

PARLIAMENTARY BUREAU

LEGISLATIVE CONSENT MEMORANDUM - ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL (UK LEGISLATION)

Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls. If two or more committee remits are engaged, the Bureau is required to recommend to the Parliament which of them is to be designated as lead committee.

Economic Activity of Public Bodies (Overseas Matters) Bill

2. This Bill was introduced in the House of Commons on 19 June 2023.

3. A LCM was lodged by Shona Robison, Deputy First Minister and Cabinet Secretary for Finance on 19 July 2023. It is supported by Tom Arthur, Minister for Community Wealth and Public Finance.

4. The Explanatory Notes accompanying the Bill state that it will prevent 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. The Bill will not prevent public bodies from complying with formal UK Government legal sanctions, embargoes and restrictions.

5. The Bill makes relevant provision altering the executive competence of the Scottish Ministers. In particular, clauses 1 and 2 of the Bill would make it unlawful for bodies subject to section 6 of the Human Rights Act 1998, including the Scottish Ministers, to make a regulated decision which was influenced by political or moral disapproval of foreign state conduct or by the disapproval of a third party seeking to influence that decision. This restriction applies to procurement decisions (defined as decisions about the purchase of goods, services or works) and investment decisions (defined as decisions about the acquisition, management, retention or disposal of an asset wholly or principally for the purposes of investment).

6. In addition, clause 4 would make it unlawful for public bodies, including the Scottish Ministers, to publish a statement that they intended to act, would intend to act, or would intend to act were it legal to do so, in a manner prohibited by the Bill.

7. The LCM indicates that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament's consent. The Scottish Government considers that the Bill is an unnecessary and unwelcome limitation on the executive competence of the Scottish Ministers, which would curtail Ministers' ability to take a values-based approach to their activities, and acts to stifle democracy.

Designation of lead committee

8. The relevant provision in the Bill falls within the remit of the following committees:

- Economy and Fair Work Committee – the relevant provision relates to procurement and investment decisions. Following the Cabinet reshuffle and consequent changes to committee remits in June, the remit of the Economy and Fair Work Committee includes 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. While this LCM has been lodged by the Deputy First Minister and Cabinet Secretary for Finance, prior to the Cabinet reshuffle the Economy and Fair Work Committee was responsible for scrutiny of procurement matters (including the LCM for the Procurement Bill). It is understood that, despite the change to Cabinet Secretary responsibilities, committee responsibilities remain the same. No other committee's remit includes procurement or investment policy.
- Constitution, Europe, External Affairs and Culture Committee – whose remit includes to consider and report on the Scottish Government's external affairs policy.

9. Of these, the remit of the Economy and Fair Work Committee appears more relevant because of the focus on procurement and investment decisions. However, formal designation of that committee as lead committee does not preclude any other committee whose remit is engaged from considering the LCM if it so wishes.

10. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

Recommendation

11. The Bureau is invited to recommend, under Rule 9B.3.5, that the Parliament designate the Economy and Fair Work Committee as lead committee on the LCM.

**Parliamentary Business Team
August 2023**