

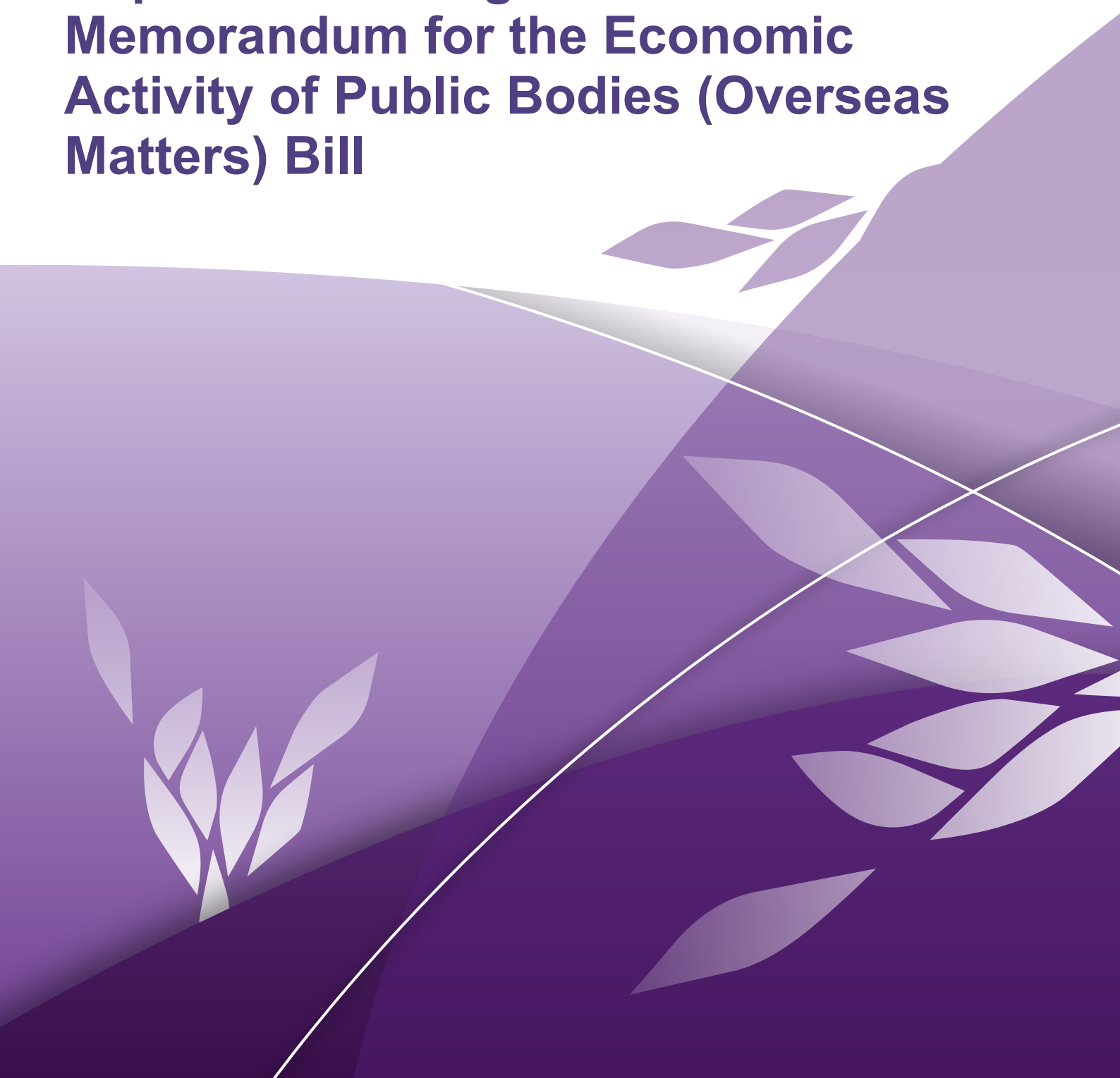


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Economy and Fair Work Committee

Report on the Legislative Consent Memorandum for the Economic Activity of Public Bodies (Overseas Matters) Bill



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Economy and Fair Work Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy with the exception of matters relating to energy; and on matters relating to just transition within the responsibility of the Cabinet Secretary for Net Zero and Just Transition.



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Introduction

1. The [Economic Activity 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 a Legislative Consent Memorandum \(LCM\)](#) on the same date, which was then referred to the Economy and Fair Work Committee by the Parliamentary Bureau.

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

2. 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
3. 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.
4. 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.
5. 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 Government 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.
6. 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 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.

Legislative Consent Memorandum

7. In its LCM, the Scottish Government makes clear that it is opposed to the Bill and does not recommend the Scottish Parliament gives its consent. It notes 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
8. The Scottish Government cites three reasons for this position—
 1. The Scottish Government sees the Bill as being “disproportionate and unnecessary”. It argues that it has always acted responsibly and in line with the UK’s international commitments. The LCM states that the “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.” It also notes that there are already provisions in Scottish procurement legislation which require equal treatment to be extended to bidders from countries where a relevant trade agreement applies.
 2. The Scottish Government highlights the flexibility of being able to take a “value-based approach to international engagement”, noting that while they will always meet the obligations from international law and treaties, it does not make decisions in an “ethical or moral vacuum”.
 3. The third reason relates to the provisions which will prohibit public bodies from issuing statements suggesting they would have acted in a different way if the provisions of the Bill did not apply. The Scottish Government suggests that this is an “assault on democratic expression and will stifle the ability for democratic debate”.

Committee Consideration

Economy and Fair Work Committee

9. The Committee took evidence on the LCM from Tom Arthur, Minister for Community Wealth and Public Finance at its meeting on 22 November 2023.
10. Members of the Committee expressed differing views on the basis for the Scottish Government's recommendation that the Parliament should withhold consent for those provisions in the Bill which relate to Scotland and require legislative consent. The Minister noted the views expressed and stated that the Scottish Government's position is based on its concern that the UK Government is—
 - ” seeking to alter the competence of Scottish ministers and to change the devolution settlement. That is specifically what we are considering in the LCM, and that is situated in the broader context of consistent acts by the UK Government to undermine devolution. That is specifically what the LCM speaks to.³
11. The Minister reiterated the Scottish Government's view that the Bill is not necessary as protections already exist in procurement legislation which require equal treatment to be extended to bidders from countries where a relevant trade agreement applies. He stated that—
 - ” We have a strong record on public procurement. We have clear provision set out in legislation and a suite of tools to assist public bodies in their procurement decisions. All public procurement decisions that are taken in Scotland have to be consistent with domestic and international procurement law obligations.³

Delegated Powers and Law Reform Committee

12. The Delegated Powers and Law Reform Committee (DPLRC) [considered the LCM at its meetings on 26 September and 3 October](#).
13. In its [report](#), the DPLRC reiterated its long-standing position that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
14. 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.
15. 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.

Conclusion

16. Members of the Committee expressed different views on the Scottish Government's position as set out in the LCM.

The majority of the Committee agreed with the Scottish Government's recommendation that the Parliament should not consent to the relevant provisions in the Bill.

The majority of the Committee therefore recommends to the Parliament that consent should not be provided for those provisions in the Economic Activity of Public Bodies (Overseas Matters) Bill which relate to Scotland and require legislative consent, as set out in the Scottish Government's LCM.ⁱ

ⁱ Murdo Fraser and Brian Whittle dissented.

- [1] House of Commons. (2023, June 19). Economic Activity of Public Bodies (Overseas Matters) Bill Explanatory Notes. Retrieved from <https://publications.parliament.uk/pa/bills/cbill/58-03/0325/en/220325en.pdf>
- [2] The Scottish Government. (2023, July 19). Legislative Consent Memorandum for the Economic Activity of Public Bodies (Overseas Matters) Bill. Retrieved from <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/economic-activity-of-public-bodies-overseas-matters-bill>
- [3] The Scottish Parliament Official Report. (2023, November 22). Official Report of the Economy and Fair Work Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EFW-22-11-2023?meeting=15574&iob=132897>

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