gone. International law has never been supreme; it is not supreme anywhere, and it has certainly never been supreme here. So you—all of you, collectively—need to come to terms with the power and responsibility that you have. If you think something about the situation in the middle east, or if you think something else about the situation in the middle east, you must sort it out. We will use democracy as a mechanism for settling the issues and seeing what the voters think, but that is the system that we have, and it is very important that we operate in it.

Really the only important part of Mr Hermer's statement, which I saw this morning, is where he says, "You can do this." Honestly, that is all you need to know. But groping around for just a resolution of the UN, which is a pretty weak source of international law anyway, and then looking at its wording and trying to say, "That means you can't pass an Act of Parliament here"—no. That is constitutionally eccentric.

If somebody will allow me, I do have drafting concerns about the Bill. I do not know whether we will get to those, but I would like to raise them if I can.

The Chair: We are running rapidly out of time, but there is an opportunity for one very quick question.

Q122 Ms Anum Qaisar (Airdrie and Shotts) (SNP): You said that you had some concerns about the drafting of the Bill. Can you explain them, please?

Steven Barrett: Yes. Mr Hermer actually flags them himself, and he is right. Paragraph 6 of the schedule is a constitutionally unique event. Given everything that I have said and explained to you here, we have never recognised all international law as binding. On my reading

of that paragraph, it seems to me an extraordinary statement. If you do not amend that, I seriously suggest—well, I would just get rid of it, to be honest, because it is giving supremacy to international law. It is conceding the power that the voters gave you and giving it to this great, great mass that is thousands of years old. People will be able to reach into the great mass that is international law and pluck out everything. You could probably pluck out bits that contradict the other bits. They will be able to pluck or draw out something to justify whichever boycott they want. The people who are motivated to do boycotts are very strongly motivated to do them. They will use that paragraph.

I also think that they will use paragraph 4 on finance, which is just a bit woolly. I think it could be tightened up. I would be very happy to help with the drafting; I might write a note after this, if that would assist anybody. I am always happy to help Governments of any colour. Should the Government change, I will be happy to help—on law only.

I wanted to raise those two issues. Paragraph 6 in particular is really a constitutional aberration. It gives away your sovereignty to a great, amorphous entity that is not properly controlled. At least the EU had structures and was under control. If you think of international law as like a territory, it has carved out a space for itself and it is stable. The rest of international law is not stable.

The Chair: On behalf of the Committee, may I thank the witnesses? I am sure it has been quite a probing experience for you, but even if individuals might not agree with the advice that you have given, I think they respect the fact that it was given in good faith and comes from a base of knowledge that is very helpful.

Examination of Witnesses

Yasmine Ahmed, Dave Timms and Peter Frankental gave evidence.

12 noon

Q123 The Chair: We will now hear evidence from Yasmine Ahmed, the UK director of Human Rights Watch, David Timms, the head of political affairs at Friends of the Earth, and Peter Frankental, programme director for economic affairs at Amnesty International UK. We have until 12.30 pm to conclude the session. For the record, could the three witnesses briefly introduce themselves?

Yasmine Ahmed: I am Yasmine Ahmed, the UK director for Human Rights Watch.

Dave Timms: I am Dave Timms. I am the head of political affairs at Friends of the Earth England, Wales and Northern Ireland.

Peter Frankental: I am Peter Frankental, economic affairs programme director at Amnesty International UK.

Q124 Chris Stephens: Amnesty International says that the Bill will make it impossible for public bodies to use their procurement and investment policies to incentivise ethical business conduct that is human rights compliant. Dave and Yasmine, do you agree with that statement? Peter, can you expand on that?

Yasmine Ahmed: Yes, I certainly agree with that. Essentially, what we see is that the Bill is going to restrict the ability of public bodies—a wide definition, as you know—to carry out their human rights due diligence responsibilities under the UNGPs. They have those responsibilities and international obligations, and what the Bill does is wholly suffocate the ability of public bodies to carry them out.

Essentially, the Bill does that by saying that a public body is not able to take account of the human rights record of a state, or companies operating within a state that is carrying out human rights abuses, except in specifically exempted cases. As we know, and as has been highlighted to you in previous evidence, the specific exemptions have significant loopholes, but even leaving those aside, there are still international crimes and human rights violations that are not caught. I will give you an example: suppose I am a public body and I want to stop investing in a military company that is supplying weapons to Saudi Arabia and UAE that are being used to commit war crimes in Yemen. This Bill will stop me from being able to do that. We know that the Bill will mean that public bodies cannot carry out and adhere to their due diligence responsibilities.

Something that is extremely pernicious from our perspective is that the Bill will have a significant chilling effect on public bodies. If I am a public body, what incentive do I have to do appropriate due diligence—both environmental and human rights due diligence? If I do that and something arises, and then one of the enforcement bodies imposes a notice on me that requires me to send all the information I have about the decision I made, given the fact that the Bill is so ambiguously worded that it only needs to be "a consideration", how am I to know that I will not be penalised? As a public body, I would not be in anyway incentivised. The Bill runs a coach and horses through ESG responsibilities, human rights responsibilities and due diligence responsibilities.

I know the Government have consistently said that this is about public policy and ensuring that public bodies do not carry out their own foreign policy. What the Bill actually does is stifle public bodies and the Government from carrying out their own responsibilities and, on the face of it, complying with international law. It is totally inconsistent as well with their own business risk guidance and the implementation of their own UNGPs. It is a hammer through that. Anyone who tells you that it is not has not adequately read the Bill.

Before I hand over to my colleagues, I would just say that I am a lawyer who has been working in this jurisdiction for a number of decades now, and I can say that I have never read a piece of legislation that is as badly worded as this. It is ambiguous and runs a coach and horses completely through ESG responsibilities and business and human rights responsibilities. I think it is a very pernicious and worrying piece of legislation, and I am very happy that the Committee is seized of the matter.

The Chair: To the other two witnesses, it might be helpful in terms of our time constraint if you could initially confirm whether you are happy with the evidence already given, and if not, please say so. Secondly, could you raise any additional points that you do not think have come out in the first response? I hope that is clear.

Dave Timms: I agree entirely with Yasmine's comments. Hopefully we will get to talk specifically about the environmental implications, but I would add to her answer the pernicious way clause 1 is constructed and the impact that will have on civil society organisations going about their reasonable activities to try to create environmental or social change. We have heard a lot of the witnesses say that it does not have gagging implications or free speech implications, but the actions of civil society organisations and members of those decision makers are drawn in by the nature of clause 1 and subsection (7), which talks about "any person seeking to persuade the decision-maker".

This is the state impinging on the activities of civil society organisations that are trying to achieve meaningful social change and trying to ensure that their money, their local authority or university is not complicit in driving destructive human rights or environmental activity. In that sense, this is a direct attack on the ability of civil society to go about the activities we would consider to be legitimate.

Peter Frankental: I totally agree with Yasmine and David. Public procurement in the UK, according to the OECD, accounts for 14% of GDP. That is enormous potential leverage to incentivise ethical business. That leverage is largely being lost because of the disincentives that Yasmine referred to. Let me give you one example of why the disincentive is so great. If a public body—say, an NHS trust—were to decide not to tender with a company in Malaysia, or a contractor in the UK that sources from Malaysia, and source rubber gloves from a factory that had been linked to human rights abuses, that would implicate the state of Malaysia. Under international law, states have a duty to protect, and that means holding companies accountable. If a company is involved in human rights violations or labour rights violations, the state has to some extent failed in its duty to protect, so disapproval of foreign state conduct is invoked. I do not think that the public bodies will want to go anywhere near giving effect to their human rights due diligence findings, because the risk and cost to them would be too great.

Q125 Felicity Buchan: I have two questions, so perhaps you can be brief on the first one. The first is quite simple: are you supportive of the BDS movement?

Yasmine Ahmed: As a matter of principle and policy at Human Rights Watch, we do not take a position on BDS. What we do say very clearly is that individuals, and whoever wants to, have the right to engage in BDS. It is part of their right to freedom of expression, association and assembly.

Dave Timms: For us, the position is exactly the same.

Peter Frankental: We do not take a view on BDS either, but we support the right of people to advocate for BDS. Can I just expand on that a little bit? More widely, we see the situation where human rights advocates and human rights defenders all over the world are delegitimised and stigmatised because of their human rights advocacy. All kinds of pretexts are given for this, such as offending public morals, being disloyal to the state and—as in this particular case, with this legislation—racism and antisemitism.

There is no reason in principle why any human rights advocate should not advocate for the human rights of Palestinians or criticise the human rights record of the state of Israel, and they should not be tarred with the brush of racism or antisemitism. That is a very dangerous road to be going by. If that approach is taken, will human rights advocates who draw attention to human rights violations of the Rohingya in Myanmar and the track record of the Government of Myanmar be accused of being anti-Buddhist? Will those who criticise the human rights record of the Indian Government with regard to the treatment of minorities be accused of being anti-Hindu? What of those who criticise human rights violations in the Gulf states? Anyone who advocates for BDS, which is a peaceful, non-violent means of achieving change and holding Israel accountable for human rights violations—Israel has enjoyed a considerable degree of impunity over the years—should be able to do that without being tarred with the brush of racism or antisemitism.

The Chair: Minister, do you have a quick follow-up?

Q126 Felicity Buchan: You have raised concerns that the Bill may prevent ethical procurement decisions, but would you not agree that there is nothing in the Bill that prevents, for instance, the divestment of fossil fuels, provided that it is not country-specific, and that there are numerous exceptions in the Bill such as on labour market misconduct and environmental misconduct? We are very much alive and dealing with ethical procurement decisions here.

The Chair: It is an agree/disagree question.

Dave Timms: I am afraid that I completely disagree with the assertion that there is any protection whatsoever for fossil-fuel divestment campaigns. We are extremely concerned about the chilling effect that the Bill could have on those. You have said that fossil fuels are not specifically mentioned, but I am afraid that the Minister does not have the ability to say what is excluded because of the construction of the first clause, which mentions

"a reasonable observer of the decision-making process".

In fact, the Department's own delegated powers memorandum, in terms of contracting with suppliers, talks about being "affiliated with certain countries" and divestments from "organisations" that are affiliated "with certain countries." So if we are talking about divestment of fossil fuels from, say, Saudi Aramco, Equinor, Petrobras, Gazprom or other companies that are highly associated with a foreign Government, we think that will be brought very quickly into the remit of the legislation.

Also, as I said before, because it bites on the way people go about campaigning, and all the statements made during that, you will often see arguments for fossil fuel divestments being couched in terms of getting off fossil fuels because of the damage of climate change, but also because of the record of particular regimes. Those decisions could very quickly be blocked by this legislation. So I see no reassurance whatsoever that it would not have a significant impact on fossil-fuel divestment.

Nor do we take any reassurance at all from the exemption around environmental misconduct. It applies only to illegal environmental harm, yet so much environmentally destructive activity is conducted lawfully. We can look at something like the due diligence discussions that happened during the Environment Act, where the limitations on reporting on illegal deforestation were

revealed because so much of the deforestation due to soy in somewhere like Brazil happens entirely lawfully. Or you can take something like Indonesian palm oil, where the legal status of land is extremely complicated and it becomes almost impossible to determine what land conversion has happened legally or illegally. How can a local authority or a public body possibly be expected to navigate that kind of complexity? What they will do is say that this legislation blocks them. So I am afraid that I do not accept your point.

The Chair: To use the same approach I advocated for the previous question, if the two other witnesses want to concur with or dissent from the response that Mr Timms gave, could they say so and perhaps raise any additional points that they think would be helpful to the Committee?

Yasmine Ahmed: Yes, I wholly concur with what Dave said. I would just add that first, as Dave noted, it has to be illegal. Fossil fuels, not necessarily the extraction of fossil fuels, are not illegal—that has been well covered. What about a situation where there are dual considerations? We see many situations where deforestation happens, for example, and there are attacks on indigenous communities and human rights defenders. What happens then? Is that caught by the Bill or not? As I mentioned, there is a litany of other human rights abuses and international crimes that are not captured by the Bill, so the exemptions are certainly by no means exhaustive. The very point that I would argue is that the Bill cannot, because the whole point of the Bill is to stop public bodies being able to carry out their due diligence responsibilities effectively.

Peter Frankental: I concur with Dave, but I want to add one point on the exemptions. The vast majority of cases reported of companies abusing human rights are not litigated—they are not subject to civil or criminal litigation; they are exposed by the media or by non-governmental organisations—so the exemptions defined in terms of breaches of law are unlikely to apply and no public body would feel confident in using the exemptions unless there has been a legal case. In so many jurisdictions, the law either is not in place or there is corruption or weak regulatory systems. The independently commissioned report on modern slavery by Frank Field, Baroness Butler-Sloss and Maria Miller drew attention to the very weak regulatory systems in the UK for implementing the Modern Slavery Act, so any reliance on the law will put public bodies in a very weak position.

Q127 Alex Norris: To build on that point, we have heard very strongly from panellists that you do not believe that the exceptions in the schedule to the Bill will protect environmental concerns. We have previously heard from the Government that they believe that it does. Assuming that that is their intent, how would you bridge the gap between what is on the face of the Bill and what is said to be the intention of that exception? Are you saying that it is irredeemable, which I think was the point that you made, Yasmine?

Dave Timms: You could increase the scope of that exemption, but you would still be left with all the problems that have been pointed out. You could have the environmental misconduct exemption extended to any environmental issue or any issues surrounding environmental harm, or include anywhere that there is a breach of international environmental treaties or agreements, but that would still leave you with the problem that Yasmine pointed out: the fact that in so many cases, environmental problems are related to human rights abuses. Look at logging in South America, where there is a high degree of overlap with human rights abuses; you would not be able to do it. You also would not be able to deal with the problem you have in clause 1, which is that any activity from civil society would be dragged into this as well. Often environmental organisations such as Friends of the Earth will campaign around concerns that overlap the environment and human rights. You might be able to chip away at the damage, but it is really hardwired into this from the start.

We have some experience of dealing with the kind of language in clause 1, which talks about a "reasonable observer", because it is really similar to the chilling effect caused by the language in electoral law that bites on third-party campaigners, where you must have regard to what is reasonably intended to influence voters. That has had a huge chilling effect, which has been documented by parliamentary Committees, on the activity of civil society in campaigning on legitimate issues around election periods. We have seen language like this: it has been drafted in a way that is vague, and language similar to this has been shown to have a chilling effect on the activities of legitimate civil society organisations trying to achieve legitimate aims.

The Chair: Does anyone have anything to add to that? No? Okay. I will come next to Dr Luke Evans.

Q128 Dr Evans: All of you were very clear to set out your position on BDS for the individual—namely, that you think it is right. I think everyone here would agree that it is an individual choice. The Bill is about public bodies and their position on BDS. Does your organisation support the idea that public bodies should be able to choose to carry out BDS—yes or no? I will just go down the panel for answers.

Yasmine Ahmed: What is very clear is that our organisation says that public bodies have to discharge their responsibilities under business and human rights of the UNGPs, and they have a responsibility to comply with international law. That is the very point that we are trying to make here. Let us set aside BDS, because what the Government are doing with this Bill is stifling the ability of public bodies to discharge the Government's own responsibilities and obligations under the UNGPs and under international law. That is what this Bill is doing. That is the effect of the Bill and that is the problem with the Bill.

I wholly agree with Peter's position on BDS, as does Human Rights Watch, and the right of individuals and the importance of people being able to advocate for the rights of Palestinians as they advocate for the rights of other individuals, but that is not what we are talking about here, because the effect of this Bill—actually, the crunch of this Bill—is that it stops the Government complying with their own responsibilities and international obligations.

Q129 Dr Evans: Very quickly, to come back on that point, do you think that foreign policy is the remit of local authorities or national Government?

Yasmine Ahmed: What I think, as I have said, is that when a public body is making financial decisions on procurement investment, it should take account—it has to take account—of the human rights and environmental implications of what it is doing. That is the answer.

Dr Evans: It is an answer to a separate question.

Q130 The Chair: I am sorry, but you have had two questions. Very briefly, because we are running very short of time, I wonder if the other two witnesses want to add any brief point to that.

Peter Frankental: I will just add that a decision by a public body not to procure with a tenderer should not necessarily be seen in terms of BDS. It is not necessarily a boycott; it is a means of effecting due diligence. If it is done in a way that is proportionate and on a case-by-case basis, as the vast majority would be, I would not see a problem with it.

I will just add something from the Government's impact assessment of the Bill. It is made absolutely clear in the impact assessment that there is no definitive evidence linking public procurement and investment to discrimination on grounds of race, religion or belief. That is set out in three paragraphs of the impact assessment—paragraphs 60, 61 and 64. So, the main premise behind this Bill, that it is necessary to prevent public bodies from engaging in antisemitism, is not compellingly evidenced, according to the Government's impact assessment.

Only one procurement case is given, that of Leicester City Council, which took a decision not to procure with Israeli settlements. That was challenged in the courts on grounds of a breach of the public sector's equality duty, and the Court of Appeal found that Leicester City Council had not breached its equality duty, was not being antisemitic and was mindful of community cohesion, and that its decision not to procure from settlements was based on a respected body of international opinion, including the UN, the EU and the UK's own policy on not recognising the settlements as legal. It is perfectly possible for public bodies to take these decisions without that being seen within the sweeping form of BDS.

The Chair: Thank you. Two more people have indicated that they want to ask questions. In order to save time, I will take the two questions and then perhaps the witnesses can determine between themselves who will answer them.

Q131 Ms Qaisar: Thank you for joining us today. What impact will the Bill have on the UK's relationship with those in the occupied territories, and with Palestinians across all four nations here who wish to exercise freedom of expression so that the actions of the Israeli Government can be held to account?

The Chair: I will bring in Brendan Clarke-Smith now for his question, and then you can share the answers between you.

Brendan Clarke-Smith (Bassetlaw) (Con): Thank you for your input today. You mentioned that people may be subject to equalities claims with the way the law is at the moment. Do you not feel that having a clear policy on this, both nationally and in terms of foreign policy, can protect local authorities if they diverge from it? That is why this Bill makes the picture a lot clearer for local authorities and avoids that situation where they may put themselves under threat and in breach of equalities laws.

The Chair: I do not know who wants to take on the two questions. I will leave it to you.

Peter Frankental: Sorry, I could not hear the first question. Could you please repeat it?

Ms Qaisar: It was to ask what impact the Bill will have on the UK's relationship with those in the occupied territories and with Palestinians here, across all four nations, who wish to exercise their freedom of expression so that the actions of the Israeli Government can be held to account.

The Chair: Mr Frankental, will you tackle that one?

Peter Frankental: I will begin with the second question. Sorry, I did not completely hear the first question. On foreign policy, I do not believe that procurement decisions that are taken on the basis of due diligence engage foreign policy at all. That is a human rights or environmental due diligence matter.

Yasmine Ahmed: To add to that, if you are talking about trying to give certainty to public authorities, what this Bill does is create complete uncertainty. The UK's business risk guidance and the UNGPs say something completely contrary to what this Bill says in terms of being cautious, considering your human rights and environmental responsibilities, and doing adequate due diligence, and in terms of the UK Government's position on the occupied territories and particular settlements within them. How we provide clarity to public bodies is a really important question. This Bill is certainly not the way to do it, because it provides much more uncertainty.

I am happy to attempt to answer the other question, if that is helpful. What the Bill means in relation to people in occupied territories is a really good question. I might expand on it slightly to say that from an international relations perspective, we should be thinking about a Bill that combines and excludes activities in Israel within the green line and the occupied territories. I am being very clear about what that says in relation to what the UK Government are saying about the Russian occupation in Ukraine, and the crimes that are being committed in that context.

It is a really important question because we should be thinking about community cohesion from both sides of the coin. What the Bill essentially says is that advocating for divestment from Israel, where Israel is committing crimes and a company is implicated in those crimes or human rights abuses, is wrong because it is linked to antisemitism. The other side of the coin—as you rightly say—is about what that does for Palestinian groups advocating for their rights, and the community cohesion between the two groups. A lot of the Jewish communities we have been engaging with have said, "We do not want our name associated with the Bill, because we are not saying that antisemitism is linked to the crimes and abuses that are being committed by Israel."

It is very clear that there is a problem of antisemitism in this country; you just have to look at the statistics. However, the way the Government should be approaching the issue, if they were properly thinking about it, is through the equalities duty, education and speaking to communities. They should not be creating a law that is going to create many more problems, provide impunity, and undermine their business and human rights responsibilities and international obligations.

The Chair: Thank you very much. I am afraid we have reached the end of this panel. I thank the three witnesses for the open and frank way in which they have addressed the questions raised by Committee members. We are grateful to them for being here today.

Yasmine Ahmed: Thank you so much.

Dave Timms: Thank you.

Peter Frankental: Thank you.

Examination of witness

Richard Hermer KC gave evidence.

12.30 pm

Q132 The Chair: We will now hear oral evidence from Richard Hermer KC from Matrix Chambers. We have until 12.45 pm for this session. Could the witness introduce himself for the record please?

Richard Hermer: Good afternoon, Sir George, and members of the Committee. My name is Richard Hermer. I am a barrister, as you have said, at Matrix Chambers. My areas of expertise most relevant to this Committee are in public law and international law, including international humanitarian law. I advise and represent a wide range of individuals, companies and, indeed, Governments, and I lecture on those topics both here and abroad.

Q133 Felicity Buchan: In your advice, you argue that the Bill places unprecedented restrictions on public authorities, but would you not agree that there are already substantial restrictions on public authorities, for example, to ensure good value for money or to comply with the UK's obligations under the Government procurement agreement?

Richard Hermer: Good afternoon, Minister. Of course, law imposes on all decision makers—be it local authorities or public bodies—a range of restrictions through law on their decisions, whether it is a purchasing decision or any other type of decision. That is what the legal framework does. I have identified in the two written opinions why aspects of this Bill are unprecedented in respect of its impact on human rights and international law. I agree with you as a matter of generality, but I disagree with you, Minister, as to this particular Bill.

The Chair: I am not going to bring the Minister back in. We have only 15 minutes for this session.

Q134 Chris Stephens: In the advice you gave the Labour party, you said the Bill

"effectively equates the OPT with Israel itself and is very difficult to reconcile"

with Britain's support for a two-state solution. Will you expand on those comments?

Richard Hermer: Yes, of course. The manner in which the Bill does that is it affords a unique protection to just one category, which is Israel, the occupied territories and the Golan Heights—one protection from being placed on the list of exceptions—whereas any other country in the world can be placed on the list of exceptions and therefore subject to adverse economic decisions by public bodies through the fiat of the Secretary of State or the Cabinet Minister. That power is denied to the Secretary of State or Minister in respect of anything to do with Israel, the occupied territories or the Golan Heights. It is accorded a special status, and that can only be changed by primary legislation. In that sense, it separates out Israel and the OPT from the rest of the world.

Q135 Wayne David: Following on from that very point, your two papers make the point very strongly that the Bill contradicts, or at least strongly questions, the British commitment to international law. Could you expand slightly on that because, as we all know, the British Government are firmly committed to international law? Are you suggesting that this questions at least the Government's commitment to international law?

Richard Hermer: Yes. I am mindful that we have only 15 minutes, probably now 10. Can I just give you a brief framework, because I think I have to disagree with the outline that Mr Barrett gave you? International law has always been key to this country, and very broadly speaking it operates on two levels. The first is on the international plane. That is our obligation to comply with international law at the international level. Secondly, in so far as it has been incorporated into English domestic law, the Government have to comply with it on a domestic level.

It is the international law level that I flagged up first in my written advice. As a country, we have always played a leading role in upholding and, indeed, creating international law. Both main parties have a proud history of that. It has fallen into slight disrepute in more recent times as we have had some legislation that expressly seeks to avoid our international law obligations, but generally speaking, that is something we can be proud of. There are two aspects in which that is relevant: first, because the Government have contended that this does comply with our international law obligations, and secondly, because the Committee will no doubt wish to ascertain whether it in fact does or there is a risk that it does not. I hope that answers your question, Mr David.

Q136 Dr Evans: We heard from a witness in the session the other day about comparisons. His position was that the Bill is relatively somewhere in the middle compared with somewhere like France or some of the states in the US. Given your experience, what is your thought on how this fits into the international comparisons?

Richard Hermer: There are some examples of American states passing what I would describe as more extreme versions of this. France is interesting because the Strasbourg court has looked at France on two occasions and the most recent one upheld that its laws were incompatible with article 10. There is not much else out there by way of example. Israel has its own laws on BDS. I am not sure where that takes us. Ultimately, Parliament has to look at this Bill on its face. How it stands up in comparison

does not tell us anything about international law—it might help with the context, but beyond that, I am not sure that it would necessarily help the Committee.

Q137 Ms Qaisar: Thank you for joining us today. Clause 4 has been referred to as a gagging clause by some. Why can it be seen as so problematic?

Richard Hermer: I am firmly of the view that it is incompatible with article 10 of the European convention on human rights, which is incorporated into our law via the Human Rights Act. I have listened carefully to the views of others, not least the way that it has been explained by the Minister, and I respectfully disagree.

There are two elements to this. First, who does it bind? There is no dispute that it does not bind a public authority per se, but it would undoubtedly bind a leader of a council or a vice-chancellor of a university—that is, the full array of public authorities or bodies acting as a quasi-public authority. Certainly, it is incapable of engaging the free speech of those individuals. Secondly, there is an analogue to the free speech of the individual in article 10, which is also the right of the public to have information. This engages article 10 in both those ways.

Once we have engagement of article 10, it then falls to the Government to justify it under article 10(2) I have set out in my first opinion the text of article 10(2). There are a number of hurdles that a Government would have to pass. We should also remember that this is not just in the context of BDS; this is in the context of any country and any conflict. I set that out in paragraph 34 of the opinion that the Labour party published. In order to establish that there was no breach of article 10, it would need to be shown that the restrictions were necessary

"in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

It is almost impossible to see how there could be a justification here. As matters stand, this would be deemed incompatible with the Human Rights Act.

The Chair: Thank you. This will be the last question.

Q138 Nicola Richards (West Bromwich East) (Con): Given that the BDS movement targets almost exclusively Israel, do you think it is appropriate that we require primary legislation for Israel?

Richard Hermer: No, I do not. In the human rights movement, there are lots of campaigns that focus on one particular country. For example—and I do not wish to be trite—if you look at the Rohingya, we are targeting Myanmar. If you look at what is going on in Yemen, most of the campaigning is around Saudi Arabia. You can pick examples from all around the world.

Undoubtedly, the BDS movement, as it is known, focuses on Israel. But often human rights campaigns focus on individual counties, because it is often individual countries that are committing human rights abuses. From a legal and human rights perspective, I do not feel that there is a need for additional protected status—all the more so, if I may say, in respect of the occupied territories and the distinction that is drawn there. I find that, on all sorts of levels, very hard to understand.

The Chair: Thank you. We have a few minutes left if anybody has a further question.

Q139 Wayne David: Apart from the objections you have clearly set out in writing and orally, you make a number of comments about the poor drafting of the Bill. Could you give us a few examples of poor drafting that will lead to all sorts of unintended consequences and complications?

Richard Hermer: I think I set out quite a few in writing. First, clause 1 could be taken to mean something entirely different to that which I think the Government intended—to just focus on particular territorial disputes rather than, more generally, the human rights record of a company.

I am afraid that, again, I disagree with Mr Barrett about the dangers of the "reasonable observer". In some areas of the law that is a common phrase. But here, if the Bill proceeds, it is a pretty binary question: have you offended the Act and taken into account considerations that you should not, or haven't you? I do not understand what the test of reasonable observer adds beyond uncertainty and, potentially, injustice. On that analysis, you can have no intention to break the law, but a reasonable observer may nevertheless consider that you did. The vagueness there is potentially very troubling. There are also the other examples I have put out in writing.

Obviously, a great deal of oxygen has been taken up on BDS, and one can understand why that is. But I would stress—as I hope I have done in writing on two occasions—that the impact of the Bill extends across the whole panorama of human rights and this country's engagement with human rights, not just one particular incident. It engages not simply what local authorities can do, but the full range of public bodies in this country.

The Chair: Thank you for the brevity of your responses, which enabled us to get a lot more questions in than I had anticipated in such a short session. It has been very helpful. Thank you very much.

Examination of witness

Melanie Phillips gave evidence.

12.43 pm

Q140 The Chair: Finally, we will hear oral evidence from Melanie Phillips, a columnist for *The Times.* For this session we have until 1 pm. For the purposes of the record, could the witness briefly introduce herself?

Melanie Phillips: I am Melanie Phillips. I am a British journalist and I spend much of my time these days living in Israel.

Q141 Felicity Buchan: The BDS movement almost exclusively targets Israel. Can you talk about the effect of the BDS movement on the Jewish community and on community cohesion?

Melanie Phillips: Many people, pretty understandably, draw a distinction between criticism of Israel and antisemitism. However, my view is that what we are all talking about when we talk about concerns over the way Israel is treated in public discourse is not criticism but a unique campaign of delegitimisation and demonisation.

Now, it should not follow that, even if you demonise the state of Israel, British Jews get it in the neck. But it is a fact—it is on record—that every time the public prints are full of not just criticism of Israel's behaviour but a presentation of Israel in which it is a unique human rights abuser in the region, attacks on British Jews, both verbal and physical, go up. So there is in practice—whatever the reasons you may adduce—a complete connection between the two. In my view, that is not really surprising. For many people in this country and elsewhere, their understanding of Judaism, the Jewish people, Jewish history and the connections between all those things and the land of Israel is extremely limited. Many people do not understand how intimately Jewish identity—Jewish religious identity—is wrapped up with the land of Israel.

For all those reasons, a boycott movement that stigmatises Israel, singles it out for treatment afforded to no other country and identifies it, therefore, inescapably as a unique evil in the world must have an impact on the Jewish community.

Q142 Felicity Buchan: I have one quick follow-up question. There has been a lot of talk about clause 4, which prohibits statements of intent to boycott. Would you agree that we need clause 4, because a statement of intent sows community division without achieving anything?

Melanie Phillips: Yes. A statement of intent is clearly no more or less than that, but the evil of a statement of intent is that it is a statement of delegitimisation—a statement that Israel is uniquely evil, that it uniquely requires this kind of approach. Therefore, any Jewish person in Britain who supports Israel is deemed to be fair game, and any Jew is deemed to be fair game because people assume, rightly or wrongly, that they identify with Israel.

Q143 Steve McCabe (Birmingham, Selly Oak) (Lab): I understood the Bill to be largely about the Conservative party meeting its manifesto promise to address BDS—in fact, the Prime Minister restated that recently. If that is the main purpose of the Bill—and I have to say I am in favour of that—do you think we need the exemption that means that Israel and the Palestinian territories are the only places that the Secretary of State cannot regulate for? Does it add anything extra to the Bill?

Melanie Phillips: I think there is no contradiction between the two. As you say, the Bill is the fulfilment of a manifesto commitment. The manifesto commitment is a broad one, and the Bill is a broad one, as you heard from your previous witnesses. There are exemptions of different kinds, and the particular exemption you are talking about, which singles out Israel, is done for a particular reason: in a Bill that deals generally with boycotts, there is one boycott that stands out as unique, which is the boycott movement against Israel. It has characteristics that do not apply to any other action taken against any other country, group or cause. In the view of the Government, and I agree with this view, it is a uniquely evil impulse, designed uniquely to destroy Israel as the Jewish state—as the Jewish homeland—and with malign potential repercussions on the Jewish community. Consequently, because it is a unique situation, it requires a specific exemption, as it is so bad that it cannot be ever thought that it could ever happen.

Q144 Wayne David: Could I say that I have regularly, over many, many years, read your excellent articles in *The Times* and indeed elsewhere. I understand that you feel very strongly about this issue, and I personally have gone on record many times as being implacably opposed to the BDS movement. However, one worry I have is that much of the mechanism in the Bill requires exemptions, and the Government have indicated that there will be some exemptions, but they have not mentioned China, and I do not think they will mention China. Yet there is tremendous concern among the Uyghurs, for example, as we have heard in this Committee, about the possible curtailment of action at a community level against China. Is that a concern you share?

Melanie Phillips: I am certainly concerned about China. And, by the way, thank you very much for the compliment—flattery will get you everywhere. I am concerned about China, and I would like and prefer our Government to take a stronger view about China—a stronger approach to China. But that is not really the point at issue here; the point at issue here is that it is for the Government to determine foreign policy—I may disagree with that policy, but it is for the Government to determine it. If local authorities or public bodies—bodies taking public money—go off on a frolic of their own and boycott China, Saudi Arabia or whoever, you have a kind of anarchy, and you cannot have that. To me, that is the issue.

As I understand it from what Ministers have said and from my reading of the Bill and these exemptions—obviously, you realise I am not a lawyer—the Bill allows public bodies who take a view that the procurement decision they are being asked to take would involve the use of Uyghur slave labour in China to use the exemptions to not go down that procurement road. But the exemptions are limited to a number of areas that the Government have deemed to be on the right side of the line when it comes to saying that it is for the Government of the day to determine foreign policy, which I think is a sensible rule for the Government of the country.

Q145 Nicola Richards: We have heard evidence that some believe the Bill could make division worse, but many others have argued that that would not be the case. Part of what the BDS movement calls for is for people to stop Palestinian organisations working with Israeli organisations. Do you think that is evidence, and is there any more evidence, that the Bill would not make community tensions worse and seeks to make them better?

Melanie Phillips: I do not think the Bill itself seeks to make tensions worse or better, but it is a fair question to ask whether it will have that effect both here and in Israel and the disputed territories. The fact is that people who advocate boycotts of Israel over its behaviour in those territories, which classically involve targeting companies that have a presence in them, believe that this is hurting Israel. Well, it does, but the people it really hurts are the Palestinian Arabs who work for

these organisations and companies. They have said over many years that they wish that the west would not go down this road. It is a disaster for them when it goes down this road. They and their families depend for their livelihoods on these companies. Boycotts are performative from their point of view—they are performative virtue signalling, which not only does not address the political challenges and difficulties that they believe they have but actually takes away their livelihoods. So this hurts them, and it does nothing about community divisions in these areas, because a state of—whatever you like to call it—war, insurrection, permanent threat of terrorist violence and so on engulfs this area, and Israelis are being killed, or there are attacks intending to kill them, literally every day. This does not affect that at all. What it would do, in my view, as I have said already, is make the situation of British Jews worse—it would affect it very badly. It would increase community divisions here; it would increase suspicion, aggression and division between the Jewish community and the non-Jewish community here.

The Chair: If anybody has a further question, there is time to ask it.

Q146 Bob Blackman (Harrow East) (Con): We have had a succession of witnesses over our various evidence sessions. Some have suggested strengthening elements to the Bill. I do not know whether you have been following the evidence, but do you have any suggestions as to how the Bill could be strengthened, rather than weakened, as some people have suggested?

The Chair: Before I ask you to respond, I will bring in Steve McCabe and, with your forbearance, ask you to perhaps answer both questions together.

Steve McCabe: I think my question was the same. You said that the Bill would benefit from amendment. I wondered what you had in mind.

Melanie Phillips: As I have said before, I am not a lawyer, and I really would not presume to say what amendments there should be. I would suggest that all Bills, as I am sure you know better than I do, are susceptible to amendment and would benefit from amendment. When I wrote what I wrote, I was really reflecting that I had seen various people make various observations about things they thought were not right. I do not know whether that is right or not, but I am absolutely sure that there is scope for amendment. Consequently, I would hope that the Bill would be amended for the better. That was really the only thing I was trying to get at.

The Chair: Thank you. I would like to thank the witness for her characteristically forthright responses, which have been very helpful to the Committee. I would also say that, in my experience—I am sure you share it—it is as well to take compliments wherever you can get them. With that, thank you very much for your attendance. We are very grateful.

Ordered, That further consideration be now adjourned. *—(Jacob Young.)*

12.57 pm

Adjourned till Tuesday 12 September at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

EAPBB31 Richard Hermer KC
EAPBB32 Human Rights Watch

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Fourth Sitting

Tuesday 12 September 2023

(Morning)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 16 September 2023

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 September 2023

(Morning)

[Sir George Howarth *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

9.25 am

The Chair: I have a few preliminary announcements. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk. I remind people to switch electronic devices to silent, please. Tea and coffee are not allowed during the sitting.

The selection list for today's sitting, which is available in the room, shows how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or a similar issue. Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear on the amendment paper. The selection list shows the order of debates; decisions on each amendment are taken when we come to the clause to which the amendment relates.

The Member who has put their name to the leading amendment in a group will be called first. Other Members will then be free to catch my eye to speak on all or any of the amendments in the group. A Member may speak more than once in a single debate. At the end of the debate on a group, I will again call the Member who moved the leading amendment. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or to seek a decision. Any Member who wishes to press any other amendment in a group to a vote needs to let me know.

Clause 1

Disapproval of foreign state conduct prohibited

Ms Anum Qaisar (Airdrie and Shotts) (SNP): I beg to move amendment 22, in clause 1, page 1, line 5, leave out

"must not have regard to a territorial consideration"

and insert "must not act".

This amendment would remove the reference to a "territorial consideration" in the legislation.

The Chair: With this it will be convenient to discuss the following:

Amendment 31, in clause 1, page 1, line 6, leave out from "that" to "influenced" in line 7, and insert "is".

This amendment is to probe the use of a subjective, rather than an objective, test to establish whether a decision-maker has contravened clause 1.

Amendment 23, in clause 1, page 1, line 9, leave out subsection (3).

This amendment would remove the reference to a "territorial consideration" in the legislation.

Amendment 3, in clause 1, page 1, line 13, leave out "or territory".

This amendment clarifies that considerations for the purposes of section 1 must relate to the foreign countries, rather than territories within foreign countries.

Amendment 32, in clause 1, page 1, leave out lines 20 to 22.

This amendment is to probe the impact of the legislation on individuals, such as those working within public authorities.

Clause stand part.

Ms Qaisar: It is a pleasure to serve under your chairmanship, Sir George.

Antisemitism is on the rise across the UK and the globe. It is a disgusting stain on society, and something must be done to eradicate it completely. There must be strong and meaningful legislation to tackle it so that Jewish people feel and are safe. That is something that I and my SNP colleagues want to see, but frankly it is also something that people across the House want to see. Sadly, however, the Bill is not an appropriate approach.

Last week we heard from Yasmine Ahmed, the UK director of Human Rights Watch, who said:

"I have never read a piece of legislation that is as badly worded as this. It is ambiguous and runs a coach and horses completely through ESG responsibilities and business and human rights responsibilities. I think it is a very pernicious and worrying piece of legislation".—[*Official Report, Economic Activity of Public Bodies (Overseas Matters) Public Bill Committee,* 7 September 2023; c. 86, Q124.]

The Bill is in need of significant amendment to tackle some of the fundamental flaws in its current form. Some clauses need to be scrapped altogether. The language in clause 1 creates ambiguities around the objectives of the Bill; it is so poorly drafted that it is difficult to determine what the Bill seeks to accomplish. Of particular concern is the phrasing relating to "a territorial consideration" in clause 1(2). As drafted, it could be interpreted in such a way as to focus the Bill solely on limiting disagreements among decision makers on territorial matters, rather than on the foreign and domestic actions of foreign states. That means that if a decision maker were to make an investment or procurement decision based solely on the domestic actions of the foreign state that did not relate to a territorial issue, the view could be taken that it was not covered by the Bill.

In written and oral evidence, Richard Hermer KC explained that if a decision maker refused to buy goods from China based only on its track record on human rights, they would not be covered by the Bill. If, however, the same person refused to buy goods from China because of its forced labour impacting cotton in Xinjiang, that decision would be covered by the scope of this Bill. That interpretation of clause 1 creates obvious issues around the Bill's applicability. We therefore ask the Government to accept amendment 22.

Clause 1 also seeks fundamentally to reduce the autonomy of local councils and the devolved nations to take a stance on human rights matters. The measures that seek to remove the ability of local government to take a stance based on the political and moral actions of a foreign state mark a dangerous step in reducing autonomy to speak out in support of human rights. Political discourse in debates over foreign policy matters to everyone. It is legislated here in Westminster, but it enriches society when people are involved in the discussions. Central Government sit upon policy, legislation and agenda, but it is a cornerstone of democracy that people

at a localised level be able to have discussion and debate around human rights, which is inevitably linked to foreign policy.

I am not calling for foreign policy to be set by local government, but as a society we benefit when local government makes decisions based on human rights. We saw that in the 1980s, as my hon. Friend the Member for Glasgow South West and I brought up repeatedly last week. In 1981, Glasgow City Council stood up against apartheid in South Africa. Glasgow was the first city in the world to award Nelson Mandela the freedom of the city. Five years later, St George's Place in the city centre was renamed Nelson Mandela Place. In 1993, Nelson Mandela visited Glasgow. In the city chambers, he proclaimed:

"While we were physically denied our freedom in the country of our birth, a city 6,000 miles away, and as renowned as Glasgow, refused to accept the legitimacy of the apartheid system, and declared us to be free."

Steve McCabe (Birmingham, Selly Oak) (Lab): As a Scot, I am very proud of the actions of Labour-led Glasgow City Council in changing the name of St George's Place and in being the first city to give Nelson Mandela freedom of the city. I have looked at the Bill, and I cannot see anything in it that would have prevented Glasgow City Council from doing that; I agree that there are things in it that have a chilling effect on local government and public institutions, but I am not quite clear how relevant the hon. Lady's reference to the Bill is.

Ms Qaisar: Essentially, I want to talk about the impact that a local government can have when people at a localised level can outline how they feel about human rights records. This Government should take heed of that, because at that time it was Thatcher's Government who imposed sanctions on apartheid South Africa and maintained close links with political leaders in apartheid South Africa.

I have tabled a number of amendments to clause 1. I have spoken at length about amendment 22. Amendment 31 is intended to probe the use of a subjective rather than objective test to establish whether a decision maker has contravened clause 1. In reality, there are so many amendments that could be made to clause 1. That is not just my view; we heard it from numerous witnesses during our evidence sessions last week and from multiple organisations that have submitted written evidence. The Minister should really go back and start from scratch.

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to see you in the Chair, Sir George, and to speak to amendment 3, which stands in my name.

We have now moved to the short but important process of line-by-line scrutiny of the Bill, which is itself short but important, with just 17 clauses and a schedule. In the high-quality Second Reading debate, we saw the significant strength of feeling among Members across the House. Frankly, there was not an even party political divide, which always makes things a bit more interesting. I suspect that colleagues' mailbags, like mine, have been full of strong views from their constituents.

On Second Reading, the Opposition tabled a reasoned amendment setting out our significant concerns about the Bill, which very much start with clause 1. It is a long-standing Opposition position that we do not support boycott, divestment and sanctions-type activity against the state of Israel. As my hon. Friend the Member for Caerphilly said on Thursday, we are implacably imposed to it. I cannot improve upon that sentiment, which is also the view of the Government. It should not have been hard, if that was what the Government wanted, to build consensus around a proportionate set of regulations that would tackle the issue. Instead, clause 1 and the Bill generally are needlessly broad, with sweeping powers and far-reaching effects. Whether consciously or not, that has created an undesirable degree of division.

The Opposition do not think it wrong, in itself, for public bodies to take ethical investment and procurement decisions, given that there is a long history of councils, universities and others taking a stance in defence of freedom and human rights. After all, it is local ratepayers' money, and it is reasonable for them to want a say in how to spend or invest it. Similarly, the money in a pension fund belongs not to the Secretary of State but to its members, so it is reasonable for members of funds, through their trustees, to wish to express their views on how the money is invested. We know that that is also the Government's view, because they have carved out a wide range of exceptions in the schedule. It is clearly not in debate that there ought to be a degree of local say on such activity.

However, it is important to say, at the start of our line-by-line scrutiny, that there is a significant difference between legitimate criticism of a foreign state's Government and what some have sought to do in recent years. There are those who have sought to target Israel alone, hold it to different standards than others and create hostility towards Jewish people in the UK. That is completely wrong, and we fully support efforts to tackle antisemitism in this country. However, this solution is not sufficient. In its unamended form, clause 1 will go far beyond what we are seeking to resolve and will create a series of problems along the way.

My amendment 3 seeks to clarify the ambiguous wording that a public body may not have regard to a "territorial consideration" when making procurement and investment decisions. As the then shadow Secretary of State—my hon. Friend the Member for Wigan (Lisa Nandy)—and I asked on Second Reading, is that supposed to mean that public bodies may refuse goods from a nation state such as China because of a general disregard for human rights, but may not refuse cotton goods from a territory such as Xinjiang state because of concerns about genocide of the Uyghur population? Or does it mean, as I suspect it may, that all actions of all foreign Governments are beyond the scope of local decision makers unless excepted in the schedule? Perhaps it is illustrative of where we are in the process of reviewing the Bill that that remains in doubt. We have seen doubt in the written evidence, and obviously doubt was felt at Second Reading, too. We need greater clarity in the Bill.

My amendment 3 is a probing amendment. I will not seek to divide the Committee on it, but I hope that it will provide an opportunity for the Minister to give clarity. I think we know that the Government mean that it is not territory-only boycotts that are out of scope, but rather that all boycott-type activity, where it disapproves of foreign conduct, is out of scope. I hope to hear that from the Minister.

[Alex Norris]

I turn to the amendments tabled by the hon. Member for Airdrie and Shotts. My amendment 3 would have the same effect as her amendment 23 and is similar to amendment 22, so the same arguments stand.

I am interested to hear what the Minister has to say about amendment 31. It relates to the important debates we had in our evidence sessions about the reasonable observer test, which I struggled with a little. When I asked the witness panel about that, we heard slightly mixed evidence. I was willing to accept it as a term of art which would be well known to the courts and therefore not likely to provide another issue for litigation, but that point seems to be in doubt. I hope that the Minister can be clear about why this approach has been chosen.

I have no doubt that this legislation is heading straight for the courts. That was obvious from written and oral evidence and the Second Reading debate, and it will be obvious throughout our line-by-line discussions. Our debates in Committee will be germane to court proceedings as well, so it is important to have the greatest possible clarity in the Bill and in our discussions.

Finally, amendment 30 relates to a matter that I shall address in detail when we debate clause 4 stand part.

Conceptually, the Bill stands up and is easy enough to understand when we think about public bodies as entities in their own right. However, it swiftly starts to disintegrate when we consider that those entities are made up of a person or persons. I thought that there were some admirable logical gymnastics on that point from the Minister during our evidence sessions. She said that on one day a person might be a councillor, a trustee or a Mayor, and thus the decision maker, but that on another day, in another context, they might no longer be and would therefore not have their freedom of expression fettered. I am not sure that that is credible, but I suspect that the Minister will want to speak to that point, so I hope to hear some greater clarity on it.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): It is a pleasure to serve under your chairmanship, Sir George, with other hon. Members from all parties. The Bill is an important piece of legislation that has been brought to this place to fulfil a manifesto commitment to ensure that the UK speaks with one voice internationally, and to promote community cohesion within the United Kingdom. We have 17 clauses and one schedule to discuss in four sittings.

Amendments 22 and 23 would remove the references to "territorial consideration" from the Bill. I am not sure that this is what the hon. Member for Airdrie and Shotts intended, but the amendments would broaden the scope of the Bill. In its current form, the Bill will prohibit only territorial considerations

"that would cause a reasonable observer of the decision-making process to conclude that the decision was influenced by political or moral disapproval of foreign state conduct",

but the amendments would mean that when a public authority is making a procurement or investment decision, all considerations influenced by political or moral disapproval of foreign state conduct would be captured, not just territorial considerations—unless, of course, they were also excluded in the schedule.

The condition of "territorial consideration" in the ban means that the Bill only bans certain boycotts or divestments that "specifically or mainly" have regard to a country or territory. It does not currently, for example, prohibit public authorities that have an environmental policy for their procurement or investment decisions that is universal rather than country-specific. The amendments would arguably prohibit such policies, which is not the intention of the Bill.

Bob Blackman (Harrow East) (Con): Does my hon. Friend accept that if the amendments are agreed to—obviously colleagues have proposed them on a sensible basis to probe the intention of the Bill—one of the risks, given that there are all sorts of territorial claims all over the world, is that countries that are occupying territories might be brought into scope if this change is made? The reality is that it should be the foreign policy of the Government that determines whether such decisions are taken, not individual authorities.

Felicity Buchan: I completely agree that foreign policy should be determined by Government. I would like to point out the definition of a territorial consideration in clause 1(3):

"A 'territorial consideration' is a consideration that relates specifically or mainly to a particular foreign territory."

Foreign territory is defined in clause 1(5) as

"a country or territory outside the United Kingdom."

For the avoidance of any doubt, "territorial" does not apply simply to territories; it also applies to countries.

Amendment 3 would exclude "territory" from the Bill's definition of a foreign territory. In his evidence to the Committee, Richard Hermer KC raised a concern about the term "territorial consideration", and I understand that the hon. Member for Nottingham North has tabled the amendment to address that concern. I have already explained the importance and purpose of territorial consideration, so I will not repeat it. I understand that Mr Hermer's concern is that the terminology indicates that the clause applies only where there is a territorial dispute, but that is not the case. As Jonathan Turner noted in evidence to the Committee, there is nothing in this wording that suggests that the clause will apply only where there is a territorial dispute. If that is the reasoning behind the amendment, it is unnecessary.

Unless I am mistaken in my understanding of the reason for the amendment, it seems to be intended to attempt to reduce the scope of "territorial considerations" in the ban. In other words, it appears to intend for public authorities to be permitted to have regard to considerations relating to a territory when making an investment or procurement decision, even if that decision is influenced by the moral or political disapproval of foreign state conduct.

9.45 am

Going back to clause 1(5), the phrase "country or territory" is standard legal drafting to include areas in the world that do not have the status of "country". Excluding territories will narrow the scope of the Bill, but the change in scope appears arbitrary. The Bill will apply to considerations relating to countries and territories equally, unless they are exempted for a specific reason. As I have expressed to the Committee many times, and as my hon. Friend the Member for Harrow East has just

alluded to, foreign policy is a UK Government matter and not the responsibility of public authorities. To ensure a consistent approach to foreign policy, it is vital that the ban applies to all countries and territories, except where the Government choose to exempt a country or territory from the ban.

Amendment 31 would remove the reasonable observer test from decisions about whether a public authority has breached the ban in the Bill on boycotts and divestments. As the Committee heard during the evidence sessions, the point of the test is to bring an objective measure to the consideration of whether the ban has been breached. Without the test, a public authority might claim that it did not in fact have political or moral disapproval of foreign state conduct in mind when making the decision, despite convincing evidence to the contrary in the decision-making process. Equally, a third party might claim in court that a decision maker with a reputation for opposition to a particular foreign state had such disapproval in mind, despite a lack of evidence from the decision-making process.

The test therefore clarifies that enforcement authorities and the courts should focus on the evidence of the decision-making process, rather than otherwise trying to determine the subjective motivations of the decision maker. I hope that the Committee was reassured on this point by the evidence from Jonathan Turner and Steven Barrett. Both are highly experienced practising barristers and explained that the test is standard in legislation and that the courts will readily understand it.

Chris Stephens (Glasgow South West) (SNP): I am grateful to the Minister for giving way, but there are difficulties with the drafting of the clause, and one criticism is that it seeks to apply a subjective rather than an objective test. However, will she clarify the point made by the hon. Member for Nottingham North? The disapproval of foreign state conduct, which the Bill refers to, includes disapproval by individuals and by public organisations collectively, but it would also apply to individuals in such organisations. Will the Minister therefore outline the Government's intent, because there is some confusion about the way the Bill is drafted?

Felicity Buchan: I will go on to address that, but to give the hon. Gentleman a simple answer now, if an individual is talking on behalf of a local authority, that is captured by the Bill. If a council leader makes a statement on behalf of the local authority, that is captured. If a councillor, or indeed a council leader, makes a statement but is not representing the local authority, that is not captured. The issue is whether it is "on behalf of".

Chris Stephens: The Minister is being very generous in giving way. Let us be clear: a council leader or any councillor who is being interviewed by a journalist or on television would have to say, "This is my personal opinion. I am not speaking on behalf of the local authority," and would have to hope that that was not edited out before the interview hit the newspapers or the television. There is a bit of difficulty around this issue. Given the Minister's answer, I wonder whether the Government could go away and look at the clause, because I think they will find themselves in great difficulty on this issue.

Felicity Buchan: I was going to explain that, but I will give the condensed version: we will put it into the explanatory notes. We will give further clarity in those notes.

Amendment 32 could cause confusion about whether the ban may or may not be breached as a result of the political and moral disapproval of individuals who make decisions on behalf of a public authority. The drafting of the Bill clarifies the position: where an individual makes a decision on behalf of a public authority, that will be seen as the public authority's decision, so the public authority will be subject to enforcement action, not the individual.

The Bill needs to be clear that decisions that involve disapproval by individuals who make a decision on behalf of a public authority are in scope; otherwise, it would bring into doubt situations such as a council voting for a local authority to conduct a boycott or indeed any decision taken by a group that makes decisions for a public authority, such as a board or committee. The ban would be ineffective and easy to circumvent if such decisions were not covered.

It might also be helpful if I explain how the ban affects individuals. Anyone acting in an individual capacity is not caught by the ban in clause 4 on making a statement of intent to boycott or divest, unless the individual is making that statement on behalf of the public authority. I gave the example of the councillor. I know that that has been a point of confusion for members of the Committee so, as I said, I will clarify the point in the Bill's explanatory notes.

In addition, when an individual or groups of individuals make a decision that is caught by clause 1, or a statement on behalf of a public authority caught by clause 4, the individuals are not personally liable: the public authority is. The public authority would be the subject of any enforcement or court action. In evidence to the Committee, Dr Alan Mendoza confirmed that that position is laid out clearly in the legislation and that the European Court of Human Rights would agree. The Government remain strongly committed to the UK's long and proud tradition of free speech and to article 10 of the European convention on human rights.

I hope that that reassures the Committee, especially in the light of the additions to the Bill's explanatory notes. The scope of the Bill is strictly limited to the actions of public authorities, and only affects individuals when they make statements or take action on behalf of public authorities. Therefore, for the reasons that I have set out, I respectfully request that the amendments be withdrawn.

Ms Qaisar: Amendments 22, 31, 23 and 32, tabled by my hon. Friend the Member for Glasgow South West and me, include probing elements, as well as changes to the legislation, because on the face of it the Bill simply does not make sense. As I said in my opening statement, that is not just my opinion, but the opinion of various different organisations in written and oral evidence. The Bill is so poorly drafted.

The Minister took a lot of time to talk about clause 4, but at this point I want to concentrate on clause 1; we will come to clause 4 later. The Bill will have an impact on the autonomy of local authorities. For years, indeed for decades, local authorities and local councillors at the very local level—I keep using "local",

[Ms Qaisar]

because that is vital—have played a role in the protection and promotion of human rights. It is important for that to be protected.

The Bill, if passed, will have an impact not only on local authorities but on universities, which is vital because they play an essential role: they gather knowledge, free from interference, to educate people in skills and in thinking critically and independently. Some of my amendments to later provisions in the Bill come back to the importance of universities and how the Bill contradicts previous legislation introduced by the UK Government.

The Bill is, as I say, drafted poorly. I still do not understand the part of the Bill that talks about "a reasonable observer". That is why we tabled the probing amendment 31. These are subjective, not objective tests. The Minister essentially needs to go back to the drawing board. The SNP is looking to divide the Committee on amendment 22.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 10.

Division No. 1]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 2.

Division No. 2]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2

Application to procurement and investment decisions

10 am

Ms Qaisar: I beg to move amendment 30, in clause 2, page 2, line 4, at end insert—

"(1A) But section 1 does not apply to decisions of Scottish Ministers."

This amendment would remove decisions of Scottish Ministers from the scope of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 15, in clause 3, page 2, line 28, leave out paragraph (b).

This amendment, and Amendments 16 and 17, seek to remove Scotland from the extent of this Bill.

Amendment 16, in clause 17, page 10, line 38, leave out "Scotland".

See explanatory statement for Amendment 15.

Amendment 1, in clause 17, page 10, line 39, at end insert—

"(1A) Section 1 does not apply to decisions made by—

(a) Scottish Ministers, unless a motion has been passed by the Scottish Parliament indicating its consent to this Act;

(b) Welsh Ministers, unless a motion has been passed by Senedd Cymru indicating its consent to this Act;

(c) a Northern Ireland department, unless a motion has been passed by the Northern Ireland Assembly indicating its consent to this Act."

Amendment 17, in clause 17, page 11, line 19, leave out "Scotland".

See explanatory statement for Amendment 15.

Clause stand part.

Ms Qaisar: Scotland has its own legislative framework under the Procurement Reform (Scotland) Act 2014, along with associated regulations and guidance. That legislative framework places duties on certain contracting authorities to demonstrate how the social, economic and environmental aims of procurement have been considered in a consistent manner, as required by the sustainable procurement duty under the Act. For example, a contracting authority is required to include a statement of its general policies on the procurement of fairly and ethically traded goods and services in its procurement strategy.

I have tabled a number of amendments in this group. Essentially, they can be summed up by this: Westminster might have the powers of reserved matters, but Scotland is a devolved nation. Scotland has its own Parliament and its own Government; it is not for Westminster to turn around and tell Scotland what she should do, because that Parliament was elected democratically by the people of Scotland. Devolved Governments, including the Scottish Government, make their own public procurement decisions. That is one manner in which they can encourage companies to behave in a way that is in line with human rights, including labour rights and environmental concerns.

Efforts made by devolved nations will be hampered by this Bill. We heard that last week from the Scottish Trades Union Congress. During evidence, Roz Foyer spoke about the Fair Work First scheme, which gives guidance for organisations seeking an award through public sector grants, contracts and other funding. Essentially, it is the Scottish Government's approach to contracting. Scotland does not have the power to legislate on employment law—yet—but through programmes such as Fair Work First we have wide-ranging guidance and a number of benchmarks that contractors are held to in order to receive public money.

As I say, Scotland cannot implement laws in relation to employment, but it uses the right to implement and use money accordingly. Roz Foyer ended her point with something absolutely crucial. She said:

"I believe that is a very legitimate way to create a landscape of better employment rights and good practice, both domestically and internationally, and that work would be severely undermined by the current proposals."—[*Official Report, Economic Activity of Public Bodies (Overseas Matters) Public Bill Committee,* 5 September 2023; c. 71, Q113.]

It is unprecedented that the Bill would prohibit Scottish Government Ministers from taking moral or political objections towards foreign state conducts into account when making procurement and investment decisions. A key concern is that the Bill alters the Executive competence of Scottish Government Ministers. Therefore, earlier this year, they lodged a legislative consent memorandum within the Scottish Parliament, as the Minister knows. Scottish Ministers have the ability, to the extent permitted by procurement legislation, to consider the country or territorial origin or other territorial considerations in a way that indicates political or moral disapproval of a foreign state when making decisions about procurement or investment.

An example, which the memorandum talks about, is the position taken by Scottish Government Ministers in relation to procuring goods from Russian suppliers following the invasion of Ukraine. That was the correct thing to do. If the Bill passes it will restrict, if not entirely remove, that ability and alter the executive competence of Scottish Ministers.

As we know, clause 4, which I will refer to later on, would make it unlawful for Scottish Ministers to even state that they would have acted differently if it were not for the provisions of the Bill. The Scottish Government's memorandum outlines three principal decisions as to why they should not give their consent to the Bill, and I want to outline them. When the Committee hears the Scottish Government's rationale, our reasons for tabling the amendments will be clear.

First, can the Minister provide some clarity? It is not clear what problem the UK Government seek to address by including Scottish Ministers within the scope of the Bill. *[Interruption.]* Hear me out. I know the Minister will probably turn around and say, "Scottish Government Ministers have to listen to the UK Government because we have reserved powers on matters of foreign policy." However, we struggle to understand this. The Scottish Government have always acted responsibly and in line with the UK's international commitments. Scotland is not an independent country—yet—so the argument that a decision of the Scottish Government in relation to a particular procurement or investment process may be mistaken by overseas Governments for an alternative UK foreign policy lacks credibility. It just does not make sense.

When I join international delegations, I will talk about the good work that the SNP's Scottish Government are doing. For example, people are quite interested in the baby box—a groundbreaking piece of policy that gives every single baby born in Scotland a box. Please bear with me, Chair, as this will come back to the Bill. When I am abroad and I talk to people about the SNP's baby box, they understand that the legislation is from Scotland; it is not UK-wide. People might not understand the intricacies of devolved and reserved matters—as a former modern studies teacher I take great pride in explaining this to people—but they do understand that foreign policy is set by the UK Government. It is not clear what the Bill seeks to address by including Scottish Government Ministers.

Secondly, the Scottish Government take a value-based approach to international engagement. I know that because up until my promotion to SNP levelling-up spokesperson last week, I led on international development for the SNP—I will give myself that shout-out. [Hon. Members: "Hear, hear!"] I thank hon. Members. I know that at the heart of the Scottish Government, international activity creates opportunity at home, broadens horizons, attracts high-quality investment and ultimately benefits the people of Scotland. While the Scottish Government will always meet the obligations placed upon them by international law and treaties, people in Scotland quite rightly expect that decisions should not be made in an ethical or moral vacuum.

Thirdly, the Scottish Government memorandum talks a lot about clause 4 and I will speak about that later. However, I would be interested to hear from the Minister about this. I still do not understand, as my hon. Friend the Member for Glasgow South West said, what a Scottish Government Minister needs to say when on television or giving a quote to a newspaper. Do they have to turn around and say, "I am talking as a Scottish Government Minister", "I am talking as an SNP MSP," or "I am talking as an individual"? We need some clarity from the Minister on that.

The Scottish Government, of course, recommended that the Scottish Parliament does not give consent to the Bill. I urge the Minister to take heed. My amendments are all in regard to Scotland and understanding why Scotland has been included in this. Can the Minister take heed and pay attention to that?

Chris Stephens: It gives me great pleasure to follow my hon. Friend the Member for Airdrie and Shotts, who is taking over as the levelling-up spokesperson after this Committee. I want to support her amendments for several reasons. First, procurement is devolved to the Scottish Parliament. That is clear, as we heard in the evidence sessions in the questions asked not just by myself but by my Labour colleagues around the effects of procurement in the devolved Administrations.

There is real concern that the Bill seems to override the devolved Parliaments in this area. The devolved Parliaments clearly and correctly suggest that they would want to use their procurement in an ethical way. The problem that we have, of course, is that witness after witness was saying, and those speaking on behalf of the Bill were saying, "It's up to the Westminster Government to dictate foreign policy." Well, that gets us only so far. Every local authority that I can recall in Scotland in the lead-up to the Iraq war had a vote on whether it supported the war. Will this Bill seek to stop that sort of activity? Witnesses said last week that this would have stopped what Glasgow District Council did in 1981 in relation to South Africa.

Half a billion years ago, the land masses now known as Scotland and England joined up physically. They are playing a football match tonight. I am quite nervous because Scotland do not do too well against the lesser nations when it comes to football, as we know, but we will see what happens tonight.

[Chris Stephens]

We have to be very clear here. The Scottish Parliament was reconvened in 1999. Devolution was approved overwhelmingly by the people of Scotland. I do not think that the people of Scotland will take too kindly to a Westminster Government who seek to impinge on the devolved matters and devolved legislation of the Scottish Parliament.

Wayne David (Caerphilly) (Lab) *rose—*

Felicity Buchan: I shall begin by addressing amendments 15 to 17—

The Chair: Order. I apologise, Mr David. You had not caught my eye, but you have now.

Wayne David: Thank you, Sir George; it is a pleasure to serve under your chairmanship. I would like to speak to amendment 1 and make it clear that it is to clause 17 but there is an opportunity to discuss it at this time because it deals with the issue of devolution. As is very clear, the Bill applies to the whole United Kingdom, but for it to operate in Wales, Scotland and Northern Ireland, certain legislative consent motions have to be agreed under the Sewel convention. That is because the Bill impinges on at least some of the competencies of the Ministers of the devolved institutions. That is made clear by the Library note. There is an impact on the devolution settlement, and it has to be worked through within the context of that settlement.

Amendment 1 makes the process clear, to avoid any misunderstanding. As we know, there have been constitutional debates, even arguments, between the Government here in Westminster and the devolved institutions, particularly the Scottish Parliament. This amendment simply sets out what is legally the case. It is not a contentious amendment. It simply puts in black and white what is the reality and should be adhered to by all parties. The Government had advance notice of the amendment, and there has been some discussion of it. I urge the Government, given that they are adhering to the idea of mutual respect between the institutions of the United Kingdom, to accept amendment 1. It is uncontentious; it is Government policy. It makes clear what the devolved settlement is in reality.

Chris Stephens: The hon. Gentleman is making an excellent point. Does he support the position that I laid out, which is that procurement is viewed very seriously by the devolved Administrations and there is concern that the Bill seeks to interfere negatively in that?

Wayne David: Many aspects of procurement and other aspects touched on in this Bill are in part devolved to the various institutions. We have a complex mosaic in the UK: the devolution settlements for Wales, Northern Ireland and Scotland are different in several respects. Nevertheless, the overriding fact is that there is definitely an impingement on devolution powers, however they are defined in the circumstances, and the Sewel convention is needed to ensure that there is common agreement on what is being done by central Government.

I refer in particular to the Northern Ireland situation, because we have received written evidence from the chief executive of the Northern Ireland Local Government Officer Superannuation Committee, David Murphy. He makes the point that as far as Northern Ireland is concerned, there is the Public Service Pensions Act (Northern Ireland) 2014, which effectively devolves public sector pensions in large part to the Northern Ireland Assembly. He goes on to conclude, after having described the arrangements:

> "It is our understanding that in the absence of the NI Assembly sitting it will not be possible to obtain a Legislative Consent Motion for the proposed legislation."

10.15 am

I want the Government's clarification on that point, because it seems that, as explained very clearly in the last two pages of the explanatory notes, the legislation requires consent motions to be placed, and Northern Ireland is part of that. Unfortunately, at the moment the Northern Ireland Assembly is not sitting. My question is simple: what happens to the legislation if it is passed here? There is no Assembly sitting to enact the legislative competence motion, so what happens to the legislation? I would be very happy to have the Minister's explanation of that. Generally speaking, I hope the Government feel able to accept the provision, as it simply makes clear the constitutional reality.

The Chair: Before I call the Minister, it might be helpful to point out that if Members want to be called, they should bob. That way I will be able to work out the sequence of the debate.

Felicity Buchan: I shall begin by addressing amendments 15, 16 and 17. The amendments would remove references in clause 17 that extend the Bill to Scotland. The amendments also remove a reference to Scotland in clause 3. Scottish Ministers are currently named on the face of the Bill so that they can only be exempted from the ban via a change to primary legislation. The amendment would allow Scottish Ministers to be exempted from the ban via secondary legislation.

The Bill's provisions apply to all areas of the UK. The provisions apply to all public authorities, as defined in section 6 of the Human Rights Act 1998, across England and Wales, Scotland and Northern Ireland. First, it is absolutely essential that the Bill extends to public authorities across the entirety of the UK. Foreign policy is a reserved matter. The Bill ensures that the UK speaks with one voice internationally. It will safeguard the integrity and singularity of the UK's established foreign policy, which is set exclusively for the whole of the United Kingdom by the United Kingdom Government.

Secondly, as we heard extensively in the oral evidence sessions, boycott, divestment and sanctions policies are divisive and undermine community cohesion. We have seen examples of actual or attempted BDS activity in public authorities in England, Wales, Scotland and Northern Ireland. It is crucial therefore that the legislation applies across the UK to prevent such divisive behaviour in any of our communities.

Ms Qaisar: I thank the Minister for giving way; she is being very generous with her time. She has set out that UK foreign policy is a reserved competency. I am interested to seek clarity and understanding on that, as I cannot remember a time when the Scottish Government have taken a different stance to the UK Government on UK foreign policy. Is the Minister able to outline one of those stances?

Felicity Buchan: The purpose of the Bill is to ensure that we do not have any public authorities, whether that is Scottish Government Ministers, Scottish local authorities or English local authorities, taking different foreign policy decisions.

Chris Stephens *rose—*

Felicity Buchan: Let me continue, please. I will come on to address a few of the points in relation to procurement and divestment when it represents political and moral disapproval of a foreign state's conduct. I want to reassure the hon. Member for Airdrie and Shotts on a few points. As for Glasgow City Council changing the name of a street, nothing in the Bill changes the council's ability to do that.

Chris Stephens: Will the Minister give way on that point?

Felicity Buchan: No, I want to continue to make these points for the sake of clarity and address some of the issues.

Similarly, a Scottish Government Minister could say they oppose the Iraq war. The Bill applies when investment and procurement decisions are based on moral and political disapproval of a foreign state's conduct.

Chris Stephens: I am grateful to the Minister for giving way. I know she is trying to clarify the situation, but I am afraid that those of us who are Glaswegian and proud of our Glaswegian roots are concerned that the Bill will prevent the actions that Glasgow took in the 1980s from happening again. The Conservative Government's policy in the 1980s was against sanctions in South Africa, and Strathclyde Regional Council, City of Glasgow District Council and other Scottish local authorities decided to take investment and procurement decisions against the apartheid state of South Africa. City of Glasgow District Council was allowed to rename a street and give someone the freedom of the city, but would it have been able to take the decision to disinvest from apartheid South Africa had the Bill been in place in the 1980s?

Felicity Buchan: If Government sanctions exist, they continue to exist. The Bill is specifically to prohibit divestment and procurement decisions.

I want to address the point made by the hon. Member for Airdrie and Shotts in relation to Russia. I give her my assurance that we will look to introduce a statutory instrument to exempt Russia and Belarus from the provisions of the Bill.

Amendment 30 would remove the decisions of Scottish Ministers from the scope of the Bill, and a carve-out for the decisions of Scottish Ministers would be inserted into clause 2. It is not clear whether the hon. Member for Airdrie and Shotts intends for the amendment to be read alongside amendments 15 to 17. Clause 2 applies the ban in clause 1 only to public authorities, as defined in section 6 of the Human Rights Act 1998. The clause also carefully defines decisions in scope only as those related to a public authority's investment and procurement functions, which is the point I keep coming back to. I would like to reiterate my response to amendments 15 to 17 by saying it is absolutely essential that the Bill extends to public authorities across the entirety of the UK. That will include Ministers, Departments and agencies in the devolved Administrations, who have also faced pressure to engage in BDS activity.

As I have said, foreign policy is reserved, so it does not trigger a legislative consent motion. However, as the ban applies to the Ministers of the devolved Administrations, this may alter their Executive competence. We have therefore formally engaged the legislative consent process, and I look forward to discussing the Bill further with my counterparts in the devolved Administrations. The Government are not seeking legislative consent for the rest of the Bill's provisions, as the other provisions do not trigger the legislative consent process.

I was asked specifically about how the Bill affects Northern Ireland. Given the continued absence of the Northern Ireland Assembly and Executive, a legislative consent motion cannot be secured currently. It is important that the Bill applies in Northern Ireland to ensure that the people of Northern Ireland benefit from these important protections. UK Government officials will work with counterparts in Northern Ireland to discuss the Bill's contents and provisions, along with the Bill's devolution analysis. We are hopeful that when the Assembly is restored, it will be able to consider and support a legislative consent motion for the Bill.

Wayne David: Will the Minister give way?

Felicity Buchan: Let me continue.

The Government will continue to uphold the Sewel convention and make sure that the interests of the devolved Administrations, and of people in Scotland, Wales and Northern Ireland, are taken into account. I will address amendment 1 and see whether that answers the question raised by the hon. Member for Caerphilly. The amendment suggests an addition to clause 17 to make legislative consent a legal requirement. Scottish Ministers, Welsh Ministers and Northern Ireland Departments would be captured by the Bill only once that consent is granted by each of the devolved legislatures.

The hon. Member for Nottingham North suggests an amendment that would undermine the principle that the UK Parliament is sovereign. It is 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. Furthermore, the codification of the Sewel principles, which are already written in statute, is unnecessary. The Lords Constitution Committee recently reported on the issue, stating:

> "We do not believe it would be desirable to involve the courts in adjudicating…on the meaning and application of the convention, which are best resolved through political deliberation."

For those reasons, I ask hon. Members to withdraw their amendments.

Wayne David: I thank the Minister for her response. First, as far as Northern Ireland is concerned, my understanding of what she has said is that the legislation will not be applicable in large part until the Northern Ireland Assembly is reconvened and has had an opportunity to discuss with central Government a legislative consent motion. That is my understanding of what she has said. Will she confirm that?

Secondly, on the Sewel convention, it is unfortunate that the Government are not prepared to accept the amendment, because it simply reiterates the reality and provides clarification. I accept that in the Government's

[Wayne David]

mind it could be a questioning of the sovereignty of Parliament, but I do not think an accurate reading of the amendment will in any way suggest that. It recognises that the legislative consent motion process is well established. The Sewel convention needs to be firmed up, and this is one step in ensuring that the partnership of nations in the United Kingdom is made firmer, not weaker.

Felicity Buchan: On the Sewel convention, as I have said, we do not think it is appropriate that that is put into legislation. We feel that that is a political deliberation, but, clearly, the Government are supportive of the Sewel convention. In light of our support of the Sewel convention, we will do everything to work with the devolved Administrations, as we always do in order to try to get an LCM.

On the specific point about Northern Ireland, I want to correct your interpretation of what I said—

The Chair: Order. It wasn't my question.

Felicity Buchan: My apologies, Sir George; I meant that I wanted to correct the interpretation of the hon. Member for Caerphilly of what I said. The measure will extend and apply to Northern Ireland by virtue of the fact that this is a foreign policy and it is a reserved matter, but we want to work to get the legislative consent motion, which might take time in Northern Ireland because it will require the Assembly to be in place.

Ms Qaisar: We have all spoken about how foreign policy is reserved, but public procurement and the use of taxpayers' money is a devolved competence. It is completely correct that Northern Ireland, Wales and Scotland attempt to use the leverage of public procurement to incentivise companies to behave sustainably with regard to human rights, labour rights and the environment. That is correct and right.

I am a little confused by the Minister's contribution and would appreciate clarification. I made an intervention and she was very generous with her time. My question was whether she was able to explain a time when the Scottish Government had not been in line with the UK Government on foreign policy. As far as I am aware, the Scottish Government have always acted responsibly and in line with the UK's international commitments. Why, therefore, have Scottish Ministers been included on the face of the Bill when the Minister is unable to explain that point?

I also seek clarification on the Minister's response to my hon. Friend the Member for Glasgow South West. My hon. Friend raised the point—we have spoken quite a bit about Glasgow City Council today—that after renaming the street and inviting Nelson Mandela to come and speak, would they have been able to disinvest? As far as I understood her contribution, the Bill would have stopped disinvestment in South Africa. I would appreciate clarification from the Minister, if she can give it. I would like to divide the Committee on my amendment.

10.30 am

Wayne David: May I also ask the Committee to divide on amendment 1?

The Chair: Amendment 1 will be taken later, but it is helpful that that intention has been signified. We are now on amendment 30.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 10.

Division No. 3]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 2.

Division No. 4]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly agreed to.

Clause 2 ordered to stand part of the Bill.

Chris Stephens: On a point of order, Sir George. There was some confusion because of the number of amendments in the group. Could you clarify that some of the amendments we have debated are to other clauses, and that there will be Divisions when we get to those clauses? It would help Members if you could explain that.

The Chair: That is indeed a point of order. The remaining amendments in the group will be taken either in the next clause or later, when we come to clause 17, because they are consequential on the lead amendment.

Clause 3

Exceptions

Alex Norris: I beg to move amendment 4, in clause 3, page 2, line 17, leave out subsections (2) and (3).

This amendment would remove provisions allowing Ministers to amend the Schedule, via regulations, to add a description of decision or consideration, or amend or remove considerations added under previous regulations.

Clause 3 makes a number of exceptions, set out in the schedule, to the proposed ban on decisions made by public bodies in respect of foreign states—that is, it allows for certain conduct to be in scope for ethical decision making, such as environmental concerns. We

support the principle of excepting certain powers from the Bill, and Members will not be surprised to hear that we are pleased to see labour rights there. However, the clause then bakes in 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.

Looking around the room, I see some Members who have been here longer than me and some who have been here for a bit less time, but I bet everyone will agree that one thing we were not told before we came here was that while we thought we would be talking about great matters of state, we would end up talking about Henry VIII regulations. Whatever happens, all roads lead to this bit of the Bill. I am continuing that unbroken streak, though perhaps not at length, as this argument is made frequently.

Clause 3(2) will provide the Secretary of State or Minister for the Cabinet Office with the power to amend this vital schedule in which the exceptions are laid out. That is an eccentric and totally unacceptable and unnecessary provision. This Parliament is rightly spending lots of time on this legislation. We have taken oral and written evidence from witnesses and will have multiple debates in the Chamber. We have convened this Bill Committee and will go through the Bill line by line, and then this process will be repeated in the other place. That is so we get the provisions right.

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.

The problem is best understood in contrast to subsection (5) because that is a mirroring provision. It allows the Secretary of State to add or remove countries from the list of places that public bodies may boycott. We have not sought to amend that, because we know from recent painful experience that foreign affairs have a habit of moving on, and there must be an opportunity for the Government of the day 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.

If we do not accept the amendment and we accept what is in the Bill, what all colleagues—Opposition and, frankly, Government Back Benchers too—are being told is, "Do all the due process, but don't worry; we will just change it later if we fancy it". That is not good enough in a parliamentary democracy, and we should delete the provision today.

Kim Leadbeater (Batley and Spen) (Lab): I will make just a short contribution, if I may. I associate myself with the comments of our shadow Minister. The matters covered by the Bill relate to issues of fundamental importance: the interpretation of UK foreign policy and the ability of public bodies to respond. We live in uncertain times, and the UK's position as an influential country on the world's stage will understandably need to change in response to events in many areas of instability. In those circumstances, it would be fundamentally wrong for Ministers to reserve to themselves the power to amend the schedule in the Bill without returning to Parliament and giving MPs and, indeed, interested parties the opportunity to scrutinise and, where necessary, object to it. That is why I support amendment 4.

Steve McCabe: I will speak briefly about subsection (7), and in particular about amendments 5 and 6, tabled by my colleagues. As I understand it—

The Chair: Order. To be helpful, they come later.

Steve McCabe: I have jumped the gun—how unusual!

The Chair: By all means continue, if you have something further to say.

Steve McCabe: No, I think I will wait. Thank you, Sir George.

Felicity Buchan: Amendment 4 would remove the power granted to the Secretary of State to amend the schedule so as to make exemptions to the ban for certain bodies and functions and certain types of considerations, and to amend or remove regulations made under those powers.

The power is necessary to ensure that the ban can evolve over time and operate as intended. The Bill rightly applies to the full range of public authorities. That is necessary to ensure that we have a consistent approach to foreign policy and to stop public authorities being distracted from their core duties by divisive debates and policies. 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 statutory instrument. The exercise of the power will be subject to affirmative resolution by both Houses.

The power will also allow the Secretary of State to exempt certain types of considerations from the ban. That may be necessary if the Secretary of State needs to react quickly to international events. 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. I therefore ask the hon. Member for Nottingham North to withdraw his amendment.

Alex Norris: I am grateful for that answer, but I am afraid that the Minister has rather made the Opposition's case for us. It is deeply concerning to hear that the purpose of the provision is about anxiety in Government concerning the possibility of a bundle of unintended

[Alex Norris]

consequences that could hinder a public body's activities for a number of months, as has been said. That is the reality—we have said that from start to finish. This thing will set a fire. This thing will roll in ways that we cannot conceive of, because it is so broadly drawn and, in places, so erratically drawn. 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.

The Minister's argument is not for retaining subsection (2), but for revisiting the provisions. I therefore hope that, having said that, she will reflect on the fact that she discussed the great anxiety about the unintended consequences of the Bill. That is what we should be addressing, instead of just giving yet more powers to Secretaries of State to act as they wish. I will press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 5]

AYES

David, Wayne	Norris, Alex
Leadbeater, Kim	Qaisar, Ms Anum
McCabe, Steve	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly negatived.

10.45 am

Amendment proposed: 15, in clause 3, page 2, line 28, leave out paragraph (b).—*(Ms Qaisar.)*

This amendment, and Amendments 16 and 17, seek to remove Scotland from the extent of this Bill.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 10.

Division No. 6]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly negatived.

Alex Norris: I beg to move amendment 2, in clause 3, page 2, line 40, at end insert—

"(4A) Section 1 does not apply to a decision which has been made in accordance with a Statement of Policy Relating to Human Rights.

(4B) A Statement of Policy Relating to Human Rights—

(a) is a public authority's policy criteria relating to disinvestment in cases concerning contravention of human rights; and

(b) must be applied consistently by the public authority to all foreign countries.

(4C) Within 60 days of the passing of this Act, the Secretary of State must publish, and lay before Parliament, guidance on the form, content and application of Statements for the purposes of this section.

(4D) Public authorities must have regard to the guidance referenced in subsection (4C) when devising a Statement."

This amendment would exempt public bodies from the prohibition in section 1, where the decision has been made in accordance with a Statement of Policy Relating to Human Rights. A Statement may not single out individual nations, but would have to be applied consistently, and in accordance with guidance published by the Secretary of State.

We heard on Second Reading, and again today, that the Government want to put disapproval of the conduct of foreign states and their territories beyond the scope of competent activity for local public bodies, in order to stop public bodies taking partial and potentially harmful stances. However, this Bill is akin to using a nuclear weapon to crack that nut. We have just heard from the Minister that the Government are so concerned about the unintended consequences the Bill may have that they are having to reserve the powers to change it quickly later, lest a public body be shut down for a number of months. The Committee just accepted that change, but it is yet another power grab by the Secretary of State and it is heavy-handed in its enforcement.

Amendment 2 sets out an alternative approach. We have been clear from the outset that it is possible to achieve what both the Government and the Opposition wish to achieve but without the overreach of the Bill in its current form. Amendment 2 would allow a public body to produce a document that sets out its policy on procurement and human rights and for that to be developed in accordance with guidance published by the Secretary of State. This is a relatively long-held Opposition policy. Indeed, it is similar to an amendment I tabled to the Procurement Bill many months ago. It is vital that procurement decisions made with regard to human rights issues be applied across the board, not just to prevent unethical actions against specific states but to ensure that common actions have the greatest impact.

Such a statement of ethical policy would thus ensure consistency in how contracting authorities—or public bodies more generally—decide on such matters, and inconsistent application would be prohibited. The practical effect would be to make it unambiguous that if a public body does not wish to procure goods from Russia because of President Putin's abhorrent human rights abuses in Ukraine, the law will be on its side. If the same body does not wish to procure services from Xinjiang because of the appalling treatment of Uyghur Muslims, the law will be on its side.

Chris Stephens: The hon. Gentleman is making an excellent speech. In our evidence sessions, we heard very powerful testimony from Uyghur society and the Uyghur people, who said that we really need to look at this part of the Bill. Does he also agree that it is very interesting that witnesses on the Government's side support disinvestment for China, for the very reasons that he has just outlined?

Alex Norris: I agree. After hearing that testimony, I reflected on one of the things that I love the most about my country—I think about this quite a lot—which is that we stand up for people who need it, whether by providing shelter or by never walking on the other side of the road. I see things through that prism. I think it is a really fundamental British value, and I am concerned that we will lose some of that. Of course, significant matters of foreign policy are the reserve of the Government of the day, but the issue should not just be left to Government Ministers. The outpouring of support for Ukraine, both in my city and across the country, showed that people take that seriously and want to have a role and a say—they want to be part of that process. That is part of building common cause, but I fear that this goes too far and will squeeze some of that out.

Our amendment 2 makes our approach to the matter very clear. If a public body acts only against a particular state—for instance, the world's only Jewish state—while not applying the same approach to human rights abuses everywhere, such actions would be illegal. Our amendment would not just ensure that there are consistent decisions and that communities are not singled out; it would also strengthen our country's commitment to stand against human rights abuses all over the world.

Our country has always defended the fundamental, inalienable human rights of all people. Procurement and investment decisions are part of that, and we should not shirk that role when it is the right thing to do. The amendment would ensure that public bodies could still play their part and that the contemptible actions of those who target one state while looking the other way when abuses are committed elsewhere are finally prohibited.

As I said on Second Reading, our amendment could be technically deficient—I am never sure whether we are supposed to admit that in Parliament, but it is clear anyway. If it is technically deficient—after all, I drafted it, and am perfectly willing to say that it is the work of a human being—we are more than willing to work with the Government to find something that works in both principle and substance. I hope to hear from the Minister that there is willingness to meet us a little bit on this, so that we can tackle the problem that we are all trying to address.

Kim Leadbeater: I rise to speak briefly but strongly in favour of amendment 2. The UK should be a beacon for human rights, not just here at home but in our foreign policy and our relations with other states. That can be done only on the basis of a consistent application of the principles we seek to uphold. It is not hard to do that when human rights abuses are committed by countries we are in conflict with. However, we must be ready to apply the same standards to countries we regard as allies and friends. That is not always easy, but if we fail to do so, we open ourselves up to accusations of double standards and hypocrisy.

Felicity Buchan: Amendment 2 would exempt decisions from the ban that have been made in accordance with a statement of policy relating to human rights, produced by a public authority. The Secretary of State would be required to produce guidance on the content of any such statement, to which public authorities would be required to have regard.

Seventy-five years on from the signing of the universal declaration of human rights, the UK remains steadfastly committed to an open international order, a world where democracy and freedoms grow and where autocracy is challenged. We put open societies and the protection of human rights around the world at the heart of what we do. That includes our membership of the Human Rights Council, robust action to hold Russia to account over its actions in Ukraine and at home, calling out China in Xinjiang, leading the call for the special session on the human rights implications of the conflict in Sudan, and our global human rights sanctions regime.

We continue to work with our partners, civil society and human rights defenders to encourage all states to defend democracy and freedom and to hold those who violate human rights to account. Our annual human rights and democracy reports are an important part of that work. This Government, Foreign, Commonwealth and Development Office Ministers and officials continue to defend individual rights and freedoms, including through regularly raising concerns with other Governments. Our resolve to ensure that everyone can enjoy their rights is unwavering.

The international rules-based system is critical to protecting and realising the human rights and freedoms of people all over the world. We work through the multilateral system to encourage all states to uphold their international human rights obligations and to hold those who violate human rights to account. We are all in agreement that human rights abuses have no place in public supply chains.

I am concerned, however, that this amendment would give public authorities too much discretion to apply blanket boycotts. I also believe that the amendment is unnecessary because of the work that the Government are already doing in the Procurement Bill, which I will address in more detail.

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.

Moreover, there is guidance to help contracting authorities to address human rights risks, and there is well-established practice throughout the procurement process. That detailed and thorough guidance includes sections on managing risks from new procurements and assessing existing contracts, taking action when victims of modern slavery or human rights abuses are identified, and supply chain mapping, and it includes useful tools and training.

[Felicity Buchan]

For the reasons that I have set out, this amendment is unnecessary, but I am also concerned that it would give authorities too broad a discretion to apply blanket boycotts. The amendment would allow authorities to exclude suppliers from entire nations without proper consideration of whether a supplier itself had had any involvement in 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. Many public authorities with no interest or expertise in such debates would come under pressure to produce statements or to explain why they did not have one. The discretion for public authorities, even acting within Government guidance, would mean a multitude and divergence of foreign policies across our public institutions and a confusing picture on the international stage of what the elected Government's foreign policy was. My concern is that, were this amendment to be agreed to, every local authority and public body would feel the need to produce such a statement even though they felt that they had no expertise in human rights. I am concerned that it would increase the level of dissension and community friction rather than in any way lessening it.

I just want to clarify that nothing in this Bill affects private individuals and private companies and their ability, clearly, to boycott or divest.

Chris Stephens: That is the double standard in the Bill: private companies can do what they like, but public bodies cannot. If I understand the Minister's line of argument, she is concerned that this amendment could be used or abused by local authorities, but proposed new subsection (4C) specifically gives the Government the power to stop any blanket boycott. That somewhat negates her arguments.

Lastly, does the Minister agree with the position of any local authority that wishes to disinvest from China and Xinjiang in particular because of its treatment of the Uyghur Muslims?

11 am

Felicity Buchan: The hon. Gentleman alludes to the difference between how we treat private and public bodies. There is a very good fundamental reason for that: we want there to be one UK foreign policy and we do not want other public bodies to be making up their own foreign policy or statements on such matters, whereas a private individual or private company is entitled to invest or divest as they see fit.

Bob Blackman: Our public bodies include people from countries all over the world, some of whom may have expertise relating to a particular country. Under this amendment, if they highlighted human rights abuses in a specific country it could result in their public authority introducing a policy that is totally different from that of all other public authorities. Does my hon. Friend agree that such a risk should not be put in the hands of local authorities?

Felicity Buchan: That is a very good point. This amendment carries the risk of allowing a multitude of different statements on human rights, without any consistency, resulting in the community friction that we all desperately seek to avoid. That is why we are looking to boycott the BDS movement.

Alex Norris: I am grateful for the Minister's response. To address the point made by the hon. Member for Harrow East, the circumstance he outlined could happen now, of course. Part of the reason we are here and that legislation in this space is important is that it does not happen in that way, does it? As we heard in the evidence sessions, it almost exclusively tends to be targeted at Israel. I do not think there is any evidence to suggest that local expertise is causing a thousand flowers to bloom across public bodies. Actually, amendment 2 would protect against that because it would give local authorities tools to say, "Look, we can only do this if we can engage in it across the piece, and we don't think that that is core business."

The Minister has expressed her concerns about distractions for local authorities. I know from my time in a local authority, during which we pushed back against a boycott of Israel, that these things flair up over a short period, a lot of energy goes into them, and it would have been much better to have had a fixed point. The amendment reserves the right of the Secretary of State to set out the form, so there would be no wild variance across all public bodies. It would give them a fixed point to anchor to, which would take a lot of pressure off the leaders of public bodies.

I am grateful to the Minister for making those points, but the reality is that we are in slightly different positions. I still hold out the hope—and I will be actively working on this between now and the final stages of this Bill—that our positions will become closer. At this point, however, given that the gap has not closed during this debate, I will have to press my amendment to a Division. We want to send a clear message that there are other ways of achieving this very important purpose.

The Committee divided: Ayes 6, Noes 10.

Division No. 7]

AYES

David, Wayne	Norris, Alex
Leadbeater, Kim	Qaisar, Ms Anum
McCabe, Steve	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Richards, Nicola
Evans, Dr Luke	Smith, Greg
Holmes, Paul	Young, Jacob

Question accordingly negatived.

Wayne David: I beg to move amendment 5, in clause 3, page 3, line 10, leave out paragraph (a).

This amendment removes the existing stipulation that the power to exempt a country or territory from section 1 may not be used in respect of Israel.

The Chair: With this it will be convenient to discuss amendment 6, in clause 3, page 3, line 11, leave out paragraphs (b) and (c).

This amendment removes the existing stipulation that the power to exempt a country or territory from section 1 may not be used in respect of the Occupied Palestinian Territories or the Occupied Golan Heights.

Wayne David: In its present form, the Bill will introduce a blanket prevention of public authorities' ability to take into account human rights—the Government would say foreign policy—when making certain decisions. There can be exceptions; we have heard the Government mention Belarus and Russia. Yet for Israel, the Occupied Palestinian Territories and the Golan Heights to be exempted, it is not enough for a Secretary of State to bring forward a statutory instrument; primary legislation will be required.

We have a fundamental problem with the clause, which is the conflation of Israel with the Occupied Palestinian Territories and the Golan Heights. Israel is a sovereign state; the Occupied Palestinian Territories and the Golan Heights are areas that have been occupied since 1967, and the occupation is deemed illegal under international law. In fact, it is not simply international law; the Government themselves have—until now, it seems—held that position very firmly. Let me quote from a fairly innocuous document, the Government's guidance on overseas business risk, which was only published in February 2022:

"The UK has a clear position on Israeli settlements: The West Bank, including East Jerusalem, Gaza and the Golan Heights have been occupied by Israel since 1967. Settlements are illegal under international law, constitute an obstacle to peace and threaten a two-state solution to the Israeli-Palestinian conflict."

That has been the Government's position, clearly and consistently expressed.

Chris Stephens: The hon. Gentleman presents a very powerful position. Members on the Opposition Benches have been told by the Government that the Bill should comply with Foreign Office policy. It seems that the Government are now deviating from Foreign Office policy. It should not be one rule for the Government and one rule for every other public body, should it?

Wayne David: There might well be something in what the hon. Gentleman suggests. There is, to be honest, a not-too-subtle change in the Government's emphasis and in their exposition on this matter. Equating Israel and the occupied territories is unique in any British legislation, let alone any Government statement; it questions the long-standing position of the United Kingdom supporting a two-state solution based on 1967 lines.

There is also the question of international law. In his first written submission to the Committee, Richard Hermer KC cited the advisory opinion of the International Court of Justice concerning the construction of a wall in the Occupied Palestinian Territories. In his second written submission, he also made reference to the United Nations.

I respectfully remind the Committee that the UK is a founding signatory of the charter of the United Nations and is obliged to comply with Security Council resolutions. Security Council resolution 2334 very clearly expresses the concern about Israeli settlements in the Occupied Palestinian Territories; I want to emphasise that point. Operative paragraph 1 of the resolution states very clearly that the Security Council

"Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace".

Operative paragraph 5 imposes an international-law obligation on all states to ensure that they treat the OPT differently from Israel. It states that the Security Council

"Calls upon all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".

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. That is quite incredible. If that does not suggest a change in Government policy, what on earth would? It seriously draws into question the Government's commitment to international law—if that doesn't, I don't know what does.

Secondly, clause 3(7) fails to differentiate between Israel and the Occupied Palestinian Territories. I do not want particularly to be in this Committee to make history: I want the Government to say, "Yes, we are being consistent. We have said this all along. We are not nudging Parliament to a change in policy. We are reaffirming where we stand." That is the right decision to make. I am pleased to say that there has been genuine consensus in Parliament on the issue of Israel and the Occupied Palestinian Territories. I do not want to see that consensus being weakened, and I certainly do not want to see it being shattered. I fear that this legislation is the thin end of the wedge.

Bob Blackman: One concern that needs to be looked at is cause and effect. When there have been attempts to put pressure on companies that trade with the occupied territories, it is often Palestinians themselves who lose their livelihood as a direct result. One reason I think this is so important is that it is for the Government to decide this, not for individual public authorities.

The other issue that needs to be on the record is that the occupied territories have been the occupied territories for thousands of years. There has never been a state of Palestine. It has always been occupied by someone. We could go back to the days of the Israelites arriving from Egypt; we could go through the Roman occupation; we could go through the Ottoman empire; we could go through Jordan occupying it until '67. The reality is that they have never had the ability to exercise authority over themselves. It is very important, when decisions are made on procurement, that we consider all the causes and the direct effects of a decision being made to disinvest from the occupied territories. We owe it to the Palestinians to safeguard their livelihoods and interests. That is one reason why clause 3(7) is so important: it protects them from unintended, although possibly well-meaning, consequences from particular public authorities.

Steve McCabe: I agree with my hon. Friend the Member for Caerphilly about all three paragraphs (a), (b) and (c) of clause 3(7). It is one of the more contentious parts of the Bill. I am not sure that I doubt the Government's good intentions over it, but I doubt whether it will have the effect that the Government seek. If I can echo what the hon. Member for Harrow East suggested, for slightly different reasons, I also think it may have unintended consequences.

11.15 am

I am not entirely sure whether the Government have a single motive for clause 3(7). I have heard the Minister say that it is really an attempt to bind a future Government and ensure that a future Minister could not simply change the position through secondary legislation. To that extent, it is a safeguard. I am not sure any Government can bind a future Government—that is a principle of this place, so good luck with that one. I think it is probably unlikely. It suggests the Government do not have faith in the strength of their own legislation, if they think it would be that easy to dismantle.

The other argument that has been advanced for subsection (7) was made by a witness, the writer and broadcaster Melanie Phillips, who said that it was essentially a belt-and-braces job and that because the provisions of the Bill are general in how they address boycotts, we needed something exceptional and additional to deal with the situation in Israel. It seems to me that the whole purpose of the Bill is to address the BDS position in relation to Israel. That is why it was a Conservative party manifesto commitment, and that is why the Prime Minister made an additional promise recently. That is the purpose—that is why we are here—yet one of the principal witnesses and supporters of the Bill is saying that the Bill is not enough and that we must have an extra belt-and-braces position.

If in future it is going to be a norm for the Government to have such little faith in the legislation they put through this House that they have to make additional provision to reduce and limit the chance that any future Government may make changes, as well as making additional provision to address what the legislation was trying to address in the first place, we are going to end up with some very lengthy legislation, running into many pages. There is not a single clause in the Bill whose minutiae could not be subject to such a degree of scrutiny and might not therefore require additional provision to make it stronger.

I do not think that that is the best way for us to legislate. What we want is simple, clear Government intent that cannot be wriggled out of or evaded, that does what it says on the tin, and that the courts have no difficulty understanding. I do not know if this is just me, but I find it a bit ironic that we are considering a Bill designed to deal with the iniquity of the way in which the world's only Jewish state is singled out and put under so much pressure, with so many people queuing up to try and destroy it—I think most of us are here to support a Bill designed to address that; that is certainly my position—and yet the Government are singling out the state of Israel on the very face of the Bill. I find that a bit ironic, to say the least.

I am fairly sure I understand the intentions of my hon. Friend the Member for Caerphilly in leaving out clause 3(7)(a) and clause 3(7)(b) and (c) separately, via amendments 5 and 6 respectively. I listened to what he said and I understand his point, but I wonder whether that might also have an unintended consequence. What if we were left in a position where Israel remained in the Bill, but the Committee had removed subsections (7)(b) and (c)? The intended safeguard in the Bill would then apply to Israel, but it would leave open the door for the other territories to be altered by someone in future.

We know that the intention of the BDS movement is to use settlements as the basis of its argument for a boycott of Israel. The movement sees settlements simply as a stepping stone; its intention is a full boycott of Israel. If I understood the hon. Member for Harrow East correctly, there would then be pressure to have provision for boycotts of settlements, which would lead to an argument about how to identify products or produce from those settlements. That would inevitably result in identifying the companies investing in the settlements, leading to demands for a boycott of those companies. It would lead to a boycott of Israeli companies and a de facto boycott of Israel; I think that that was broadly his point. I cannot remember whether it was the hon. Gentleman or one of his colleagues who raised the case of SodaStream in an earlier debate, but that is exactly the effect that this proposal would have: it would mean boycotting Israel and Israeli companies. The people who would suffer most from that outcome would be Palestinians.

There is a danger in separating subsection (7)(a) from subsection (7)(b) and (c). I understand the intention of my hon. Friend the Member for Caerphilly and exactly what he is concerned about—I share a great deal of that view—but the simple answer is that if the Bill is good enough to do what the Government say they want, we do not need clause 3(7) at all. We do not need belt and braces, or to try to bind the hands of any future Government, which I suggest we would not be able to do anyway.

The simple answer—to get consensus on the Bill and to get those of us who agree with the primary objective, which is to prevent the way in which Israel is being singled out and subjected to this pernicious boycott campaign—is to remove clause 3(7) altogether. I ask the Minister seriously to think carefully about the benefits of doing that, versus the potential disbenefits of leaving it in the Bill when it may well not achieve the objectives that I absolutely accept are her genuine intention.

Kim Leadbeater: Regrettably, no Palestinian voices were called to give oral evidence to the Committee—I wish they had been—but a number of respected and representative organisations have submitted written evidence. If we take notice of only one objection that they raised, although that would be a mistake because they raised a number of really valuable points, it should be this: the Bill should not treat Israel, the Occupied Palestinian Territories and the occupied Golan Heights on an equal basis. The exclusion raises serious questions about the UK's commitment to a just two-state solution and its alignment with established international law principles governing the status of the territories, which—as noted in international law, norms and consensus—are illegally occupied territories. We should take note of such serious concerns, which is why I support amendment 6.

Ordered, That the debate be now adjourned.—*(Jacob Young.)*

11.24 am

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Fifth Sitting

Tuesday 12 September 2023

(Afternoon)

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 16 September 2023

The Committee consisted of the following Members:

Chairs: Dame Caroline Dinenage, † Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 12 September 2023

(Afternoon)

[Sir George Howarth *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

Clause 3

Exceptions

Amendment proposed (this day): 5, in clause 3, page 3, line 10, leave out paragraph (a).—*(Wayne David.)*

This amendment removes the existing stipulation that the power to exempt a country or territory from section 1 may not be used in respect of Israel.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 6, in clause 3, page 3, line 11, leave out paragraphs (b) and (c).

This amendment removes the existing stipulation that the power to exempt a country or territory from section 1 may not be used in respect of the Occupied Palestinian Territories or the Occupied Golan Heights.

Chris Stephens (Glasgow South West) (SNP): The amendments were tabled by the hon. Member for Caerphilly. We are discussing the part of the Bill that got the most comment on Second Reading. It had the most written submissions and witness statements, and considerable time was spent on this issue during the evidence sessions.

The hon. Member is trying to improve the Bill, which is a dog's breakfast, so it is sometimes difficult to come up with the requisite amendments to try to sort it out. *[Interruption.]* If anybody wants to make an intervention, I am more than happy to take one. We are trying to amend the Bill so that it is acceptable to everyone. May I remind everyone that a number of Conservative Members were very exercised about this part of the Bill on Second Reading? We need to spend some time on this proposal to see whether we can come up with solutions, because there are real problems with clause 3(7) remaining in the Bill.

I remind Members of the exchange I had with the hon. Member for Caerphilly. It looks like we have a UK Government who want all public bodies to comply with their Foreign Office policy, but this area of the Bill appears to be in defiance of that policy. Why do I say that? Only a couple of days before Second Reading, Foreign Office Ministers made the position very clear during Foreign Office questions: they viewed the occupied territories as being illegal under international law. However, it is now being suggested in the Bill that a public body will not be able to disinvest from or boycott the occupied territories or the Golan Heights. There is a contradiction there, and the Government really need to look at that. It looks as though they are changing their Foreign Office policy through a piece of domestic legislation, and that is not the appropriate place to do it.

I sympathise with what the Trades Union Congress said about this issue: the Government are getting themselves into all sorts of difficulties. For example, they will be aware that the International Criminal Court has opened an investigation into the situation in Palestine, which covers crimes that are alleged to have been committed since 2014. Under their statute, the UK Government have obligations under that investigation, and there is a real concern that they are not acting consistently to uphold international law in this regard. There are real concerns that the situation, whereby Israel has occupied the Palestinian territories and the Syrian Golan Heights for more than 50 years, is in violation of international law and, significantly, numerous UN resolutions. The UN resolutions are important; a Foreign Office Minister referred to them prior to Second Reading.

I remind the Committee that in presenting the Second Reading, the Minister and the Secretary of State made their position clear. As is stated in the *Hansard* reports of those debates, they said that they thought the Bill would not impact on the UK Government's position in relation to the occupied territories and the Golan Heights. But I am afraid that my reading of the situation, which is shared by many others, is that that is exactly what it does. I will support amendments 5 and 6.

Greg Smith (Buckingham) (Con): I draw the Committee's attention, as I did in the evidence sessions, to my entry in the Register of Members' Financial Interests. I will not take up too much of the Committee's time, but a point needs to be made on this important amendment and to be heard time and again. It relates to why Israel should be so significantly named, as apart from any other territory or country, in the Bill. For a start, Israel is a democracy in the middle east—a quite rare democracy in that region—the democratic values of which we need to seek to uphold.

More fundamentally, we should ask ourselves what the boycott, divestment and sanctions movement is. In the written and oral evidence given to the Committee, we heard clearly not that the movement is just a little bit against Israel—it does not just have some sort of mild disagreement with Israel or the Government of the day in Israel—but that the leaders of the BDS movement explicitly talk about wanting the destruction of the state of Israel. Israel is the target of the BDS movement. Its leaders have repeatedly rejected a two-state solution, which has broad agreement across all the political parties here in the United Kingdom and in many other democracies around the world. The co-founder of the Palestinian BDS National Committee explicitly goes further, and states his opposition to Israel's right to exist as a state of the Jewish people.

That is why we need such explicit recognition in the Bill, which I hope will go on to become an Act. It will protect our allies in Israel and stop the malign forces in the BNC membership, which includes a coalition of Hamas, Palestinian Islamic Jihad and the Popular Front for the Liberation of Palestine—organisations that we in the United Kingdom proscribe. That is why I will vote against the amendments and seek to see the Bill pass through the Committee unamended.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): Amendments 5 and 6 would remove from the Bill the references to Israel, the Occupied Palestinian Territories and the occupied Golan Heights. All Committee members can agree that BDS is a pernicious movement that does nothing to promote peace in the middle east and sows division and hatred in the UK.

Last week, we heard passionate testimonies from representatives of the Jewish community in the UK on the impact of anti-Israel boycotts and divestments on community cohesion and their links to antisemitism. The witnesses set out that the statistics clearly demonstrate the link between antisemitism here in the UK and the situation in Israel: the months with the highest levels of antisemitic incidents in the UK correspond to the months in which conflicts have happened in Israel and the Occupied Palestinian Territories. That is why most of us on the Committee agree that we need to legislate to ban public authorities from engaging in such BDS campaigns.

We have seen that BDS campaigns pursued by public authorities often target the settlements in the Occupied Palestinian Territories. For example, in 2014 Leicester City Council passed a motion that stated:

"Leicester City Council resolves, insofar as legal considerations allow, to boycott any produce originating from illegal Israeli settlements in the West Bank".

In 2021, a UN special rapporteur wrote to all local government pensions scheme committee chairs urging them to divest from companies that conduct business in the Israeli settlements. I think we can all agree that we should send a clear message that such campaigns should not be allowed, and the Bill provides that clarity.

For those reasons, it is vital that should a future Government choose to allow public authorities to engage in boycotts or divestments against Israel, it is done through a change to primary legislation and is thus subject to full parliamentary scrutiny. That is the only reason that Israel, the Occupied Palestinian Territories and the Occupied Golan Heights are named on the face of the Bill. The addition to the Bill is simply about ensuring that we use the most appropriate parliamentary procedure for a decision that would have a harmful impact on community cohesion in the UK.

Several Members referred to UK Government foreign policy. I will make it absolutely clear that the Bill does not in any way legislate for the UK's foreign policy with regard to Israel. The Bill will not prevent the UK from imposing sanctions or otherwise changing our foreign policy on any country in the future if it is deemed appropriate by the Foreign, Commonwealth and Development Office. The Bill does not change our policy on the middle east. Our position on the middle east peace process is and continues to be clear: we support a negotiated settlement leading to a safe and secure Israel, living alongside a viable and sovereign Palestinian state based on 1967 borders with agreed land swaps, Jerusalem as the shared capital of both states and a just, fair, agreed and realistic settlement for refugees.

I will also make it clear that the UK believes very strongly in the importance of complying with international obligations under the UN charter and in compliance with Security Council resolutions. As I stated on Second Reading, the view of the UK Government is that the Bill is compliant with international law and our obligations under UN Security Council resolution 2334. For those reasons, I respectfully ask hon. Members to withdraw the amendments.

Wayne David (Caerphilly) (Lab): I thank the Minister for her statement. I accept what she says about the Government's commitment to a two-state solution, and so on, but that does not take away from the fact that substantive elements of the Bill, at the very least, place a serious question mark over that commitment. That is objectively true.

As Opposition Members have made clear many times, we are opposed to the BDS movement and all that it stands for, but this is not about that. The question before us is: what is the best way to tackle that? We believe that the best way to do so is on a cross-party basis by getting people together and creating a political consensus that will hold firm and endure. That is where we stand, and that is the basis of our opposition to the Bill.

It is also extremely important that we reiterate our commitment to international law. Again, I hear what the Minister says, and I do not doubt her sincerity for one moment, but there is nevertheless an opinion among those in the legal community that this legislation substantially questions our commitment to international law, and we are extremely concerned about that.

It is important that we conduct this whole debate in a constructive and friendly way, as I believe we have done so far. It is very important that whatever the outcome of our final deliberations and whether or not the Bill becomes an Act, it is nevertheless extremely important that we collectively reaffirm our commitment to peace and stability between Israel and Palestine.

2.15 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 8]

AYES

David, Wayne	Qaisar, Ms Anum
Leadbeater, Kim	
Norris, Alex	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 6, in clause 3, page 3, line 11, leave out paragraphs (b) and (c).—*(Wayne David.)*

This amendment removes the existing stipulation that the power to exempt a country or territory from section 1 may not be used in respect of the Occupied Palestinian Territories or the Occupied Golan Heights.

The Committee divided: Ayes 5, Noes 9.

Division No. 9]

AYES

David, Wayne	Qaisar, Ms Anum
Leadbeater, Kim	
Norris, Alex	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 10]

AYES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

NOES

Qaisar, Ms Anum	Stephens, Chris

Question accordingly agreed to.

Clause 3 ordered to stand part of the Bill.

Schedule

EXCEPTIONS

Chris Stephens: I beg to move amendment 18, in the schedule, page 13, line 5, at end insert—

"(2) Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in breaching international law, where that breach of international law is directly related to the decision."

The Chair: With this it will be convenient to discuss the following:

Amendment 14, in the schedule, page 15, line 29, at end insert—

"11 (1) Section 1 does not prevent regard to a consideration so far as it relates to genocide.

(2) That includes a consideration related to the possibility of genocide having taken place or taking place in the future.

(3) In this paragraph, 'genocide' has the same meaning as in the International Criminal Court Act 2001."

This amendment adds genocide as an exemption to the application of section 1.

Amendment 19, in the schedule, page 15, line 29, at end insert—

"11 Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in the crime of genocide as determined under international law, where that crime of genocide is directly related to the decision."

Amendment 20, in the schedule, page 15, line 29, at end insert—

"11 Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in the crime of ethnic cleansing as determined under international law, where that ethnic cleansing is directly related to the decision."

Amendment 21, in the schedule, page 15, line 29, at end insert—

"11 Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in the crime of apartheid as determined under international law, where that crime of apartheid is directly related to the decision."

That the schedule be the schedule to the Bill.

Chris Stephens: I rise to speak to speak to amendments 18 to 21; we support amendment 14. The provisions of clause 1 are referred to in part 2 of the schedule under "International law" and consideration given to the possibility of the United Kingdom being

"in breach of its obligations under international law."

The Bill's constraints are therefore relaxed to deal with those circumstances. I hope that the Committee has a unanimous view that a person or body engaged in breaching international law should not gain any financial, economic or other reward from such breaches. Amendment 18 would embed that view into the Bill. That is why I and my hon. Friend the Member for Airdrie and Shotts tabled it.

Regarding genocide, my colleagues and I refer the Committee to a lengthy list of countries identified by the Foreign, Commonwealth and Development Office as human rights priority countries, several of which stand accused of genocide. The Bill would be improved by recognising that crime and the need for the international community, including the United Kingdom, to act against it when and where it has occurred. I therefore commend amendment 19 to the Committee. For broadly the same reasons, it is appropriate that we introduce amendments dealing with ethnic cleansing as well.

Regarding apartheid, I referred earlier in the debate to Scotland's concerted fight against apartheid in South Africa. Sadly, that crime was not eradicated with the fall of that racist regime, and it has reappeared around the globe many times since then. I believe that the Conservative party was on the wrong side of history when it came to take a stand on apartheid South Africa; with this Bill, it appears to be choosing to continue that shameful legacy. We must learn from the past and make decisions for a better future. I therefore commend the amendments in my name, and in the name of my hon. Friend, to the Committee.

Wayne David: I rise to speak to speak to amendment 14. As we have heard, this Bill is not country or nation specific. It applies as much to Myanmar, North Korea and China as it does to Israel. The Government say there will be exemptions; Belarus and Russia have been mentioned, but unfortunately no others, and that is one of the profound weaknesses in the Bill. There are also other non-nation exemptions—financial and practical matters, bribery, competition law infringements, the environment and so on—but, crucially, there is no reference to genocide.

In June, 19 leading Uyghurs wrote a letter to *The Times* in which they expressed their serious concerns about the Bill. Last week, we heard evidence from the UK director of the World Uyghur Congress. In what I thought was a very moving session, the director told us that she strongly opposed the Bill and made it clear that it was not just her own view, but the view of the entire Uyghur community she represented.

There can be no doubt that the Uyghur minority in China are victims of grave and systematic human rights abuses. The Government have correctly described these abuses as "barbarism". The UN has said that the crimes may well constitute crimes against humanity, and the US Administration have said that what we are seeing is genocide. Therefore, I sincerely hope that the Government accept the amendment, and in so doing demonstrate that they stand foursquare behind the Uyghur community.

Bob Blackman (Harrow East) (Con): Will the hon. Gentleman give way?

Wayne David: I had finished.

The Chair: I have to say, Mr Blackman, that your timing is not that good today. We will take this as an intervention.

Bob Blackman: I have every sympathy with a view of taking action against nations that commit genocide, but the hon. Gentleman and I know that when we have tried to get the Government to classify certain human rights abuses as genocide, we get met with the legal definition of genocide. His amendment deals with just genocide, and not any other human rights abuses. Therefore, unless an international body classifies crimes against humanity as genocide, his amendment will have no effect whatsoever.

Wayne David: I am a normal person, not a lawyer, and I am open to suggestions about what would be a legally tight definition. The important thing is that if the amendment were passed, I am sufficiently confident that His Majesty's Government would draw up the correct legal definitions to ensure that the political views the Committee had expressed were made real. I take the hon. Gentleman's point, but there is room for co-operation and hopefully a conclusion on this issue.

Felicity Buchan: I will address amendment 18 first and then the others. Amendment 18 would allow public authorities to choose not to procure from or invest in a company if that would give financial, economic or other benefit to a party that has breached international law.

The UK believes strongly in complying with its obligations under international law. That is why the Bill contains an exception to the ban for considerations that a decision maker reasonably considers are relevant to whether the decision would place the United Kingdom in breach of its obligations under international law. Nothing in the Bill breaks international law, nor would it compel any public body to take a decision that would put the UK in breach of international law; but judgment on whether a body is guilty of a violation of international law is not a decision for public authorities. That should be determined by a competent court. I was slightly beaten to that point by my hon. Friend the Member for Harrow East. Where there has been a judgment that a party has breached international law, the Government will review their response accordingly. Again, it is not the place of public authorities to do so.

The Bill already contains an exception to the ban for considerations relating to labour market misconduct, including modern slavery and human trafficking. That means that public authorities will be able to continue having regard to territorial considerations that are relevant to a breach of international treaties banning forced labour. We recognise that modern slavery often occurs in the supply chains of countries that are not party to international treaties on forced labour and that are unlikely to prosecute the perpetrators. Therefore, the Procurement Bill makes explicit provision for a new exclusion ground that does not require a conviction to disregard bids from suppliers that are known to use forced labour or perpetuate modern slavery.

Amendments 14, 19, 20 and 21 would add an exemption to the application of clause 1 for considerations relating to genocide, ethnic cleansing and apartheid. Apartheid is considered a crime against humanity. Although ethnic cleansing is not recognised as an independent crime under international law, the practice of ethnic cleansing may constitute genocide, crimes against humanity or war crimes. If genocide or a crime against humanity were ruled to have occurred by a competent national or international court—that is the important point—after consideration of all the evidence available in the context of a credible judicial process, it would send a strong signal to the international community. The Government would take any such ruling very seriously and consider their response, which could include the potential use of sanctions.

It is the long-standing policy of successive British Governments that judgment as to whether genocide or a crime against humanity has occurred is for a competent national or international court. It is not for the UK Government, and it is certainly not for public authorities to decide. For those reasons, I ask hon. Members to withdraw their amendments.

2.30 pm

Chris Stephens: I am afraid we are not convinced by the Minister's reply, and we will push some amendments to a vote. The amendments themselves refer to international law. Indeed, the Labour party's amendment 14 defines genocide as having the same meaning as described under the International Criminal Court Act 2001, so that should allay some of the fears voiced by Government Members. For completeness and tidiness, I will push amendments 18, 20 and 21 to a vote and I will yield amendment 19—

Steve McCabe (Birmingham, Selly Oak) (Lab): I have an absolutely simple question. I do not know whether the hon. Member knows the answer, but I have been wondering about this. I do not think any of us here would object to the idea of having some genocide provision, and I am conscious that my colleagues have referred to the International Criminal Court. Does the hon. Member know whether the situation affecting the Uyghurs at the present time would be caught by that provision?

Chris Stephens: I cannot give my good friend a definitive answer to that, but it certainly should be looked at. We could argue that what is happening is also ethnic cleansing. As the hon. Member knows, I have reiterated this a number of times. I have Uyghur Muslim constituents and their situation is very difficult. I end up in tears when they tell me what is going on in China. I am in tears when they tell me that they are trying to get family members here so that they can have some sort of a family reunion. Certainly somebody should look at whether it is ethnic cleansing or genocide. I thank the hon. Member for his intervention.

I wish to push amendments 18, 20 and 21 to a vote, and I will yield to Labour colleagues if they wish to push amendment 14 to a vote.

Wayne David: Yes, we will be pushing amendment 14 to a vote. On the legal basis, we have expressed an opinion here, but of course the Government have constant legal advice during the passage of a Bill, and sometimes that legal advice is changed or modified in the light of representations and circumstances. I hope that that will happen here and that the Government will accept the need for definitions to be provided, provided we can unite around the objective of ensuring the word "genocide" is included.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 11]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 14, in the schedule, page 15, line 29, at end insert—

"11 (1) Section 1 does not prevent regard to a consideration so far as it relates to genocide.

(2) That includes a consideration related to the possibility of genocide having taken place or taking place in the future.

(3) In this paragraph, "genocide" has the same meaning as in the International Criminal Court Act 2001." —*(Wayne David.)*

This amendment adds genocide as an exemption to the application of section 1.

The Committee divided: Ayes 6, Noes 9.

Division No. 12]

AYES

David, Wayne	Norris, Alex
Leadbeater, Kim	Qaisar, Ms Anum
McCabe, Steve	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 20, in the schedule, page 15, line 29, at end insert—

"11 Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in the crime of ethnic cleansing as determined under international law, where that ethnic cleansing is directly related to the decision."—*(Chris Stephens.)*

The Committee divided: Ayes 2, Noes 9.

Division No. 13]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 21, in the schedule, page 15, line 29, at end insert—

"11 Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or anything done further to it) would give financial, economic, or other reward to a party that has engaged in the crime of apartheid as determined under international law, where that crime of apartheid is directly related to the decision."—*(Chris Stephens.)*

The Committee divided: Ayes 2, Noes 9.

Division No. 14]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Schedule agreed to.

Clause 4

Related prohibition on statements

Ms Anum Qaisar (Airdrie and Shotts) (SNP): I beg to move amendment 24, in clause 4, page 3, line 24, at end insert—

"(4) Nothing in this section requires any act or omission that conflicts with the rights and freedoms guaranteed under the Human Rights Act 1998."

This amendment would ensure that any act or omission under the "gagging clause" in clause 4 would not conflict with the Human Rights Act 1998 (HRA), in particular, Article 10 (right to freedom of expression) and Article 9 (freedom of thought, conscience and religion) of the ECHR as incorporated by the HRA.

The Chair: With this it will be convenient to discuss clause stand part.

Ms Qaisar: Clause 4 is simply unworkable and not practical. During my contribution, I will outline the rationale for my amendment, but I wish to put on record that the SNP will not support the clause.

Amendment 24 inserts the proposed words to ensure that any act or omission under the clause would not conflict with the Human Rights Act 1998 and particularly with article 10 of the European convention on human rights, on freedom of expression, and article 9, on freedom of thought, conscience and religion, as incorporated by the HRA. Freedom of expression has long been seen as a cornerstone of democracy and the foundation for the rule of law. The ECHR gives political speech a high form of protection because of its crucial role in democracy. Any attempt to make it unlawful for public officials to be influenced by the political speech of others, or even to appear to have been so influenced, undermines freedom of expression. Public officials, in accordance with international law, have the qualified right to freedom of expression. That can be denied only under tightly prescribed conditions, which are not met in this legislation.

Amnesty International has outlined that the clause puts the UK at risk of breaking article 10 of the ECHR, which is protected under the Human Rights Act 1998. The Bill sets out a quasi-judicial review process and an enforcement regime that can be used to prevent or punish the making of statements. Both of those would amount to an interference with article 10 rights, in so far as they do not meet the necessity test. The ECHR considers that interference with the right to freedom of expression may entail a wide variety of measures, such as a formality, condition, restriction or penalty.

That raises the question of whether the proposed legislation's interference with article 10 rights can be justified as being for a legitimate aim, which is defined in the ECHR as

"in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

None of those aims appears to apply in this case. Although the Government state in their impact assessment that the Bill is intended to

"prevent divisive behaviour that undermines community cohesion",

they provide no specific examples, stating:

"The number of actual or attempted boycotts or divestments inconsistent with UK foreign policy is relatively low".

In that context, interference with free speech appears to be disproportionate, given the importance of this right.

Clause 4 has baffled me. I will present the Minister with a hypothetical scenario, and I would appreciate clarification of it, if she would indulge me. Let us say, for argument's sake, that a company based in Xinjiang that is complicit in poor factory working conditions is line for a contract with the Scottish Government. Non-governmental organisations have raised human rights concerns and, unrelated to that, the Minister in charge of procurement is invited on to "Question Time" that night, where a member of the public asks about the company. In my understanding of the Bill—I would appreciate clarification on this—the Minister cannot say the company will not be awarded the contract because of its poor factory working conditions. That is because, under the Bill, Ministers cannot make decisions based on territories, and the Scottish Government Minister would not be allowed to say that their choice would have been not to award the contract to that Xinjiang-based company—they might want to say that, but they would be unable to do so because of the Economic Activity of Public Bodies (Overseas Matters) Act. However, the Minister could say that the contract would not be awarded to a company based in China because of general concerns about poor human rights records, not specific to Xinjiang.

Something else baffled me. That question was asked in a public forum, so let us say for argument's sake that an MP and a councillor are also on the panel. 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. 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.

2.45 pm

Le us say that the councillor thinks the contract should not be awarded to the company, but they are also the leader of the local council. They want to give a response, but before they do, do they say, "By the way, I know I'm the leader of Council X, but I am now speaking in a personal capacity as Councillor Joe Bloggs"? Or do they say, "I am Joe Bloggs. I am also an elected councillor, and I just happen to be the leader of the council"? It does not make sense. Also, where does this leave the accountability of elected officials? That is incredibly important for the general public.

The Bill clearly goes against the spirit of free speech and is an effort to restrict political expression. It would be in breach of article 19 of the international covenant on civil and political rights, which is intended to protect robust political debate.

Clause 4 has also received criticism from others. Universities UK has called for it to be scrapped in its entirety, citing the fact that it contradicts duties placed on universities via the Higher Education (Freedom of Speech) Act 2023 to uphold freedom of speech and academic freedom. Universities are championed for the role they play in driving forward research and innovation, as well as providing students with the opportunity to think critically and engage with different perspectives. Without freedom of speech and academic freedom, universities would not be able to fulfil one of their most essential aims: the advancement of understanding and the pursuit of truth. Clause 4 also contradicts the policy aims of the Act by banning the right to express support for boycott or divestment campaigns.

Crucially, clause 4 may have an impact on the promotion of academic freedom. Given the way the Bill is drafted, universities would only have to be "influenced by" moral or political disapproval of foreign state conduct to be non-compliant. That could, for example, deter a group of academics from researching and discussing views on a boycott or divestment decision due to the

fear of potential litigation or fines for the university. That could have the unintended consequence of restricting academic freedom, especially for academics with expertise in foreign policy.

In Committee last week, we heard from the Local Government Association representative that clause 4 could impact "the freedom to express" views during committee meetings, as well as the publication of faithful minutes of meetings. I have asked about this before, but there is also the question of why the Bill names Scottish Ministers. Can the Minister please outline—I also asked about this in an earlier sitting, but I was unable to get a response—when the Scottish Government have gone against UK foreign policy?

I am now going to use a word that colleagues might not like, and I hope they will not groan. That word is independence, and I hope they will bear with me. In Scotland, we have a democratically elected pro-independence majority in Parliament. Although other Members might be sad that it is not the Conservatives or Labour who are in power, the reality is that 72 out of 129 MSPs are pro independence. As we heard from Roz Foyer of the Scottish Trades Union Congress last week, it would be

"legitimate and in the public interest"—[*Official Report, Economic Activity of Public Bodies (Overseas Matters) Public Bill Committee*, 5 September 2023; c. 71, Q113.]

to understand what the Scottish Government might choose to do in the context of independence if they had the power to have particular international procurement policies. That is epitomised by their current work on producing a series of papers that look at the detail of what an independent Scotland might look like. Will the Bill hamper those papers, Minister? Clause 4 is simply unworkable and should be removed from the Bill in its entirety.

Steve McCabe: I have to say that I agree with that last comment—I think clause 4 is unworkable, and it adds nothing to the Bill. It is a bit like clause 3(7). If anything, it undermines some of the intentions behind the Bill. Not surprisingly, it has been referred to as a gagging clause. It is virtually Kafkaesque, because it is coming a bit close to thought control. We are asked to accept that a person is not only prevented from doing something that contravenes clause 1 but that they are to be prevented from saying that, if it were perfectly legal to do so, they would want to do it. It would appear that they are not allowed to think that either. As I understand it, the Government say that the justification—this is an honourable aim—is that they are trying to protect community cohesion.

I ask hon. Members to pause for a second and work out how many people they know, and what institutions, would argue that community cohesion is being protected and safeguarded by these measures. The clause might prevent a person from saying that they intend to contravene clause 1 or that they would implement decisions that would, effectively, contravene clause 1 if it were legal to do, but it does not prevent them from saying a whole series of other abusive and offensive things about the state of Israel or anywhere else. In fact, it gives them a licence to say all those other things, and there is not a thing that can be done about it, provided they stay within the limits of existing law. I cannot see how this restriction is going to protect community cohesion. It is likely to have the opposite effect and to give those who do not share the Minister's objectives on BDS a licence to look for ways to be abusive and offensive and still stay within the limits of the law.

I share the Minister's desire to protect community cohesion and, as I have said, her overall objectives on the Bill, but I ask her to reflect on whether the proposals will really have the effect she seeks or whether it might be smarter to withdraw what is a pretty dysfunctional clause and go back to the drawing board to see whether there are more practical ways in which we could unite on protecting community cohesion.

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to follow the passionate and high-quality contributions from the hon. Member for Airdrie and Shotts and my hon. Friend the Member for Birmingham, Selly Oak. I rise to address the issue of whether clause 4 should stand part of the Bill, because the Opposition believe that it should not. As we have heard, this is the so-called gagging clause, and colleagues will remember the significant discomfort about this provision on both sides of the House on Second Reading. It takes the Bill far beyond the existing consensus on combatting BDS actions that target specific states and into the realms of placing serious restrictions on freedom of expression.

Having listened carefully throughout our proceedings, I still cannot understand why the Government are so attached to clause 4. The road it takes us down is not helpful, and it will only muddy the waters in terms of what the Government seek to do. Let us be clear what clause 4 does. As we have heard from colleagues, it prohibits public bodies—yes, the entity but, in reality, the people who make it up—from making a statement that they would breach clause 1, were they able to, as a result of moral or political disapproval of a foreign state's conduct. It is one thing to say that they cannot do it; now, they cannot even say that they would wish to—they cannot even talk about it.

We have heard the Minister's qualification, and I will turn to it shortly. However, we must assess what is on the face of the Bill, which is a really bizarre limit on freedom of expression and contrary to the British values on which we pride ourselves. I know that there are Conservative colleagues who pride themselves on being free speech champions—indeed, it is a big part of what they do in this place and online—and I say to them that this may well be their moment to prove that.

I pay tribute to my right hon. Friend the Member for Barking (Dame Margaret Hodge), who spoke so powerfully on Second Reading about her experiences fighting the British National party and about why this clause cannot stand. She said:

"arguments are never won by suppressing democratic debate".—[*Official Report*, 3 July 2023; Vol. 735, c. 615.]

I agree. That is a lesson that politicians on both the left and the right are still wrestling with—certainly in the online space—and need to learn.

There is also a wider problem. This is part of a broader range of efforts by the Government to curtail free expression—a legislative programme that has whittled away at the civic space over many years. That includes the Trade Union Act 2016, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, the Public Order Act 2023 and more. The Bill

adds to those as yet another unacceptable fetter on free expression. There is consensus to make progress on the Bill, but clause 4 is a particular sticking point.

We have heard from the Minister, in the evidence sessions and today, some admirable attempts to clear this up. She has said that this is a very narrowly understood restriction and that individuals who may be a decision maker on one day can talk in a personal capacity on another, when they are not making the decisions. I think that fails on three fronts.

First, that is not what it says on the face of the Bill. Clause 4(1) states that a statement of intent to "contravene section 1", were that permissible, is not allowed and, at line 15, the words "(in whatever terms)" are added. I cannot square "in whatever terms" with what the Minister has said. If someone was on a television programme, could they have a disclaimer and set aside the "in whatever terms" provision? I do not think those two things sit together, and I feel confident that an enforcement authority relying on judicial review for oversight would fall back on what is on the face of the Bill, rather than what we have heard.

Secondly, I would argue that a person who is a decision maker because they lead a local authority, is a cabinet member or is even, perhaps, a member of the council or a Mayor is always a decision maker. I do not think that they can just turn it off or on. I do not think that saying that is credible. I know that when people overreach in what they say on social media or in the media more generally, they might try to disassociate themselves from it in an attempt to shield their colleagues, but I do not think they get much shrift in that. Never mind when we get to the conflation where—we have current precedent—a leader of a council is a Member of Parliament. We also have recent and multiple examples, including one that lasted a significant period, where a Member of Parliament was also an elected Mayor. Are they fettered from talking about foreign policy in debates in this place? Can they take off those hats? I do not believe that they credibly can.

Finally, and this is the point made by my hon. Friend the Member for Birmingham, Selly Oak, we heard on Second Reading, and we have heard in Committee, that the purpose of the clause is to stop decision makers adding to or creating a situation where a community, particularly a minority one, is made unsafe. This is important, and the evidence from the Jewish Leadership Council and the Board of Deputies of British Jews brought that home. What the Minister has said in Committee, however, is that a decision maker could essentially say whatever they want, up to the point of advocating a boycott, and avoid that harm. As my hon. Friend says, it implies that a person can stand up and say anything they wish, in the most inflammatory terms, but that would not make people feel or be less safe. All that would do that would be the final phrase, "And I think we should boycott them." I would say that the 200 words of inflammatory speech—of conspiracy theories and racist or hateful language—is where the harm is.

The clause does not add anything to the Bill, which leads us to our problem. We are being asked by the Government simultaneously to accept that the provision is broad enough to be impactful and to protect from harm, but narrow enough, as the Minister says, to apply in only a very small number of cases at a very small moment in time. I would say that those two things cannot be true together. The clause does not have to exist for the Bill to operate, which is why I believe we can safely vote against it without harming the overall goal.

Bob Blackman: Can I just put a contrary argument about the logic and flow of the Bill as planned? First, we have to look at clause 1. We are talking about individuals who are making decisions about placing contracts and buying goods and services from organisations that are affected by foreign policy. That is the first decision. Only the people in that position are affected in this way.

I am not a lawyer, either, but this is how I read the situation. A person cannot say, "I am going to break the law." We cannot have an individual making a decision standing up and saying that. It clearly would be a contravention of the Bill and would be quite logical, and that is why we have clause 4(1)(a). If the person was to say, "If it were lawful to do so, I would act in this way," that would create problems in community cohesion. We have seen that in what Leicester wanted to do, which is a prime example of what could happen if this clause is not included. From what I have heard, saying that this is about people in a representative democracy, whatever their guise, muddies the waters. The BDS movement focuses on Israel, the occupied territories and the Golan Heights, and it is targeting public authorities of all types.

3 pm

We have all probably been lobbied by universities, and some have told me that this would somehow infringe on freedom of speech and freedom of research. Not a bit of it. It is only when they are making decisions about buying goods or services from Israel, or other Government policies, that that would come into operation.

Steve McCabe: The hon. Gentleman and I share a lot of common ground on various foreign affairs issues. I have been reflecting on what he is saying. He and I both take the view that the Islamic Revolutionary Guard Corps should be banned, and we would like to see the Government act urgently on that. In the absence of a ban, if we were to go one step further and think of other ways in which we might be able to impact on the IRGC, would it be outrageous to say, "If it were legal to do so, I would do this and this"? Why would that be a breach?

Bob Blackman: I could call the hon. Gentleman my hon. Friend because we co-operate on many issues. As representatives we can speak out and ask for a change in the law, but it is not right for us to lobby organisations, individuals and public bodies to break the law. That is what is covered in the clauses. With respect, I think the wording could be cleverer or better. I am one of those individuals who passionately believes in free speech. I passionately believe that people in a democracy and elsewhere should be allowed to say what they believe. I share the sentiments expressed on Second Reading by the right hon. Member for Barking (Dame Margaret Hodge), who has fought the British National party. Whenever we see extreme views with which we all disagree, we need to expose them in public and defeat them in an argument, rather than push them underground. My clear concern is that people could undermine

[Bob Blackman]

community cohesion inadvertently. They probably would not mean to do so. There is no issue with making statements and having debates in councils, Parliament and the Scottish Parliament. The issue is one of breaching the law in terms of procurement, including of goods and services.

Chris Stephens: I thank the hon. Gentleman for giving way; he is being very generous. Does he not concede that there is a real problem with the language in clause 4(1)(b), which states

"that the person would intend to act in such a way were it lawful to do so"?

That is a rather baffling sentence, is it not?

Bob Blackman: I thank the hon. Gentleman, but that is what I have said. In due course, perhaps on Report, the language may need to be tidied up. However, the intention is clear. The decision maker should not be saying, "If I was able to do it, I would make this decision." I do not think it helps the public body or decision making if primary legislation passed through this House says that that would be unlawful. That would not help community cohesion and it would not protect public bodies against being accused of making decisions based on particular views rather than on their coherent procurement needs. I will conclude with that.

Chris Stephens: I know you are a seasoned political veteran, Sir George—it is always clause 4 that causes a problem, isn't it? It is always clause 4, and the problem with this clause 4 is that it is the thought police clause. The difference is—*[Interruption.]* I have been rehearsing that one. I made that wisecrack privately to Sir George the other day, so yes. But this is the thought police clause. The normal police come for someone if they commit an act that is criminal, but the thought police are different. They act if someone "intends" to act in a particular way. Under the Bill, the authorities do not need to demonstrate any proof of intent to publish a particular kind of statement. That is impossible to do in the normal world, so let us just rely on telepathy to find out someone's intent.

It gets worse, and I thank the hon. Member for Harrow East for taking my intervention. In clause 4, entitled "Related prohibition on statements", subsection (1)(b) proposes that even

"were it lawful to do so",

any alleged intent to do so would be a criminal act. You need only consult George Orwell on this, Sir George—prove me wrong if you can—because he says, "Yes, this is the Thinkpol, whose job is to monitor the citizens of Oceania and arrest all those who have committed thoughtcrime in challenge to the status quo authority of the Party and the regime of Big Brother." Fortunately, there is an escape clause for the Government in clause 4, which states:

"This section does not apply to a statement by a Minister of the Crown".

Lucky them—but not anybody else.

The convention for the protection of human rights and fundamental freedoms, better known as the European convention on human rights, was opened for signature in Rome on 4 November 1950—only two years after George Orwell published his book "1984". The world had just come through a period in which freedom of expression had been brutally suppressed. The ECHR, to which the UK is still a signatory, defines freedom of expression thus:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

The purpose of the Bill is therefore to break an international convention and undermine a fundamental human right. Why would any Government do that? Is it because this is the red meat that the Tory party is throwing to people—a policy that actively restricts moral and political freedom of expression on human rights, environmental protections and workers' rights? Are they playing to a narrow audience with dog-whistle policies? We can end this dystopian farce here and now.

Witness after witness, even the witnesses who support the Bill and support the Government's position on the Bill, said—all of them—that they had difficulties with this clause and how it could possibly be enacted and enforced. We need to take account of that, and I ask the House to support the amendment tabled by my hon. Friend the Member for Airdrie and Shotts. If not, we certainly need to remove clause 4.

Felicity Buchan: I shall start by explaining why we do not support amendment 24, and I will then explain why we feel strongly that clause 4 needs to stand part of the Bill. I will address a few of the specific questions, but I will do so at the end, because I think it is important that hon. Members see the logical flow of the argument.

Amendment 24 seeks to ensure that none of the provisions in clause 4 will conflict with the Human Rights Act 1998. This amendment is unnecessary, as the Government's assessment is that all the provisions in the Bill are consistent with the Human Rights Act and the European convention on human rights, including article 10, the right to freedom of expression.

The purpose of the European convention on human rights, which the Human Rights Act implemented into domestic law, is to regulate the relationship between the state and the individual and specifically to protect private persons' fundamental rights from potential interference by the state. This includes private persons' article 10 right to freedom of expression. Public authorities, which form part of the state or perform the state's functions, are the potential perpetrators of ECHR violations and therefore do not have these rights. Public authorities do not have the rights; the rights are to protect private individuals and private bodies against state interference. This assessment was supported by several of the witnesses that the Committee heard from last week, and that is why we believe that the amendment is unnecessary.

Clause 4 prohibits public bodies from publishing statements indicating that they intend to engage in activity prohibited by this Bill. That includes statements indicating that the public body would have acted differently were the legislation not in place. It is important that we focus on public bodies, because this does not restrict the rights of individuals. 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. 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.

Academic freedom has been mentioned. If I am a university professor, which I am highly unlikely ever to be, I can say whatever I want. If, however, I stand up and say, "I, Felicity Buchan, speaking on behalf of Imperial College," which is in my constituency, that is representing the view of Imperial College, as opposed to that of Felicity Buchan.

Ms Qaisar: The Minister is being generous with her time. If the councillor in the hypothetical scenario I gave wanted to make a point, would he have to say, "I am Joe Bloggs. I just so happen to be a councillor. I just so happen to be the leader of the council," or can he say, "I am a councillor Joe Bloggs and I just so happen to be the leader of the council." I still do not understand.

Felicity Buchan: I will go into detail on it. Give me one minute and I will go through all those scenarios.

Dr Luke Evans (Bosworth) (Con): As Members of Parliament, we are always having to declare our interests if we think there is going to be a conflict. I asked a question yesterday about veterans' health. I am the honorary president of the Royal British Legion. When discussing such topics, particularly when in front of the media, we know exactly where there could be a conflict of interest and therefore make the determination that it should be declared. We should therefore allow the legislation to stay as it is, because the distinction is clear between speaking on behalf of a public body and speaking as an individual elected to represent a point of view.

Felicity Buchan: I agree. That is the distinction between representing a public body and speaking as an individual, even if someone is an elected councillor.

Steve McCabe: Will the Minister give way?

Felicity Buchan: I am going to go into the detail on some points, and then I will take questions.

This clause does not impact an individual's freedom to express a view. It is clear that declarations of boycotts and divestments are divisive and undermine community cohesion. These types of policies have no place in public bodies. 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.

We heard repeatedly in evidence that a declaration stating, "We would boycott were it legal to do so," is enough to trigger community friction and antisemitism issues. For instance, in 2014, Leicester City Council passed a motion targeting the activity of the Israeli state with a boycott

"insofar as legal considerations allow".

3.15 pm

Alex Norris: I am grateful to the Minister for the case that she is making. 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?

Felicity Buchan: This very much has the advantage of preventing Leicester City Council from making such a declaration. So anyone representing the views of Leicester City Council and saying, "I am standing here giving the views of Leicester City Council" is not allowed to do that.

Let me move on to exact circumstances. 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 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.

As I have promised, I will make that distinction clear in the Bill's explanatory notes. We want this to be very clear. There is a real concern that recent declarations of anti-Israel boycotts, even when they are not implemented in practice, have driven and contributed to rising antisemitism.

Steve McCabe: I want to return to the example that the Minister cited relating to a personal or public persona. She said that if Felicity Buchan said something in a personal capacity, that would be fine, but if she said it as a professor or representative of an organisation, that would not. If Felicity Buchan were an extremely well-known, recognisable public figure, which she may well be one day, is it considerable that her personal persona would be divisible from her public persona in any credible way that courts or the wider public would recognise?

Felicity Buchan: The Bill is not distinguishing between personas, individual or public. It is a sentiment that I am giving as an individual, as opposed to doing so as leader of my council or head of my university, representing my university. It is about the distinction between the individual and the public body.

I am coming to the end of my remarks. We will put that distinction into very clear guidance in the explanatory notes.

Chris Stephens: It is important that we get to the bottom of this. There is a real enforcement difficulty here. Some newspapers are not always friendly to my party, some are not friendly to the Labour party, and some, believe it or not, are not friendly to the Conservative party. A newspaper could come up with a scenario in

[Chris Stephens]

which it was quoting someone directly and giving the impression that that was their view on behalf of a public body, without expressing that that person was speaking in a personal capacity. That is a real difficulty. Of course, the other difficulty is that the Felicity Buchan we are referring to is a Minister of the Crown, so anything that Felicity Buchan says is completely exempt under the clause.

Felicity Buchan: On the point about what a newspaper may or may not infer, clearly for there to be enforcement it needs to be proved. We will go on to talk about enforcement later, but I think there is a clear distinction between stating something in a personal capacity and representing one's institution. On that basis, I recommend that the amendment be rejected and that clause 4 stand part of the Bill.

Ms Qaisar: I thank hon. Members for all their comments. I agree with Opposition Members that clause 4 needs serious reworking or simply removal from the Bill. As has been mentioned, and as we heard in our evidence sessions, the clause marks a dangerous attack on the article 10 right to freedom of expression set out in the Human Rights Act. We must ensure that the Bill does not impede the rights of individuals freely to express their views.

I am sorry, but I am not reassured by the comments in the impact assessment and from the Minister that the Bill requires such strong provisions preventing freedom of expression. I am surprised that the Government have sought to include such provisions in the Bill. They seem to have failed to acknowledge that the clause has the potential to engage individuals' human rights, as is proven by the lack of a human rights memorandum to accompany the legislation. I remind Government Members that this Government claim to be a bastion of free speech.

Jacob Young (Redcar) (Con): Hear, hear.

Ms Qaisar: The hon. Member says, "Hear, hear," yet I imagine that he is about to vote for a clause that restricts free speech. I am somewhat perplexed.

This Government have passed legislation designed to protect academic freedom and have even appointed a supposed free speech tsar, yet the Bill seems to go against that. Clause 4 has the potential to shut down academic debate and limit academic freedom, which is integral to the higher education sector across all four nations. I am not convinced whatsoever by this clause. I will push amendment 24 to a vote, and I will vote against the clause in its entirety.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 15]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 6.

Division No. 16]

AYES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

NOES

David, Wayne	Norris, Alex
Leadbeater, Kim	Qaisar, Ms Anum
McCabe, Steve	Stephens, Chris

Question accordingly agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5 ordered to stand part of the Bill.

Clause 6

ENFORCEMENT AUTHORITIES

Alex Norris: I beg to move amendment 8, in clause 6, page 4, line 28, at end insert—

"(3A) In relation to a decision or statement made by, or for the purposes of, a local authority, the enforcement authority is the Office for Local Government."

This amendment changes the enforcement authority for local authorities from the Secretary of State or Treasury to the Office for Local Government.

The Chair: With this it will be convenient to discuss the following:

Amendment 9, in clause 6, page 4, line 38, leave out subsection (6).

This amendment removes the provision allow the Secretary of State or Minister for the Cabinet Office to amend this section so as to change the enforcement authority in relation to a particular description of decision or statement.

Clause stand part.

Alex Norris: Clause 6 sets out the enforcement authorities for the Bill's provisions. Subsection (2) sets out that the enforcement authority is the Secretary of State or the Treasury, unless otherwise stated. Subsection (4) states that for any decision or statement made by an English higher education provider, the enforcement authority will be the Office for Students. On the face of it, that seems a fairly benign set-up for enforcement, but it creates a distinction in how the Bill treats different public bodies, on which I would like to press the Minister.

On the one hand, the Bill is saying that enforcement against higher education providers will be given over to a third actor, the Office for Students. On the other hand, it is saying that local government will be policed by national Government instead. Amendment 8 tries to put those things on a more consistent footing and to say that there should be less variance in enforcement. The amendment puts forward the Office for Local Government as a more suitable authority for enforcement of the Bill's provisions in relation to local government.

I hope that the Minister will cover this issue in her response, because I do not know why there is divergence. She can put me right if I am wrong, but I fear that this is a continuation of central Government's heavy-handed manner with regard to local authorities. Part of the problem with our approach is that we get devolution when local leaders get the answer "right", but not so much when central Government disagree with them. Adding clause 6 to the Bill unamended will continue the trend of the Government wishing to keep the reins on local government. Given that they have already chosen to use the Office for Students, surely aligning that with the Office for Local Government would make an awful lot more sense.

Amendment 9 is similar to my amendment 4 on Henry VIII powers. The Government are reserving the ability to change the enforcement authorities as they wish under subsection (6). Amendment 9 seeks to delete that provision and ensure that we can set out, through normal parliamentary processes, who will enforce the legislation. Local councils are not going to change that much, and public bodies generally are not going to change that much, but the Government need emergency powers to vary the enforcement agency. If the Government wish to do things a certain way, they should put that in the Bill, and if they wish to change it they should return to Parliament through primary processes.

Felicity Buchan: I urge the Committee to reject the amendments. Let me explain why.

Amendment 8 would establish the Office for Local Government as the enforcement authority in relation to a decision or statement made by local authorities, except where specified otherwise. We have carefully considered the most appropriate enforcement authorities across the sectors that are covered by the Bill; for example, the Pensions Regulator has an existing role in regulating the administration and governance of the local government pension scheme. Although we are expanding some powers, the enforcement authorities listed in the Bill already have an existing role in enforcement for those public authorities. That is not the case for the Office for Local Government, which the hon. Member for Nottingham North is proposing.

The Office for Local Government is not envisaged as an enforcement authority for anything. It is intended to provide data and analysis about the performance of local government and to support its improvement, but it is not envisaged to have a role in regulating local government's activities. It would therefore not be appropriate for it to have an enforcement role against local authorities in this context. Furthermore, Oflog is an office of the Department for Levelling Up, Housing and Communities and, as such, does not have a statutory basis. The effect of amendment 8 would therefore be to keep responsibility with the Secretary of State.

Amendment 9 would remove the power given to the Secretary of State or the Minister for the Cabinet Office to change the enforcement authorities in relation to a decision or statement captured by the Bill. The Bill will provide a power for the Secretary of State and other enforcement authorities to issue compliance notices, and to investigate and fine public bodies, where there is a breach of the ban. Public bodies subject to the ban will also be susceptible to judicial review if they break this law.

We have carefully considered the most appropriate enforcement authorities across some of the sectors covered by the Bill, such as the Pensions Regulator. For higher education providers on the register of the Office for Students, the Office for Students should be the responsible enforcement authority. As the Bill is drafted, the Secretary of State or the Treasury should be the enforcement authority for all other public bodies subject to clauses 1 and 4. Ministers of the Crown are not subject to the additional enforcement regime but are subject to judicial review.

In time, the most appropriate regulators for each of the sectors covered by the Bill may change. The Bill provides the necessary flexibility, via the power given to the Secretary of State or the Minister for the Cabinet Office, to update the respective enforcement authorities if they change. For those reasons, I ask the hon. Member for Nottingham North to withdraw his amendments.

Alex Norris: I am grateful for the Minister's reply. I do not intend to press either amendment to a Division, but I will make a couple of points in response.

The Minister mentions that Oflog may not sit elegantly with the Office for Students, because the Office for Students has an existing role doing this type of activity, whereas Oflog does not. However, Oflog was only established in June, so of course it does not have a similar record or similar experience, but that is a person-made thing that could be changed. The Minister also says that Oflog was not envisaged as an enforcement authority, but I cannot believe that the Office for Students was ever really envisaged to be an enforcement authority either.

Similarly, the default enforcement authority in the Bill is the Secretary of State. I do not think that many people go to the ballot box imagining the capacities of different Secretaries of State to kick doors in; I hope not, anyway, because they certainly would not cast a ballot for me. I am therefore not wholly convinced that that is a brilliant argument against the amendment.

I also cannot accept the final point that the most appropriate agency may change in time. If that were the case as a result of the disestablishment of the Office for Students, say, that would itself require primary legislation, and the enforcement agency would be changed routinely as part of that. I do not think that Ministers should have the ability to change enforcement agencies on a whim—because one agency does not give the answers they want, for example—but I think there is a real risk of that. However, I do not think that that is enough to divide the Committee at this point, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Jacob Young.)*

3.34 pm

Adjourned till Thursday 14 September at half-past Eleven o'clock.

Written evidence reported to the House

EAPBB33 Trades Union Congress (TUC)

EAPBB34 Britain-Israel Communications and Research Centre (BICOM)

EAPBB35 British Palestinian Committee (BPC)

EAPBB36 Omar Mofeed

EAPBB37 Palestinian Forum in Britain

EAPBB38 Melanie Phillips

EAPBB39 UNISON (supplementary submission)

EAPBB40 Palestinian BDS National Committee

EAPBB41 Yachad (supplementary submission)

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Sixth Sitting

Thursday 14 September 2023

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 18 September 2023

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 14 September 2023

[Dame Caroline Dinenage *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

Clause 7

Information notices

11.30 am

Chris Stephens (Glasgow South West) (SNP): I beg to move amendment 25, in clause 7, page 5, line 8, leave out

", or is about to make".

This amendment, together with Amendments 26, 27, 28 and 29, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention of the ban.

The Chair: With this it will be convenient to discuss the following:

Amendment 26, in clause 7, page 5, line 12, leave out ", or is likely to contravene".

See explanatory statement to Amendment 25.

Amendment 27, in clause 7, page 5, line 15, leave out ", or is about to publish,".

See explanatory statement to Amendment 25.

Amendment 28, in clause 7, page 5, line 18, leave out ", or is likely to contravene,".

See explanatory statement to Amendment 25.

Amendment 29, in clause 8, page 6, line 6, leave out ", or is likely to contravene".

See explanatory statement to Amendment 25.

Chris Stephens: It is a pleasure to see you in the Chair, Dame Caroline.

In considering this clause, we will continue some of the debates we had on clause 4 on Tuesday. We have heard many similar views from a range of parties that the Bill is an unethical attempt to stifle freedom of expression and legitimate concerns of councils and other publicly funded bodies. They will face significant fines for being about to, or likely to, associate with international norms of behaviour. And who will be empowered to conduct investigations into those suspected breaches? Why, it will be UK Government Ministers themselves who are granted that authority! There go freedom of expression and the rule of law. I ask Members to support the SNP amendments.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): Amendments 25 to 29 would remove enforcement authorities' power to give information notices and compliance notices in anticipation of a contravention of the ban.

First and foremost, the powers given to enforcement authorities to be used before such a breach will prevent the sort of deeply divisive activity that we have heard about from representatives of the Board of Deputies of British Jews and the Jewish Leadership Council in oral evidence. It is obviously much better to prevent a breach of the ban in the first place than to wait for a divisive boycott or divestment policy to be put in place before taking action.

I reassure hon. Members that that does not mean that there will be active monitoring of public authorities. Potential breaches will be investigated as and when they are brought to the attention of enforcement authorities by third parties. When flagged to enforcement authorities, it is only where relevant to a potential breach of clause 1 or 4 that an information notice may be issued to require information from a relevant public body.

Finally, the enforcement regime does not provide unprecedented powers for enforcement authorities. It is based on existing regimes. The powers are based on those that the Office for Students already has for regulating universities, and the powers to enforce the ban for local government pension schemes are similar to those that the Pensions Regulator already has. I therefore ask that the amendments be withdrawn.

Chris Stephens: We wish to test the will of the Committee on the matter. I ask Members to support our amendments.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 17]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 26, in clause 7, page 5, line 12, leave out

", or is likely to contravene".—*(Chris Stephens.)*

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 18]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 27, in clause 7, page 5, line 15, leave out

", or is about to publish,".—*(Chris Stephens.)*

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 19]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Amendment proposed: 28, in clause 7, page 5, line 18, leave out

", or is likely to contravene,".—*(Chris Stephens.)*

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 20]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Alex Norris (Nottingham North) (Lab/Co-op): I beg to move amendment 10, in clause 7, page 5, line 32, leave out subsection (8).

This amendment removes provisions stipulating that providing information in compliance with an information notice does not breach obligations of confidence or other restrictions on disclosure.

It is a pleasure to see you in the Chair, Dame Caroline.

Clause 7 sets out the significant powers to compel information that will be made available to the enforcement authorities detailed in clause 6. As we have heard, the enforcement authority will most often be the Secretary of State. The provisions in clause 7 provide enforcement authorities with the power to prepare and issue an information notice to request from a relevant public body information relating to a decision in respect of the Bill. The enforcement authority—usually the Secretary of State, as I say—can request any information likely to be useful for it to assess whether the provisions of the Bill have been contravened or are likely to be contravened.

Provision is also made in respect of clause 4, the gagging clause. Clause 7 means that the enforcement authority can request information if it is satisfied that a public body subject to the Bill is about to publish, may publish or has already published a statement prohibited by the Bill. The most egregious provision is subsection (8), which provides:

"A person providing information in compliance with an information notice does not breach—

(a) any obligation of confidence owed by the person in respect of the information, or

(b) any other restriction on the disclosure of information (however imposed)."

"However imposed" is a challenging phrase. It seems to grant the Secretary of State or other relevant bodies the power to issue notices that would not only require all information to be handed over, but override normally protected duties of confidentiality, safeguarding or legal privilege. That is very significant. We would argue that those powers of investigation go beyond the powers of the security services to compel information. There is no clarity or sense of what checks and balances there are. Even the security services, which do not have that degree of power, have oversight mechanisms such as the Intelligence and Security Committee of Parliament. Frankly, this seems to be a very strong power to reserve to the Security of State or, indeed, the Office for Students.

We have heard evidence from multiple witnesses who are concerned about these provisions. We did hear from others who are less concerned, but even if colleagues consider the case I have set out to be wrong or overstated, the ambiguity is obvious. At the very least, the Bill is not clear enough. It is important to say that the Government do not—if I have understood properly what the Minister told the Committee last week—want the provisions to supersede legal privilege. That is welcome, and I am keen to have similar commitments regarding safeguarding duties. If that is the case, amendment 10 promotes that.

I believe that the Government ought to accept our amendment, or at least propose an alternative in lieu. What is in the Bill seems overbearing; if not overbearing, it is definitely unclear. That, at least, must be resolved.

Felicity Buchan: Amendment 10 would remove clause 7(8), which stipulates that providing information in compliance with an information notice does not breach obligations of confidence or other restrictions on disclosure.

The intention behind clause 7 is to provide a power for enforcement authorities to issue information notices to require information from a relevant public body relating to a decision in respect of the Bill. As drafted, the clause sets out a necessary and proportionate power for enforcement authorities properly to investigate potential breaches of the ban.

I must be clear that the clause does not place an undue burden on public bodies in scope of the ban. Information may be requested only if the enforcement authority is satisfied that a person has made or will make a decision or statement in breach of the Bill and that the information is likely to be useful for the enforcement authority's investigation. Subsection (8) provides standard wording in order to give assurance to the person complying with the information notice that they will not be breaching an obligation of confidence or any other restriction on disclosure. The Bill is by no means unique in including such drafting; the same caveat is provided for in the Agriculture Act 2020, the Building Safety Act 2022 and the Health and Care Act 2022, for example.

The hon. Member for Nottingham North has said that he is concerned that the subsection would override the privilege between lawyer and client. I can reassure him that it does not. Legal professional privilege is a fundamental common-law right, including for those public bodies captured by the Bill, and specific words would not be needed to override it. The information power therefore does not extend to legally privileged material; I can confirm that I will clarify that point

[Felicity Buchan]

explicitly in the Bill's explanatory notes. I would also add that Richard Hermer KC has subsequently clarified, in written evidence to the Committee on this point, his view that it is likely that a court would not deem legal professional privilege to be overridden by the clause.

Subsection (8) does not provide a right to extract the information, nor does it give a power to the Government; it simply provides the person who is disclosing information necessary to investigate a potential breach with protection against a claim for breach of confidence or any other restriction. I therefore ask the hon. Member to withdraw his amendment.

Kim Leadbeater (Batley and Spen) (Lab): It is really important that legislation passed by the House be clear and unambiguous. As we have heard repeatedly in this Committee from a wide variety of sources, including witnesses who gave oral evidence and those who submitted written evidence, the Bill fails that test.

This subsection is another example of that. The open-ended reference to

"any other restriction on the disclosure of information"

makes no distinction, for example, between somebody expressing a view in a private and in a professional capacity. That cannot be right. Subsection (8) should be deleted.

Alex Norris: I am grateful to my hon. Friend the Member for Batley and Spen for her very effective contribution, with which I agree.

I hear what the Minister says about the intention behind the clause and about whether it is necessary and proportionate. I can probably agree with "necessary", but there is still a divergence of views between us on "proportionate". I also hear what the Minister says about commonality with other pieces of legislation. I am willing to accept that clause 7(8) is not a unique provision, but I do not think that that means that it is therefore the right provision. It could be badly drafted here and elsewhere too; that would not be without precedent.

11.45 am

I still have a problem. What the Minister says is welcome, and I have no reason not to take it at face value, but I am struggling to square paragraph (a), particularly the phrase "any obligation", with what she said, because those are obligations, and they are now clearly not considered under "any". It is already tricky that the "any" has caveats, but I also struggle to square the "any obligation" provision with subsection (9), which seems to set out other obligations, such as on data protection. I thought that the Minister might have relied on those, but she did not.

It seems that the Minister's strong intention is not to override legal privilege—that is welcome news—and she intends to make that clear in the explanatory notes. That is just about enough to see me off today, but I hope that she will reflect on the point. I do not think that what is set out the Bill is quite clear, given what she has said. I also think that there is a clash with subsection (9).

I know that the matter will be considered in the other place, and on that basis I will not press amendment 10, but I do not think that we are finished here. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ms Anum Qaisar (Airdrie and Shotts) (SNP): I beg to move amendment 33, in clause 7, page 5, line 39, leave out from "legislation" to end of line 41.

This amendment is to probe the way the legislation appears to "qualify" the data protection legislation.

It is a pleasure to serve under your chairmanship, Dame Caroline.

Like previous clauses that we have discussed, clause 7 is poorly drafted. It hands enforcement authorities powers that risk infringing on civil liberties such as the right to a private life. The clause allows an enforcement authority to compel a person suspected of contravening a ban to provide information, including personal information about people involved with a decision. It is clear that the intention is to prevent a public body from contravening clause 4, the so-called gagging clause. However, the broadness of the clause risks casting too wide a net and infringing on personal data. My amendment 33 seeks clarity from the Government as to how the clause will interact with existing data protection legislation.

Data law exists to protect people's privacy and data, but the Bill is confusingly drafted. In its current form, the clause could be interpreted as implying that existing data protection legislation is to be read in line with the Bill, rather than the other way around. That obviously raises issues about an individual's right to data privacy. The circularity of the drafting could potentially mean information disclosure obligations superseding data protection legislation. As has been raised numerous times under other clauses, the drafting clearly suggests that little thought has gone into the powers granted to enforcement authorities. It is unclear whether any assessment has taken place of the legal necessity of the powers or of whether they are proportionate under the General Data Protection Regulation and the Data Protection Act 2018.

The drafting of clause 7(8) is particularly concerning. It provides that disclosure of information under the provisions will not breach

"any obligation of confidence owed by the person in respect of the information, or…any other restriction on the disclosure of information (however imposed)."

That is such a broad definition that it potentially includes everything from contractual restrictions and court orders to legal professional privilege and even statutory restrictions on information disclosures.

Many people have raised these concerns, as we know from our evidence sessions last week and from written submissions. I am sure that granting such expansive powers was not the Government's intention in drafting the clause. I hope that the Minister will provide an explanation of why they have drafted the legislation so confusingly in respect of data protection and why they are granting such expansive powers to enforcement authorities.

The clause has the potential to allow a severe intrusion on an individual's right to privacy under article 8 of the European convention on human rights, which provides the right to a private life. The grounds on which information can be requested are very wide: someone would need merely to be suspected of being in the process of potentially making a prohibited decision or statement to be required to hand over information. That is compounded by the requirement to provide any information that is

"likely to be useful to the enforcement authority".

It would be beneficial if the Government explained what kind of information could be requested through an information notice.

Amendment 33 is a probing amendment, so I will not push it to a vote, but I hope that the Government will provide further detail on what evidence individuals will have to provide when issued with an information notice, as well as looking again at the broad powers granted under the clause.

Felicity Buchan: Amendment 33 would remove the part of clause 7 that refers to compliance with data protection legislation, specifically the requirement that the provisions of the clause should be taken into account when determining whether the provision of information would contravene data protection legislation. Importantly, an information notice does not require the provision of information if this would be in contravention of the data protection legislation.

The clause provides a lawful basis for sharing information. This is a standard drafting mechanism that respects the principles of data protection; it does not alter the principles of data protection. As I have already set out, the Bill is by no means unique in including this drafting, which features in various pieces of existing legislation, such as the Building Safety Act 2022 and the Agriculture Act 2020. For those reasons, I ask the hon. Member for Airdrie and Shotts to withdraw the amendment.

Ms Qaisar: I thank the Minister for her response, but I do not think it goes far enough in addressing the concerns that I and other Members have raised. I heard what she said, and I understand from her previous contributions that some additions will be made to the explanatory notes. I am slightly concerned that, when they made concessions on clause 7 and others, the Government said that there will simply be additions to the explanatory notes, rather than anything on the face of the Bill. I hope the Minister will go back and seriously consider how to tighten up the language in the clause. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Clause 9

Monetary penalties: power

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 11, in clause 10, page 7, line 20, at end insert

"within 60 days of the passage of this Act."

This amendment specifies that regulations prescribing a maximum monetary penalty must be made within 60 days of the Bill being passed

Amendment 12, in clause 10, page 7, line 21, leave out "may" and insert "must".

This amendment, together with Amendment 13, would require the publication of regulations in matters to which the enforcement authority must, or must not, have regard in exercising its powers within 60 days of the passage of the Act.

Amendment 13, in clause 10, page 7, line 23, at end insert

"within 60 days of the passage of this Act."

See explanatory statement to Amendment 12.

Clause 10 stand part.

Alex Norris: I rise to speak to amendments 11 to 13, which relate to clauses 9 and 10. Clause 10(1) states that:

"The Secretary of State must, by regulations, prescribe a maximum penalty for the purposes of section 9".

Clause 9 states that an enforcement authority may impose a monetary penalty on someone if they do not comply with the provisions of the Bill. Similarly, clause 10(2) states that:

"The Secretary of State may, by regulations, make provision about matters to which the enforcement authority must, or must not, have regard in exercising its powers under section 9",

which refers to the power to impose monetary penalties.

The regulations set by the Secretary of State will be highly consequential, because they will show how the sharper elements of the Bill, which we have already discussed, will interact with the rights and freedoms of individuals. They will outline the monetary penalty, but also what the enforcement authority—most often, the Secretary of State—will weigh in making a decision. As drafted the Bill does not specify when the Secretary of State must make these regulations and when they will take effect. That leaves a degree of ambiguity, and a gap where people will be waiting to see when the provisions start to bite.

The Minister previously talked about measures being necessary and proportionate. It is necessary to have an enforcement regime, and proportionate for the shoe to drop at some point; otherwise there is no point in having the legislation. Also, having made a significant number of points around Henry VIII provisions, and, at length, been quite displeased by some of them, even someone with my hard heart would say that it is proportionate for those to be set by regulations, because they will change over time.

The quid pro quo for that is what I have set out in amendments 11, 12 and 13, which remove some of the ambiguity and has the Government say when they intend to set the regulations. These probing amendments—I will not press them to a Division—set out what ought to happen within 60 days of Royal Assent, which would give a degree of clarity for those who are getting their decisions in order and understanding when the provisions are likely to fall. I think that is proportionate. If 60 days is too short or long a period, I hope the Minister will say when the Government intend to do this. I suspect they want to get on with it, but people ought to have that clarity.

Felicity Buchan: Amendment 11 would require the Secretary of State, via regulations, to set a maximum fine that can be imposed on public authorities in breach of the ban within 60 days of the Bill being passed. The suggestion by the hon. Member for Nottingham North to set a deadline of 60 days for the Secretary of State, while well intentioned, is inappropriate.

It is crucial that the threshold for fines is carefully decided in consultation with enforcement authorities, including the Office for Students and The Pensions Regulator. Since that will also be done by the affirmative

[Felicity Buchan]

procedure, the measure will need to go through both Houses. It will need to go through the Joint Committee on Statutory Instruments, the Secondary Legislation Scrutiny Committee in the House of Lords, and it would need to be debated in both Houses. Clearly, it is a piece of legislation that the Government want to be implemented, so I give the Committee my word that we will do this as expeditiously as possible. It is wrong, however, to commit to 60 days.

The same arguments apply to amendments 12 and 13. We agree that expediency in setting out details of the enforcement regime is important, but we need to take into account proper consultation with the regulators and enforcement authorities, as well as due scrutiny in both Houses. For that reason, I ask the hon. Member for Nottingham North to withdraw the amendments—I know that he said they were probing amendments.

Alex Norris: I am grateful for that answer from the Minister. I am happy to withdraw the amendment on that basis. The point about consultation is important, so I hope that is a full consultation, both with potential enforcement authorities and those who speak for those that are going to fall under the provisions, such as the Local Government Association.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clauses 10 and 11 ordered to stand part of the Bill.

Clause 12

APPLICATION OF PROHIBITIONS

Question proposed, That the clause stand part of the Bill.

Alex Norris: Clause 12 adds back the local government pension scheme. We heard in evidence just how seriously the local government pension scheme takes its fiduciary duties. This is overreach. The case for the inclusion of the local government pension scheme is weak. Again, I think this will play out later down the line in further discussions in the other place. Its inclusion, which is significant and will add an extra burden and anxiety for people working hard to deliver important benefits for their members, is not really necessary, so I hope the Minister will reflect on that.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clauses 13 to 16 ordered to stand part of the Bill.

Clause 17

GENERAL PROVISION

12 noon

The Chair: Amendments 16 and 17 to clause 17 were debated in an earlier group. I have not selected those amendments for separate decision, because they are incompatible with an earlier decision, namely that clause 2 stand part of the Bill.

Amendment proposed: 1, in clause 17, page 10, line 39, at end insert—

"(1A) Section 1 does not apply to decisions made by—

(a) Scottish Ministers, unless a motion has been passed by the Scottish Parliament indicating its consent to this Act;

(b) Welsh Ministers, unless a motion has been passed by Senedd Cymru indicating its consent to this Act;

(c) a Northern Ireland department, unless a motion has been passed by the Northern Ireland Assembly indicating its consent to this Act."—*(Wayne David.)*

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 21]

AYES

David, Wayne	Norris, Alex
Fletcher, Colleen	Qaisar, Ms Anum
Leadbeater, Kim	Stephens, Chris
McCabe, Steve	

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

Clause 17 ordered to stand part of the Bill.

New Clause 1

IMPACT ASSESSMENT: TRADE AND DIPLOMATIC RELATIONS

"(1) Within six months of the passage of this Act, the Secretary of State or the Minister for the Cabinet Office must conduct an impact assessment of this Act's impact on the United Kingdom's trade and diplomatic relations with the following countries—

(a) Afghanistan;

(b) Bangladesh;

(c) Belarus;

(d) Central African Republic;

(e) China;

(f) Colombia;

(g) Democratic People's Republic of Korea;

(h) Democratic Republic of the Congo;

(i) Egypt;

(j) Eritrea;

(k) Ethiopia;

(l) Haiti;

(m) Iran;

(n) Iraq;

(o) Libya;

(p) Mali;

(q) Myanmar (Burma);

(r) Nicaragua;

(s) Occupied Palestinian Territories;

(t) Pakistan;

(u) Russia;

(v) Saudi Arabia;

(w) Somalia;

(x) South Sudan;

(y) Sri Lanka;

(z) Sudan;

(aa) Syria;

(ab) Turkmenistan;

(ac) Uzbekistan;

(ad) Venezuela;

(ae) Yemen;

(af) Zimbabwe.

(2) The Secretary of State or the Minister for the Cabinet Office must produce a report on the outcome of the impact assessment.

(3) The report mentioned in subsection (2) must be laid before Parliament as soon as reasonably practicable after the impact assessment has been conducted."—*(Chris Stephens.)*

This new clause would require the Government to undertake an assessment of the impact of the Act on the UK's trade and diplomatic relations with the countries identified by the FCDO as human rights priority countries.

Brought up, and read the First time.

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

One definition of a human being is that they learn from their mistakes. To do so, they must review their actions against a set of criteria, often through an impact assessment, so as to identify any error, misjudgment or unintended consequence that they may have created. That sometimes leads to a revision or reversal of prior actions. I am sure that we all agree with that statement, given that we are all human beings, are we not? The principle applies to presumptions as well as actions. I am sure the Government hope this legislation will impact only on the countries and territories explicitly named in the Bill, but that may be presumptuous. New clause 1 provides a list of countries whose behaviour might change as a consequence of the Bill being enacted. It might change them for the better, but we ought to be aware that some will see it as a green light to expand their breaches of human rights, confident in the knowledge that the UK has turned a blind eye to their behaviour, all in the interest of expanding trade. We believe that the impact assessment and the timescales proposed are realistic and essential to the reputation of the UK. I ask the Committee to send a clear message to those countries by supporting the new clause.

Felicity Buchan: I urge hon. Members to reject the new clause. It would give the Secretary of State or Minister for the Cabinet Office a new duty to conduct an assessment, six months after passage of the Act, of its impact on the UK's trade and diplomatic relations with the countries identified by the Foreign, Commonwealth and Development Office as human rights priority countries.

The UK Government's trade positions and diplomatic efforts will not be affected by the Bill. Its intent is to ensure that the UK speaks with one voice internationally; it is not to hamper diplomatic relations by publishing arbitrary impact assessments for the countries listed in the new clause. The Bill makes clear where the power to conduct foreign policy is, and allows other public bodies to focus on their core duties. It does not change any aspect of the UK's foreign policy.

That is not to say that the Government will not carry out impact assessments on international matters when needed. Indeed, we are already committed to producing independently scrutinised impact assessments, such as those for new free trade agreements. Moreover, as with any Act that the House passes, once the Bill is an Act it can be subjected to post-legislative scrutiny by a parliamentary Select Committee to assess how it has worked in practice since coming into force. The additional impact assessment proposed by the hon. Member for Glasgow South West is unnecessary. For those reasons, I ask him to withdraw the new clause.

Chris Stephens: I have listened carefully to the Minister. If I understood her correctly, she said that the Bill does not change Foreign Office policy. Many Opposition Members believe that some provisions in the Bill actually do change Foreign Office policy, and we explored that in an earlier exchange. Many of us believe that we are using a domestic Bill to change Foreign Office policy, and if we are doing that, I insist that the Committee divide on the new clause.

Bob Blackman (Harrow East) (Con): Will the hon. Member explain the basis on which he selected his large number of countries and excluded others?

Chris Stephens: As a member of this Committee, the hon. Gentleman could have tabled an amendment to the new clause or even his own amendment. Those countries were selected because of concerns with the human rights abuses that are taking place. Perhaps that will satisfy the hon. Gentleman enough for him to support the new clause.

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

The Committee divided: Ayes 2, Noes 9.

Division No. 22]

AYES

Qaisar, Ms Anum	Stephens, Chris

NOES

Blackman, Bob	Jenkinson, Mark
Buchan, Felicity	Nici, Lia
Clarke-Smith, Brendan	Smith, Greg
Evans, Dr Luke	Young, Jacob
Holmes, Paul	

Question accordingly negatived.

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

Felicity Buchan: May I take this opportunity to thank the entire Committee? We have worked effectively and expeditiously. I also thank the two Chairs and the Clerks.

Alex Norris: Similarly, I want to put on record our thanks to you, Dame Caroline, and Sir George, to the top-class Clerks for all their help, to the civil servants for their work and to my colleagues. I draw special attention to my hon. Friend the Member for Wigan (Lisa Nandy), who was shadow Secretary of State on Second Reading, for her efforts and support while we have been getting our work together, and to the Minister for her collegiate work, both inside and outside this room. I also thank her colleagues.

Chris Stephens: May I first thank you, Dame Caroline, and Sir George for chairing these sittings? I also commend all Members. There has been much debate around the Bill, and many of us have regarded it as essential that

[Chris Stephens]

we debate it in a tone that is appropriate but also robust. I think we have done that in this Committee. I would like to thank all hon. Members for the tone they have adopted and also for their good humour. That has been essential for the Bill, which has been fairly controversial.

We will obviously reflect on the changes we want to see in the stages to come. I do think there is going to be a challenge on the Government's side, because a number of their Members are very critical of the Bill. The fact that no amendments have been agreed will be a test for them. I again thank you, Dame Caroline, and Sir George, as well as the Clerks, for all the help we have had.

Lastly, it was unfortunate that there was no evidence from a Palestine support group in our evidence sessions. I do not believe there was a conspiracy on that. I think it was perhaps more cock-up than conspiracy, but I hope it is something we will all learn from. We should have all views heard, and we might all want to take that point away and reflect on it.

Bob Blackman: On that point, the Committee received correspondence today from the Palestine Solidarity Campaign. Conservative Members' inboxes have certainly been filled with over 2,500 emails from people who are sending a template email that is factually inaccurate. It would be helpful to know from the Clerks or you, Dame Caroline, whether there will be a response to the correspondence we have had or whether we as individuals will have to respond and point out the facts. Personally, I have three or four emails from constituents, but the emails have come in from literally all over the country to everyone else. Frankly, it is a complete waste of their time and effort.

The point the Palestine Solidarity Campaign has made is reasonable given the information that has been supplied to it, but we need to correct the record on how the witnesses were chosen and on the offer that was made in terms of correspondence and evidence so that we could carefully consider all sides. As the hon. Member for Glasgow South West has referred to, we have to go through Report, Third Reading and the other place. It would be grossly unfair, given all the work the Committee has done, were it suggested that we were one-sided and did not hear the other side of the argument.

The Chair: Unfortunately, there is no formal route for the Committee as a whole to make a statement, but Members had the opportunity to discuss the issue last Thursday, and in making his comments now, the hon. Gentleman has put his very well-reasoned thoughts on the record. I would suggest that Members do have to respond individually to correspondence they get, but the hon. Gentleman can now refer to his comments, which are on the record and there for everyone to see.

Lia Nici (Great Grimsby) (Con): I rise briefly to support my hon. Friend the Member for Harrow East. We should make it clear to members of the public who are listening or reading *Hansard* afterwards that individual Members of Parliament have had no influence on who comes to give evidence and who does not. The aggressive nature of what we and our staff have experienced this week really is not acceptable. We are here trying to do the best job we can, and we have had no influence on who does and does not come here to give evidence. I just wanted to put that on the record.

The Chair: The Committee did agree a resolution about who would come in to give evidence; that agreement was debatable and amendable. But the hon. Lady's point is well made and is now on the record.

Chris Stephens: I would not usually try to intervene again, Dame Caroline, especially when I am trying to get to another debate, but I thank Government Members for raising this issue. I have had 2,700 emails, so I think that everyone on the Committee has got the emails. I suggest that this matter is raised through the usual channels. I think there was a cock-up rather than a conspiracy; the email address of one of the organisations was certainly on our suggested list. I think it would help all of us if there was a template response agreed via the usual channels. I put that forward as a suggestion to take to the usual channels to see whether we can come up with something that would be a template for us all.

The Chair: The Whips on both sides will have heard that, and I suggest they take it away and come up with a solution that is acceptable to everybody.

Lia Nici: May I clarify for the record that, as a general rule, Members of Parliament do not make contact with people who are not their own constituents? I will not ask my hard-pressed team in the constituency to respond to people who are not constituents. That is parliamentary protocol. No constituents have got in touch with me about this matter, and I will not be requesting that my team respond to non-constituents, because we need to work with people who really need our help.

Felicity Buchan: I echo the comments of my hon. Friend the Member for Great Grimsby. It may be useful if I spend one minute explaining how the witness list comes about. Each party suggests witnesses, and then a Programming Sub-Committee agrees the list of witnesses. I just wanted to clarify that point.

Question put and agreed to.

Bill accordingly to be reported, without amendment.

12.17 pm

Committee rose.

Written evidence reported to the House

EAPBB42 Karl Drinkwater

EAPBB43 Local Government Association

EAPBB44 Alyson Tyler