

## **ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL (ANTI-BOYCOTT BILL)**

### **Background**

The Economic Activity of Public Bodies (Overseas Matters) Bill was tabled on Monday 19<sup>th</sup> June 2023 and was designed to prohibit public bodies from taking investment or procurement decisions which are deemed to indicate ‘disapproval of foreign state conduct’ (the “Section 1 Prohibition”), including boycott campaigns in support of human rights. It would have prohibited public sector employees from expressing any for such campaigns. The calling of a General Election on the 22<sup>nd</sup> May 2024, to take place on the 4<sup>th</sup> July, eventually saw the government abandon the legislation due to time restraints while in Committee Stage in the House of Lords.

The UK has a proud and successful history of using boycotts to enact positive social change – from boycotting slave trade sugar to the Bristol Bus Boycott to actions taken to dismantle South African apartheid, the right to pursue such campaigns is a fundamental exercise of the freedom of expression, thought and conscience.

### **Target**

Section 3.7, explicitly protects Israel from being excluded under the act the only state afforded protection in this way. This effectively creates a permanent ban on public authorities ever boycotting Israel and indicates that the primary target of this legislation is the Palestinian-led Boycott, Divestment and Sanctions movement (the ‘BDS movement’) an anti-racist, non-violent movement aimed at pressuring Israel to comply with its obligations under international law towards the Palestinian people.<sup>1</sup>

Public bodies that are most likely to be affected will include local government institutions, NHS Trusts and universities. If passed, the bill would severely restrict the ability of public bodies to procure and invest ethically, in compliance with domestic and international law and UK policy on business and human rights.

### **Implications on civil liberties**

Section 4.1(a) indicates that a public sector decision-maker cannot publish a statement indicating that they intend to engage in a boycott under the Section 1 Prohibition, whilst Section 4.1(b) indicates that they cannot say that they would intend to do so even if it were lawful. This Orwellian gagging clause inhibits the right to freedom of expression and freedom of thought and conscience, both protected under the European Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998. As this clause refers to ‘a person’, it goes beyond silencing public institutions and amounts to a specific attack on individual civil liberties. Section 7 may create unprecedented individual liability for public sector workers who are deemed to fall foul of the new law.

This bill can be contextualised within a wider series of recently passed bills that seek to crackdown on civil liberties like freedom of expression. These include the Police, Crime, Sentencing and Courts Act 2022, the Public Order Act 2023 and the anti-BDS clause included in the Public Service Pensions and Judicial Offices Act 2022.

### **Implications on autonomy of local government institutions**

Section 3.5 gives the Secretary of State and Cabinet Ministers the power to theoretically exclude specific countries from the Act. This would effectively allow government ministers sole authority to decide which

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<sup>1</sup> BDS Movement. (Accessed 19<sup>th</sup> April 2023) [What is BDS?](#)

countries or territories public authorities may boycott, removing such power from local authorities and eroding their autonomy. It is a centralising mechanism that gives more power to the Treasury (Section 6.2) to police the activities of public sector bodies.

### **Compliance with International law**

Public authorities engaging in business with companies with economic activities in Israeli settlements may be complicit in acts constituting crimes under both domestic and international law, including the Rome Statute 1998 and the Proceeds of Crime Act 2002. This means that public bodies may be in danger of providing material support to (aiding and abetting) the commission of war crimes. Aiding and abetting international crimes is illegal under Article 25(3)(c) of the Rome Statute. The Anti-boycott Bill may well place public bodies in a position where they are required to breach international law in order to comply with its provisions, including with respect to criminal liability.

### **Compliance with UK policy**

The UK's Foreign Office (FCDO) official policy regarding Israeli settlements is that they are illegal under international law, that there are "clear risks related to economic and financial activities in the settlements", and that the UK does "not encourage or offer support to such activity."<sup>2</sup> The Anti-boycott Bill contains provisions which seek to prohibit public authorities from not only boycotting Israel, but also boycotting Israeli settlements. They are therefore in direct contradiction of longstanding, official UK foreign policy. Section 3.7 conflates Israel, the occupied Palestinian territories, and the occupied Golan Heights, undermining the long-standing FCDO position that Israeli settlements in the oPt and Golan Heights are illegal.

### **The UN Guiding Principles on Business and Human Rights (UNGPs)**

The UNGPs are a set of internationally accepted guidelines for states and companies to address human rights abuses committed in the context of business operations. The UK has affirmed its commitment to implementing the UNGPs in its National Action Plan of 2013.<sup>3</sup> The Anti-boycott Bill is likely to create great confusion and uncertainty for public bodies in their procurement and investment decisions, due to the conflict created by the Anti-boycott Bill between their obligations under the UNGPs and their duties under the bill. Given the risk of individual penalties introduced by this bill, decision-makers are likely to over-comply, resulting in a chilling effect and an erosion of human rights compliance and culture within the public sector as a whole.

### **Exclusion of Palestinian voices at committee stage**

Palestinian voices were not invited to provide oral evidence at committee stage for this bill. In contrast, several organisations claiming to represent the Jewish community in the UK were invited to attend and give oral evidence, including the Board of Deputies of British Jews, the Jewish Leadership Council and Conservative Friends of Israel.

Skewed oral evidence risks the committee stage being used to reaffirm the government's position on a specific piece of legislation rather than providing legitimate scrutiny of a bill. In this case, one-sided scrutiny risks neglecting the impact that this bill will have on the suppression of the BDS movement in the UK, which in turn may lead to an increase in anti-Palestinian racism.

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<sup>2</sup> FCDO. (16<sup>th</sup> June 2023) [Guidance, Overseas business risk: Israel.](#)

<sup>3</sup> HM Government. (2013) [Good Business: Implementing the UN Guiding Principles on Business and Human Rights.](#)