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GENERAL COMMITTEES

Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Fifth Sitting

Tuesday 12 September 2023

(Afternoon)

CONTENTS

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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)