

Economic Activity of Public Bodies (Overseas Matters) Bill: call for evidence

Submission by Anti-Slavery International

Founded in 1839, we are the oldest international human rights organisation in the world. We draw on our experience to work to eliminate all forms of slavery and slavery like practices throughout the world. We work in partnership with our supporters, governments, businesses, like-minded organisations and global movements to bring about long-term, sustainable change.

Anti-Slavery International is **concerned with the main provision in the Bill (Clause 1)**, setting the prohibition on public bodies being influenced by “political or moral disapproval of foreign state conduct” when taking procurement and investment decisions. We believe that the legislation could have a negative impact on current efforts for the public sector to cut ties with companies that are benefiting from the exploitation of human rights, including modern slavery, and the environment.

1. Introduction

1.1. The Economic Activity of Public Bodies (Overseas Matters) Bill (“the Bill”) aims to “make provision to prevent public bodies from being influenced by political or moral disapproval of foreign states when taking certain economic decisions, subject to certain exceptions; and for connected purposes.” While there is an exemption in cases of labour-related misconduct, whether that’s the possibility thereof or actual misconduct, this Bill in its current form will:

1.1.1. Undermine policies to include human rights within public procurement practices and could in fact dissuade public procurement decisions based on those grounds.

1.1.2. And, considering the incredibly important role public procurement can play in incentivising ethical business conduct with potential suppliers, would exacerbate an unlevel playing field between businesses that are allocating resources to behaving responsibly and those who are not be.

2. Modern slavery in global value chains

2.1. The 2021 Global Estimates of Modern Slavery released by Walk Free, the International Labour Organisation (ILO) and the International Organization for Migration (IOM) indicate¹ that there are nearly 50 million people living in a situation of modern slavery on any given day. Forced labour accounts for 27.6 million of those in modern slavery. State-imposed forced labour in particular, which happens in cases where forced labour is orchestrated by the state, accounts for one in seven cases of forced labour. More than 60 per cent of people in forced labour are exploited in the private sector, likely linked to the value chains of international businesses providing goods to global markets, as well as to UK public bodies UK. In the UK, forced labour remains the most common form of exploitation identified by the Modern Slavery Helpline.²

¹ <https://www.walkfree.org/global-slavery-index/>

² https://www.unseenuk.org/wp-content/uploads/2022/04/Unseen-Helpline-Annual-Assessment_2021-FINAL.pdf

- 2.2. In the public sector in particular, the UK has allegedly been sourcing PPE made with forced labour from Malaysia,³ the Uyghur Region⁴ and North Korea.⁵ Similarly, a Guardian investigation⁶ found that solar projects commissioned by the Ministry of Defence, the Government's Coal Authority, United Utilities and some of the UK's biggest renewable energy developers were using panels made by Chinese solar companies accused of exploiting people in forced labour camps in the Uyghur Region. The existence of forced labour within the sector reveals that the current procurement systems used by the NHS and UK Government are insufficient to guarantee the sourcing of modern slavery-free products.
- 2.3. Increasingly, we are seeing attempts to ensure accountability for the public sector (e.g. the Health and Care Act 2023 and Public Policy Notes on tackling modern slavery within public sector supply chains). The Bill would have the effect of ending the budding good practice and disincentivising public bodies from taking modern slavery into account for their procurement decisions.

3. How the Bill will undermine policies to include human rights within public procurement practices and dissuade public procurement decisions based on those grounds

- 3.1. We are deeply concerned that, instead of ensuring that the supply chains of the UK public sector are free from modern slavery, the Bill could restrict public bodies from making decisions about responsibly divesting from companies that are involved in forced labour, in particular state-imposed forced labour.
- 3.2. The use of 'Labour-related misconduct' as an exemption to the application of the Bill constitutes a significant risk in relation to modern slavery. Given the ambiguity of the wording, it would be left to the courts to determine whether the exemption in the Bill for 'Labour-related misconduct' applies in a particular case. If a public body chooses to exclude potential bidders from regions with proven widespread forced labour, the burden is on the public body to show that its decision was based only on international law and labour-related factors, rather than on general political or moral disapproval of a foreign state's behaviour.
- 3.3. The potential costs and challenges attached to this burden of proof would put significant pressure on the public body and would discourage it from taking proactive measures and exclude suppliers on the grounds of forced labour.
- 3.4. The case studies below exemplify our concern:

- 3.4.1. Turkmenistan is a country where state-imposed forced labour is well documented. Turkmenistan is also the 10th-largest cotton producer in the world and has a vertically integrated cotton industry. Companies face the risk of cotton made with state-imposed forced labour in Turkmenistan entering their cotton supply chains at all stages of production.

³ <https://www.theguardian.com/global-development/2020/sep/25/nhs-sourcing-ppe-from-company-repeatedly-accused-of-forced-labour-top-glove>

⁴ <https://www.theguardian.com/politics/2021/aug/22/labour-says-ppe-contracts-must-not-go-to-xinjiang-firms-that-use-forced-workers>

⁵ <https://www.theguardian.com/global-development/2020/nov/20/uk-sourced-ppe-from-factories-secretly-using-north-korean-slave-labour>

⁶ <https://www.theguardian.com/environment/2021/apr/23/revealed-uk-solar-projects-using-panels-from-firms-linked-to-xinjiang-forced-labour>

Suppliers in third countries, in particular Turkey, but also Pakistan and Italy, use cotton, yarn, and fabric originating in Turkmenistan.⁷ Some of these products containing Turkmen cotton are subsequently exported to global markets, including the UK.

3.4.2. The Xinjiang Uyghur Autonomous Region (Uyghur Region) is another example of state-imposed forced labour, where the Chinese Government has detained an estimated 1-1.8 million Uyghurs, Kazakhs and other Muslim and Turkic-majority peoples. This is considered the largest internment of a religious and ethnic minority group since the Second World War, and forced labour is a key part of the system of persecution. The UK Overseas Business Risk guidance⁸ has noted the risk of Uyghur forced labour being present in the cotton industry, textiles, automobiles, electronics and polysilicon – a key material for solar panels.⁹ UK companies are directly profiting from this forced labour in various sectors, in particular textiles, solar, automobiles, PVC flooring and electronics, due to the global reach of Chinese supply chains.¹⁰ As noted by UNISON, the law could end up preventing public officials from supporting the divestment from companies involved in human rights violations in the Uyghur Region.¹¹ Companies which provide surveillance equipment to the Uyghur Region¹², which on the face of it aren't directly related to labour and therefore will likely fall outside the 'Labour-related misconduct' exemptions, would pose a significant risk to public bodies wanting to cut ties with companies that are enabling exploitation in the Uyghur Region.

3.5. Ultimately, the Bill will undermine the attempts of the UK to ensure the public sector integrates its responsibilities towards human rights and the environment through their procurement policies. These attempts include, for example, the inclusion of the public sector in the material scope of section 54 of the UK Modern Slavery Act, the Transparency in Supply Chains Clause (TISC).

4. The role public procurement can play in incentivising ethical business conduct with potential suppliers

4.1. According to OECD data,¹³ public procurement represents around 16% of the UK's GDP. Given such a prominent role in the UK's economy, the public sector plays a key part in promoting businesses' respect for human rights. In practice, the Bill's design could discourage public bodies from using their procurement and investment strategies to promote ethical business practices. It also provides a sense of security to companies relying on public contracts, essentially making their global impact on human rights and the environment less important for their competitiveness in bidding processes.

4.2. Even where the Bill would provide exemptions for labour-related cases, passing this law would increase public bodies' difficulties in using their economic power to influence ethical business

⁷ <https://www.cottoncampaign.org/turkmenistan>

⁸ ⁹ The UK Government provides information for UK businesses on political, economic and security risks when trading overseas through their UK Overseas Business Risk

guidance, which can be accessed here: <https://www.gov.uk/government/collections/overseas-business-risk>

⁹ <https://www.gov.uk/government/publications/overseas-business-risk-china/overseas-business-risk-china>

¹⁰ <https://www.antislavery.org/wp-content/uploads/2023/05/ASI-briefing-UK-BHREA-report-May-23.pdf>

¹¹ <https://www.unison.org.uk/news/article/2023/07/fighting-to-protect-workers-rights/>

¹² <https://www.business-humanrights.org/en/latest-news/china-hikvision-cameras-help-track-uyghurs-and-other-ethnic-groups-in-xinjiang-report-finds/>

¹³ <https://stats.oecd.org/Index.aspx?QueryId=107598>

conduct overseas. As noted by Human Rights Watch,¹⁴ the Bill could reduce the incentives for organisations to conduct human rights and environmental due diligence. Given the Bill's ambiguity, disclosure requirements and financial penalties, public bodies could be discouraged from conducting due diligence to assess whether their financial decisions might implicate them in human rights abuses and environmental harms, due to fear of potential repercussions.

- 4.3. Sourcing PPE from Malaysia is a prime example of forced labour taking place in the supply chain of the UK's public sector. Unsurprisingly, global demand for PPE increased during the Coronavirus pandemic. Malaysia supplies the majority of medical gloves used by the NHS, the single biggest purchaser of gloves in the world. Substantial evidence of forced labour can be found within the Malaysian medical gloves industry, and this increased during the pandemic.¹⁵ Top Glove, a Malaysian PPE company, is the biggest manufacturer of rubber gloves in the world for multiple companies which supply the NHS. During the pandemic, workers at Top Glove allegedly worked 12-hour days, six days a week, with some earning as little as £7 per day.¹⁶
- 4.4. Under the proposed law it would be possible that if NHS bodies made decisions to avoid sourcing from companies in the Malaysian medical gloves industry, those companies could take legal action on the grounds that decision makers have been influenced by "political or moral disapproval of foreign state conduct". Similarly, those companies supplying products and services to the public sector would have fewer incentives to address the global impacts of their operations on human rights and the environment, making less effort to comply with global standards of conduct such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This would create an unlevel playing field between businesses that are allocating resources to behaving responsibly and those who are not.
- 4.5. Conversely, if the Bill were successfully used to change procurement decisions on a company where moral concerns could be seen to be intertwined with labour-related misconduct (i.e. in situations of state-imposed forced labour), the burden shifts to the appellant to show that their objections are rooted in labour-related concerns. This is a tricky standard, particularly as those cases would most likely be brought by civil society organisations. It would then be up to them to amass evidence, of a typically "hidden" crime, with limited resources to support their case to such a high standard that it could not be refuted.

5. The need for stronger legislation

- 5.1. Instead of the introduction of Economic Activity of Public Bodies (Overseas Matters) Bill which, as exposed throughout this submission, could pose new challenges rather than progressing the fight against modern slavery, we need to strengthen the UK's legislative framework on modern slavery and ensure that the public sector falls within the scope of these new stronger laws.
- 5.2. As the cases above show, the UK public sector has failed to ensure that taxpayers' money is not tied to modern slavery. Anti-Slavery International recognises that there is no silver bullet to address forced labour in global value chains. A toolbox of complementary measures would

¹⁴ <https://www.hrw.org/news/2023/07/03/human-rights-watch-briefing-economic-activity-public-bodies-overseas-matters-bill>

¹⁵ <https://modernslaverypec.org/latest/forced-labour-malaysia-medical-glove>

¹⁶ <https://www.theguardian.com/global-development/2021/mar/30/us-bars-rubber-gloves-malaysian-firm-top-glove-evidence-forced-labour>

allow the UK's public sector to put human rights at the core of its procurement policies. Our recommended measures for reforming legislation include, among other elements, the introduction of import controls and a Business Human Rights and Environment Act. These two types of legislation are different in nature, therefore should be considered as complementary, but not interchangeable.

- 5.2.1. Import controls: In recent years, governments have introduced laws through their customs processes in order to be able to block or seize products with forced labour.¹⁷ In the US, for example, the abuses found in the production of rubber gloves in Malaysia led the US Customs and Border Protection to impose an import ban on PPE from Top Glove in July 2020. Comparatively, in the UK, imports from Top Glove increased by 314 per cent between January and July 2020.¹⁸ Import controls can be an effective way to put pressure on companies profiting from forced labour specifically, as it allows government authorities to use their trade and economic power and put immediate pressure on perpetrating governments and companies in question to change practices and remediate workers when harm is found. Import controls are particularly powerful in cases of state-imposed forced labour, where there is systemic forced labour across an entire industry, like cotton in Turkmenistan and across several industries in the Uyghur Region. For additional information, [here](#) you can read the full list of joint CSO and trade union recommendations for the establishment of a legal framework for the transparent imposition of import controls.
- 5.2.2. A Business Human Rights and Environment Act: Anti-Slavery International is calling for the introduction of a new UK Business, Human Rights and Environment Act (BHREA) to create a duty for businesses and public sector bodies to prevent negative human rights and environmental impacts, mandating companies, financial institutions and the public sector to conduct human rights and environmental due diligence across their operations, subsidiaries, and value chains. Over the past few years, support has been increasing from policymakers, business, investors, and the general public for stronger legislation. For additional information, Anti-Slavery International has developed a position paper on a call for a UK Business, Human Rights and Environment Act [here](#).
- 5.3. For more information, please contact Chloe Cranston, Head of Thematic Advocacy Programmes (c.cranston@antislavery.org).

¹⁷ https://aim-progress.com/storage/resources/AIM-PROGRESS%20CSR%20Legislation%20Sheets_March2019.pdf

¹⁸ <https://www.theguardian.com/global-development/2020/sep/25/nhs-sourcing-ppe-from-company-repeatedly-accused-of-forced-labour-top-glove>