



Baroness Neville-Rolfe DBE CMG
Minister of State
Cabinet Office 70 Whitehall London
SW1A 2AS

The Rt Hon. the Lord Wallace of Saltaire
House of Lords
London
SW1A 0PW

15 April 2024

Dear William,

On Wednesday 20 March, during the committee of the Economic Activity of Public Bodies (Overseas Matters) Bill, I committed that my officials would provide further clarification in the Bill's Explanatory Notes on individual accountability for breaches of the ban, as requested by you and Baroness Chapman of Darlington.

In the debate, you asked for clarity on what is meant by individuals who make the decision for the decision-maker.

Using your own example of colleges in Oxford and Cambridge with governing bodies of 30 to 100 different individuals, it is clear that public authorities will usually delegate decision-making to an individual or a group of individuals.

However, for the purposes of this Bill, the "decision-maker" is a public authority to which the Bill applies. Even when an individual, or a group of individuals makes a decision on behalf of a public authority, the ban only applies to the public authority itself and there is no personal liability for the individual(s). I can confirm that my officials will update the Clause 1 Explanatory Notes, following the Bill's passage through the House. I would like to take this opportunity to share the proposed change with you to let you know that the commitment made on the floor of the House is being acted on. Please see the updated wording below:

For the purposes of this Bill, the "decision-maker" is a public authority to which the Bill applies. Public authorities will usually delegate decision-making to an individual or a group of individuals. This subsection recognises that it is the disapproval of those individuals or third parties seeking to influence those individuals that will be relevant to determining what has influenced the public authority. However, even when an individual, or group of individuals, makes a decision on behalf of a public authority, the ban only applies to the public authority itself and there is no personal liability for the individual(s).

In the instance where a group of individuals make a decision for the public authority, and the decision contravenes the Bill, the Bill provides powers to the enforcement authorities to investigate and determine if the individual, or group of individuals, who made the decision did so with regard to a territorial consideration in a way that indicates they were influenced by moral or political disapproval of foreign state conduct, and therefore in breach of the ban.

An enforcement authority will have the power to issue an information notice, requesting any information that is likely to be useful in investigating the breach. This may include meeting minutes, email correspondence, contracts, or supplier scorecards for example. This enables the enforcement authorities to assess whether the individual or individuals who made the

decision on behalf of the public authority were influenced by their own moral or political disapproval - or disapproval of any other person seeking to persuade them.

The Bill uses the “reasonable observer” test to determine “influence”. This is a longstanding objective test of law of whether a hypothetical individual, who is reasonable, and who, if they were in possession of the facts surrounding the decision-making process, would consider that the decision was influenced by moral or political disapproval.

I trust that this letter answers your question and thank you again for engaging on this important legislation. I would be very happy to meet this week or next if you would find that helpful.

I will place a copy of this letter in the Library of the House.

Warm regards

Lucy Neville-Rolfe

Baroness Neville-Rolfe DBE CMG