



Economic Activity of Public Bodies (Overseas Matters) Bill

HOUSE OF COMMONS PUBLIC BILL COMMITTEE

Written Evidence from the City of London Corporation

Submitted by the Office of the City Remembrancer

Context of this Submission

1. As the governing body of the Square Mile, the Corporation supports and promotes London as the world's leading international financial and business centre. The Corporation also fulfils certain local authority functions. It is the Police Authority for the City of London Police and the Port Health Authority for London and the tidal Thames.
2. The Corporation is additionally responsible for a range of organisations, including the Heathrow Airport Animal Reception Centre, the Barbican Arts Centre, several state schools and an Academies Trust, the Guildhall School of Music and Drama, and numerous public spaces in London and the South-East, including Epping Forest and Hampstead Heath.
3. In consequence of this varied mix of public and private functions, the Corporation has a particular interest in the Bill and how its provisions will apply to hybrid bodies. The Corporation would welcome further clarification on the application of the Bill to hybrid bodies and on the meaning of the term "investment decision".

The need for the legislation

4. The provisions of the Bill reflect the Government's aim to prevent public bodies from using their procurement and investment decisions to pursue their own foreign policy agenda. The Corporation notes the overwhelming support for the Bill by the UK's

Jewish community, and in particular by the Jewish Leadership Council, the National Jewish Assembly, and the Board of Deputies of British Jews.

Application to hybrid bodies

5. The Bill will apply to public authorities as defined in section 6 of the Human Rights Act 1998 (HRA) and the associated case law. It will therefore apply to hybrid public authorities such as the Corporation, to the extent that they are exercising a public function. The private functions or acts of the Corporation will not be within the scope of the Bill.
6. The Government has, however, acknowledged in their memorandum for the Delegated Powers and Regulatory Reform Committee that case law regarding the meaning of “public authority” for the purposes of the HRA might in the future lead to the inclusion of certain bodies that were not intended to be covered by the Bill. To address this risk, the Bill includes a regulation-making power in clause 3(2)(a). This would enable the Secretary of State to exclude bodies or functions from the scope of the Bill by secondary legislation. The Corporation would welcome further clarity on when and how the Government intends to exercise this regulation-making power.

Meaning of “investment decision”

7. The provision prohibiting disapproval of foreign state conduct applies to “a procurement decision” or “an investment decision” made by any public authority. An investment decision is defined in clause 2 of the Bill as a decision about (a) “the acquisition by the decision-maker of an asset wholly or principally for purposes of investment,” or (b) “the management, retention or disposal by the decision-maker of an asset held wholly or principally for such purposes”.
8. The Corporation would welcome greater clarity regarding the application of this provision. A clearer definition of the term “an investment decision” would assist. The phrase “wholly or principally for the purposes of investment” is rather circular and leaves uncertainty as to the meaning of “investment” for the purposes of this provision. A clearer definition would provide public bodies with certainty regarding the financial activity which would fall within the scope of “an investment decision”.

Conclusion

9. The Corporation recognises the importance of the Bill's fundamental aim, to prohibit public bodies from imposing boycotts, divestments and sanctions against countries or territories where such measures would be inconsistent with UK foreign policy. Further guidance from the Government would be welcome on the intended use of the clause 3(2)(a) regulation-making power in response to developing case law on the meaning of a "public authority". The Corporation would also welcome a clearer definition of "an investment decision" in clause 2(3). This would help to provide public authorities with greater certainty regarding the scope of the Bill's application to financial decisions.

August 2023