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Public Bill Committee

SUBSIDY CONTROL BILL

Seventh Sitting

Thursday 4 November 2021

(Morning)

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Monday 8 November 2021

The Committee consisted of the following Members:

Chairs: †Caroline Nokes, Mr Virendra Sharma

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

Kevin Maddison, Bradley Albrow, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 4 November 2021

(Morning)

[Caroline Nokes *in the Chair*]

Subsidy Control Bill

11.30 am

The Chair: Before we start, may I remind hon. Members about social distancing and mask wearing where appropriate, please? We will now continue line-by-line consideration of the Bill. The selection list for today's sitting is available in the Committee Room and shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue.

Clause 52

Mandatory referral to CMA

Kirsty Blackman (Aberdeen North) (SNP): I beg to move amendment 28, in clause 52, page 28, line 10, at end insert—

"(c) where the granting authority for a subsidy scheme is the Government department responsible for the operation of the subsidy control regime, or

(d) where the granting authority for a subsidy is the Government department responsible for the operation of the subsidy control regime and the subsidy value is over £2 million."

This amendment makes provision for situations for mandatory referrals in cases where the department responsible for the operation of the subsidy control regime is a granter of subsidies or subsidy schemes.

Thank you for chairing the Committee today, Chair; we very much appreciate it. I am pleased that the hon. Member for Mid Dorset and North Poole is delighted to see me here. He made very clear this morning that he was worried that the debate might be truncated without my presence. I am here to oblige by standing up and making my first speech of the day.

The amendment is about mandatory referrals to the Competition and Markets Authority. Clause 52 specifically focuses on those mandatory referrals and the criteria under which a subsidy would mandatorily be referred and therefore given an additional level of scrutiny. The mandatory referral considerations in subsection (1) of the clause say that a public authority must request a report from the CMA if it is giving a subsidy or a subsidy scheme "of particular interest" or if it is

"directed to do so by the Secretary of State".

It goes on to say in subsection (3) that the Secretary of State may

"specify further information that must be included in a request",

and

"make provision as to the form of a request."

That is all well and good, but it seems to me that every single criterion for mandatory referral to the CMA relies on the decisions being made by the Secretary of State. The Secretary of State will decide what is a subsidy or subsidy scheme of particular interest and what class it falls into. That is a decision that will be made, but those details are not in the Bill.

If a subsidy is only mandatorily referred if it is of particular interest, which is defined by the Secretary of State, or if the Secretary of State chooses to refer it, there is a gap in terms of a conflict of interest, where the subsidy may be given by the Secretary of State's Department and, given the limited criteria we have for interested parties, for example, which have not yet been expanded on—we will discuss them later on in the Bill—it would make sense for large grants made by the Secretary of State's Department to mandatorily be referred to the CMA for a report. That would not cause a huge amount of additional work for the CMA, but it will provide an additional check and balance to the system. We do not want the Government marking their own homework on that; we would rather there was an additional level of scrutiny here.

Amendment 28 says that

"where the granting authority for a subsidy scheme is the Government department responsible for the operation of the subsidy control regime, or"—

that should be "and", not "or"—

"where the granting authority for a subsidy is the Government department responsible for the operation of the subsidy control regime and the subsidy value is over £2 million."

Once again, I do not feel I am being unreasonable. I am not asking for a mandatory referral every time. Sorry—I just reread the amendment, and it is right, it should be "or". It is about a subsidy scheme that is made by the Secretary of State's Department, so scrutinising all the subsidy schemes made by the Secretary of State's Department, or the scrutiny of an individual subsidy where that is more than £2 million. I apologise to the Clerks for doubting them; this is how I intended the amendment to be.

This is not an unreasonable ask, but it is an extra check and balance, ensuring that the Government are appropriately scrutinised and that there is a look at all those subsidies. It is just an additional look; it will not delay the granting of the subsidy or mean that it will take longer. The subsidy will still be able to be granted fairly quickly and subsidy schemes will be able to be set up fairly quickly. However, it means that the CMA will look at those with an inherent conflict of interest because the Secretary of State's Department is granting or setting up the subsidy scheme.

Later in the clause is a provision for the Secretary of State to make changes by regulations, but that specifically relates to the form of the request and the further information that may be included in the request. It does not relate to further criteria as to which public authorities must request a report from the CMA. If there were such a provision, I would push for the Secretary of State to make regulations and ensure that the criteria were widened. As that has not been included in the clause, I feel that I have to move the amendment.

If the Minister could give me some level of comfort, that would be very helpful. I think that that check and balance needs to be there to get rid of the inherent conflict of interest.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Ms Nokes. I thank the hon. Member for Aberdeen North for her remarks. She raises a number of important and pertinent issues around scrutiny, in particular about subsidies introduced by the Secretary of State.

The clause deals with the mandatory pre-award referrals to the CMA. It outlines that:

"A public authority must request a report from the CMA…before giving a subsidy, or making a subsidy scheme, of particular interest, or…where directed to do so by the Secretary of State".

We have highlighted our concerns about the definitions of subsidies "of particular interest". It is a glaring gap in our debates on the detail of the legislation. We think that the definition should be included in primary legislation, and I hope the Minister has listened to our concerns. I am sure that the issue will come back at future stages and, at the very least, our expectation will be that the definition is published very soon after the Bill receives Royal Assent. Things that we could be dealing with now should not end up delaying the ability to make decisions and implement the regime.

Although we are concerned about the definition, we support the overall importance of the measures outlined in the clause and the function of mandatory referral to the CMA, in the interests of checking compliance with the principles, bringing assurance on value for money and confirming that there will be no distortion or harm to the economy.

On amendment 28, the hon. Member for Aberdeen North makes an important continuing reference to the Government marking their own homework. Although we recognise the intention and some of the arguments behind the amendment, we do not think that producing a report on a subsidy every time one is given by the Department for Business, Energy and Industrial Strategy—as a sort of blunt tool—would necessarily be the most effective use of the CMA's time.

Rather, we have argued very strongly for all subsidies, regardless of whether they are below a particular amount or given to a certain recipient, to be posted on the database to ensure sufficient transparency. We will also seek to ensure that there are greater rights on call-in powers or that the CMA can investigate itself, if it deems that there a reason to do so. We think that any assurances, which are, in part, the intention behind the amendment, could be better delivered through the Bill in other ways. On that basis, we will abstain on amendment 28. We support clause 52 standing part of the Bill.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): As always, it is a pleasure to serve under your chairmanship, Ms Nokes. Before I begin, I would like to make a general point about today's debate and address a question raised during our discussions on Tuesday. Throughout the discussion of clauses in part 4 of the Bill, Members will hear me refer to the subsidy advice unit, which will be a new sub unit of the Competition and Markets Authority established by this Bill. Technically speaking, the provisions in part 4 confer various responsibilities on the CMA, and it is for the CMA to decide which of its responsibilities it will delegate to the SAU. The mechanics of that process will be discussed later when the Committee considers clause 67. While the decision on how to organise its work rests with the CMA, in practice it is likely that most if not all of the responsibilities under part 4 will be delegated to the SAU. Therefore, for consistency and ease, I will be referring to the SAU throughout these debates.

Clause 52 sets out that two categories of subsidy and scheme will be subject to referral to the CMA. The first is subsidies and schemes of particular interest, which we discussed in the context of clause 11 on Thursday 28 October, and the second is the subsidies and schemes that are referred by the Secretary of State under the provisions that we will shortly discuss under clause 55. Amendment 28, as we have heard, would add to that list of subsidies subject to mandatory referrals, requiring the Department responsible for the subsidy control regime to refer individual subsidies above £2 million and all subsidy schemes to the SAU. In practice, the BESI, my Department, is the Department with responsibility for subsidy control. I can reassure hon. Members that BEIS takes its subsidy control commitments very seriously. BEIS subsidies, like those of all other public authorities in the UK, will be subject to the "subsidies of particular interest" regime. There is no special treatment in this regime for my Department: indeed, BEIS can already ask advice of the CMA where necessary, using the powers in the Enterprise Act 2002.

The Bill establishes the two categories that we have talked about: subsidies and subsidy schemes of interest, which can be voluntarily referred to the SAU, and subsidies and schemes of particular interest, which must be referred to the SAU. The Government will set out in regulations definitions for both of those categories, and those regulations will be subject to the affirmative procedure, so there will be opportunity for parliamentary scrutiny of them. Those definitions will capture subsidies that are more likely to give rise to trade disputes, as well as subsidies that are more likely to distort UK competition and investment. BEIS subsidies and subsidy schemes will be subject to the same requirements and procedures as all other subsidies. I assure hon. Members that my Department really will not get any special treatment on this issue.

However, routinely requiring BEIS to be referred to the SAU when it offers subsidies and subsidy schemes would be a disproportionate approach to managing the risk of those highly distortive subsidies. It is important for the SAU to focus its attention and casework on genuinely distortive subsidies, not to focus unduly on subsidies and schemes made by BEIS in particular. The Government fully agree that subsidies and schemes of particular interest merit a proportionately higher level of scrutiny than other less distortive subsidies and subsidy schemes, but those subsidies are, in principle, better captured through a robust and well-evidenced set of thresholds and criteria. Those criteria will be set out in regulations defining the subsidies and schemes of particular interest, rather than placing a discrete requirement on a single public authority on the face of the Bill.

Kirsty Blackman: Specifically regarding the process, and what might happen in terms of subsidies of interest and subsidies of particular interest, does the Minister agree that this is going to be a movable feast? The regulations will be subject to the affirmative procedure, but things may change, and therefore there will need to be a change to the interests and particular interests. I am just asking the Minister to give me comfort that if the Government agree there is a particular issue with something, and it needs to be added to the group of "interest" or of "particular interest", it will be added.

Paul Scully: Yes, I can give the hon. Lady that assurance. Those schemes will be set out rigidly and subject to the affirmative procedure, so we can have parliamentary scrutiny, but none the less—as she rightly says—we

[Paul Scully]

need to retain flexibility, which is exactly why those definitions are in regulations in the first place, rather than on the face of the Bill. Of course, we look to provide as much parliamentary scrutiny of those regulations as possible. I ask the hon. Lady to withdraw her amendment.

Kirsty Blackman: I will not press this amendment to a vote at this stage, but I might bring it back at a later stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: The clause requires that public authorities refer certain subsidies and subsidy schemes to the subsidy advice unit before they are given or made. Two types of subsidies or schemes must be referred: those defined as being of particular interest in clause 11 and those that are called in by the Secretary of State under clause 55.

11.45 am

Seema Malhotra: We support clause 52. I am not concerned about the detail of the clause, but how it will be effective as part of the regime. This comes back to why the rules around what can be referred under the definition of a subsidy of particular interest and who has what call-in powers will be a fundamental question to come back to. It would be a shame to have a good clause and not use it to best effect to support the best outcomes of the regime.

Kirsty Blackman: I agree with the hon. Lady. My concern, which I mentioned briefly when talking about the amendment, is that subsection (1) is not flexible enough. It mentions particular interests and

"where directed to do so by the Secretary of State",

but I would prefer to see an additional category that says, "other reasons", with regulation to follow if that is what the Minister suggests. There are probably more reasons why things could be referred mandatorily to the CMA without having to go through the affirmative process of changing the particular interest subsidy section in clause 11. There could have been a little more flexibility in that clause, and it would be useful if the Minister agreed to think about that.

Paul Scully: I am always happy to think about flexibility.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

Clause 53

CMA REPORTING PERIOD FOR MANDATORY REFERRAL

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

Paul Scully: Clause 53 sets out the timeframe within which the subsidy advice unit must publish its report on a subsidy or subsidy scheme once a mandatory referral has been made to it by a public authority. The subsidy advice unit has an initial five-day working period in which to tell the public authority whether it has provided the information required by clause 52. It then generally has 30 working days in which to publish a report on the subsidy or subsidy scheme. That is the reporting period.

There are a couple of situations where it might be extended on a case-by-case period, whether by mutual agreement with the SAU and the public authority or directed by the Secretary of State following a request made by the SAU. Extensions are intended to be used sparingly—for example, when the SAU has been asked to report on a particularly complex case.

Seema Malhotra: It is a pleasure to respond to the Minister's comments. The clause sets out the CMA's reporting period for mandatory referrals. It specifies that the CMA has 30 working days to issue a report, unless the reporting period is extended under subsections (4) or (6). There is also the important five-day period for the CMA to respond to a request for a referral.

Labour Members recognise the importance of a relatively quick reporting period to give public authorities the confidence they need when granting subsidies under what is designed to be a quicker and easier system. However, it should not be without safeguards and, sometimes, extra safeguards, bearing in mind that pre-notification brings checks earlier in the process. We have to continue to be very mindful of that. We want subsidies that are given for the right reasons to be granted, without an extra onerous delay from the reporting taking too long, so it is important that some targets and mandatory deadlines are in the legislation.

We are concerned about whether the CMA will have the necessary capacity to produce the initial response within five days, and then the report within the 30 working-day period. Can the Minister offer reassurances about how the Government will monitor, review and work with the CMA on whether it has the capacity? There may be a spurt of requests, particularly perhaps earlier on in the process, as public authorities are starting to feel their way through it. They may even request, for good reason, voluntary referrals. What process is he putting in place to ensure that the CMA has the necessary resource to carry out its reporting adequately and in a timely manner?

We want that reporting to be to the required standard. Corners should not be cut in order to meet a deadline. We need the work to be done effectively and with the confidence of all interested parties and the public. We would also like clarity on what exactly would constitute an exceptional circumstance to allow the Secretary of State to extend the reporting period. Will the Minister provide further clarity on what might fit that definition? Despite those concerns—there may need to be some tightening up later—the clause lays out the necessity of the measures for the effectiveness of the regime. We will therefore agree that it stand part.

Paul Scully: The purpose of the referral process is not for the subsidy advice unit to duplicate the public authority's assessment of whether the subsidy complies with the subsidy control requirements. The SAU provides the evaluation of the assessment based on the information that is already provided by the public authority, so it is not duplicating work. We therefore believe that 30 working days is reasonable, given that specific role, but for exceptional or complex cases where more time may be

necessary, as I said, the SAU may extend the reporting period, either through agreement with the public authority or by a request to the Secretary of State.

When that extension is agreed by mutual consent, the SAU has to publish a notice stating how much the reporting period has been extended by and why that has happened. If it cannot be agreed by mutual consent, the SAU can request that the Secretary of State directly extend the reporting period. That can be requested and, in turn, granted only in exceptional circumstances. We chose the CMA in the first place to host the SAU because of its expertise and experience in protecting competition and investment, making it a natural fit for those broad aims. We are already working closely with the CMA to plan for the delivery of the new SAU, ready for the implementation of the regime.

Question put and agreed to.

Clause 53 accordingly ordered to stand part of the Bill.

Clause 54

Cooling off period following mandatory referral

Paul Scully: I beg to move amendment 3, in clause 54, page 30, line 8, leave out "on or".

This amendment ensures that a public authority may give a subsidy after the reporting period expires, but not on the final day of that period.

The amendment consists of a very minor change that is nevertheless necessary to ensure the public functioning of the mandatory referral process. Clause 54 requires that the public authority waits for a cooling-off period to elapse following the subsidy advice unit's report on a mandatory referral before giving a subsidy or making a subsidy scheme. That is intended to ensure that public authorities have a minimum window for considering the contents of such a report before giving the subsidy or making a scheme. Subsection (3) applies where the subsidy advice unit has not produced a report before the statutory reporting period of 30 working days. The reporting period is usually 30 working days. Here there is no need for a cooling-off period since there is no report for the public authority to consider. Instead, the public authority should be able to give the subsidy or make the scheme any time after the reporting period has expired.

As currently drafted, subsection (3) allows the public authority to make the subsidy on the last day of the SAU's 30 working-day reporting period, before it has technically expired. That gives rise to the theoretical possibility of a public authority being able to give a subsidy or make a scheme on the last day of the reporting period, when there is still a short time left for the SAU to publish its report—that is not the intention. This amendment clarifies that the full reporting period must have expired before the public authority can give a subsidy or make a scheme without having to wait for a cooling-off period to elapse.

Seema Malhotra: We support Government amendment 3, which provides clarity as to exactly when the cooling-off period ends. I will reserve my other comments on the clause for the next stages.

Amendment 3 agreed to.

Seema Malhotra: I beg to move amendment 48, in clause 54, page 30, line 10, leave out "Secretary of State" and insert "CMA".

This amendment provides that the power to extend the cooling off period should sit with the CMA rather than the Secretary of State.

The Labour party accepts the necessity of the cooling-off period to ensure that appropriate consideration is also given to the CMA's report. However, we do have some concerns about subsection (4) of the clause. We believe that the power to extend the cooling-off period should lie not with the Secretary of State but with the CMA. Given that the extension of the cooling-off period could have a significant effect on the granting of the subsidy and the effectiveness of its intended purpose, we should not risk it being seen as a politically charged, or political, decision. As such, we believe that it would be better for the CMA, an independent organisation whose judgment is trusted, to make that decision. Amendment 48 would make that change.

Paul Scully: As we have heard, clause 54 provides for a cooling-off period of five working days that have to expire before the authority can give a subsidy or make a subsidy scheme that has been subject to the mandatory referral process. The clause further provides that the Secretary of State may direct an extension to that cooling-off period if they judge that the report published by the SAU at the end of the mandatory referral process shows serious deficiencies with the public authority's assessment against the subsidy control principles. Amendment 48 would remove that power from the Secretary of State and give the SAU the power to direct an extension to the cooling-off period. However, that would be at odds with the advisory role of the SAU, as laid out elsewhere in the Bill. We will discuss that in a more holistic way in the context of other amendments, particularly amendment 58 and new clause 3.

For now, I emphasise the Government's view that the SAU is not a regulator or a gatekeeper, but rather acts as that impartial adviser for the most potentially harmful subsidies and schemes. Its reports are non-binding, and it will provide an important way of scrutinising the underlying assumptions in the design of subsidies and schemes, as well as identifying potential weaknesses. Granting a power to the SAU to extend the cooling-off period after it has published its report risks muddying the water between the role of adviser and enforcer.

Seema Malhotra: If there is a concern, does the Minister envisage the CMA being able to recommend extending the cooling-off period?

Paul Scully: Part of the CMA's regular reporting on how the system works will look at the scheme holistically, and it may wish to look at that period as well. Ultimately, it is the Secretary of State who is responsible for the subsidy control system and its consequent effects on competition and investment across the UK. Although the SAU will be created to help facilitate the effective operation of the regime, it does not have the same overarching responsibilities as the Secretary of State, so it is right that the Government bear the responsibility for intervening in the subsidy control regime where necessary. In drawing the SAU into the space for that decision making and matters of public spending, even

[Paul Scully]

in a limited way, the amendment would risk the CMA's hard-earned reputation for independence and political neutrality.

12 noon

Kirsty Blackman: I have spent years looking at education reports and care inspectorate reports. There are criteria for giving marks and a particular language is used—something is good, poor or dreadful. Is the Minister expecting that "serious deficiencies" will be used by the CMA in the report? Will it say, "We consider there to be serious deficiencies", which the Secretary of State would consider to be a red flag, resulting in the potential extension of the cooling-off period? Does the Minister think the CMA will do that explicitly, or will the Secretary of State have to read between the lines and try to work out how bad things are? We do not know how the reports will be structured, so it would be helpful if the Minister could make clear whether the Secretary of State is going to understand the meaning of the reports and whether the SAU would seek an extension to the cooling-off period because it believed there were serious deficiencies.

Paul Scully: There is not going to be a rating, because the SAU is not a regulator or enforcer, but it is responsible for making sure that the situation is made as clear as possible so that people, not least the Secretary of State, can understand it. That is why we have left this matter to the CMA—its staff are experts and have great experience of doing exactly that.

Seema Malhotra: This has been a very helpful debate. The Minister is right: we will discuss some contextual powers in the debates on later clauses and new clause 3. Clarifying the roles, expectations and powers for the CMA, the Secretary of State and other bodies, such as devolved Administrations, is an important point to come back to, but I will not press the amendment at this stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Seema Malhotra: I beg to move amendment 50, in clause 54, page 30, line 18, at end insert—

"(5A) The Secretary of State must by regulations define 'serious deficiencies' for the purposes of this section."

This amendment requires the Secretary of State to define "serious deficiencies" for the purposes of directing that the cooling off period is extended.

The Chair: With this it will be convenient to discuss amendment 51, in clause 54, page 30, line 26, after "subsection" insert "(5A),".

This amendment is linked to Amendment 50.

Seema Malhotra: It is a pleasure to move amendment 50 and, with that, to speak to amendment 51, to which it is related.

Clause 54(4) states that the Secretary of State can extend the cooling-off period if he or she considers that the CMA's report has identified "serious deficiencies". The hon. Member for Aberdeen North has referred to that point. Yet again, the Bill is lacking a key detail—namely, what would constitute a serious deficiency. We have had a brief discussion on this point. Clarity is necessary for public authorities, the CMA and interested parties, in order to have confidence in the new regime and the timing of subsidies.

The amendment would require the Secretary of State to define serious deficiencies for the purposes of directing that the cooling-off period is extended. It would be helpful to the Committee if the Minister could confirm how and where we will reach a definition of serious deficiencies and when we are likely to get that definition. My comments apply to both amendments 50 and 51.

Paul Scully: The meaning of the term "serious deficiencies" is intended to mirror the common understanding of those words, so we do not believe the requirement to define it further is necessary. Defining it further, either in the Bill or through regulations, risks leading to a situation where the Secretary of State judges that there is a serious problem with a public authority's assessment, but is prevented from taking action because the specific problem is not exactly set out in those regulations.

Seema Malhotra: I am slightly surprised, because serious deficiencies is being used as a trigger for the Secretary of State to be able to use a power. I would be very surprised if there was a common understanding that was so common that even the members of this Committee, if they were to secretly write it down on a piece of paper and compare notes, would have exactly the same definition of serious deficiencies. I am not sure that suggesting there is a common understanding, as if that is fact, is the right way to address this particular point. We need this defined, and we need to know when and where it will be defined.

Paul Scully: One of the problems is that, if we define it in the way I think the hon. Lady is after, we then lose some of the flexibility. I was just about to say that the exact situation will vary on a case-by-case basis. A serious deficiency could arise, for example, if the subsidy advice unit identified that the proposed subsidy or scheme might have significant negative effects on UK competition and investment but the public authority had not considered any of the options for mitigating those effects. Another example might be if the SAU identified significant technical flaws in or omissions from the public authority's assessments of compliance with the requirements of chapters 1 and 2 of part 2, such as the analysis of how the subsidy incentivised a change in the beneficiary's behaviour or the impact on international trade.

Kirsty Blackman: Does the Minister agree that it is likely that the SAU will have internal working definitions of what is "acceptable" or "deficient", and that it is likely to say that to the Secretary of State in giving its recommendations and possibly asking for any extensions?

Paul Scully: Absolutely—that is exactly what I was going to come on to. The hon. Lady has obviously seen the next paragraph I was going to read. The Secretary of State would not be taking that view on his own. It would not be an arbitrary judgment; it would be acting on the basis of a published report by the SAU, which is obviously independent.

As the hon. Member for Feltham and Heston said on Second Reading and has reiterated this week,

"the new system will work only if it provides transparency, oversight and scrutiny".—[*Official Report*, 22 September 2021; Vol. 701, c. 341.]

This amendment only serves to undermine those aims slightly—unintentionally, I am sure—by limiting the circumstances in which the Secretary of State can act to extend the cooling-off period and ensure that a public authority has more time to consider the SAU's comments. I therefore request that she withdraw her amendment.

Seema Malhotra: I thank the Minister for his comments. I will not press the amendment to a vote, but I want to repeat this point. In light of what the Minister has said, some of the examples or scenarios that he has started to outline suggest that there is more that can be done to scope out, set out some expectations or perhaps put something in guidance so that there starts to be a sense of scope around what sorts of scenarios could result in a consideration of serious deficiencies.

I say that not because I am trying to create an issue that is not there, but because where we have something in legislation that is a basis on which a power is to be exercised, it is incumbent on the Government to ensure that there is greater clarity about what the expectations might be. That might not be a complete list, defined A to H, but it may be a broad set of guidance, for use both by the subsidy advice unit in making assessments, and by the Secretary of State in making a clearer and more transparent decision that could also be open to scrutiny. I hope the Minister will confirm to the Committee that he would be prepared at least to look at some of those areas he has outlined—perhaps there will be more and we might need to come back to this in the regulations—to provide clarity on what could be quite an important use of the power. We would hate for the use of the power to be challenged on the basis of people not agreeing that something was a serious deficiency. We do not want the process to be subject to unnecessary delays that could be dealt with by planning ahead for different interpretations. There is perhaps not the common understanding that the Minister thinks of "serious deficiencies".

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: Clause 54 establishes the cooling-off period that must elapse before a public authority may give a subsidy or make a subsidy scheme that has been referred to and reported on by the subsidy advice unit, following a mandatory referral.

Seema Malhotra: We have no further comments other than the issues we have raised already. We support clause stand part.

Question put and agreed to.

Clause 54, as amended, accordingly ordered to stand part of the Bill.

Clause 55

Call-in direction

Bill Esterson (Sefton Central) (Lab): I beg to move amendment 52, in clause 55, page 30, line 29, after "Secretary of State" insert

", the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland".

This amendment extends the call in powers under this section to the Devolved Administrations.

It is great to see you back in the Chair, Ms Nokes, bright and early this time.

The amendment addresses the call-in powers as they relate to the devolved Administrations. We think that the power to call in is a good power to have in the Bill, but it needs to be consistent and apply to the devolved Administrations, not just to the Secretary of State.

Clause 55 allows the Secretary of State to request an assessment of a subsidy or subsidy scheme if the Secretary of State believes it could be breaking regulations or having negative effects on competition and investment in the United Kingdom. As we have said a number of times, it is important that the First Ministers and the Northern Ireland Department responsible have those same powers. It makes no sense that the Secretary of State should be empowered to call in Scottish, Welsh and Northern Irish subsidies that may damage English interests, but the Scottish, Welsh and Northern Irish leaders cannot call in subsidies that may damage the interests of their own nations. That is what we heard in the evidence sessions.

I start with the evidence from Thomas Pope, deputy chief economist at the Institute for Government, who told us that subsidy control

"affects devolved competence and the operation of policy in all four nations of the UK. I therefore think it is appropriate that there be better devolved representation."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 31, Q43.]

Simon Baynes (Clwyd South) (Con): Will the hon. Gentleman give way?

Bill Esterson: The hon. Gentleman is wearing a mask, so I will give way.

Simon Baynes: In the previous discussions on this issue, the opinion of the Bill Committee seemed to be that these matters were the responsibilities of the Secretary of State. It therefore makes no sense to me to devolve those responsibilities to the devolved Administrations. In some of their comments, Opposition Members have fully accepted that these matters are the responsibility of the Secretary of State, because it is a reserved power.

Bill Esterson: Just because the Government keep winning the votes, which they always will do because they have a majority in Parliament and therefore on the Committee, that is not a reason for us to not make valid arguments. This is a slightly different point on our concerns about the failure to reflect the devolution settlement in the Bill. Call-in is a slightly different aspect of the powers needed for a functioning subsidy regime, and it is right that we are raising it at this stage of the deliberations.

12.15 pm

Robin Millar (Aberconwy) (Con): Will the hon. Gentleman give way?

Bill Esterson: The hon. Gentleman is wearing a mask, so I will give way.

Robin Millar: Is it not precisely the point that this does reflect the devolved agreement, because the Secretary of State has those reserved powers?

Bill Esterson: I think the hon. Gentleman missed the point I was making, but there we go. It is entirely appropriate, given that the regime is a four-nation regime, that the four nations have the powers of call-in to the CMA in the way that our amendment sets out.

Robin Millar: This is an important point, so I am grateful to the hon. Gentleman for giving way again so soon. There is no four nations concept within our constitution. We have one United Kingdom Government and three devolved Administrations. Four nations is something reserved for rugby matches and the vernacular—*[Interruption.]* Indeed, the rugby is six. It is not something within our constitution. He has referred to the four nations on several occasions, and on this occasion I feel it is important and relevant to make that point.

Bill Esterson: I suspect that more than one party would be very interested in repeating those remarks multiple times, certainly in two of the nations of this country. They are called nations within the devolved settlement; we have a devolution settlement that has "four nations" within it. It will be interesting to see how many times the hon. Gentleman is quoted saying that.

I will quote what George Peretz told us about why it matters that there should be a call-in power for all four nations:

"In a situation where an English local authority, the Secretary of State or another UK Government body acting as an English Department does something that is designed to benefit England but causes serious concern in Scotland or Wales, why should the Welsh or Scottish Ministers not be able to do the same thing if the concern is with competition or investment within the United Kingdom? I find it slightly hard to see what the argument against that is."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 44, Q63.]

I have not heard from either the hon. Member for Clwyd South or the hon. Member for Aberconwy an argument against what he told us last week.

Rachel Merelie, senior director for the Office for the Internal Market at the CMA, noted:

"It is really important that all granting authorities are treated fairly and equitably, regardless of whether they are in the devolved nations or in England."—[*Official Report, Subsidy Control Public Bill Committee,* 26 October 2021; c. 69, Q98.]

I am not the only one talking about the devolved nations by any means; we have it from the CMA.

Kevin Hollinrake (Thirsk and Malton) (Con): Will the hon. Gentleman give way?

Bill Esterson: The hon. Gentleman does not have a mask on, so I will not. He will be able to make a speech afterwards, as I think one of his colleagues said.

The devolved nations of the United Kingdom cannot be treated as second class when it comes to economic matters that could have potentially monumental impacts on the proper functioning of their markets. The devolved Administrations must have equitable powers with the Secretary of State to call in subsidies where they could be damaging to their own economies.

Kirsty Blackman: I stand as a proud representative of the nation of Scotland to make a brief speech on amendment 52. The powers that are suggested under clause 55 are limited powers. They are not unlimited powers to call in anything on a whim of the Secretary of State or of anybody else. They can only be called in in relation to subsidies or subsidy schemes of interest, or subsidies or subsidy schemes in which the Secretary of State considers there is a failure to comply with chapters 1 and 2 of part 2, or there is a risk of negative effects on competition or investment within the United Kingdom.

The amendment proposed by the Opposition does not affect that. It would still apply only in the case that the devolved Administrations wanted to call in something that was a scheme of particular interest, or something that the Secretary of State had presumably already called in that was against chapters 1 and 2 of part 2 or where the Secretary of State agreed there were negative effects on competition or investment within the United Kingdom. Those are not, as the Government members of the Committee have suggested, unlimited powers parallel to those of the Secretary of State; they are limited powers. The only time the power would be exercisable is if the schemes were of interest—rather than of particular interest, because they are mandatorily referred—and the three devolved Administrations would be able to call those schemes in. It would be a limited power that would only apply for schemes of interest. I absolutely support the amendment—it makes sense—and we would obviously like it to go further. We have a devolution settlement and this is a proportionate amendment that makes sense in the context.

Paul Scully: Under the powers in the Bill as drafted, when the Secretary of State decides to exercise the call-in power, that direction has to be published. In addition, the SAU has to provide annual reports on its caseload, including any subsidies and schemes that were called in by the Secretary of State. That transparency will help ensure that the powers are used appropriately and that Parliament has oversight of how and when the powers are being used. Amendment 52 would allow those referrals to the SAU under the terms of clause 55 to be made by devolved Administrations, whereas the Bill provides the power for the sole use of the Secretary of State.

In the majority of cases, the most potentially harmful subsidies will be those that meet the criteria for subsidies of particular interest, which will be set out in regulations, but it is inevitable that there will be some subsidies or schemes that fall outside those boundaries. They will still benefit from the additional scrutiny offered by the SAU.

The call-in power provides a mechanism to catch potentially highly distorted subsidies that may not be caught within the "subsidies of particular interest" definition. It will also provide a safety net where there is a risk of failure to comply with the subsidy control requirements or there is a risk of negative effects of competition and investment within the UK. This is a reserved power and as such the Secretary of State's responsibilities and interests in making referrals are UK wide. As a member of the UK Government, they are responsible for subsidies granted in all parts of the UK being compliant with our international obligations.

Kirsty Blackman: I have two questions. I would have expected that "particular interest" would cover anything that does not meet chapters 1 and 2 of part 2 anyway, so it would be nice if the Minister could clarify that point. Secondly, if any of the devolved Administrations request a meeting with the Secretary of State because they are concerned and want the Secretary of State to call something in, would the Secretary of State grant that meeting?

Paul Scully: On meetings, I am not the Secretary of State, but effectively, yes—we want to engage with the devolved Administrations. We do that on a regular basis, and have done in the formulation of this Bill, as we have discussed many times, and we will continue to do so as we go through guidance and the working of the Bill.

In the event that one or more of the devolved Administrations has serious concerns about a subsidy given or a scheme made, of course they can request that the Secretary of State use that call-in power. The Secretary of State would carefully consider any request from their counterparts in the devolved Administrations, just as they would on any other policy matter. As I say, we have met the devolved Administrations a number of times since July 2020 on the formulation of this Bill. We continue to meet and engage with them regularly, and listen to their views as the Bill progresses through Parliament, and we will do so in the lead up to implementation. I request that the hon. Member for Sefton Central withdraws the amendment.

Kirsty Blackman: My other question was about the definition of "particular interest", or "interest". Subsidies of particular interest will be mandatorily referred, as we have already agreed, but subsides that risk to fail to comply with the requirements of chapter 1 and 2 of part 2 could be referred by the Secretary of State. It would concern me if compliance was not part of schemes of particular interest, or schemes of interest. I understand that some schemes of particular interest would be defined on the basis of the sector they are in and the specific details of the subsidy, but I would expect that lack of compliance with the rules would cause a scheme to be of particular interest anyway. I hope the Minister understands what I am trying to get at here. If a subsidy does not comply with the subsidy control principles, surely it is either not a subsidy—it is not allowed—or it is a scheme of particular interest that would need to be looked at mandatorily, or perhaps optionally, by the CMA.

Paul Scully: I think I get the general gist of where the hon. Lady is going with that point. That is why, rather than trying to define them as not complying, we are trying to define them specifically at the outset, hence the regulations that we will be putting forward, but there is plenty of opportunity to have that discussion.

Bill Esterson: The hon. Member for Aberdeen North correctly made the point that the amendment asks for a limited set of powers. I set that out using the evidence. We should follow the evidence of people who are experts on these subjects. We had a range of very good witnesses, who set out why there should be the sorts of powers that we are proposing. I cannot help think that there will be occasions when the Secretary of State is making awards. If he, as it says in the Bill, is making those awards, is there not a potential conflict of interest if there is not another way of providing that call-in if there is perceived damage in the other three nations? The Minister might want to respond to that point.

The amendment makes a limited request. The Minister talked about requests to the Secretary of State for a call-in, but a request is not the same as a power. Unless there is that power—potentially in the case of a conflict of interest where the Secretary of State is the awarder—there is a limit to the way the Scottish, Welsh and Northern Irish Administrations can ensure there is a fair application of the system in terms of call-ins. I would be grateful if the Minister could come back on this point about the potential conflict of interest where the Secretary of State is the awarder in relation to the use of call-in powers.

Paul Scully: As I say, the Secretary of State will be acting on behalf of the UK Government. Subsidy control is a reserved power, as we established in the debate for the United Kingdom Internal Market Act 2020 that we had at length at the end of last year. None the less, there is no special treatment for the Department for Business, Energy and Industrial Strategy. There was plenty of opportunity through the publication of the advice and the reason for call-ins, and any enforcement that may need to be done through the Competition Appeal Tribunal to highlight that potential. None the less I think there were enough checks within the structure to avoid that. I hope the hon. Member will withdraw the amendment.

Bill Esterson: I do not think that we got an answer to my question. There is still the concern that if the Secretary of State says no and there are legitimate concerns in the three nations, there needs to be the additional limited opportunity of call-ins. We will push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 16]

AYES

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

NOES

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

Question accordingly negatived.

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

12.30 pm

Paul Scully: Clause 55 gives the Secretary of State the ability to direct a public authority to request a report from the subsidy advice unit on a proposed subsidy or subsidy scheme. That may be made in relation to a subsidy of interest or any other subsidy or scheme that the Secretary of State considers to be at risk of failing to comply with the subsidy control requirements or of negatively impacting competition or investment in the UK. It is not intended to be used routinely, but it is a

[Paul Scully]

necessary safeguard. It is there to ensure that an additional layer of scrutiny can be applied to subsidies that might risk creating market distortions but would otherwise not be subject to mandatory referral to the SAU.

Kirsty Blackman: I was going to ask a question about this clause, and the Minister has managed to make me even more confused. Subsection (1) states:

"A public authority may request a report from the CMA before giving a subsidy, or making a subsidy scheme, of interest."

It does not state that, additionally, any other subsidy may be referred to the CMA under a voluntary referral. It might elsewhere in the legislation, but it does not at this point.

My concern was that it relates only to subsidies "of interest"—subsidies of particular interest are covered by mandatory referral, and that is fine—but for subsidies that fall outside the category of interest, perhaps because interest is narrowly drawn by the regulations when interest is set, there seems to be no way for those public authorities to refer them voluntarily to the CMA, as the legislation is drafted. It would be good if they could.

Let us say that "particular interests" and "interests" are defined by the Government, that goes through the affirmative procedure, we have a discussion, and the definitions are agreed. Accidentally, however, something is left out of the category of interest—because we do not think of everything—and a local or public authority discovers the anomaly and thinks to itself, "Do you know what, I should refer this to the CMA voluntarily, because I think it probably should be included in the schemes of interest, but in the way that the legislation is written, it does not fall under that", so it tries to make a voluntary referral. It cannot, however, because it may make a voluntary referral only in the case of something that is of interest.

There is a bit of a gap. Authorities should be able to make that voluntary referral, whether it is a scheme of interest or not. There is a concern. As to what the Minister said, absolutely, if the Secretary of State has a concern additional to the interest section, that would be fair enough and make a difference, or if the authority itself decides that it should be referred to the CMA. I do not think that that will be a huge amount of extra work. Authorities will not refer themselves to the CMA for fun; they will do so when they feel that there is a reasonable chance that what they are considering doing is contentious.

I will not vote against the clause, because voluntary referrals are a good thing, but I do not think that it goes as far as the Minister suggested it goes—unless I have missed something.

Bill Esterson: I was not entirely clear which clause the hon. Member for Aberdeen North was speaking to. We are still on clause 55 stand part—but it was a very good speech on the next clause, so we now know what she will say.

We expressed our concerns in the debate on our amendment. I hope that the Minister will reflect on those concerns and consider whether greater strength is needed in this clause and, similarly, I suspect, in clause 56—when we get to that debate.

Kirsty Blackman: It is no wonder that I was confused by what the Minister said. He was speaking to clause 55 and I was looking at clause 56. Apologies.

Paul Scully: We will hear the hon. Lady's comments again.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clause 56

VOLUNTARY REFERRAL TO CMA

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

Paul Scully: The clause—wait for it—allows public authorities voluntarily to refer certain subsidies or subsidy schemes to the subsidy advice unit before they are given or made. Those are known as subsidies or schemes of interest, and the criteria will be set in secondary legislation, as set out in clause 11.

To make that voluntary referral, the public authority has to provide certain information about the subsidy or the scheme that will be referred, including an assessment by the public authority of whether its proposed subsidy or scheme would meet the principles, the prohibitions and the other requirements set out in chapters 1 and 2 of part 2 of the Bill.

The Secretary of State is also given the power to make new regulations specifying the form in which that information must be provided to the SAU, as well as any additional information that must be provided beyond that which is already set out in the clause. That will enable the content and the form of the request to be adapted based on operational experience of whether the SAU is getting the information it needs to report back effectively.

Openness, transparency and a risk-based approach to scrutiny will ensure confidence in the new UK subsidy control regime. The voluntary referral process provides an additional avenue of scrutiny for public authorities seeking to grant some of the more potentially distortive subsidies and schemes. To answer the question from the hon. Member for Aberdeen North, who may want to ask it again, the process gets the balance right by ensuring a flexible system with enough information for the public authorities to get it right in the first place. A lot of that will be done through guidance, and the SAU is there to be helpful and give advice; it is not an enforcer or a regulator.

Kirsty Blackman: Let me just imagine that I made an excellent speech.

The concerns that I raised a few moments ago still stand. I think there should be more flexibility in the first part so that it is made clear to public authorities that they can refer something should it not fall under the specific definition of "schemes of interest". I would appreciate it if the Minister considered tabling an amendment to that effect. I do not feel that that would make additional work.

I genuinely feel that public authorities would use that flexibility only in circumstances where they feel that "schemes of interest" has been defined too narrowly to cover the scheme that they would like to refer to the CMA. That flexibility would not be overused; nobody

would be daft enough to overuse it. There seems to be no ability for public authorities to refer anything unless it is classed as a scheme of interest or particular interest, or is something deemed by the Secretary of State to meet various criteria. I would appreciate it if the Minister looked at that.

Seema Malhotra: The clause does indeed allow public authorities to

"request a report from the CMA before giving a subsidy, or making a subsidy scheme, of interest."

We have had some interesting and helpful discussion so far, but our main concern remains the lack of clear definitions in the legislation, particularly the definition of "interest". Such clarity would provide some necessary assurance to public authorities, the CMA and subsidy recipients about how the regime will work in practice.

We could have pre-empted this issue and had clearer definitions to ensure that more was done upstream by public authorities, meaning fewer referrals. More referrals will create more burden on the subsidy advice unit. Referrals will be made for good reason, however, so we absolutely need the provision. It is likely that there will be greater demand for referrals in the earlier stages of the regime's implementation, but as people become familiar with the process and judgments become clearer, and the CMA gets some case studies to use, the system will improve.

It is important that there is clarity from Government. We may come back to some of this, but the referring public authority will also need clarity on what it will and will not get back. Guidance on that would be extremely helpful to make the legislation work effectively.

Paul Scully: I take on board the hon. Lady's point about guidance and ensuring that public authorities know what to provide and what to expect back. That is absolutely fair. In terms of where we go and how wide we make this, it is not our intention to replicate the needlessly complicated and slow processes under the state aid scheme; this will be focused on the most potentially distortive subsidies, to provide scrutiny where it is most needed, so it would not be proportionate to have the extra step for every subsidy regardless of size or impact.

The SAU itself will have discretion on whether to accept voluntary referrals based on the CMA's existing and published prioritisation criteria, because we want to ensure that it can do its job effectively, but none the less offer that advice.

Seema Malhotra: The Minister is starting to go a little bit further in implying that there will be, perhaps not trade-offs, but decisions that will need to be made about whether to have the review done by the subsidy advice unit and what that might be intended for. What the clause might be intended for may not be the same as what public authorities may feel in wanting to seek a voluntary referral. Can he perhaps clarify whether, for example, undertaking a voluntary referral may be used to seek to provide reassurance so that there is less likelihood of a challenge later on? Decisions that are taken will bear some relationship to other parts of the Bill and the ability to bring challenges. What status would receiving a report back from the subsidy advice unit have? Could that be used if, for example, there was a challenge later on?

Paul Scully: Indeed, that is exactly the reason for the SAU not to be the regulator or the enforcer but to provide expert, independent advice. Even in the more distortive schemes, as I have always said, there is nothing stopping a public authority from giving the subsidy even if there is advice not to. However, since that advice is published, it would be available to people looking in on the matter, and in any referral to the CAT that would be taken into account. One of the reasons for putting it under the CMA is that it already has the expertise and the ability to give good advice and robust assessment and analysis.

Rightly, where the SAU itself considers appropriate, the public authority can get advice on the design of its subsidy or scheme, but the SAU will base that on its own criteria, such as the overall impact on competition, strategic significance and the available resources.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

Clause 57

CMA REPORTING PERIOD FOR VOLUNTARY REFERRAL

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

Paul Scully: Clause 57 sets out the timeframe within which the SAU must publish its report on a subsidy or subsidy scheme. Once it has accepted a voluntary referral made by a public authority, it has an initial period of five working days to tell the public authority whether it will produce a report in response to the request. It will then generally have a reporting period of 30 working days in which to publish its report on the subsidy or subsidy scheme.

The clause also enables the Secretary of State to make regulations to amend either the period of five working days or the reporting period itself, which will allow the Government to amend those periods, should longer or shorter periods prove to be necessary based on experience of how the regime is working in practice. Any regulations would be subject to the affirmative procedure and therefore would need to be approved by Parliament in draft.

Seema Malhotra: I thank the Minister for his comments on clause 57 stand part. The clause outlines the CMA's reporting period for subsidies and schemes that are voluntarily referred to it. We have no issues with this clause, but I wanted to raise one small point in relation to subsection (6).

I would be grateful for clarity about how the Minister expects any extensions of the reporting period to be reported, because we do not just need to know that it is taking longer because there is complexity: we need to know whether it is taking longer because there is a resourcing issue, or because public authorities are not completing the paperwork correctly and there is some confusion over some information that might be provided. Understanding those reasons would inevitably be useful when seeking improvements to the system and making the process more efficient.

More efficiency also means less cost and better value for money, because it is public money that goes into the CMA and the subsidy advice unit, so we need to make sure those resources are used effectively and improve

[Seema Malhotra]

the quality of both the applications and the process. I would be grateful to understand how the Minister envisages that being done.

12.45 pm

Paul Scully: It is in the interests of the SAU and everybody else that this system works. If the quality of evidence that public authorities are giving is causing complexities, feedback to those public authorities would be incredibly helpful in making sure the framework works, but it is also the kind of thing that would be covered in the CMA's reporting when it says how the framework is working in itself.

Seema Malhotra: Would that be in the annual report, or in the five-year review? Five years is rather a long time.

Paul Scully: It would be in both. That reporting is there to say what subsidies exist and how the framework is working, but those conversations would also be happening all the time through the advice to public authorities and BEIS's communications with the CMA on a regular basis, making sure that the framework works. As I said, it is in everybody's interests that we get that exchange right.

Question put and agreed to.

Clause 57 accordingly ordered to stand part of the Bill.

Clause 58

CALL-IN DIRECTION FOLLOWING VOLUNTARY REFERRAL

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

Paul Scully: Clause 58 sets out what would happen if the subsidy advice unit agreed to report on a subsidy or scheme that has been voluntarily referred, and that subsidy or scheme is then called in by the Secretary of State. The clause streamlines the pre-award reporting process that would apply when the subsidy is called in following a voluntary referral, because the SAU should already have some familiarity with the subsidy or scheme that has been called in, due to its already having been voluntarily referred.

Three scenarios are dealt with within this clause. The first is where the SAU has not published its report on a subsidy or scheme that was voluntarily referred, and the statutory time limit for doing so has not yet expired. The second is where the SAU has not published its report on a subsidy or scheme that was voluntarily referred, and the statutory time limit has expired. The final scenario is where the SAU has already published its report on a subsidy, but that subsidy has not yet been given or made. This clause ensures that the processes for scrutinising subsidies and subsidy schemes by the SAU are as efficient and timely as possible.

Seema Malhotra: We agree that in such cases, the subsidy or scheme in question should be treated as if it were part of a mandatory referral to the CMA. We have no issues with this clause, and will vote for it to stand part.

Question put and agreed to.

Clause 58 accordingly ordered to stand part of the Bill.

Clause 59

CMA REPORT FOLLOWING MANDATORY OR VOLUNTARY REFERRAL

Bill Esterson: I beg to move amendment 53, in clause 59, page 33, line 13, leave out paragraph (a).

This amendment removes the power for the Secretary of State to amend this section by regulation.

The Chair: With this it will be convenient to discuss amendment 54, in clause 59, page 33, line 17, leave out subsection (6).

This amendment is a consequential amendment linked to Amendment 53.

Bill Esterson: We have concerns about the way the clause allows the Secretary of State to use regulations to affect the content and form of CMA reports. This is a question of the CMA's independence. On the Competition and Markets Authority website, it describes itself as

"an independent non-ministerial department".

The CMA's work

"is overseen by a Board, and led by the Chief Executive and senior team. Decisions in…investigations are made by independent members of a CMA panel."

In contrast, the clause would empower the Secretary of State to amend, by using regulations, the content of the CMA's reports. It is very hard to see how this is anything other than a direct contradiction of the principle of independence, baked into the CMA's set-up.

The timing of the change, given the shameful proceedings in the Commons Chamber yesterday, leaves the suspicion that it is, again, about removing the principle of independence from the heart of the CMA's role. We saw this with the Prime Minister's own adviser on ministerial standards, Sir Alex Allan, resigning because of the breach of the ministerial code, and we saw it yesterday with members of the ruling party scrapping the rules or attempting to scrap the rules on MPs' conduct because one of their own was found guilty of what the Standards Committee described as an "egregious" breach and then wanting to scrap the role of the independent standards commissioner.

Robin Millar: Will the hon. Gentleman give way?

Bill Esterson: Of course, they will all want to intervene—

The Chair: Order. May I remind hon. Members to stay within the scope of the Subsidy Control Bill?

Bill Esterson: Thank you, Ms Nokes. On that basis, it will probably not be wise to take the interventions. I am using these things as an example of the ruling party's attempts to remove independence. The CMA is also supposed to be independent. We have seen a desire to break the rules and then just remake the rules in the main Commons Chamber, and I fear that now we may be seeing something similar—we need to ensure that we do not see something similar—when it comes to the independence of the CMA in its role with regard to the subsidy control regime.

Without amendment, the clause will allow the Government to rewrite the contents of an independent report if there is any warning that it will say something that they do not like. That is not how independence

works, and it is not good government. Our amendments would remove the power for the Secretary of State to do that. It would remove the power to edit reports published by the CMA, and it would ensure that the independence of the CMA stays as it is.

Kirsty Blackman: I have just a brief question. This clause lays out things that reports following mandatory or voluntary referrals "must" include and some things that the reports "may" include. Can the Minister confirm that the reports may also include things not mentioned here and that the additional things that would be included would be at the discretion of the CMA? If it can include only the musts and the mays in the clause, it will not be able to include anything else that the CMA considers would be relevant in the report. Given that the Minister has stressed the independence and expertise of the CMA, it would be sensible to confirm that it can include matters that it feels are relevant, whether or not they are explicitly mentioned in the Bill.

Paul Scully: The CMA is independent and will use its expertise. I think that we have crossed wires here, because actually the clause allows the Secretary of State to talk about the content of the report but not to textually amend an independent report. That is not what we are talking about here, which is what is within scope of the report—to ensure that it can actually do it. This is to be able to give additional transparency and scrutiny in the regime itself. The clause allows him to make provision about the content and form of the report, but, as I said, not to change the text of an independent report.

Any changes to the content of the report must be made by the affirmative procedure. That is core to the subsidy control regime, because if the Government believe that the process needs to be refined, it is only right to have parliamentary scrutiny of it. By contrast, any specification as to the form of the report would be a technical regulation, for which the negative procedure is appropriate. Amendments 53 and 54 remove that possibility, except by future primary legislation.

As I say, removing the mechanism for amending or enhancing the baseline for SAU reporting that is set out in clause 59 would unnecessarily tie the hands of the SAU and future Governments seeking to improve the referral process based on the experience and expertise that is gathered over time through the functioning of the new regime. As set out in clause 67, the power to change the content of the report may be exercised only for a period of one year following the publication of SAU's first report under clause 65.

As I have set out, however, changing the form of the report is a technical matter, so it is appropriate for the regulations to be subject to the negative procedure. I therefore request that the hon. Member for Sefton Central withdraws the amendments.

Bill Esterson: Clause 59(4)(a) uses the phrase

"amend subsection (1), (2) or (3) to make provision about the content of the CMA's report".

The Minister used the terms "text" and "content" interchangeably, which highlights our concern. Using secondary legislation, the Secretary of State is able to give himself the power to amend CMA reports. That is the problem—that is what overturns the power.

Kirsty Blackman: The Minister did not answer my question about additional information that the CMA may include in a report that is outwith the scope of the Bill. It does not fall under part 2; it falls under something else that the CMA thinks is relevant and should be in the report. Does the hon. Gentleman agree?

Bill Esterson: The Minister did not answer the hon. Lady's question, so maybe he can do that after I finish my summing up, which will not take much longer.

We will push the amendment to a vote, because the Minister did not address our concerns about removing the independence of the CMA.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 17]

AYES

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

NOES

Baynes, Simon	Mortimer, Jill
Benton, Scott	Scully, Paul
Buchan, Felicity	
Millar, Robin	Tomlinson, Michael

Question accordingly negatived.

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

12.58 pm

Adjourned till this day at Two o'clock.