

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

SUBSIDY CONTROL BILL

Sixth Sitting

Tuesday 2 November 2021

(Afternoon)

CONTENTS

CLAUSES 34 TO 51 agreed to, one with amendments.
Adjourned till Thursday 4 November at half-past Eleven o'clock.
Written evidence reported to the House.

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

(Afternoon)

[CAROLINE NOKES *in the Chair*]

Subsidy Control Bill

2 pm

The Chair: Before we restart proceedings, I remind Members about the updated guidance on face coverings and the increased risk in Committee. I encourage you to observe social distancing and to wear a mask when you are not speaking.

Clause 34

INFORMATION TO BE INCLUDED IN THE SUBSIDY
DATABASE

Amendment proposed (this day): 40, in clause 34, page 18, line 9, remove “may” and insert “must”.—(*Seema Malhotra.*)

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

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

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.

Kirsty Blackman: Thank you for chairing the Committee, Ms Nokes. I came back thinking that I had notes, but I have just written two sentences on a bit of paper. Hopefully I will not ramble too much. I want to speak to amendment 19 and amendment 20, which is linked to amendment 19, and amendment 21. I think that is all, but I will speak to other amendments as we come to them.

The logic behind amendment 19 is, unsurprisingly, to try to give us a bit more certainty about what the Secretary of State will require to be included in the subsidy database. It changes “may, in particular” to “must” in subsection (2), to give us certainty that those things will definitely be included. That strengthens the clause and makes it clearer. Amendments 20 and 21 allow the Secretary of State to include anything else that they think is necessary, because if “may” is strengthened to “must”, we need to allow the Secretary of State to have a bit more flexibility to include anything else not listed.

Amendment 21 is about the purpose of the subsidy. We are concerned, having looked at the entry requirements for local authorities—sorry, I mean public authorities; I spent far too many years as a local authority councillor. This amendment has been included because I am not convinced that paragraph (b) on the policy objective of the subsidy scheme adequately covers what we would like to have in that database. People who put things in the subsidy control database need to say why they are giving the subsidy to the organisation. That is important not just for setting the policy objective, particularly in subsidy schemes, but for knowing the point of that individual subsidy—why it is given to that organisation. It will be very helpful if the Minister outlines whether he thinks additional things may be added to this list by the Secretary of State. I hope he can be clear with the Committee that this is not necessarily a prescriptive list and the Secretary of State may include other things in it. I am assuming that is why the language was chosen at the beginning of subsection (2), but if the Minister could state that, it would be helpful for us to understand.

We have discussed at some length the importance of the subsidy control database, and the fact that it is the only way enterprises or public authorities will be able to find out about subsidies that have been made that may distort competition. I agree with the shadow Minister, the hon. Member for Feltham and Heston, that it is very important that we get this right, and that we have as much information as possible, so that people can make pre-action requests and challenge a subsidy.

The subsidy control database is not a tick-box exercise, and I hope that subsidy control is not a tick-box exercise; subsidy control is necessary, and not just so that we can meet our international obligations. Presumably, the Government think that it is a good thing. It is good that we have regulations around subsidies; that is very important. If subsidy control is not to be a tick-box exercise enabling us to meet our obligations, and if we are not saying, “We’re just going to do the bare minimum,” it is key that the Government give some thought to the amendments tabled by Labour and the SNP, and consider whether it is important to strengthen the data on the subsidy control database, as well as the ability to search it and timelines, which we have talked about.

Amendment 21 would require the purpose of the subsidy to be put on the database. That is missing from the list in clause 34. It would be useful for organisations and public authorities to have information on why the subsidy was given. If the Minister believes that “the policy objective of the subsidy or scheme”

adequately covers the purpose of the subsidy, it would be helpful if he could state that, and say that the Government will request authorities to include the purpose of the subsidy. That would give us comfort about the information that will be on the subsidy control website.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): It is, as ever, a pleasure to serve under your chairmanship, Ms Nokes. I thank hon. Members for their interest in clause 34 and the amendments to it. As we have heard, the clause concerns the technicalities of how we will require public authorities to upload details of subsidies to the database, and allows the Secretary of State to make regulations setting up the information requirements of the database. The regulations will be technical in nature, and Parliament will have the opportunity to review them through the negative procedure.

We have thought really carefully about this, and I would like briefly to take the Committee through our rationale for taking the power. The definitions, rules and processes at the core of the proposed new regime are set out in the Bill. Further technical detail and specificity will be needed on the exact transparency requirements. Our new regime needs to be responsive to market and technological changes and to reflect future trade deals and international obligations. It is also important that it can respond to unforeseen events and developments. We need to be able to act quickly, when necessary, to events such as financial crises, covid-19, and changes in world markets and the global capacity for the production of particular materials.

The list of information that must be uploaded on the database relates to the technical, administrative reporting requirements placed on public authorities, rather than the substantive subsidy control requirements that determine which subsidies are given. For these reasons—the need to change at pace, and the fact that these are simply reporting requirements, not rules about when subsidies can be given—we have provided for the Secretary of State to have the power to make these requirements by regulation, rather than putting them in the Bill.

We share the desire to be as transparent as possible. This is a crucial part of the regime, not a tick-box exercise; I assure the hon. Member for Aberdeen North

that we take it very seriously. In order to give Parliament further information about what kind of information may be provided, subsections (2) and (3) provide illustrative lists.

Amendments 19, 20, 41 and 42 concern similar matters, so I will address them together. As I have said, the Government’s intention in providing the list of requirements in subsections (2) and (3) is to illustrate the kind of information requirements that may be included in the regulations. Those regulations are not yet prepared. More work is required to gather evidence and scope out the most appropriate way of setting out the database upload requirements in legislation. These requirements need to be clear and operationally viable, and must ensure appropriate transparency and value for those interested in subsidy award data.

Our intention is to make the regulations as straightforward and concise as possible and to avoid duplication. The amendments would mean that the Secretary of State must include in the regulations all the fields listed in clause 34(2).

Amendment 41 also covers the list in subsection (3)—the lists would no longer be illustrative but would be a minimum that could be added to. The regulations would be required to include information that, on the basis of the information gathered before drafting the regulations, might be surplus to requirements. We want to ensure that the exhaustive work is done beforehand, because we have tried to avoid creating additional, unnecessary reporting requirements for public authorities in the UK’s new subsidy control regime while still being as transparent as possible. Before setting out the requirements, the Government will carry out full analysis to ensure that data fields are useful and appropriate.

Kirsty Blackman: Can the Minister give me some comfort that public authorities updating the database and those searching the database will be involved in the consultation, and that the majority of the decisions taken by the Government are likely to be led by consultation responses, rather than if the consultation comes back and states, “We absolutely want paragraph (f); that absolutely has to be there” the Government would be unlikely to decide not to have paragraph (f)?

Paul Scully: We will engage with all those bodies—with the public authorities that will have to do the reporting; with the recipients of subsidies; and with people interested in subsidy data and transparency. We have already started that engagement, and it will continue because it is important that the database is as useful as possible and is balanced by a proportionate approach so that we do not duplicate effort. None the less, these will all be taken into account as we gather the evidence.

The data required for the database needs to be available to public authorities without creating large administrative burdens, either on those authorities or on subsidy recipients. It needs to be data that is relevant to all subsidies and schemes, or to be clear in which circumstances it is required, and where it is not. It needs to be presented so that those viewing it can easily access the data available and seek out the information they need.

In addition to getting this right for commencement of the new regime, it is important to remember, as I mentioned earlier, that the requirements may need to

[Paul Scully]

change over time. For these reasons, I believe it is right that the lists in subsections (2) and (3) remain illustrative—that is to say, the regulations should not be required to include all types of information listed. The ability to tailor the regulations in future is essential for ensuring that the database does what it needs to do and can allow for different requirements for different types of subsidy.

Amendments 21, 43 and 44 seek to add further categories of information to the illustrative lists. As I have already set out, these lists should be considered illustrative of the technical requirements that the Government expect to bring forward in secondary legislation. As such, any additions are unnecessary.

The illustrative list provided clearly demonstrates that the regulations are intended to cover the information for interested parties to understand the key facts about a subsidy or subsidy scheme, and whether it is likely to harm their interests.

Amendment 40, which stands in the name of the hon. Member for Feltham and Heston, would make it compulsory for the Secretary of State to make regulations under this power. I assure members of the Committee that the Government intend to bring forward these regulations before the commencement of the subsidy control regime. However, I do not believe it is appropriate to consider these regulations essential to the operation of the new subsidy control regime as set out in the Bill, because the regulations are essentially technical.

Kirsty Blackman: The Minister says that the Government intend to bring forward the regulations before the subsidy regime starts. Can he give us an assurance that it will be not a few days before but long enough for public authorities to understand their obligations and include the correct data?

Paul Scully: I can reassure the hon. Lady on two things. First, we want to ensure that we develop this with public authorities—that we engage with them so that they are part of the process. They will be reporting, so we want them to understand what they have to do.

Secondly, as I said in answer to the hon. Lady during a previous sitting, we want to do this in good time and ensure that public authorities, beneficiaries and everyone involved have time to digest it. That is very much the aim ahead of commencement.

The regulations are essentially technical in character and do not fundamentally change the substantive subsidy control requirements. The current practice clearly demonstrates that there is no need to have such specific requirements in force for the database to be operational as it is already up and running, although we can and will improve it.

I therefore request that the amendment be withdrawn.

2.15 pm

Seema Malhotra (Feltham and Heston) (Lab/Co-op): I thank the Minister for his remarks and the hon. Member for Aberdeen North for speaking to her amendments. I remain concerned that the provision is not nearly robust enough and I was not fully reassured by the Minister's comments. I take on board some of his remarks. Further work and research may be needed to check that the list is complete or whether more information

may be needed on the database. However, I did not understand some parts of the Minister's response. Which bit of subsection (2)(a) to (i) would he not want included in any subsidy entry? Why are they in the Bill to start with? They all seem eminently sensible.

I would like to push two of our amendments to a vote. The first is amendment 40, which would make it mandatory for the Secretary of State to make the provisions by regulation. It would be made mandatory for information to be entered, and that is done by the amendment changing the word “may” to “must” in subsection (1). Although I will not press the other amendments, I would like to push amendment 43 to a vote. For the reasons I outlined, it is fundamental that the date on which the subsidy or scheme was entered on to the database be included in the entries. So much can be hooked on to that date and if it is not, scrutiny becomes much more fragile, as is the ability of interested parties to bring forward cases with clarity. Those are fundamental points if information is to be debated robustly. The system cannot be at all robust if those important elements are missing.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 7]

AYES

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

NOES

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

Question accordingly negated.

Amendment proposed: 19, in clause 34, page 18, line 12, leave out “may, in particular,” and insert “must”.—(*Kirsty Blackman.*)

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 8]

AYES

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

NOES

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

Question accordingly negated.

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

“(j) the date the subsidy or scheme was entered onto the database.”—(*Seema Malhotra.*)

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 9]

AYES

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

NOES

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

Question accordingly negated.

Kirsty Blackman: I beg to move amendment 22, in clause 34, page 18, line 35, leave out subsection (4) and insert—

“(4) Regulations to be made under this section for the first time are subject to the affirmative procedure. (5) Any subsequent regulations made under this section are subject to the negative procedure.”

This amendment would have the regulations be considered under the affirmative procedure, in the first instance, and the negative procedure for any future tweaks.

I like to think I am not an unreasonable person. We have debated at some length what needs to be on the subsidy control database, and it was also discussed during our evidence sessions. It is fundamental to the operation of the scheme that the subsidy control database is fit for purpose and that the information that is available on it is agreed in consultation with the public authorities and the enterprises that it will affect. That relates both to what goes on to the database and to the ability to challenge anything that is happening.

When the regulations are first made, there is likely to be some disagreement. We have had plenty of disagreement already about whether a provision should say “may” or “must” and members of the Committee have brought up good points that Ministers may not have heard before. The Minister’s characterisation of some of the consultation responses has been slightly challenged by the shadow Minister on the ground that some of those responses were not as clear as the Minister suggested. For that reason, when we consider for the first time the information to be included on the subsidy control database, it is important that we do so by the affirmative procedure. Any subsequent changes can be done by the negative procedure.

As the Minister has said, this is a framework Bill, but we have not seen this part of the framework. If the scheme is to work, we need to see what it will involve. The Minister said that this section was specifically about what was included on the database and not about the regulation of subsidy because there are rules on whether or not they are awarded. He is right about that, but we will not be able to understand whether subsidies are being given unless they are on the database. We simply will not know whether they exist. The only burden on public authorities is to provide a letter to the business; it does not involve any level of check or anything that enables us to scrutinise what has happened. The affirmative procedure, in the first instance, would

be the best way forward, with the negative procedure for future iterations—tweaks to ensure it is operating correctly.

Paul Scully: Amendment 22 concerns the procedure by which the Secretary of State can make regulations to set out the information that public authorities must upload to the transparency database.

As we have discussed in the context of other amendments, these regulations are highly technical. They do not change the substantive subsidy control requirements or the basis on which subsidies can be given. They are also not necessary for the database to function—as demonstrated by the fact that it is already operational.

The negative procedure is most appropriate for a technical issue such as this. As I mentioned this morning, the Bill proposes the right parliamentary procedure for different types of secondary legislation. I mentioned the powers to amend the exemption thresholds in clause 42(1) being subject to the affirmative procedure because they affect the substantive subsidy control requirements rather than the thresholds or entries on the database that we are discussing.

The regulations will be drafted and published in good time to ensure that public authorities understand what the regulations will require of them. I therefore request that the amendment be withdrawn.

Kirsty Blackman: I thank the Minister for his statement. It will be interesting to see whether the regulations come forward in the negative or the affirmative.

I do not intend to press the amendment to a vote. I say simply that, although the website is operational, it is not very functional. The Minister has admitted that it has shortcomings, a number of which would have been sorted if the intention of the regulations had been made clearer in the Bill or if they would be discussed under the affirmative procedure.

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 gives the Secretary of State the power to make regulations that stipulate what information must be provided by a public authority with respect to a subsidy scheme or subsidy award when it is recorded on the subsidy database.

The regulations will be subject to the negative procedure.

Kirsty Blackman: Subsection 2(g) of the clause mentions “the amount of the subsidy or scheme or the amount budgeted for the subsidy or scheme.”

That directly contradicts what the Minister said in relation to tax measures. He said that tax measures could not be put on to the database in advance of knowing exactly how much the tax measures would be. I suggested that it would be possible to include the budgeted amount on the website. The Minister said that would not be possible—it would be important to have the final amount. This specifically states that in regulations the Government might ask for the budgeted amount—particularly for tax measures, where there is such a long time before a public authority has to upload the information, during which a business might, because of the distortive effects of the subsidy, be in serious financial

[Kirsty Blackman]

difficulties and go under. It is bizarre that the argument that the Minister made is directly contradicted by subsection 2(g). It would be helpful to know why the provision is in the Bill if the Government would not even consider using it—which is what he suggested earlier.

2.30 pm

Seema Malhotra: I am grateful for the opportunity to say a few words in this stand part debate.

We have discussed extensively the considerable concerns about the framing of clause 34. We will not vote against clause stand part, and there is no mechanism for us to abstain. I will make one final comment, on the content of subsection (3). It is extremely important that there is a thorough set of requests from public authorities to make sure that the criteria being used for the calculation of the subsidy are explicit, for all the reasons of transparency that we have talked about. We need to see that embedded through the Bill. To be fit for purpose, there are a number of areas where we believe that needs to be strengthened. We intend to come back to these issues at future stages of the Bill.

Paul Scully: To answer the question from the hon. Member for Feltham and Heston, the criteria used to determine how the figures are arrived at are part of the purpose of the subsidy, which is why that information is in the Bill, but guidance will also be provided, as will regulations on gross cash equivalents.

On the point made by the hon. Member for Aberdeen North, that, effectively, is why this is an illustrative list. Budgeted amounts can vary significantly from the final subsidy, so it might not be appropriate for them to be used in all cases, including for tax. None the less, we want to work out these issues on an evidence-led basis, having engaged with the public authorities to see how the database will work in practice. It is important we work with the public authorities to come up with the guidance and final regulations in plenty of time before commencement.

Kirsty Blackman: It would be very helpful if when the consultation is carried out the Government were to ask enterprises whether they would prefer to see the data earlier, or the final figure. I think the Government have got it wrong on this one.

Paul Scully: As I said, we will engage with enterprises and public authorities, as well as academic and legal experts, to make sure we get the balance right. We think we have a balanced and proportionate response, but that will be developed in plenty of time before commencement.

Question put and agreed to.

Clause 34 accordingly ordered to stand part of the Bill.

Clause 35

INTRODUCTORY

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

Paul Scully: The Bill sets out a robust but flexible framework for the awarding of subsidies. As part of the regime provides the necessary flexibility for public

authorities, certain types of subsidies are exempt from the framework entirely, or from different elements of it, depending on the nature and context of different subsidy decisions. For example, except for the continued application of clauses 16 and 17 in respect of goods, there is no need to apply the subsidy control requirements to lower value subsidies that have minimal distortive impacts, including those given to services of public economic interest.

Although the framework should be flexible enough to allow public authorities to provide the necessary support in emergencies, in other areas, such as monetary policy subsidies, it is entirely inappropriate for them to be within scope of the subsidy control regime. For monetary policy, it is crucial that the subsidy control framework does not undermine the Bank of England's independence or hinder its role in the macroeconomic framework. Part 3 sets out a number of other exceptions, such as on subsidy schemes established before the regime will be enforced, where there is a need to give certain subsidies or make a subsidy scheme to maintain financial stability, and subsidies given for large cross-border co-operation projects.

Seema Malhotra: The clause explains this part of the Bill, which sets out where certain subsidies and schemes are to be exempt from the requirements of the regime. We do not have any specific issues with the clause, and are happy to support that it stand part of the Bill.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Clause 36

MINIMAL FINANCIAL ASSISTANCE

Amendment proposed: 33, in clause 36, page 19, line 17, after “requirements” insert

“with the exception of duties under section 33.”—(*Kirsty Blackman.*)

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.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 9.

Division No. 10]

AYES

Blackman, Kirsty

Esterson, Bill

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 exemption allows public authorities to award low-value subsidies of up to £315,000 over three years with maximum flexibility and minimal administrative burden. Subsidies given through the minimal financial assistance exemption are very unlikely to have any appreciable distortive impact on international trade

and investment, or UK competition and investment, so it is appropriate to exempt them from the substantive requirements of the regime, subject to the value threshold set out in the clause and the relevant procedural requirements set out in clause 37.

Kirsty Blackman: I continue to believe that subsection (2) of the clause is meaningless and unpoliceable because of the way that the subsidy control database is being put together. I would very much like it if the Minister would, either now or at some future point, in writing preferably, let us know how the Government intend to ensure that public authorities are able to find out whether an organisation has had a subsidy before, what its value was, and whether the subsidy that it will potentially award to that organisation will push it over the £315,000 limit.

There is no point in the clause if there is no way in which it can work because of the Government's decisions on how the database is run. I am very pleased that a public authority will have to write a letter to an organisation to say, "We're giving you a subsidy under the minimal financial assistance scheme," but that does not go far enough. It may be helpful if it had to write a letter to all granting authorities, because then they would all be aware of the subsidy that had been given, and they could take decisions. This is an unfair and not sensible burden to put on granting authorities, because there is no way that they can ensure that they are abiding by the law, or get the transparency data to prove that they have done so.

Seema Malhotra: We will not support clause stand part. My contribution will build on the arguments made by the hon. Member for Aberdeen North. We debated amendment 33, which I think went part way to covering some of our concerns, but our concerns are broader, in questioning the exemptions from some of the control requirements.

The clause outlines subsidies that are exempt from the subsidy control principles, stating that the principles do not apply to subsidies worth less than £315,000 to one enterprise over three years. We believe that subsidy control principles exist for a reason; we are having these debates and setting up this regime for a reason. Subsidies should help to pursue a specific policy objective. They should be proportionate. They should encourage certain behaviours. They should not fund unnecessary costs. They should not be distortive or cause overwhelmingly negative effects. They should not affect competition and investment within the UK. Those principles should stand regardless of the size of the subsidy.

A subsidy being smaller does not mean that it cannot be disproportionate or bring about negative effects. All subsidies have the power potentially to harm the economy. They should be transparent and subject to scrutiny and the potential for challenge, and therefore all should be required to be in line with the subsidy control principles. I have not heard anything from the Minister, although he may yet persuade me otherwise, about why the clause is needed and why the Bill cannot require all subsidies to be transparent and in line with the subsidy control principles—it is the Subsidy Control Bill.

Paul Scully: Clause 37, as we will discuss in a second, states that the public authority has to confirm with the enterprise that the subsidy is still below the threshold.

That is the right balance for a proper process to confirm that the threshold is respected without applying disproportionate burdens of oversight for small subsidies that are unlikely to be distortive in any way. Although the regime is light touch, it still imposes some obligations, and it is not proportionate to impose them on very small subsidies that are unlikely to have an impact on trade and competition. For that reason, we feel that the balance is right between the transparency required to make sure that the subsidies are made and reported, and that we can understand the effect and distortion they may have, and the administrative burden that will be put on public authorities and those smaller businesses.

Kirsty Blackman: I appreciate the case that the shadow Minister made. I am not entirely convinced at this point; I need to think about it a bit more. I will therefore abstain if clause stand part is pushed to a vote, but I reserve the right to change my mind on Report.

Seema Malhotra: We wish to push clause stand part to a vote.

The Committee divided: Ayes 9, Noes 5.

Division No. 11]

AYES

Baynes, Simon
Benton, Scott
Bowie, Andrew
Buchan, Felicity
Millar, Robin

Mortimer, Jill
Scully, Paul
Stafford, Alexander
Tomlinson, Michael

NOES

Esterson, Bill
Fletcher, Colleen
Kinnock, Stephen

Malhotra, Seema
Whitley, Mick

Question accordingly agreed to.

Clause 36 ordered to stand part of the Bill.

Clause 37

SECTION 36: PROCEDURAL REQUIREMENTS

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

2.45 pm

Paul Scully: Clause 36 establishes the minimum financial assistance—or MFA—exemption and the value threshold for awarding subsidies under the exemption. That exemption allows subsidies to be given without having to comply with the subsidy control requirements, and clause 37 sets out the procedural requirements to use that exemption.

Before awarding an MFA subsidy, a public authority has to provide the intended beneficiary with an MFA notification. That must set out that the subsidy is proposed to be awarded as MFA, the value of the prospective subsidy and it must request confirmation that the enterprise will not exceed the MFA threshold. The public authority can only award the subsidy when it has received this confirmation. When awarding an MFA subsidy, the public authority must give the intended beneficiary an MFA confirmation, which is a written statement confirming that the subsidy has been awarded through the MFA

[Paul Scully]

exemption, the gross value amount of the subsidy and the date on which the subsidy was awarded. The beneficiary must keep a record of this information for three years, beginning on the date on which the subsidy was awarded.

Stephen Kinnoek (Aberavon) (Lab): Clause 37 refers to the enterprise needing to keep a written record. How will the public authority know that the enterprise is keeping that written record?

Paul Scully: That would be for challenge, should the overall subsidy be challenged in a court through judicial review. The public authority should exercise its statutory obligations.

Stephen Kinnoek: Just to clarify, we are taking it from the enterprise based on trust?

Paul Scully: It works both ways. If I were an enterprise receiving a subsidy, such as minimum financial assistance, I would want to make sure that I was doing my own due diligence, and public authorities do. Any businessman would know that there are legal implications and legal requirements of running a business. It should be the case that it works both ways.

There are interlocking elements within the framework that ensure that both public authorities and enterprises are doing their own due diligence. The procedural requirements will make sure that enterprises receive subsidies only through the MFA exemption when they are genuinely entitled to do so, while still minimising the administrative burden associated with awarding a subsidy. I commend the clause to the Committee.

Kirsty Blackman: I have a few questions about the clause. It would be helpful if the Minister could lay out what he expects the timeline to be for these requirements. The minimal financial assistance notification has to be given in advance of the subsidy being awarded. It is an intention letter that says the body intends to give the subsidy. Presumably that has to happen at any point in advance of the actual cash changing hands or the tax measure taking place.

My second question is about the minimal financial assistance confirmation, which is the written statement confirming that the subsidy has been given, the date it has been given and the gross value of the assistance. The Minister made clear earlier in the debate that it could be up to a year, or even longer, before an enterprise actually knows what the gross value of that assistance is if it is a tax measure. Are the bodies expected to give the confirmation as soon as they give the subsidy, or are they expected to give the confirmation as soon as they know the exact amount, particularly for tax measures? The provision does not seem to add up with the details we were given on the subsidy control database.

The other questions I have are about what “written” means. If a public authority emails these details to an organisation, does that count as written? Clause 37 says that

“the enterprise must keep a written record”.

Does it have to keep these details on a piece of paper in a filing cabinet, or can it be kept in an electronic form? What if the enterprise does not have much in the way of

offices? What if it operates largely online? We have seen many enterprises move towards online working. Is an electronic version acceptable? Would the enterprise be fulfilling its duties by keeping an electronic record, or do we need that bit of paper, hanging about somewhere in someone’s house or office or wherever?

If the Minister cannot give exact answers to my specific questions, it would be handy if he could supply the answers at a later date—

Paul Scully: In writing?

Kirsty Blackman: In writing would be absolutely fine—if that is by email, I am happy to receive it electronically. It would be helpful if the Minister could write to us to confirm what “written” means. For people to be able to meet their obligations, he will probably have to make some sort of statement about what the Government intend, either today or at a later stage.

Seema Malhotra: It is a pleasure to speak to clause stand part. The Minister could have saved himself a whole debate had he supported our arguments on clause 36, because this clause sets out the procedural requirements attached to subsidies given under the clause 36 exemption.

The clause outlines how public authorities must provide the intended recipient with a notification, stating that they cannot award a subsidy until they have received confirmation from the intended recipient in a number of areas, including that the relevant threshold will not be breached. There are a whole set of debates to be had about what is considered a subsidy and what is not—we have had that on other aspects of the Bill—and about the lack of full clarity on the interface with the freeports policy or on taxation and subsidies. Clear guidance will be needed for interpretation by the enterprise of what it needs to consider when answering the question under subsection (2)(c). I hope that the Minister will set out in his remarks how he intends that to happen, to give surety to the enterprise and to the public authority.

As I said, Labour does not support clause 36. In my view, we have not heard a convincing case for such exemptions, which seem to be beyond what is needed. Our starting principle must be and must remain transparency. Confidence in this regime is all about transparency, to ensure that there is no cronyism or potential fraud. Once we have set up an agile, simple and robust system, which it is surely not beyond our wit to do, it should be straightforward to provide that information.

The Minister said earlier that the MFA notification would not need to be published. Will he clarify whether that is still the intention if an MFA notification goes to an enterprise? Local authorities and public authorities can simply publish on their websites, for example, when they have given some form of notification. That is a common thing to do, and publishing on a website what has been given to an enterprise does not in my view involve any issue of commercial confidentiality or of not being in the public interest; it would simply be transparent.

If we do not win the argument about changing the detail of the regime, there might be a middle way: at least the notifications ought to be published. Will the Minister tell us whether that has been given consideration and, if so, what the conclusion was and why? If it has

not been given consideration, perhaps he will take it away and we can look at it as part of ongoing discussions with local authorities and other public authorities on other areas in the Bill, particularly clauses 32, 33 and 34.

Given that clause 36 remains part of the Bill, however, we recognise that the regulations listed under clause 37 will be necessary to bring some procedure to minimal financial assistance. We will therefore not vote against clause stand part.

Paul Scully: I will cover some of the questions that have been asked. It is fine for written records to be electronic, and we expect to provide guidance on that. Those letters should be sent as soon as possible, based on the value calculation at that point. Small subsidies will be far less complex than some sort of mega tax break or anything like that, which will have a far more uncertain value. As we were discussing this morning, the subsidy will typically crystallise at the time of the tax declaration, because that will be when the value is better known, but essentially it is for public authorities to let people know as soon as possible. I will write to the hon. Member for Aberdeen North to expand on the tax situation and the tax breaks, using electronic means if she is amenable to that, rather than non-verbal communication such as interpretive dance or anything else we talked about earlier. I will get an email to her to clarify the situation.

The hon. Member for Feltham and Heston talked about having a robust situation. The reason why having the ability to grant these smaller exemptions is really key became apparent during the covid pandemic. Although there was a scheme, there were still exemptions that we had to work on really quickly, and I had so many businesses from the hospitality and retail sectors coming to me because they were incredibly hard pressed. We were having to delay what seemed like some of the easiest awards that the Government could make throughout the pandemic because of the bureaucracy of the state aid framework that we had at the time. This is why we are trying to get that proportionate approach, balanced between having something that is agile—that can work with whatever circumstances we face and minimise administrative burdens—and having a robust and appropriate situation that people can look at and address through review by the Competition Appeal Tribunal, should they so wish.

Turning to the issue of publication, if local authorities want to publish these letters, that is up to them. What we are saying is that they should be sending them to the enterprises—the recipients and the beneficiaries—in the first place.

Seema Malhotra: The question I was asking was whether consideration had been given to whether public authorities should publish those letters. Some may and some may not, but there is not necessarily a downside to publishing letters that are already being sent. Has active consideration been given to that question? Has advice been received? Has any consultation been done, and what was the outcome of it, or is this an area that has not yet been considered?

Paul Scully: It is something that we will continue engaging with local authorities and public authorities on. For local authorities, there are already other spending

databases, so subsidies over £500 will already appear on those databases. Again, we will work through that kind of engagement as we come on to the guidance.

Kirsty Blackman: The Minister said that the letters are allowed to be sent by electronic means. Can I clarify that the written records kept by enterprises are also allowed to be electronic?

Paul Scully: I believe that is the legal definition of what “written” means and therefore how those records are kept, but if it is not, I will clarify that later.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clause 38

SERVICES OF PUBLIC ECONOMIC INTEREST ASSISTANCE

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

3 pm

Paul Scully: The clause establishes an exemption from the subsidy control requirements for subsidies of up to £750,000 awarded for the delivery of services of public economic interest, and this type of subsidy is called SPEI assistance. This exemption operates in a similar way to the exemption for low-value subsidies—minimal financial assistance—in the previous clauses. Services of public economic interest are public services that it is important to deliver but that would not be delivered by enterprises at the necessary level without subsidy. They include, for example, certain rural transport services.

The SPEI assistance exemption operates in a similar way to the MFA exemption, but has a higher value threshold of £725,000 within the current and previous two financial years. That is because of the importance of delivering this category of services, and the fact that SPEI subsidies in general are less likely to be distortive because they are given for services that are not supplied in an appropriate way by the market, or in some cases not supplied at all. Therefore it is appropriate to exempt them from the subsidy control requirements. If it is desired to grant a subsidy above that limit, the general procedure for the award of SPEI subsidies set out in clause 29 must be followed, and such a grant is also subject to a separate transparency threshold set out in clause 41. To ensure that the SPEI assistance threshold is correctly applied, all SPEI assistance subsidies are subject to rules that allow the cumulative total for each enterprise to be calculated.

Clause 42 defines “minimal or SPEI financial assistance”, which effectively encompasses all the different low-value exemptions through which an enterprise could receive support. For example, on MFA, set out under clause 36, aid given under the EU state aid de minimis regulations before the end of the implementation period, and exempt low-value subsidies given in the interim regime under the terms of the trade and co-operation agreement, should all be taken into account. That stops enterprises being able to receive many subsidies that are considered low value in isolation, but cumulatively could create distortions if their combined value exceeds the threshold. I commend the clause to the Committee.

Seema Malhotra: I thank the Minister for his opening remarks. Subsidies given through the exemption do not have to apply the subsidy control requirements if the amount of assistance received by the beneficiaries totals less than £725,000 over a three-year financial period. Clause 38 sets out that services of public economic interest are exempt from the subsidy control principles. We recognise the force of some of the arguments made by the Minister, that these are generally in relation to services that are not being provided by the market, and that the SPEI assistance is different from other subsidies. There are some areas that we would like to explore further, but overall we are not arguing against this today and therefore we will support the clause.

Paul Scully: I said at the beginning that it was £750,000, but I meant £725,000 throughout.

The Chair: Thank you for that clarification.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clause 39

SECTION 38: PROCEDURAL REQUIREMENTS

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

Paul Scully: The previous clause establishes the SPEI assistance exemption and the value threshold for awarding subsidies under the exemption. This clause sets out the procedural requirement to use that exemption.

Seema Malhotra: I thank the Minister for his opening remarks. He has outlined that clause 39 establishes some of the procedural requirements to be attached to SPEIs. We think, for reasons outlined in previous debates, that these requirements will be important and add necessary procedures to the granting of assistance to SPEIs. However, I think the question whether there is to be publication of notifications is a matter that the Minister might take away and consider in relation to the similar debate that we had on clause 37. I will be grateful for that and will perhaps come back to this issue during the Bill's future stages, after we have time to further consider it.

Paul Scully: Duly noted.

Question put and agreed to.

Clause 39 accordingly ordered to stand part of the Bill.

Clause 40

MERGERS AND ACQUISITIONS

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

Paul Scully: The clause sets out how a subsidy given through the minimal financial assistance and service of public economic interest exemptions is to be treated following a merger or acquisition. It is important for the purposes of compliance with the relevant financial thresholds. These provisions provide clarity and ensure that exemptions cannot be exploited by enterprises restructuring themselves in such a way as to receive more exempt subsidies.

Bill Esterson (Sefton Central) (Lab): It is a pleasure to see you back in the Chair this afternoon, Ms Nokes. We have no objections to the clause.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41

SUBSIDY DATABASE: EXEMPTION FOR SPEI ASSISTANCE

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

Paul Scully: Services of public economic interest are vital services that without Government subsidy would not be supplied in the appropriate way by the market, or in some cases would not be supplied at all. It is important that public authorities can support the delivery of vital public services using those subsidies. The clause exempts certain services of public economic interest subsidies from the transparency requirement in clause 33 to upload the subsidy on to the database. There are two categories of exemption.

First, clause 41(1)(a) provides that a subsidy for a service of public economic interest of less than £14.5 million is exempt from the obligation to upload. Secondly, even where the subsidy for a service of public economic interest is £14.5 million or more, it is exempted from transparency obligations if it has been given for certain activities listed in the clause, including hospital care, social housing or airports with fewer than 200,000 passengers annually. Subsection (2) details that, when calculating the value of the subsidy, the gross cash amount should be used, or, if the subsidy is not provided in cash, the gross cash equivalent.

Bill Esterson: We do not believe that the clause should stand part. That is consistent with our approach to the problems with the lack of content on the database and the lack of transparency. The clause outlines that subsidies of less than £14.5 million given to SPEIs are exempt from having to be published on the database. As my hon. Friend the Member for Feltham and Heston laid out in her comments on clause 38, we understand that the subsidies to services of public economic interest should not have to obey the subsidy control requirements, but we cannot see why they should not be published on the database. I also do not think I heard the Minister explain why the £725,000 threshold applies in clause 38. Perhaps he could answer that in his response.

The bigger question on the clause is why the Government have chosen to exclude payments to services of public economic interest from the database at all. The Minister talked about transparency. Why is there no transparency for these payments? The Government's recent track record is—as the Public Accounts Committee put it—one of enormous sums of money being given with no apparent return in the case of Test and Trace, and hundreds and millions of pounds-worth of contracts going to people with connections to Government Ministers or other connections to Government. In the case of Andrew Mills, who was an adviser to the Board of Trade, a company that he set up last year assisted in the awarding of a £252 million contract to Ayanda Capital, but a significant proportion of the personal protective equipment that it supplied turned out to be unusable. That was very wasteful and inefficient, but the process was very lucrative for individuals with such connections.

That is why transparency is so important. Recent history has given the country the impression that the Government are reluctant to engage in proper transparency. That is not a place in which anybody on this Committee should want to be. It feels at times that the Government fail to grasp that subsidises are financed by public money and that they should therefore be subject to appropriate transparency and scrutiny. We have discussed that a number of times. Subsidies to SPEI enterprises are no exception. Although they may go towards enterprises that differ from other subsidy recipients, they are still financed by public funds and should therefore still be subject to transparency, and the public should still be able to access information about them. These are much larger sums of money.

If that does not happen, subsidies given to SPEIs risk being abused and given to inappropriate recipients—including, as we have seen over the past year and a half, those with connections to the Conservative party. During last week's evidence session, Professor Rickard told us:

“Through transparency, we can get better compliance and better value for money”.—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 21, Q24.]

Does the Minister disagree with that analysis? Can he tell us what drawbacks he sees to subjecting subsidies given to SPEI enterprises to more transparency?

We agree with Professor Rickard that better transparency reduces corruption, reduces cronyism and leads to better value for money. The clause unnecessarily reduces the transparency for subsidies that could amount to tens of millions of pounds—perhaps more in some cases. As such, the clause should not stand part of the Bill and we will vote against it.

Paul Scully: For the sake of completeness, and with your indulgence, Ms Nokes, I go back to the question about why the threshold in clause 38 is set at £725,000. As part of the consultation response, the Government set out that we would convert the special drawing rights sums in the trade and co-operation agreement to a fixed value in pounds. Setting that exemption threshold at a fixed sterling amount is simpler than having a moving SDR threshold affected by currency fluctuations, and so it was fixed to give certainty for public authorities and recipients.

We have discussed that subsidies granted for public services are unlikely to be unduly distorted. The very reason they are needed is that other providers are unable or unwilling to provide a necessary service—for example, ferry links between Scottish islands, and bus services in rural areas—at a reasonable cost. The lower risk of distortion justifies a higher transparency threshold, which has been set at £14.5 million. SPEI subsidies for less than that amount are unlikely to be distorted.

We are striking a balance between minimising administrative burdens and requiring an appropriate level of transparency. Such services were also exempt from transparency rules under the EU state aid system. We are seeking to minimise administrative burdens where possible, and it would not be appropriate to impose new, unnecessary transparency requirements. Does that mean that they are not transparent? No, it does not. They must be awarded in a transparent manner, as clause 29 stipulates, which means that the subsidy is given through

“a written contract or other legally enforceable arrangement”.

Public authorities would normally publish those contracts, and it is good practice to do so. Indeed, the examples that the hon. Gentleman gave earlier about accusations of and concerns about the perception of cronyism were available because the spending decisions had been made public at a point in time. Spending decisions by councils, including Labour ones, up and down the country, above £500, are available on spreadsheets, which people can go to and drill down.

3.15 pm

Subsidies can be referred to the Competition and Markets Authority—the Bill does not exempt SPEI subsidies in general from referral to the CMA, which would depend on the criteria for subsidies and schemes of particular interest. We will set out the criteria in secondary legislation in due course. None the less, the clause allows for the proportionality to be challengeable before the CMA, while still reducing the administrative burden and allowing subsidies in areas that, frankly, are very unlikely to be distorted, for the reasons I have given.

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

The Committee divided: Ayes 9, Noes 5.

Division No. 12]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 41 ordered to stand part of the Bill.

Clause 42

CHAPTER 2: SUPPLEMENTARY AND INTERPRETATIVE PROVISION

The Chair: May I clarify whether Ms Malhotra or Mr Esterson is moving the amendment?

Bill Esterson: I beg to move amendment 45, in clause 42, page 23, line 43, at end insert—

“(1A) Before making regulations under subsection (1), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(1B) If consent to the making of the regulations under subsection 11(A) is not given by any of those authorities listed in subsection (1A) within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(1C) If regulations are made in reliance on subsection 1(6B5), the Secretary of State must make a statement to the House of Commons explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.”

[Bill Esterson]

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

So much confusion today, in so many ways, in dealing with the Bill and in some of what is going on in the Bill, Ms Nokes, but there we are. It is all set to make the afternoon go by in a more entertaining fashion.

As with many aspects of the Bill, the clause fails to take into consideration the important role that the devolved Administrations have in state aid governance. The ability to impose regulations unilaterally by secondary legislation, without seeking the consent of the devolved Administrations, is inconsistent with the approach that Labour has sought to instil in Committee—to consider the devolved Administrations as public authorities equal in responsibility for state aid to the responsibilities of the Secretary of State.

Devolved Administrations are on balance more likely to understand what subsidies will be most beneficial for their respective nations than the Secretary of State. That includes such matters as setting the value thresholds for the minimal financial assistance and services of public economic interest assistance exemptions, as well as the transparency exemption for SPEI assistance. Last week, Daniel Greenberg told us in evidence that

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

We of course understand the role of the Westminster Government in the creation and operation of the UK subsidy regime, but preventing the devolved Administrations from creating streamlined schemes undermines their important role in our democratic infrastructure, as well as their responsibilities for their respective nations. We therefore seek to amend clause 42 to allow Welsh Ministers, Scottish Ministers and the Northern Ireland Department to require the Secretary of State to seek the consent of the devolved Administrations before making regulations under the clause. Where such consent is not given within one month, beginning on the day on which it is sought, the Secretary of State may make the regulations without it but must publish a statement explaining the decision. We believe that the amendment would help to increase the effectiveness of subsidies across the UK and respects the role of the devolved Administrations.

Paul Scully: The Government welcome the ongoing interest that the devolved Administrations have in the Bill, and that the Opposition have in this area. We understand how important it is to set the right thresholds for minimal financial assistance and services of public economic interest assistance, and to set the right reporting threshold for SPEI subsidies. Setting the appropriate thresholds for those categories of subsidy is key to balancing the administrative burden on public authorities, ensuring that proportionate levels of transparency are met and that we remain in line with our international obligations.

The hon. Member for Sefton Central will be aware that in the Government’s response to the consultation on subsidy control we committed to considering whether the threshold at which agricultural subsidies should be classed as minimal financial assistance should be different from that for other subsidies. That decision will be taken after further consideration, before the Bill comes into force. It is right that the regulations under the clause are scrutinised. The Bill provides for that by requiring that they will be subject to the affirmative procedure and will be debated and approved by both Houses in draft before they can be made. The UK Parliament is the right place to scrutinise any regulations made under the clause.

To reassure Members present, I reiterate that we have had numerous discussions with Ministers and officials in the Scottish Government, the Welsh Senedd and the Northern Ireland Executive while drafting the Bill, and since its introduction. We are committed to engaging regularly with the devolved Administrations, taking account of their views, as the Bill progresses through Parliament and in the run-up to its implementation. That includes engagement on the thresholds for those categories of subsidy, both in the round and on a sector-specific basis, so I ask that the hon. Member withdraw the amendment.

Bill Esterson: I have to pick the Minister up on this: he thanks Members for our ongoing interest in the Committee’s deliberations, and the devolved Administrations for their interest. Come on. We are supposed to have a four-nation system. I think it is a bit more than just showing ongoing interest. Perhaps he can tell us the result of the discussions and the consultation feedback on the clause. What was the devolved Administrations’ response? Did they say that they were happy with the clause, or did they want to be in a position to give their consent before the implementation of its provisions? Certainly from what I have seen, they would want the ability to give consent, notwithstanding the importance of the UK-wide system that is in place and the Westminster Government’s role. I would be interested in his response.

Paul Scully: I think we have established that subsidy control is a reserved matter. It will be subject to debate, but none the less it is a reserved matter, and it is therefore right that subsidy control policy is made and voted for here in Parliament, which is why I talked about the scrutiny. Parliament is the place to do this. We have engaged on a number of occasions on various aspects of the Bill—34 times at official level and 10 at ministerial level. On top of that, in response to the consultation the different devolved Administrations came up with different views on a number of issues. There was no one consistent view in a number of areas. There are provisions in the Bill that engage the legislative consent motion process, and we hope that the devolved Administrations will not only agree that the Bill is important, but give it their legislative consent.

Stephen Kinnock: The Minister keeps saying that the UK Parliament is the right place to deal with this, and we actually agree—that is the sentiment behind the amendment. All the amendment asks is that the UK Government adopt a collaborative approach by checking with the other public authorities, but, if the UK

Government feel that they should proceed as originally intended, they should go ahead with it within one month. We are not divided on the question of whether the UK Parliament is the right place to do this. What we are saying is that a collaborative approach would deliver better results for everybody. The Minister should not use the argument that the UK Parliament is the best place to do this, because we actually agree with that.

Paul Scully: The devolved Administrations remain one of the key areas—perhaps the key area—where the subsidies will be given. We are not substantively changing the spending powers of the devolved Administrations, or indeed of any public authority.

Kirsty Blackman: The Minister specifically mentioned agricultural subsidies. Agriculture is devolved to the Scottish Parliament—it is a Scottish parliamentary competency—but he is suggesting that if Westminster intervenes in a devolved competency it is okay for it to not even run it by the Scottish Parliament in any formal way.

Paul Scully: We have not committed to changing the agricultural threshold. We intend to analyse carefully the full implications of lowering the threshold before making any final decision. Why would we want to do that? Because it may be desirable to effectively manage UK competition and investment as a whole. However, this was one area in which our analysis showed that there was no one single response to the consultation. I come back to the point that we will continue to engage closely with the devolved Administrations, as with all public authorities.

Kirsty Blackman: I disagree with the comments of the hon. Member for Aberavon. Clearly, I think that Scotland should be able to make its own decisions and have its own regime. In fact, I think it should be part of the EU and under the state aid regime, which has worked particularly well in an awful lot of areas.

I do not think that the amendment goes far enough. I am happy to support it if it is pushed to a vote, but I would have gone further in making sure that the Scottish Government, Scottish Ministers, the Welsh Senedd and Northern Irish Departments had even more of a say than that proposed by the amendment. If the amendment is pushed to a vote, I will support it on the basis of it being the minimum that I would expect, but I would prefer it to be even stronger.

The Chair: Perhaps we could have some clarity as to whether the amendment is to be withdrawn or pushed to a vote.

Bill Esterson: My hon. Friend the Member for Aberavon and the hon. Member for Aberdeen North have made some powerful points about why it is so important to get this right. I did not get a satisfactory answer from the Minister. He mentioned engagement having taken place 34 times, but he could not tell me what was said about the point addressed by the amendment, and neither did he answer the points made by Daniel Greenberg last week about why the devolved institutions do not share the Secretary of State's powers.

As my hon. Friend the Member for Aberavon has quite rightly said, we are not saying anything different about the role of the UK Government in setting up the subsidy regime. What we are saying is that it would

make perfect sense to include and engage properly with the devolved Administrations, not least because they have a much better idea of how to apply subsidies in their areas. We even recognise that there will be times when that would not be possible, which is why we suggest that after a month it would fall to the Secretary of State to make a statement as to why consent had not been sought.

We have done our best to give the Government a way to meet the consultation results and show that they really are serious about a four-nation approach to the new regime. It is a shame that the Minister has not taken that on board, and we will push our amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 13]

AYES

Blackman, Kirsty
Esterson, Bill
Fletcher, Colleen

Kinnock, Stephen
Malhotra, Seema
Whitley, Mick

NOES

Baynes, Simon
Benton, Scott
Bowie, Andrew
Buchan, Felicity
Millar, Robin

Mortimer, Jill
Scully, Paul
Stafford, Alexander
Tomlinson, Michael

Question accordingly negatived.

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

3.30 pm

Paul Scully: Clause 42 allows the Government to make certain amendments to the total value thresholds for the exemptions in chapter 2 of part 3, which have been set at the conversion rate between special drawing rights, International Monetary Fund reserved currency, and the pound. The UK-EU trade and co-operation agreement, the TCA, sets the threshold for minimal financial assistance, SPEI assistance, SPEI transparency exemptions and the total value thresholds of SPEI. That means that if the exchange rate changes significantly, the Government may need to amend the thresholds of the Bill to remain compliant with the TCA.

In addition, the EU and the UK may agree to change the special drawing rights amounts set out in the TCA, so the Government must retain the ability to amend the exemption total value thresholds. The Government must have the ability to lower the total value thresholds in response to any new international agreements. Clause 42 also provides a power to specify a lower threshold for minimal SPEI assistance and SPEI transparency exemptions for categories of subsidies. Essentially, these international obligations are why the previous debate is superfluous. Ultimately, the UK Parliament is the right place to discuss changes to thresholds to make sure that we continue to meet our international obligations. I commend the clause to the Committee.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clause 43

NATURAL DISASTERS AND OTHER EXCEPTIONAL CIRCUMSTANCES

Bill Esterson: I beg to move amendment 46, in clause 43, page 25, line 16, at end insert—

“(3A) The Scottish Ministers, the Welsh Ministers, and a Northern Ireland department may request the Secretary of State to declare a natural disaster or another exceptional circumstance in Scotland, Wales, and Northern Ireland.

(3B) If the Secretary of State refuses a request made under section (3A), he must make a statement in the House of Commons outlining the reasons for his refusal.”

This amendment allows the devolved administrations to ask the Secretary of State to declare a natural disaster or exceptional circumstances, so that the exemptions listed in Clause 43(1) applying to Scotland, Wales, and Northern Ireland may apply. If the Secretary of State refuses a request for exemption, this amendment requires him to make a statement to the House of Commons.

Amendment 46 allows the devolved Administrations to ask the Secretary of State to declare a natural disaster or exceptional circumstances so that exemptions listed in clause 43(1) applying to Scotland, Wales and Northern Ireland may apply. If the Secretary of State refuses a request for exemption, the amendment requires them to make a statement to the House of Commons. To reiterate the point I made in the last debate, we are determined to ensure that the role for the devolved Administrations in the administration of their own nations is respected and considered. Of course, we agree that the subsidy regime sits with the Westminster Government, because it is a UK-wide system, but on matters as important as states of natural disaster, devolved Administrations should always be consulted.

Members will appreciate that natural disasters are not political by nature. A natural disaster does not discriminate who it targets and where it affects. By that logic, devolved Administrations, which are just as likely as anywhere else to experience natural disaster, should be granted powers to request that the Secretary of State declares a natural disaster or exceptional circumstance so that the exemptions listed in clause 43(1) may apply. We believe the amendment would respect the role of devolved Administrations in managing their response to disasters effectively, while still ensuring the Secretary of State has the final say.

Kirsty Blackman: The very nature of natural disasters is that they do not occur across the entirety of the UK in one go. Let us hope a natural disaster does not occur across the whole of the UK in one go! Generally, they are regionally specific; they will happen in a relatively confined geographical area. Whether it be flooding, an earthquake or something of that sort, not everywhere will be affected. Therefore, thinking about how this provision could apply, it makes a huge amount of sense for there to be an actual mechanism through which the devolved Administrations can request for the Secretary of State to declare a natural disaster. I would hope that the Secretary of State would be doing so anyway, and would recognise that a disaster in Wales—

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): Surely that is exactly the point. If a natural disaster has occurred, it is almost certain that the Secretary of State would declare a natural disaster. There is nothing that I can see preventing any devolved

Administration within the United Kingdom from requesting that the Secretary of State does that in law anyway. I do not think this amendment is required at all.

Kirsty Blackman: The hon. Gentleman said that it is almost certain—probable, at least—that the Secretary of State would do so, but it is not certain. The amendment allows an actual mechanism for the devolved Administrations to make that request. It also makes it clear that if the Secretary of State refuses a request of this nature, they have to explain why. That is very important for transparency. This transparency issue is also important—

Robin Millar (Aberconwy) (Con): What would the logic would be if the situation were reversed, so that the UK Government wished to declare a natural emergency, but the devolved Administration did not? Has the hon. Member given that any thought?

Kirsty Blackman: That is nothing to do with the subject of this amendment, which is specifically about the devolved Administrations being able to ask. If the Secretary of State wishes to declare a natural disaster, and Wales, Northern Ireland or Scotland does not want them to declare it, there is no mechanism for that—we do not have the powers to do that.

On the issue that was raised by the hon. Member for West Aberdeenshire and Kincardine, it is important that the devolved Administrations have this mechanism because, as has been stated earlier, trust is at an all-time low. We have been very clear that some of the relationships between the devolved Administrations and the UK Government are not in a particularly good place right now. Building this provision in means that there is an additional safeguard in place, so that those places that know their areas best and know the effect on those areas better than Westminster does, because they are closer, are able to make that request.

Paul Scully: Natural disasters such as floods, fires and other exceptional circumstances can arise that require subsidies to be given at pace, to compensate for the damages caused. The clause allows the Secretary of State to publish a notice to declare that exemptions from the subsidy control requirements apply in respect of a natural disaster or other exceptional occurrence. That will allow public authorities to give subsidies that compensate for the damage in a timely manner.

The hon. Member for Aberdeen North is right that not all such emergencies would apply across the whole of the United Kingdom. In many cases, the natural disaster in question would be localised to a specific place or region. Although it is the responsibility of the Secretary of State to declare that the exemption applies, subsidies using the exemption may be given by different public authorities, such as UK Government Departments, local authorities, agencies and, of course, the devolved Administrations. Public authorities are empowered to design subsidies in the most appropriate way to address the damage caused for their specific local needs. The Secretary of State does not need to approve the subsidies given under the exemption, once the natural disaster or other exceptional occurrence has been declared. The existing processes in the Bill already ensure that this type of subsidy can be given across the UK, by the devolved Administrations or other devolved authorities.

If a natural disaster or other exceptional circumstance occurred within the area of any of the devolved Administrations, it would of course be open to that Administration to request that the Secretary of State trigger the exemption, if the Secretary of State has not already done so. If the conditions for the exemption were fulfilled, the Secretary of State could then seek to publish a notice as soon as possible.

The clause is limited to very narrow circumstances to avoid creating an over-broad exemption to the domestic subsidy control regime that could damage UK competition and investment, and our ability to fulfil our international obligations. It is therefore appropriate that the Secretary of State has sole responsibility for determining when the criteria for triggering the exemption have been met. The Secretary of State must publish and lay in Parliament a notice to trigger the use of the exemption. That will ensure that the Secretary of State exercises the power in a transparent and accountable way. I request that the hon. Member for Sefton Central withdraws the amendment.

Bill Esterson: I should point out that the amendment does not seek to give the devolved Administrations the power to declare a state of emergency, which I think was implicit in the Minister's remarks. They would ask the Secretary of State to use his or her power to do so, not have the power themselves. The hon. Member for Aberdeen North made the point about transparency well. I am satisfied that the point has been made satisfactorily and that the Minister has taken it on board, and I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: Clause 43 enables public authorities to award subsidies to compensate for the damage caused by a specified natural disaster or other exceptional occurrence without having to apply the majority of the subsidy control requirements. The subsidies awarded under the clause would be exempt from the principles, prohibitions and requirements, but the transparency requirements would still apply. Before the exemption can be used, the Secretary of State must publish a notice declaring that a natural disaster or other exceptional occurrence has happened and that this exemption applies, and that notice must be laid in Parliament.

Kirsty Blackman: It would be useful to know where the notice is likely to be published. Will the Minister commit to considering whether the notice could be on the subsidy control database in some way? Perhaps on the database people could see a wee link that says, "This is where natural disasters have been declared"—hopefully it will not happen very often. It would be helpful if people could see all that information.

Paul Scully: Clearly, the notice has to be laid in Parliament, and I hope that I explained in my letter to the hon. Member exactly what that means. Clearly, we will also publish that on the gov.uk website and in other areas. I have forgotten the second part of her question.

Kirsty Blackman: It was about whether that information would be on the subsidy control database website.

Paul Scully: Well, transparency is not within the exemption. It is very much about whether a public authority is allowed to give the subsidy in the first place, but the transparency rules still apply.

Question put and agreed to.

Clause 43 accordingly ordered to stand part of the Bill.

Clause 44

NATIONAL OR GLOBAL ECONOMIC EMERGENCIES

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

Paul Scully: Clause 44 enables public authorities to award subsidies to remedy a national or global economic emergency without having to apply the subsidy control prohibitions and other restrictions, like the subsidies that were necessary to respond to the 2007 financial crisis. As we saw during that crisis, the support required to respond to such an economic emergency needs to be given quickly and effectively, so the clause provides for such support to be given where the Secretary of State considers it appropriate. Before the exemption can be used, the Secretary of State must again publish a notice declaring that an economic emergency has occurred and that the exemption applies, and that notice must be laid in Parliament.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

NATIONAL SECURITY

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

Paul Scully: Clause 45 exempts subsidies given for the purpose of safeguarding national security from the subsidy control requirements, in order to protect the UK's valid security interests. That is in line with the approach of the national security exemptions in other UK legislation, such as the Freedom of Information Act 2000 and the Data Protection Act 2018.

3.45 pm

Kirsty Blackman: It would be useful to know how widely national security is defined. Are we talking about subsidies specifically relating to, for example, new military equipment, or to much more tangential things, such as for an organisation that provides server capacity for one of the security services? How tangential can something be in order to be covered by the clause? If the Minister cannot answer, I would be grateful for an answer at some point, in writing or through the method of interpretive dance, if that is what he prefers, because it would be helpful for us to understand this. This is a brief clause, but I am concerned that that definition could be drawn too widely. I just do not know because I do not have enough information.

Bill Esterson: The clause makes it clear that subsidies given to safeguard national security are not subject to the subsidy control regime. This is an important principle that must be interpreted without prejudice in the light of our international commitments; I am sure the Minister agrees with that. We are pleased to see it in the Bill.

Paul Scully: In answer to the hon. Member for Aberdeen North, national security is a term with a long history in domestic legislation. It covers no more than is required to safeguard the UK's genuine national security interest in a way that is fully compliant with the UK's wider international obligations, including trade and co-operation agreements. It is customary in international agreements, such as our free trade agreements, that we reserve the right to protect valid security interests. That is the beginning and end of the clause.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

BANK OF ENGLAND MONETARY POLICY

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

Paul Scully: Clause 46 sets out that activities conducted by or on behalf of the Bank of England in pursuit of monetary policy are not subject to the subsidy control regime. Measures implemented by central banks in pursuit of monetary policy have always been considered to be outside the scope of EU state aid rules. The joint declaration of the European Union and the United Kingdom on monetary policies and subsidy control confirmed our mutual understanding that activities conducted by a central bank in pursuit of monetary policies are outside the scope of subsidy control requirements in the TCA. It is important that that position is put beyond doubt and into UK law.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

FINANCIAL STABILITY

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

Paul Scully: Clause 47 provides Her Majesty's Treasury with the power to give financial stability directions that set aside one or more of the subsidy control requirements for specified subsidies or subsidy schemes. This will enable the Treasury and the Bank of England to undertake financial stability interventions at sufficient pace and with the necessary legal certainty to ensure the integrity and stability of the financial system and to protect investors, depositors and policy holders.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clause 48

LEGACY AND WITHDRAWAL AGREEMENT SUBSIDIES

Paul Scully: I beg to move amendment 1, in clause 48, page 26, line 42, at end insert—

“(1A) In subsection (1), the reference to the subsidy control requirements, so far as it relates to subsection (1)(a), does not include the requirements as to transparency in Chapter 3 of Part 2, except in relation to—

- (a) subsidies given that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture;
- (b) subsidies given in relation to trade in fish and fish products;
- (c) subsidies given in relation to the audiovisual sector.”

This amendment provides that the transparency requirements in Chapter 3 of Part 2 apply to subsidies under legacy schemes, subject to exemptions relating to agriculture, fish and the audiovisual sector.

The Chair: With this it will be convenient to consider Government amendment 2.

Paul Scully: Amendment 1 clarifies that the transparency requirements in chapter 3 of part 2 of the Bill will apply to subsidy awards that are given after the Bill comes into force, but that are provided under legacy schemes. The transparency requirements for this class of subsidy are consistent with those for other in-scheme subsidy awards—that is, there is an obligation on public authorities to upload the details of awards given under published schemes that are of more than £500,000 in value.

The amendment provides legal certainty around the transparency obligations on public authorities, which are set out in the guidance on the UK's international subsidy control commitments. It will impose no transparency requirements on subsidies given under legacy schemes to those sectors that are excluded from the relevant chapter of the trade and co-operation agreement. Those fall under three categories: agricultural subsidies in the scope of the World Trade Organisation agreement on agriculture, subsidies in relation to the trade of fish and fish products, and subsidies to the audio-visual sector.

Amendment 2 sets out a full definition for the agreement on agriculture, which is referred to in amendment 1. That ensures a clear exemption for subsidies subject to the relevant provision in the agreement on agriculture, which is consistent with the UK's obligations under the trade and co-operation agreement.

Amendment 1 agreed to.

Bill Esterson: I beg to move amendment 47, in clause 48, page 27, line 6, at end insert—

“(2A) On the date on which the Act is passed, the Secretary of State must make a statement to the House of Commons regarding the applicability of Article 10 of the Northern Ireland Protocol to subsidies given and schemes made by public authorities in each part of the United Kingdom.”

This amendment would require the Secretary of State to make a statement to the House of Commons regarding the applicability of Article 10 of the NI Protocol on the date on which the Act is passed.

The amendment would require the Secretary of State to make a statement to the House of Commons on the applicability of article 10 of the Northern Ireland protocol on the date on which the Act is passed. Clause 48 provides that the requirements of the subsidy control regime do not apply to subsidy schemes that are subject to the Northern Ireland protocol. The Minister will suggest, I imagine, that this gives comfort to public authorities and avoids the double jeopardy of both regimes applying to a subsidy scheme—I take that from what he and the Secretary of State said on Second Reading.

If the Minister were to say that, he would be assuming that there is clarity on which subsidies and schemes are subject to the protocol. On this vital question that public authorities will need to interpret, there is no

agreement between the UK Government and the European Commission. There is significant uncertainty about the extent of the reach back—that is, where EU state aid rules will continue to apply across the UK. Where a subsidy is applied in Wales, Scotland or England has consequences in Northern Ireland. George Peretz told us in last Tuesday’s evidence session,

“if I am advising a client such as a local authority or a subsidy recipient, my immediate problem is that I have to look at two sets of guidance—one issued by the European Commission and one by the Department for Business, Energy and Industrial Strategy—that in some important respects tell me very different things.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 46, Q64.]

His final assessment was:

“It is all a bit of a mess.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 48, Q67.]

We should all note that the European Union published proposals to address problems with the Northern Ireland protocol a fortnight ago. That is a step in the right direction, although the proposals it put forward do not address the state aid subsidy issue. In contrast, on Second Reading on 22 September, the Secretary of State suggested

“we have proposed the change to the Northern Ireland protocol to bring all subsidies within scope of the domestic regime.”—[*Official Report*, 22 September 2021; Vol. 701, c. 338.]

Here we are six weeks later, and we are no clearer about the status of the negotiations with the EU. I hope the Minister will set my mind at ease and tell us what the UK proposals are to solve the problem that George Peretz set out so well in evidence last week.

Let us remind ourselves: the Government negotiated the Northern Ireland protocol and signed it, so they now have a duty to make the protocol work, just as they have a duty to make Brexit work. It is no good threatening to rip up an agreement that the Prime Minister himself signed just two years ago, and certainly not without something to put in its place. Perhaps the Minister can confirm when he last discussed these issues with his European counterparts, and the timeline on which he expects there to be clarity on article 10 of the protocol and its impact on the Bill.

The purpose of the amendment is to require the Secretary of State to provide a statement on

“the applicability of Article 10 of the Northern Ireland Protocol to subsidies given and schemes made by public authorities in each part of the United Kingdom.”

Public authorities and recipients need and deserve certainty on this issue.

Kirsty Blackman: The hon. Member for Sefton Central used the quote I was going to use from the Secretary of State, who was really pretty clear that the new subsidy control regime that we are discussing is the one that will apply across the United Kingdom. That was the point the Secretary of State was making—that this is the only subsidy control regime that will apply across the United Kingdom. That seems pretty factually incorrect, not least for Northern Ireland but, as the Opposition Front Bench spokesperson pointed out, for other parts of the UK where that trade will end up going to the EU.

The very least the Government could do is to ensure that a formal statement is made, because if we are relying on what Government Ministers have said in the course of either debates in the House or statements, we

do not know the answer. We have been told a number of different conflicting things. I get that this is a movable feast and that there is no final decision on exactly how it will work. That is why the amendment is so reasonable. It specifically says that the applicability statement will need to be made on

“the date on which the Act is passed”.

Presumably, by the date on which the Act is passed we will have some idea of which regimes will apply in Northern Ireland. We have spoken very little about Northern Ireland specifically during the course of this Committee but, when the Minister talks about giving certainty to enterprises and public authorities, it seems to me that Northern Ireland is in a unique position where there is no certainty at all. People literally do not know which regime will apply.

It is all well and good to say, “We will consult with people and ensure that they see the guidelines in advance of having to put them in the subsidy control database,” but the fundamental issue of which regime they are complying with has not yet been answered in a way that would stand up to any kind of scrutiny. The amendment is completely reasonable and, if the Minister does not want to accept it, he should be clear with us and with the organisations concerned, particularly in Northern Ireland, about how he and the Secretary of State will explain to them which regime they will be operating under.

Paul Scully: As we have heard, amendment 47 to clause 48 would require the Secretary of State to

“make a statement to the House of Commons regarding the applicability of Article 10 of the Northern Ireland Protocol to subsidies given and schemes made by public authorities in each part of the United Kingdom”,

on

“the date on which the Act is passed.”

Clause 48 excludes subsidies in the scope of article 10 of the Northern Ireland protocol from the domestic subsidy control regime, which, as the hon. Member for Sefton Central says, is to avoid double regulation of subsidies. Subsidies that are subject to the protocol and comply with the EU state aid laws will be exempt from the requirements of the new domestic regime.

I should remind hon. Members that the Secretary of State is already required, as a statutory duty, to publish guidance on the practical application of article 10 of the Northern Ireland protocol under section 48 of the United Kingdom Internal Market Act 2020. BEIS published that guidance on 31 December 2020. That is intended to help public authorities reach a view on whether article 10 applies to subsidies granted in Northern Ireland and the rest of the UK, to which they must have regard.

The guidance is based on the EU Commission’s unilateral declaration of 18 December 2020, which made it clear that article 10 would apply in Great Britain if there was a genuine and direct link back to a company in Northern Ireland. That is most likely the case of a subsidised company in Great Britain with a subsidiary in Northern Ireland. The Command Paper on the Northern Ireland protocol published on 21 July 2021 set out the Government’s position that comprehensive and robust commitments are in place on subsidy control in the trade and co-operation agreement, and that those are being further strengthened through the UK’s Subsidy Control Bill, making the existing provisions in article 10 redundant in their current form.

4 pm

The Government are in intensive discussions with the EU with the aim of delivering significant changes to the Northern Ireland protocol, including article 10. Although it would be inappropriate to comment on the talks at this time, it is worth pointing out that the status and applicability of article 10 at the time the Bill is passed will depend heavily on them. The guidance on article 10 will keep pace with the outcome of the talks.

Stephen Kinnock: Will the Minister confirm that this legislation cannot be passed by this House until there is clarity on article 10 of the Northern Ireland protocol? There seems to be a big gap in understanding on the definition of an at-risk good. Any company headquartered in Great Britain, when deciding whether it might be at risk as regards a good going into the European Union, will be unclear on that point. Until the EU and the UK Government have come to that clarity, this legislation is unworkable.

Paul Scully: I disagree. This framework, which is a bare-bones framework, as I have said, has to work with whatever is in the Northern Ireland protocol, whatever is negotiated. That is why, for the reasons I have said, I talked about the reach-back provisions, which are never perfect. We know that the Northern Ireland protocol is not perfect, but it is a negotiated view. That is why, in those intensive discussions, we are looking at delivering significant changes and trying to improve an imperfect situation.

Kirsty Blackman: If an enterprise in Northern Ireland is given a subsidy, and that enterprise has competition in or trades with both Scotland and Ireland, which regime does it need to comply with if it gets that subsidy? Does it need to comply with the state aid or subsidy control regime, or both?

Paul Scully: It would first depend on what it trades in, and then on what its service is, because those are dealt with in different ways. It would then depend on the framework of the company and what structure it has in GB and Northern Ireland, because it must have genuine reach-back to Northern Ireland to be able to apply to that.

Kirsty Blackman: I appreciate the Minister being so indulgent in giving way. Are there any circumstances in which an organisation—an enterprise that is given a subsidy or a public authority giving out a subsidy—will have to comply with both the subsidy control and state aid regimes?

Paul Scully: The regime has been specifically worked through so that there is no double jeopardy, as the hon. Member for Sefton Central described at the beginning. They have to deal with one or the other. Clearly, as I said, the one they would deal with depends on the framework of the company, the ownership of the company, and whether it deals in electricity or services, because different rules clearly apply. None the less, as the negotiated provision is constituted, they would only have to apply to apply to one or the other. If it is state aid, they do not then need to worry about domestic subsidy control, and vice versa. The Command Paper clearly stated that we

believe that we can bring it under domestic subsidy control, although that is not being negotiated yet, so that is clearly not the situation at this moment in time.

Stephen Kinnock: I am grateful for the Minister's indulgence. On a point of clarity, clause 48(2) states:

"The subsidy control requirements do not apply to...a subsidy given, or a subsidy scheme made, in accordance with Article 10 of the Northern Ireland Protocol".

My interpretation of that is that the only show in town is article 10 of the Northern Ireland protocol—that that trumps the subsidy control regime. Is that not the case? I thought he said in his introductory remarks that the default position in all this is the state aid regime under the Northern Ireland protocol.

Paul Scully: As I say, if something comes within state aid, whether it is goods or logistics, it may be the case, but neither one nor the other trumps it. There is no double regulation. Either it comes under state aid or it comes under domestic law—[*Interruption.*] That is what is there within the protocol, and there are certain things that just do not appear under the protocol.

Clearly, we will continue to keep the House informed of progress made relating to the Northern Ireland protocol. I do not want to go down the rabbit hole of coming out with individual examples that may then be redundant as the talks continue at pace. We want to make sure we continue to keep the House informed and, as such, I consider that section 48 of the United Kingdom Internal Market Act 2020 already makes provision for a statement of the application of article 10 of the Northern Ireland protocol by way of statutory guidance—[*Interruption.*] The Government have already given the guidance and I do not see any need to place an additional requirement on the Secretary of State to make a statement to the House of Commons regarding the applicability of article 10 of the Northern Ireland protocol. I request the hon. Gentleman withdraws the amendment.

The Chair: Before I call the shadow Minister, I remind hon. Members that your phones should be on silent, please.

Bill Esterson: I think the pings you just heard were all the different legal opinions on the application of the subsidy control regime on EU state aid, Ms Nokes. The Minister found a number of different ways of phrasing the same problem: it all depends, it is one or the other, or he cannot give individual examples. I am afraid that is what it all boils down to.

Stephen Kinnock: It is an absolute shambles.

Bill Esterson: My hon. Friend the Member for Aberavon uses the word shambles. It is hard to disagree given the Minister's answer. Until that is addressed, it undermines the operation of the regime, which risks legal challenge.

On the point about individual examples, businesses face the potential of legal challenge if they do not get this right. They are not going to know which regime. We were starting to get an answer there, in that if the subsidy is under the terms of the Northern Ireland protocol, it is state aid. However, even there the Minister could not be entirely clear. It goes back to my initial question: what proposals are the Government putting forward to address this? What is in the Secretary of

State's words on Second Reading, where he was extremely confident that the matter would be addressed, as the hon. Member for Aberdeen North and I both said in our opening remarks? What do the Government think is going to work? What is it from their discussions with their EU counterparts that suggests a way forward? We still have not had that from the Minister and that underlines exactly why the amendment is so important in giving the Government until the day on which the Bill passes into law to address exactly how the operation will apply.

To go back to the words of George Peretz, there are two sets of guidance and two sets of legal opinion. He, as a lawyer, could advise on the same situation, with the awarding body on the one hand and the business on the other, on which regime might apply. Until that is addressed, we have a real problem with the legislation and the existence of the two different subsidy regimes will cause a real problem for the effective use of subsidies to support businesses in the regions and nations of our country.

The Chair: Can I clarify whether the hon. Member will press the amendment?

Bill Esterson: I will press the amendment to a Division. *Question put*, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 14]

AYES

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

NOES

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

Question accordingly negatived.

Amendment made: 2, in clause 48, page 27, line 9, at end insert—

“(4) In this section ‘the Agreement on Agriculture’ means the Agreement on Agriculture, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (read with any adjustments necessary for context).”—(*Paul Scully.*)

This amendment is consequential on Amendment 1 and provides a definition of the Agreement on Agriculture.

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

Paul Scully: The clause provides an exemption from the subsidy control requirement for legacy subsidies and subsidy schemes—those granted or established in accordance with the subsidy control rules enforced before the Bill comes into force—and for subsidies and subsidy schemes given in accordance with the EU withdrawal agreement. That objective is to prevent double regulation. Public authorities awarding subsidies under such legacy schemes will have to comply only with the terms and conditions of the legacy scheme, as well as with the relevant guidance on their transparency obligations.

Bill Esterson: We have heard spectacularly from the Minister the failure of the Government to explain how the regime will operate or to come forward with answers to questions asked during the debate on our amendments. There is little to add to what has been said already.

Stephen Kinnock: Briefly, for the record, I am deeply uncomfortable with this part of the legislation. It leaves businesses across the length and breadth of the country in a total state of confusion about which parts of the provisions apply to them and which are under article 10 of the Northern Ireland protocol. I genuinely think it would be a dereliction of duty by the Committee to allow the clause as drafted to stand part of the Bill. Whether we press it to a vote does not matter—we lose the votes all anyway—but I want to put it on the record that that would be a dereliction of duty.

Bill Esterson: I reassure my hon. Friend that we will indeed be pressing clause stand part to a vote. He is right: businesses need certainty. We are coming out of a once-in-100-year global pandemic, and they need all the support that they can get. This regime should give that support, but it cannot do so if there is that massive uncertainty at the heart of it, whether this regime or a different one should apply. The Government have not addressed that and they need to get on and address it—

Paul Scully: We are—

Bill Esterson: No—[*Interruption.*]

The Chair: Order. If Members wish to intervene on the shadow Minister, they may do so, but we will not have chuntering.

Bill Esterson: We gave the Government every opportunity with our amendment, but they chose to vote it down. They have left us with what my hon. Friend the Member for Aberavon called a dereliction of duty, which is a good way of putting it. The clause does not do justice to businesses, awarding bodies, communities or our constituents. Those are good reasons why we should vote it down.

Kirsty Blackman: I have not had a chance to think about exactly how not having the clause as part of the Bill would affect the Bill as a whole. I share the concerns, that there are major issues with the clause, but at this point I will abstain on any vote.

Bill Esterson: I understand the hon. Lady's concerns, but there is such a big problem with what is set out, it is right for us to register our objection by voting against the clause.

Paul Scully: All I can say is that we were asked to go through a whole load of examples, which would not be helpful in giving that certainty. What will be helpful is the negotiations that are continuing at the moment. As it happens, the subsidy control framework before us works within either system: the one that we wish to negotiate, the result that we wish to have, or the situation we have at the moment. Subsidies that fall within the scope of the Northern Ireland protocol of the withdrawal agreement and which affect Northern Ireland-EU trade, such as on goods and wholesale electricity markets, will need to comply with EU state aid rules, including on

[Paul Scully]

services, otherwise they come under the domestic subsidy control regime. That is about as clear as we can be, but negotiations are happening at the moment.

4.15 pm

Bill Esterson: The Minister had the opportunity to accept our amendment, which would have addressed the concern that he has just set out about needing negotiations, because it would have given him time for them. It is regrettable that he did not accept our amendment, but he is now in the position of having to come forward with the answers, and as the responsible Minister, it is up to him to do so.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 9, Noes 4.

Division No. 15]

AYES

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

NOES

Esterson, Bill	Kinnock, Stephen
Fletcher, Colleen	Whitley, Mick

Question accordingly agreed to.

Clause 48, as amended, ordered to stand part of the Bill.

Clause 49

TAX MEASURES

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

Paul Scully: Clause 49 sets out that the subsidy control requirements do not apply where a subsidy is permissible by virtue of article 413 of the trade and co-operation agreement. That article provides for exceptions for certain obligations in the TCA. The clause ensures that where one of those tax exceptions allows a subsidy to be given, the subsidy control requirements in the Bill do not apply.

Question put and agreed to.

Clause 49 accordingly ordered to stand part of the Bill.

Clause 50

LARGE CROSS-BORDER OR INTERNATIONAL COOPERATION PRODUCTS

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

Paul Scully: This clause sets specific provisions for large cross-border projects and projects of international co-operation. If a public authority is satisfied that a

project that it plans to subsidise qualifies as a large cross-border project or a project of international co-operation, there is no legal requirement to assess the subsidy or subsidy scheme against the subsidy control principles.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Clause 51

NUCLEAR ENERGY

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

Paul Scully: This clause establishes that subsidies and subsidy schemes for nuclear projects are not required to be assessed against the additional principles for energy and environmental subsidies that are set out in schedule 2.

Kirsty Blackman: I would just like to ask why.

Bill Esterson: I am interested in the answer to that question as well, given that in the last 11 years of Conservative Government we have not seen the investment in new nuclear that was needed to meet our climate obligations.

Stephen Kinnock: It was all coming from China.

Bill Esterson: Indeed. The role of China in our nuclear industry is a point well made by my hon. Friend. I hope that we will see significant investment in new nuclear as a result of the regulations, if that is what the Government intend. Perhaps the Minister will give an indication of their intentions, because without investment, we will not hit our obligations. Nuclear is, of course, a longer-term project because it takes so long to get going. I remind Members that we have significant targets to hit by 2030, and unless we are talking about small modular reactors, nuclear reaches beyond that timeframe. Can the Minister enlighten us on any plans?

Paul Scully: Subsidies or subsidy schemes for nuclear energy will be required to assess against the main subsidy control principles in schedule 1. Removing the clause would require those projects to be assessed against the additional energy and environmental subsidy control principles. The clause is in line with our various international obligations under the trade and co-operation agreement with the European Union.

I do not want to start speculating on what will happen with future nuclear investment, but we have legislation coming forward tomorrow.

Question put and agreed to.

Clause 51 accordingly ordered to stand part of the Bill.

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

4.20 pm

Adjourned till Thursday 4 November at half-past Eleven o'clock.

Written evidence reported to the House

SCB03 Anthony Collins Solicitors LLP

