

# Student Briefing:

## Economic Activity of Public Bodies (Overseas Matters) bill

### Summary

The government has tabled the ‘Economic Activity of Public Bodies (Overseas Matters) bill’ (often called the ‘anti-boycott’ bill) which could dramatically restrict campaigns for social and climate justice. It needs to pass through parliament<sup>1</sup> to become law, but here’s what you need to know about the proposed legislation.

The legislation aims to prevent local authorities, universities, some pension funds, and other public institutions from exercising ethical discretion when making financial decisions. If passed, the bill would require decision makers on financial matters in those public bodies (including universities) to show no “regard to a territorial consideration” in a way that indicates “political or moral disapproval of foreign state conduct.”<sup>2</sup> This would bar public authorities from making spending or investment choices that express dissatisfaction with any state, or companies with ties to them, unless explicitly permitted to do so by the government.

A broad coalition of nearly 70 civil society organisations made up of trade unions, charities, NGOs, faith, climate justice, human rights, and solidarity organisations are calling on MPs to reject this bill in parliament.<sup>3</sup> They argue that boycott and divestment campaigns are used to campaign peacefully for progressive change in this country and around the world: they are important tools for accountability and core elements of freedom of expression, which should be protected in a democratic society. **Student organisers have long used divestment as a tactic, from targeting companies complicit in South African apartheid, to the arms trade, and fossil fuel extraction. Many see this bill as the latest attempt from the government to curtail the power of the student movement as a force for justice.**

### Background: What is the ‘anti-boycott’ bill?

Before tabling this bill, the government said that its intention is to “ban public bodies from conducting their own boycott campaigns against foreign countries or territories” and to stop public bodies from “taking a different approach to the UK government on sanctions and foreign relations”.<sup>4</sup>

Similar wording was used in government guidance to Local Government Pension Schemes in 2016, which was successfully challenged through judicial review in 2017 initiated by the Palestine Solidarity Campaign, and then defeated a second time in 2020 in the Supreme Court after the government appealed the original decision.<sup>5</sup> As a result, the government was forced to remove language in the guidance that attempted to prevent local authorities from determining investment strategies in line with ethical and socially responsible

<sup>1</sup> Find out how bills become laws here: <https://www.gov.uk/guidance/legislative-process-taking-a-bill-through-parliament>

<sup>2</sup> [Economic Activity of Public Bodies \(Overseas Matters\) bill, 2023](#), p. 2.

<sup>3</sup> <https://righttoboycott.org.uk/>

<sup>4</sup> [Queen’s Speech 2022: background briefing notes](#), 10 May 2022, p. 133.

<sup>5</sup> See press release from barristers I KBW, who represented PSC in the case: “The issue leading to the dispute was about the taking into account of non-financial factors in the making of investment decisions (that is, “ethical investment”)... The “summary of requirements” in the guidance stated that authorities “should not pursue policies that are contrary to UK foreign policy or UK defence policy”. **The majority of the Supreme Court has now held that these passages in the guidance were unlawful.**” [‘Supreme Court decision in Palestine Solidarity Campaign: LGPS investment guidance on foreign policy and defence issues held unlawful’](#), 29 April 2020.

principles. Having been defeated in court twice, the government has now decided to implement its unlawful guidance through primary legislation.

Parallel legislation has been introduced in the USA, where several states have passed laws aimed at curbing boycotts or divestment from companies complicit in the illegal occupation of Palestinian territory. Many of these laws have been overturned in court by civil rights organisations, and others are currently being challenged. This is important context for the UK legislation, because **anti-boycott laws in the USA are now being replicated to restrict those campaigning around environmental protection, gun control, and access to abortion – this is why we’re worried that this legislation could be used very broadly to attempt to restrict campaigning in the UK on a range of ethical issues.**<sup>6</sup>

### **What is boycott, divestment and sanctions?**

Boycotts, divestment and sanctions are three tactics used to impact policy through financial pressure. They are usually used to target companies or institutions that are involved in human rights abuses or other kinds of illegal or unethical behaviour, most famously in the 1970s and 1980s against companies that operated in Britain but were complicit in apartheid in South Africa. Had this law been in place then, it could have forced local authorities and British universities to do business with South African apartheid. Since 2005, Palestinian civil society groups have called for people of conscience around the world to end the involvement of their institutions or companies in their area in the Israeli state’s treatment of Palestinians, which Amnesty International and other human rights organisations have termed apartheid.<sup>7</sup>

- A **boycott** is the refusal to buy or procure products or services, or to support the cultural institutions that are complicit in a state, company or institution’s bad practices. An example of a boycott campaign is the campaign to persuade Barclays bank to pull out of South Africa in the 1970s-80s, when students refused to bank with Barclays until it withdrew from South Africa, which it eventually did in 1986.<sup>8</sup>
- **Divestment** is when an organisation, public body or individual removes any funds or resources they have invested, either directly or indirectly, in a particular state, company or institution. An example of a divestment campaign is that of student campaigners lobbying their university to divest from fossil fuels: so far 94 UK universities and 2 Irish universities have committed to divest from fossil fuels in some form, covering an endowment wealth of over £15bn.<sup>9</sup>
- **Sanctions** are applied by governments to fulfil their legal obligations to promote human rights. They can ban business with the country or organisation, end military trade and free-trade agreements, and/or suspend membership in international forums such as UN bodies. An example of this is the current sanctions applied by the UK government against Russia due to the war in Ukraine: a range of goods and equipment are now “prohibited for export, supply or transfer to, or for use in, Russia or to a person connected with Russia, along with the provision of related technical assistance, financial services and brokering services”.<sup>10</sup>

<sup>6</sup> See, for example: ‘[To crush climate action, fossil fuel advocates are copying anti-BDS laws](#)’ in +972 Magazine, 21 March 2022. See also, the Foundation for Middle East Peace’s [frequently updated list](#) on US legislation proposed using anti-boycott laws as templates.

<sup>7</sup> <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>

<sup>8</sup> <https://www.aamarchives.org/campaigns/barclays-and-shell.html>

<sup>9</sup> <https://peopleandplanet.org/fossil-free-victories>

<sup>10</sup> <https://www.gov.uk/government/publications/notice-to-exporters-202214-additional-sanctions-against-russia/notice-202214-introduction-of-additional-sanctions-against-russia>

## **Who would this bill affect?**

The bill, if passed, would apply to “public bodies”: including all UK ministers and their government departments; ministers in the devolved administrations in Scotland, Wales and Northern Ireland, and their departments and agencies; all local authorities; local government pension funds; universities; and possibly some cultural institutions.<sup>11</sup>

## **What would it mean for universities?**

If it is passed, then this bill would restrict the ability of the university as a body to make decisions about boycotts and divestment (universities would very rarely be involved in the tactic of sanctions), as the decision would have to show no “political or moral disapproval of foreign state conduct”.

This means that the university decision makers such as Vice Chancellors and members of University Councils would be under pressure from the government not to commit to divestment or boycotts that relate to a specific country’s unethical practices. **Government messaging around the planned bill suggests that it is primarily aimed at campaigns against Israel’s violations of Palestinian rights, but other movements who use boycott or divestment tactics will also be impacted. Such legislation could curtail campaigns against deforestation, environmental pollution, and the exploitation of children and workers, in countries where these practices are tolerated or endorsed by the authorities.**

The wording of the bill suggests that the government will argue that, in principle, the right to engage in boycott is protected, while only attempts to ‘single out’ particular states are prevented. In practice, it could make it near impossible to exercise that right in many real-world situations or to effect real change because boycotts work when they are targeted and specific. (An equivalent might be to claim that workers still had the right to strike while introducing a law prohibiting any strike that targeted a particular workplace or employer.)

**Clause 4(1) of the bill forbids all those subject to the proposed new law from even stating that they would support taking a moral stance if it were permissible to do so.** Its application to Scotland, Wales and Northern Ireland and the concentration of substantial powers in Westminster, could also undermine devolution and disempower elected mayors.

**Contrary to the government’s own stated commitment to free speech on campus, preventing universities from making ethical investments, or just openly discussing their potential merits, will seriously curtail academic debate.** Previous attempts to silence local authorities – including the notorious ‘Section 28’ which banned the “promotion of homosexuality” – prove that central government does not always know better than communities and their elected representatives.

**It’s likely that university administrators will over-interpret the law in an effort to be ‘risk averse’ and will try to crack down even on discussions about boycott, divestment and sanctions. This would be a major violation of the Human Rights Act guarantee of freedom of expression, and of universities’ stated commitments to academic freedom, and it’s important that Students’ Unions ensure their students are not being silenced in this way.**

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<sup>11</sup> Full list: [https://publications.parliament.uk/pa/bills/cbill/58-03/0325/EAPB\\_IA\\_15-03-23.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0325/EAPB_IA_15-03-23.pdf) p.9.

## What does this mean for SUs?

A Students' Union is usually recognised to be a separate charitable organisation to the university, so should not be directly subject to this legislation. However, the government's Impact Assessment for this bill states that:

"We [the government] have been communicating with the Charity Commission, the independent regulator of charities in England and Wales. The Charity Commission has confirmed their position on BDS activity within Student Unions. They have said that Student Unions can discuss BDS under their educational purposes, but that taking action would constitute political activity that the Commission would then consider in line with its normal processes, taking any regulatory action that is appropriate in the circumstances."<sup>12</sup>

This does not make it clear what SU activity would be limited by this legislation, as the Charity Commission is clear that Students' Unions can become involved in campaigning and political activity which furthers or supports its charitable purposes, including its educational purposes: "campaigning and political activity can be legitimate and valuable activities for charities to undertake [...] in the context of supporting the delivery of its charitable purposes".<sup>13</sup> However, we are operating in a context where the Charity Commission has already used its powers to crack down on SU motions advocating for BDS in relation to Palestinian human rights, so independent of this bill, campaigners should be aware of the necessity to think carefully about how SU motions are worded, whether they are essential to campaigning, and to consult for advice where needed.

Often motions which include advocating for the tactics of boycotts, divestment and sanctions do fall under the educational objects of an SU. The Charity Commission also states that Students' Unions "can make public comments on social, economic and political issues, if it furthers the educational objects of the SU."<sup>14</sup> In advance of this bill passing, it should be possible for SUs to campaign against its implementation.

**Students' Unions have supported and organised many campaigns which lobby the university to divest from companies for ethical reasons in the past, and this is an important area of their work. It would be a shocking overreach for the government or Charity Commission to forbid SUs to support student campaigns for boycotts of a country or company because of its climate or human rights abuses, but this chilling is a possible impact of the bill.**

## What would it mean for student campaigning?

**The headline is that student campaigning on a range of ethical issues will – and should – continue, whether or not this bill is passed.** Student campaigns, including those supporting the Palestinian-led call for Boycott, Divestment and Sanctions, very rarely actually target a state directly – much more regularly they target companies or industries that are complicit in the oppression taking place in that country or globally (e.g. campaigns for universities to divest from BAE Systems, because of their weapons manufacturing which harms human rights in multiple countries). Similarly, divestment from fossil fuel companies that targets the companies themselves should not be limited by the legislation. **It's important that student campaigns know the limits of this legislation, as it's likely that universities will try to use it as an excuse not to make the changes that students are pushing for, even if the legislation doesn't directly forbid it.**

<sup>12</sup> [https://publications.parliament.uk/pa/bills/cbill/58-03/0325/EAPB\\_IA\\_15-03-23.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0325/EAPB_IA_15-03-23.pdf) p. 8, 'Non-Legislative Guidance'

<sup>13</sup> Charity Commission, 'Campaigning and political activity guidance for charities', 2022

[<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-guidance-on-campaigning-and-political-activity-by-charities>]

<sup>14</sup> <http://ogs.charitycommission.gov.uk/g048a001.aspx> (6.2 Political activity)

Individual boycotts, such as the mass boycott of Barclays banks in the 1970s and 1980s by individual consumers, will not be affected by this legislation, as they are made by individuals, not a public body. Similarly, a for-profit company such as a gym would not be subject to this legislation, and nor would a bank or other business. Students campaigning for individual boycotts of products or companies such as Barclays by other students will not be affected by this bill. Similarly, student campaigns which lobby careers fairs or other events not to platform companies which they are campaigning against should not be affected, as this does not constitute a university-body boycott or divestment.

**Regardless of whether the bill is passed, there will still be many ways for students and the public to use the tactics of boycotts, divestment and sanctions.** However, if this bill is passed, student campaigns and Students' Unions will have to think about ways to lobby the university to act in an ethical way, despite pressure from the government for the university not to engage in boycotts or divestment.

**It is really important that we do not overstep the bill's remit by self-censoring student campaigns in advance:** for example, there are many creative ways to argue that a university divesting from a specific arms company that is engaged in human rights abuses is in fact in line with UK government foreign policy because UK government foreign policy does set limits on the trading of military goods, with a ban on trade of cluster missions, explosive submunitions, goods for the execution of human beings and torture equipment.<sup>15</sup>

**Students can also directly campaign for their university to reject the government's application of this bill,** in a similar way to local councillors who have written an open letter to the government stating that "it is the right, and indeed a responsibility, of public bodies to break ties with companies contributing to abuses of rights and violations of international law, in occupied Palestine, and anywhere else where such acts occur."<sup>16</sup> See 'How do I get involved' below for a template email to send to your university Vice Chancellor.

### **Why is this bill being tabled?**

The government has stated that plans for an anti-boycott bill are motivated by "concerns that such boycotts may legitimise and drive antisemitism as these types of campaigns overwhelmingly target Israel."<sup>4</sup> However, this statement is inaccurate, as boycott, divestment and sanctions are tactics used by a range of campaigns and movements, and it seems intended to create fear and division. The call for Boycott, Divestment and Sanctions (BDS) that comes from Palestinian civil society aims to put pressure on companies that are complicit in violations of their rights. **By suggesting that antisemitism is driven by divestment from companies involved in Israel's violations of international law, the government draws a false equivalence between Jewish people and the policies of the state of Israel, and silencing advocates for human rights and justice. This only hinders the fight against antisemitism.**

The bill singles out the "Occupied Palestinian Territories" and "Occupied Golan Heights" by name, alongside Israel, as territories that the law explicitly protects from public sector boycotts, leaving no room for future exceptions<sup>17</sup>. **Despite assertions that foreign policy is unchanged, this is the first time that a piece of British law will require Israel and the territories it illegally occupies to be treated in the same way, departing from decades of international consensus on the illegality of settlements.**

In fact, 14 of Israel's leading civil society organisations have already written to the government to oppose the anti-boycott bill and many Jewish groups and individuals agree. This opposition transcends the diverse attitudes to Israel and Palestinian rights that exist within the Jewish community in Britain. Some, including

<sup>15</sup> <https://www.gov.uk/guidance/export-controls-military-goods-software-and-technology>

<sup>16</sup> <https://righttoboycott.org.uk/2022/01/12/councillors-1/>

<sup>17</sup> [Economic Activity of Public Bodies \(Overseas Matters\) bill, 2023](#), p. 6-7.



Jews for Justice for Palestinians, Na'amod: UK Jews Against the Occupation, and Jewish Solidarity Action, are actively committed to campaigning for Palestinian rights. Others are completely against the tactics of BDS but believe that a ban would curb democracy and undermine debate. **At its recent conference, the Union of Jewish Students voted overwhelmingly to oppose the government's plans for this bill, describing them as a "curtailment" of "the democratic right to non-violently protest" and "a setback to Israeli-Palestinian peace."**<sup>5</sup>

This bill must be understood in the context of the current government's other legislation, such as the Policing bill, the Public Order bill, the 'Spy Cops' bill, the Nationality and Borders bill, and the Overseas Operations bill and the Strikes (Minimum Service Levels) bill. **All of these laws and related policies aim to impose limits on campaigners' abilities to challenge the UK government and UK companies over illegal or unethical practices, and to participate in our fundamental rights to organise and to hold government and institutions to account.** Watching how similar bills have rolled out in the USA also shows how this kind of legislation can be stretched and applied to create restrictions on a broad range of campaigns, and to create a chilling effect for anyone using boycotts or divestment tactics in the cause of justice, especially when the targets of such campaigns are powerful companies with close ties to government.

This is why so many civil society groups have signed a statement opposing the implementation of this bill: because it has wide-reaching effects on the ability of public institutions to act in line with the beliefs of their members or constituencies when considering human rights and ethical decision making.<sup>18</sup>

### **How can we get involved in campaigning against the bill?**

**The best way for students to oppose this legislation is by continuing to campaign for environmental and social justice with even more vigour.** The content of the bill, if it is passed, may mean that some tactics may need to change, or that some key points of pressure may change, but crucially, campaigning against unethical practices in universities must continue, and students are always at the forefront of these campaigns. [The Right to Boycott coalition](#), who have been organising around opposing this bill, consists of many groups that are already active on campus or which have student branches – by linking up with each other and building coalitions in your organising on campus, we can show the breadth of support for divestment, and opposition to this bill.

Students can also lobby their institutions to speak up against the government's encroachment into their investment decisions (local councillors have [written an open letter](#) to this effect): a **template email to your University Vice Chancellor** is [here](#). You can also lobby your MP to oppose the bill (a template email is [here](#)) and sign and share the petition against the bill here.

If students want to pass a motion opposing this bill in your Student's Union, get in touch with the Right to Boycott coalition, and see our draft motion [here](#).

**You can get in touch with the campaign group at [righttoboycott@palestinecampaign.org](mailto:righttoboycott@palestinecampaign.org)**

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<sup>18</sup> <https://righttoboycott.org.uk/>