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GENERAL COMMITTEES

Public Bill Committee

SUBSIDY CONTROL BILL

Tenth Sitting

Tuesday 16 November 2021

(Afternoon)

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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

(Afternoon)

[Caroline Nokes *in the Chair*]

Subsidy Control Bill

Clause 70

Review of subsidy decisions

2 pm

Kirsty Blackman (Aberdeen North) (SNP): I beg to move amendment 23, in clause 70, page 40, line 12, at end insert—

"(c) the Welsh Ministers,

(d) the Scottish Ministers, or

(e) a Northern Ireland department;".

This amendment intends that devolved administrations are included as interested parties regarding calling in of subsidy decisions.

The Chair: With this it will be convenient to discuss amendment 71, in clause 70, page 40, line 12, at end insert—

"(c) the Scottish Ministers,

(d) the Welsh Ministers, or

(e) the Department for the Economy in Northern Ireland."

This amendment would include the Devolved Administrations within the definition of an interested party.

Kirsty Blackman: Thank you, Ms Nokes, for your forbearance in continuing to chair these sittings for us; we appreciate it.

It strikes me that there are three really important things in the Bill. The first question is this. What is a subsidy, and when can and cannot a subsidy be awarded? Actually, we have had not much disagreement across the Committee about what constitutes the answers to those points. The second question, which we have raised a number of concerns about, is this. How do we know what has been awarded? Specifically, we have raised a number of issues about transparency, how transparency will work and whether the transparency measures being suggested are adequate. The third question is how subsidy decisions can be challenged. The Bill and this system, the subsidy control regime, will not work if there is not a mechanism for a challenge to be made. That seems to me to be the third of those three important areas.

We have suggested amendment 23, which is specifically about the definition of interested parties. The Bill says that "interested party" means

"a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme in respect of which the application under subsection (1) is made, or…the Secretary of State".

The Minister has been clear a number of times that being too prescriptive about some things and including too many things risks suggesting that we are not including others. If the measure includes a, b and c, potentially an imaginary d would be excluded, because it explicitly says a, b and c.

The legislation talks about "interested parties" as those people who have been affected, but it also includes the Secretary of State, so presumably, in the Government's eyes, the Secretary of State has a specific role whether or not he or she has an interest or the Government have an interest in whatever it is that has been subsidised. The Secretary of State has the ability to request a call-in whether or not they have an interest. The Minister has spoken at some length—indeed, a number of people have—about the asymmetry of the legislatures in the UK, and there is an asymmetry of legislatures. Westminster has reserved powers and, as we have seen in the United Kingdom Internal Market Act 2020 and various other power grabs, the ability to override some of the devolved competencies. We are not disagreeing that there is an asymmetry, but there is a requirement and a recognition that we have devolved legislatures that have a very important role to play in not just the economic development but the wellbeing of their citizens under whatever the devolved competencies are.

Kevin Hollinrake (Thirsk and Malton) (Con): Is the hon. Lady not defining that exactly as the legislation is set out? The devolved legislatures have an important role to play. Therefore they are an interested party. That is the point; it does not need to be set out specifically.

Kirsty Blackman: In that case, it does not need to be set out specifically that the Secretary of State is an interested party. There would be no need to include the Secretary of State if the Bill applied equally to any of the devolved legislatures whether or not they had a direct interest or whether or not their interests would be affected. It may be the case that the Scottish Parliament's or the Scottish Government's interests are not affected by something but that the interests of a significant number of businesses in Scotland are affected, in which case it would be completely reasonable for the Scottish Government or Scottish Ministers to be included, as we have suggested in the amendment; we have also referred to Welsh Ministers and "a Northern Ireland department". The aim is specifically to catch the issue that has just been made clear. Sometimes the devolved institutions will not have a direct interest that affects the operation of their Parliament, but they might have an interest on behalf of the wellbeing of their citizens or the economic development of the places they represent. Subsection (7)(a), which defines interested parties, does not go far enough to allow those institutions to raise concerns about potential issues. If the concern does not affect them directly, it seems they are excluded from raising it.

I understand the point made earlier by the Minister about the Competition Appeal Tribunal and how it may define interested parties, but there is a definition of interested parties in the Bill. I feel it is too narrow to include other interested parties such as Scottish Ministers, unless they are directly affected.

Legislatures need to be responsible. We need to take action on behalf of our citizens, and to be able to take that action. Given that these institutions are democratically elected and there have been votes that resulted in the creation of the institutions, we must recognise that the devolved legislatures have a stake and a responsibility—a place to fill in supporting their constituents. This is not about trying to say that the Scottish Government are better than the Westminster Government—I mean, they are, obviously, but the amendment is not about fighting

to change the power structure of the UK. It would simply allow Scottish Ministers, Welsh Ministers and the relevant Northern Ireland Department to take their place and be able to exercise their right to protect the people, the businesses and the countries they are elected to represent.

If the term "interested parties" covers everybody, including those who have an indirect interest, then it does not make sense to include the Secretary of State in the definition. However, if the term "interested parties" does not include Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland Department, we have a really big problem. This is not how devolution is intended to work; it is intended that those institutions can support their constituents.

I would appreciate it if the Minister will look at the issue. It is likely I will consider pressing the amendment, because it is such an important issue. As I said, this is one of the three most important parts of the Bill. The devolved legislatures absolutely should have the right to have subsidy decisions called in. This is not a power that is going to be used every five minutes. It is not like anybody is going to be challenging the decisions or looking for assessments on a regular basis—that is not how it is going to work. If the UK Government are committed to levelling up and the principles in the Bill of looking at competition throughout the United Kingdom and the effects of subsidies, it is really important that the three devolved Administrations have this power.

Kevin Hollinrake: Does the way that the amendment is drafted not mean that Scottish Ministers, Welsh Ministers and the relevant Northern Ireland Department could interfere or be an interested party even though they had no interest? For example, a Scottish Minister could intervene in something that was happening in Wales, which has no relevance—they would have no interest at all. Is that the intention—that a Scottish Minister can intervene in a subsidy scheme in any part of the United Kingdom, even though it does not directly affect Scotland?

Kirsty Blackman: Yes, because that is the point of the Bill. The point of the legislation is to make sure that we do not have those subsidy races. As was made clear on Second Reading, Members want a situation in which there are not subsidy races and in which they can ensure that the best decisions are being taken for their area. If the hon. Gentleman, the local authority in his constituency or the Secretary of State felt that something in his constituency was being affected negatively because of the actions of the Scottish Government or the Northern Ireland Department in granting a subsidy, I would expect the Secretary of State to consider calling that in. If the hon. Gentleman made representations to the Secretary of State on behalf of organisations in his constituency that might not want to go through the process of employing lawyers to get it called in, but are genuinely affected, surely that is one reason why the Secretary of State may be included.

Kevin Hollinrake: The hon. Lady makes my point for me. If something were affecting North Yorkshire, I would be an interested party already, because that is how it is defined.

Kirsty Blackman: No, the hon. Gentleman would not be an interested party, because the Bill states that an interested party is

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

The hon. Gentleman's interests are themselves not affected. His constituents' interests are affected—

Kevin Hollinrake: That is the same thing.

Kirsty Blackman: It is not the same thing, and that is the point that I am making. That is why either the definition of an interested party needs to change, or we specifically include those people whose direct interests may not be affected but whose indirect interests—whose responsibilities towards their constituents and their country—are affected as a result. In such circumstances, therefore, the hon. Gentleman would not be an interested party. I cannot see how his interests possibly could be affected, going on the reading of the legislation, although his constituents' interests would be affected. If that is how we want the measure to operate—which is how I would like it to operate—I would very much like it to operate in the way that he is suggests.

Kevin Hollinrake: My interests are my constituents' interests, and vice versa, so why would my interests not be affected if my constituents' interests were affected?

Kirsty Blackman: The Bill states:

"a person whose interests may be affected by the giving of the subsidy".

The hon. Member's interests would not be affected by the giving of the subsidy, his constituents' interests would be. If the Minister, when he speaks, confirms that a Member's interests cover all the interests of his constituents, can define the interests of the Scottish Government, Welsh Ministers and the Northern Ireland Department or can say absolutely that, for example, a Northern Ireland Department's interests cover the interests of businesses and constituents within its jurisdiction, I will be delighted that the hon. Member for Thirsk and Malton is correct. That is what I would like it to say but, as drafted, that is not what the Bill says.

There is therefore a gap, an issue with not enough people being able to make that challenge and in those democratic institutions not having that right. As the Minister said, it is not a foregone conclusion that such things would go through, that the CAT would look at the subsidy decision and say, "Oh, the Secretary of State has referred this, so they are definitely correct and the subsidy is definitely wrong." That is not how it would work. The CAT is an independent organisation and it will be making those decisions.

On the specific point about people who have the ability to refer subsidy decisions, however, I think that those people with indirect interests on behalf of their constituents or the areas that they represent should have the right to make that referral—and for the CAT to make the decision after that. Again, that will not lead to a significant increase in the number of challenges to come forward, but if the Government are committed to levelling up and to the Subsidy Control Bill regime working as it is intended to work, changes have to be made to the clause. Amendment 23 was the best way that I could see of making the changes to ensure that

[Kirsty Blackman]

those interested parties with indirect parties would be able to fulfil adequately their roles to work on behalf of the people who elected them.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Ms Nokes. I thank the hon. Member for Aberdeen North, who laid out some very strong arguments for amendment 23. I will speak briefly to amendment 71, which is very similar.

2.15 pm

Amendment 71 would include the devolved Administrations within the definition of an interested party, and would do so explicitly in the Bill. It is possible to interpret that the devolved Administrations might under some circumstances fall under subsection (7)(a). I am not sure whether that is the case for all Members of Parliament; it would be very interesting for the Minister to share his understanding of the interpretation of interested parties. The Bill is not clear on who could be included as an interested party and under what circumstances. It may then become for the courts to interpret, which I would rather was not the case. I would rather that Parliament's will was clear on that.

That is why we tabled the amendment, which explicitly includes the Scottish, Welsh and Northern Ireland Department for the Economy within the definition of interested parties. That would allow the devolved Administrations to bring legal challenges against subsidies that they might perceive to be damaging interests relevant to their nations. It seems only fair that such a right be in the Bill. It would of course then be for the Competition Appeal Tribunal to consider the merits of the challenge, but at the moment there seems to be an asymmetry of powers in the Bill. The Secretary of State could challenge Scottish, Welsh and Northern Irish subsidies that may be perceived to be harmful to England-based interests, but there is not a symmetry of powers the other way.

In the light of the extended conversation that we have had, it would be helpful if the Minister could come back on that point and enlighten us, and perhaps take on board that the way in which it could be interpreted does not seem to be in the full spirit of devolution and a four-nation approach. I would be grateful to him for his comments, particularly on the issues raised by the hon. Member for Thirsk and Malton.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is a pleasure to serve under your chairmanship, Ms Nokes. I appreciate the contributions of the hon. Members for Aberdeen North and for Feltham and Heston. As we have heard, the amendments are almost identical in effect, so I will discuss them together.

Who has standing to challenge subsidy decisions is an important question that we considered carefully when drafting the Bill. The definition of an interested party, which covers any person whose interests may be affected by the subsidy or scheme in question, is intentionally broad and in many instances could capture the devolved Administrations. As I said in relation to the previous amendment, the rule on standing in the clause is not intended to exclude any party whose interests may genuinely be affected by a subsidy.

None the less, I hope that hon. Members will agree that it is necessary to have some limit on who can bring a challenge, so that the CAT can dismiss various challenges, whether they are vexatious or not. That is necessary to ensure that useful subsidies are not held up without good reason. The absence of a list or further explanation is not intended to exclude any party whose interests may genuinely be affected by a subsidy. On the contrary, the broad definition gives the CAT the maximum discretion so that, whatever the facts of the case may be, it can deem the right people to be interested parties. Depending on the case, that could certainly include one of the devolved Administrations.

Opposition Members have suggested that because the Secretary of State has default standing to bring a challenge there is an unequal situation that prejudices the interests of Scotland, Wales and Northern Ireland. That is simply not right. The Secretary of State has not been designated an interested party to act in the interests of one part of the UK. It is therefore not necessary that there should be some sort of balance, with other actors also having default standing. This is a reserved policy area and, as such, the Secretary of State's responsibilities and interests are UK wide.

The Secretary of State is always deemed an interested party so that they can challenge any subsidiary they feel would be incompatible with the subsidiary control framework and because, as a member of the UK Government, they are responsible for the compliance of subsidies granted in all parts of the UK with our international obligations. The Government expects that the Secretary of State would use this ability only in exceptional circumstances where, in their view, a subsidy would threaten the integrity of the subsidy control framework, which protects competition and investment within the UK and helps to meet our international obligations. It is just as likely that the Secretary of State would challenge a subsidy given by an English local authority that prejudiced a Scottish business, as it is that they would challenge a Welsh subsidy that prejudiced an English business.

The intention of the clause is to allow a default right to stand as an interested party to challenge subsidies, while reserving a specific role for the Secretary of State to oversee the whole system and ensure compliance with international agreements. It is not appropriate or necessary for any other public authority to have the same standing. I have talked a lot about devolved Administrations, but to cover the point made in the exchange between the hon. Member for Aberdeen North and my hon. Friend the Member for Thirsk and Malton, an interested party could be any of those public authorities, including local councils or any awarding body. As we discussed in the previous group of amendments, that interest is wider than direct financial interest. For that reason, I ask the hon. Lady to withdraw her amendment.

Kirsty Blackman: The Minister has not really answered the key question that would be helpful in order to ensure that interested parties are as broad as the hon. Member for Thirsk and Malton and I think it should be. Does a devolved Administration's interests include indirect interests? Let us say that the Scottish Parliament was to come forward to the CAT and ask for something to be reviewed on the basis that it would affect seven businesses throughout Scotland. Is that included in the

definition of persons of interest who may be affected? What if a number of organisations in their jurisdiction are potentially affected by a subsidy given? That subsidy may be given in Scotland; this is not necessarily an inter-nation argument. It could be that a local authority in Scotland gives a subsidy and the Scottish Government are not happy about it because it could negatively affect seven different businesses. Is that included? Is that covered by the definition of interested parties?

Paul Scully: Yes. I would say that is a direct interest rather than an indirect interest. Public authorities, including devolved Administrations, may be interested parties. That is why we are keeping the definition wide—because it includes their responsibilities as well as a direct interest for the public authority or the devolved Administration itself.

Kirsty Blackman: The Minister has made the clarification to say that it includes responsibilities. Obviously, the devolved Administrations have responsibilities for lots of things in various areas. That is incredibly helpful. I still would like to see amendment 23 in the Bill and I would like to press it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 24]

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 clause enables interested parties to apply to the Competition Appeal Tribunal, or the CAT, to challenge decisions by public authorities to give subsidies or make subsidy schemes. The CAT has the advantage of being a UK-wide tribunal with specialist expertise in competition and in hearing judicial reviews in the field of economic regulation. It is well regarded by practitioners and the Government's consultation demonstrated strong support for its performing this role.

Any interested party who is aggrieved by a subsidy decision will be able to apply to the CAT to review that decision. The clause defines an interested party as any

"person whose interests may be affected"

by the decision in question. The Secretary of State is also explicitly defined as an interested party, which does not mean that the Government have the intention of challenging a large number of subsidy decisions by other public authorities. Instead, it provides a safety valve allowing the Secretary of State to challenge subsidy decisions that might harm competition and investment within the UK or cause concerns to be raised by one of the UK's trading partners under the terms of our international agreements.

The clause provides that the CAT must apply judicial review principles when determining applications to review subsidy decisions, which means that the tribunal will determine whether the decision was lawful, including whether the requirements set out in the Bill have been met. The tribunal will not be capable of reviewing the merits or effectiveness of a subsidy or subsidy scheme.

Seema Malhotra: I thank the Minister for his comments. We have no further comments on the clause beyond what we raised on the amendments. We support clause 70 standing part of the Bill.

Question put and agreed to.

Clause 70 accordingly ordered to stand part of the Bill.

Clause 71

TIME LIMITS FOR APPLICATIONS UNDER SECTION 70

Seema Malhotra: I beg to move amendment 74, in clause 71, page 40, line 31, at beginning insert—

"Except where subsection (1A) applies,".

This amendment is linked to Amendment 75.

The Chair: With this it will be convenient to discuss amendment 75, in clause 71, page 40, line 33, at end insert—

"(1A) Where a public authority has not complied with its duties under section 33(1), an application to the Tribunal under section 70 in respect of a subsidy decision must be made by sending a notice of appeal before the end of six months beginning with the date on which it is established that the section 33(1) duty has not been complied with."

This amendment provides for an extended period of challenge where a public duty has not complied with its section 33 duties.

Seema Malhotra: The clause amends the Competition Appeal Tribunal rules to establish the time limits for making an application to the CAT for a review of a subsidy control decision. Interested parties must send their notice of appeal to the CAT within one month of the relevant date. The tribunal may not extend the one-month time limit unless there are exceptional circumstances.

As we have already stated, we believe very strongly that public authorities should have a clearer statutory duty to upload full and accurate information to the subsidy database. Where a public authority fails to comply with that duty, there should be consequences. The regime requires a better incentive for public authorities to upload accurately and fully. Evidence from DWF, which I will not repeat at length again, revealed how many of the entries currently uploaded to the database are far from complete or accurate.

Amendments 75 and 74 would provide a statutory consequence where a public authority has not complied with its duty to upload information to the database, as set out in clause 33(1): namely, an extended challenge period of six months from the date on which it is established that the clause 33 duty has not been complied with. In our view, that would create a strong incentive for public authorities to upload information to the

[Seema Malhotra]

database promptly, comprehensively and accurately. Transparency is central to the new regime, and protecting it is at the heart of the amendments.

Paul Scully: Clause 71 sets out the time limits for an interested party to apply to the CAT for a review of a decision to grant a subsidy or make a subsidy scheme. It is important to strike a balance between allowing sufficient time for a subsidy scheme or award to be challenged and giving confidence to the subsidy beneficiary that the subsidy decision can no longer be challenged, and that they can make use of that subsidy.

The Government believe that the appropriate balance is the one-month limitation period, generally counted from the date on which the subsidy or subsidy scheme is published on the database. The hon. Member for Feltham and Heston has tabled amendments to that general time limit, which we will discuss later. I understand that the amendments are intended to extend the period for challenging a subsidy when a public authority has not properly fulfilled its transparency obligations. It may be useful to begin by clarifying how the clause would work in cases where the transparency requirements are not met.

Clause 71 already provides a powerful incentive for public authorities to properly fulfil their transparency obligations. If they do not, there is no transparency date for the purpose of rule 98A subsection (2), so there is no limitation period for when an interested party can seek a review of the subsidy in the CAT. In other words, if there is a non-trivial failure to comply with the transparency obligations in clause 33, the subsidy or scheme could not just be challenged six months after it is made; it could potentially be challenged at any time.

2.30 pm

In view of that, amendment 74 may not have the desired effect of increasing the opportunity to challenge such a subsidy scheme; in fact, it would limit it. In practice, the effect of the amendment would depend on the interpretation of when it is established that a public authority has breached its obligations to upload a subsidy to the transparency database. If the intention of the amendment is that there should be an extended limitation period when a public authority makes a transparency upload after the deadline, I understand the logic of that intention, but extending the limitation from one month to six months in that scenario would not be consistent with the nature of that regime.

We expect high levels of compliance with the regime, so it is not necessary to introduce this kind of punitive measure. Crucially, the prolonged uncertainty that could be created by a very small delay in uploading the subsidy to the database would unfairly hurt the beneficiary of a subsidy when the fault would lie with the public authority that had failed to make a timely upload to the transparency database. The increased uncertainty for the subsidy beneficiary would be considerable.

The statutory deadline for uploading a subsidy is six months for most subsidies, and 12 months in the case of a subsidy in the form of a tax measure. If a public authority failed to accurately upload a subsidy within six months, and an interested party then had six months from the late upload to challenge the subsidy, the subsidy would be at risk of challenge for at least a year, or 18 months in the case of a tax subsidy. Depending on how they are interpreted, the amendments would either be counterproductive or unnecessarily punitive in harming the interests of a party that may not be at fault.

There is no need to extend the challenge period for non-disclosure of a subsidy that ought to have been disclosed because that period is already potentially indefinite. An extended challenge period for a subsidy or scheme that has been uploaded late to the transparency database would add little to the existing strong incentives for a public authority to make a timely upload, and it would create an unreasonable amount of uncertainty for the subsidy beneficiary. It would undermine the balance that we have set between certainty and allowing interested parties to challenge potentially unlawful subsidies. For those reasons, I ask the hon. Lady to withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments—I think he picked up on some of the issues that we were raising. He gave the example of a public authority not acting in line with its duties, meaning that those in receipt of a subsidy could end up waiting for longer. That could be administrative error, and nothing to do with the subsidy, but we would not know.

I think it is fair to say that the amendment is not perfect, but we wanted to make a general point about time limits, which we want to look at in the round, and about how the whole regime can work fairly. On this occasion, I will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Seema Malhotra: I beg to move amendment 73, in clause 71, page 40, line 33, leave out "one month" and insert "three months".

This amendment would extend the period for interested parties to submit an application for review of a subsidy to three months.

The amendment would extend to three months the period for interested parties to submit an application for review of a subsidy. We think that is extremely important, because as it stands, interested parties would have one month from the publication of a subsidy or scheme on the database, or from receiving requests for information from the public authority in respect of a subsidy or scheme, to bring a challenge before the CAT.

That is an extremely short timeframe. Uploads to the database could be made on July 22, for example, or on December 16, when we rise for recess. I do not want to suggest that there might be attempts to reduce opportunities for scrutiny and challenge by timing uploads to the database, but at the end of July, for example, there are school holidays, and even Parliament does not return until September. One month can be a very short time for scrutiny and challenge, especially at particular times of the year, and it is about what is chosen to be published and when.

Labour recognises the importance of giving subsidies legal certainty in this quicker, more flexible regime. However, given that public authorities will have six months or even a year to publish subsidies on the database, why will interested parties be given only one month to challenge them? Once the one-month period has elapsed, there will be no other routes for challenging subsidies and schemes. That means that if interested parties are not given the appropriate amount of time to consider

new subsidies and schemes, damaging subsidies or schemes will face no risk of challenge. That seems extremely risky, and I hope the Minister recognises that.

Jonathan Branton, a lawyer at DWF, summarised this and said:

"I think one month is too short, because that requires people to be extremely alert about checking things."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 52, Q73.]

People can get busy and have other deadlines for two, three or four weeks. It seems to be an extraordinarily short time that may create inefficiencies in other areas, as people ask, "What subsidies have come out? How quickly should I be checking?" This is about making sure there is a fair, well-scrutinised and effective regime. We need to get the balance right between providing legal certainty and ensuring damaging subsidies can be effectively challenged. It feels as if the balance is not right at the moment in the context of this regime and how it is designed in the Bill.

We propose to correct the balance in amendment 73, which would give interested parties three months to bring a subsidy or scheme before the CAT. In doing so, there would be more time to consider subsidies and their effects. It would give interested parties and public authorities a fair chance to ensure a challenge can be brought, still within a limited amount of time, and the balance between that and legal certainty can be effective.

Paul Scully: The clause sets out the time limits in which the interested party must make an application to the CAT to challenge the subsidy. It is important to set that limit so that we can give legal certainty to public authorities and subsidy beneficiaries. Ongoing lack of legal certainty can be a strong disincentive for public authorities giving legitimate subsidies and for the enterprises agreeing to receive them.

For example, a subsidy could take the form of a loan guarantee for a capital investment, such as buying new machinery. Members will appreciate that a beneficiary would be naturally reluctant to go ahead with buying that machinery for as long as there is a possibility that the subsidy decision could be quashed and a recovery order made.

It is right that subsidies can be challenged and that interested parties have sufficient time limits to consider that challenge, but we must not create such prolonged uncertainty that it acts as a brake on legitimate subsidies. That is the balance that we have struck in the Bill with the limitation period, which is generally one month from the date the subsidy or scheme is uploaded on the transparency database.

It is also important to note that an interested party can make a pre-action information request to a public authority. The limitation period is then extended until one month after the public authority has responded. Since the pre-action information request gives the public authority up to 28 days to respond, in practice, the limitation period can run for two or three months after the publication of the subsidy or scheme on the database.

Clause 71 also makes it clear that in exceptional circumstances, the tribunal may extend the time limits for bringing a challenge, but this amendment would extend the general window for bringing a challenge from one month to three months. That is too long. It is longer than the challenge periods available in other areas where business decisions are dependent on the decisions of public bodies, such as procurement and planning decisions, where the limitation periods are 30 days and six weeks respectively. In those areas, the harmful effects of prolonged uncertainty have been recognised through the shorter challenge periods available. The same reasoning applies in the subsidy control context. If the general limitation period for challenging subsidy decisions were extended to three months, as the amendment proposes, public authorities and subsidy beneficiaries could, in practice, have to wait as long as five months before having reasonable legal certainty about a subsidy. That is far too long. It is important to allow sufficient time for those affected by subsidy decisions to submit their claim, while ensuring that public authorities and beneficiaries can proceed to implement subsidy decisions with certainty once they are made. The Government believe that the timings provided for in the clause strike an appropriate balance between those two objectives. I therefore request that the hon. Member withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments. I was intending to press the amendment to a vote, but there is a wider question about how we improve the balance regarding how this amount of time is used within the framework of the Bill. Should public authorities be given a shorter time in which to upload, to allow more time for a challenge to be brought? The same amount of time would have elapsed, but that could be a far better framework for the regime.

In the light of the comments made and the consideration that we need to look at this as a whole, I will not press the amendment to a vote today, but we intend to return to this. It will be important for the certainty that we want to see and the transparency we need. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kirsty Blackman: I rise to speak to amendment 31 in clause 71, page 40, line 36, leave out 'one month' and insert '6 months'.

This amendment allows CAT referrals a longer period to be made.

This is a pretty similar amendment, as it is about extending the length of time in which a challenge can be brought before the CAT. I wholeheartedly agree with what the shadow Minister has just said. If the Minister's greatest concern is ensuring that the period of uncertainty is not increased, there remains an issue about the balance. We could ensure that that level of uncertainty existed for the same length of time but the balance was correct, so public authorities could upload these things very quickly, making the total challenge period shorter. That balance needs to be changed.

On amendment 31, the Opposition have made pretty much all the arguments I was going to make, so I will not take up too much of the Committee's time. More than one amendment has been tabled on the matter, as well as on the database and its timings, and a number of comments were made in the witness sessions about the balance in the Bill not being right. I hope that the Minister will take on board the strength of feeling and give consideration to changing that balance by reducing the amount of time available for people to put things on the database and increasing the amount of time allowed for organisations to challenge. I therefore have no wish to move the amendment.

The Chair: The hon. Lady does not wish to move her amendment. Does the Minister wish to comment?

Paul Scully: I will just say that I always take on board and reflect on everything that the hon. Member for Aberdeen North says—and, indeed, other colleagues as well.

The Chair: The amendment is not moved.

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

Paul Scully: The clause amends the Competition Appeal Tribunal Rules 2015 to set out the time limits in which an interested party must make an application to the CAT to review a subsidy decision. It is important to provide for time limits within which a challenge may be brought against a subsidy decision. It is important to allow sufficient time for those affected by subsidy decisions to submit their claim, while ensuring that public authorities and beneficiaries can proceed to implement subsidy decisions with certainty once they are made. We believe that the timing provided in the clause strikes the appropriate balance between those objectives.

The one-month limitation period starts only once the subsidy or scheme is published on the subsidy transparency database, but the limitation period for challenging decisions can be extended in certain circumstances. The first is where an interested party makes a pre-action information request. That will give the interested party a further month to bring their challenge, starting from when the pre-action request is responded to. Clause 76 enables an interested party to gather more information before deciding whether to challenge a subsidy decision and gives the public authority the opportunity to explain its decision, which may cause the interested party to decide that litigation is unnecessary.

The limitation period will also be extended where the Secretary of State refers the subsidy or scheme to the subsidy advice unit under clause 60. The interested party will then, again, have a further month to bring its challenge, starting from when the post-award referral report is published. Finally, the CAT has the discretion to extend the time limits set out in clause 71.

2.45 pm

Seema Malhotra: Notwithstanding our concerns that the right balance has not been struck, we will not vote against clause stand part.

Question put and agreed to.

Clause 71 accordingly ordered to stand part of the Bill.

Clause 72

CAT powers on review: England and Wales and Northern Ireland

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

Paul Scully: The clause gives the Competition Appeal Tribunal the ability to grant the same forms of relief as are available to the High Court on an application for judicial review in England and Wales and Northern Ireland. The tribunal must likewise apply the same principles as the High Court in deciding whether to grant relief, and the remedies granted by the CAT are, where relevant, the same as those currently available to the High Court.

It is important that these remedies are available to the tribunal when it determines that a decision to give a subsidy or make a subsidy scheme was unlawful. That will ensure that the subsidy control principles, prohibitions and other requirements can be effectively enforced through the tribunal and, in turn, incentivise compliance. It will also ensure that the UK meets its commitments under its international agreements.

The clause works intrinsically with the clauses that follow it. Clause 73 makes equivalent provision in relation to Scotland. That is necessary because Scotland is a separate jurisdiction and has a different set of remedies for applications to the supervisory jurisdiction of the Court of Session, which is the judicial review equivalent. Clause 74 gives the CAT the power to award an additional form of relief—a recovery order. That will give the CAT the ability, should it deem it appropriate, to order a public authority to recover a subsidy, in part or in whole, to rectify any adverse impacts on competition and investment in the UK caused by its award.

Seema Malhotra: The Minister has outlined in some detail what the clause does. It grants the CAT power to give certain forms of relief, similarly to the High Court. The CAT may grant a mandatory order, a prohibiting order, a quashing order, a declaration or an injunction. We recognise the importance of these powers, so we will support the clause.

Question put and agreed to.

Clause 72 accordingly ordered to stand part of the Bill.

Clause 73

CAT powers on review: Scotland

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

Paul Scully: The clause gives the CAT the power to grant equivalent forms of relief as are available to the Court of Session in an application to the supervisory jurisdiction of that Court. When reviewing a case in Scotland, the CAT will be required to apply the same principles as the Court of Session would in those cases.

It is necessary to make separate provision for when the CAT is reviewing an application in Scotland as compared to England, Wales or Northern Ireland because, as the Committee is already aware, Scotland has a separate legal jurisdiction and its own system of judicial review, which differs from that in England and Wales and Northern Ireland. The clause therefore ensures that the tribunal has appropriate and effective remedial powers when it is hearing Scottish cases.

Seema Malhotra: We have no further comments on the clause, which we support.

Question put and agreed to.

Clause 73 accordingly ordered to stand part of the Bill.

Clause 74

RECOVERY ORDERS

Seema Malhotra: I beg to move amendment 76, in clause 74, page 43, line 34, at end insert—

"(4A) The annual report prepared by the CMA under section 25(4) of, and paragraph 14 of Schedule 4 to, the Enterprise and Regulatory Reform Act 2013 must contain details of all recovery orders made in the relevant period including the names of the public authority and beneficiary and the amount to be recovered."

This amendment provides for the CMA's annual report to provide details of all recovery orders made the by the CAT in the relevant period.

Seema Malhotra: The clause confers a power on the CAT to make a recovery order if it has granted relief in respect of a subsidy decision and found that the decision was in contravention of the subsidy control requirements in chapters 1 and 2 of part 2 of the Bill. A recurring theme in the Bill is the lack of transparency baked into how the Government confer subsidies and the subsequent management and reporting of those subsidies, with subsidy referrals, exemptions for certain subsidies from the regulations, and the blocking, rather inexplicably, of transparency for smaller subsidies.

In our view, clause 74 represents the latest example of poor transparency. It confers a power on the CAT to make a recovery order if a subsidy is found to be in contravention of the control principles. A recovery order requires a public authority to recoup an amount of the subsidy from the beneficiary of the subsidy. This clause therefore creates a provision to allow any losses that the Government face when they mistakenly confer a subsidy on a business or industry that is in contravention of their own regulations to be recouped.

Does it not make sense, then, that parliamentarians and the public should be able to scrutinise subsidies that have been inadvertently conferred, to make sure that does not happen again? Indeed, as we seem to keep needing to remind Members, there should be adequate public oversight of the spending, or potentially mis-spending, of public money. Professor Rickard noted in her evidence to the Committee:

"The benefits of transparency, and more of it, outweigh the costs."

She went on:

"I would encourage Members to think carefully about the ways in which we could further increase the transparency to ensure that the UK was a world leader in transparency in subsidies and so as to help to provide consistency and certainty for business and accountability to taxpayers"—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 19, Q22.]

Transparency, and more of it, is a good thing. Imagine for a moment that an individual in charge of awarding a subsidy has taken the decision to corruptly award a subsidy to a business or sector from which he or she may gain direct financial benefit. If we are lucky, which we would need to be without adequate transparency, perhaps someone internal to their organisation would discover the malpractice. Without a publicly available report or register where the public can scrutinise which subsidies have been recalled and for what reason, that individual would get away with it and that malpractice could be swept under the rug.

It was discovered, for example, that Andrew Mills, an adviser to the Board of Trade who miraculously secured a £250 million PPE contract despite never having produced PPE in his life, received a pay-out of £32 million in that deal. That is an extremely large amount of money, which was paid out of the public purse, but that figure was only recently uncovered because one individual leaked it to the press. Transparency is therefore vital. That is why we are proposing amendment 76, which would require the CMA's annual report to provide the full details of all recovery orders made by the CAT in the relevant period. That is what transparency looks like, that is what ensuring value for public money looks like, and that is why we hope the Government will give due consideration to the amendment.

Paul Scully: In addition to the ordinary judicial review remedies available under clauses 72 and 73, clause 74 gives the CAT the power to make a recovery order. It may order recovery of some or all of a subsidy if it finds that a subsidy or scheme was made in breach of the subsidy control principles, prohibitions and other requirements. The effect of the order will be to require the relevant public authority to recover the subsidy from the beneficiary. The method of recovery, the amount to be recovered and the timeframe for recovery will be for the CAT to determine.

As we have heard, amendment 76 would make it compulsory for the CMA's annual report to include details of all recovery orders made in that year, including the names of the public authority, the beneficiary and the amount to be recovered. I support the objective of ensuring that the process of reporting and managing recovery orders is transparent and accountable; however, this intent is already met by the process as it stands in the Bill. Recovery orders, by their nature, will be made public, and enforcement mechanisms exist to ensure that they are followed. Accordingly, there is no need to give the CMA this additional reporting duty.

Kirsty Blackman: It would be useful if the Minister clarified how recovery orders are made public and how we can find that information.

Paul Scully: I will happily do so. Recovery orders are given during a hearing by the Competition Appeal Tribunal to a public authority if that public authority is found to have given a subsidy that breached the subsidy control principles, prohibitions and other requirements. The cases heard by the CAT are usually held in public, with any ruling later published on the tribunal website alongside a transcript of the hearing. The names of the public authority and the beneficiary, and the amount to be recovered, would ordinarily all be published within that for recovery orders.

I was at the CAT a couple of weeks ago, and I saw the virtual courtroom where a hearing about the takeover of Newcastle United was recently held. The hearing was viewed by 35,000 people—mainly Newcastle supporters, I suspect. According to the president of the CAT, more people watched it than attend, on average, the games of all but 15 of the premier league teams. There is a good degree of interest in the CAT's decisions, which will be publicly available.

Kirsty Blackman: I am really glad that the CAT is so open and transparent. It should therefore not be that difficult for the CMA to put in its annual report the results of all the recovery orders that are published on the website.

Paul Scully: I will address that point, but if the tribunal decides to make a recovery order, the public authority in question must recover a subsidy from the beneficiary in accordance with the terms of the order. Recovery orders will be enforceable in the same way as an order made by the High Court or, in relation to Scotland, the Court of Session. The tribunal will hold public authorities accountable for the subsidies that they give. As the process is already transparent and holds public authorities accountable to the regime, it is not necessary to give the CMA a reporting obligation for recovery orders.

The CMA's annual report would also not be the right place for that information to be collated. The requirement to produce a report under the Enterprise and Regulatory Reform Act 2013 relates to the CMA's functions. The Competition Appeal Tribunal, not the CMA, is responsible for recovery orders. The CAT already has the reporting systems needed for recovery orders. I therefore request that the hon. Member for Feltham and Heston withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments. He is right that recovery orders are published alongside hearings, but they are not collated, and it is not possible to see them easily in one place in order to understand collectively what is going on. If we want to know where things are not going well and what is happening across the regime from an end-to-end point of view, it is important to have that information not just publicly available, but easily accessible.

Kirsty Blackman: Does the hon. Member agree that it is very difficult for us to know what is coming up in the CAT unless we are looking at its website on a regular basis, so the transparency that we need as parliamentarians to see that the Bill is working effectively is not adequately fulfilled by the CAT's current reporting duties?

Seema Malhotra: I thank the hon. Member for her comment, and she is right. When we develop legislation and introduce a regime, it has to stand the test of time and last beyond the time we spend in our individual roles. In five or 10 years, the Minister might have become Prime Minister.

Paul Scully: Not a chance, he says from a sedentary position.

Seema Malhotra: Others are starting their campaigns, so perhaps the Minister also will do so.

We need to think about making such information more easily accessible. We thought about whether the CMA should publish it simply because if we have data on the regime as a whole, it should not be too onerous to find a way of reporting some of it, perhaps in partnership with the Competition Appeal Tribunal. To enable us to see what is going on and where there are recovery orders, that would be useful alongside other information that we talked about, such as geographical information, so that we have an end-to-end view.

Kirsty Blackman: I have just one more thing to add on this. Clause 65 covered monitoring and reporting on subsidy control, and the five-year report that will be published. Does the hon. Member agree that if the annual report will not cover instances of recovery orders because they are not the responsibility of the CMA, the CMA's review of the efficacy of the subsidy control regime would be an appropriate alternative place to report on them?

3 pm

Seema Malhotra: The hon. Member makes a good point. I come back to our broader discussion about needing to have a clear view and how we can be efficient. Data collection and reporting requires thought and design about what will be most useful for coming forward into reporting and therefore fit for making decisions on. Nobody wants to collect the data for the sake of it; it is always for a purpose. How do we make it as streamlined, straightforward, accurate and quick as possible? It is worth coming back to this issue.

In the light of our earlier conversation about the Minister writing on what he expects to see in the annual report, that would also be an opportunity for us to revisit the issue and making sure that the reporting across the whole system is coherent and effective, as well as what would be annual and what would be in the more periodic reports. 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: This clause gives the CAT the power to make a recovery order in addition to the standard judicial review remedies that will be available to the tribunal under clauses 72 and 73. As with the other remedies that will be available to the CAT, the power to order recovery will be at the CAT's discretion. It will be for the tribunal to decide on a case-by-case basis whether the recovery of the subsidy is an appropriate remedy based on the facts in question. The CAT may decide a different remedy, or a combination of different remedies, is more appropriate depending on the facts in front of it.

The clause gives the tribunal flexibility in how the recovery order is framed to account for different types of subsidy that may need to be recovered. For example, the tribunal would have the power to decide how long a public authority should have to recover the subsidy and the means by which recovery is to be exercised. It will be for the tribunal to decide on a case-by-case basis the appropriate content of the recovery order. In many instances, it will be relatively clear which enterprises benefited from a subsidy that needs to be recovered, and relatively simple to require the public authority to recover the amount in question. However, there may be cases where the subsidy is complex in nature, with the tribunal concluding that it should be left to the public authority to calculate the exact amount to be repaid.

Seema Malhotra: I thank the Minister for his remarks. We support the clause.

Question put and agreed to.

Clause 74 accordingly ordered to stand part of the Bill.

Clause 75

APPEALS AGAINST DECISIONS OF THE CAT

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

Paul Scully: The Competition Appeal Tribunal will, in the first instance, determine reviews of subsidy decisions by public authorities. In the rare instances where there are legitimate disputes on the meaning of the law underpinning a decision, it is important there is an ability to seek permission to appeal to a court of appeal. Appeals cannot be made simply because one party to the litigation does not agree with the outcome. There will have to be a genuine ground of appeal citing an error in the application of the law. The clause provides the basis on which appeals can be made as appropriate to the Court of Appeal in England and Wales or Northern Ireland, or to the Court of Session in Scotland. Appeals may be made on any point of law with permission either from the tribunal or the relevant appellate court.

Seema Malhotra: As the Minister said, the clause allows appeals to be made to the Court of Appeal or the Court of Session on any points of law. We support it.

Question put and agreed to.

Clause 75 accordingly ordered to stand part of the Bill.

Clause 76

Duty to provide pre-action information

Seema Malhotra: I beg to move amendment 77, in clause 76, page 44, line 21, leave out

"such restrictions as it considers proportionate"

and insert

"the minimum restrictions that are necessary".

This amendment provides that restrictions imposed to protect the specified categories of information should be the minimum necessary.

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

Amendment 78, in clause 76, page 44, line 27, at end insert—

"(5A) The Secretary of State must issue guidance on the restrictions that are necessary to protect the types of information described in subsection (5)."

This amendment would require the Secretary of State to issue guidance on restrictions imposed under subsection (5).

Amendment 79, in clause 76, page 44, line 27, at end insert—

"(5B) The Secretary of State must by regulations make provision enabling a person to appeal against a decision by a public authority to impose any restrictions under subsection (5)."

This amendment would require the Secretary of State to make provision for an appeals process against restrictions imposed under subsection (5).

Seema Malhotra: Clause 76 imposes a duty on public authorities to provide certain information to interested parties about a subsidy or a subsidy scheme. An interested party may request the information for the purpose of deciding whether to apply to the CAT for a review of a subsidy or scheme on the grounds that it failed to comply with the relevant subsidy control requirements. A request must be made in writing and the interested party must state that they are considering applying for a review. The public authority must respond to the request within 28 days and it may impose restrictions that it considers proportionate to protect commercially sensitive or legally privileged information.

Amendment 77 would mean that restrictions should be the minimum necessary when imposed to protect commercially sensitive, confidential or legally privileged information or information whose disclosure would be contrary to the public interest. Let us compare that with the current wording of the Bill, which is that the public authority may impose restrictions that it considers proportionate. The original wording is very ambiguous, provides too little guidance for the public authority and provides little recourse to challenge if it is determined that the restrictions imposed were in fact disproportionate. The restrictions imposed by the public authority should not be overly excessive. It is important that information that should be made public is made public to allow maximum transparency. If we keep the original text, a public authority could choose unnecessarily to make public more than is proper, hampering adequate transparency measures.

Amendment 78 would provide a proper route for challenge if a public authority imposed restrictions under subsection (5) that were found to be excessive. On amendment 79, we consider it proper that where restrictions have been imposed on the release of information to interested parties on the basis of, for example, commercial or legal sensitivities, there is an appeals process to ensure that the decision made was the correct one. That is essential to ensure that a public authority is not able to abuse its powers in deciding which restrictions to impose, and encourages the public authority to choose the minimum restrictions necessary or possibly face an appeals process.

Overall, although we believe that our amendments would substantially improve clause 76, we recognise the clause's importance in allowing interested parties to make a request for information.

Paul Scully: The purpose of clause 76 is to put a duty on public authorities to provide certain information, at the request of an interested party, about their decision to give a subsidy or make a subsidy scheme. That is so that the interested party can decide whether to apply for a review of that decision at the CAT. The pre-action information request will allow claims to proceed more efficiently, and help to avoid unmeritorious challenges. The public authority must respond to the request within 28 calendar days, but can impose proportionate restrictions, as set out in subsection (5), to protect certain types of sensitive, confidential, legally privileged or other information that should not be disclosed. It is important that a public authority is able to impose those restrictions, as that may be needed to avoid potential legal challenges—for example, if certain information is subject to a legal duty of confidentiality, and to avoid disclosing information contrary to the public interest. Where a pre-action information request has been made, it is very clearly in the interests of the relevant public authority to provide a full return and to use with some caution the restrictions on providing those types of information. For that reason, this trio of amendments is unnecessary.

If a public authority abuses the provisions in clause 76(5) and provides insufficient information to clarify whether its subsidy decision complied with the subsidy control requirements, it is all the more likely that the interested party will proceed to a full challenge. If they do, the public authority may be required to disclose further information in proceedings before the tribunal. The public authority will have gained nothing.

I am very reluctant to agree to produce guidance on what might be the minimum restrictions necessary, because that will depend on the facts of each case. The risk that

[Paul Scully]

public authorities misuse the discretion that clause 76(5) gives them seems small and, as I have said, it is not in their interests to do so. That risk is smaller than the risk of producing unhelpful guidance that does not allow public authorities to disclose the right information in the context of each case. The amendments propose taking a sledgehammer to crack a nut. Ultimately, I am confident that, helped by the guidance, there will be a high degree of compliance with the regime and very few occasions when there are grounds for a challenge.

Seema Malhotra: The Minister may be coming to this point, but will he clarify the process he envisages in a case where there is suspicion that, rather than information being commercially sensitive, there is another reason for not disclosing it? Is there a way to challenge that or to appeal? We want to understand this; that is why we tabled the amendments.

Paul Scully: Yes, I will come to that.

I am similarly reluctant to agree that the Government should create a special route of appeal against public authorities' decisions on what information to provide. There is only a remote chance that such a route would ever be needed, but there is already a route to challenge a public authority's decision under the clause. Depending on the facts, the general right to judicial review in the High Court or the Court of Session may be available. As I said, however, we can be confident that there will be a high level of compliance, and I am even more confident that public authorities will not act against their own interests and those of subsidy beneficiaries by withholding information unnecessarily in a pre-action information request. It would be excessive to create a special route to challenge the way public authorities comply with these requests.

The Bill makes it firmly in a public authority's interests to provide a full response to a pre-action information request and to take a sincere and serious approach to imposing restrictions on what information it provides. Inadequate disclosure would increase the chances of a full challenge, and with it the likelihood of further information needing to be disclosed in proceedings before the tribunal. Setting up an apparatus of guidance, regulations and special routes of appeal around the pre-action information request would be wholly disproportionate to the risks that the hon. Member for Feltham and Heston set out. I ask her to withdraw the amendment.

Seema Malhotra: I thank the Minister for his remarks. I am not entirely sure that he has identified an alternative route. On the basis that he thinks there could be a route, and to allow time to review and test that, I will not press the amendments today, but I would be grateful if he replied in writing on one specific point. If an interested party makes a request and, under subsection (5), the public authority imposes restrictions that it has reason to believe are spurious, for example, the Minister says that JR may be available. The question is whether JR is available. I would like him to state where and how there is the equivalent of an appeal mechanism. If he does that, I would be happy to say that we feel that that important issue has been dealt with.

The Minister also says that only in a small number of cases—I forget his exact words—might the provision be misused, but sometimes the point of having law is to make sure that it is there for such occasions. We cannot predict how many times a mechanism for appeal and challenge may be required, but one day, when he is, perhaps not the Prime Minister, but the Secretary of State, he might have reason as an interested party to use it. For the purpose of ensuring that there is a robust regime, it is important that we cover off this point. If such a mechanism is in the Bill, as he hopes it is, it would be good to have clarification in writing.

Paul Scully: I am happy to go again. The public authorities have a statutory duty. They understand their legal position and the legal duties. That is why I believe the number of such cases will be minimal. If public authorities do not provide the correct information, the interested party can go straight to the CAT for a full challenge, but judicial review is available in those circumstances. With three avenues, we do not feel it is necessary to create a specific one for this set of circumstances, but I will put clarification in writing.

Seema Malhotra: On the basis that I expect a letter from the Minister, 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 imposes a duty on public authorities to provide certain information to interested parties about a subsidy or subsidy scheme. An interested party may request the information for the purpose of deciding whether to challenge the subsidy or subsidy scheme on the ground that the public authority failed to comply with the principles, prohibitions and other requirements in the Bill. To avoid being timed out on bringing a challenge, a request should be made before the expiration of the one-month challenge period, in writing, and the interested party musts state that they are making the request for purpose of deciding whether to review a subsidy or subsidy scheme decision. The public authority must respond to the request within 28 calendar days, but can impose proportionate restrictions to protect certain types of sensitive, confidential, legally privileged information or other information that should not be disclosed because that would not be in the public interest. The purpose of the duty is to ensure that interested parties can make a well-informed decision on whether to commence a challenge against a subsidy decision.

Seema Malhotra: Having explained how we believe our amendments would have improved the clause, we acknowledge its importance in allowing interested parties to request information and therefore support its standing part of the Bill.

Question put and agreed to.

Clause 76 accordingly ordered to stand part of the Bill.

Clause 77

MISUSE OF SUBSIDIES

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

Paul Scully: The clause confers on public authorities the right to recover a subsidy that has been used for a purpose that is different from the one for which it was given. Public authorities give subsidies with a specific purpose in mind. They will determine whether the subsidy complies with the subsidy control principles in the Bill. They will reference the purpose for which the subsidy has been given. Many public authorities award subsidies through a written contractual arrangement that sets out the terms and conditions under which the financial assistance is being given; this is likely to state the purpose for which the assistance is being given.

Kirsty Blackman: I am sorry to interrupt the prospective Secretary of State mid-flow, but I have a question. Does the clause apply to subsidies below the de minimis threshold?

Paul Scully: I will come to that in a second.

It is good practice for the contractual arrangements to contain a mechanism allowing public authorities to recover a subsidy if the terms and conditions are breached, including whether the subsidy is misused. However, not all subsidies are given through contractual arrangements, and those may not have a mechanism to recover the subsidy if it is used for a different purpose. Public authorities may have other private law rights that enable them to recover the subsidies in those circumstances. The clause is designed to avoid any uncertainty by conferring on public authorities a right to recover subsidies used for a purpose other than that for which they were given. The new right to recover is enforceable as if it were a contractual right and does not affect any other remedies that might be available to the public authority with respect to the award of the subsidy in question.

Seema Malhotra: I am grateful to the Minister for his comments and to the hon. Member for Aberdeen North for her question, which is important.

As the Minister outlined, the clause gives public authorities the power to recover subsidies used for purposes other than the purpose for which they were given. That is an extremely important stipulation. Subsidies should be used only as intended, in line with the subsidy control requirements, and as agreed between the public authority and the recipient. We will support the clause standing part of the Bill.

Paul Scully: May I write to the hon. Member for Aberdeen North on her question? I am not sure whether the clause will apply, but I will write to her.

Kirsty Blackman: Thank you.

Question put and agreed to.

Clause 77 accordingly ordered to stand part of the Bill.

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

3.19 pm

Adjourned till Thursday 18 November at half-past Eleven o'clock.