

Economic Activity of Public Bodies (Overseas Matters) Bill

FOURTH MARSHALLED LIST OF AMENDMENTS TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 20th February 2024, as follows –

Clauses 1 to 3
Schedule

Clauses 4 to 17
Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

The Schedule

BARONESS DRAKE
LORD THOMAS OF CWMGIEDD
LORD SHIPLEY
LORD WILLETTS

27 The Schedule, page 12, line 26, after “financial”, insert “risk, impact and”

Member's explanatory statement

This amendment seeks to allow decision-makers in public bodies to consider the financial risk and impact associated with, for example, the delivery of contracted goods and services and the investments in the Local Government Pension Scheme, without falling foul of the prohibition.

BARONESS NOAKES
LORD PANNICK

28 The Schedule, page 13, line 2, leave out paragraph 6

Member's explanatory statement

This amendment probes the scope of paragraph 6 and its intended purpose.

LORD VERDIRAME
LORD ETHERTON

- 29 The Schedule, page 13, line 2, leave out from “consideration” to end of line 5 and insert “if so required by a regulation adopted under section 3(2)(b) to give effect to the United Kingdom’s obligations under international law.”

Member's explanatory statement

This amendment is consequential to the amendment to Clause 3.

BARONESS BLOWER

- 30 The Schedule, page 13, line 5, at end insert “and conventions, including the Genocide Convention, the Universal Declaration on Human Rights or any United Nations Security Council Resolution supported by the United Kingdom.”

LORD HENDY
BARONESS BLOWER

- 31 The Schedule, page 13, line 5, at end insert –

“6A Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the goods, services or works subject to a procurement decision or their manufacture, provision or supply to the decision maker would or might involve a breach of international law.”

Member's explanatory statement

This amendment would extend consideration of breach of international law from breaches by the UK to breaches by territories outside the UK in the manufacture, provision or supply of goods, services or works.

LORD HENDY
LORD COLLINS OF HIGHBURY
BARONESS BLOWER

- 32 The Schedule, page 13, line 38, at end insert –

- “(c) conduct that amounts to, or would if carried out in any part of the United Kingdom amount to, a violation of an internationally recognised core labour standard as defined in the fundamental labour standards of the International Labour Organization, which are –
- (i) freedom of association and the effective recognition of the right to collective bargaining,
 - (ii) the elimination of all forms of forced or compulsory labour,
 - (iii) the effective abolition of child labour,
 - (iv) the elimination of discrimination in respect of employment and occupation,

- (v) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, maternity leave and other conditions of work,
- (vi) health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness, and
- (vii) non-discrimination in respect of working conditions, including for migrant workers.”

Member's explanatory statement

This amendment would allow a public body, when taking procurement decisions (as defined in section 2(2)), to consider violations or potential violations of International Labour Organization fundamental labour standards (all of which the UK has ratified). The wording is drawn from Article 399(2) and (6) of the Trade and Cooperation Agreement of 2020 (the “Brexit Deal”) agreed by HM Government.

BARONESS JONES OF MOULSECOOMB
LORD COLLINS OF HIGHBURY

- 32A** The Schedule, page 15, line 22, at end insert “, environmental protection, environmental targets, environmental treaties or environmental law (as defined by the Environment Act 2021).”

Member's explanatory statement

This amendment would expand the environmental grounds on which a public body is allowed to make certain economic decisions.

BARONESS JONES OF MOULSECOOMB
LORD COLLINS OF HIGHBURY

- 32B** The Schedule, page 15, line 26, leave out sub-paragraphs (a) and (b) and insert –
- “(a) reduces the level of environmental protection, including in a country or territory other than the United Kingdom, or
 - (b) caused, or had the potential to cause, harm to the natural environment, including the life and health of –
 - (i) plants, wild animals and other living organisms,
 - (ii) their habitats, or
 - (iii) land (except buildings or other structures), air and water,
 and the natural systems, cycles and processes through which they interact.”

Member's explanatory statement

This amendment seeks to extend the definition of environmental misconduct to include damage regardless of whether it is legal or illegal, and to include species, habitats and the natural world.

LORD DUBS
LORD COLLINS OF Highbury

32C The Schedule, page 15, line 29, at end insert –

“Environmental considerations

- 11 (1) Section 1 does not prevent regard to a consideration so far as it relates to action which may be detrimental for the purpose of achieving the Paris Agreement goal or other climate change goal.
- (2) “The Paris Agreement goal” means the goal of holding the increase in the average global temperature to well below 2°C above pre-industrial levels referred to in Article 2(1)(a) of the agreement done at Paris on 12 December 2015.”

Member's explanatory statement

This would provide that a public body can consider the impact of a state's action on the environment and the achievement of international climate change goals. This mirrors language in the Pensions Schemes Act 2021, which puts requirements on trustees to consider climate change as a factor in the governance of a scheme.

Clause 4

LORD WILLETTS
LORD COLLINS OF Highbury
LORD JOHNSON OF MARYLEBONE
LORD WALLACE OF SALTAIRE

33 Clause 4, page 3, line 18, leave out paragraph (b)

Member's explanatory statement

This amendment would remove the prohibition on a person publishing a statement indicating that they would have acted in a way prohibited by Clause 1 if it were legal to do so.

LORD COLLINS OF Highbury
LORD HAIN
LORD WALLACE OF SALTAIRE
THE LORD BISHOP OF MANCHESTER

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

Clause 5

LORD WALLACE OF SALTAIRE

34 Clause 5, page 3, line 27, leave out “or statement”

Member's explanatory statement

This amendment, along with similar amendments to this Clause from Lord Wallace of Saltaire, would mean legal proceedings would only apply to decisions and not statements.

LORD WALLACE OF SALTAIRE

- 35 Clause 5, page 3, line 28, leave out “, or the subject matter of the statement,”

Member's explanatory statement

This amendment, along with similar amendments to this Clause from Lord Wallace of Saltaire, would mean legal proceedings would only apply to decisions and not statements.

BARONESS YOUNG OF OLD SCONE
LORD WALLACE OF SALTAIRE
LORD THOMAS OF CWMGIEDD

- 36 Clause 5, page 3, leave out line 30

Member's explanatory statement

This amendment would, in line with standard practice and other legislation, require other means of enforcement provided by this Act to be exhausted before decisions or statements could be enforced via an application for judicial review.

LORD DAVIES OF BRIXTON

- 36A Clause 5, page 3, leave out from line 30 to line 9 on page 4

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD WALLACE OF SALTAIRE

- 37 Clause 5, page 3, line 31, leave out “or statement”

Member's explanatory statement

This amendment, along with similar amendments to this Clause from Lord Wallace of Saltaire, would mean legal proceedings would only apply to decisions and not statements.

LORD WALLACE OF SALTAIRE

- 38 Clause 5, page 3, line 32, leave out “, or the subject matter of the statement,”

Member's explanatory statement

This amendment, along with similar amendments to this Clause from Lord Wallace of Saltaire, would mean legal proceedings would only apply to decisions and not statements.

LORD COLLINS OF HIGHBURY

38A Clause 5, page 4, line 6, at end insert –

- “(6A) A proposed applicant who has sufficient interest in the subject-matter of an application relating to a local government scheme, as defined in section 12(4), is limited to –
- (a) a member of a pensions committee or sub-committee,
 - (b) a member of a local government administering authority,
 - (c) a member of a statutory body,
 - (d) a member of a Local Government Pension Scheme (LGPS),
 - (e) an officer for an LGPS Fund,
 - (f) an employer under the LGPS, and
 - (g) an individual involved in the acquisition, management, retention, or disposal of an asset held wholly or principally for investment purposes.”

Member's explanatory statement

This amendment would define who has standing to bring a judicial review relating to a local government pension fund.

LORD SHIPLEY

39 Clause 5, page 4, line 9, at end insert –

- “(7A) Where a decision relates to a Local Government Pension Scheme, a person who has standing to make an application under subsection (5) is a person who –
- (a) is a member of a Pensions Committee or Sub-Committee,
 - (b) is a member of a local government administering authority,
 - (c) is a member of a statutory body,
 - (d) is a member of a Local Government Pension Scheme (LGPS),
 - (e) is an officer for an LGPS Fund,
 - (f) is an employer under the LGPS, or
 - (g) is an individual involved in the acquisition, management, retention, or disposal of an asset held wholly or principally for investment purposes.”

Member's explanatory statement

This amendment would define the pool of individuals who would be eligible to instigate judicial review against a Local Government Pension Scheme to try and prevent against vexatious claims.

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

40 Clause 5, page 4, line 13, leave out subsection (9)

Member's explanatory statement

This amendment and others are consequential to another in the name of Baroness Bryan of Partick to Clause 17, removing Wales, Scotland and Northern Ireland from the territorial application of the Bill.

LORD DAVIES OF BRIXTON

40ZA Clause 5, page 4, line 14, leave out “subsections (1) and (3)” and insert “subsection (1)”

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD DAVIES OF BRIXTON

40ZB Clause 5, page 4, line 14, leave out “(in each place it occurs) there were” and insert “there is”

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD DAVIES OF BRIXTON

40ZC Clause 5, page 4, line 17, leave out “subsections (2) and (7)” insert “subsection (7)”

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD DAVIES OF BRIXTON

40ZD Clause 5, page 4, line 17, leave out “were” and insert “is”

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD DAVIES OF BRIXTON

40ZE Clause 5, page 4, leave out lines 19 to 21

Member's explanatory statement

This is a probing amendment, along with the associated amendments to Clause 5, seeking an explanation of the circumstances and implications of when decisions, statements or subject-matter of statements by public bodies are not amenable to judicial review.

LORD WALLACE OF SALTAIRE

Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 5 stand part of the Bill.

Clause 6

LORD WALLACE OF SALTAIRE

40A Clause 6, page 4, line 28, at end insert –

“(3A) In relation to a decision or statement made by, or for the purposes of, a local government pension scheme, the enforcement authority is the Pensions Regulator.”

Member's explanatory statement

This is a probing amendment, to establish whether it is more appropriate for a single regulator to enforce the terms of this Bill, or for that authority to be allocated to bodies sector by sector.

LORD WALLACE OF SALTAIRE

41 Clause 6, page 4, line 29, leave out subsection (4)

Member's explanatory statement

This amendment would remove the Office for Students as an enforcement authority under this section.

LORD WALLACE OF SALTAIRE
LORD COLLINS OF HIGHBURY

42 Clause 6, page 4, line 38, leave out subsection (6)

Member's explanatory statement

This amendment would remove the ability of the Secretary of State to amend this section by regulations.

Clause 7

LORD COLLINS OF HIGHBURY

42A Clause 7, page 5, line 7, leave out subsections (3) and (4) and insert –

- “(3) The conditions in this subsection are that –
- (a) a person has made a decision to which section 1 applies, and
 - (b) the information is necessary to the enforcement authority in assessing whether the person, in making that decision, has contravened section 1.
- (4) The conditions in this subsection are that –
- (a) a person who is subject to section 1 (see section 4(2)) has published a statement, and
 - (b) the information is necessary to the enforcement authority in assessing whether the person, in publishing that statement, has contravened section 4.”

Member's explanatory statement

This narrows the power of an enforcement agency to require information under this clause. It provides that a person may only be required to hand over information where they have made a decision/statement, rather than just ‘are likely to make’, and the information is ‘necessary’, rather than just ‘likely to be useful’ to the enforcement agency. This is to probe the threshold for what will be considered ‘likely’.

LORD WALLACE OF SALTAIRE

42B Clause 7, page 5, line 8, leave out “, or is about to make,”

Member's explanatory statement

This amendment, alongside others in the name of Lord Wallace of Saltaire to Clauses 7 and 8, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention.

LORD WALLACE OF SALTAIRE

42C Clause 7, page 5, line 12, leave out “, or is likely to contravene,”

Member's explanatory statement

This amendment, alongside others in the name of Lord Wallace of Saltaire to Clauses 7 and 8, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention.

LORD WALLACE OF SALTAIRE

42D Clause 7, page 5, line 14, leave out “, or is about to publish,”

Member's explanatory statement

This amendment, alongside others in the name of Lord Wallace of Saltaire to Clauses 7 and 8, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention.

LORD WALLACE OF SALTAIRE

42E Clause 7, page 5, line 18, leave out “, or is likely to contravene,”

Member's explanatory statement

This amendment, alongside others in the name of Lord Wallace of Saltaire to Clauses 7 and 8, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention.

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

43 Clause 7, page 5, line 26, leave out subsection (7)

Member's explanatory statement

This amendment and others are consequential to another in the name of Baroness Bryan of Partick to Clause 17, removing Wales, Scotland and Northern Ireland from the territorial application of the Bill.

BARONESS CHAPMAN OF DARLINGTON
LORD WALLACE OF SALTAIRE

43A Clause 7, page 5, line 32, leave out subsection (8)

Member's explanatory statement

This would remove the provision that this bill supersedes any other obligation of confidence or restriction on the disclosure of information.

LORD WALLACE OF SALTAIRE

43B Clause 7, page 5, line 39, leave out from “legislation” to the end of line 41

Member's explanatory statement

This amendment is to probe the way this bill appears to qualify data protection legislation.

LORD WALLACE OF SALTAIRE

Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 7 stand part of the Bill.

Clause 8

LORD WALLACE OF SALTAIRE

43C Clause 8, page 6, line 6, leave out “, or is likely to contravene,”

Member's explanatory statement

This amendment, alongside others in the name of Lord Wallace of Saltaire to Clauses 7 and 8, would remove the ability of information notices and compliance notices to be given to public bodies prior to an actual contravention.

LORD COLLINS OF HIGHBURY

43D Clause 8, page 6, line 16, after “notice “insert “, including its reasons for being satisfied as mentioned in subsection (1),”

Member's explanatory statement

This is a recommendation of the Constitution Committee. It would put a duty on an enforcement agency, before issuing a compliance notice, to provide the public authority with the reasons they plan to issue one. This is to allow the public authority to be fully informed when they make representations.

Clause 10

LORD COLLINS OF HIGHBURY

43E Clause 10, page 7, line 19, leave out subsection (1)

Member's explanatory statement

This is a probing amendment, to reflect the Constitution Committee's concern that 'The power in Clause 10 to set a maximum financial penalty by way of regulations is unsatisfactory'.

LORD WALLACE OF SALTAIRE

44 Clause 10, page 7, line 20, at end insert –

“(1A) The maximum penalty prescribed by regulations must not exceed 2% of the annual budget of the public body penalised.”

Member's explanatory statement

This amendment places a limit on the maximum penalty for contraventions under this Act.

Clause 11

LORD WALLACE OF SALTAIRE

Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 11 stand part of the Bill.

Clause 12

BARONESS BLACKSTONE
LORD HANNAY OF CHISWICK
BARONESS JANKE
LORD THOMAS OF CWMGIEDD

45 Clause 12, page 8, line 6, leave out “management”

Member's explanatory statement

This amendment would remove management from the definition of a fund investment decision, to allow investors to carry out stewardship activities include engagement and voting, without falling foul of the prohibition.

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

46 Clause 12, page 8, line 11, leave out paragraph (b)

Member's explanatory statement

This amendment and others are consequential to another in the name of Baroness Bryan of Partick to Clause 17, removing Wales, Scotland and Northern Ireland from the territorial application of the Bill.

LORD COLLINS OF HIGHBURY

46A Clause 12, page 8, line 13, at end insert –

“(4A) Section 1 does not apply in relation to a fund investment decision made by the scheme manager if the decision has been made in accordance with established investment principles.

(4B) “Established investment principles” means –

- (a) the United Nations Guiding Principles on Business and Human Rights,
or
- (b) the United Nations Principles of Responsible Investment.”

Member's explanatory statement

This would provide that a pension fund can continue to take ESG issues (environmental, social and governance) into account in line with existing established investment principles and best practice.

LORD DAVIES OF BRIXTON

Lord Davies of Brixton gives notice of his intention to oppose the Question that Clause 12 stand part of the Bill.

Clause 13

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

47 Clause 13, page 8, line 31, leave out subsection (3)

Member's explanatory statement

This amendment and others are consequential to another in the name of Baroness Bryan of Partick to Clause 17, removing Wales, Scotland and Northern Ireland from the territorial application of the Bill.

LORD DAVIES OF BRIXTON

Lord Davies of Brixton gives notice of his intention to oppose the Question that Clause 13 stand part of the Bill.

Clause 14

LORD DAVIES OF BRIXTON

[Withdrawn]

After Clause 15

LORD WARNER

48 After Clause 15, insert the following new Clause –

“Review of this Act’s compliance with the Human Rights Act 1998

- (1) The Secretary of State must, within 6 months of the passing of this Act, lay before Parliament a review of the Act’s compliance with the obligations under the Human Rights Act 1998.

- (2) The review under subsection (1) must, in particular, assess the Act’s interaction with the right to freedom of expression under Article 10 of the European Convention on Human Rights.”

Member's explanatory statement

This amendment aims to probe to extent to which the Bill is compliant with Article 10 of the ECHR and, if not, whether it is then non-compliant with section 6 of the Human Rights Act 1998.

LORD HAIN

49 [Withdrawn]

LORD WALLACE OF SALTAIRE
LORD COLLINS OF HIGHBURY

49A After Clause 15, insert the following new Clause –

“Review of this Act’s impact on faith communities

- (1) The Secretary of State must, within 6 months of the day on which this Act comes into force, lay before Parliament a review of the Act’s effect on community cohesion with a particular focus on interfaith relations.
- (2) The review under subsection (1) must in particular assess any adverse impacts which have resulted from implementation of the Act on faith communities and outline any proposed measures to mitigate this impact.”

Member's explanatory statement

This amendment would require the Secretary of State to review the impact of this Act on community cohesion and interfaith relations.

Clause 17

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

50 Clause 17, page 10, line 38, leave out “and Wales, Scotland and Northern Ireland” and insert “only”

Member's explanatory statement

This amendment to Clause 17, removes Wales, Scotland and Northern Ireland from the territorial application of the Bill.

BARONESS CHAPMAN OF DARLINGTON

51 Clause 17, page 10, line 39, at end insert –

“(1A) Section 1 does not apply to decisions made by –

- (a) Scottish Ministers, unless a motion has been passed by the Scottish Parliament indicating its consent to this Act;
- (b) Welsh Ministers, unless a motion has been passed by Senedd Cymru indicating its consent to this Act;
- (c) a Northern Ireland department, unless a motion has been passed by the Northern Ireland Assembly indicating its consent to this Act.”

Member's explanatory statement

This would provide that the Act does not apply to decisions made by Scottish Ministers, Welsh Ministers or a Northern Ireland department unless an appropriate legislative consent motion has been passed.

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

52 Clause 17, page 11, line 1, leave out “13(2) and (3) and”

Member's explanatory statement

This amendment is consequential on the amendment to Clause 17, page 10, line 38 in the name of Baroness Bryan of Partick.

LORD WARNER
LORD OATES

53 Clause 17, page 11, line 3, leave out subsection (3) and insert –

“(3A) This section comes into force on the day on which this Act is passed.

- (3B) The rest of this Act may not come into force until before 31 January 2025 or until the Secretary of State has laid a statement before Parliament explaining how the Act furthers the foreign policy objectives of the United Kingdom in relation to the Occupied Palestinian Territories and Gaza.”

BARONESS CHAPMAN OF DARLINGTON
THE LORD BISHOP OF MANCHESTER

54 Clause 17, page 11, line 13, at end insert –

“(4A) The Secretary of State may not lay regulations to bring section 1 into force until the Secretary of State has laid before Parliament a comprehensive list of the bodies to which section 1 will apply.”

Member's explanatory statement

This would require the Secretary of State to provide a comprehensive list of which bodies come into scope of this bill, before the provisions in Clause 1 can be brought into force.

BARONESS CHAPMAN OF DARLINGTON

55 Clause 17, page 11, line 13 at end insert—

“(4A) The Secretary of State may not lay regulations to bring section 1 into force until the Secretary of State has published guidance on in what circumstances an individual is considered to be a “decision-maker” for the purposes of that section, and laid it before Parliament.”

Member's explanatory statement

This would require the Secretary of State to publish guidance to clarify in what circumstances an individual is “a decision-maker” for the purposes of this bill.

BARONESS BRYAN OF PARTICK
BARONESS RITCHIE OF DOWNPATRICK
LORD HAIN
LORD THOMAS OF CWMGIEDD

56 Clause 17, page 11, line 19, leave out paragraph (b)

Member's explanatory statement

This amendment is consequential on the amendment to Clause 17, page 10, line 38 in the name of Baroness Bryan of Partick.

Economic Activity of Public Bodies (Overseas Matters) Bill

FOURTH MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

10 May 2024

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