# 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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**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**

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|---|---|
| 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.*