

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

SUBSIDY CONTROL BILL

Fifth Sitting

Tuesday 2 November 2021

(Morning)

CONTENTS

CLAUSES 32 AND 33 agreed to.

CLAUSE 34 under consideration when the Committee adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 6 November 2021

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The Committee consisted of the following Members:

Chairs: CAROLINE NOKES, † MR VIRENDRA SHARMA

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

Public Bill Committee

Tuesday 2 November 2021

(Morning)

[MR VIRENDRA SHARMA *in the Chair*]

Subsidy Control Bill

9.25 am

The Chair: We now continue the line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue.

Clause 32

SUBSIDY DATABASE

Seema Malhotra (Feltham and Heston) (Lab/Co-op): I beg to move amendment 34 in clause 32, page 17, line 10, at end insert—

“(c) the subsidy database is subject to routine audit to verify the accuracy and completeness of entries.”

This amendment requires the Secretary of State to ensure that the database is subject to routine audit.

The Chair: With this it will be convenient to take amendment 39 in clause 33, page 17, line 27, at end insert—

“(3A) A public authority must ensure that all entries made under this section are accurate and complete”.

This amendment would require public authorities to ensure that all entries on the subsidy database are accurate and complete.

Seema Malhotra: It is a pleasure to serve under your chairship, Mr Sharma, and to debate amendments 34 and 39.

The clause provides that the

“the Secretary of State must make arrangements for the provision of a database of subsidies and subsidy schemes for the purposes” of transparency as required by the trade and co-operation agreement—the TCA. The database must be accessible to the public free of charge, and public authorities who are obliged to upload details of subsidies or schemes should be enabled to do so. The Secretary of State may direct the Competition and Markets Authority to take on responsibilities for maintaining the database in the future.

Clause 32 mandates the Secretary of State to arrange for the database to be set up, and we support the creation of the database. We recognise that it is vital for there to be transparency over subsidies in the new regime. However, we are again concerned that key details are missing from the Bill. In order for it to function effectively, the legislation should require public authorities to make sure that their entries on to the database are accurate and complete. This is particularly important given that interested parties will use information on the database to assess whether subsidies meet the subsidy control principles and, if not, whether they should be challenged before the Competition Appeal Tribunal. Surprisingly, the Bill does not contain any obligations on local authorities or public authorities to make accurate

and complete declarations. I hope the Minister will agree that that is a gap in the legislation and is one that we need to see addressed.

To resolve the problem, Labour has proposed amendment 39, which would establish an explicit duty on public authorities to ensure that their entries on the database are accurate and complete. That is the least we should expect, but I am afraid that the evidence suggests that not all entries entered even over the past 11 months have been accurate or complete. In many cases, they have not been either.

Secondly, the Bill does not place the database under any order or control mechanism. Whose responsibility is it to verify that the information on the database is accurate and complete? Again, given that the information entered on the database is crucial for effective transparency of the regime, does the Minister not agree that this is a significant gap? If the database does not have any regular audit function and if inaccurate or incomplete information entered on to it is not checked, this poor information may lead to misguided legal challenges or, indeed, to harmful subsidies failing to be addressed. The other consequence is that it reduces overall confidence in the database and the information in it. Over time, that would undermine the regime.

In the evidence given on Tuesday 26 October, Alexander Rose of DWF said that since 11 pm on 31 December 2020 only 501 subsidies had been entered on the database. He highlighted that

“of those 501, some 257 are recorded as having a zero or nil value. —[*Official Report, Subsidy Control Bill Public Bill Committee, 26 October 2021; c. 52, Q73.*]

He gave some frankly shocking examples of schemes that had not been accurately reported. He also questioned the database's completeness and said that there was no way that only 501 subsidies had been awarded since the entries began.

The Minister may also remember the example of the Tees Valley Capital Grant Scheme. It was listed as having been posted on the website on 1 April 2020, but the website did not even exist on 1 April 2020. Given how vital subsidy entries will be to ensuring that subsidies meet the principles, it is clear that such complacency cannot be allowed to govern the new database under this regime. We need to get it right from the start. Expectations therefore need to be clear and they need to be defined in law. Let us remind ourselves that this is public money. Faith in the system requires good-quality information that is accurately reported, and we need to ensure that there will be a value for money check on the subsidies being proposed.

As the current database is clearly not working for those purposes, it is vital to address that point. Part of this may be about the design of the website for data entry itself, but the expectations of Parliament need to be clear on public authorities. It should be understood that there will then be real consequences if the database contains inaccurate information. We cannot control that if it is deliberate, but we need to put the safeguards in place so that the subsidies are used as intended.

Amendment 34 would ensure that the database was subject to routine auditing. We are open to discussions with the Government and stakeholders on which body is best placed to conduct such an audit. However, we believe that ultimately the responsibility lies with the

Secretary of State to ensure that the database contains accurate information and is fit for purpose. I hope that the Government recognise the importance of both amendments in ensuring that the new regime is effective and transparent.

Kirsty Blackman (Aberdeen North) (SNP): It is nice to be here again, Mr Sharma. Thank you for chairing the Committee.

This is an important part of the Bill. It is vital that the database is as full as possible and that people can find the information that they need. The points that were made in the evidence sessions about searching through the database were also incredibly important. There need to be search terms that people can use so that they can look through the database to find the information that they need. The regime will work only if people can find subsidies that are relevant. Improvements to the search function need to be among the other improvements.

I got the Library to put together some figures. As of 26 October, there were 501 subsidies on the database, but 245 of them—nearly half—did not have an amount specified. I know that this is a precursor system and it is not yet fit, but that shows how important it is that we have a framework and the details in place so that public authorities know what information they need to provide and that anyone wanting to challenge the information is able to find that information on the site. So 245 entries did not specify an amount, but about £1.6 billion is currently registered on the database. In addition, 138 entries did not specify where they are from—whether that is England, Scotland, Wales or Northern Ireland—but given the way challenges are likely to work, and given principle F in schedule 1 about competition within the United Kingdom, it is incredibly important that the entries make it clear where they are from and where the subsidy has been given. The principles include a requirement that a subsidy does not affect competition between the regions. It is therefore important that that is one of the criteria that the Secretary of State specifies.

The links on the database are an absolute nightmare. If we go to any of the subsidies, it says, “Click here for more information”. Some of the links take us just to gov.uk, but other links take us to a local authority landing page. That is not right. It does not give us the details of the scheme. It would be more helpful if people were required to upload the details on to the website for the database rather than having the freedom to upload the details on to their own website. They could put them on their website and then take them down the next day. Even if there were a checking process when the information first went up, they could immediately remove it. Having the backroom systems in place so that there is enough space and server capacity on the website to store all the information would be incredibly helpful and probably provide better transparency.

I just want to pull out a couple of further things from the statistics that the Library provided. Of the subsidies recorded on the database that specify the region they are from, 30% are from England. I refuse to believe that only 30% of the subsidies that have been given in the UK since the system was started were in England. Some 21% were from Scotland, and I also refuse to believe that 21% of the subsidies that were given in the UK were given in Scotland. That just cannot be possible.

I completely agree with the amendments that have been proposed. I am not looking to argue with the Minister about the requirements set out and the strength of the database; I am just looking to ensure that the guidance that authorities have to abide by is very strong. I would rather there be too much information on the website than not enough to enable people to mount their challenges. We will come to this later, but there will be very little time for people to make a challenge. They should therefore not have to spend quite a while rummaging around trying to find the details that would enable them to make an informed challenge. I would be keen to hear the Minister make it clear that he intends a significant amount of information that is as accessible as possible to be on the website. People should be able to search the website and, if possible, a system should be in place to ensure that authorities that do not upload full information face a slap on the wrist. They should face some sort of sanction or negative consequence for failing to do their duty.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is a pleasure to serve under your chairmanship, Mr Sharma.

Clause 32 sets out the obligation for the Secretary of State to provide a database for subsidies and subsidy schemes, so that public authorities can adhere to the transparency requirements set out in the Bill, including those in clause 33. We have discussed the operational subsidy database. That was put in place to ensure the UK would be able to meet its international subsidy reporting obligations from 1 January 2021. It will continue to be adapted over the coming months to ensure it is fit for purpose for the future subsidy control regime.

The Government are committed to digital best practice in the monitoring and development of this database and all the databases that we oversee. The database uses the service standard specified by the Government Digital Service. The contract we have with our supplier is flexible—both to implement this Bill and to ensure that we can make improvements as we monitor and evaluate how it is being used.

Seema Malhotra: Will the Minister clarify his comments on digital standards? There are two key issues here. One is the content and the functional design of the database. The other is the technical design and the ease of use of its search facilities and so on. Will he comment on the quality of what can be searched for and on the duty to include accurate information on the database? Will he say a little more about how he sees them being delivered?

Paul Scully: I will try in my remarks to develop some of the issues with public authorities and their statutory duties.

We have made minor improvements since the database came online in March and we will make changes in the coming months. We will reflect on what has been said in the Committee and throughout the Bill’s passage and by stakeholders and public authorities.

Amendment 39, tabled by the hon. Member for Feltham and Heston, and amendment 34, tabled by the hon. Member for Aberdeen North, focus on ensuring the accuracy of the information that is available on the database.

Amendment 39 would require public authorities to ensure that their database entries are accurate and complete. Amendment 34 would create a new obligation

[Paul Scully]

on the Secretary of State to subject the database to routine audit to ensure that entries on the database were accurate and complete. Although I agree wholeheartedly that it is important that the information on the database is correct and complete, the amendments are unnecessary for several reasons.

First, the obligations on public authorities set out in clause 33 are clear. If an authority uploaded data that was inaccurate or incomplete, its statutory obligations simply would not have been discharged properly. Amendment 39 is therefore superfluous.

The incentives faced by public authorities also mean that there is no need for amendment 34. If the public authority does not properly fulfil its obligation to upload the required information, the clock for the end of the limitation period does not start, so the subsidy or scheme could be challenged indefinitely. This gives public authorities an in-built incentive to ensure that the information that they upload is timely, complete and accurate.

Kirsty Blackman: Who decides whether the information is complete and that the clock has started, or does that happen only in the event of a challenge? How does somebody who is challenging know that, even though they are outside a month, it does not matter because the clock has not started?

Paul Scully: Effectively, it is for the challenge. It is a loose framework. It is not like the state aid regime, where permission has to be sought and waited for before going ahead with a subsidy. It looks back at the subsidies and schemes that have been made. I shall return to the database and the issues raised about its integrity and accuracy, which I hope will illustrate some of the points.

Seema Malhotra: The Minister has stated, in effect, that public authorities that do not protect information might not be in line with their statutory responsibilities. I am not clear where, in the Bill as drafted, there is a requirement on public authorities to ensure that all entries that they place on the database are accurate and complete. It is fine to say that a public authority must ensure that an entry that it makes must be maintained on the subsidy database for six years, beginning on the date the entry is made, but where is the requirement for the information to be accurate and complete?

Paul Scully: It is as with every statutory duty placed on a public authority. The Bill contains a statutory obligation on public authorities to upload subsidies on the transparency database—in most cases, within six months. With any breach of statutory duty—whether it is on the face of the Bill or otherwise—a public authority can be challenged in judicial review in the courts. That is why I say that the amendment is superfluous: the net effect is exactly the same.

Members referred to the Teesside scheme. The reason the database was not live on 1 April 2020 was that that was the date when the scheme was set up rather than when the subsidy was paid. Subsidies that are not part of the scheme are dealt with differently.

9.45 am

On the database being full of gaps and of poor quality, in the evidence sessions Professor Rickard described it as “excellent”. It is worth noting that the database is still a relatively new tool. It continues to be developed to ensure that it is fit for the purposes of the new subsidy control regime. We are open to suggestions on how it can be improved and we expect to make further improvements in the coming months before the new domestic regime comes into force next autumn.

We have heard examples about the number of zeros. At the moment, the database is unable to show subsidy schemes and awards that follow. The ones with a zero are part of the scheme and are dealt with differently. An enhancement to the database is planned for the coming months that will show scheme-only entries, which will get around the issues that arose previously.

On the other issues—geography or some of the information that the hon. Lady was talking about earlier that may want to be challenged—any person who wants to challenge a scheme or subsidy or to find out more about data that is not on the database can put in a pre-action information request. Again, that stops the clock. The six-month period is not affected by that, because someone can make such a request, get that information and judicially review it later.

Seema Malhotra: I am finding the logic of what the Minister is proposing quite difficult to follow. With the requirement for completeness and accuracy, we could prevent a lot of wasted time and money, possibly on the part of public authorities or enterprises that may consider a challenge on the basis that information was incomplete, where a public authority may decide not to put information on the database completely. It is important, given the functions in the Bill and the powers to be exercised, that we have as accurate and complete information as possible. There is no point in saying that judicial review or a pre-action protocol may be used later to correct information that was not provided earlier. That strikes me as building huge inefficiency into a system that could be more efficient and more accurate and could better achieve the Government’s intended outcomes. The Minister has not answered where the duty is on a public authority to ensure that its entries are accurate and complete. It is not here in writing.

I want to clarify a point that the Minister made about the Tees Valley Capital Grant Scheme. The scheme might have started on a particular date, but if the date listed on the database is eight months prior to the database existing, that is not accurate. It can be listed, but it should also be possible to say when a scheme might have started. There are different parts to the information, so ensuring its accuracy is important. Other parts of the Bill hinge on the date when something is listed, so that cannot be inaccurate—it would have a knock-on effect on the actions that can be taken and the powers that people have.

Paul Scully: The scheme that we are referring to was created under the state aid rules—under an entirely different regime when we were still a member of the framework. It is additional information rather than subsidy control—specifically, UK subsidy control. Payments are still being awarded, despite the fact that it was an EU state aid scheme in the first place.

On the public authority duty, we are looking at similar aims. I used the word “superfluous” because public authorities clearly have a statutory duty and a requirement to carry out statutory duties. If we put something on the face of the Bill, the net result will be the same. How do you challenge someone who does not want to adhere to their statutory duties? You judicially review them.

That is why the Bill does not provide for any sanction for the failure to upload a subsidy. There is a strong incentive to do so, because the sooner the subsidy scheme or stand-alone subsidy is uploaded, the sooner the limitation period for digital review under the cap will expire. The Bill sets out the statutory obligation on public authorities to upload subsidies on to the transparency database, in most cases within six months.

Any breach of a public authority’s statutory duty can be challenged by judicial review, which is why the amendments are, although worthy in their aims, superfluous to the requirements of the Bill. I therefore ask that amendment 34 be withdrawn.

Seema Malhotra: I have listened to the Minister. Our difficulty is that the amendments seem to be fundamental to the integrity of the whole regime.

The Minister alluded to obligations on local authorities. I cannot see any in writing. I shall not press amendment 39, as I would like further to explore whether there are, by proxy, obligations on which we can look to draw. If not, I would like to bring this back at a later stage.

The requirement for a routine audit to verify the accuracy and completeness—a duty of the Secretary of State under clause 32—is fundamental. That gap is not filled elsewhere and we should like to press the issue today.

Question put, That the amendment be made:

The Committee divided: Ayes 7, Noes 9.

Division No. 6]

AYES

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

NOES

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

Question accordingly negated.

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

Paul Scully: The clause requires the provision of the subsidy database to ensure that the subsidy control regime is transparent and facilitates compliance with our international commitments. It must be available to the public free of charge. Public authorities will be able to upload certain subsidies to the database to meet their obligations under clause 33. The Secretary of State is clearly responsible for providing the subsidy database,

and if appropriate the Secretary of State may direct the Competition and Markets Authority to carry out this function on his or her behalf.

I should clarify that the five-year reporting cycle that we discussed earlier was chosen to correspond roughly with a standard parliamentary term and, for consistency, with the monitoring reports of other bodies, such as the Office for the Internal Market. There might be circumstances when reporting within a shorter time period is desirable, such as in the early stages of the new regime, enabling the Secretary of State to assess how well it is bedding in.

The database is a key part of the new subsidy control regime, enabling the public and interested parties to see which subsidies have been awarded and to whom.

Seema Malhotra: I thank the Minister for his remarks. I have made a number of comments on clause 32. He will appreciate why we feel that there are areas to address, but fundamentally we think that the clause is important.

The principle of the database being accessible to the public free of charge is important, but I reiterate the points made by the hon. Member for Aberdeen North about searchability. Useability is an additional consideration alongside accessibility, and it should be referred to in further regulations or guidance.

I understand that when the Secretary of State directs the CMA to perform duties on his or her behalf, the powers go to the CMA as a whole. It might be assumed, however, that the subsidy advice unit in the CMA will take on those duties, so will the Minister clarify whether he expects that to be done by the unit or another team in the CMA?

Paul Scully: I thank the hon. Lady. We agree on useability. We will look at making the changes to the database, not least because of the Committee’s reflections and those in further parliamentary stages, but also because of the real-time conversations with people using the database—not only people putting data on, but people wanting to read it.

The subsidy advice unit in the CMA will be responsible for the use of the database and delegation. Expertise may be brought in, but it will be for the subsidy advice unit to work on the database on behalf of the Secretary of State.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Clause 33

DUTY TO INCLUDE INFORMATION IN THE SUBSIDY DATABASE

10 am

Seema Malhotra: I beg to move amendment 35, page 17, line 18, leave out subsection (2).

This amendment requires all subsidies to be entered onto the subsidy database.

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

[The Chair]

Amendment 32, page 17, line 21, leave out “£500,000” and insert “£100,000”.

This amendment reduces the threshold for subsidies granted under subsidy schemes to be registered in the database.

Amendment 33, page 19, line 17, after “requirements” insert “with the exception of duties under section 33.”.

This amendment requires that Minimum financial assistance under £315,000 is subject to the subsidy database requirements in clause 33, despite being exempt from the other control requirements in Part 2.

Seema Malhotra: The clause details the specific obligations of a public authority in uploading subsidies and subsidy schemes on to the subsidy database, as it stands in the Bill. It is right that a public authority must ensure that an entry is made in respect of any subsidy scheme unless any agreed relevant exemption applies. The clause also states that a subsidy or scheme must be uploaded within six months of the confirmation of the decision to grant or make a subsidy or scheme, except for tax measures which must be uploaded within one year. Subsection (2) exempts a subsidy from the requirement to be uploaded when the individual award is less than £500,000.

As I said on Second Reading, Labour welcomes the subsidy regime, which will enable subsidies to be granted more speedily while requiring stronger checks to be in place. The Bill presents us with an opportunity to create a more responsive subsidy regime but, as we move away from the EU system of pre-notification, it is vital to ensure that the new regime, which grants subsidies first and then allows them to be challenged after, has appropriate mechanisms for oversight and transparency.

Clause 33, which outlines the obligations that public authorities have in respect of the subsidy database, demonstrates how the Bill seems to fail to provide the checks that we need for subsidies under the new regime. As the Bill stands, subsidies made under a scheme that are worth less than £500,000 do not have to be entered on to the database. I would like to understand the Minister’s justification for that and how the figure of £500,000 was decided on. Amendment 35 would leave out subsection (2) so that there is a requirement to be transparent.

The provision in the Bill is staggering. The sum of £500,000 is significant and could be given multiple times under a scheme without that being transparent. How are we then able to challenge what is being done and, as an interested party, make the possible case against? Does the Minister not agree with Professor Rickard, who said in our evidence sitting last week:

“Through transparency, we can get better compliance and better value for money?”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 23, Q25.]

I am sure the Minister will agree that we always want to see value for money and that we can help to ensure that the subsidies that are being granted meet the goals that we are setting out to achieve.

I am sure the Minister will also agree that subsidies worth £500,000 or less can have a significant effect on the market. They can distort competition. As such, public authorities should be obliged to enter them on to the database to ensure that their aims and the subsidies can be fairly scrutinised. That is why Labour is proposing amendment 35, which would stipulate that all subsidies should be entered on to the database. We have not

suggested setting a minimum threshold for publication; there are proposals on that from the hon. Member for Aberdeen North.

In the system of appeal rather than pre-notification, comprehensive transparency is vital. With the right system, entering subsidies on to the database need not be cumbersome or complicated for public authorities. It can be a straightforward task that is well worth completing for the transparency it provides in the context of every subsidy. We can search the database for the amounts that we might want to scrutinise, but every subsidy should be on the database. That is our starting point.

Amendment 35 would mandate that subsidies given under a scheme are individually also quoted under the scheme’s entry. There will be an amount associated with that subsidy under the scheme; there is no reason why that amount should not be able to be entered and should not be required to be entered.

The amendment would ensure full transparency of all subsidies under the regime and that interested parties had the relevant information needed to scrutinise any subsidy, whether given alone or under a scheme.

Kirsty Blackman: I will speak to not only amendment 35, but amendments 32 and 33. I want to address the logic behind the amendments. It is impossible to overstate the importance of the transparency database. It is the key place—the only place—where organisations and local authorities will be able to find information about the subsidies being granted. I imagine that a lot of organisations will be poring over the information on a fairly regular basis to work out whether the subsidies made meet the principles put forward by the Government. It is absolutely, desperately important that we get this right, and I am keen for us to do that from the beginning as far as possible, rather than having to make changes to the legislation afterwards.

I am concerned by what the Minister said earlier about the timing of pre-action information requests; it feels to me that organisations will just make those requests all over the place, no matter when the subsidy was actually registered. If there is no requirement to have full information on the subsidy database and there is no sanction for public authorities that do not do that, people may as well try their hand with the pre-action information request. This encourages the action process to happen, rather than providing people with the information in the first place so that they know that they do not need to make the request.

The logic behind amendment 32 is that subsidy schemes should be easier to implement than subsidies. It should be easier for public authorities to give them out: presumably, the schemes will have been agreed. They will be set up in a certain way, so the process of giving awards under them should be easier—that is literally the point of having subsidy schemes.

I turn to the logic of changing the figure from £500,000 to £100,000 and keeping a floor. If something under £100,000 has been approved as part of a scheme, it is probably going to be not that bad—it will probably be fine. But £500,000 is far too high, which is why we suggest £100,000. As was said in the evidence sessions, the figures are arbitrary—the figures are always arbitrary no matter which one is chosen. However, that was the logic behind having a differential system in place between subsidy schemes and subsidies on the subsidy database.

I like Labour's amendment 35 and get where they are coming from, but I am more comfortable than them with the more streamlined process of the subsidy scheme.

I move on to our amendment 33, on minimal financial assistance. It would actually amend a future clause—clause 36—but it makes sense to debate it at this point, as it is specifically on the amount that needs to be provided on the database. My suggestion is that all subsidies not made under a scheme should be part of the database. I am not suggesting that they should have to meet the other minimal financial assistance requirements, but I am suggesting that—this was pretty clear from our evidence sessions on Tuesday—all the subsidies not made under schemes should be registered on that database. They would not necessarily have to jump through the other hoops, but all the public authorities that we are dealing with will have done a huge amount of due diligence before giving a subsidy of any sort. They will have the information and it would not cost them much in the way of time to ensure that it is uploaded. That would increase drastically the amount of transparency and our oversight. As drafted, we will not know whether the system is working, because we will not have access to transparency data on any subsidies under £315,000 or any made in a scheme under £500,000. That is not good enough.

A new system is being set up and the Government have been clear that it is a free-market and permissive system, but neither I nor anyone else will know whether it works if we are not able to see the data and whether public authorities are making far fewer—or far more—subsidies than expected under the scheme. We will be unable to assess the adequacy of the system unless the Minister is willing to make changes to the thresholds for schemes and for general subsidies. Once again, I am not suggesting that we put other duties in place for minimal financial assistance or a requirement that other hoops have to be jumped through; I am suggesting that details are uploaded to the database so that we may scrutinise the data.

Paul Scully: There has been a great deal of interest in the thresholds at which the transparency obligations apply, so I will explain some of the detail and logic of those thresholds. Transparency is an important part of the subsidy control regime and key to the enforcement provisions.

As we have heard, interested parties must be able to see subsidies in order to determine whether they may be affected and whether they wish to challenge the subsidy award or subsidy scheme. Any challenge will be made in the Competition Appeal Tribunal through that judicial review. The database is a vital tool in that. To serve its purpose, the aim of the database should always be to enable interested parties to see the subsidies that they may wish to challenge. It is not designed to be a general database of public authority spending; other tools are already available elsewhere for greater financial transparency in that regard and are not limited to subsidies. The transparency requirements in the Bill have therefore been designed to focus solely on those subsidies and schemes that can be challenged on subsidy control grounds.

The Bill provides for various reasons why a subsidy or scheme cannot be challenged on subsidy control grounds, such as a subsidy award given under a published scheme not being able to be judicially reviewed in the

CAT on subsidy control grounds. That is because the scheme itself is assessed against the subsidy control principles and is challengeable, rather than the award under the scheme. Another example is minimal financial assistance subsidies, which are considered too small to cause undue distortions. They therefore do not have to adhere to the subsidy control principles and other requirements. Those subsidies do not need to be on the subsidy control database.

The transparency of subsidy awards has costs as well as benefits. Providing the data would create an administrative burden for public authorities, including small local authorities, in addition to the imposed costs for those using the database if excessive, irrelevant or potentially poor-quality data is provided that interested parties have to sift through. Another thing about the impact on public authorities is the cumulative impact. We find that transparency requirements in general tend to fall on a small number of people in local authorities and other public bodies. That is why there is a relatively high bar or threshold—because of that cumulative burden on a few people in local authorities.

Stephen Kinnock (Aberavon) (Lab): Does the Minister not agree that, with public trust in politics and Government at an all-time low, the more transparency that we can have in the system, the better it will be to build trust in the new subsidy control regime? Does he not recognise the serious risk of cronyism and that sunlight is the best disinfectant? Therefore, let us have the maximum transparency, and let us drop this clause from the Bill, as requested by my hon. Friend the Member for Feltham and Heston in her amendment.

10.15 am

Paul Scully: I do believe in transparency, that sunlight is the best disinfectant, and in the importance of this database being as accessible as possible. As I will come on to say, the starting point of many of the thresholds and the amounts that we have been adhering to for many years lie in EU state aid rules. They also reflect the consultation responses that we have received from all parties, which I will come back to. We need to ensure that the benefits of any approach to our database and transparency outweigh the costs, and I believe that the Bill strikes the right balance.

Seema Malhotra: Could the Minister define what he means by the costs of information on the database? Surely, if all the information is available to a public authority that has gone through the process of making a decision about an award, uploading entries and so on should not be an onerous process. What does he see as the cost?

Paul Scully: As I say, it is the cumulative costs that, in many ways, were the starting point. As a matter of principle, we should not seek to add duplicative red tape for public authorities—particularly local authorities and other small authorities—without good cause. I will expand on that as I continue.

Seema Malhotra: Perhaps this is an opportunity for the Minister to design a database and an extremely straightforward way of entering information. It does not seem to me that this should be onerous at all. Of course we agree that we should not add red tape, but in

[*Seema Malhotra*]

the interests of the integrity of the system, of public money and of preventing cronyism and people getting around controls, surely this ought to be part of a public authority's obligation to the public. Perhaps the Minister could come back on those specific points.

Paul Scully: First, on cronyism, the starting point for the thresholds—as I will come to in a minute—were based on EU state aid, which we have had for the best part of 40 years.

Seema Malhotra: I am sorry to make this point again to the Minister: the EU state aid regime was based on information being available to the public. The whole system was different. There was pre-notification, so by the time a subsidy was awarded, a transparent process had taken place. The proposed regime will not do that. The shift in the system means that safeguards are needed for public money and so that any future scandal does not cause a crisis in the regime. Does not the Minister realise that shifting the regime to a different position from that in the EU will have consequences?

Paul Scully: First, moving the subsidy control scheme from pre-notification and pre-approval will mean that the subsidies can actually get to those businesses and interests at the right time, rather than when it is too late or when they would have less of an effect. The hon. Member for Aberdeen North mentioned the pre-action information requests and transparency requirements. We have based this on the consultation responses from people who will be at the cutting edge of the system, and it is also in line with other international examples. We have looked at other examples around the world, which is why I probed our witnesses on what happens in other parts of the world. We have been looking at that with this scheme.

This system, as drafted in the Bill, does strike the right balance in ensuring that people can drill down into this scheme. On the pre-action information request process, if the database is not keeping up with the ever-changing world of subsidies, businesses, environmental impact and other areas relating to subsidies, there are safeguards to ensure that it is as transparent as possible.

Let me briefly deal with some of the thresholds and give a little more information. Public authorities must upload information about all stand-alone subsidies that exceed the minimal financial assistance threshold of £315,000 cumulated over three years, unless they are subject to a specific exemption. They must also upload information about all subsidy schemes.

The Bill provides for transparency of large awards given under schemes—those over £500,000. That was worked out roughly, allowing for currency differences, according to the EU amounts. Although these large awards cannot themselves be challenged in the CAT using the subsidy control requirements, they do provide important information about how the scheme is being used by the public authority, and their size means that the benefits outweigh the costs.

Seema Malhotra: Will the Minister clarify the maximum number of subsidies of, say, £450,000 that may be given under a subsidy scheme? How would anyone know about them?

Paul Scully: I shall come back to that, if I may. Let me deal first with consultation.

The Government's proposed approach to transparency was set out in the consultation on subsidy control, including the proposal to exempt minimal financial assistance and subsidies given under schemes of less than £500,000. We asked whether respondents agreed with the proposed rules on transparency, and 81% agreed. We also asked specifically whether respondents agreed that minimal financial assistance subsidies should be exempt from transparency requirements, and 65% agreed that they should be exempt. Respondents pointed to the administrative burden as a reason for not lowering the thresholds. It is clear, therefore, that the approach taken in the Bill reflects the views of those who responded to the consultation.

There is no theoretical limit to the number of subsidies of any value that may be given under the specific scheme. None the less, it will be the scheme itself that will have to be applied under the principles of the subsidy control framework.

Amendment 32 would require all subsidy awards, given under published schemes, of £100,000 or more to be uploaded to the database, lowering the threshold from £500,000. Amendment 35 would remove this threshold altogether so that a subsidy of £1 given under a scheme would need to be uploaded on to the database.

The database will already include information about the scheme under which these subsidies are given. This information will be sufficient for others to understand whether their interests will be affected by any subsidy given under that scheme and whether they should seek to challenge the scheme itself. As such, and as I have said, the Bill does not provide for the possibility to challenge subsidies given under schemes.

Further, the Bill provides for an exemption from the transparency requirements for small subsidies given as minimal financial assistance, which is found in clause 36. Amendment 33 would remove this exemption. It would require information about all subsidies of any size to be uploaded to the database, except for those given under a scheme or subject to another exemption.

I believe that the costs entailed in all three amendments clearly outweigh the benefits.

Kirsty Blackman: Does the Minister feel that his rejection of amendment 33 renders the cumulative provisions of clause 36 unworkable? How will anyone know that somebody has received cumulative subsidies if there is no requirement for those subsidies to be registered anywhere? What is the point of those provisions if we are not going to be able to police them?

Paul Scully: The challenge will be to the scheme itself, not to the subsidies within it.

Kirsty Blackman: I was talking specifically about minimal financial assistance and the cumulative impact. An organisation cannot have more than £315,000 over a three-year period before it has to be registered, but if there is no requirement to register the 20 subsidies received—or 200,000—how is anyone ever going to know?

Paul Scully: A public authority awarding something that it believes will be a subsidy below that will have to publish a letter demonstrating that it is adhering to

minimal financial assistance. That is therefore for businesses or the recipients of the subsidy to double-check. Although it is the public authorities that will be awarding the subsidies and they will be analysed by people checking the database, if I ran a business that was reliant on a subsidy, I would, to be frank, make sure of it. I would not want to leave it to the awarding authority to do all the paperwork. I would want to make sure that my business interests were looked after. So there is that risk of task duplication.

Kirsty Blackman: One more point: the duty is on the public authority to ensure that it is complying with the regime. It is the public authority's duty to do that. The Minister made it clear earlier that the public authority has a statutory duty. However, the public authority is then having to rely on that organisation telling them that it has had a subsidy. The public authority will know that that will push the organisation over the £315,000, that it will not be eligible for minimal financial assistance and that it will have to be registered on the scheme. A duty has been placed on the public authority for something over which it has no control and because the Government refuse to put that on the subsidy database it will not be able to find out whether the law is being broken.

Paul Scully: All I will say is that if the public authority is issuing something that it believes to be a subsidy, albeit under MFA, it will publish a letter to explain to the recipient why that MFA exemption appears.

Kirsty Blackman: Who is going to get the letter? Just the business? Where does it say in the Bill that the public authority has to publish a letter when providing a subsidy? Let us say Aberdeen City Council gives a subsidy to somebody and Aberdeenshire Council gives a subsidy to that same business. How are they going to know that the other authority has done it when the only paper trail is a letter that Aberdeen City Council has given to the business?

Paul Scully: It is not published as such, but is sent to the recipient. That is in clause 37. I hope hon. Members agree that we have taken a proportionate, sensible and balanced approach here, first, to make sure that we can exempt small subsidies from the requirement to apply the principles of subsidy control, and secondly, to enable public authorities to assess the subsidy schemes against their principles, rather than duplicating the analysis for every individual subsidy awarded within those schemes. Publishing additional information about small subsidies would have limited value for those concerned about potentially distortive subsidies and would detract from the core purpose of the database. The requirements would lead to additional red tape for public authorities, well beyond the requirements they had to fulfil under the EU state aid regime. In a great many cases, the information would simply duplicate what those authorities already publish in appropriate formats elsewhere.

I do not doubt that, overall, both local and national Government need to make databases interoperable so they can talk to each other, data can be scraped from them and they can be read more easily alongside each other. However, I do not believe that that is for the Bill to address. The exemption from minimal financial assistance subsidies and the £500,000 threshold for subsidies given

under schemes finds the right balance between the administrative burden of uploading subsidies and the transparency that the regime needs.

10.30 am

Seema Malhotra: I thank the Minister for his comments, but I must say that I do not feel that they have so far moved us forward in tackling the very serious issues that the debate has started to uncover. I also want to refer to his consultation as an illustration of how complex this is and how it requires further considered discussion, also in the light of the risks of things going wrong. A system works well when we plan for things to go wrong. When we do that, things will largely go better, because we have managed the risks and taken them seriously. As an example, page 45 of the consultation states:

“The consultation also asked for views on whether there should be a minimum threshold of £50,000 below which no subsidies have to be reported. 14% of respondents answered this question. Of those that responded, 64% agreed there should be a minimum threshold of £50,000.”

It goes on with differing views across differing areas. That comes back not just to how the regime will be used by those who use it in good faith but to where things can go wrong. We must ensure that there are measures, boundaries and transparency in place to prevent things going wrong and to protect the public purse. Value for money surely must be a consideration—more than it seems to be for the Government from the comments that we have heard so far. This requires a much more considered debate. We need to consider some of the evidence and the risks again.

Robin Millar (Aberconwy) (Con): I think that it is important that we pay attention to those matters, so I am grateful for the discussion, which I am following with interest. However, I have some familiarity with grant schemes in local authorities. One of the first questions that we, as a subsidy-awarding body, were asked was, “Has anybody else given you money?” It seems sensible for any subsidy-awarding body to ask a potential recipient of a subsidy whether they have applied for or received a subsidy elsewhere. If they fail to declare it, that is a case of fraud.

Seema Malhotra: I thank the hon. Gentleman for his comment. If he thinks that there should be such a requirement or that that should be in the guidance, perhaps he might raise it with his own Front Bench. It is important to have some of those checks in place. However, where fraud might be taking place, or there is an impact of—perhaps genuine—cumulative subsidies, whose responsibility is it? If an enterprise has been in receipt of multiple subsidies and does not declare them, where are they declared? If feedback to the local authority or the public authority is incomplete, how do we find out, unless subsidies are on the database and it is then much easier to search and identify them?

There is a lot more to be taken away from this discussion in terms of inefficiency and higher risk of fraud—or, if not fraud, perhaps some forms of maladministration or error. A transparent and full database would reduce the risk of many of those issues arising, and would then reduce the cost of seeking pre-action information or judicial review. Why must we clog up our tribunals with matters that could have been avoided

[Seema Malhotra]

had we had better control systems in the first place? A transparent and full database would ensure the value for money not just of the subsidy but of what the system demands and who pays for checks and balances later in the process.

The complexity of some of those issues requires us to think them through in more detail. I will not be pushing amendment 35 today, but we certainly plan to return to it in later stages of the Bill.

Kirsty Blackman: On a point of order, Mr Sharma, if I wanted to push amendment 33 to a Division, would it happen now or during the debate on clause 36?

The Chair: Later.

Kirsty Blackman: I would like not to move amendment 32 and to push amendment 33 to a Division.

The Chair: Ms Malhotra, would you like to withdraw amendment 35 or to press it to a Division?

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

Amendment, by leave, withdrawn.

Kirsty Blackman: I beg to move amendment 26, in clause 33, page 17, line 24, leave out “one year” and insert “three months”.

This amendment would reduce the length of time public authorities have to enter a subsidy in the database from one year to three months, with respect only to tax measure subsidies.

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

Amendment 37, in clause 33, page 17, line 24, leave out from “measure,” to “or” in line 25 and insert

“as soon as practicable, or within one month, beginning with the date of the tax declaration, whichever is sooner”.

This amendment would require the public authority to make an entry into the subsidy database in respect of a subsidy or scheme given in the form of a tax measure as soon as practicable and at the latest within one month.

Amendment 18, in clause 33, page 17, line 26, leave out “six months” and insert “one month”.

This amendment would reduce the length of time public authorities have to enter a subsidy in the database from six months to one month.

Amendment 38, in clause 33, page 17, line 26, leave out from “form,” to “scheme.” and insert

“as soon as practicable, or within one month, whichever is sooner.”

This amendment would require the public authority to make an entry into the subsidy database in respect of a subsidy or scheme in any other form as soon as practicable and at the latest within one month.

Amendment 27, in clause 33, page 17, line 27, at end insert—

“(3A) Before this section comes into force, the Secretary of State must make regulations defining the term “tax declaration” in subsection (3)(b).”

This amendment requires that Government to define the term “tax declaration” before this section comes into force.

Kirsty Blackman: This is one of the most important parts of the Bill that the Government have got wrong, and I am massively concerned. A number of witnesses raised concerns about the length of time. Some of those time lengths might have come from the trade and co-operation agreement, but my understanding is that those are minimum thresholds. It is entirely proper for us to put in stricter thresholds, should we desire to do so. It is important that those times be changed, for the sake of transparency and to protect organisations that might be harmed by subsidies being given to somebody else.

Amendment 26 would

“leave out ‘one year’ and insert ‘three months’”.

That is specifically about tax measures. The logic behind having a three-month period, rather than the one-month period I have suggested for normal measures, is that tax measures may be more complex, and it may take authorities longer to make that registration on the database. That should give them enough slack to be able to put that information on the database.

My big concern about tax subsidies is followed up in amendment 27 on the meaning of “tax declaration”. That meaning is not clear to me and, when I asked a tax professional, they did not know what “tax declaration” means in this case. It is important that the Government make clear what that means because, if “tax declaration” is the tax return, that return is made after the financial year in which that happens. It could possibly take up to two years for a requirement for that to be registered on the database. By that time, a competing organisation might have gone under. It was made clear to us in the evidence sessions that six months was a fairly long time; nearly two years is a very long time. It is completely unacceptable for the Government to choose to do that.

If the Minister says that “tax declaration” means the tax return, that would be helpful in making clear the meaning of “tax declaration”. My understanding, from the evidence given by Daniel Greenberg, is that that would be enough for everybody to understand the implementation of the legislation. The length of time is a massive concern for me. That is why I am proposing on tax measures that the length of time be changed from one year to three months, which is reasonable.

Where measures do not relate to tax, I am proposing that six months be changed to one month. That is again to protect businesses where the subsidy has distorted competition to the extent that they are in serious difficulties. I understand what the Minister said about time being paused if a subsidy has not been uploaded properly on the database, or if a pre-action request is made, but my concern is that people will make pre-action requests left, right and centre, no matter the date put in. It is also far too long a period of time.

The public authority that is granting money to an organisation has to go through a number of hoops in order to do so. It is completely reasonable to ask it to upload that as close to that point in time as possible, rather than let it potter about for six months, because it is already doing lots of paperwork. It is already jumping through hoops in relation to that subsidy, so it makes sense for us to reduce the time. It builds much more protection into the system, which is important. Surely that is the point of having a system. If we did not have international agreements and did not have to have any

system in place, it would be different, but we do have to have a system. Therefore, the system that we have should make sense and should work.

I will just speak briefly about the Opposition amendments that have been put forward. They are along a similar line and try to do very similar things. Should the Opposition decide to push the amendments to a vote, I would be quite happy to back them, because it is really important to get this right.

Seema Malhotra: It is a pleasure to speak to our amendments 37 and 38, and to the other amendments in this group. I thank the hon. Member for Aberdeen North for the persuasive arguments that she has outlined. She has mentioned that our amendments are on similar lines. Ours perhaps go slightly further, and I will lay out our arguments as to why we have tabled the amendments in this way.

Amendments 37 and 38 would change the period that public authorities have to enter their subsidies on the database to one month, including for subsidies given in the form of a tax measure. Schedule 1 highlights the intention for subsidies to be proportionate, fair and targeted. However, the extensive time period described in clause 33 allows public authorities to have six months to publish on the database, or one year if the subsidy is given in the form of a tax measure. That is notwithstanding the important comment made by the hon. Member for Aberdeen North, which I think also came up in some of the evidence sessions, about what is intended by “tax declaration” within the context of the Bill and what time could elapse between the equivalent of the subsidy being made and that being public. An understanding of that would be very helpful for the purposes of scrutinising that aspect of the Bill and whether there needs to be a change.

Having one year to enter tax measures into the database means that subsidies that do not meet the regulations can still be granted and be spent over that significant amount of time. As subsidy details are not entered into the database, interested parties do not have the necessary information to scrutinise or challenge the subsidies. That means there could be a six-month period in which a highly damaging subsidy can be granted without any challenge. Does the Minister recognise the damage that extensive publication periods could have on the fairness and transparency of the regime, and the extra cost to the public purse of ceasing to recoup some of the subsidies that may be subject to a successful challenge but may already be spent by then? What are the Government’s reasons for making the publication period so long? In last Tuesday’s evidence session, Jonathan Branton, partner at DWF Group, said:

“I have yet to hear a really persuasive case for why you need that long to publish the fact that you have made an award. Why do you need six months to get yourself together to publish that something has been done?”—[*Official Report, Subsidy Public Bill Committee*, 26 October 2021; c. 58, Q79.]

That was a powerful point. Can the Minister enlighten us? We in Parliament have a responsibility to the public to try to ensure value for money and transparency in public expenditure. That question is at the heart of how we ensure that the proposed regime commands the confidence, credibility and trust of all four nations of the UK and our constituents.

10.45 am

If the process for entering subsidies on to the database is designed to be easy and straightforward, there is even less reason why the time period for publication should be any longer than one month. We know how busy our public authorities can be, so does the Minister agree that leaving things for longer does not necessarily make them easier, but harder? That can lead to greater errors. What if an official moves on? People change their jobs, and that means someone else needs to find the paperwork. Errors can be built in when decisions and information are not updated at the time of a transaction. That is why I am concerned that the longer the publication period, the harder it can become for public authorities to ensure that they make accurate and complete entries. If the risk of error becomes greater, surely it is not in the public interest to have such a long publication period.

We are also not clear about the justification for providing a different time period for tax and non-tax measures. I would be grateful if the Minister clarified the Government’s thinking on that. Our amendment would still provide ample time for public authorities to enter their subsidies on to the database, while ensuring that potentially damaging subsidies are not given the opportunity to go unchallenged for half a year.

Paul Scully: Let me start by explaining the intention behind the process of uploading the subsidies to the database. As with other aspects of the transparency requirement, we have sought to balance the objectives of minimising unnecessary bureaucratic requirements on public authorities while ensuring transparency for those interested in subsidy awards, and most importantly for those that may be subject to challenge under the Bill’s provisions. As such, we have set the deadline for uploading subsidies on to the database at six months—the deadline for most subsidies—which is the time limit that existed under the EU’s state aid system.

Special provision is made for tax subsidies, as calculating their exact value is more complex and cannot be done until tax declarations have been received and finalised. I will come back to the time limit and the definition of tax declarations.

We expect public authorities to upload subsidies promptly because they have a strong incentive to do so. Generally, the date of uploading a subsidy on the database will determine the end of the limitation period to challenge it. The sooner a subsidy is uploaded to the database, the sooner the clock for the limitation period will start running, and therefore the sooner the public authority will gain certainty that the subsidy will not be subject to a challenge. Public authorities will therefore seek to upload subsidies as soon as possible.

Amendments 18 and 38 would shorten the upload deadline for subsidy awards and subsidy schemes not given in the form of tax measures. Amendment 18 would shorten the deadline to one month and amendment 38 would oblige public authorities to upload the subsidy award or scheme as soon as possible, and within one month at the latest.

As I said, we expect public authorities to upload as soon as the relevant data are available, and to use the whole period of six months only if there is good reason. An upload deadline as short as one month would likely result in more public authorities needing to amend their

[Paul Scully]

entries at a later date. Although they can do so as a permitted notification within the meaning of clause 81, that creates an unnecessary administrative burden for those authorities. It also means that the information on the database is more likely to contain minor inaccuracies.

I am sure that hon. Members will agree, as their earlier amendments suggested, that accuracy is really important, so a longer deadline for uploading is not only justified but sensible. I again emphasise that the approach taken in the Bill reflects the views of those who responded to the public consultation on the approach to subsidy control earlier in the year. The consultation set out the details of the proposed approach that we are now discussing, including the six-month deadline for uploading general subsidies. Of those who responded to the question, 74% agreed with the Government's proposed approach.

Amendments 26 and 37 seek to shorten the deadline for uploading subsidies in tax measures on to the database. Subsidies in the form of tax measures can be an effective tool for achieving policy objectives, but they are generally a more complex way of giving subsidies. They are more likely to have performance-related conditions, which means that it can take longer to determine the exact amount of the subsidy. Of course, a public authority will have an estimated value for the subsidy when it is granted for the purpose of assessing compliance with the principles, as well as for costing the measure for the purpose of managing public money. However, a final amount may not be known until the tax declaration has been completed. Even once that declaration has been submitted, further discussion between the beneficiaries of the subsidy and the public authority might be necessary, to confirm that the calculations in the tax declaration are correct.

Kirsty Blackman: Points were made earlier on the specific length of time. Why is the final amount required to be on there at the beginning, because they could presumably just put in how much they expect it to be? That would be much better for those organisations that may be looking to challenge it.

Paul Scully: They will clearly have that estimated calculation, but the database will function most effectively if the public authority uploads a subsidy when it can be confident of its accurate value. That will enable an interested party to determine whether to challenge the subsidy through a judicial review. It is important that public authorities are not then coming back and correcting those figures. It is a balance between ensuring that we get the entries in a timely fashion and in an accurate fashion. That is admittedly a difficult balance to strike, but the majority of people in the consultation agreed with our approach, which is set similarly to the EU state aid scheme.

The result of what we have set out is that a public authority will require sufficient time between the date of the tax declaration and the obligation to upload that subsidy to the database. We have determined that 12 months from the date of the tax declaration is sufficient time for public authorities and beneficiaries to calculate the exact subsidy amount. Amendment 26 would reduce that period from 12 months to just three months, and

amendment 37 would reduce it to one month. That would mean a significant reduction in the time available for a public authority to make those final calculations and upload the subsidy.

As with non-tax subsidies, an upload deadline of one or three months will increase the likelihood of error. Again, I am sure that is something we want to avoid. We expect public authorities to upload subsidies in the form of tax measures as soon as they can and, as I mentioned, they will have a strong incentive to do so. That is why 12 months is an appropriate deadline to reduce the risk of inaccurate information being uploaded. Shortening the deadline would not improve subsidy transparency in our view, nor help interested persons who may wish to challenge a subsidy in the form of a tax measure.

Kirsty Blackman: If I had an enterprise that was being harmed by either a tax subsidy or any other kind of subsidy, I would rather know that the subsidy had been given and not know the exact amount than have no information at all until my business had gone under.

Paul Scully: I come back to our earlier discussions about the onus that is put on public authorities, and the impact that it will have on them, not only to put the amount on the various databases but possibly to go back and correct them. I appreciate that it is a difficult balance to strike, but none the less the balance is based on the EU state aid rules. It has gone through the public consultation and the majority agreed with it.

Amendment 27 would add a requirement to define a tax declaration in regulations before the subsidy control regime came into force. I can reassure hon. Members that, in the vast majority of cases, I would expect that the relevant tax declaration would indeed be a tax return. There are other examples: duty and certain other types of taxation treatment. That is why it is called a tax declaration rather than a tax return. But most of the time it would indeed be a tax return. The precise details would vary, depending on the specific tax and the mechanics of the measure in question.

As I have said, the Government will provide thorough guidance—I come back to the guidance that we have spoken about on a number of occasions—to ensure that public authorities are aware of their subsidy control obligations, including how to report subsidies in the form of tax measures. If it would be helpful to public authorities, subsidy beneficiaries and interested parties, that guidance will provide further explanation as to what should be considered a tax declaration. As that does not affect the substance of the law, I do not think it would be appropriate for secondary legislation. I therefore request that hon. Members withdraw or not press these amendments.

Seema Malhotra: I thank the Minister for his comments. There has been quite an important discussion and debate today. I want to highlight why this matter is complex and why more is needed on it. The Government quote from their consultation response, but on the specific point about the public authorities consultation question—should it be within six months?—I think it was actually quite a loaded question: “Do you agree that the obligation should be to upload information within six months of

the commitment to award a subsidy?" That is hard to disagree with, even if people think that it should be one month or less. As with many of the questions, we had 15% of respondents answering this, and a majority did agree with the proposal. I do not think people would necessarily disagree with it. But even those who then did think a bit further and disagreed commented that six months was too generous and could be shorter, and apparently suggested a range of alternatives.

What is important is to get this right. The Minister made a couple of points in relation to where there may be some information that is not fully available—I do not know what specifically that would be—that would result in edits to correct some information, which could be after a month or two. I would like the Committee to have an opportunity to reflect on that and perhaps to talk to local government and other public authorities about what difficulties they might perceive if the period was to be greater than one month, or whether they did think that one month could be workable in the context of an easy-to-enter database. I think that, rather than pushing this matter to a vote today, we should see some further work done on these issues, in order to have confidence about the deadline, and come back to this on Report, with some of that information and further research being clear.

Kirsty Blackman: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Seema Malhotra: I beg to move amendment 36, in clause 33, page 18, line 7, leave out "negative" and insert "affirmative".

This amendment makes the regulations set out in Clause 33(8) subject to the affirmative procedure.

This amendment would ensure that any future changes made to the minimum threshold for publication were decided through the affirmative rather than the negative procedure. We have said throughout the passage of the Bill that too many aspects of it are set to be decided at a later date by the Secretary of State. Decisions that could and will have a significant impact on the new subsidy regime, such as those that would change authorities' database obligations, should be afforded appropriate parliamentary scrutiny. The decision to change the minimum threshold for publication on the database is one example that would alter the transparency and clarity of the new regime. It is not right for it to be nodded through Parliament or go under the radar. It should be given parliamentary scrutiny and the vote that it demands.

11 am

Kirsty Blackman: I have a wee comment to make on this. The Government increasing the minimum threshold required on the subsidy database is a very contentious issue that we have discussed at length, including with witnesses. A significant number of respondents to the consultation answered on the basis of the numbers put before them. It is important enough that lots of people responded to the consultation. It is important enough that we have had a length of time debating the numbers. The negative procedure does not make sense, given the Bill's possible impact. Unless the Bill is amended, the

Government could, at a stroke, change the threshold to £2 million under the negative procedure. In terms of transparency, accountability and ensuring that this makes sense and works for everybody, it would be sensible for the amendment to be accepted.

Paul Scully: Clause 33 sets out that the Secretary of State may change the threshold above which subsidies given under schemes are required to be uploaded to the transparency database. Amendment 36 seeks to change the procedure for these regulations from negative to affirmative.

The regulations can be used to change the thresholds for all subsidies given under schemes, or for those matching a specific description, such as those given to a specific sector. The regulations cannot be used to make changes beyond this—for example, to change the requirement to upload all subsidy schemes to the database—and nor do they change the substantive subsidy control requirements, which are assessed at scheme level, rather than for each individual subsidy given under a scheme. As such, these regulations should be considered technical.

The Bill proposes the right parliamentary procedure for different types of secondary legislation. For example, the powers to amend the exemption thresholds in clause 42(1) are subject to the affirmative procedure because they affect the substantive subsidy control requirements rather than simply the threshold for uploading information to the database.

Kirsty Blackman: Does the Minister agree that if the Government were to change the threshold from £500,000 to £20 million, that would require some scrutiny?

Paul Scully: As I have set out, the figure of £500,000 strikes the right balance between transparency and minimising undue and unnecessary administrative requirements. We currently have no intention of changing the overall threshold. The Secretary of State has power to change the threshold if necessary—for example, because of changing market conditions or international obligations.

Seema Malhotra: I appreciate that the Minister has stated the Government's position on the £500,000 threshold but he has not made the case for it, neither on the operation of the regime nor on value for money or transparency. The hon. Member for Aberdeen North powerfully made the point that the Government have the power to change the £500,000 threshold under the negative procedure. Has the Minister held discussions—with the Secretary of State or others in government—about whether there should be a maximum that the Secretary of State may propose? The consequence is much less transparency over greater amounts of public funds. That surely cannot be the right direction of travel for any Government, and certainly not for a scheme that we want to stand the test of time and enjoy the confidence of the public.

Paul Scully: In this instance, we are looking at adjusting the thresholds for specific sectors, such as agriculture, that are characterised by smaller businesses where a relatively small subsidy can have a distortive effect. It might be more appropriate to have a specific threshold

[Paul Scully]

in the future, but the focus in the transparency measures in this Bill is on enabling interested parties to see the subsidies that they may wish to challenge. We are not setting out to provide a general database of public authority spending, but the schemes are transparent because the details of a scheme itself must be uploaded on to the database. That is where the challenges may come. Transparency is set within this framework and that is why it is appropriate to use the negative procedure. I ask the hon. Lady to withdraw the amendment.

Seema Malhotra: I thank the Minister for his comments. In the light of the complexity of many of the issues that we have debated, I will not push the amendment to a vote. However, the issue must be looked at in the round to ensure that clause 33 is as robust as it can be and will stand the test of time. 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 sets out the duty on public authorities to upload certain information on to the database about their subsidies and subsidy schemes. It provides public authorities with clear rules on whether a subsidy award should be uploaded to the database or not. It sets out the three rules for public authorities granting stand-alone subsidies and subsidy schemes.

Seema Malhotra: This is an important clause, but it requires significant improvement. We will not vote against clause stand part, but I hope that the Minister will engage positively on the issues. This is not a party political matter. It is genuinely in people's interests to have a robust regime, and we have outlined the cornerstones of that.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

INFORMATION TO BE INCLUDED IN THE SUBSIDY DATABASE

Seema Malhotra: I beg to move amendment 40, in clause 34, page 18, line 9, remove “may” and insert “must”.

This amendment makes the regulations listed in subsection (2) mandatory for entries on the subsidy database.

The Chair: With this it will be convenient to take amendment 19 in clause 34, page 18, line 12, leave out “may, in particular,” and insert “must”.

This amendment seeks to ensure the Secretary of State will include all these measures in the regulations.

Amendment 41, in clause 34, page 18, line 12, leave out from “The” to “particular,” and insert

“Regulations made under subsection (1) must”.

This amendment makes it a requirement for subsidies entered into the database to include the information set out in paragraphs (a) to (i) of subsection (2).

Amendment 20, in clause 34, page 18, line 27, at end insert—

“(j) any other matter which the Secretary of State deems necessary”.

This amendment is linked to amendment 19.

Amendment 21, in clause 34, page 18, line 27, at end insert—

“(j) the purpose of the subsidy”.

This amendment would allow the Secretary of State to include a requirement in regulations that a public authority's entry in the database details the purpose of the subsidy.

Amendment 43, in clause 34, page 18, line 27, at end insert—

“(j) the date the subsidy or scheme was entered onto the database.”

This amendment requires the date on which the subsidy or scheme was entered onto the database, to be included in entries on the database.

Amendment 42, in clause 34, page 18, line 34, at end insert—

“(3A) The Secretary of State may by regulations make provision about further information that must be included in a public authority's entry in the subsidy database in relation to a subsidy or subsidy scheme.”

This amendment allows the Secretary of State to make regulations setting out further information required to be published on the subsidy database.

Amendment 44, in clause 34, page 18, line 34, at end insert—

“(d) the date the public authority confirms the decision to give each subsidy under the scheme;

(e) the duration of each subsidy under the scheme;

(f) any time limits or other conditions attached to the use of each subsidy under the scheme;

(g) the amount of each subsidy or the amount budgeted for each subsidy under the scheme;

(h) the date each subsidy under the scheme was published.”

This amendment requires that the information required to be entered into the subsidy database for subsidy schemes includes much of the same information required for subsidies.

Seema Malhotra: It is a pleasure to move our amendments to clause 34, which is about the information to be included on the subsidy database. The clause outlines that the Secretary of State can make regulations about what public authorities must include in their entries on the database and it lists certain regulations that the Secretary of State may make provision for. As well as ensuring that subsidies are published on the database and with accurate information, it is important that public authorities are obliged to include all the necessary information in their entries. It is therefore strange that the Bill does not contain minimum requirements that must be included in the subsidy entries. An explanation of why that is the case would be welcome from the Minister, particularly following Jonathan Branton's assertion that,

“a national transparency register has been established, but when you look at that register and at the relevant rules around it, you do not see that it is functioning well.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 51, Q72.]

The Government must surely recognise that the information included on the database will be crucial for the effectiveness of the regime, and that there should be a common standard—one that is an obligation—for public authorities to enter that information, rather than yet again leaving it to the Secretary of State, a very busy

person, to decide later what should be included in subsidy entries. The Bill should mandate those requirements now. I am sure the Secretary of State would appreciate the Minister making changes in Committee that could make his life, or her life in future, easier. That is in the public interest.

The requirements should also be put to the whole House rather than nodded through Parliament through a process with less scrutiny. They should be included more firmly in the primary legislation to allow public authorities and interested parties a strong, clear message from Parliament about what information as a minimum should be prepared and uploaded on the database. That is why we propose amendments 40 and 41 to make the regulations listed in subsection (2) mandatory, rather than obligations that the Secretary of State may or may not include in future regulations. It is also why, if they decide to put it to a vote, we will support amendment 19 tabled by the hon. Members for Aberdeen North and for Aberdeen South, which achieve similar outcomes. The amendments would ensure that entries onto the database include the information necessary for transparency and for interested parties to make informed decisions about whether subsidies obey the control principles. As Jonathan Branton summarised:

“If you cannot see what is going on, you do not know what to challenge, or even if to challenge.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 51, Q72.]

Amendment 43 would include the date that the subsidy or scheme was entered on to the database as part of the mandatory information that public authorities must include. Given that the legislation states that interested parties have just one month from the date of publication on the database to challenge subsidies, it seems odd that the information required by the amendment is not already included in the Bill. It is a critical piece of information. As Alexander Rose stated,

“the key piece of information on that website”—
—the database—

“is the date the entry is made, and the reason that is so important is that the challenger has as little as a month to challenge once that information is placed on the website.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 52, Q73.]

Will the Minister explain why the Government do not think the database needs explicitly to include and mandate publication dates, even though the dates are so crucial to the challenge process?

I hope the Committee can see how necessary amendment 43 is, as it includes the publication date on the database. Without it, I fail to see how the interested parties will be able to exercise their power in the ways intended in the Bill to bring challenges within the timeframe to damaging subsidies or those they consider of concern.

Amendment 44, on similar lines, sets out mandatory requirements that public authorities need to meet when entering information. We recognise that subsidy schemes will provide public authorities with a surer framework under which to grant subsidies. However, that does not mean that subsidies granted under them should escape scrutiny and transparency. The amendment seeks to ensure that the date each subsidy under a scheme is granted is published on the database, as well as the duration of each subsidy under a scheme, any time limits as might relate to the conditions and each subsidy’s amount. I cannot see any reason in the public interest that that should not be so.

The amendment would ensure that not only the schemes, but each individual subsidy under them, was subject to appropriate transparency. It would enable the Secretary of State, the CMA and interested parties to check that subsidies given under the schemes, as well as the schemes themselves, are consistent with the principles laid out in schedules 1 and 2. To quote Jonathan Branton:

“It is really difficult to argue against transparency and say, ‘Why wouldn’t you have transparency about the dispensation of public money in this way?’”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 55, Q76.]

Finally, to change the substance of the Bill, Labour also proposes amendment 42, which would allow the Secretary of State still to make the regulations on the content of the database. I hope that the Government can therefore see that the amendments, taken together, do not seek to make the provisions stated in subsection (2) static and would rather ensure that the database is necessarily informative, to ensure that the regime can run effectively and that subsidies can obey the control principles.

Ordered, That the debate be now adjourned.—(Michael Tomlinson.)

11.17 am

Adjourned till this day at Two o’clock.

