

Economic Activity of Public Bodies (Overseas Matters) Bill

A Guide for UNISON Branches

Third Reading

November 2023

Economic Activity of Public Bodies (Overseas Matters) Bill A guide for branches (third reading)

Introduction

The Economic Activity of Public Bodies (Overseas Matters) Bill, which is currently being considered by Parliament, is unnecessary and will have a damaging impact on ethical investment and procurement by public bodies throughout the UK.

The Bill is currently going through Parliament with the third reading expected at some stage after the King's Speech on 7 November. The Government have suggested they would like the Bill to become law before the end of 2023.

This guide is to help UNISON branches and activists talk about the Bill with their local MP and encourage them to oppose it. It can also be used to help you raise concerns with any members of the House of Lords you may have contact with, as they will consider the Bill and suggest amendments following the third reading in the House of Commons.

What will the Bill do?

The Economic Activity of Public Bodies (Overseas Matters) Bill is intended to prevent public bodies from being influenced in their procurement or investment decisions by political or moral disapproval of the conduct or policy of a government or any other public authority in a foreign territory.

The government have said that it is needed to “stop businesses and organisations – including those affiliated with Israel - being targeted through ongoing boycotts by public bodies”. However, the Bill would have implications for investment or procurement decisions relating to companies that violate human and workers' rights or damage the environment in any country in the world.

The Bill would apply to all public bodies and covers elected decision makers in local and devolved government, including Scotland, Wales and Northern Ireland, where investment and procurement decisions are normally devolved.

The Bill would apply to any decision about a contract for goods, services or works, including contractual clauses, and is likely to cover engagement with suppliers. It would also apply to the management of an investment asset, so is likely to affect engagement with companies about ethical, social and governance concerns.

The Bill would allow the Secretary of State to disapply the legislation to certain countries, for example Russia and Belarus. However, they would not be allowed to disapply the legislation to Israel, the occupied Golan Heights and the occupied Palestinian territories.

The Bill would prohibit decision makers, including elected officials, from making a statement (in whatever terms) implying that they would support a procurement or investment decision that was influenced by political or moral disapproval of the conduct or policy of a government or any other public authority in a foreign territory.

The Bill would allow the Secretary of State or another enforcement authority to issue information or compliance notices or fines to individual decision makers. It would also allow anyone with sufficient interest to take legal action through the courts, whether or not judicial review was applicable.

The Conservative Party first announced plans to restrict ethical investment and procurement decisions by public bodies in October 2015. Since then, the government has introduced significant new guidance, regulations and legislation including Procurement Policy Note 01/2016 on procurement and boycotts and the Public Service Pensions and Judicial Offices Act 2022.

The Bill received its first reading in Parliament on 19 June when it was first published. It received significant opposition, including from some Conservative MPs, at the second reading on 3 July. The Bill Committee then considered the proposed legislation and heard evidence from witnesses, including UNISON, before Parliament considered amendments to the Bill on 25 October, which were all rejected by the Government.

Why does UNISON oppose the Bill?

The Bill would affect the ability of the Local Government Pension Scheme (LGPS) to consider the views of scheme members when making investment decisions, including engaging with companies on important ethical, social and governance issues. This would undermine the fiduciary duty and stewardship responsibilities of pension funds.

There would be additional costs for pension funds as they are unable to respond to certain risks and are required to take additional safeguards to mitigate against the possibility of litigation. This could have an impact on the value of pensions.

It would also limit the right of workers to influence procurement decisions that affect their work, including where equipment and resources are linked to violations of human or workers' rights or international law.

The Bill would affect those working in procurement and pensions for public bodies, by burdening them with a substantial, unnecessary additional workload and placing decision makers at risk of possible litigation.

The Bill also includes restrictions on freedom of speech for decision makers, undermines devolution and places public bodies at risk of excessive litigation. It is unclear and wide ranging, so is likely to lead to unintended consequences. There is already significant legislation and regulations in place regarding these matters, making the Bill unnecessary as well as highly problematic.

Take action:

- Send a letter from your branch to your local MP, asking them to oppose the Bill (see model letter below);
- Meet with your MP to ask them to oppose the Bill;
- Write to members of the House of Lords to highlight our concerns and ask them to propose amendments to the Bill;
- Highlight the problems with the Bill to other politicians including local councillors, elected mayors, MSPs (Scotland) MLAs (Northern Ireland) AS/MS (Cymru/Wales) and ask them to oppose it;
- Highlight the problems with the Bill to your employer.

Lobbying your MP

Most MPs hold surgeries so that constituents can talk to them about their concerns and issues. The details of the surgeries and how to book an appointment may be on their

website. If not, you should contact your MP's constituency office to find out how to book an appointment. Meeting an MP for the first time can be a little daunting. You may prefer to go as a small group from your branch and share the points you would like to get across between you. If you are meeting as a group, make sure you tell your MP's office who will be attending in advance.

Do your research

It will help with your meeting if you find out about your MP in advance:

- Which party are they a member of?
- What is their majority?
- If they are a Conservative do they normally vote with the Government or are they a Government spokesperson?
- Have they spoken out in support of or against the Bill?
- Do they have an interest in any of the issues relevant to the debate: workers' rights, human rights, environment, pensions, procurement, public services, Israel/Palestine, Uyghur rights in China, freedom of speech, devolution, for example?

Meeting your MP

If you are attending as a small group decide in advance who will lead the discussion, who will take notes, and which points each person will discuss. Keep your points polite, concise and entirely focused on the Bill.

If your MP is a staunch supporter of the Bill it is important that they listen to your concerns and understand why the Bill would be so problematic. If your MP is against the Bill ask them to talk to any Conservative MPs and members of the House of Lords they know.

Key arguments against the Bill

It undermines the rights of pension scheme members

Pensions are an important part of a worker's remuneration package - their deferred wages. Funds should be invested in the best interests of scheme members. Whilst the law requires pension funds to ensure that achieving a good financial return is their primary concern, it does allow decision makers to take non-financial considerations into account, providing there is no significant risk and scheme members would support the decision. The Bill would severely interfere with this 'fiduciary duty' by making it illegal for a decision maker to be influenced by political or moral disapproval of a policy or conduct of a public authority in a foreign state.

This would make it illegal for a pension fund to act if scheme members raised concerns about an investee company, even if it was involved in a serious violation of human or workers' rights, international law or environmental misconduct. The Bill relates to any decisions about the management of an investment asset, so is likely to prohibit pension funds from engaging with companies to raise such concerns. Engagement with companies on environmental, social and governance concerns is an important stewardship responsibility of pension funds, which can help reduce financial risks and improve business practices. It would be significantly undermined by the Bill.

The Local Government Pension Scheme is the only public service pension scheme the Bill applies to. The Secretary of State would be required to amend the schedule to the Bill in order to include other pension schemes that use investments.

It undermines ethical procurement by public bodies

Procurement has an impact on workers from the uniforms they wear to the equipment they use. Workers who perform a public service do not want the resources they use to be linked to a violation of human or workers' rights elsewhere in the world, whether it's the procurement of rubber gloves from Sri Lanka, where labour rights are being eroded by the government, or security equipment from a company involved in Uyghur detention camps in China. Every year in the UK public bodies spend £380 billion procuring goods and services. The Bill would prevent public bodies using this enormous potential leverage to encourage businesses worldwide to respect human and workers' rights and the environment and improve their practices.

For several years UNISON has been working with public bodies to use the power of procurement to improve workers' rights. The Bill would undermine this work, where workers' rights violations could be linked to a policy or conduct of a public authority in a foreign state.

The exceptions in the Bill fail to protect human and workers' rights

The Government argues that it has included certain exceptions for workers' rights, the environment and international law in the schedule. But these exceptions are extremely weak, for example the exception for labour rights violations concentrates on forced labour and doesn't even provide for the International Labour Organisation's core conventions, the minimum enabling rights for workers. Decision makers would only be allowed to consider environmental conduct where it violates the law, and there is no exception in the Bill for human rights violations.

In cases where a pension fund needs to divest rapidly, for example where there is a risk of one country invading another, decision makers would be required to wait for the Secretary of State to table regulations which disapply the legislation to relevant countries. This could be financially detrimental for pension funds and scheme members. However, the Bill would prohibit the Secretary of State from disapplying the legislation to Israel, the occupied Palestinian territories or the occupied Golan Heights. This could contradict the UK government's position and United Nations resolutions in support of a two-state solution, by equating Israel with the territories it has occupied.

The enforcement regime would expose public bodies to the risk of excessive litigation

The Bill includes a strict enforcement regime, including exceptional powers for the Secretary of State to issue information and enforcement notices and fines to individual decision makers. It also allows for an 'interested observer' to take legal action against a decision maker and requires the courts to consider the case, whether or not judicial review is applicable. Enforcement by the Secretary of State could take place alongside a court case. The enforcement regime would place a huge additional administrative burden and expense on pension funds and procurers, as they take measures to protect themselves against the risk of litigation. Workers who are decision makers could also be at risk of legal action.

It undermines devolution and freedom of expression

The Bill would apply to investment and procurement decisions by public bodies throughout the UK, despite these being devolved responsibilities in Scotland, Wales and Northern Ireland. Section four of the Bill prohibits a decision maker, including councillors or ministers in devolved governments, from "publishing a statement (in whatever terms)" indicating any kind of support for an investment or procurement decision that could be influenced by political or moral disapproval of the policy or conduct of a foreign state authority. This would limit the ability of elected officials to respond openly and transparently to the concerns of those they represent.

There are already significant laws and regulations which apply

The Local Government Act 1988 prohibits local authorities from considering “the location in any country or territory of the business activities or interests of contractors” in their procurement decisions. The Government’s Procurement Policy Note 01/2016 requires public bodies not to apply boycotts in their procurement decisions. The Public Service Pensions and Judicial Offices Act 2022 empowers the Secretary of State to issue guidance requiring local government pension funds not to deviate from UK foreign policy in their investment decisions.

Challenging the Government’s arguments?

Below are some of the arguments the Government are using to justify the Bill and the arguments you can use in response.

They say: *“It will stop public bodies from adopting their own foreign policy”.*

We say: This isn’t about public bodies ‘adopting their own foreign policy’ it is about them upholding internationally recognised norms on human and workers’ rights in their investment and procurement decisions, including the United Nations Guiding Principles on Business and Human Rights.

They say: *“It will stop public bodies from adopting Boycott, Divestment and Sanctions Campaigns or singling out Israel”.*

We say: UNISON members have been calling for pension funds to begin the process of divestment from companies on the United Nations list of business enterprises involved in the illegal Israeli settlements in the occupied West Bank and for time limited engagement with other companies involved in the settlements. This is about the right of scheme members not to have their pensions invested in companies that are contributing to a grave violation of international law and has nothing to do with boycotting Israel. It is one of a number of UNISON campaigns calling on public bodies to invest and procure more ethically.

They say: *“It is a legitimate response to address antisemitism”.*

We say: UNISON recognises and condemns the worrying rise in antisemitism we have seen in recent years. Antisemitic incidents in the UK have increased by more than 530 percent since the brutal and heinous attack by Hamas on civilians in Israel on 7 October. Incidents of antisemitism have sadly also increased during previous escalations in Israel and Palestine. Our campaigning on Palestine is always centred on human and workers’ rights, international law and calling for peace and a viable Palestinian state alongside Israel. We actively work to challenge antisemitism in society and recognise that the government need to do more. We fail to see how preventing public bodies from being influenced in their procurement or investment decisions by political or moral disapproval of the conduct or policy of a government or any other public authority in a foreign territory will address the enormous challenge of tackling antisemitism in the UK.

Model letter to your MP

Dear [name],

[Name of UNISON branch] is extremely concerned about the Economic Activity of Public Bodies (Overseas Matters) Bill, which is currently being considered by Parliament.

This extremely problematic and unnecessary Bill would conflict with the responsibility of decision makers in the Local Government Pension Scheme to perform their fiduciary duties and consider the views of scheme members when making investment decisions. It would also undermine their ability to perform their stewardship responsibilities by engaging with companies on important ethical, social and governance issues.

The Bill would also limit the ability of public bodies to consider violations of human and workers' rights and environmental misconduct when procuring goods and services. Most public service workers don't want the resources and equipment they use to be linked to human rights abuses around the world, whether its rubber gloves from Sri Lanka, where labour rights are being eroded, or security equipment from a company supplying Uyghur detention camps in China.

The proposed legislation is unclear and wide ranging, so is likely to result in unintended consequences. It would also add a substantial additional administrative and financial burden on public bodies, including mitigating against the risk of excessive litigation. We are also concerned that the Bill would undermine devolution and the freedom of speech of elected decision makers.

We urge you to oppose the Bill and would welcome the opportunity to meet with you to further discuss our concerns.

Yours sincerely,

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