Friends of the Earth Parliamentary Briefing
House of Commons Second Reading of the Economic Activity of Public Bodies (Overseas Matters) Bill

Friends of the Earth (England, Wales and Northern Ireland) is deeply concerned about the negative impact this legislation could have on campaigns that aim to encourage public bodies to cut economic ties with countries, companies or products that are driving destruction of the natural environment, pollution overseas or contributing to climate change.

We believe that the right to boycott and divest from countries and companies that pollute our environment, that break international law or abuse human rights is essential in the journey to a greener, fairer future.

Friends of the Earth (England, Wales and Northern Ireland) is one of nearly 70 organisations and charities covering unions, human rights, faith, environment, international solidarity and development that oppose this legislation.¹

We urge MPs to vote to decline to give the Bill a Second Reading on 3 July.

Summary of provisions

This Bill (Clause 1) prohibits public bodies (including councils, universities and some cultural institutions) from making procurement or investment decisions based on “territorial considerations” that a “reasonable observer” would conclude are “influenced by political or moral disapproval of foreign state conduct”. The Bill includes a far-reaching system of information and compliance notices and fines for public bodies that breach the regulations, and powers for the Secretary of State to make exemptions including to list foreign governments that are exempt from the prohibition and therefore could be subject to divestment etc decisions based on political or moral disapproval of their conduct. Other exceptions are listed in a schedule. A gagging clause is included which bans decision makers in public bodies from making any statements that they intend to undertake procurement or investment decisions in conflict with Section 1 or that they would if the legislation allowed them to.
Exception for ‘Environmental Misconduct’ – too weak to work

Section 3(1) refers to a schedule of exceptions from the prohibition contained in Section 1. This includes an exception for considerations relating to “environmental misconduct”, defined as conduct that is an offence in UK law or any other country and causes significant harm to the environment.

This exception is limited and does little to reassure that the legislation won’t have a negative impact on environmental campaigns. Much environmentally destructive activity takes place entirely legally and indeed this could even be the rationale for a boycott or divestment campaign. During the passage of the Environment Act 2021 the limitations of due diligence measures that only targeted illegal deforestation were made clear because, for example, a significant proportion of deforestation due to soy or palm oil in Brazil and Indonesia respectively could take place either legally or it would be difficult to distinguish between legal and illegal activity.

Significant environmental implications, but no assessment of impact

The existence of the exception demonstrates that the scope of the Bill includes environmental matters and has environmental implications. Despite this the Explanatory Notes (para 88) state that the Secretary of State considers that the Bill does not contain an environmental provision that would require a statement under Section 20 of the Environment Act 2021. It is extremely worrying that despite the Bill having environmental matters within its scope the extent of the environmental impact of the legislation is neither explored nor accounted for in the documentation.

We are concerned that a campaign directed at persuading public bodies to boycott or divest from a commodity or a specific product or company due to their involvement in, or association with the environmentally destructive activity or conduct in a foreign state or territory could come within the scope of the legislation. This could be due to the way the campaign is conducted, examples or case studies used or identifying the territory of the extraction or environmentally harmful activity, or because it includes criticism or disapproval of a foreign state’s conduct or policies.

Clause 1(7) is clear that the ‘moral or political disapproval’ of foreign state conduct would not need to be by the decision maker but could be on the part of “any person seeking to persuade the decision-maker to act in a certain way;”. The test of what a “reasonable observer” would conclude means the Bill explicitly targets the nature and conduct of the campaign itself creating a
chilling effect and restricting the freedom of expression of NGOs, civil society and the public.

**Fossil fuel divestment**

Fossil fuel divestment globally has led to institutions with a combined value of over $40 trillion diverting their money away from polluting industries to greener alternatives. This significant public movement is well established in the UK. According to UK Divest the Northern Ireland Assembly and Senedd pension funds have committed to divest from fossil fuels as have the pension funds of five local authorities, and many more have passed supportive motions. Over 100 universities have also made a commitment to divest.

While it does not currently appear that the legislation would constitute a blanket ban on public bodies divesting from fossil fuel investments it could have a significant impact both in prohibiting many specific divestments and have a wider chilling effect on both public bodies considering divestment, and on campaigners. It seems extraordinary that the Government would table legislation that could stifle the public from acting to address the contribution to climate change made by the procurement and investment decisions of public bodies.

The Delegated Powers Memorandum for the Bill states that “The aim of the Bill is to stop boycotts and divestment campaigns of public bodies that are not in line with UK foreign policy.” Fossil fuel extraction is intertwined with foreign policy and international relations. Some of the world’s largest oil and gas companies (such as Saudi Aramco, Petrobras and Equinor) are majority owned or controlled by foreign states. Friends of the Earth is concerned that campaigns to divest or boycott from these could be regarded as a territorial consideration that would indicate disapproval of the conduct of the relevant state.

Additionally, where a fossil fuel divestment campaign cited specific examples of states as part of making the case for divestment – such as Russia or Saudi Arabia – that decision could come within the scope of the legislation. A campaign directed at boycotting or divesting from a specific fossil fuel company for its activity in a foreign state (for example the activity of Total in funding a massive gas project in Mozambique currently), where that activity is legal and conducted with the support of the relevant state, could also come within the scope of the legislation.
There is international precedent for legislation initially targeting BDS campaigns against Israel being applied to halt fossil fuel divestment. In the US, the fossil fuel lobby has used anti-boycott legislation to attack fossil fuel divestment campaigns through state level legislation such as the Energy Discrimination Elimination Act, which have been opposed by Friends of the Earth US.

We are concerned that the absence of an exemption for campaigns targeting countries in breach of international law (there is only an exception from Section 1 where the decision could place the UK in breach of international law) could also undermine attempts to hold countries to key environmental treaties using boycotts or divestment.

The supporting documents for the legislation are clear that the target of the Bill are civil society campaigns aimed at influencing the economic activity of public bodies widely defined and not restricted to a specific issue.

The Explanatory Notes (para 4) state: “Campaigning groups sometimes seek to persuade institutions in the UK, including public authorities, not to buy goods or services associated with particular foreign countries.” Israel is mentioned as “the most prominent example in recent years”.

The notes continue (para 5): “The Government has set out its view that it is not appropriate for public bodies to accede to such campaigns except where to do so is positively consistent with the UK’s foreign policy as determined by the Government.”

The scope of the legislation extends far beyond foreign policy into the ethical and moral considerations of whether the economic activity of public bodies is complicit in or contributing to environmental destruction, human rights abuses and breaches of international law. This legislation constitutes yet another restriction on civil society, when we have already seen a decline in the UK’s international reputation.

We believe this legislation is wrong in principle and unworkable in practice. We therefore urge MPs to decline to give the Bill a Second Reading.

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See [https://righttoboycott.org.uk/](https://righttoboycott.org.uk/)


III See [www.divest.org.uk/what-is-divestment/](www.divest.org.uk/what-is-divestment/)

IV Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee para 23.
In 2023 international civil society monitor Civicus downgraded the UK from ‘narrowed’ to ‘obstructed’ in its rating of nation states civic freedom [https://monitor.civicus.org/country-rating-changes/uk/](https://monitor.civicus.org/country-rating-changes/uk/)

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