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GENERAL COMMITTEES

Public Bill Committee

SUBSIDY CONTROL BILL

Fourth Sitting

Thursday 28 October 2021

(Afternoon)

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Monday 1 November 2021

The Committee consisted of the following Members:

Chairs: † Caroline Nokes, Mr Virendra Sharma

† Baynes, Simon *(Clwyd South)* (Con)
† Benton, Scott *(Blackpool South)* (Con)
† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Buchan, Felicity *(Kensington)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Fletcher, Colleen *(Coventry North East)* (Lab)
Flynn, Stephen *(Aberdeen South)* (SNP)
† Hollinrake, Kevin *(Thirsk and Malton)* (Con)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Millar, Robin *(Aberconwy)* (Con)
† Mortimer, Jill *(Hartlepool)* (Con)
† Scully, Paul *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Stafford, Alexander *(Rother Valley)* (Con)
† Tomlinson, Michael *(Lord Commissioner of Her Majesty's Treasury)*
† Whitley, Mick *(Birkenhead)* (Lab)

Kevin Maddison, Bradley Albrow, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 28 October 2021

(Afternoon)

[Caroline Nokes *in the Chair*]

Subsidy Control Bill

Schedule 2

The energy and environment principles

Question proposed, That the schedule be the Second schedule to the Bill.

2 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is a pleasure to serve under your chairmanship, Ms Nokes. The schedule lists the additional energy and environmental principles that energy and environment subsidies must be evaluated against, in addition to the subsidy control principles in schedule 1. These common-sense additional principles are designed to ensure, for example, that public authorities consider the need for energy and environment subsidies to achieve reductions in emissions, or otherwise increase the level of environmental protection relative to the lower level achieved without the subsidy. There are also more specific principles in schedule 2, including, for instance, those regarding subsidies for electricity generation adequacy, renewable energy and cogeneration. This schedule is key to complying with our obligations under the trade and co-operation agreement with the European Union, and I commend it to the Committee.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Ms Nokes. I thank the Minister for his remarks on schedule 2. I have no further comments to add—we will be supporting this schedule stand part—other than to allude to the debate we had earlier about making more explicit within the schedule the need to deliver the UK's net zero commitment, and that subsidies should contribute to that goal. That is an area that I am sure we will come back to when debating later parts of the Bill, but we will support this schedule stand part today.

Schedule 2 agreed to.

Clause 10

Subsidy schemes and streamlined subsidy schemes

Seema Malhotra: I beg to move amendment 9, in clause 10, page 6, line 30, leave out paragraph (a) and insert—

"(a) is made by—

(i) a Minister of the Crown,

(ii) the Welsh Ministers,

(iii) the Scottish Ministers, or

(iv) a Northern Ireland department; and"

This amendment would extend the power to make streamlined subsidy schemes to the Devolved Administrations.

The Chair: With this it will be convenient to discuss amendment 16, in clause 10, page 6, line 30, after "Crown" insert

", or other primary public authority, as defined in subsection (3),".

The purpose of this amendment is to allow the Scottish Ministers, Welsh Ministers and relevant Northern Ireland department, as well as other public authorities, to make streamlined subsidy schemes.

Seema Malhotra: I am pleased to be able to move amendment 9 on behalf of myself and my hon. Friend the Member for Sefton Central. We have proposed the amendment because we recognise that the streamlined subsidy schemes play a significant role in this legislation. Clause 10 defines subsidy schemes and streamlined subsidy schemes: unlike subsidy schemes, streamlined subsidy schemes can be made only by a Minister of the Crown, but they do create a route for certain subsidies to be passed more easily and quickly, and on occasion have the potential to effectively contribute to key policy objectives and targets, which is their purpose.

The question is why the Government have allowed only the Secretary of State to create streamlined schemes. In our view, the restriction not only limits the potential of the Bill, but undermines the important role of the devolved Administrations. Those Administrations are more likely than the Secretary of State to understand what subsidies and schemes may be most beneficial for their respective nations or areas, and by preventing them from being able to create streamlined schemes, the Government are potentially hampering the effectiveness of subsidies in Scotland, Wales and Northern Ireland. As Daniel Greenberg explained in our evidence session on Tuesday,

"throughout the Bill, you see 'Secretary of State, Secretary of State, Secretary of State'—all powers of HMG—and you think, "Hold on, the devolved institutions are also public authorities. They appear in the list of public authorities in clause 6, so why is it that they do not also share Secretary of State powers?"—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 61, Q80.]

While Labour understand that power over UK subsidies should ultimately reside in Westminster, preventing the devolved Administrations from creating streamlined schemes undermines their important role in our democratic structure, as well as the responsibilities that they have in their respective nations. It should also be noted that any proposals for streamlined schemes must be laid before Parliament, as set out in subsection (5). Any streamlined subsidy schemes created by the devolved Administrations could be subject to ample parliamentary scrutiny. Labour is therefore seeking to amend the clause to allow Welsh Ministers, Scottish Ministers and Northern Ireland Departments to create streamlined subsidies. We believe that the amendment would help increase the effectiveness of subsidies across the UK while respecting the role of the devolved Administrations. We also support the SNP's amendment, which I think would have a very similar effect.

Kirsty Blackman (Aberdeen North) (SNP): It is a pleasure to take part in the Committee's proceedings with you in the Chair, Ms Nokes. I want to say a couple of things. I agree with almost everything that the hon. Member for Feltham and Heston said, apart from the idea that the Secretary of State should have powers over what happens in Scotland, because obviously I believe that Scotland should be independent—but that is probably an argument for another day.

The powers of the Scottish Parliament were voted for democratically in a referendum that showed the Scottish people's will that a Scottish Parliament should be created. Those powers have been discussed on many occasions, including in subsequent Scotland Acts. The powers of the Scottish Parliament, having been agreed democratically, are part of our democracy, whereas the powers that Westminster has do not seem to have ever been discussed or voted on democratically.

As regards what the Opposition spokesperson said about upholding the democratic nature of the United Kingdom and the democratic powers of the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly, I think it is really important that the ability to make streamlined subsidy schemes be included. If the Government are going to talk about levelling up, which I am sure they will—they generally do on such matters—they should consider that those devolved bodies, which are elected to represent those areas, have a huge amount of knowledge and are much closer to the places they represent. They should be able to make streamlined subsidy schemes too, because I believe, as many people do, that they would make them better than Westminster is likely to.

Robin Millar (Aberconwy) (Con): It is a pleasure to serve with you in the Chair, Ms Nokes. It is important to recognise what the constitution of the UK says, and that is very clearly that powers and competences are reserved to the United Kingdom Government. We do not have a system of equivalence; there is no equivalence between a devolved Government and the UK Government, because sovereignty rests here. I know that equivalence features in some of the contributions we are hearing, but there is no place for it in our constitution. The devolved powers and competences are very clearly defined, which is absolutely correct. The suggestion that the Secretary of State's powers should be replicated elsewhere does not fit with our proper constitutional model.

In response to the comment from the hon. Member for Aberdeen North about powers being discussed and voted on, we do of course discuss and vote on powers in the UK Government every time there is a general election, and frequently through sittings like this too, so I am happy that there is extensive consideration of them.

On the point about streamlining, it is important to understand some of the limitations, which are themselves discussed within the devolved Administrations, in particular on the number of elected members. For example, there is currently a discussion within the Welsh Senedd about increasing the number of its Members, and one of the reasons is to improve its ability to scrutinise itself. For all those reasons, I hope that I have made a helpful contribution to the discussion.

Kirsty Blackman: Is the hon. Member's concern about streamlined subsidy schemes that he does not believe the Welsh Senedd has enough Members to agree to such schemes?

Robin Millar: No, I was observing that there is a discussion taking place within the Senedd about the number of Members, and one of the arguments for increasing that number is about improved scrutiny, because having more Members would allow for greater and more effective scrutiny of internal operation, and therefore any decision made, whether on a streamlined subsidy scheme, funding, grants or whatever, would benefit from that extra scrutiny.

Paul Scully: Streamlined subsidy schemes have an important role to play in supporting public authorities to deliver well-designed subsidies: subsidies that address market failures but minimise the risk of excessive distortion to competition, investment and trade and that are not subject to mandatory or voluntary referral to the subsidy advice unit under the provisions of chapter 1 or part 4. The Government intend that streamlined subsidy schemes will be a pragmatic means of establishing schemes for commonly awarded subsidies, including in areas of UK strategic priority, that all public authorities in the UK would able to use if they wish. They will therefore function best when they apply across the entire UK. The Government will design them so that they are fit to be used in all parts of the UK. In addition, clause 10 sets out the procedural requirements when making a streamlined subsidy scheme, including the requirement that it is laid before Parliament.

The practical effect of the amendment would be to require devolved Administration Ministers to lay streamlined subsidy schemes before the UK Parliament, both when they are made and if they are modified. The appropriateness of that procedure is questionable, given that devolved Ministers are not directly accountable to the UK Parliament.

Kevin Hollinrake (Thirsk and Malton) (Con): Can the Minister give an example of a streamlined subsidy scheme?

Paul Scully: The streamlined subsidy schemes will be worked up as we come up to the commencement of the Bill, so I will not set out a list of streamlined moots as yet, but they are there for something that is common and not necessarily devolved in particular areas that needs to be rolled out at speed with minimum interruption to the public authorities. The obvious example—it is not necessarily a streamlined moot—in recent years is the grant scheme that we have had in covid, which came under a lot of pressure from having to ask for exemptions within the European Union to get the framework available there, which meant that we could not roll it out to the extent that we wanted to, as quickly as we wanted to.

Kirsty Blackman: Does the Minister think it possible that some of the streamlined subsidy schemes that will be made are likely to encroach on devolved areas, even though they are being made for the whole UK? If so, does he believe that when a streamlined subsidy scheme is laid before Parliament it should talk about the consultation that has been held with the devolved Administrations responsible and explain why, if they disagree with the scheme, the Government are going ahead anyway?

Paul Scully: Rather than a streamlined scheme encroaching on the devolution settlement, it is important to stress that any public authority in the UK will be free under the Bill to create a subsidy scheme for its own purposes. Schemes have many of the same attributes that streamlined subsidy schemes have in that only the scheme, and not the individual subsidies awarded under it, needs to be assessed under those principles. Schemes offer a similar administratively light touch means of awarding many subsidies that are also open to any and

[Paul Scully]

all public authorities, including the devolved Administrations. What we are saying is that the streamlined subsidies are best used when they are available across the UK but schemes are available to the devolved Administrations, to the public authorities and indeed to the UK Government to award. They are more bespoke and tailored. Because of that, I ask the hon. Lady to withdraw the amendment.

Seema Malhotra: I thank the Minister for his remarks. Perhaps it is something that I have not seen, but could he clarify where it is specified that streamlined subsidy schemes would need to be UK-wide? I could not see it in the legislation.

Paul Scully: What I was saying was that streamlined subsidy schemes do not need to be UK-wide. We are not putting that on the face of the Bill. They work best and are more effective when they can be rolled out across the UK, because schemes effectively do a very similar thing. It could be more bespoke and more tailored to a local area, economy or whatever the subsidy relates to.

2.15 pm

Seema Malhotra: I thank the Minister for his comments. It feels as if this area is not sufficiently defined. I cannot see why we would not want to have better symmetry of powers between the devolved nation Administrations.

Kevin Hollinrake: Is not a reason that this could distort competition between different parts of the United Kingdom? If an example of a streamlined subsidy scheme is the business rate grants for hospitality, whole parts of the UK—Scotland, for example—could provide a huge amount of support across the hospitality sector, which would unfairly disadvantage the rest of the UK. Is that not an example of how this might be a danger?

Seema Malhotra: I am not sure I fully agree with that. Surely it would mean that it was incompatible with the principles in schedule 1. I think that the principles would preclude that. I come back to the point that at the moment we have an asymmetry of power. I cannot, in the circumstances of streamlined subsidy schemes as they are currently defined, see why that should not be a power that is there for the devolved Administrations. It is important to go further with the amendment, and I would like to put it to a vote.

Kirsty Blackman: Just to come back on what the hon. Member for Thirsk and Malton said, business rates are already devolved in Scotland. We already have a more generous system of allowances. People at the lower end of income, pay or value of properties pay less than they would in England anyway. So we already have that in place. It does not have to come in as part of a subsidy scheme or streamlined subsidy scheme, as far as I am aware.

The hon. Member for Feltham and Heston is correct. The Minister seems to be saying that the schemes will apply across the UK, but nothing in the Bill says that this will apply across the UK for any of the streamlined subsidy schemes that come through. The Government could create a streamlined subsidy scheme that applied only in Blackpool, for example. The fact that it is a streamlined subsidy scheme does not mean that it has to apply across the UK.

I did not get a straight answer from the Minister about devolved competencies. Is it intended that the UK Government will make streamlined subsidy schemes that trespass on areas of devolved competency and apply those across the UK? If that is the case, I am even more concerned about this than I already was. If they are going to do that only in reserved areas, that makes sense, but given the Government's tendency to reduce the power of the Scottish Parliament and the other devolved Administrations, I am not sure that I have a huge amount of trust in the fact that the streamlined subsidy schemes will not trespass on the devolved areas.

Paul Scully: The streamlined schemes are not effectively the most commonly used ones. They are few and far between. The schemes will be far more tailored. They do very similar things and provide similar freedoms in terms of ease of access. A scheme, whether streamlined or not, needs to be assessed against the principles. Every streamlined subsidy scheme will be laid in Parliament after it is made. Any streamlined subsidy scheme that is amended will be laid in Parliament. That will ensure transparency for those schemes. We will publish a number of schemes and lay them before Parliament before the regime is commenced. Public authorities will therefore have sufficient time to understand the parameters of streamlined subsidy schemes before the subsidy control regime commences.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 3]

AYES

Blackman, Kirsty	Kinnock, Stephen
Esterson, Bill	Malhotra, Seema
Fletcher, Colleen	Whitley, Mick

NOES

Baynes, Simon	Millar, Robin
Benton, Scott	Mortimer, Jill
Bowie, Andrew	Scully, Paul
Buchan, Felicity	Stafford, Alexander
Hollinrake, Kevin	Tomlinson, Michael

Question accordingly negatived.

Seema Malhotra: I beg to move amendment 10, in clause 10, page 6, line 32, at end insert—

"(4A) A streamlined subsidy scheme may be made, in particular, for the purposes of providing support to areas of deprivation.".

This amendment would clarify that streamlined subsidy schemes may be made for the purposes of supporting areas of deprivation.

I will keep my remarks brief. As I stated earlier, the Bill provides an opportunity to target funding towards areas of deprivation. In our view, that is not made as explicit as it needs to be in the Bill. If we are looking at levelling up, tackling deprivation and equity of outcomes, we would want a streamlined subsidy scheme, in particular for the purposes of providing support to areas of deprivation. We have tabled a similar amendment to

schedule 1, but are seeking here to amend subsection (4) of clause 10. The amendment would explicitly clarify that streamlined schemes can be used to support projects to tackle economic deprivation.

Paul Scully: As we have heard, the Government intend streamlined subsidy schemes to be a pragmatic means of establishing schemes for commonly awarded subsidies. That includes subsidies in areas of UK strategic priority that all public authorities in the UK will be able to use if they so wish.

The Government are fully supportive of action to assist areas of deprivation and to facilitate the levelling-up agenda. The new domestic subsidy control regime will give authorities the flexibility to deliver subsidies where they are needed to support economic growth, without facing excessive bureaucracy or lengthy pre-approval processes. We will also publish guidance to make clear how the principles should be applied by public authorities when considering subsidies that advance the levelling-up agenda or promote the economic development of relatively disadvantaged areas.

We would not want to pre-empt work to develop the streamlined subsidy schemes by committing here and now to privilege one specific policy objective over all the others in the Bill. In any case, the Bill does not set limits on the policy objectives that a streamlined subsidy scheme can pursue. Seeking to specify particular objectives in the Bill may lead to the power to create streamlined subsidy schemes being interpreted in an unduly narrow way in the future. I therefore ask the hon. Member to withdraw the amendment.

Seema Malhotra: I had wanted to press the amendment to a vote, but perhaps I can ask the Minister for further clarification. If, in the further guidance that may be coming on streamlined subsidy schemes, we can return to the question of the objectives and purposes for which those schemes are made, I am happy to withdraw the amendment today and come back to the point in future discussions.

Paul Scully: I am grateful to the hon. Member. It is important that we continue to talk about this issue, so I am happy to discuss it further.

Seema Malhotra: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Paul Scully: As we have heard, the clause confirms that public authorities can create a subsidy scheme and that a Minister of the Crown can create a streamlined subsidy scheme. I have talked about the fact that they are a pragmatic means of establishing schemes for commonly awarded subsidies in areas of UK strategic priorities. All public authorities in the UK will be able to use them, if they so wish.

Seema Malhotra: I thank the Minister for his comments. In relation to the discussions that we have had, and our concerns about some of the areas under clause 10, I will not be proposing that we vote against it standing part. However, there are concerns. If there were some mechanism or means by which we could abstain, we would seek to do so. There are some big gaps in clarity regarding some of the clause's powers and what they can be used for, and we would like greater definition and scrutiny.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

Subsidies and schemes of interest or particular interest

Seema Malhotra (Feltham and Heston) (Lab/Co-op): I beg to move amendment 11, in clause 11, page 6, line 40, at end insert—

"(1A) Regulations under this section must be made by no later than three months after this Act receives Royal Assent".

This amendment would require the Secretary of State to make regulations giving the meaning of "subsidy, or subsidy scheme, of interest" and "subsidy, or subsidy scheme, of particular interest" no later than three months following Royal Assent.

I am grateful for the opportunity to move amendment 11. I mentioned earlier that this Bill has many issues when it comes to devolution. We want a four-nation settlement to be integral to how the regime is implemented. It has to have the confidence of the whole nation, and it must deliver sustainable outcomes across the whole of the UK, but Professor Fothergill summarised on Tuesday:

"From the point of the view of the devolved Administrations, for example, the passage of the Bill will still leave them pretty much in the dark as to what they can and cannot do."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 12, Q8.]

Clause 11 highlights yet another devolution issue. It gives the Secretary of State the power to define schemes of interest, and of particular interest, after the Bill receives Royal Assent. How the Secretary of State chooses to define these areas will have a significant effect on the legislation and its implementation. Given the importance of these definitions, could the Minister explain why the Government have not gone further and included them in primary legislation, instead leaving them up to the Secretary of State? Does he not agree that Parliament should have the opportunity to properly scrutinise such significant definitions at this stage of the Bill?

Does the Minister also recognise that it would therefore be of concern to the devolved Administrations to be excluded from the making of these definitions? Daniel Greenberg expressed on Tuesday how the Bill falls short on

"explanation of some of the systems and mechanisms that will inevitably be required to go on underneath the surface in order to reflect the economic competencies of the devolved Administrations".—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 60, Q80.]

As I have said, the devolved Administrations have an important role to play in the creation and implementation of subsidies in their respective nations. As such, there is an important part for them to play in the process of defining and setting these significant terms.

Paul Scully: As we have heard, amendment 11 would require the Government to make the regulations within three months. The Government fully recognise the importance of establishing clear definitions for the categories in a timely fashion, both to create certainty for public authorities and to set the parameters for the work of the subsidy advice unit.

2.30 pm

Regulations under clause 11 are subject to the affirmative procedure. Therefore, a draft of the regulations will be laid for debate and approval by both Houses of Parliament in sufficient time to allow for the final regulations to be made for the commencement of the regime, and with a sufficient lead-in time for the public authorities. We expect commencement to be in autumn 2022, subject to the passage of the Bill and secondary legislation through Parliament. Therefore, there is plenty of time and I do not believe that the amendment is necessary.

Finally, the Government may need to lay additional regulations under clause 11 at some point in the future. For example, the global economic conditions may change, meaning that we need to amend the definitions. The amendment could prevent the Government from laying essential regulations after the period of three months following Royal Assent. The hon. Lady asked why the subsidies of interest criteria are not in the Bill. We want to ensure that we have the flexibility to develop them in a changing world, so they do sit better within regulations. I therefore ask her to withdraw the amendment.

Kirsty Blackman: To flip that on its head, if the Minister expects and hopes that the regime will be implemented in autumn 2022, will he confirm that he also expects and hopes that the regulations under this clause will be made in advance of the summer recess in 2022 to allow authorities the time to look at them properly and digest them in advance of the scheme coming in?

Paul Scully: Clearly, we want to make sure that the regulations go through due parliamentary process and that colleagues have plenty of time to see them, discuss them and scrutinise them. That is absolutely appropriate. We also want to give businesses time to see what is on the horizon, and to give public authorities—those awarding authorities—time to adjust to the new framework.

Seema Malhotra: I thank the Minister for his remarks. On the basis that we want to ensure that there is time for scrutiny—and I think he alluded to some assurances that things will move as quickly as possible—I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Seema Malhotra: I beg to move amendment 12, in clause 11, page 7, line 8, at end insert—

"(4) Before making regulations under this section, the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(5) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(6) If regulations are made in reliance on subsection (5), the Secretary of State must make a statement to the House of Commons explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned."

This amendment would require the Secretary of State to seek the consent of the Devolved Administrations before making regulations under this section. Where such consent is not given within one month, the Secretary of State may make the regulations without that consent, but must make a statement to the House of Commons explaining their decision.

It is my pleasure to speak to this amendment. It would require the Secretary of State to seek the consent of the devolved Administrations before making regulations under the clause. As the Minister just mentioned, the Government may wish to bring forward further regulations to make changes under clause 11. We propose that if such consent is not given within one month, the Secretary of State may make the regulations without that consent, in line with other principles here and in the United Kingdom Internal Market Act 2020, but must make a statement to the House of Commons explaining that decision.

As I have outlined, we are very concerned that there needs to be a fair and equitable four-nations solution in how this legislation is developed and implemented. That will be an important part of its success and the confidence that people have in it over time. As I have said, the devolved Administrations have an important role to play in the implementation of subsidies, and they should play their part in defining and setting the significant terms in the legislation.

If the Secretary of State is unable to gain the devolved Administrations' consent—I hope that it will be forthcoming on the basis of there being constructive dialogue between the nations, and those mechanisms being set up in good faith—it is important that that has the scrutiny of the House of Commons, and that the Secretary of State makes a statement to the House explaining what the issues were and why agreement was not reached.

As I have said, the regulations will have an important effect on the subsidy regime. It is bad enough that they are not included in primary legislation, but it is important that dialogue happens to ensure that the best regulations are made under this clause. I hope that the Minister will agree that the definitions need to be set in partnership and in discussion with the devolved Administrations, and that it would be a sign of confidence in the regime to seek that consent.

Kirsty Blackman: I have a couple of points on this amendment, and I want to give it my wholehearted backing. I agree that the devolved Administrations should be consulted on these regulations. I would probably go further and have them not proceed if the devolved Administrations did not agree, but we are where we are.

I am a serving member of the Procedure Committee, and we have discussed this at huge length recently in our report and our look at how the territorial constitution works, and how the devolved Administrations relate. One thing that is brought up regularly is that if the UK Government proceed with something in the absence of legislative consent, there is no clear mechanism for the UK Government to explain to Parliament why the process has happened in advance of legislative consent. For me, it seems like the very least that the UK Government should do if something proceeds without consent.

That is important in relation to legislative consent motions for primary legislation where something trips over into devolved competencies, as we have seen a number of times in recent years. When it comes to these regulations, I think it is really important that the devolved Administrations are in agreement with what happens, because, in the main, they will be guaranteed authorities implementing subsidy schemes in the devolved areas. The Scottish Parliament has authority over the local

authorities in Scotland so it will oversee some of their work, particularly when it comes to directing them how to best improve their local areas. If the UK Government are to proceed without the consent of the devolved Administrations, they must come and explain to us why.

I note that the UK Government and Scottish Government, as well as the other Administrations, have regular conversations about how things could go forward, but I feel there is a significant amount of disagreement at the moment in many areas. It would be very good if we could all come to an agreement about what "particular interest" means. If we cannot, I believe that this House should know why the UK Government think that agreement has not been reached, and why they intend to proceed anyway.

Paul Scully: Obviously, the Government welcome the devolved Administrations' ongoing interest in the Bill, and we continue to engage with them on a regular basis. In coming up with this framework, I think we have had at least 34 official-to-official engagements and 10 or so ministerial-to-ministerial engagements with the devolved Administrations. It is important that we continue that spirit of discussion, because we have to set the right definitions for the subsidies of schemes of interest or particular interest.

Having those appropriate definitions is really important to ensure that the subsidy advice unit is focused on the subsidies and schemes that are most likely significantly to distort competition and investment in the UK, or that may do the same to our trade with other countries. It also means, as we have heard, that regulations made under clause 11 may need to be amended quickly in the event that economic conditions change rapidly, for example. A requirement to seek the consent of the devolved Administrations each time the power is used risks introducing significant delays into the process.

Stephen Kinnock (Aberavon) (Lab): I thank the Minister for his comments. As the Institute for Government has made clear in its commentary on the Bill,

"a successful system needs buy-in from all parts of the UK…any regulations should be made in consultation with the devolved administrations…government must take a collaborative approach to writing the regulations that will determine how the system will actually work."

The Minister has made the argument himself, really. In his opening comments, he rightly praised the work that has already taken place, as well as all the conversations—the 34 official-to-official meetings and the 10 Minister-to-Minister meetings—that are happening. That precedent has already been set, and there is clearly a commitment on all sides for that to continue.

The Minister also made the point about urgency, but surely one month is a reasonable timeframe within which to check and consult that we are on the right course, and, if the Governments are still not in agreement, to proceed as the reasonable compromise in our amendment sets out.

Paul Scully: The spirit is certainly there, but I do not want to bind future Administrations to a requirement to respond in emergency situations.

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): I concur with my hon. Friend. We have seen in the past few years—with British Steel, for example—that the Government have had to move incredibly quickly to get subsidies in place. Adding that one-month period could determine the success or failure of such subsidies in supporting a specific UK industry. Time is of the essence.

Paul Scully: Absolutely. The Government have determined—as we did in debate on the United Kingdom Internal Market Act 2020—that subsidy control is a reserved matter, so it is right that subsidy control policy is made and voted on in Parliament. Clearly, we must ensure that those schemes are scrutinised, and we will continue to engage with the Scottish and Welsh Governments and the Northern Ireland Executive, as we have done in drafting the Bill and since its introduction. We are committed to engaging with them regularly and listening to their views during the Bill's passage and beyond. That includes engagement on the definitions of "subsidy, or subsidy scheme, of interest" and "subsidy, or subsidy scheme, of particular interest". I therefore ask the hon. Member for Feltham and Heston to withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments. I also thank other hon. Members who have contributed, particularly the hon. Member for Aberdeen North, who brought her expertise and experience from the Procedure Committee to the discussion. That was quite helpful as it highlighted a wider issue about better defining how the House can more effectively support the goals of our devolved Administrations and of Westminster in a more coherent way.

This quite measured amendment would

"require the Secretary of State to seek the consent of the devolved Administrations before making regulations under the clause. Where such consent is not given within one month, the Secretary of State"

can go ahead. The amendment deals with making regulations under the clause, and would ensure that the process was working properly.

Kirsty Blackman: Does the shadow Minister agree that because the clause deals specifically with schemes of interest and of particular interest, it is pretty unlikely that a situation will arise whereby an economic failure needs to be addressed in the space of a month, but cannot be addressed because the Government cannot change the definition of "interest" or "particular interest"?

Seema Malhotra: I think the hon. Member is right on this—the definitions would not necessarily change in those circumstances, and some of that is more about the speed of being able to grant a subsidy—but I am not sure I followed the logic of the intervention, although I appreciate that there is a concern there and it is important that we iron out those scenarios. However, I am not sure the intervention is pertinent to the issue being debated now.

I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 4]

AYES

Blackman, Kirsty	Kinnock, Stephen
Esterson, Bill	Malhotra, Seema
Fletcher, Colleen	Whitley, Mick

NOES

Baynes, Simon	Millar, Robin
Benton, Scott	Mortimer, Jill
Bowie, Andrew	Scully, Paul
Buchan, Felicity	Stafford, Alexander
Hollinrake, Kevin	Tomlinson, Michael

Question accordingly negatived.

2.45 pm

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause will enable the Secretary of State to make secondary legislation to define subsidies or subsidy schemes of interest, or of particular interest. We know that some subsidies are more likely than others to pose a risk of distorting international trade or competition within the UK. International trade disputes, including at World Trade Organisation level, may have arisen in particular sectors. As we heard earlier, that is especially common in sectors of long-standing global over-capacity, such as steel. Subsidies to enterprises operating in sectors that have historically faced a higher proportion of disputes may therefore warrant a proportionately higher level of scrutiny before they are given.

The Bill will establish the mechanisms for the referral of those subsidies and schemes to the subsidy advice unit, but it is important that the Government have some flexibility to modify the criteria over time in response to market conditions or the periodic reviews that will be carried out by the SAU to ascertain how the domestic subsidy control regime is working. Both Houses will have the opportunity to debate any regulations in draft to ensure that the criteria for what constitutes "of interest" or "of particular interest" are robust and capture the right subsidies and schemes for additional scrutiny.

Seema Malhotra: I will add nothing further to the comments made during our discussion of the amendments. There are areas that we continue to be concerned about, but we will not oppose the clause standing part.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

Application of the subsidy control principles

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause is central to the new subsidy control regime. It will impose a duty on public authorities to consider the subsidy control principles before deciding whether to give an individual subsidy or make a subsidy scheme. A public authority cannot go on to give the subsidy or make the scheme unless they are of the view that it is consistent with those principles. That duty does not apply when a subsidy is given under a scheme. That is because the terms of the scheme must be consistent with the principles themselves, and any subsidies must therefore comply with those terms.

Seema Malhotra: I thank the Minister for his comments. This is an important clause, so we obviously support it standing part of the Bill. I seek his view on a couple of points that came up in relation to earlier clauses regarding how a public authority will confirm that the subsidy is in line with the principles—we talked about that in the debates on clauses 3 and 4 standing part of the Bill—and ensure that the quality of information that is then published reflects the consideration process that the public authority went through.

Earlier, the Minister talked about the expectation that public authorities will keep their own records of how they made assessments that the subsidy being provided would not distort competition, and that there were not ways in which it could have been available in the market on more favourable terms, and so on. It is important from a transparency and public confidence point of view that it be clearer how it would need to be demonstrated, or at least confirmed, by the public authority that it had considered the subsidy control principles and what records might need to be kept should there be a concern at a later date.

Paul Scully: In the first instance, an interested party can request the public authority to provide information demonstrating how it has complied with the duty under clause 76. Under part 5 of the Bill—

Seema Malhotra: I think there will be a further debate to have on the interested parties point. The important thing is what the public authority might be expected to do.

Paul Scully: Absolutely. I was going to say that the interested party can, obviously, make a challenge—commence a judicial review of the decision. The duty to consider and act consistently with the principles does leave room for legitimate judgment by public authorities.

On the question of what standard will be applied when looking at that, should it be judicially reviewed, the Competition Appeal Tribunal will apply the judicial review standard when hearing challenges. None the less, the guidance that is going to be published will provide advice on the practical application of provisions, including the duty to consider and act consistently with the subsidy control principles. That guidance will be published in good time for public authorities and other stakeholders to understand the key requirements of the new regime before it commences.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13

Application of the energy and environment principles

Kirsty Blackman: I beg to move amendment 17, in clause 13, page 7, line 30, leave out

"in relation to energy and environment".

This amendment would require public authorities to consider energy and environment principles when giving any subsidies, not just those related to energy and environment.

The reason I tabled the amendment is something that we covered earlier today in relation particularly to net zero and thinking about the obligations that we all have to ensure the protection of the environment. I think it is really important, as the Minister agreed earlier today, that in every policy decision that is being made by every authority, whether it is granting a subsidy or doing anything else, those authorities are considering the environmental principles of that decision.

This proposal would ensure that consideration was given to the energy and environment principles in schedule 2 in relation to every subsidy that was given. That is not too much for us to ask of granting authorities. They are giving subsidies, and we have to remember that the subsidies they are giving represent significant amounts of money. We are talking about hundreds of thousands of pounds; we are not talking about when a local authority gives a grant of 100 quid to a small community council to put up Christmas lights. As we are talking about big sums of money, it is totally reasonable that we expect these public authorities—which do anyway a huge amount of audit, and a huge amount of sense checking of any spend that they do and consideration of any spend that they do— to think about all that spend. They should do so not just in relation to subsidies, but in relation to the energy and environment principles.

I probably would have written schedule 2 slightly differently. I maybe would have had slightly different energy and environment principles, including the Opposition's suggestions around net zero, but given that those are in the Bill and that schedule 2 is in the Bill, it is totally reasonable for us to say that those authorities should consider the energy and environment in everything they do. That is not explicit or even implicit in schedule 1, in terms of the concerns that authorities have to look at with regard to the principles there. This is hugely important.

Andrew Bowie: Given that we did not accept the hon. Lady's earlier amendment, does she not worry that this new proposal might weaken the Bill further with regard to what she is talking about—environmental protections?

Kirsty Blackman: I think that, actually, schedule 2 does provide some environmental protections; I am quite comfortable in saying that. It does not do everything I would have wanted it to do. It does not create a requirement to meet the carbon commitments and move towards net zero in the consideration of the principles. However, increasing the level of environmental protection is in there, and it is important that all authorities are thinking about increasing the level of environmental protection in whatever they are doing. Now is the time for the UK Government to make that explicit in relation to everything that everybody is doing, whether it is subsidies or something else. That is why the amendment has been tabled.

Seema Malhotra: I thank the hon. Lady for her explanation of the amendment. We certainly recognise the intention behind it, which was something we looked at and gave thought to. We share the view that climate and environmental considerations should be taken into account in assessing all subsidies, and ensuring that all subsidies are assessed in the context of the UK's net zero commitments is important. That is a real gap in the Bill—for example, transport subsidies might sit outside the scope of schedule 2, and therefore a public authority might not be required to consider the environmental questions and impact relating to those.

Labour believes that hardwiring the net zero considerations into all subsidy decisions would be better achieved by amending schedule 1, as our amendment would have done. I hope that as we proceed with our debates in the House and the period of COP26, which is just ahead of us, we can return to how we embed that principle in the legislation. These are principles of general relevance, so that is where we see a general requirement to consider net zero sitting a little more comfortably. That is why, while we support the intention behind the amendment, we would prefer to reconsider how we look at embedding the general principle of net zero more widely in the legislation.

Paul Scully: I remind hon. Members that the principles in schedule 2 include general matters such as requiring energy and environmental subsidies to be aimed at, or to incentivise the beneficiary in, delivering a secure, affordable, sustainable energy system, or to increase the level of environmental protection relative to that which would have been achieved in the absence of the subsidy. The schedule also includes a number of more specific principles, covering for example the decarbonisation of emissions linked to industrial activities or subsidies to electricity-intensive users to compensate for rises in electricity costs.

While I recognise the commitment shown by the hon. Member for Aberdeen North to our transition to net zero—subsidies that are correctly devised, designed and targeted can be a powerful means to achieve that—public authorities grant subsidies for many reasons and in connection with many policy objectives.

Kevin Hollinrake: The UK is pretty much a world leader in tackling climate change, second only to Sweden in the Climate Change Performance Index. We must look at this question in the context of what the United Kingdom does, rather than something so specific. Would not the amendment effectively open the door to a lot of judicial challenges on whether subsidies were always in the interest of energy and the environment? Is that not opening the door to a lot of problems in the granting of subsidies?

Paul Scully: It might be. Whether there would be a slew of judicial reviews remains to be seen, but certainly, there is a question whether subsidies for other policy objectives would be awarded in the first place, because it would be too onerous to do so. Let me take the example of subsidies for training young people. There are some valuable economic and societal purposes there, but depending on what we are training the young people for, they do not always necessarily have much connection to the energy and environmental principles.

Expanding the principles in schedule 2 to include all subsidies may discourage public authorities from granting subsidies in pursuit of otherwise valuable aims. We do not want that to happen. The additional principles in schedule 2, which apply to energy and environmental subsidies and to subsidy schemes, fully support the UK's priorities on both net zero and protecting the environment. I want to ensure, particularly given this morning's discussion and the fact that we are in the lead up to COP26, that we are championing those priorities

[Paul Scully]

and continuing to lean in and show global leadership from the front. In this instance, owing to the reasons I have set out, I ask the hon. Lady to withdraw the amendment.

3 pm

Kirsty Blackman: I thank the Minister, the Opposition and the hon. Member for Thirsk and Malton for their comments. I agree that this amendment is not the best possible way of achieving our aim, and that other amendments moved this morning—particularly the amendment to schedule 1—would be a better way to go about embedding net zero in our commitments. Unfortunately, the will of the Committee was tested this morning, and schedule 1 went unamended. Hopefully it will be amended on Report, or the Government may choose to change it to include net zero commitments in the principles, but this is where we are in the absence of them doing so.

If we are talking about subsidies to get young people into employment, every local authority, or whoever is granting the subsidy, should ensure that they do so in a way that does not take us away from our net zero targets. That should be part of the decision-making process for every decision we make, whether it is about training young people or building an offshore wind farm. My concern, which was raised by the Opposition this morning, is that that is not embedded in everything the UK Government are doing, and it should be. I tabled this amendment because net zero should run through everything that everybody does, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause establishes that public authorities granting energy and environment subsidies, or establishing schemes to award such subsidies, must assess them against the additional principles in schedule 2.

Seema Malhotra: We support clause 13.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

INTRODUCTORY

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause sets out the purpose in general terms of chapter 2 of part 2 of the Bill, which prohibits several categories of subsidy from being given and establishes requirements on the giving of other categories of subsidy.

Seema Malhotra: We support clause 14.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

UNLIMITED GUARANTEES

Question proposed, That the clause stand part of the Bill.

Paul Scully: If the Committee will bear with me—

The Chair: I will try to move more slowly.

Paul Scully: The notes for clause 15 stand part are not in my pack but fortunately, because of technology, which does not require a subsidy, I can tell the Committee that the clause prohibits subsidies in the form of unlimited guarantees of an enterprise's debts or liabilities if this guarantee is either unlimited in monetary terms or in its duration.

Seema Malhotra: I understand that the clause, as the Minister describes, provides that an unlimited guarantee for the debts or liabilities of an enterprise is prohibited. That does, as I understand it, reflect the commitments in article 12.7 of the UK-Japan comprehensive economic partnership agreement on subsidies, and article 367 of the EU-UK trade and co-operation agreement. Perhaps the Minister could confirm that these commitments are rolled over from the EU and Japan agreements.

Paul Scully: As I said, the clause ensures that we continue to comply with our international obligations, which have included those prohibitions on unlimited guarantees for many years.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

EXPORT PERFORMANCE

Question proposed, That the clause stand part of the Bill.

Paul Scully: We are back to old-fashioned analogue for this part of the Bill Committee. The clause prohibits subsidies that are contingent, whether in law or in fact, on export performance. It permits two types of subsidies to be given for export credit support, including short-term export credit insurance for non-marketable risks, and an export credit, an export credit guarantee or an insurance programme as permitted by the agreement on subsidies and countervailing measures. It also defines key terms and specifies a list of marketable risk countries.

Kirsty Blackman: I have a quick question on subsection (7), which says that a direction given under subsections (4) or (6) must "be laid before Parliament" and

"be published in whatever manner the Secretary of State considers appropriate."

It makes sense that it is laid before Parliament. I am not sure what that means, although I probably should. Does it mean that a written statement on the changes is laid before Parliament? Do the words

"be published in whatever manner the Secretary of State considers appropriate"

mean that it will be published for the public or for granting authorities to see? What method does the Minister think might be considered appropriate? Are we talking about putting it on gov.uk, for example, or about writing to organisations to let them know why the changes have happened?

Paul Scully: The clause basically allows the Secretary of State to give a direction to amend the list in order to respond to any changes in market conditions. That direction must be laid before Parliament and published.

Kirsty Blackman: Specifically on that point, if the Minister does not mind, does "laid before Parliament" mean a written statement or does it mean regulation? I am confused. If he does not have an answer, I would be happy to speak to him later.

Paul Scully: I will write to the hon. Lady.

Kirsty Blackman: Specifically on the words "must be published", I would be keen to know how the Government might publish the direction. I am not asking the Minister to tie himself down, but I want clarity that it will be published in such a way that those who are affected by it are likely to see it, rather than it being hidden away somewhere in the back of gov.uk, where they would not trip across it unless by accident.

Paul Scully: I will clarify that, but there is no purpose in hiding it. We want to give certainty to businesses and the public authorities.

Seema Malhotra: I thank the Minister for his comments. It is quite a long clause. It does not appear to be one that we need to raise real concerns about today, but I would like to raise some points of clarification, because the question is whether there is anything deeper in there that could have other implications.

According to the notes, the clause establishes

"rules around subsidies for goods and services designed to be contingent, whether in law or in fact, on export performance"

which may include, for instance,

"subsidies to cover the price difference between domestic market prices and international market prices. Subsidies of this kind are prohibited unless specific conditions or terms are met, in line with the UK's international obligations under"

various other pieces of legislation such as the TCA. The clause establishes that

"short-term export credit support, where this support is not in the form of support for marketable risk for buyers in marketable risk countries… is not prohibited."

In the light of some of the circumstances we are seeing in relation to differences in domestic prices and international market prices, I would be grateful for greater clarity on what the overall clause is there to achieve and whether it will work in the interests of businesses in the UK and support of them.

Paul Scully: The significant distortive effect of export subsidies on our international trade has been recognised for many years, so except for certain types of export credit, export performance subsidies for goods are prohibited under the World Trade Organisation's agreement on subsidies and countervailing measures. This Bill obviously complies with that agreement.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

Use of domestic goods or services

Question proposed, That the clause stand part of the Bill.

Paul Scully: Clause 17 prohibits subsidies that are contingent on the recipient using domestic goods or services over imported goods or services. Such subsidies are generally known as local content subsidies, and since they benefit domestic businesses, they are generally regarded as being distortive to trade and therefore often result in inefficient outcomes for consumers. Again, local content subsidies for goods are prohibited under the World Trade Organisation's agreement on subsidies and countervailing measures.

Subsidies to the audio-visual sector are exempt from that prohibition: it may sometimes be appropriate to give subsidies to that sector that require local content, in light of its contribution to our nation's cultural objectives. That approach is in line with our international obligations and reflects the approach taken by many of our trading partners, including Canada and New Zealand.

Subsection (3) clarifies that certain types of subsidies should not be considered local content subsidies—for example, when the Government incentivise an enterprise that is not currently based here to locate production in the UK, or to train or employ workers in the UK.

The clause facilitates our international obligations under the terms of the trade and co-operation agreement with the European Union and as a member of the World Trade Organisation, and I commend it to the Committee.

Seema Malhotra: We support clause 17 standing part of the Bill.

Kirsty Blackman: This is one of the issues that has frustrated me most about the entire Brexit thing: a whole bunch of left-wing Brexiteers thought that these subsidies would be allowed in the event of our leaving the EU and coming out of its state aid system. They thought that we would be able to incentivise local content, and a lot of people in left-wing areas supported Brexit for that reason, but it is expressly prohibited by the WTO and the trade and co-operation agreement. I am just rising to vent my frustrations briefly; I am not going to vote against the clause.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

Relocation of activities

Seema Malhotra: I beg to move amendment 13, in clause 18, page 10, line 13, at end insert—

"(3A) This section shall not come into force until the Secretary of State has laid before Parliament a report complying with subsection (3B).

(3B) The report must explain how the prohibition established in this section is consistent with—

(a) reducing deprivation across the United Kingdom; and

(b) the Government's policy on the establishment of freeports in the United Kingdom".

This amendment would mean that the prohibition in clause 18 does not come into force until the Secretary of State has laid before Parliament a report explaining how that prohibition is consistent with reducing deprivation across the UK and the Government's freeports policy.

[Seema Malhotra]

I am grateful for the opportunity to move this amendment, which would mean that the prohibition in clause 18 would not come into force

"until the Secretary of State has laid before Parliament a report explaining how that prohibition is consistent with reducing deprivation across the UK and the Government's freeports policy."

Clause 18 provides that a subsidy is prohibited if it is conditional on relocation from one part of the UK to another, and that the relocation would not occur but for the giving of the subsidy. Subsection (2) clarifies the meaning of an enterprise relocating existing activities: such a relocation occurs where the business carries on activities in one area of the UK before the subsidy is given, and it ceases to carry on those activities in that area after the subsidy has been given and instead carries them on in another area of the United Kingdom. Clause 18 is intended to protect the UK's internal market and prevent subsidy races between parts of the UK.

The Government's March 2021 consultation document anticipated clause 18, and suggested that measures could be introduced to prevent the uneconomic relocation of economic activity between England, Scotland, Wales and Northern Ireland. The important word there is "uneconomic", which is notably missing from what appears to be a slightly blunter instrument in clause 18 as currently drafted. The Government's consultation cautioned:

"Any additional measures here would need to recognise the value of subsidies which seek to address regional inequalities."

However, clause 18 does not seem to do that. There is no acknowledgement of the value of subsidies that seek to address regional inequalities. Alexander Rose of DWF Group said on Tuesday that relocations can be highly beneficial to the economy.

3.15 pm

As we know, there seems to be confusion in the Government about what levelling up actually means. Every Government Member probably has their own definition—a slogan still in search of a strategy. The Minister will be relieved to know that I will not ask him to provide a definition, but I will ask him to explain how clause 18 is consistent with reducing inequality across the UK.

Kevin Hollinrake: Is it not quite obvious? We are trying to target new investment to go into those regions, rather than existing investment being transferred from one part of the country to another. Is that not what the clause is trying to say?

Seema Malhotra: I hear what the hon. Gentleman says, and that is indeed what it is probably trying to do, but the problem is not only that it potentially undermines levelling up; it could also undermine and challenge the Government's freeport policy. In the Queen's Speech and the 2021 Budget, the UK Government announced eight new freeports in England, which are intended to promote regional regeneration and job creation and to become hotbeds of innovation. However, it is notable that no mention of freeports was made in the Government's consultation on subsidy control policy, which closed on 31 March.

Under the Government's freeport policy, significant subsidies, particularly tax reliefs, move to a particular site. In fact, they are conditional on a relocation. Are these tax reliefs—enhanced capital allowance, enhanced structures in building allowance, business rate relief and relief from national insurance contributions—which are conditional on relocating to a freeport, prohibited or not by clause 18? We heard significant reservations about clause 18 from our expert witnesses on Tuesday. As Jonathan Branton from DWF Group put it:

"Having a prohibition in the Bill, even a badly worded one, is potentially too blunt a tool, which might backfire."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 56, Q77.]

Amendment 13 would mean that the prohibition in clause 18 would not come into force until the Secretary of State has laid before Parliament a report that explains how the provision is consistent with both reducing deprivation across the UK and the Government's freeport policy. This modest amendment is designed to ensure that the Government have properly considered the impact of the clause 18 prohibition on tackling regional inequality and on the freeport policy. However, we are not convinced at the moment that sufficient thought has been given to that impact.

Beyond our concerns about whether the Government have considered the impact of this provision on their claimed commitment to levelling up across the UK, there are also questions about how public authorities should interpret the clause 18 prohibition. Specifically, the prohibition applies where a subsidy is conditional on moving all or part of the economic activity from one area of the UK to another, but I cannot see where we have had a definition of "area". Will the Minister explain whether "area" refers to a nation of the United Kingdom, a region, a local authority, a town, a village or any or all of the above? What about a council subsidising a business to move from one part of a local authority to another? There might be perfectly sensible and sound economic and regeneration reasons to do that—for example, to make way for an infrastructure project—but presumably this would be caught by clause 18. Therefore, it is arguably prohibited. Will the Minister clarify the interpretation of the current wording of clause 18?

Stephen Kinnock: My hon. Friend is setting out very clearly the rationale for our amendment. I would add, in response to the comments from the hon. Member for Thirsk and Malton, that this is about incentivising and ensuring that the measure is used in a positive way.

Our concern is that the wording of the clause is a very blunt instrument. It could be interpreted by a business that was looking to invest in either Middlesbrough or Mayfair that already has a base in Mayfair as a disincentive against favouring an investment in Middlesbrough. That would surely fundamentally undermine the Government's own levelling-up agenda. The amendment would reassure businesses that they can be incentivised to invest in Grimsby rather than Guildford, without it being a binary choice between one or the other—it is much more nuanced.

Seema Malhotra: My hon. Friend is absolutely right to put the amendment in those terms—it seeks to bring clarity. The Minister will probably appreciate that these are complicated questions for enterprises that may be in receipt of subsidies for positive reasons that meet the

objectives of the regime and public policy goals. Clarity for public authorities in granting those subsidies is also important, ensuring that they are not subject to challenge when they genuinely want to achieve positive outcomes, but would be caught under the fairly blunt definition in clause 18. I look forward to the Minister's response.

Kirsty Blackman: The concerns I raised on principle F of schedule 1 are very similar to the ones being raised here. The Government have an intention here, but the clause will not achieve that intention; it is also too restrictive.

I love this amendment; it feels hugely cheeky. I know it is very serious, but I love the way it is drafted—how sad is that?—and I quite like the way both issues are put together in the same amendment. It makes sense that this measure is included alongside the amendments moved earlier by the Opposition on areas of deprivation. There is also the freeport element. The clause basically rules out freeports and the way the Government have explained they are intended to work, which is massively concerning if that is the Government's plan.

If, for example, a Government Department was to relocate from Whitehall to Salford—I cannot think which Department might be doing that—and if there is going to be some sort of incentive for them to do that, that relocation would be prohibited. Surely that is something that the Government want; if they did not want it, they would not be doing it. They want Government Departments to be able to relocate to places outside Whitehall and to bring jobs to those areas. I am glad they are doing that, but it now would not be able to provide any subsidies for that to happen. That does not make sense.

If the Government's stated aim and objective is to try to level up places to ensure more jobs, there is going to have to be some level of relocation. That is going to have to happen. We are going to end up in a situation where the Department for Business, Energy and Industrial Strategy does not have 400 staff here and has 400 staff in Salford instead. Surely that is a good thing, rather than a bad one. It would be helpful if the Government could clarify what is meant here.

I agree with the amendment. I agree with the report. We covered areas of deprivation this morning. The freeport thing, however, is unsolvable unless the Government provide us with more information, whether by the Minister explaining, changes being tabled for future iterations of the Bill—perhaps on Report—or the report asked for by the Opposition being provided.

Paul Scully: I shall cover a few of the points raised. To take the example of a local authority wanting to incentivise a business to move back to its high street or something like that, the Bill would not prevent local authorities from offering subsidies to support regeneration.

As for what constitutes an "area" in the relocation prohibition, it is not a defined term in the Bill. Public authorities will therefore have to apply common sense in their interpretation. The objective is to prevent the relocation of all, or part of, existing economic activity between different areas of the UK, but there will be circumstances in which relocation within an area may occur. For example, where a business has an existing presence in a region and moves within that region, it is unlikely to engage the prohibition. Again, that will come in guidance.

Seema Malhotra: The Minister might say that that will come in guidance, but the scenario that he just outlined does not seem to be consistent with the wording of the clause. Even if the local authority was to agree a move from one end of its area into a high street, and even if all the existing economic activity was relocated, that would not have occurred but for the giving of the subsidy. Activity would be carried on in an area of the United Kingdom different from where it was before. Will the Minister reflect on that? It might be helpful to read that again, even against the scenario he just outlined.

Paul Scully: The regenerative example that I gave would fit, but it will be fleshed out in guidance. Let me come to freeports quickly, because that issue complies with the principles and prohibitions set out in the Bill, including in the clause.

When designating freeports, bidders are required to explain how their choice of tax site locations minimises displacement of economic activity from wider local areas, especially other economically disadvantaged areas. The focus of freeports, however, is to encourage new investment and to create new businesses and jobs, rather than harmful displacement, so tax sites will be designated only once the mitigation of displacement and other factors have been demonstrated by the successful bidder in its tax site. We are confident that the risk of harmful displacement has been minimised.

In summary, the subsidies will not be conditional on the relocation of existing economic activities.

Kirsty Blackman: The Minister has made a good case on subsidies for the purpose of regeneration, but that is not stated in the clause. At no point is it stated that the regenerative ideals or decisions to produce regeneration in an area trump the clause.

Paul Scully: I said that the clause does not prevent local authorities from offering subsidies to support regeneration. None the less, we will supply more support through guidance, because we want to give public authorities the confidence to apply subsidies in that scenario and similar ones.

The purpose of the clause overall is to prohibit wasteful subsidies that serve only to poach economic activity from one area to another. I must say, the ears of the good people of Guildford must be burning after their third mention in a couple of days—

Bill Esterson (Sefton Central) (Lab): What about the good people of Mayfair?

Paul Scully: As Minister for London, I do not think that this is aimed at the good people of Mayfair.

We do not want to prevent levelling-up subsidies that attract investment to disadvantaged areas. The clause achieves that by prohibiting subsidies that explicitly require enterprises to relocate existing economic activities from one area of the UK to another, where that relocation would not have occurred without the subsidy. We have said that. The amendment, however, risks delaying the commencement of the clause, which might allow subsidies to be granted that could poach economic activity from disadvantaged areas.

3.30 pm

Stephen Kinnock: I have a brief question. Why would the Government not want to make it a condition? Either the Bill is an empty vessel that will just regulate certain activities or it has a public policy objective. Schedule 1 clearly states that public authorities must explain and assess the policy objective behind the subsidy.

If the policy objective of the Bill is levelling up, why would the Government sometimes not want to actually give public authorities the opportunity and ability to make it a condition of a subsidy for an entity to relocate to another part of the country that will benefit from the investment? I can understand that sometimes it should not happen and sometimes it should, but amendment 18 offers a more nuanced position where it can be explicitly said, "For reasons of levelling up, we are driven by this policy objective and we want the opportunity to incentivise accordingly."

Paul Scully: Basically because this is a framework Bill. The policy objective of the Bill specifically is not levelling up. It enables levelling up through the framework, but it is the spending and subsidy themselves that are the policy objectives we are talking about. That is why schedule 1 refers to having to explain those policy objectives. Ultimately, this is a framework Bill that allows a permissive approach to subsidy, rather than the opposite—the state aid regime that we had when we were a member of the EU. The Government are fully committed to making sure that the UK subsidy control regime does support disadvantaged areas and facilitates the levelling-up agenda.

As part of the broader consideration that public authorities are required to undertake when assessing a subsidy, the subsidy has to be compliant with the principles within the Bill, and the wider impacts of the subsidy on competition and investments in other parts of the UK must be taken into account. We will publish guidance to make clear how this requirement should be applied by public authorities when considering subsidies that advance the levelling-up agenda or promote the economic development of relatively disadvantaged areas.

I welcome the interest in freeports, which are one of the Government's flagship programmes to support levelling up and economic recovery. They are there to encourage new investment and create new businesses. The freeports offer follows the subsidy control principles set out in the Bill. They are an example of the UK Government levelling up economic growth across the UK—a strategic interest, which the domestic regime has been designed to reflect.

Kevin Hollinrake: On the Minister's earlier point about technology needing subsidy, actually touchscreens, GPS and the internet were all developed initially through public funding, both in the US and the UK. Is the clause not trying to prevent companies from gaming the system by trying to pit one local authority or area of the country against another through a bidding race to bring their jobs to a certain part of the country?

Paul Scully: That is exactly right. Look at subsidy control regimes around the world. Witnesses in the evidence sessions focused on America and the subsidy race between various states, which is exactly what we are trying to avoid through this sensible and proportionate measure. Accordingly, we believe that requiring the Secretary of State to report to Parliament on clause 18's consistency with the Government's strategic priorities to do with supporting deprived areas and freeports is not necessary. The new UK domestic regime is designed to ensure that disadvantaged areas have maximum freedom and reassurance to receive levelling-up subsidies that best suit the characteristics of the area. I request that the amendment be withdrawn.

Bill Esterson: It is great to see you back in the Chair, Ms Nokes.

Clause 18 is crystal clear about preventing the use of subsidies to enable businesses to move from one location within the UK to another. The example of the high street is crystal clear, as is the example of the freeports. I will come back to the point about promoting new investment in freeports shortly.

The Minister talked about issuing guidance to go with the provision. That is the way the legislation has been crafted, which I think we can all understand. However, guidance will always be open to interpretation, and what takes priority? Is it the primary legislation—the very clear statement set out in clause 18 that a subsidy is prohibited if

"the relocation of those activities would not occur but for the giving of the subsidy"?

How is that overcome by the guidance? That is the point that all Opposition Members who have spoken have tried to get to, whether with the example of the regeneration of high streets or that of freeports.

The Minister talked about the justification for freeports and the support that the Government have given. My hon. Friend the Member for Feltham and Heston made the point that freeports were not part of the consultation for the legislation, and they are ruled out by the clause. It could not be much clearer.

On the point about freeports being just about new investment, the evidence base—the report published by the UK Trade Policy Observatory, and the commentary by Adam Marshall when he was director general of the British Chambers of Commerce—shows all too clearly that they are exactly about relocation and displacement, and all the things that the Minister said that they should not be about. His point that they do not deliver displacement from one deprived area to another is undermined by the evidence base provided by the UKTPO and the British Chambers of Commerce.

I am afraid that we have not had an adequate answer from the Minister on how all those circles will be squared, and how the primary legislation of clause 18, which he wants to go through unamended, will not override attempts to use subsidies to support local areas in the examples that we have given him and that he says we should not worry about. I am afraid it comes back to a point that we have made a number of times, and will continue to make, I suspect, through the Committee's deliberations: specific statements need to be added to the Bill to provide reassurance and to make the framework a much more workable system of subsidy.

Without that, things will be left wide open. As much as the Minister defends the Government's freeport policy, notwithstanding the analysis that I have given from those experts, and claims that local authorities will be able to sort their high streets, and despite his response to my hon. Friend the Member for Aberavon about

supporting more deprived areas otherwise, I am afraid that without additional content going in at this stage, or on Report, or in the House of Lords, we will be left in a position where the framework will leave awarding bodies open to judicial review because of the uncertainty and the contradiction that will almost inevitably be left in place between the primary legislation of clause 18 and whatever he puts in guidance.

Seema Malhotra: I listened to the Minister's response and the contributions to the debate. I remain concerned that the clause is worryingly worded in terms of what could be permissible under it and what might not be. In the light of that, it is important that we press what is a very measured amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 5]

AYES

Blackman, Kirsty	Kinnock, Stephen
Esterson, Bill	Malhotra, Seema
Fletcher, Colleen	Whitley, Mick

NOES

Baynes, Simon	Millar, Robin
Benton, Scott	Scully, Paul
Bowie, Andrew	Stafford, Alexander
Buchan, Felicity	Tomlinson, Michael
Hollinrake, Kevin	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Paul Scully: As we have heard, clause 18 prohibits subsidies that explicitly require enterprises to relocate economic activities from one area of the UK to another, where this relocation would not have occurred without the subsidy. I should say that the purpose of the provision is only to prevent subsidies that are explicitly contingent on a relocation—in other words, that the business ceases its economic activities in the previous area. We believe that the approach strikes the right balance: it prohibits some of the most potentially harmful subsidies without preventing levelling-up subsidies that attract investment to disadvantaged areas.

Seema Malhotra: I thank the Minister for his comments. He has our concerns on the record. We will not oppose the clause, but I think this is an important area. Perhaps I will write to the Minister about this, which I hope will help to make sure the provision is as positive as it can be for the purposes of the Bill.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

RESCUING

Bill Esterson: I beg to move amendment 14, in clause 19, page 10, line 29, after "exceptional circumstances" insert

"including the protection of critical national infrastructure and industries of strategic national importance,".

This amendment clarifies that protecting critical national infrastructure and industries of strategic national importance may constitute exceptional circumstances.

The Chair: With this it will be convenient to discuss amendment 15, in clause 20, page 11, line 15, after "exceptional circumstances" insert

"including the protection of national security and industries of strategic national importance".

This amendment clarifies that protecting critical national infrastructure and industries of strategic national importance may constitute exceptional circumstances.

Bill Esterson: We broadly support the measures in clause 19 on rescue subsidies, and we want to strengthen the measures by adding, with amendments 14 and 15, the important areas of critical national infrastructure and security.

Clause 19 prohibits subsidies from being given to ailing and insolvent enterprises unless the subsidy would prevent social hardship or severe market failure. In these cases, the subsidy should act only as "temporary liquidity support" to provide the enterprise with time to prepare a restructuring plan. That is exactly the right way to phrase the clause thus far, because we recognise that public money should not be used to prop up failing businesses. We are pleased that the Government are in the right place here.

However, we recognise that the Government have a poor track record on protecting and supporting industries of national importance. I am afraid that the case of the steel industry a few months ago is a prime example. Until 5 pm on the day before the trade remedies were due to expire, the Government had not intervened to overturn the recommendations of the then trade remedies investigation directorate, which right at the end came into operation as the Trade Remedies Authority. Its recommendations were to drop steel safeguards, and it took significant lobbying from the steel sector, individual businesses, trade unions, the Trades Union Congress and Labour Front Benchers to push the Government to realise what a catastrophic mistake it would have been had those safeguards been dropped at that time.

The steel industry outlined how the industry was then lurching from crisis to crisis, and to a degree it still is. Over a number of years, the laissez-faire approach to the production of steel has been at the heart of that. Steel is a crucial national industry: it is critical to our national security and it is critical, or it should be, to our infrastructure production. We should be supporting that industry. That is what our amendments are about, and steel is a very important example. There are other examples of the Conservatives' reluctance to show an interest in nationally significant businesses, such as the takeover of Morrisons by Clayton, Dubilier & Rice just recently—another business of great importance to national infrastructure.

3.45 pm

Amendments 14 and 15 would ensure that rescuing and restructuring subsidies can be given to ailing or insolvent enterprises if they are of vital strategic importance.

Andrew Bowie: Will the hon. Gentleman expand on how Morrisons would fit into the definition of "national critical infrastructure", as set out in amendment 14?

Bill Esterson: Morrisons, as one of the big four supermarkets, is crucial to our national economy. The problem is that the Government do not show enough interest in businesses of such strategic importance.

Andrew Bowie: Will the hon. Gentleman give way on that point?

Bill Esterson: As the hon. Gentleman has been wearing a mask today, I will.

Andrew Bowie: I thank the hon. Member; he is too kind. The decision to allow Morrisons to be taken over, in the way that it was, was made because it was deemed that that would be good value for shareholders, but also good for the company in general—it would be able to reinvest in its infrastructure here, in the United Kingdom. The decision was actually supporting one of the big four supermarkets to provide jobs and employment for this country. To try to define it in this way and say that the Government should step in when businesses like that are under threat of takeover—even when those takeovers could be to the advantage of that company and to the British people—would be, I think, a retrograde step.

Bill Esterson: I am grateful to the hon. Gentleman for intervening. I think he is rather missing the point, which I tried to explain the first time around. I am making the point that the Government showed no interest in what was going on with Morrisons, nor the merits of what was happening.

Coming back to steel, the Government have belatedly woken up. Before I was intervened on, I was actually going to say that perhaps there are signs of improvement on this front. The Government have shown some interest in improving things, because there are amendments in the Budget that would give the Secretary of State for International Trade powers to overrule the recommendations of the Trade Remedies Authority. I am therefore mildly hopeful that we are seeing an improvement in policy and approach from the Government on that measure alone.

Stephen Kinnock: My hon. Friend is making some very important points. We have clearly sparked a debate about what constitutes critical national infrastructure and what constitutes businesses that are vital to our national security and our national interest. We can certainly have a debate about businesses operating at the consumer end of the spectrum, but there are other examples. The steel industry is an obvious one, but look at the issues around AstraZeneca and the attempted hostile takeover by Pfizer; look at Arm, or at the way in which private equity is taking over our defence industry. Our country has become the capital of the world for hostile foreign takeovers. We have more than any country in the OECD, and we face a world in which aggressive Chinese-backed investment vehicles and businesses are looking to take over businesses that are potentially coming out of the pandemic distressed and vulnerable.

The Chair: I will just make the point that this is an intervention—a short one.

Stephen Kinnock: National security is at the heart of our magnificent amendment. Let us not carry on being up for sale to everybody.

Bill Esterson: I am grateful to my hon. Friend for adding some extremely important examples to my point.

Kevin Hollinrake: Can I give the hon. Gentleman some other examples?

Bill Esterson: Not yet; let me answer my hon. Friend first before I take what I am sure will be an incredibly important and insightful intervention, as always—it does not mean he is right. It is extremely important that we take nationally significant businesses seriously, that we have a regime that enables us to support them when appropriate, and that we take on board what is in the national interest. That is the purpose of our amendment. I will take the intervention from the hon. Member for Thirsk and Malton, even though he is not wearing a mask today—he did partly on Tuesday.

Kevin Hollinrake: I understand the hon. Gentleman's point about national infrastructure and inward investment, but would he and the hon. Member for Aberavon not concede that Tata's investment in the UK steel industry is important? Investments in Jaguar Land Rover, which was a failing business before it was taken over, were important for the UK and they protected and effectively created lots of jobs. If the hon. Member for Sefton Central thinks that foreign direct investment in the UK is bad—I know Morrisons is an important company in Yorkshire—is it also bad that our UK-based private equity businesses invest in other countries?

Bill Esterson: No, not at all. I have no idea at all why the hon. Member thinks that is where my or my hon. Friend's arguments were going. We are very much in favour of foreign direct investment to this country and investing overseas as well. Indeed, the success of foreign direct investment in the north-east of England under the Thatcher Government has been put at risk by the attitude of this Government towards the Japanese and the rather strained relations, which hopefully are beginning to repair since the UK-Japan deal. However, let us not underestimate the reputational damage that was done by the way some of that was handled.

Alexander Stafford (Rother Valley) (Con): Conservative Members appreciate what you are trying to say, but the fact that there is a lot of confusion and concern about how you are saying it shows me that the amendment should not stand. Rather than just saying "exceptional", which covers what we need it to do, we have this definition. Even under "critical national infrastructure", 13 industries are officially defined by the Centre for the Protection of National Infrastructure, none of which is steel. We can argue for steel, but it is not actually listed in the official categories. It just creates confusion. That is why I do not think the amendment works.

The Chair: I remind Members that interventions need to be short, and can we lose the yous, please?

Bill Esterson: Thank you, Ms Nokes. That intervention rather makes the point that I was making in the previous debate about the need for definition in the Bill around what we mean by various terms and the need to avoid leaving things open to chance in guidance and interpretation. I take the hon. Gentleman's point, but this is why we need a bit more clarity in primary legislation.

Continuing with the steel industry, not least because we took evidence from UK Steel, if some support is not given in the short term to the UK steel sector to support its decarbonisation and reduce the massive energy costs associated with the industry, we could soon see steel, which is a vital strategic industry for the UK, facing imminent threat. I do not think anybody disagrees on the strategic importance of the steel industry at a national level.

In the evidence sessions, Richard Warren spoke about the costs of renewables and carbon taxes in relation to electricity prices:

"The UK steel sector pays between 80% and 100% more for its electricity than its counterparts in the EU. Those exemptions have reduced our electricity prices. There is a still a big gap, but they are really important to improving competitiveness in the UK."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 50, Q72.]

He made the point that it was in the national interest to support the industry. He said:

"Net zero or low-carbon forms of steel production will add anything from 30% to 50% to the costs of steel production".

On the cost of steel production, he said:

"If other countries are not moving at precisely the same speed or putting the same constraints on their industries, you will need some sort of intervention to correct that market failure."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 57, Q77.]

That is why we think there is a very strong case for putting this provision into primary legislation.

More widely on the issue of net zero, this point is backed up by the written evidence from the Institute for Government, which says that it is

"sensible to require some additional process to ensure that the subsidy is designed well."

That was in relation to major infrastructure that could contribute towards net zero. That is what our amendments are trying to achieve, and it is why we think they are so important.

Anything that is in the national interest or the interests of national security demands an additional level of support and attention, including attention to the way it is worded. Again, I am afraid we come back to the point that not having this set out in primary legislation creates weaknesses, and leaves the prospect of challenge and of the regime not operating as well as it should.

Paul Scully: As we have heard, amendment 14 relates to clause 19. The Bill provides that in order to give either a rescuing or a restructuring subsidy, the public authority giving that subsidy must be satisfied either that it contributes to the objective of the public interest by

"avoiding social hardship or preventing a severe market failure",

or that there are

"exceptional circumstances that justify the subsidy"

despite that test not being met. The amendments would specify that those exceptional circumstances would include the protection of critical national infrastructure, industries of strategic national importance and, in the case of amendment 15, national security.

I fully agree that public authorities should be allowed to grant necessary and appropriate rescue and restructuring subsidies in order to protect critical national infrastructure, national security, and industries of strategic national importance. I am therefore pleased to be able to provide reassurance to the hon. Member that, as it stands, the Bill does so. The reasons are twofold: first, clause 45 contains a general exemption from all subsidy control requirements for the giving of a subsidy with the purpose of national security. Secondly, the conditions set out in clauses 19 and 20 will allow for rescue and restructure subsidies in order to protect critical national infrastructure and industries of strategic national importance. In my view, many hypothetical rescue and restructure subsidies for those purposes could in principle meet the first test in clause 19(4)(a) and clause 20(5)(a) of being in the public interest by

"avoiding social hardship or preventing a severe market failure".

Where that condition is not met on the facts, but there are other exceptional circumstances in play, clauses 19(4)(b) and 20(5)(b) already provide for exactly that situation, so it is not necessary to attempt an exhaustive list of potential exceptional circumstances that could be relevant to the clause. That would risk unduly influencing public authority behaviour. On the one hand, it risks encouraging inappropriate rescue and restructure subsidies in circumstances that are not genuinely exceptional on the facts, and where they could have excessive harmful effects on domestic competition. On the other hand, it could discourage the use of rescue and restructure subsidies in circumstances that are genuinely exceptional and merit such interventions, but are not specifically listed in the Bill.

The purpose of clauses 19 and 20 is to prevent aimless bail-outs of failing enterprises, while allowing public authorities to provide temporary rescue support for enterprises that it is in the public interest to rescue and restructure. Those subsidies should not be undertaken lightly, in order to maintain a competitive free-market economy and facilitate compliance with our international obligations, including those in the TCA with the EU. As such, I ask the hon. Member to withdraw his amendment.

Bill Esterson: I am grateful to the Minister for drawing the Committee's attention to where the points covered by our amendments exist elsewhere in the Bill. I have reservations about the strength of those clauses, which I explained in my speech and will not revisit, but there is reference to the protection of national security in the Bill. Whether it is adequate, time will tell. I know that the Minister or a member of his team will bring these measures forward in secondary legislation. We think they are better in primary legislation and that there should be more detail at this stage, but we accept the assurances the Minister has given, and we will not push the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

4 pm

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause prohibits rescue subsidies to ailing or insolvent enterprises unless the three specific conditions are met: there must be a credible restructuring plan, the subsidy must be limited to temporary liquidity support, and it must be in the public interest, unless there are exceptional circumstances.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

RESTRUCTURING

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause prohibits restructuring subsidies to ailing or insolvent enterprises unless four specific conditions are met. This clause does not apply to deposit takers or insurance companies. Again, the enterprise must have prepared a restructuring plan and, unless there are exceptional circumstances, a restructuring subsidy must only be offered if it is in the public interest. Restructuring subsidies can only be given to enterprises that are small or medium-sized, and they must also be contingent on an enterprise's not having received a restructuring subsidy before, or five years having passed since it did, although there are exceptions to that.

Bill Esterson: The Opposition do not oppose this clause.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

RESTRUCTURING DEPOSIT TAKERS OR INSURANCE COMPANIES

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause sets out specific conditions for subsidies for the purpose of restructuring ailing or insolvent deposit takers or insurance companies.

Bill Esterson: The fact that subsidies should not be given to ailing or insolvent banks, insurance companies or other deposit takers unless certain conditions are met, such as that the subsidy is given on the basis of a restructuring plan that is likely to restore long-term viability, is an eminently sensible measure that we are content to see in the Bill. We also recognise that such companies should receive subsidies only when they have contributed to their restructuring costs from their own resources. We are pleased to see the clause included in the Bill. There are some concerns relating to this clause that I will come to in clause 24, but I think they are better dealt with there.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

LIQUIDATING DEPOSIT TAKERS OR INSURANCE COMPANIES

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause prohibits subsidies for insolvent deposit takers or insurance companies that are unable to demonstrate credibly that they can be restored to long-term viability, unless they are able to satisfy specific conditions.

Bill Esterson: We are happy to support clause 22.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

LIQUIDITY PROVISION FOR DEPOSIT TAKERS OR INSURANCE COMPANIES

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause sets out specific conditions for subsidies that are for the purpose of supporting liquidity provisions to ailing or insolvent deposit takers or insurance companies.

Bill Esterson: We support clause 23.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clause 24

MEANING OF "AILING OR INSOLVENT"

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause defines "ailing or insolvent" in relation to the giving of rescue and recovery subsidies to deposit takers, insurance companies and enterprises. The definition of ailing or insolvent in this Bill incorporates both domestic and international terminology. It combines the existing concept of insolvency in UK law with the wider concept of ailing or insolvent agreed in the TCA. The definition is compliant with our international commitments and has a strong basis in British law. Subsections (1)(b) and (c) use the existing insolvency test in the Insolvency Act 1986. Subsection 1(a) uses the TCA definition of "ailing or insolvent". An enterprise being unable to pay its debts or the value of its assets being less than its liabilities are British tests for declaring an enterprise "insolvent". Subsection 1(a) builds on this by extending the tests to include enterprises that are "ailing or insolvent"—those which would go out of business in the short to medium term without subsidies.

Subsection (2) allows the Secretary of State to make regulations on what is meant by

"would almost certainly go out of business in the short to medium term without subsidies".

While the definition of "insolvency" reflects existing domestic law, "ailing" has no such domestic definition. A narrow power such as this allows the Secretary of State to make further provision on the meaning of ailing, should that be necessary.

Bill Esterson: We recognise the importance of clauses 21 to 27. We have some questions about the definitions of "ailing" and "insolvent". The definitions of those terms in the Bill are arguably more demanding than those under EU state aid rules, which require an enterprise to be almost certain to go out of business in the short or medium term, and to be unable to pay its debts as they fall due; also, the value of its assets must be less than the amount of its liabilities. Why have the Government chosen broader definitions for ailing and insolvent enterprises than those in the regime that is being replaced?

Alexander Rose from DWF raised concerns that these broader definitions risk harming tech and research-and-development heavy start-ups because they require significant expenditure before they start making profits. As I am sure many Members will know, that can be months, if not years. Can the Minister explain what consideration has been given to these broader definitions

where they relate to start-ups that are capital-intensive for significant periods before profits are made? What are the Government going to do with the regime to ensure that start-ups are not harmed by the legislation? I am sure that the Minister agrees that it is sensible to support our innovators and to allow them to take the time to become profitable. It will be interesting to see how he intends to do it. We need to be competitive internationally, which is crucial for an export-led recovery.

The same point applies to scale-ups, a point Rolls-Royce made in its written evidence. It has that concern about start-ups, and quoted some case law from the Supreme Court saying that courts should be careful not to leap to conclusions when asked to apply the test about insolvency, and that allowance should be made for debts when the maturity date is some time in the distance. Is the difference between liabilities that are due in the short term and long-term liabilities and debts picked up in the primary legislation? How is the Minister planning to ensure that a distinction is made between short-term and long-term liabilities?

Interestingly, Rolls-Royce made the point about national security, going back to our earlier debate. In addition to mentioning what we raised before, it asked about dual use. What is the Government's plan on subsidies where dual use includes national security investment and non-national security investment, which is common in areas such as aerospace?

Paul Scully: The Bill is clear that an ailing or insolvent enterprise is one that would almost go out of business in the short to medium term without subsidies. Importantly, this definition applies only to the giving of rescue and recovery subsidies. I hope my opening remarks help the hon. Gentleman's understanding of where we go in some of the definitions. Just to repeat: subsection (2) allows the Secretary of State to make regulations on what is meant by

"would almost certainly go out of business in the short to medium term without subsidies".

While the definition of insolvency reflects existing domestic law, "ailing" has no such domestic definition. Therefore, there is allowance for the Secretary of State to make further provision on the meaning of "ailing", should that be necessary. We went down that route because the EU's "undertaking in difficulty" test is disliked by stakeholders, is highly prescriptive and in some cases prevented the giving of subsidies to viable businesses with a longer route to market and profitability. These were businesses such as medical technology firms and start-ups. The definition that we are using has a much more restricted application, but where it does apply it provides greater flexibility while also preventing the use of subsidies to bail out unsustainable companies.

The hon. Gentleman talked about national security exemptions as well. We are going to get on to—

Bill Esterson: Before the Minister moves on, I want to tie down the difference between short-term and long-term liabilities. From my dim and distant accountancy past, there seems to me to be quite a good definition for this from insolvency legislation—from memory. We may have other accountants with us who can confirm or deny that. Does the hon. Gentleman know that that is the kind of distinction that the Secretary of State is likely to make in regulation?

Paul Scully: Largely, we want to use insolvency legislation where it stands, so that will be the starting point of any discussion. Hopefully that has answered that point.

To respond to the security issues that the hon. Gentleman raised, the provisions in clause 45, we will get to, safeguard the UK genuine national security in a way that is fully compliant with our international obligations, including the TCA. It is obviously customary for countries, in international agreements such as free trade agreements, to reserve their right to protect their valid security interests. However, we are going to exercise that properly, and only when there is a genuine national security interest at stake that requires such protection; it cannot be used to seek an economic advantage alone.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

MEANING OF "DEPOSIT TAKER"

Question proposed, That the clause stand part of the Bill.

Paul Scully: This clause defines the meaning of "deposit taker" for the purposes of clauses 19 to 24 of this Bill.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

MEANING OF "INSURANCE COMPANY"

Question proposed, That the clause stand part of the Bill.

Paul Scully: This clause defines the meaning of "insurance company" for the purposes of clauses 19 to 24 of this Bill. The clause also makes it clear that the meaning of "insurance company" may be amended in future by the Treasury by the affirmative procedure, provided that both the Financial Conduct Authority and Prudential Regulation Authority are consulted in advance.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

SUBSIDIES FOR INSURERS THAT PROVIDE EXPORT CREDIT INSURANCE

Question proposed, That the clause stand part of the Bill.

Paul Scully: This clause permits subsidies to be given to insurers that provide export credit insurance where two conditions are met. Subsidies that do not meet these conditions are prohibited. These are that an insurer providing export credit insurance for marketable risk countries must provide the insurance on a commercial basis, and that the subsidy is not used to directly or indirectly benefit any of the recipient's marketable risk insurance business.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of Bill.

Clause 28

SUBSIDIES FOR AIR CARRIERS FOR THE OPERATION OF ROUTES

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause establishes conditions on subsidies granted to air carriers for the operation of routes. Subsidies not meeting one of those conditions are prohibited by the clause.

Bill Esterson: We recognise that subsidies to an air carrier for the operation of a route should be prohibited unless certain conditions are met, and those conditions are listed. I cannot help noting the irony of the reduction in taxes on travel for short-haul flights, and the fact that one can get a ticket from London to Glasgow for COP26 for £45 on the railway and it is about £145 to fly. That is possibly going slightly beyond the scope, other than to say that again this is not consistent with what the Minister said earlier about the intention of travel, so to speak, on moving towards net zero.

Seema Malhotra: My hon. Friend may be aware that it is part of the application, if someone is going to COP26, to show how they are—

The Chair: Order. May I remind Members of the need to stay on the subject of the Subsidy Control Bill.

Seema Malhotra: It is tangentially connected.

The Chair: I will give you a little leeway—not much.

Seema Malhotra: The requirements of applying for a pass for COP26—*[Laughter.]*

Michael Tomlinson: It was a great effort.

Bill Esterson: I think I understood my hon. Friend's excellent intervention. She was correcting me: actually, one can get a ticket for £25 from London to Glasgow, not £45.

The Chair: I am still not convinced that this is on the substance of the Bill.

Seema Malhotra: The Government requires that delegates state their method of travel.

Bill Esterson: Yes, there is the irony that the Government are requiring delegates to COP26 to show their method of travel to the conference. I hope that we will see subsidies supporting rail travel. In my constituency, I have been long campaigning for a rail link from the port of Liverpool rather than a new road, and in the run-up to COP26 that would make sense, rather than concentrating on air travel. There is a serious point that we need to use the subsidies to support rail and low-carbon transport, and reduce the reliance on, and support that the Budget gave for, air travel.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

SERVICES OF PUBLIC ECONOMIC INTEREST

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause sets out the requirements for giving subsidies for services of public economic interest.

Seema Malhotra: I thank the Minister for his remarks on clause 29. Similarly to EU provisions on support to services of general economic interest, the clause relates to enterprises that are assigned with a particular task in the public interest. We recognise why the clause is needed, to outline the regulations for subsidies given to SPEIs. Labour recognises that SPEIs differ from enterprises that may normally receive subsidies, and accepts that different regulations should therefore apply to subsidies given to SPEIs. We support the regulations under clause 29. It may be important to note that we do not support the exceptions given to SPEIs under clauses 38 and 41, but that will be discussed at a later date.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

EFFECT OF PROHIBITIONS ETC IN RELATION TO SUBSIDY SCHEMES

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause sets out how the prohibitions and other requirements in this chapter apply in relation to subsidy schemes. It ensures that public authorities cannot evade those prohibitions and requirements when establishing a subsidy scheme.

Seema Malhotra: We support clause 30 standing part of the Bill.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31

SUBSIDIES OR SCHEMES SUBJECT TO MANDATORY REFERRAL

Question proposed, That the clause stand part of the Bill.

Paul Scully: Clause 31 prohibits a subsidy or scheme that a public authority has failed to properly refer to the subsidy advice unit, or which has been given or made before the referral process has been allowed to conclude.

Seema Malhotra: Clause 31 outlines the regulations for mandatory referral of subsidies to the CMA. We support the regulations in the clause, which will be an important part of the operation of the regime, but we will seek to amend clause 54, which will be discussed at a later date.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Michael Tomlinson.)*

4.20 pm

Adjourned till Tuesday 2 November at twenty-five past Nine o'clock.

Written evidence reported to the House

SCB01 Jonathan Branton and Alexander Rose, DWF SCB02 Rolls-Royce plc