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GENERAL COMMITTEES

Public Bill Committee

SUBSIDY CONTROL BILL

Ninth Sitting

Tuesday 16 November 2021

(Morning)

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not later than

Saturday 20 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

Tuesday 16 November 2021

(Morning)

[Mr Virendra Sharma *in the Chair*]

Subsidy Control Bill

9.25 am

The Chair: Before we begin, I have a few preliminary announcements. Members are expected to wear face coverings except when speaking, unless exempt, and to maintain distancing as far as possible. This is in line with current Government guidance and that of the House of Commons Commission. Please give each other and members of staff space when seated and when entering and leaving the room. Members should have a covid lateral flow test twice a week, which can be carried out either at the testing centre in Portcullis House or at home.

Members should send their speaking notes by email to hansardnotes@parliament.uk. Officials in the Gallery should communicate electronically with Ministers. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Clause 65

Monitoring and reporting on subsidy control

Kirsty Blackman (Aberdeen North) (SNP): I beg to move amendment 29, in clause 65, page 37, line 12, leave out "fifth" and insert "second".

This amendment, and Amendment 30, together require that the CMA publish a report after two years, and annually thereafter.

The Chair: With this it will be convenient to discuss the following:

Amendment 61, in clause 65, page 37, line 12, leave out "fifth" and insert "third".

This amendment would require the CMA to conduct its first review under the section in the third year after commencement.

Amendment 30, in clause 65, page 37, line 14, leave out "five years" and insert "one year".

This amendment is linked to Amendment 29.

Amendment 62, in clause 65, page 37, line 14, leave out "five" and insert "three".

This amendment would require the CMA to prepare a subsequent review every three years.

Kirsty Blackman: Thank you, Mr Sharma, for your dedication in chairing the Committee, no matter how much we talk. It is appreciated that you continue to show up.

Amendment 29 would work in conjunction with amendment 30 on Competition and Markets Authority monitoring. The measures on subsidy control are new, and we do not know how they are going to work. We do not know how well subsidy control is going to work. It is therefore really important that the CMA reports on a regular basis.

I have had various arguments with Treasury Ministers about tax measures. Treasury Ministers have generally made it clear to me that tax measures are reviewed on a regular basis. Unfortunately, it is impossible to find what "regular" means. It is impossible to pin it down. It is impossible to work out when tax measures are actually reviewed and to see, in any sensible way, any evidence of that. I have previously asked Ministers on Delegated Legislation Committees, for example, to commit to writing to the members of a Committee in the future, when the tax measure under discussion is reviewed, but the Government continue to fail to do so.

I am concerned that the Government's ability to be transparent on subsidy control measures needs to be in the Bill. The amendment addresses the CMA monitoring report, rather than the Government report, but the CMA will deal with the monitoring and reporting of subsidy control. I hope that the Government will also be reviewing measures, in addition to the CMA's monitoring and reporting, and will be checking to see how subsidy control is working and whether the Bill is working as intended. As we have previously said though, we have significant concerns about the lack of data that will be provided and the fact that we cannot effectively monitor all the subsidies that are given because of the lack of requirement for granting authorities to register all of those subsidies, or even subsidies over a sensible threshold—the threshold as set is too high.

Amendment 29 would ensure that the CMA's first report occurs two years, rather than five years, after subsidy control begins. Given the newness of the regime—it is being created and implemented for the first time in autumn next year—we need to know how things are going and we need to know that more quickly than in two or even three Parliaments, depending on how quickly elections are called. Five years is about three parliamentary terms, if we go by recent times. Some people would even say that five years is a generation.

Five years is too long for the initial report. Following that, five years for the subsequent report is also too long. Amendment 30 suggests that the report should be pulled together annually, rather than every five years. That would greatly improve transparency. The Government have been clear that this is a permissive structure that will encourage people to act in the best interests of economic development and improving their areas. I do not think we can properly assess that if we get a report on this from the CMA only every five years rather than more regularly. The Opposition's amendments to the clause would similarly reduce the length of time between reports; they have been slightly more flexible than I have, but I support the aim of their amendments—to reduce the term from five years.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Sharma. I thank you for continuing to turn up to our ongoing and extensive deliberations. I thank the hon. Member for Aberdeen North for her comments. She is right that we have tabled a coincidentally similar amendment to hers. I support all the arguments she made. She is right that the Opposition amendment suggested slightly greater flexibility than the SNP amendment, partly because of our thinking on how long it might take to actually get the information to be able to add more meaningful assessments and recommendations to the monitoring of and reporting on subsidy control.

The clause rightly requires the CMA to undertake a periodic review of the effectiveness of the Bill's operation and its impact on competition and investment in the UK. The Secretary of State may also direct the CMA to prepare a report in respect of a specified period. I am not fully sure whether that allows for some flexibility if issues are identified; perhaps the Minister can respond to that point. However, the review is important because the new regime contains many significant differences from the EU state aid rules in the processes that we will follow. Those processes, which I think have the support of the House, require safeguards to be in place, because they are not in place in a system in which some of the review and scrutiny is done up front. We cannot embark on this without making sure that there are safeguards on the use of public funds, adequate scrutiny measures and a system for learning what works well and what may not. For example, there may be a learning curve for public authorities, businesses and the Government alike, so it is important that the regime is subject to this regular review. It is good practice and it is important for value for money, for accountability to the taxpayer and to assess the effectiveness of the regime and make any necessary changes.

It is important that the regime is subject to regular review. I think we are joined here in the view that five years is not regular enough, particularly given the very good example of having three elections in five years. Politics is not always certain, yet we want that certainty to be in place. We want the learning to be fast cycle; it is good practice to learn in a more fast-cycle way. Perhaps the Minister could clarify why this time period was selected. Five years would effectively provide for one report per Parliament, assuming that we have a five-year Parliament.

What is more, five years is a significant amount of time to have passed before the first review of the effectiveness of the operation of the regime. There could be significant inefficiencies that cause substantive negative effects within that timeframe, and Parliament would be none the wiser without that informed view and assessment from the CMA. Labour tabled amendments 61 and 62 to reduce the reporting period laid out in clause 65 to every three years, which would allow for enough data to come through and for a cycle of meaningful reports that could take into account recommendations for change and assess how effectively the intended outcomes had been delivered. As a minimum, that is a more appropriate timeframe for reviewing the new regime. I would be grateful to know whether deciding on five years followed discussions with the CMA. If those discussions did happen, what was the CMA's feedback? Engaging with the CMA is important, and there may be the need for challenge if Parliament has a different view.

As well as giving Governments more opportunity to make changes to the regime, including legislative changes and process improvements, any problems with the regime would be resolved considerably earlier because, let's face it, if we have five years to do something, it may be left until the last minute. We want to ensure that Parliament is also responsive to any changes and plays its part in ensuring that the regime, and any changes, can be reviewed effectively every three years.

I hope the Minister recognises why five years is too long a reporting period, takes on board the comments of the hon. Member for Aberdeen North and her party and those from Labour, and perhaps offers some feedback to the Committee on why five years was suggested. Does the Minister recognise our arguments, and would he be prepared to include a review in the later stages of the Bill?

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is a pleasure, as always, to serve under your chairmanship, Mr Sharma. As we have heard, clause 65 requires the CMA to produce a report on the overall effectiveness of the regime and its impact on competition and investment within the UK. The monitoring report is to be produced in relation to the first five years following the Bill's commencement and for every subsequent five-year period. That interval was chosen specifically as an appropriate length of time over which to consider the wider impacts of the regime as a whole and to evaluate its overall effectiveness during a period in which a sizeable number of subsidies would be given, so that the medium-term effects could be properly considered and evaluated.

The period is consistent with the maximum length of a parliamentary term, as we have heard, ensuring that there is a regime-wide assessment of the regime at least every normal parliamentary term. Producing such a report is a significant undertaking, requiring a good amount of time to gather and analyse the evidence. Five years strikes the right balance between the time needed to observe how the new regime is working and the benefit of timely analysis and evaluation.

Seema Malhotra: I thank the Minister for giving way, and I appreciate his comments. However, he has not explained whether periods of time other than five years were assessed, and has not yet explained—perhaps he will—whether the CMA was involved in the discussions. Given the work of the subsidy advice unit and all the other work going on, producing a report every three years will not be too onerous if it is part of business as usual. What consideration has been given to other time periods?

Perhaps the Minister can also clarify something. Does he see that if a report arrives in year four of a Parliament and some legislative changes are required and then we have an election, that would not be a sensible way of running a regime that requires some interplay between Parliament and the devolved Administrations? More frequent reporting at three years, which is not too onerous—it is as long as it takes to complete a common degree—would make a difference and allow for changes to be brought through.

Paul Scully: To be fair, I had only just started making my remarks. However, whether it is butting up against elections or not, that could equally be the case in three years as well as five years. However, five years was chosen, as I said, basically to correspond roughly with the standard parliamentary term; it gives a good amount of time for good and meaningful data to be collected and analysed; and it is also consistent with the monitoring reports of other bodies, such as the Office for the Internal Market.

Clearly, we work with the CMA on this issue and other issues. The CMA will work on the subsidy control regime in the future; we work with it very closely. In the

[Paul Scully]

evidence session, Rachel Merelie talked about the fact that there may be merit in the CMA providing advice more frequently at the request of the Secretary of State, and that is exactly what is set out in the Bill, so that the frequency of reporting can be changed, which I will come on to shortly.

We have heard that the various amendments will reduce the key periods, down to either two years or three years, depending on the particular amendment. I will cover the amendments in turn.

First of all, amendment 29 would require the initial monitoring report to be produced within two years of the Bill gaining Royal Assent, as opposed to within five years. Well, I have talked about the fact that five years would normally be the appropriate timeframe, so that the wider evidence and the consequences can be properly considered. I agree that circumstances might arise that could make it beneficial for any monitoring report on the new control regime to be produced within a shorter timeframe. That is why clause 65(4) says:

"The Secretary of State may direct the CMA to prepare a report in relation to a specified period."

And the Secretary of State will provide the means for an earlier report if it should be considered necessary. Therefore, I believe that amendment 29 is unnecessary.

Amendment 30 relates to the reporting frequency. Again, I understand the desire of the hon. Member for Aberdeen North for more frequent reporting. However, reducing the interval between the reports by the subsidy advice unit to one year is not necessary and could divert resource from other important activities.

Equating more frequent monitoring reports with improved scrutiny and transparency might seem attractive, but in reality it could well have an effect opposite to that intended by the hon. Member, resulting in more superficial reports, which would be less useful in assessing the overall effectiveness of the subsidy regime.

Clause 66 already requires the subsidy advice unit to provide annual reports to Parliament, in order to provide transparency in referral cases that it has handled throughout the year. The monitoring reports set out in clause 65 go beyond that, covering the functioning of the whole regime and not just the specific role of the subsidy advice unit. By necessity, those reports take longer to produce, so that there is sufficient quality data for the subsidy advice unit to consider.

Kevin Hollinrake (Thirsk and Malton) (Con): It may seem tempting to wrap all this stuff in lots of scrutiny, but does my hon. Friend agree that red tape costs money? Wrapping the economy in red tape costs money. Ultimately, the cost of that has to be borne by the taxpayer. He is absolutely right to say that at any point in time the Secretary of State could ask the CMA to consider whether there is any evidence of problems with the provisions in the Bill. Better to have that arrangement than simply to ask for review after review, for which there will be a cost to the taxpayer.

Paul Scully: My hon. Friend is absolutely right, as usual; we do not want reviews for the sake of reviews. It is good to have a focus, but it is also good to be able to look at the meaningful evidence rather than distract attention and resource from what may be important scrutiny by the subsidy advice unit itself in its day-to-day work. Such reviews would obviously put pressure on public authorities and the awarders as well.

It is important that we ensure that the unit has sufficient time to collate and analyse the evidence. Reducing the amount of time available to produce these monitoring reports would only result in less useful reports, as there would not be good enough quality data available for the unit to assess, nor sufficient time for it to collect and analyse the data that is available. And it would indeed divert resources away from the subsidy advice unit's other functions, which could, for example, reduce the capacity to accept voluntary referral requests from public authorities.

Amendments 61 and 62, which are meant to be considered together, were tabled by the hon. Member for Feltham and Heston. They are obviously very similar to amendments 29 and 30, which were tabled by the hon. Member for Aberdeen North.

Amendment 61 would require the subsidy advice unit's initial monitoring report to be produced within three years of the Bill gaining Royal Assent, as opposed to within five years. I have already said that five years would normally be the appropriate timeframe. However, I agree that in some situations it would be beneficial for the monitoring report to be produced within a shorter timeframe. For that reason, we already have the powers set out in clause 65(4). As I have already said, clause 65(4) says that

"The Secretary of State may direct the CMA to prepare a report in relation to a specified period",

should that be necessary. As such, I believe that amendment 61 is unnecessary.

9.45 am

Similarly, I do not believe that amendment 62 strikes the right balance, for the reasons I have set out, and it is not consistent with the CMA's other reporting requirements. As I have noted, more frequent monitoring reports may not lead to improved scrutiny. Clause 66 already requires annual reports to Parliament on the cases that the subsidy advice unit has handled throughout the year, so we want to get the balance right in this area, making sure that, as my hon. Friend the Member for Thirsk and Malton has said, we are not dragging resource away but focusing the reviews on exactly when they are needed and making sure that the subjects they cover are very focused. I therefore request that the hon. Member for Aberdeen North withdraws her amendment.

Kirsty Blackman: I want to address a few things that have been mentioned. It is absolutely the case that clause 66 requires annual reporting, but that annual reporting is on a very limited number of things. It seems to me that only numbers need to be provided, and that that reporting does not include very much else. The requirement is, "How many post-award referrals have there been, and how has the CMA dealt with them?" rather than, "Have they been dealt with properly?" It is not as much of a deep dive as it could be.

The Minister could commit to a step in between those two approaches. Clause 65 gives the Secretary of State flexibility to direct a report to be made within a shorter period. The middle step would allow an annual

report to address more than just the data while not going quite as far as the requirements under clause 65 for a review of the entire scheme's efficacy and whether it is working as intended. It would be interesting to hear whether the Minister would consider that.

Turning to the various other things that have been said, the Brexit vote was only five and a half years ago—which is not much longer than the five-year period—and before that we had no idea that we would be creating our own subsidy control regime. We have moved so far, and so much has happened over that period of time, that I do not think a five-year period is short enough. I appreciate the Minister's comments about the possibility of the Secretary of State directing a report for an earlier period, particularly initially, but clause 65(3)(a) could have said that the period should be three or two years. If that had been written in the Bill in the first place, we would have had fewer concerns like the ones we are raising today.

The hon. Member for Thirsk and Malton said that red tape costs money. He is right, but red tape also saves money, and the whole point of this Bill is that public money is going to be given to organisations. Public money is going to be spent, and we need to make sure that that money is spent effectively, but I do not think that the suggested review system is adequate enough to ensure that we spend that public money effectively. Yes, this review would cost money—I am not for a second trying to dodge that fact—but I think that the benefits outweigh the risks, in that this is such a new regime and it will be really important for us to carry out that review at a relatively early stage. I am not asking for it to be done in six months; I am suggesting two years for the initial review, and the Opposition are suggesting three years. Neither is as long as five years, which will give us the early comfort of knowing that the regime is acting in the way that we hope and expect it will do.

Kevin Hollinrake: The hon. Lady's amendment does not say "two years", though, does it? It says:

"two years, and annually thereafter."

That sounds like a huge amount of bureaucracy. She said that it would be a lighter-touch report, but I do not see anything in the amendment that says it is a lighter-touch report. It talks about the effectiveness of the provisions, so how would it not end up being a deep dive into the workings of the scheme?

Kirsty Blackman: I apologise—I did not make myself clear. When I talk about a lighter-touch report, I am talking not specifically about the amendments but about the fact that there should be a third approach in the Bill. If the Government are not going to move from five years—if the five-year reporting period for this deep dive report is going to remain—and we have the annual reports suggested in clause 66, which are too light touch and are just about the numbers, there is a case to be made for a middle step: a report that contains a little bit more than just the numbers, but not quite as much as that potentially costly review. That is not covered by the amendments; I am simply suggesting that the Minister consider it.

Paul Scully: I think the middle way that the hon. Member is talking about is actually what clause 66 does. The clause notes the bare minimum of what that the annual report should include. There is plenty more that the CMA can and should include—we are giving it the bare minimum.

Kirsty Blackman: That is a hugely helpful clarification. If parliamentarians or anyone else do not believe that the data included in the annual report is transparent enough, the Minister is open to us writing to the Secretary of State to request that it include more information.

The Minister has been clear throughout the course of our deliberations that a number of the changes made by the Bill are about ensuring that things can be done at speed. The tax measures and other things that were put in place because of covid had to be done very quickly—nobody is disagreeing with that—but such an approach can result in unforeseen circumstances. As such, if something started and finished during the course of a five-year period, we would not know anything about its efficacy. We would not know whether it had made a difference in the way intended until significantly after it had ended.

The Secretary of State has the ability to require those additional things. If specific funding is going to be put in place for natural disasters, for example, or any other issue we have discussed, it would be helpful if the Minister would consider asking the CMA to do an additional report, asking: "Did this work as intended? Did the funding subsidy for natural disasters achieve its aims? Could it have been done through means other than subsidies? Was there a requirement for it to comply with everything in these provisions? Would it have been easier if they had not had to jump through certain hoops in order for the subsidy to be given more quickly?"

I think that this provision does not go far enough. The Minister's clarification about clause 66 is really helpful, and I am sure that both the Opposition and my party will continue to suggest areas where transparency could and should be improved. We will take our opportunity as parliamentarians to lobby the Government, and if there are specific concerns or issues that we believe require a report, we will request that such a report be undertaken. I wish to press amendment 29 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 21]

AYES

Blackman, Kirsty	Malhotra, Seema
Fletcher, Colleen	
Kinnock, Stephen	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 63, in clause 65, page 37, line 16, at end insert—

"(4A) In preparing any report under this section, the CMA must consult—

[Seema Malhotra]

(a) the Secretary of State;

(b) the Scottish Ministers;

(c) the Welsh Ministers; and

(d) the Department of Economy in Northern Ireland."

This amendment would require the CMA to consult with the Secretary of State and Devolved Administrations before preparing any report under this section.

The Chair: With this it will be convenient to discuss amendment 64, in clause 65, page 37, line 27, at end insert—

"(7A) The CMA must arrange for a copy of a report prepared under this section to be laid before the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly."

This amendment would require the CMA to lay a copy of its reports before the devolved parliaments and assemblies.

Seema Malhotra: We return to a familiar theme, which is the absence of any clear role for the devolved Administrations and the failure to recognise the need for a truly four-nation approach. Yet again, the clause fails to provide a role for the devolved Administrations in the CMA consultations and report.

The Government seem not to have quite grasped the fact that the new subsidy regime will affect not just England, but Wales, Scotland and Northern Ireland. All nations should contribute to the review of the effectiveness of the regime and its impact on competition and investment within the UK, as all four nations will be affected. In fact, given that Scotland, Wales and Northern Ireland will have to implement not just what is in the Bill, but the many future regulations to be made by the Secretary of State, it is equally important that all voices are heard. Already, the devolved Administrations will not be included in defining many regulations; will not be able to call in subsidies or make post-award referrals; will not have automatic standing to challenge subsidies before the Competition Appeal Tribunal; and may not even be represented on the body that oversees the new regime—unless the Government are enlightened by discussion in Committee and the main Chamber, and with what is happening with the Office for the Internal Market.

Will the Minister explain what role he sees the devolved Administrations playing in the new regime and in the monitoring and review? Daniel Greenberg, Parliamentary Counsel for Domestic Legislation, said in the evidence session that

"when you are dealing with international obligations of the UK, that has to be dealt with by central Government but, again, doesn't that have to be done in consultation with the devolved Administrations? Of course it does. With co-ordination with the devolved Administrations? Of course it does. With mechanisms for encoding that co-ordination and consultation into the way the Bill operates? Of course."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 61, Q80.]

The Labour party agrees completely with that, which is why we have consistently sought to amend the Bill to increase the role and voice of the devolved Administrations.

There have been fewer occasions on which Labour has wanted to increase the voice of the Secretary of State under the legislation, but clause 65 is one place where we think that might be important. The amendment would therefore require the CMA to consult both the Secretary of State and the devolved Administrations before issuing a periodic review of the regime. In particular, the CMA would find the inclusion of their voices helpful as it deliberates the impact of the regime on competition and investment across the UK.

Kirsty Blackman: I thank the hon. Member for her indulgence. There is no need for me to speak to the amendments, but I wholeheartedly support them. The Scottish National party will back them should they be pressed to a vote.

Seema Malhotra: I thank the hon. Member for her support.

Speaking to amendment 64, once the CMA has prepared its report, clause 65(7) requires the CMA to arrange for a copy of it to be laid before Parliament. We welcome the opportunity that that will provide for the UK Parliament to scrutinise the reports. Given the impact of the regime on the devolved Administrations, however, why will the report not also be laid before the devolved Administrations of Scotland, Wales and Northern Ireland, thereby giving them the opportunity to undertake detailed scrutiny? There might be a technical reason for that, but certainly the feedback that we have received is that laying reports before the Administrations would enable more formal scrutiny of them. I would be grateful for the Minister's comments on that.

Amendment 64 would require the CMA to put a copy of its report before the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly, which would provide each of the legislatures with a clear ability to scrutinise the CMA report and therefore the effectiveness and impact of the regime.

10 am

Paul Scully: As we have already discussed, clause 65 sets out the requirement for the unit to produce a report on the overall effectiveness of the subsidy control regime and its impact on competition and investment. Outside the broad content of the report, the Bill provides that the unit can draw upon powers set out in sections 41 to 43 of the United Kingdom Internal Market Act 2020 to gather information from public authorities, businesses and other persons in the service of producing its monitoring report.

In addition to the information-gathering powers of the 2020 Act, the unit can draw on other existing provisions that the CMA has under the Enterprise Act 2002 to engage with a wide range of stakeholders, and even commission new research in order to meet its statutory duties. Outside of those specific provisions, it is intended that the subsidy advice unit will have discretion on how to approach its monitoring functions.

We have heard that amendment 63 would require the subsidy advice unit to specifically consult the Secretary of State, Scottish Ministers, Welsh Ministers and the Department for the Economy in Northern Ireland in preparing a report. In preparing its monitoring report, the subsidy advice unit will want to seek information from public authorities across the UK, both in their capacity as subsidy granters and in relation to their various policy-making roles. That will be necessary in order to develop a balanced view of the function of the regime and its impact on competition and investment.

Highlighting the role of the Secretary of State and their contemporaries in the Bill gives rise to the question why other parties have been omitted. Why not also specify, for example, that the subsidy advice unit should consult regulators, businesses or their representative groups, or any number of other specific persons? The reason we have not specified individuals with whom the subsidy advice unit must engage is so as to afford it the maximum flexibility to undertake its monitoring function appropriately and as it thinks fit. The unit can also draw on the wealth of institutional knowledge that the CMA has, specifically related to the protection of competition. It is therefore unnecessary to direct the unit's subsidy monitoring functions in the way intended by the amendment.

Amendment 64 also concerns the subsidy advice unit's relationship with devolved Administrations in the fulfilment of its duties, and would require that its regime monitoring reports be laid before the relevant legislatures in Northern Ireland, Scotland and Wales, in addition to the UK Parliament. Hon. Members will undoubtedly point to the example of the Office for the Internal Market's reports on the functioning of the UK internal market, which are laid before all four UK Parliaments.

Although the Office for the Internal Market also falls under the umbrella of the CMA, it is a uniquely constituted body reflecting the specific role and relationships that it has with the Administrations in all four UK countries. We have consciously not followed the governance model established by the Office for the Internal Market for the subsidy advice unit. Subsidy control is and will remain a reserved policy matter. The subsidy advice unit will be formed as part of the CMA, a non-ministerial department that serves the whole of the UK. It is therefore appropriate that the CMA and, by extension, the subsidy advice unit reports to the whole UK Parliament.

Kirsty Blackman: May I ask the Minister—sorry if I missed it—to say explicitly whether he would expect the CMA to consult the devolved Administrations in the preparation of the five-year report?

Paul Scully: As an awarding body, I fully expect the CMA and subsidy advice unit to speak to all the devolved nations as well as public authorities. That does not specifically need to be in the Bill, for the reasons I have given about excluding others. Given that subsidy control is and will remain a reserved policy matter, it is right that the UK Parliament considers and scrutinises the report. I therefore request that the hon. Member for Feltham and Heston withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments. The devolved Administrations are distinct from other institutions because they are democratic institutions. For a regime that has to be accountable, it is important that the voice of those bodies and of Ministers, and others who may well have a view, are consulted. It is important to distinguish democratic institutions from others. The Minister is right that there will be a whole range of people who may want to contribute their views, and I am sure that the CMA will find a mechanism for seeking views.

I want to push amendment 63 to a vote because if this is something that should be done anyway, we want to ensure that it is done. Making sure at key stages that the voice of the devolved Administrations, and indeed of the Secretary of State, are formally heard will add significant insight to what will be in that report. We want that report to be the best it can be.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 22]

AYES

Blackman, Kirsty	Malhotra, Seema
Fletcher, Colleen	
Kinnock, Stephen	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 65, in clause 65, page 37, line 27, at end insert—

"(7A) Within 30 working days of a report being laid under subsection (7), the Secretary of State must make a statement to the House of Commons explaining what action will be taken to remedy any deficiencies in the effectiveness of the operation of the Act or impact of the operation of the Act on competition and investment within the United Kingdom identified by the CMA."

This amendment would require the Secretary of State to make a statement to the House of Commons on the CMA's findings and any remedial action required.

I will keep my comments brief. This amendment would require the Secretary of State to make a statement to the House of Commons on the CMA's findings and any remedial action required. It does not take a genius to recognise that reviews alone are not enough; they need to be acted on. Yet there are no provisions in the Bill that we have seen that require the Secretary of State to act in response to the findings of the CMA's reports, or even to consider whether action is necessary to remediate any deficiencies in the regime identified by the CMA. Does the Minister agree that this seems to be a significant gap?

If the report and reviews under clause 65 do not trigger at the very least an obligation for the Secretary of State to consider and have due regard to its findings, are we not missing quite an important step in the overall process of review and improvement of the regime? That is why we have tabled amendment 65, which states that within 30 days of the report being laid under clause 65, the Secretary of State must make a statement to the House explaining what their response is and what action may be taken to address any deficiencies highlighted in the report. That would ensure that any issues with the new regime were not only raised, but actively considered. As the regulation currently stands, problems identified by the CMA may continue undebated and unaddressed.

Kirsty Blackman: I have a couple of other comments and suggestions. The laying before Parliament is, as has been said, a limited way in which parliamentarians can interact with the report. It is great that it is being laid

[Kirsty Blackman]

before Parliament, but a ministerial statement, whether written or oral, would help in not just raising the profile of the report published by the CMA, but making clear what the Government intend to do about any deficiencies that have been created. Alternatively, there could be a requirement in the legislation—I might think about this for Report—for the report to go before the Public Accounts Committee or the Business, Energy and Industrial Strategy Committee, whichever would be more relevant, in order that it could scrutinise the report and ensure that it was taking evidence and creating a report with recommendations to the Government on what needs to be changed.

If the reporting period is to be only every five years, I assume that there will not be immediate—as soon as the report comes through—change happening and that it is likely that there will be a mulling-over period once the report comes in, so that, as the Minister said, the medium-term changes and so on can be assessed and any changes can be made to the legislation. In that case, a written statement or an oral statement being made, whereby we could ask any questions that we needed to, or a more in-depth report by one of the parliamentary Select Committees, would mean that Parliament had a stake, Parliament was invested, and Parliament was assisting in making the changes that the CMA required or in suggesting how to make the changes.

I am sure that the Minister would be the first to admit that the Government do not have every one of the answers. They may have a lot of the answers, in his view, but they do not have every one of the answers, and that is why consultation is hugely important with external organisations but also with those of us who are elected to scrutinise legislation, to scrutinise what the Government are doing, and to try to make the most appropriate changes so that things work, in the interest of spending public money appropriately but also in the interests of our constituents and the people of the UK.

Paul Scully: The hon. Member for Aberdeen North is absolutely right to want to improve the system. That is exactly the incentive; we need to improve the system. A number of mechanisms are available already. The BEIS Committee and the Public Accounts Committee can indeed call the report in and consider it, and there are urgent questions and any number of other mechanisms. I understand and appreciate the suggestions. There are mechanisms there.

The main purpose of the function of reporting, as I have said, is to provide a measure of objective scrutiny for the regime. Parliamentarians can consider the report and feed into the process of monitoring and continuous improvement of the regime, as can Government themselves. That objective assessment, based on the information that has been gathered, will be a really valuable and transparent mechanism to demonstrate what is working and what may require improvement. It will of course fall to the Government to provide a suitable response to any issues identified by the report.

The amendment tabled by the hon. Member for Feltham and Heston would put in place an arbitrary and constraining time limit of 30 days within which the Secretary of State must assess the findings from the unit's monitoring report and then provide details for addressing any potential issues. Without prejudicing what the content of any future monitoring report might be, it seems unlikely that this amendment would have the effect of promoting effective and well considered changes if they were required, because the amendment, by tying the Government's hands in this way, would risk hurried and ineffective solutions to any issues identified by the SAU. The monitoring reports will represent the culmination of many months of work by the SAU, so it is right that the Government should respond appropriately. However, arbitrary, short deadlines are not likely to promote sensible changes, especially if there is a need for substantive change.

This amendment also offers little benefit in relation to improving the transparency of the regime. First, monitoring reports will already be published for all to see. Secondly, many of the tools provided by the Bill require further scrutiny by Parliament through the means of affirmative regulations, which require debate and, ultimately, the agreement of parliamentarians in both Houses before they can be enacted. Transparency is one of the cornerstones of the new subsidy regime, and continuous improvement is one of the essential principles of good governance. The amendment would do nothing to enhance either of those aims and may in fact prove detrimental to them by forcing an artificially rushed response to the SAU's finding. I therefore request that the hon. Member for Feltham and Heston withdraw the amendment.

10.15 am

Seema Malhotra: I thank the Minister for his comments. On the basis of some of the discussion, and the suggestion about what role Select Committees might play, issues with the report are perhaps something we can review and discuss offline with the Minister. On that basis, 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 requires the subsidy advice unit periodically to review and report on the effectiveness of the operation of the subsidy control regime and its impact on competition and investment. This report should be prepared every five years, or more frequently if requested by the Secretary of State. This review mechanism will ensure that the new subsidy control regime continues to operate effectively, based on experience of how it is working in practice and the impact it is having on competition and investment. The report will be published by the SAU and laid before Parliament.

Seema Malhotra: This is an important clause and we support its standing part of the Bill.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill.

Clause 66

CMA Annual Report

Seema Malhotra: I beg to move amendment 66, in clause 66, page 37, line 40, at end insert—

"(d) the proportion of subsidies and schemes in each of paragraphs (a), (b) and (c) in relation to which the CMA found that the public authority's assessment under section 52(2)(d) or 56(2)(d) required improvement;

(e) the proportion of subsidies and schemes in each of paragraphs (a), (b) and (c) in relation to which the CMA identified a risk of negative effects on competition or investment within the United Kingdom;

(f) information on the geographical allocation of subsidies, including the total value of subsidies subject to mandatory and voluntary notification in the preceding 12 months that have been awarded to enterprises in each nation, region and local authority within the United Kingdom;

(g) the number of extensions to the reporting period made under section 53(6) at the request of the CMA and the average number of days of those extensions;

(h) the number of voluntary referrals made under section 56(1);and

(i) the number of those voluntary referrals in relation to which the CMA has given notice under section 57(2) that it has decided not to prepare a report.".

This amendment would require the CMA to include the additional specified information in its annual report.

Clause 66 sets out the information that the CMA must include in its annual reports. It is connected in some regards to the debate that we have just had. Although we support the mandating of specific information to be included in the annual reports, the information required feels too high-level and not sufficiently detailed or useful. The clause envisages the CMA simply listing the subsidies and schemes in relation to which it has prepared reports. The Minister may explain what he expects in the annual report.

We believe that, first, the annual report should include information on the number of subsidies and schemes in relation to which the CMA found that public authority assessments required improvements. In doing so, the review would provide an assessment of how successfully public authorities are meeting their statutory obligations under the legislation.

Secondly, the report should include information on the subsidies and schemes that the CMA reviewed and found risked having a negative effect on competition and investment within the UK's internal market. That would ensure that not only the House but the taxpayer and the devolved Administrations are made aware of what, where and how subsidies are putting pressure on the UK's internal market, if that is happening.

Thirdly, the report should include information on the geographical spread of subsidies that the CMA considered in the last reporting period, as well as information on the value of subsidies that have been awarded to enterprises in each region, nation and local authority in the UK. We are used to statistics and information being available at a fairly granular level. This is important and significant, given that, despite our best attempts, the Bill currently provides no information or regulation on how subsidies and schemes will work to reduce economic inequality across the United Kingdom.

If the Government really believe in levelling up, they need to take action to match what they say. The new regime, and subsidies generally, can provide an important opportunity for channelling resources to deprived areas and reducing regional and intra-regional inequality. As the Bill currently stands, however, there are no regulations in place that actively allow for that. As Professor Fothergill, the national director of the Industrial Communities Alliance, explained:

"In certain places, if we really are serious about levelling up, we have to put more resources into that effort, and we have to use state aid as one of the tools for delivering new jobs."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 11, Q7.]

Does the Minister recognise that the contents of the Bill do not currently match up with the levelling-up rhetoric? Does he agree that subsidies can be used and could make a significant impact by supporting and aiding deprived areas? Including information on the geographical spread of subsidies could be quite an effective and efficient way of providing some insight about whether the resources under the regime are working to reduce inequality, which would surely be of help to the Government in achieving their stated goals.

We believe that the CMA's annual report should include information that would allow the CMA's resourcing, capacity and effectiveness to be evaluated. We have proposed that the annual report should set out

"the number of extensions to the reporting period"

for mandatory notifications that the CMA has made, the duration of those extensions,

"the number of voluntary referrals made",

and how many of those the CMA has and has not prepared a report on. The CMA has a key role in ensuring that subsidies and schemes meet the principles and do not distort the market. If it is unable to carry out its responsibilities effectively, there will be a real risk that damaging subsidies continue without challenge or review.

Kirsty Blackman: I have just a couple of points to make. We have already raised a number of concerns about the limitations of the transparency that will be provided, particularly on the subsidies that will be on the database and our inability to get any meaningful information from it, because so many of the subsidies that will be made will be excluded from being on the website by merit of their being below the de minimis threshold. We continue to have concerns about that.

The amendment simply asks for transparency data and for the CMA to produce in its annual report data that it has already. These are data that the CMA will have within its local key performance indicators—stuff that it will be considering anyway. It will know the number of extensions and voluntary referrals that have been made. This is not an additional piece of work that the CMA will need to do. It is simply ensuring that such information is added to the annual report, rather than putting an additional burden on the CMA. It is stuff that the CMA will be measuring anyway—if it is not doing so, it is not a public organisation that is working sensibly. This is basic, bread-and-butter stuff, and it means that we would be able to scrutinise properly and have an idea of what is happening.

The points made by the hon. Member for Feltham and Heston, particularly in relation to the resourcing of the CMA, are incredibly important. We want the CMA to be adequately resourced so that it can carry out its functions effectively, because the system does not work if the CMA is not adequately resourced. We will struggle

[Kirsty Blackman]

to know whether the CMA has adequate resource if it is not producing data on the number of extensions that it has required. As I say, the amendment is eminently sensible, and I look forward to hearing what the Minister has to say in response to the speech made by the Opposition spokesperson.

Paul Scully: The Enterprise and Regulatory Reform Act 2013 requires the CMA to prepare an annual report of its activities and performance during the year. Clause 66 requires the CMA to include details within its annual report of any subsidies and schemes that have been referred to the subsidy advice unit in the previous year, including both mandatory and voluntary referrals. The purpose of including that information is to provide transparency on the number and types of cases being referred to the SAU each year.

Amendment 66 adds to the information that the CMA would be required to append to its annual report in ways that we believe are overly prescriptive. It would limit the CMA's flexibility to determine what information to include in its annual report and the most effective way to deliver that. Some of the information that the amendment mandates would not be accessible or consistently available. For example, the requirement that the CMA publish the proportion of cases where the SAU found that a public authority's assessment required improvement, or where it identified a risk to competition and investment, misunderstands the role of the SAU.

The SAU will evaluate the public authority's assessment of whether the subsidy or scheme complies with the Bill's requirements. It will also evaluate whether there are any effects of the subsidy or scheme on competition or investment in the UK. The SAU may include advice about how the public authority's statement might be improved or modified to ensure compliance with the requirements of the Bill, but the SAU is not a regulator. It will not make its own independent assessment of potential risks to competition and investment, or make definitive judgements on the extent of them.

Other requirements of the amendment are similarly unnecessary, including the requirement to publish the number of requests made by the SAU under clause 53(6) to extend the reporting period for a mandatory referral. Clause 53(7) already requires that such requests are published. In addition, the low number of mandatory referrals that we estimate in any given year will mean that calculating the average number of days for extension is unlikely to offer much additional insight into the subsidy control regime. It therefore need not be mandated for inclusion in the annual report.

The amendment would also require the CMA to publish geographical allocations of all subsidies subject to mandatory and voluntary referrals. That would be a burdensome task for the CMA, and would be difficult to comply with consistently. First, the amendment asks for information to which the CMA would not have ready access, since not all subsidies eligible for voluntary referral will be referred to the SAU. Secondly, if a public authority referred a scheme instead of an individual subsidy to the SAU, it would not be possible for the CMA to determine the expected geographic allocation of subsidies not yet awarded under that scheme. The same issue may apply to the beneficiary of a single subsidy that operates in more than one location.

The right approach is to provide the CMA with a degree of flexibility to determine what information about subsidies and schemes referred to the SAU is presented in its annual report. For the reasons that I have provided, I request that the hon. Member for Feltham and Heston withdraw the amendment.

Seema Malhotra: I thank the Minister and the hon. Member for Aberdeen North for their comments. I intended to press the amendment to a vote, but on the basis of some of the discussion I will not do so. However, I will challenge a couple of things the Minister said. We are all aware of where there could be burdens for the CMA or others in producing reports, but it is important to ensure that we have an X-ray view that provides insight into what is happening across the system as a whole. Where the CMA should have information that would be relevant, it may be useful to include it in the annual report.

The Minister talked about eligibility for voluntary referral, about which the CMA would not have information. We did not intend to include any wording around eligibility, and I do not think that we did. We talked about the number of voluntary referrals, and those for which the CMA decided not to prepare a report. It is important to ensure that our proposals are understood. I take on board what he said, I think in the debate on clause 65: that he would welcome suggestions from the Opposition, and perhaps from his own side, about what information would be useful. We all want to ensure that there is an effective and efficient regime. None of us wants to see unnecessary costs incurred, but we need transparency and the right information to inform the right decisions and the best response.

10.30 am

I will challenge the Minister slightly on this matter. The public and Parliament are the customers of that report. Reports are produced with the requirement to be accountable for what has been done in line with what might be expected, how efficiently and effectively it has been done, and to have metrics by which performance can be assessed and issues identified. We should not abdicate our responsibilities as good customers to say what we think is needed for Parliament to be able to review the effectiveness of the regime and the institutions involved in delivering it. I encourage the Minister to think about that and not just say he will leave it to the CMA to produce what it wants. We must also have in mind what needs to be produced to be able to make our decisions effectively.

Kirsty Blackman: I am a bit confused by the Minister's comments on paragraph (d). He seemed to suggest that the CMA's report may not talk about where local authorities' assessments require improvement. That is slightly concerning because, if a local authority is making an assessment on a subsidy and the assessment requires improvement, who is going to tell it? Who is going to say the assessment requires improvement if the CMA does not have the ability to say, "Excuse me. You have done this a bit wrong. Could you do it better?"

It would be helpful if the Minister contacted us, by letter if possible, to say what he expects will be in the CMA's reports. At the moment, I do not understand what will be in those reports, specifically in relation to

the mandatory referrals. What will be in the CMA's report on the mandatory referrals that come forward? What does the Minister expect will be in the report? It does not have to be prescriptive; it could be ideas of the kind of things that would be in there, because at the moment I do not understand what that report is going to be.

Seema Malhotra: It would be helpful, in the light of our conversation, if we could start with the Minister's expectation. He may well have reflected on the discussion we have had today. That may a good and efficient way for us to come back with suggestions of what else might occur, or perhaps there will be full, total agreement on what we want to see in the CMA's annual report; we do not know. 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: In accordance with the Enterprise and Regulatory Reform Act 2013, after the end of each financial year, the Competition and Markets Authority must prepare and send to the Secretary of State an annual report of its activities and performance during the year. The clause requires that the CMA include details within its annual report of any subsidies and schemes that have been referred to the subsidy advice unit in the previous year, including referrals made on both a mandatory and a voluntary basis. That will help to provide transparency on the number and types of subsidies and schemes that have been reported on by the subsidy advice unit.

Seema Malhotra: Notwithstanding the comments we have made in the ongoing discussion, we support the clause stand part.

Question put and agreed to.

Clause 66 accordingly ordered to stand part of the Bill.

Clause 67

INFORMATION-GATHERING POWERS

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

Paul Scully: The clause gives the subsidy advice unit—the SAU—information-gathering powers to assist with its monitoring and reporting functions under clause 65. It does so by applying, with modifications, the information-gathering powers that the CMA has under sections 41 to 43 of the United Kingdom Internal Market Act 2020.

Those powers enable the SAU to require that persons produce specified documents and that businesses provide estimates, forecasts, returns and other information that may be specified. The SAU will be able to require that the information be provided for the purpose of assisting it to review and report on the operation of the Bill, and on its impact on competition and investment within the United Kingdom. The SAU will have the power to impose financial penalties, where a person fails to provide information as required, or intentionally obstructs or delays the SAU when it is exercising those powers.

The Secretary of State is given the power to make necessary modifications to the powers, so that they work when applied for those purposes. Such modifications cannot alter the maximum financial penalties that may be imposed by the SAU. It is important that the SAU can obtain credible and comprehensive information, so that it can monitor and report on the subsidy control regime effectively. The ability to impose financial penalties for non-compliance provides a powerful incentive for persons to provide that information to the SAU and is consistent with the CMA's existing statutory functions.

Seema Malhotra: The clause applies sections 41 to 43 of the United Kingdom Internal Market Act 2020 for the purpose of assisting the CMA in carrying out its functions on subsidy control. The clause means that the CMA will be able to give an information notice or require the production of a document by an individual, business, or public authority. We recognise the importance of allowing the CMA to give an information notice, so that it can monitor the subsidy regime effectively. We therefore support the clause standing part of the Bill.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clause 68

SUBSIDY ADVICE UNIT

Seema Malhotra: I beg to move amendment 67, in clause 68, page 38, line 39, at end insert—

"(3A) The Chair of the CMA Board may appoint up to three non-executive members to the Subsidy Advice Unit established under subsection (1) in order to ensure that the Unit includes least one person with relevant experience in relation to each of Wales, Scotland and Northern Ireland."

This amendment would allow the CMA Chair to appoint up to three non-executive members to ensure that the Unit includes at least one person with experience in relation to each of Wales, Scotland and Northern Ireland

The Chair: With this it will be convenient to discuss the following:

Amendment 68, in clause 68, page 38, line 41, at end insert—

"or persons appointed under subsection (3A)."

This amendment is linked to Amendment 67.

Amendment 69, in clause 68, page 38, line 41, at end insert—

"(4A) Before making an appointment to the Subsidy Advice Unit, the CMA must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland."

This amendment would require the CMA to seek the consent of the devolved administrations before making an appointment to the Subsidy Advice Unit.

Seema Malhotra: The clause establishes regulations for the CMA to establish a board called the subsidy advice unit, which will carry out the CMA's duties under the new regime. We support the creation of the subsidy advice unit and the duties it gains under the Bill. However, yet again, the Government have failed to create a role for the devolved Administrations. The Minister might wonder whether I sound like a broken record, but the reason is that the theme continues to be a cause of concern throughout the Bill.

[Seema Malhotra]

The subsidy advice unit will play an extremely important role in the new regime, consistently assessing all subsidies and schemes referred to the CMA, by public bodies and by the Secretary of State. Its reports and advice will influence the challenging and carrying out of subsidies and schemes, and will provide important guidance for public authorities. The demands on its time and expertise will be considerable, as it sets up and carries out that very important function.

Rightly, the unit ought to have all the right input. A diversity of input means that some of the best decisions will be made. It is important to ensure that the right advice and input will be there in the unit, in particular that representing all four nations of the UK. Its work will be applicable not just to England, but to Scotland, Wales and Northern Ireland. However, the clause does not appear to ensure that all nations will be represented fairly in the subsidy advice unit. Why is that?

Does the Minister not feel that it is important for the devolved nations to be represented on this significant body? Doing so would enhance the Government's reaching out and their ongoing connection with the devolved Administrations, ensuring genuine four-nation input in its work. As Dr Pazos-Vidal, head of the Brussels office for the Convention of Scottish Local Authorities, said, the Bill

"is too general and not reflective of the territorial constitution of the UK as it stands."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 8, Q4.]

The lack of specific representation for the devolved Administrations on the advice unit is a stark example of that.

Labour proposes two amendments to change that lack of representation. They would ensure that the Bill works as well as we want it to, and as well as we need it to for Scotland, Wales and Northern Ireland, as well as for England. Amendment 67 would allow the chair of the CMA board to appoint up to three non-executive members to the subsidy advice unit if the board felt that there was a gap. That would ensure that the CMA could include at least one person on the unit with specific, recent experience that was relevant to Scotland, Wales and Northern Ireland. Amendment 69 states that the CMA must seek the consent of the devolved Administrations before making an appointment to the subsidy advice unit.

The amendments would ensure that the guidance and reports issued by the CMA are not too England-focused, and take into account, in a more equal way, the views of all the UK regions. They seek to ensure that information and insights are considered in the round and together, and that the new regime is more effective across the whole of the UK.

It is not just Labour that recognises that representation is important. To choose just one comment that we heard in evidence, Thomas Pope, deputy chief economist at the Institute for Government, said:

"I certainly think that the CMA and/or the subsidy advice unit should have a membership and input reflecting its four-nation role in the UK".—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 31, Q43.]

We think that that should be formalised as part of the structure, so that things are less likely to go wrong or be overlooked. If there is an intention to have such representation anyway, why not formalise it as part of the structure, and put it on the face of the Bill?

Paul Scully: Clause 68 requires that the CMA establishes a new committee of the board, called the subsidy advice unit, for the purposes of undertaking the subsidy control functions set out elsewhere in the Bill. The unit would be a specific committee within the CMA dealing with subsidy control, exclusively comprising staff and members of the CMA. In the clause, "members of the CMA" refers to the chair and individuals who sit on the CMA board and the CMA panel of competition experts. "Staff" refers to the civil servants employed by the CMA.

Amendments 67 and 68 appear to misinterpret the relationship between the CMA and the subsidy advice unit. The CMA was chosen as the home of the subsidy advice unit because of the former's experience of protecting UK competition and its credibility with both domestic and international stakeholders. Although the subsidy advice unit is being set up as a distinct unit, reflecting its unique role compared to the CMA's other statutory functions, it would still be an internal unit of the CMA. Subsidy advice unit appointments are therefore internal CMA appointments.

Amendments 67 and 68 seek to allow the CMA chair to appoint non-executive members to the subsidy advice unit. However, the CMA can already recruit personnel to the unit with relevant experience in relation to Northern Ireland, Scotland and Wales. The CMA already can and does recruit staff and members from across the UK, and currently employs staff in Belfast, Cardiff, Edinburgh and London.

Amendment 69 goes much further, by requiring that the CMA seek the consent of the devolved Administrations before making appointments to the subsidy advice unit. However, as we have already established, subsidy advice unit appointments are internal CMA appointments. The amendment represents an unprecedented and unwarranted intrusion into the CMA's internal operations, putting at risk the very independence that makes it such a desirable home for the subsidy advice unit's function. I therefore request that the hon. Member for Feltham and Heston withdraws amendment 67.

10.45 am

Seema Malhotra: The Minister has said that having the voice of the devolved Administrations is unprecedented. Before I come back on whether we will press any of the amendments to a vote, can he clarify whether that is really unprecedented? He was involved in the Office for the Internal Market legislation in a way that I was not directly, so is there a difference in how the Office for the Internal Market is constituted in relation to the devolved Administrations?

Paul Scully: It is a different set-up. The Bill places a requirement on the CMA to establish a new committee of its board, to be referred to as the unit, which would consist of members of the CMA and staff. It does not have the same constitutional impact, not least because the subsidy advice unit will deal with the subsidy regime, which is reserved. In the same way as Ministers do not get involved in the day-to-day workings of the subsidy advice unit or the CMA to ensure their independence, it remains for the CMA to determine which staff it appoints to the unit.

Seema Malhotra: I thank the Minister for his comments. I do not think he fully answered the question, which is whether there is anything different about the representation of the devolved Administrations in relation to the Office for the Internal Market. Perhaps he can answer that specifically.

The Minister is right about allowing for independence, but it is independence to operate within a framework that I think is being set in the Bill. There is room for us to do this without challenging the independence of the CMA or the subsidy advice unit by simply laying out what Parliament would expect. Perhaps he can come back to me specifically on the point about the Office for the Internal Market and the voice of devolved Administrations in it.

Paul Scully: The Office for the Internal Market is a distinct set-up—it is a new set-up—whereas this is a committee within the board of the CMA. As I say, they are two distinct bodies. The OIM is overseen by the CMA, but it sits as a distinct body. The SAU sits within the CMA's overall tree.

Seema Malhotra: And the devolved Administrations?

Paul Scully: The hon. Lady talks about the devolved position. The OIM sits as a distinct board specifically because of the constitutional impact of the United Kingdom Internal Market Act 2020. Because the SAU sits within the CMA's board, it is very much an internal appointment. The OIM is not constituted in the same way. It is not for the CMA to make those internal appointments to the OIM directly.

Seema Malhotra: I thank the Minister for that, but I do not feel that he has been completely clear. These are not God-given institutions; we are talking about decisions made by the same Government. The question becomes whether there is a reason, and whether it would be helpful and effective in the way that the regime is set up and operates, to have independent expert voices that are from and work with the four nations of the UK. I do not feel that there has been a clear response to that important issue.

Paul Scully: The 2020 Act constitutes the Office for the Internal Market—we determined that—whereas the subsidy advice unit, being not a regulator but an organisation that offers advice, sits directly within the CMA. It is not setting up a discrete body; it is setting up a portion of the CMA. We have charged the CMA to set up the subsidy advice unit. Either the CMA is independent or it is not. The amendment charges us to get under the bonnet of the CMA's internal appointments and direct it to make certain appointments, which risks undermining its independence.

Seema Malhotra: Perhaps the Minister and I will have to agree to differ on this point, because seeking to have particular areas of expertise reflected in the membership of the subsidy advice unit is not challenging its independence; it is setting out the expectation of Parliament. It is within the Minister's gift to say that, and it could be contained in the Bill if we chose to do so.

Paul Scully: The SAU has the ability to bring in independent experts, including experts with interests in Scotland, Northern Ireland and Wales. The staff clearly have that expertise as well, which is why they have offices in each of the cities I mentioned.

Seema Malhotra: I think we will come back to the point that the CMA is likely to do what is required by Parliament and Ministers. It is important to remember that distinction: we are the ones who are making decisions on legislation, so we are accountable to the public and the taxpayer for making legislation that will stand the test of time and operate in the interests of the four nations of the UK, as is intended. That is not for the CMA to make decisions on; it will be looking to the Minister to advise and help make decisions on that. I put it to the Minister that making sure that the subsidy advice unit contains expert voices from across our devolved Administrations is an important part of how we make sure it is constituted to have the inputs we need. After that, as I am sure we all agree, there needs to be independence in how the CMA operates. There will be no determination by Parliament of which specific people should be on those boards—we need to separate those issues.

On the basis of what the Minister has said, I do not think the Bill currently goes far enough, so we will press amendment 67 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 23]

AYES

Blackman, Kirsty	Malhotra, Seema
Fletcher, Colleen	
Kinnock, Stephen	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.

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

Paul Scully: The purpose of clause 68 is to require the Competition and Markets Authority to create the subsidy advice unit as a committee of its board, and to allow the SAU to carry out subsidy control functions under, or by virtue of, this Bill on behalf of the CMA. This type of governance has the advantage of not requiring large structural changes within the CMA, while providing appropriate administrative ring fencing to allow the subsidy advice unit to carry out the subsidy control functions, existing as a discrete unit with its own character and brand.

Kirsty Blackman: A couple of questions have been raised about this clause. I am not particularly happy with how it works: I think more could have been contained in it. The questions from the hon. Member for Feltham

[Kirsty Blackman]

and Heston have shown that there is a lack of clarity on what the subsidy advice unit means and how it will differ from the Office for the Internal Market, for example. The Minister will probably laugh, but it would be incredibly helpful if we were provided with an organogram that explains the work of the CMA, the SAU sub-committee, and the Office for the Internal Market, so that we can understand how it all goes together.

The Minister has been clear that the SAU sub-committee of the CMA board is a different thing from the internal market one. I do not entirely understand how it all fits together. I know that the Enterprise and Regulatory Reform Act 2013 explains some of it, but all those pieces of legislation, in various different places, being mashed together still does not give a picture of how it will all work. If the Minister could agree to look at that, it would be incredibly helpful.

Seema Malhotra: I thank the Minister for his comments. Notwithstanding the debate we have had, the Labour party supports clause stand part, but some areas need to be reflected on, including how the Office for the Internal Market is working, and what we can learn for the CMA and this regime. Clarity ahead of Report would be very helpful to settle some of those questions.

Paul Scully: I will happily supply an organogram. Effectively, the Office for the Internal Market sits as a specific panel, whereas the SAU is a committee of the CMA and will go down on the CMA board. Working that way was the CMA's preferred approach because that gives it discretion on how to design the operational processes for fulfilling the SAU's functions.

Seema Malhotra: I accept that the structures are different, but sometimes we can learn from principles. There is a difference between structures, functions and principles, and we are quite interested in the principles point.

Paul Scully: I appreciate that, but I was saying that the CMA preferred this way because it allows the CMA to draw on its board and staff members, as well as on existing members of the CMA panel, as it sees fit. That avoids creating any additional complexity in the governance arrangements—as we have seen with the Office for the Internal Market, we do not want that to keep expanding. That allows the CMA to draw on the expertise of CMA panel members with established backgrounds in state aid and subsidy control who were appointed in anticipation of the functions under the new regime.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69

REFERENCES TO SUBSIDY CONTROL GROUPS

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

Paul Scully: The purpose of clause 69 is to enable the subsidy advice unit to make a reference to the CMA chair for the constitution of a CMA panel group under schedule 4 to the Enterprise and Regulatory Reform Act 2013. The provision gives the CMA the ability to refer certain subsidy control functions to its expert independent panel members as it sees fit.

Seema Malhotra: As the Minister has said, clause 69 enables the subsidy advice unit to make reference to the chair of the CMA for the constitution of a CMA panel group. We have no issues with the clause and will support clause stand part.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Clause 70

REVIEW OF SUBSIDY DECISIONS

11 am

Seema Malhotra: I beg to move amendment 72, in clause 70, page 39, line 30, leave out subsection (2).

This amendment would allow an application to be made to review a subsidy decision related to a subsidy given under a scheme.

The amendment would enable interested parties to apply to the Competition Appeal Tribunal for a review of the decision to give a subsidy or make a subsidy scheme. An interested party is defined in subsection (7) as

"a person whose interests may be affected by the giving of the subsidy or the making of the…scheme"

or the Secretary of State. Subsection (2) states that:

"Where an application for a review of a subsidy decision relates to a subsidy given under a subsidy scheme, the application must be made for a review of the decision to make the subsidy scheme",

meaning that an application cannot be made in respect of a decision to give a subsidy under a scheme. The Bill is explicit on that matter.

The evidence from the law firm DWF is quite scathing about that aspect of clause 70:

"We also believe preventing challenges to awards made under a scheme runs contrary to the logic of the system, which seems to be to allow those affected to test the lawfulness of awards at the point they are affected."

I would be grateful if the Minister could respond on that. Is it right that although an interested party may have suffered as a result of the awarding of a subsidy, if it is made under a scheme, they have no basis to bring a challenge? If that is right, can it be right?

Labour's amendment reflects both our concern and a suggestion to remediate that deficiency, which is to leave out subsection (2). The result would be that an application to review a subsidy decision could also be made for a decision to award a subsidy made under a scheme. That seems to be one way to address the issue. I would be grateful for the Minister's response, first, on the issue and, secondly, whether he thinks there is a better way to address it in legislation.

Paul Scully: Clause 70 sets out the terms under which an application for review of a subsidy decision may be made to the Competition Appeal Tribunal. The tribunal may review, on application by an interested party, a decision made by a public authority to give a subsidy or make a subsidy scheme.

As drafted, an interested party may not apply to the tribunal for a review of the decision to grant a subsidy under the terms of a scheme. An application may instead be made to review the making of the scheme itself. Before a scheme is made, the proposed terms must be assessed against the subsidy control principles; a scheme must not be made unless subsidies granted under it are consistent with those principles. Consequently, subsidies that comply with the terms of a scheme will comply with the principles and do not need a separate assessment.

Subsidy schemes have long been recognised as a convenient way to grant multiple subsidies—not least because of the administrative simplicity of making a single, scheme-wide assessment against the principles. It would significantly undercut the benefits of administrative efficiency of schemes if subsidies granted in line with the terms of a subsidy scheme were eligible for review by the tribunal.

I am not sure what harm the amendment is trying to remedy. Is it the risk that impermissible subsidies may be granted under a scheme? In such cases, either the scheme is non-compliant and can be challenged within the normal limitation periods, or the subsidy does not comply with the terms of the scheme it is granted under, in which case the non-compliant subsidy would be deemed a new individual subsidy, and could be challenged as such. I therefore request that the hon. Lady withdraw the amendment.

Seema Malhotra: I thank the Minister for giving way. Could he clarify—

The Lord Commissioner of Her Majesty's Treasury (Michael Tomlinson): The Minister is not giving way. The hon. Lady is making a speech.

Seema Malhotra: I thank the hon. Gentleman for that. Will the Minister clarify that last point, as to how a subsidy under a scheme could be regarded—if I understood him correctly—as a new subsidy, and treated as a new subsidy for the purposes of a challenge?

Paul Scully: The scheme can essentially be challenged under the Competition Appeal Tribunal against the principles. If a subsidy granted under a scheme is consistent with those principles, it is part of the scheme, and it is the scheme that would need to be challenged. If a subsidy granted under a scheme is not consistent with the principles, it is therefore not consistent with the scheme, and it would sit outside that. It could therefore be challenged.

Seema Malhotra: I must say that I find that a little confusing. I am not fully clear on how a challenge can be brought to a subsidy under a scheme to even determine—what the Minister said in relation to it. Perhaps I am missing the point here, but it currently seems to be very explicit: it ends up being about the scheme rather than an individual subsidy under the scheme. Nine out of 10 subsidies under a scheme may have no challenges against them, with only one being challenged.

Paul Scully: The scheme itself must already be consistent with those principles, so if any particular subsidy is given within the scheme, and it is not consistent with the principles, then it clearly cannot sit within that scheme itself, because it is inconsistent with the scheme that it is purported to be part of. Therefore, that will then be set aside and will be approachable for the CAT.

Seema Malhotra: Who would make that decision? It does not seem to be in line with the wording of the legislation.

Paul Scully: That is when the interested parties can approach the CAT on that basis.

Kirsty Blackman *rose—*

The Chair: Is it related or on something else?

Kirsty Blackman: It is related, but I was not sure who was speaking.

The Chair: The Opposition spokesperson was asking for some clarifications from the Minister.

Kirsty Blackman: Can I ask the Minister a question?

The Chair: Yes.

Kirsty Blackman: If there is a subsidy that is given under a subsidy scheme, who decides that that subsidy was not eligible to be part of the subsidy scheme and is therefore applicable to challenge outside the scheme? I think that is part of the point that the Opposition spokesperson was getting at. There does not seem to be a mechanism for saying "That subsidy doesn't fit within this scheme, and is therefore challengeable in its own right, rather than as part of the scheme".

A subsidy is, by definition, one given under the scheme until somebody analyses that and decides that it is not applicable to be given under the scheme, but there does not seem to be a process for that subsidy to be categorised as something that should not have been given under the scheme. How does the challenge procedure work here?

Paul Scully: Essentially, if the public authority has wrongly given the subsidy as part of a scheme, it will be for the CAT to decide.

Seema Malhotra: I thank the Minister for his answer; I want to ensure that we correctly understand what he is trying to say. On the basis of what I think he is saying—that there may be a mechanism for challenging subsidies under a subsidy scheme—I will not press the amendment to a vote today, but I would like the Minister to explain, in writing, how he would see that scenario working, and where the power to bring a challenge sits.

I am still not clear where a determination—that a subsidy is to be treated as a subsidy, rather than a subsidy under a scheme—would come from. That does not feel clear, so let us get that clarified. If we could have that in writing, that would be extremely helpful. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Seema Malhotra: I beg to move amendment 70, in clause 70, page 40, line 9, leave out

"whose interests may be affected by"

and insert

"who has sufficient interest in"

This amendment would alter the definition of interested party to make it consistent with clause 31(3) of the Senior Courts Act 1981.

The purpose of clause 70 is to enable interested parties to challenge subsidies before the CAT. It defines an interested party as

"a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme"

or "the Secretary of State". We are concerned that the definition is too narrow and is deficient in two respects. The definition of interested parties—the test that establishes standing for the purposes of judicial review—applies a test at subsection (7)(a), which seems narrower than under the Senior Courts Act 1981. The test under subsection (7)(a) is

"a person whose interests may be affected".

By contrast, the test under section 31(3) of the 1981 Act is a person who

"has a sufficient interest in".

While it may not seem so different on one level, it could have important consequences.

George Peretz and others have suggested that the definition of interested parties under the Bill narrows the standard public law right and could be interpreted as limiting those who could bring a challenge to parties whose commercial or financial interests have been affected. What would that mean for the ability of those acting in the public interest and not in a private interest to challenge a subsidy?

Let us use an example: the Good Law Project has serious concerns about the awarding of a tax relief to a particular business and does not believe the subsidy is consistent with the subsidy control principles. It is not inconceivable that the business could be owned by a friend or relative of a Minister who is awarding the tax relief or being involved in some other way. In light of the current climate around sleaze, perhaps it would not be surprising at all. Can the Minister clarify what standing an independent challenger, such as the Good Law Project, would have under subsection (7)(a) to bring a challenge to such a tax relief, and if not why not?

Labour proposes amendment 70 to make the definition of interested party consistent with section 31(3) of the Senior Courts Act 1981. It should not only be those whose financial interests are or may be affected and the Secretary of State who can challenge subsidies.

As Professor Rickard, professor of political science at the London School of Economics, explained in October:

"Thinking about who has a particular interest in challenging those subsidies, there may be good reasons to expand the potential set of challengers to ensure that it includes not just competitors but maybe also employees, trade unions, taxpayers or interest groups. That would give us more eyes on the subsidies to ensure that they are complying with the principles, ensuring value for money and achieving the economic outcomes that they set out to achieve."—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 23, Q25.]

Does the Minister recognise that the subsidy's impact can extend beyond those who are more narrowly defined as interested parties? The amendment could bring the test for standing in line with judicial review. It would be helpful if the Minister could clarify whether there was an intention to subtly deviate from the definition in the Senior Courts Act. We hope the Government recognise that it could be a way of improving how the Bill operates as well.

Paul Scully: I will go into a bit more detail in a second, but an interested party is any person whose interests may be affected by the decision in question. We are setting out a new UK-specific subsidy regime with unique rules. In that context, we have set out an intentionally broad definition of what constitutes an interested party. That said, the Competition Appeal Tribunal can exercise its discretion. We want to ensure that in each case the right people are determined to be interested parties. By exercising that discretion, the Competition Appeal Tribunal can build up a jurisprudence that is specific to and optimally used for the subsidy control context. The Competition Appeal Tribunal is an expert body in competition matters and has the right knowledge to make appropriate decisions on these questions of standing.

As we have heard, the amendment would require the CAT to adopt the test in the Senior Courts Act 1981, which states that a person seeking review of the subsidy decision must have "sufficient interest". I understand that the hon. Member for Feltham and Heston intends that the amendment would broaden the scope of who can bring a challenge, but given the breadth of the existing test in the Bill, I do not think that she could be confident that her amendment would have the desired effect. In any event, it would bring along a body of case law that may be unrelated to the new subsidy control regime and could prevent the CAT from exercising its full discretion in each case. As I have said, it is a new system, with standalone enforcement through the CAT. It is therefore appropriate that the tribunal can decide for itself who can seek reviews of subsidy decisions.

The clause does not exclude any party whose interests may genuinely be affected by a subsidy. As such, I cannot see the advantage in changing the test for who can challenge a subsidy, as proposed in the amendment. The hon. Member for Feltham and Heston talked specifically about someone without a financial interest. As I say, that is why the definition of "interested party" is broad. It covers any person whose interests may be affected by a subsidy, and it will be up to the CAT to determine. We are giving the expert body the appropriate discretion to get the answers right in each and every case, and I therefore ask the hon. Lady to withdraw the amendment.

Seema Malhotra: This is an interesting and important discussion about who is included in the definition of "interested party". I would like to reflect on the Minister's comments and perhaps test them with expert advice and a detailed review of the definitions and explanatory notes for the Bill. On that basis, I will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

11.17 am

Adjourned till this day at Two o'clock.