

ECONOMY AND FAIR WORK COMMITTEE

**29th Meeting, 2023 (Session 6), Wednesday
22 November 2023**

Legislative Consent Memorandum – Economic Activity of Public Bodies (Overseas Matters) Bill

Note by the Clerk

Introduction

1. The [Economic Activities of Public Bodies \(Overseas Matters\) Bill](#) was introduced in the House of Commons on 19 June 2023. In accordance with Standing Orders (Rule 9B.3.1), the Scottish Government lodged [the attached Legislative Consent Memorandum \(LCM\)](#) on the same date, which was then referred to the Economy and Fair Work Committee by the Parliamentary Bureau.
2. Following publication of the LCM, the Committee received a written submission from the Scottish Council of Jewish Communities. This is also attached as an annexe.
3. Tom Arthur, Minister for Community Wealth and Public Finance will attend the Committee meeting on 22 November to give evidence on the LCM.

Legislative Consent Process

Legislative Consent Memorandum

4. The requirement for an LCM is triggered where a UK Bill makes provision applying to Scotland for any purpose within the legislative competence of the Scottish Parliament or alters the executive competence of Scottish Ministers.
5. The LCM prepared by the Scottish Government should explain how the Bill will affect Scotland and why. For example, the Bill may—

- change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
- alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).

Legislative Consent Motion

6. If the Scottish Government recommends in its LCM that consent be given, it will normally be decided by a motion taken in the Chamber known as a Legislative Consent Motion. This motion is usually drafted by the Scottish Government. If, however, the Scottish Government does not recommend that consent be given, a debate on the LCM may be scheduled in the Chamber, but this does not happen in every case.

Economic Activities of Public Bodies (Overseas Matters) Bill

7. The UK Government notes that the purpose of the Bill is to ensure a consistent foreign policy across the UK by preventing—

“public bodies when making decisions about procurement and investment from considering a country or territory of origin or other territorial considerations in a way that indicates political or moral disapproval of a foreign state”.¹
8. The Bill describes clauses 1 – 4 as the “main provisions”. Clause 1 bans public bodies from disapproval of foreign state conduct. Clause 2 applies the ban to procurement and investment decisions.
9. The Bill does not prevent public bodies from complying with formal UK sanctions, embargoes, and restrictions and the Bill allows for such exceptions to be applied and disapplied by regulation.
10. However, Clause 3(7) states explicitly that regulations made under the Bill cannot be used to make exceptions that relate specifically, or mainly to, Israel, the Occupied Palestinian Territories, or the Occupied Golan Heights. UK Ministers have stated their intention for [Russia and Belarus to be exempted immediately upon commencement](#) of the Bill. Clause 4 bans public bodies from making statements which indicate moral or political disapproval.
11. Clauses 14 and 15 contain delegated powers that are exercisable within the Scottish Parliament’s legislative competence in so far as the areas of procurement and local government are devolved. Clause 14 (6) would allow the Secretary of State to make regulations about the relationship between the Bill and the Procurement Reform (Scotland) Act 2014 (or any of the

¹ [Economic Activities of Public Bodies \(Overseas Matters\) Bill – Explanatory Notes](#)

regulations under that Act) in relation to “excluded” and “excludable” suppliers. Clause 15 (3) confers a power on the Secretary of State to avoid conflicts between this Bill and section 17 of the Local Government Act 1988.

Scottish Government’s position on the Bill

12. In its LCM, the Scottish Government makes clear that it is completely opposed to the Bill and does not recommend the Scottish Parliament gives its consent. It notes in its LCM that the Bill—

“represents an unnecessary and unwelcome limitation on the executive competence of the Scottish Ministers. It is a wholly disproportionate approach, which would curtail Ministers’ ability to take a values-based approach to their activities, and it acts to stifle democracy.”²

Scrutiny by other Scottish Parliament Committees

Delegated Powers and Law Reform Committee

13. The Delegated Powers and Law Reform Committee (DPLRC) [considered the LCM at its meetings on 26 September and 3 October](#).
14. In its [report](#), the DPLRC reiterated its longstanding position that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
15. It noted, however, that it was content with the power conferred on the Secretary of State under clause 14 in relation to the implementation of the Bill, as the purpose for which the power may be exercised is limited.
16. Similarly, it noted it was content with the power conferred on the Secretary of State under clause 15 (related changes to local government contracting restrictions), as it is a narrow and technical power limited to consequential changes to provisions relating to procurement in the 1988 Act.

Decisions

- 17. After considering evidence from the Minister, the Committee is required to reflect upon the Memorandum and then reach a view on whether it is content with its terms and report its findings to the Parliament.**

**Economy and Fair Work Committee Clerks
17 November 2023**

² [Economic Activities of Public Bodies \(Overseas Matters\) Bill – Legislative Consent Memorandum](#)

Legislative Consent Memorandum

Economic Activity of Public Bodies (Overseas Matters) Bill

Background

1. This memorandum has been lodged by Shona Robison, Deputy First Minister and Cabinet Secretary for Finance, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Tom Arthur, Minister for Community Wealth and Public Finance. The Economic Activity of Public Bodies (Overseas Matters) Bill was introduced in the House of Commons on 19 June 2023. The Bill can be found at [Economic Activity of Public Bodies \(Overseas Matters\) Bill - Parliamentary Bills - UK Parliament](#)

Content of the Economic Activity of Public Bodies (Overseas Matters) Bill

2. The UK Government describes the effect of the Bill as being to ban public bodies from implementing their own boycotts or divestments against foreign countries and territories, where these are inconsistent with formal UK Government legal sanctions, embargoes, and restrictions.

3. The UK Government describes the justification for the Bill as being to ensure a consistent foreign policy across the UK and that the UK speaks with one voice internationally.

4. Clauses 1 and 2 of the Bill would make it unlawful for bodies subject to section 6 of the Human Rights Act 1998 (for short-hand hereafter referred to as "public bodies"), including the Scottish Ministers, to make a regulated decision which "was influenced by political or moral disapproval of foreign state conduct" or by the disapproval of a third party seeking to influence that decision. This restriction applies to "procurement decisions" (defined as decisions about the purchase of goods, services or works) and "investment decisions" (defined as decisions about the acquisition, management, retention or disposal of an asset wholly or principally for the purposes of investment).

5. Clause 3 confers a power on UK Ministers to disapply this restriction in respect of certain countries, territories, considerations, or persons. The UK Government explains, for example, that if this regime had been in place at the time of the invasion of Ukraine, it would have disappplied the restriction in relation to Russia.

6. That power is limited in that it explicitly cannot be used to disapply the restrictions specifically or mainly in relation to Israel, the Occupied Palestinian Territories, or the Occupied Golan Heights. The effect of this limitation is that Israel is placed in a unique position amongst all other countries in the world – no matter what action it may take, the UK Government would be unable to act swiftly by secondary legislation to permit public bodies to take that action into account in relevant decisions.

7. Clause 4 would make it unlawful for public bodies to publish a statement indicating that they intend to act in a way which would contravene the restrictions imposed by the Bill, or would intend to act in such a way were it lawful to do so. This provision would not only prevent public bodies from stating that they intend to breach the restriction in clause 1 of the Bill but, significantly, from stating that they would intend to act in such a way were they not prohibited from doing so. This means that a public body would be in breach merely by stating that their intention would be to take a different approach had it been open to them to do so.

8. Clauses 5 to 11 set out the enforcement regime in relation to these restrictions. The Bill designates UK Ministers as the enforcement authority in relation to these restrictions, and gives them the power to:

- Issue “information notices” requiring public bodies to give them information about their approach to such decisions or statements. These notices would permit the enforcement authority, among other things, to assess whether a decision-maker has breached the prohibitions.
- Issue compliance notices to public bodies requiring them to refrain from taking certain actions; and
- Impose fines on public bodies (the maximum amount is to be prescribed in regulations) for non-compliance with those notices. This would include the ability to fine the Scottish Ministers for non-compliance. It should also be noted that interest will be due on any fine that is not paid timeously or in full.

9. Persons with sufficient interest in the subject-matter of an alleged breach are also given standing by the Bill to make an application for judicial review; with the courts then able to make any order they think appropriate by way of relief and for the purpose of preventing a breach. The Bill enables such challenges to be raised even when the decision or statement, which is the subject of the challenge, would not be amenable to judicial review.

10. Clauses 12 and 13 apply restrictions to local government pension schemes and provides the Pensions Regulator with power to enforce them.

11. Clause 14 makes provisions regarding the relationship between the Bill and procurement legislation. Sub-sections (1) to (3) relate to powers and provisions in the Procurement Bill (which will largely only apply to reserved, Welsh and NI bodies), which, in the case of sub-sections (1) and (3), do not have equivalents in Scottish

legislation. Sub-sections (4) and (5) make an explicit saving for provisions in the Procurement Bill which set out the lawful grounds on which a public body may (or must) exclude a bidder. Such explicit protection is not afforded to exclusions provisions in the suite of legislation regulating devolved Scottish bodies' procurement activity – instead a power is conferred on the Secretary of State by sub-section (6) to make regulations relating to the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016, the Procurement Reform (Scotland) Act 2014, and any regulations made under that Act, for purposes “similar” to the preceding subsections or paragraph 2 of the Schedule (relating to defence contracts). It is not clear why the UK Government has taken this approach, instead of simply replicating the provisions of 14(4) in relation to the Scottish procurement legislation. This creates a new, enduring, and wholly unnecessary power for UK Ministers to make regulations in relation to devolved Scottish procurement legislation.

12. Clause 15 amends section 17 of the Local Government Act 1988. That Act prevents local authorities (and some other bodies) from taking specified non-commercial matters into account in contracting decisions. The Bill will omit section 17(5)(e), which prevents local authorities from taking the location of a contractor into account. It also gives UK Ministers the ability to specify in regulations that some matters fall outside of the restriction in 17(5)(f), which relates to consideration of the political, industrial or sectarian affiliations of a contractor.

Provisions which relate to Scotland

13. The Bill extends to Scotland. It applies to all bodies subject to section 6 of the Human Rights Act 1998 in relation to the procurement or investment decision at hand. That is to say that it extends to courts, tribunals and any body corporate whose functions are of a public nature. The Scottish Ministers would therefore be bound by this Act.

Why legislative consent is required

14. In accordance with Rule 9B.1 of the standing orders, this is a relevant Bill because it alters the executive competence of the Scottish Ministers, by including them within the scope of the Bill. Currently, the Scottish Ministers have the ability – to the extent permitted by procurement legislation – to consider the country or territory of 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 of this is the position taken by the Scottish Ministers in relation to procuring goods from Russian suppliers following the invasion of Ukraine. The Bill will unduly restrict, if not entirely remove, this ability and, therefore alter the executive competence of the Scottish Ministers. The Bill would further limit and caveat the executive competence of Scottish Ministers by making it unlawful, under punishment of fine subject to interest, to even state they would have acted differently or otherwise, were it not for the provisions of the Bill.

Reasons for not recommending legislative consent

15. The Scottish Government considers this to be a wholly unnecessary and unwelcome alteration of Scottish Ministers' competence, and suggests that there are three principal reasons why the Scottish Parliament should not give its consent to the Bill.

16. The first reason is the disproportionate and unnecessary nature of the Bill. It is not clear what problem the UK Government is seeking to address by including the Scottish Ministers in the scope of this Bill. The Scottish Government has always acted responsibly and in line with the UK's international commitments. In any event, however, an 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.

17. There are also already significant protections in Scottish procurement legislation which require equal treatment to be extended to bidders from countries with which a relevant trade agreement applies – and this includes Israel, for example, which like the UK is party to the World Trade Organisation's Agreement on Government Procurement (the GPA). These protections are set out in regulations 19, 26A, 26B, 87A and 87B of the Public Contracts (Scotland) Regulations 2015; regulations 28, 51A and 51B of the Concession Contracts (Scotland) Regulations 2016; and regulations 34, 41A, 41B, 100A and 100B of the Utilities Contracts (Scotland) Regulations 2016.

18. The second reason is the importance of being able to take a values-based approach to international engagement, as set out in the Scottish Government's Global Affairs Framework and Vision for Trade, for example. The Scottish Government's international activity creates opportunities at home, broadens our horizons, attracts high-quality investment and ultimately benefits the people of Scotland. While the Scottish Government will always meet the obligations placed upon it by international law and treaties, people in Scotland rightly expect that decisions should not be made in an ethical or moral vacuum.

19. The third reason relates to democracy. To make it unlawful for Scottish Ministers to even publish a statement to the effect that they would have acted in a certain way were it not outlawed by this Bill – or risk having fines levied by the UK Government – is an assault on democratic expression and will stifle the ability for democratic debate. This betrays a weakness in the UK Government's attempts to present itself as a defender and indeed, promoter of democratic rights internationally, as well as diminishing claims to moral leadership in the face of the present challenges to the rules-based international order.

20. The UK Government's approach to apartheid government in South Africa, refusing to condemn it when others were actively boycotting it, demonstrates the danger inherent in this restriction. We are rightly proud of those in Scotland who took a stand against apartheid. Under the provisions of this Bill, many of them would have been silenced. For a Government to outlaw the expression of ideas different to its own is wholly unjustifiable and entirely incompatible with the notion that we live in a functioning democracy.

Consultation

21. There has been no specific consultation on this Bill.

Financial implications

22. Other than the threat of fines, subject to interest, for non-compliance with the new regime, there are no financial implications arising directly from the decision to give or withhold consent to this Bill.

Conclusion

23. This Bill represents an unnecessary and unwelcome limitation on the executive competence of the Scottish Ministers. It is a wholly disproportionate approach, which would curtail Ministers' ability to take a values-based approach to their activities, and it acts to stifle democracy.

24. The Scottish Government will not be recommending that the Scottish Parliament gives its consent to the Bill.

Scottish Government
July 2023

This Legislative Consent Memorandum relates to the Economic Activity of Public Bodies (Overseas Matters) Bill (UK legislation) and was lodged with the Scottish Parliament on 19 July 2023

Economic Activity of Public Bodies (Overseas Matters) Bill – Legislative Consent Memorandum

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Written submission from the Scottish Council of Jewish Communities

Background information

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted very widely among members of the Scottish Jewish community, and this response reflects the views of all branches of Judaism that have communities in Scotland.

The Scottish Council of Jewish Communities, the Jewish Community, and Israel

The remit of the Scottish Council of Jewish Communities does not include international affairs, and, in particular, it is not our remit to lobby for any particular view on the Middle East, not least because Jewish people in Scotland hold as wide a variety of views about current Israeli politics as do non-Jewish people, and it is not difficult to find Jewish supporters of all positions in Israeli politics. The impact of Scottish attitudes and initiatives relating to affairs in the Middle East on the Jewish community in Scotland is, however, our remit, and it is frequently the case that these cause increased fears and feelings of anxiety among people who, in many cases, already feel vulnerable.

Relationship between the Scottish Jewish Community and Israel

A significant majority of the Scottish Jewish community have family and friends in Israel just as many other Scottish people also have a close relationship with another country, including the First Minister who has described Pakistan as “a country very close to my heart”¹, and himself as “a Scottish-Pakistani”². And in a beautiful cameo

¹ <https://twitter.com/HumzaYousaf/status/1656249554402983940>

² <https://twitter.com/HumzaYousaf/status/1655229158807547904>

he described how “One of the really lovely things that happened when I got elected first minister was that virtually every single person in my grandad’s hometown in Pakistan must have tried to call me. ... the caller would tell me they were from Mian Channu, where my grandfather came from, and they just wanted to say ‘hello’ ...”³.

In addition to these personal connections, several academic studies into the attitudes of Jewish people in Britain have found that “Israel is part of the Jewish identity” of the vast majority of British Jews. The Institute for Jewish Policy Research found that for 82% of the respondents, Israel plays an ‘important’ role in their Jewish identities,⁴ and 76% feel that Israel is relevant to their day-to-day lives in Britain, while research by City University found that 93% of respondents said that Israel forms some part of their identity as Jews, 90% supported its right to exist as a Jewish state, and 84% expressed pride in its cultural and scientific achievements.⁵

It is, however, important to emphasise that merely having some personal connections in, or affinity with, another country does not mean that someone should be held responsible for the actions of the government in that other country. There is no excuse for those who, because they disagree with the Israeli government, target people in Scotland simply because they identify them as Jewish.

Antisemitism in Scotland

The present and previous First Ministers have explicitly stated that “Nothing that happens in the Middle East should be used to justify antisemitism in Scotland.”,⁶ but Jewish people in Scotland continue to suffer abuse and discrimination as a result of conflation between “Israel” and “Jewish” – terms that are sometimes used interchangeably, so that what purports to be criticism of Israel actually attacks Jewish people in general, and becomes explicit antisemitism.

This is evident from, amongst other things, a purported boycott of Israeli goods, when Israeli-grown fruit and vegetables in the produce section of Scottish supermarkets escaped the boycotters’ attention as they covered the kosher food shelves with BDS stickers and flyers regardless of the fact that many of those goods had been imported not from Israel but from the US, and others were not imported at all but had been produced in the UK. Several other examples are evidenced on pages 5 and 6 below.

³ Humza Yousaf: *People can call me the continuity candidate but I'm my own man* (Holyrood Magazine, 8 May 2023)

<https://www.holyrood.com/inside-politics/view,humza-yousaf-people-can-call-me-the-continuity-candidate-but-im-my-own-man>

⁴ Committed, concerned and conciliatory: The attitudes of Jews in Britain towards Israel (July 2010) https://www.jpr.org.uk/sites/default/files/attachments/Committed%2C%20concerned%20and%20conciatory_%20The%20attitudes%20of%20Jews%20in%20Britain%20towards%20Israel.pdf

⁵ The Attitudes of British Jews Towards Israel (Department of Sociology School of Arts and Social Sciences City University London, November 2015)

https://www.city.ac.uk/__data/assets/pdf_file/0008/295361/Israel-Report-FINAL.PDF

⁶ Meeting with the First Minister, Humza Yousaf MSP

https://www.scojec.org/news/2023/23v_fm/fm.html

Views about the Westminster Economic Activity of Public Bodies (Overseas Matters) Bill and its potential implementation in Scotland

The Scottish Council of Jewish Communities has carried out a consultation among Jewish people in Scotland, including both those living in settled communities and those living literally from the Borders to the Shetlands outwith any formal Jewish community. A wide range of views was expressed, but the overwhelming majority (more than 74%) supported the proposed measures in their entirety, while an additional nearly 8% supported the main premise of the Bill but without making explicit mention of “Israel, the Occupied Palestinian Territories, or the Occupied Golan Heights”. Just under 16% opposed the Bill in its entirety.

While many respondents commented about the UK Bill, they were also explicit that, by extension, their views were directly applicable to the legislative consent memorandum to extend the remit of the Bill to Scotland.

The majority of respondents expressed concerns about antisemitism:

“BDS is a highly intellectualized form of antisemitism, masked as mere criticism of Israel. In fact, it calls for a boycott of the only Jewish state in the world on ill-informed, and ahistorical grounds.”

“BDS is an antisemitic campaign masquerading as simply "anti-Zionist". This is too common a problem to be ignored”

“Laws must be put in place to protect future generations from all forms of antisemitism whether out in the open or under the radar like the BDS movement.”

“What we need is something to protect us from racism, bullying and aggressive protests, especially on topics (such as Gaza) where we have no influence or responsibility.”

However, some pointed out that boycotting Israel is not necessarily antisemitic:

“it is pertinent to note that boycotting the Occupied Palestinian Territories is not a practice should be construed as necessarily antisemitic, or problematic”

“[I] oppose the spirit in which the bill was written and presented, and the cynical distortion of very real fears of antisemitism to justify restriction of the right of public bodies to boycott.”

Some respondents also supported the Bill because of doubts about whether local councillors had sufficient information to make appropriate decisions about international affairs:

“I have for a very long time had a strong opinion that local Councillors who make these important decisions on behalf of their cities and counties do not

have enough knowledge or understanding of these complex situations in other countries and therefore not in position decide to on behalf of their communities boycott and sanctions which can even cause huge economic hardships to the people they think they are helping.”

Some of those who opposed the Bill made clear that they did not do so because they supported the use of boycotts, commenting, for example:

“I speak as someone who believes that BDS policies are generally unwise, misguided or misapplied.”

“I do not feel that any nation or territory should be a priori unsanctionable. ... [but] wouldn't like to see every local authority having to spend energy on forming its own foreign policy. I don't think my own local authority is competent to do that.”

A number of respondents referred to the devolution settlement. For example, one respondent commented:

“I emphatically believe that the contents of this bill represent a very dangerous slippery slope in terms of unjust UK control over how Scotland governs itself.”

However there were many more comments such as:

“I absolutely agree that foreign policy is not a devolved issue anywhere in the UK. Therefore it is not acceptable for specific organisations to follow their own BDS policy, especially if they are subject to central or local funding.”

“Sanctions and boycotts should not be decided by Local Authorities and only by Central Government.”

“Local authorities and other public bodies should NOT be able to pursue their own foreign policy on this matter.”

The Impact of Particular Procurement and Boycott Policies

In the Legislative Consent Memorandum,⁷ the Scottish Government states, “an 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.

There are also already significant protections in Scottish procurement legislation which require equal treatment to be extended to bidders from countries with which a relevant trade agreement applies – and this includes Israel.”

⁷ <https://www.parliament.scot/-/media/files/legislation/bills/lcms/economic-activity-of-public-bodies-overseas--matters-bill/legislative-consent-memorandum.pdf>

Our concern is not with the impression that may or may not be made on overseas governments – as we have already stated, international affairs are outwith our remit – but on the impact of particular procurement processes and decisions on the Jewish community, and on community relations in Scotland.

The Scottish Government and a number of local councils have, over a number of years, singled out Israel in a way that has not been done with other countries that are also involved in territorial disputes, such as Cyprus, China/Tibet, or India/Kashmir.

In particular, the Scottish Government has issued procurement advice that “strongly discourages trade with illegal settlements in the Occupied Palestinian Territories”.⁸ The continued validity of this advice, issued in 2014, has been re-affirmed this session by the Minister for Business, Trade, Tourism and Enterprise in his answer to a parliamentary question.⁹ Until the current conflict in Ukraine, when, in accordance with UK Government sanctions, a procurement note was issued in respect of Russia and Belarus,¹⁰ the Scottish Government has never issued any other procurement advice relating to any other named country.

The Scottish Government asserts in the LCM that “people in Scotland rightly expect that decisions should not be made in an ethical or moral vacuum”, and this was echoed by several respondents to our consultation who referred to “Jewish historical experience and values”, and “Jewish historical and moral perspective”. They emphasised, however, that moral and ethical positions must by definition be general, not confined to criticism of a single entity. The fact therefore that the Scottish Government has issued procurement advice about only one country, but not issued similar advice in response to widespread concerns about the conduct of grossly oppressive regimes such as Myanmar’s treatment of the Rohingya people, China’s treatment of the Uyghur people, territorial disputes concerning Kashmir and Tibet, and Iranian and Taliban discrimination against women, similarly demonstrates that this is a political and not a genuine ethical and moral stance.

There is no question but that the state of Israel should be held to the same moral and ethical standards as other countries, and indeed the internationally recognised

⁸ Scottish Procurement Policy Note 4/2014 (August 2014)
<https://www.webarchive.org.uk/wayback/archive/20160106214501/http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/SPPN2014/SPPN42014>

⁹ Scottish Parliament written answer S6W-03000 (September 2021)
<https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=s6w-03000>

¹⁰ Scottish Procurement Policy Note 1/2022 (August 2022)
<https://www.gov.scot/publications/public-procurement-russian-and-belarusian-companies-sppn-1-2022/>

IHRA definition of antisemitism,¹¹ adopted by the Scottish Government in 2017,¹² makes that clear by stating explicitly that criticism of Israel similar to that levelled against any other country, and of any particular Israeli government, is entirely legitimate.

What is not legitimate, however, and is listed by the IHRA as an example of antisemitism in public life, is criticising Israel for some specific action while not doing so to other countries for similar behaviour. This is relevant because, as well as the Scottish Government procurement advice referred to above, a number of local councils have discussed, and in some cases approved, a policy of boycott, divestment, and sanctions in respect of Israel but have not done so in respect of Iran, Myanmar, China, or any other named country.

It is well-documented that public statements, comment, and media reporting relating to the Middle East result in an increase of antisemitic incidents in Scotland and elsewhere,¹³ and while the Scottish Government is clearly not intentionally antisemitic, it is a cause for concern to the Jewish Community that the decision to issue special procurement advice about Israel alone may indirectly encourage antisemitism from those who conflate the local Jewish community with the State of Israel.

When one Scottish local authority voted to boycott Israel, some Jewish residents expressed concerns that Scottish Government and Council procurement and boycott policies may, for example, prevent some Jewish people in hospitals or care homes from accessing kosher meals.

Other organisations such as Trades Unions have also implemented policies purportedly targeted against Israel that in fact impact Jewish people in Scotland. One respondent told us:

“I have been very disappointed by the reaction of a senior official from a trade union whom I challenged on their policy towards Israel. For whatever reason, my reaching out to this individual met with a very intensely hostile response and they would brook no further dialogue.”

¹¹ IHRA working definition of antisemitism

<https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

¹² The Cabinet Secretary for Communities, Social Services, and Equalities (13 June 2017, third from last paragraph of statement)

<https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11003&i=100547&c=2008181#ScotParlOR>

¹³ “The level of anger and hate that is directed at Israel always spills over into antisemitism at times of conflict. Such crises see a recurring and disturbing pattern: reactions to ‘trigger events’, often from overseas, cause significant spikes in anti-Jewish hate crimes and hate incidents in the UK. In practice, this means that the perpetrators of these incidents deliberately target Jews and Jewish institutions to express their hatred of, or anger towards, Israel; or they use Israel as an excuse to attack Jews.”

p3 *The Month of Hate* (Community Security Trust, July 2021)

https://cst.org.uk/public/data/file/4/a/The_Month_of_Hate.pdf

As a result of reactions such as this, some Jewish people have told us that they often feel under pressure to declare their support for the Palestinian cause preemptively to people who know they are Jewish, in order to protect themselves from stereotyping and abuse.

Incidents targeting Jewish people in Scotland explicitly on account of dislike of the state of Israel included a supplier ending a business relationship when he discovered that the owner was Jewish; a young person who was subjected to a rant demonising the state of Israel by a clinician during what should have been a mental health appointment (all the more inappropriate in the context of mental health); and the following e-mail which was received by a Scottish Jewish organisation:

“Get to Israel with ye tumshie traitors, your Israel first nonsense. Trying to limit our Scottish freedoms. ... Get out of our country Jewy infiltrators. NOT WELCOME HERE, not true Scots or even greatful guests. Scotland for the Scots Jooland for the traitors with a dual loyalty.”

When we reported the findings of our 2015 survey of Being Jewish in Scotland,¹⁴ we and the then First Minister expressed concern that a number of respondents had told us that, because of rising antisemitism, they had for the first time considered leaving Scotland. This concern is reinforced and given substance by the fact that some Jewish people in Scotland have recently taken up nationality of another European country in order to keep open an escape route should antisemitism worsen still further. To quote one person who has done so,

“My father had to leave his country [to escape the Nazis], and I was raised in the expectation that the time might come when I might have to leave this one. Never lock yourself in a basement with no fire exit.”

It is incumbent on the Scottish Government to take note of and respond to this situation, and of the increased vulnerability of Jewish people in Scotland – not only feelings of vulnerability but vulnerability in fact, as evidenced above.

The Scottish Parliament and the Legislative Consent Memorandum to the Economic Activity of Public Bodies (Overseas Matters) Bill

While undoubtedly welcome, ministerial comments that Jewish people in Scotland should not be a proxy target for those who dislike Israel or Israeli government policy – or that dislike of Israel should not be an acceptable excuse for antisemitism – pious sentiments do not change behaviours. Legislation does, and we therefore urge the Scottish Parliament to take note of the vulnerability and anxiety of many Jewish people in Scotland as demonstrated by the large majority view among the Scottish Jewish community in support of the Westminster Bill, and so reject the Scottish Government Legislative Consent Memorandum to the Economic Activity of Public

¹⁴ What's Changed about Being Jewish in Scotland? (Scottish Council of Jewish Communities, 2015) <https://scojec.org/resources/files/bjis2.pdf>

Bodies (Overseas Matters) Bill, so as to permit the UK Parliament to legislate for Scotland on this occasion.