

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## SUBSIDY CONTROL BILL

*Eighth Sitting*

*Thursday 4 November 2021*

*(Afternoon)*

---

### CONTENTS

CLAUSES 59 TO 64 agreed to, some with amendments.  
Adjourned till Tuesday 16 November at twenty-five past Nine 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**

**Monday 8 November 2021**

© Parliamentary Copyright House of Commons 2021

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**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

(Afternoon)

[MR VIRENDRA SHARMA *in the Chair*]

### Subsidy Control Bill

2 pm

**The Chair:** Before we start the meeting, may I make a humble request? Everybody is advised to wear masks.

#### Clause 59

CMA REPORT FOLLOWING MANDATORY OR  
VOLUNTARY REFERRAL

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

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully):** As always, Mr Sharma, it is a pleasure to serve under your chairmanship. Clause 59 specifies the contents of the report that must be produced by the subsidy advice unit on subsidies or schemes that are referred by public authorities or the Secretary of State. The SAU's report must contain an evaluation of the public authority's assessment of whether the subsidy or scheme complies with the subsidy control principles, prohibitions and other requirements. This will provide an additional layer of independent and impartial scrutiny of the most potentially harmful subsidies and schemes, shining a light on the public authority's underlying assumptions and justifications for giving a subsidy or making a scheme.

The hon. Member for Aberdeen North asked what would be in these reports, and whether the Competition and Markets Authority or the subsidy advice unit itself could add extra things. As long as those things are relevant, clearly, the subsidy advice unit can add more information. What it cannot do is directly comment on the legitimacy of a subsidy, because it is not an enforcement body: it is an advice unit, so there is a distinction there.

*Question put and agreed to.*

*Clause 59 accordingly ordered to stand part of the Bill.*

#### Clause 60

POST-AWARD REFERRALS

**The Chair:** We come now to amendment 55 to clause 60. Happy Diwali to Seema Malhotra and every other Member.

**Seema Malhotra (Feltham and Heston) (Lab/Co-op):** I beg to move amendment 55, in clause 60, page 33, line 20, after "Secretary of State" insert

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

*This amendment extends the post-award referral powers under this section to the Devolved Administrations.*

It is a pleasure to serve under your chairship, Mr Sharma. You beat me to it: I wish you, and all who might be celebrating, a happy Diwali and Bandi Chhor Divas today. It is a very auspicious day, and it is a pleasure to be debating the Bill on such an auspicious day.

Clause 60 gives the Secretary of State the power to refer subsidies or schemes to the CMA after they have been awarded. Although Labour supports the general principle of post-award referrals, there are key problems that we wish to raise about this clause, not least the asymmetry of powers between the Secretary of State and the devolved Administrations, as well as some other key details. Amendment 55 has been tabled because, in our view, the Bill fails to provide the devolved Administrations with the proportionate and fair symmetry of powers that they should have, given that the Bill will operate across the UK.

**Kevin Hollinrake (Thirsk and Malton) (Con):** Is that not the point, though? The hon. Lady said “across the UK”; this is a UK-wide scheme, so we have to have somebody in overall charge of the scheme, which is why we cannot have symmetry of powers for all the devolved regions. The Secretary of State is Secretary of State for the entire United Kingdom, so does it not have to be the case that he holds some powers that the devolved Administrations do not?

**Seema Malhotra:** I thank the hon. Member for his contribution. He will see from the contributions of Opposition Members that we are not saying that exactly the same powers should be given in all circumstances to the devolved Administrations, but that there are areas in which arguments for the devolved Administrations having similar powers make sense within the context of how the regime may operate. With a view to how issues could be raised and dealt with, there may be very good reason for doing that. We propose this not for political purposes but because we seek a regime that will work effectively and with some symmetry of powers relating to the opportunity, where it would be helpful, to challenge subsidies. I will lay out a couple of reasons why.

The clause gives the Secretary of State the power to make post-award referrals to the CMA but does not extend this power to the devolved Administrations. The specific purpose of the amendment is to extend the post-award referral powers in the clause to the devolved Administrations. As it stands, the Secretary of State can refer to the CMA subsidies granted in Scotland, Wales and Northern Ireland that may be perceived to damage the interests of enterprises in England. However, the devolved Administrations cannot bring forward an argument. They may in time have good reason to refer subsidies—English or others—to the CMA that they may perceive damage interests within the devolved Administration areas.

**Kirsty Blackman (Aberdeen North) (SNP):** I do not intend to speak to the amendment, but I want the Opposition spokesperson to know that she has my full backing for it.

**Seema Malhotra:** I thank the hon. Member for her contribution in response to the challenge to us from the Government side, which I do not think is at all fair, because we have not at any point argued against this being a reserved power or the overall structure of the Bill. We have genuinely sought to amend the Bill to make sure that there is a fair and sustainable settlement that commands the confidence of all our nations.

Powers on subsidies and the regime overall should reside in Westminster, and we understand that it is crucial that subsidies under the regime do not distort

the UK's internal market—we would raise little concern on that, and we think it is vital that that is the case—but as such, devolved Administrations, such as the Scottish Parliament or Welsh Senedd, should have the opportunity to receive the CMA's advice on subsidies that they consider could damage their national interest. It is not only Labour that thinks that. During the evidence session on 26 October, George Peretz QC, a barrister specialising in state aid, said:

“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.]

Could the Minister share his reflections on those comments? Perhaps he will offer a robust argument for not allowing the devolved Administrations to make post-award referrals, because we fail to see a valid argument for that exclusion. Instead, it feels more like a lack of a fair distribution of powers, and something we should consider as the Bill makes progress. We therefore propose the amendment.

We hope that the Committee sees its importance in ensuring that Scotland, Wales and Northern Ireland feel that they have a fair role in the subsidy regime. I will await the Minister's remarks before deciding what we shall do on this amendment.

**Paul Scully:** The amendment would extend the Secretary of State's post-award referral power, set out in the clause, to the devolved Administrations. The debate is similar to one we had earlier. The Government intend to use the power in exceptional circumstances and it will be fully transparent, as a direction will be published in an appropriate place, which is usually gov.uk.

It is worth my being absolutely clear that the power simply allows for additional scrutiny and transparency of the public authority's assessment that took place before it gave the subsidy or made the scheme in question. The measure does not make the subsidy unlawful after the fact, nor does it block the public authority from giving more subsidies under the scheme in question. I reassure the hon. Member for Feltham and Heston that any use of the post-award referral power will be transparent. When the Secretary of State exercises the power, the direction must also be published in an appropriate manner. That will make it clear that the power is being used appropriately and only in those exceptional circumstances.

Turning to the amendment, I believe that the call-in power should remain a matter for the Secretary of State only. Subsidy control is a reserved policy area, as we have heard. As I said when speaking to amendment 52 to clause 55, the Secretary of State's responsibilities for subsidy control are UK-wide and, as in all matters, he will act in the interests of the whole of the UK. That includes responsibility for overseeing the system as a whole and ensuring that subsidies granted across the UK are compliant with our international obligations.

In the event that one or more of the devolved Administrations had serious concerns about a subsidy given or a scheme made, they would of course be able to request that the Secretary of State use the call-in power, as I said earlier. The Secretary of State would carefully

consider any request from his counterparts in the devolved Administrations on that, as in any other policy matter. I stress again, as I said on the formulation of the Bill and as we will on the guidance for and the running of the regime, we will continue to engage as closely as we can with all our colleagues in Scotland, Wales and Northern Ireland.

I believe, therefore, that it is neither appropriate nor necessary for the devolved Administrations to have the same ability to trigger a post-award referral. For the reasons that I have provided, I request that the hon. Lady withdraws the amendment.

**Seema Malhotra:** I thank the Minister for his remarks. I fail to see an explanation. I understand the restatement of his position, but I feel that the argument was missing. This area is important to the effectiveness of the regime as a whole and over time, so I will press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 4, Noes 8.*

#### Division No. 18]

#### AYES

Blackman, Kirsty  
Esterson, Bill

Fletcher, Colleen  
Malhotra, Seema

#### NOES

Baynes, Simon  
Benton, Scott  
Buchan, Felicity  
Hollinrake, Kevin

Millar, Robin  
Mortimer, Jill  
Scully, Paul  
Tomlinson, Michael

*Question accordingly negatived.*

2.15 pm

**Seema Malhotra:** I beg to move amendment 56, in clause 60, page 33, line 27, at end insert—

“(c) that there is a risk of negative effects on competition or investment between the United Kingdom and a territory or country outside the United Kingdom.”

*This amendment provides that a post-award referral can be made where the Secretary of State considers that a subsidy or scheme risks competition or investment between the UK and a third country.*

**The Chair:** With this it will be convenient to discuss amendment 57, in clause 60, page 34, line 1, leave out paragraphs (a) and (b) and insert—

“the day on which the subsidy is given or the scheme is made.”

*This amendment would provide the Secretary of State with 20 working days beginning on which a subsidy is given or a scheme is made.*

**Seema Malhotra:** It is my pleasure to move amendment 56 and to speak to amendment 57. We would like to address some further important gaps that we think exist in clause 60. First, as the clause stands, the Secretary of State cannot make a post-award referral on the basis that a subsidy may distort competition between the UK and a third country. In an article on 5 July entitled “UK Subsidy Control Bill—a brief summary”, George Peretz QC said that

“oddly, the Secretary of State does not appear to have that power if the possible subsidy only affects foreign countries, though such subsidies could well cause difficulty at international level.”

[Seema Malhotra]

Labour is therefore proposing amendment 56, which would allow the Secretary of State to make post-award referrals on the basis that a subsidy or scheme is distorting international competition. We hope the Committee can understand why this is an important amendment. If the Government choose not to support it, will the Minister outline what the reason is and why the Government do not feel the need to refer subsidies that distort international competition to the CMA?

Secondly, we are proposing amendment 57, which would change the Secretary of State's time to refer a subsidy or scheme to the CMA from 20 days after it is published on the database to 20 days after it is granted. The amendment is not intended to be used as a tool for reducing the time for post-award referrals; rather, it is intended to ensure that the Secretary of State can refer to the CMA grants that public authorities have incorrectly not categorised as a subsidy and that have therefore not been posted on the database. We hope the Minister recognises that, as the Bill currently stands, there is a loophole whereby subsidies incorrectly not identified can escape scrutiny and transparency. Amendment 57 is an attempt to close the loophole, and I therefore hope that the Government will work with us and support it.

**Kirsty Blackman:** Thank you for chairing this afternoon's meeting, Mr Sharma. I have a brief comment about the omission of the power set out in amendment 56. I would appreciate it if the Minister could let us know what assessment he has made of its compatibility with the trade and co-operation agreement and the World Trade Organisation rules if the Bill does not contain the power that the Opposition are suggesting should be put in via amendment 56.

**Paul Scully:** Clause 60, as we have heard, provides a power for the Secretary of State to direct a public authority to refer a subsidy or scheme to the subsidy advice unit after it has been given or made. The power can be used where the Secretary of State judges that there is risk of failure to comply with the subsidy control requirements, or of negatively impacting on competition and investment within the UK. The purpose of the power is to ensure that there is an opportunity for the subsidy advice unit to provide independent scrutiny and evaluation of the public authority's assessment of compliance with the subsidy control requirements in circumstances where the subsidy or scheme was not subject to mandatory referral before the subsidy was given or the scheme was made. That independent analysis will increase transparency and provide useful information to the Secretary of State and any potential interested parties, if they are considering a judicial review challenge to the subsidy or scheme. In circumstances whereby the subsidy is given in multiple instalments or further subsidies will be given under the scheme, it may also give the public authority advice that allows it to make adjustments for future instalments or subsidies.

Amendment 56 would add a further scenario that would permit the Secretary of State to direct a referral where they were concerned about a subsidy or scheme's potential impact on competition and investment between the United Kingdom and other territories. Clause 60(2)(b) explicitly underlines that a referral may be made where "there is a risk of negative effects on competition or investment within the United Kingdom."

That is important, because it reflects the domestic character of the new subsidy control regime and emphasises our commitment to protecting our vibrant free market economy.

However, as we have heard, the subsidy control regime is also concerned with impacts on international trade and investment and, in order to comply with our international obligations, this is enshrined in the subsidy control principles. In particular, principle G requires that the benefits of a subsidy or scheme outweigh the negative effects, including those on international trade and investment.

**Kirsty Blackman:** The Minister is attempting to explain why the Government have explicitly included one of the principles, but not the other principle. It seems to me, if one principle is included, they all need to be included, or none of them. Giving extra importance to one principle suggests that the other principles are less important, and therefore amendment 56 makes a huge amount of sense to me.

**Paul Scully:** I will come back to that in a second, but let me finish talking about principle G. If the Secretary of State has concerns that a subsidy does not comply with principle G, or any other subsidy control requirement that is connected to international trade or our international obligations, then they may already direct a referral under subsection 2(a) of this clause, meaning that this amendment is redundant.

I also want to point out that the Bill deliberately refers to "trade or investment" between the UK and other territories, rather than "competition or investment". The Secretary of State does not have any role in managing the balance of competition between nations. That is enshrined in those obligations.

Amendment 57 concerns the time limits for the referral power in clause 60. The Bill limits this power to within 20 working days from either the day in which the subsidy or scheme is entered onto the transparency database, or, where a subsidy or scheme is exempted from that requirement, 20 working days from the date the subsidy is given or made. These timeframes mean there is a significant window during which a post-award referral may be made. Most subsidies and schemes must be entered on to the database within six months of being given or made, while for tax measures, as we have discussed, the period is within a year.

Amendment 57 removes the ability to issue a post-award referral following entry on the transparency database, and would only allow a referral within 20 days of the subsidy being awarded or made. There is no loophole, as was suggested, but 20 days after the upload of the database is the end of the time period when the referral needs to be made. It does not start with the date of the upload on the database.

**Kirsty Blackman:** On the point the Minister made in relation to "competition or investment" and the disparity between that and "trade or investment", if the Opposition amendment referred to "trade or investment", would it be acceptable to the Minister?

**Paul Scully:** Again, the principles are enshrined, and it is the principle that complies with those international treaty obligations.

Going back to the timeframes, amendment 57 would have the effect of curtailing the power and reducing the opportunity to provide transparency on the most concerning subsidies. That would mean, in some circumstances, the deadline could have expired before the Secretary of State or any interested party had any news of the subsidy at all. The additional scrutiny and transparency offered by this measure will undoubtedly be lost in some cases which may have benefited from the use of this power, and risks undermining confidence in the system as a whole. I therefore request that the hon. Member withdraw amendment 56.

**Seema Malhotra:** I thank the Minister and the hon. Member for Aberdeen North for their comments.

The Minister referred to principle G in schedule 1, which I was going to refer to in my final comments. As the hon. Member for Aberdeen North highlighted, there seems to be an asymmetry between G (a) and (b) and what is reflected in clause 60(2). I take the point that using the word “trade” better reflects the wording in principle G, but the asymmetry issue remains. It might end up causing confusion because, on one hand, there is what is implied under principle G (a) and (b), but on the other clause 60(2)(b) says

“there is a risk of negative effects on competition or investment within the United Kingdom.”

It seems almost to imply that this power covers G (a) but not G (b), and I would hate for there to be confusion about this that was not intended.

I will not push the amendment to a Division, but I would be grateful if, perhaps in writing, the Minister could clarify this, and provide a more detailed note about how and where those powers may apply to risks of negative effects on international trade or investment. It is important that there is integrity in the Bill. If we have misunderstood something, that is absolutely fine, but if there is a gap or an area that could perhaps lead to confusion about what is and is not subject to a legal challenge, it would be helpful to resolve that earlier rather than later.

**Paul Scully:** I think that it is a misunderstanding, but I am happy to write to clarify that.

**Seema Malhotra:** 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:** Clause 60 provides a power for the Secretary of State to direct a public authority to refer a subsidy or scheme to the subsidy advice unit after it has already been given or made.

*Question put and agreed to.*

*Clause 60 accordingly ordered to stand part of the Bill.*

## Clause 61

### CMA REPORTING PERIOD FOR POST-AWARD REFERRALS

**Seema Malhotra:** I beg to move amendment 58, in clause 61, page 34, line 23, after “section 60” insert “, or makes a decision to investigate under section [Post-award investigations],”.

*This amendment is a consequential amendment linked to NC3.*

**The Chair:** With this it will be convenient to discuss new clause 3—*Post-award investigations*—

“(1) The CMA may decide to conduct an investigation in relation to a subsidy that has been given or a subsidy scheme that has been made.

(2) A decision under subsection (1) may be made in relation to any subsidy or subsidy scheme in respect of which the CMA considers—

- (a) that there has or may have been a failure to comply with the requirements of Chapters 1 and 2 of Part 2, or
- (b) that there has or may have been a failure to comply with the transparency obligations set out in Chapter 3 of the Part 2.

(3) Where the CMA makes a decision to investigate under subsection (1), it must direct the public authority to provide it with—

- (a) any assessment carried out by the public authority as to whether the financial assistance fell within the meaning of “subsidy” or “subsidy scheme” for the purposes of this Act, and the reasons for that conclusion;
- (b) any assessment carried out by the public authority as to whether the financial assistance if assessed to constitute a subsidy or subsidy scheme would comply with the requirements of Chapter 1 and 2 of Part 2 and the reasons for that conclusion;
- (c) any evidence relevant to those assessments;
- (d) in a case where such assessments were not provided, the reasons for the assessments not being provided;
- (e) any information that the public authority failed to enter in the subsidy database in accordance with Chapter 3 of Part 2; and
- (f) such other information as is specified in regulations under section 60(8)(a).

(4) Where the CMA decides to conduct an investigation under subsection (1), the direction given under subsection (3) must be made before the end of 20 working days beginning with the day on which the subsidy is given or the scheme is made.

(5) The CMA must send a copy of the direction given under subsection (3) to the public authority and the Secretary of State.

(6) The public authority must provide to the CMA the information required under subsection (3) before the end of the information period as defined in section 60(7).”

*This new clause provides the CMA with the power to conduct a post-award investigation where the public authority has or may have failed to comply with its requirements.*

**Seema Malhotra:** It is pleasure to move amendment 58 and to speak to new clause 3. I am grateful for the opportunity to do so, because we think that this is quite an important area in which to seek some wider changes to improve the Bill.

In relation to post-award referrals, new clause 3 says that the CMA must publish a report on the subsidy or scheme within 30 working days. That reporting period may be extended by agreement between the CMA and the public authority, or the CMA may in certain circumstances request an extension from the Secretary of State. The Secretary of State may also make regulations that amend the length of the reporting period.

We support clause 61 overall and will vote for it to stand part. However, new clause 3 would extend the CMA’s powers with regard to post-award referrals. This is an issue that George Peretz outlined in his evidence to us. New clause 3 would allow the CMA to conduct post-award investigations into subsidies or schemes on its own initiative. The aim of the new clause is to ensure that, as mentioned in our previous discussion, subsidies

[Seema Malhotra]

that are, perhaps incorrectly, not categorised as subsidies and that therefore avoid scrutiny and transparency are able to be scrutinised should they come to light. George Peretz told us:

“There is an issue about the position of subsidies that are not recognised by the granting authority as subsidies.”

He added that

“it will be true under the definition of subsidy in the Bill, that there is room for considerable disagreement and argument about whether certain types of measures are subsidies at all.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 42, Q61.]

Will the Minister enlighten the Committee as to his reflections on that? It is a genuine area of concern for someone who is a distinguished lawyer in the field. Does the Minister recognise that the Bill therefore appears to contain loopholes with regard to subsidies that may deliberately not be defined as such, and are therefore not formally recognised as such?

2.30 pm

We have taken the comments raised in evidence quite seriously. We believe that the Bill contains this loophole and we want it closed. We want to ensure that all subsidies are subject to transparency and scrutiny and that, if they are not entered into the subsidy database but there is good reason to question or challenge whether they are indeed a subsidy and should be considered subject to the subsidy control regime, there is some mechanism to allow that to happen.

The CMA is an independent, well-regarded institution. It can and should be trusted to undertake the necessary investigations into certain subsidies, while not wasting time and where there is good reason—there could be some discussion about the criteria that may be helpful in determining that. As such, we believe that new clause 3, which gives the CMA the power to undertake investigations on its own initiative, is an appropriate response to the loophole. Amendment 58 is consequential on new clause 3. I would be grateful for the Minister’s comments.

**Paul Scully:** Clause 61 sets out the process for the subsidy advice unit’s report following a post-award referral by the Secretary of State under clause 60. Amendment 58 provides for a new clause to be inserted after clause 61, seeking to establish a power for the subsidy advice unit to initiate a post-award referral of its own accord. The amendment inserts a reference to the new clause proposed by the hon. Member for Feltham and Heston.

I will start by setting out the policy rationale behind the specific role for the new subsidy advice unit set out in the Bill. The Government believe that subsidy control is far more than a box-ticking exercise. It is essential to protect UK competition and investment and to ensure that we are compliant with our international commitments. However, some commentators, and perhaps some hon. Members, seem to believe that the highest form—the gold standard—of subsidy control is the EU state aid regime. I entirely reject that view. Public authorities controlled by all parties have faced delays, unnecessary bureaucracy, and disproportionate prohibitions.

The Bill will establish a strong subsidy control regime that safeguards our vibrant free market economy. It

also makes the most of the opportunities of exiting the EU by avoiding the complex and stifling rules and regulation that are a hallmark of EU state aid.

**Seema Malhotra:** In relation to the debates on Second Reading and others that we have had in good faith in relation to the Bill, it is important not to draw on arguments that are not relevant or pertinent to the clear point being made. There may well be public authorities that, for all intents and purposes, are granting subsidies—spending public money—without categorising them as subsidies. In doing so, they avoid being held publicly accountable and being challenged and scrutinised in relation to the subsidy control principles. If that is the case, what happens, and who can act if a challenge should be brought?

**Paul Scully:** I was just about to turn to enforcement. The role of the subsidy advice unit is one of the most important pillars of our new approach. It strikes the right balance, as part of an enabling regime that is none the less robust in its protection of competition and investment.

The unit will enhance the scrutiny and transparency of the subsidies that are most likely to lead to distortive or harmful effects. In doing so, it will provide reassurance to public authorities giving subsidies that they have appropriately considered the subsidy control requirements. I welcome that—it speaks exactly to the hon. Lady’s point.

The subsidy advice unit is not a regulator. It does not have investigatory or enforcement powers. The mechanism for enforcement of the new domestic subsidy control regime set out in the Bill is the process of a judicial review challenge in the Competition Appeal Tribunal.

I start from the position that most if not all public authorities take their statutory obligations very seriously, as they do their obligations to spend taxpayers’ money effectively, and to balance the positive effects of their interventions against the costs to UK competition and investment. Of course, there is a need for safeguards and enforcement mechanisms and, as hon. Members have emphasised, for transparency and opportunities for public scrutiny, but a statutory obligation is none the less a powerful tool.

Under the UK constitution, the normal way to challenge the actions of a public authority in respect of their statutory obligations is through judicial review in UK courts and tribunals. We have taken that path in the Bill, broadly replicating the judicial review process in part 5 of the Bill, so that cases can be brought to the Competition Appeal Tribunal, with some adjustments and additions to account for the specificities of giving subsidies. Most notably, that means that we have provided for a recovery mechanism.

New clause 3 would give an investigatory role to the subsidy advice unit that is at odds with the specific and limited role set out in the Bill. We want an agile and responsive regime that firmly places decision making and responsibility with the public authorities. That allows space for innovation and creative solutions to local policy problems, while protecting competition and investment through a measured risk-based approach to enforcement.

The hon. Member for Feltham and Heston may or may not agree with that vision, but we do not believe that the new clause represents a viable or credible alternative. It does not establish how the SAU may come by information directly that may lead it to launch an investigation. It does not establish any incentive for a public authority to comply with any such investigation, nor any consequences for failing to do so. It does not provide the means for the SAU to compel a public authority to co-operate with any such investigation, nor does it suggest in what way the SAU should analyse the information it gathers through its investigation. It does not offer any meaningful improvement to the Bill.

The hon. Lady asked what would happen with a subsidy of particular interest that has not been sent to the CMA. It is then a prohibited subsidy. That is covered in the Bill. The appropriate avenue is through the Competition Appeal Tribunal, if it has caused harm.

**Seema Malhotra:** There is a lot to work through and to disentangle about what exactly would happen. The first question that would need to be asked in such a situation is, “Is this a subsidy?” Which body does the Minister consider is the right body to confirm whether it is a subsidy within the definitions and the regime in the Bill? Is it the Competition Appeal Tribunal? Or would it be, in normal circumstances, the CMA? It would be helpful to know.

**Paul Scully:** It is the public authority. That is the whole point of the permissive approach in the Bill. The guidance that will be published and the principles that are set out in the Bill, alongside the ability to refer to the subsidy advice unit, will give the public authority the knowledge it needs.

**Seema Malhotra:** I understand that point—it is a fundamental part of how the regime will operate. In a circumstance where, either deliberately or mistakenly, a public authority does not categorise its subsidy as a subsidy and it is not entered on the database, and therefore it is not subject to the same opportunity for scrutiny and challenge, but it is then identified and raised through some other means, one of the first questions will be whether or not it is a subsidy. I do not think that in that circumstance we can go back to the public authority and have it mark its own homework, so would the institution responding to the challenge answer whether it is a subsidy, or would it be the Competition Appeal Tribunal, or would it be the CMA?

**Paul Scully:** It would be the Competition Appeal Tribunal, because the enforcement is done through judicial review.

**Seema Malhotra:** I thank the Minister for that. That is helpful for us to take away and reflect on within the context of the flow of functions in the Bill, and I think we will come back to it. He talked about some questions that our new clause might give rise to. If the Government change their mind, and consider that there might be a gap and a different way of addressing it, we would of course be very happy to make some suggestions in addition to new clause 3. Somehow this needs to be more clearly defined within the context of the whole regime. It is important for transparency, value for money and to ensure that where public authorities may, deliberately

or otherwise, seek to avoid the scrutiny of the regime, it is easier to bring that back in, and for there to be transparency. 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:** Clause 61 sets out the timeframe within which the subsidy advice unit must publish its post-award report on a subsidy or subsidy scheme once it has been referred to by the Secretary of State.

**Seema Malhotra:** We will support clause stand part.

*Question put and agreed to.*

*Clause 61 accordingly ordered to stand part of the Bill.*

## Clause 62

### CMA REPORT FOLLOWING POST-AWARD REFERRAL

**Paul Scully:** I beg to move amendment 4, in clause 62, page 35, line 40, leave out paragraph (b).

*This amendment modifies the content of the CMA's post-award report to ensure consistency with the content of the pre-award report required under clause 59.*

**The Chair:** With this it will be convenient to discuss Government amendment 5.

**Paul Scully:** Amendment 4 is a minor change to clause 62(4), which sets out the requirements for the SAU's report following post-award referral. The amendment ensures clarity and consistency between the reports produced by the subsidy advice unit for both pre-award and post-award referrals. The effect of the amendment is to remove provision for the subsidy advice unit to offer optional advice on changes required to mitigate the distortive effects of a subsidy or scheme as part of its report following the post-award referral of a subsidy or scheme. On reflection, and having worked closely with SAU colleagues on the design of their functions, the Government decided that a separate provision was unnecessary for both pre-award and post-award reports.

Clause 62(4)(a) already provides for the SAU to offer optional advice on how a subsidy or scheme might be modified to better comply with the subsidy control requirements under chapters 1 and 2 of part 2 of the Bill. The subsidy control requirements include the obligation to ensure that subsidies are consistent with the principles, including principle F, which provides that subsidies should minimise

“any negative effects on competition or investment within the United Kingdom.”

Subsection (4)(a) therefore already enables the subsidy advice unit to advise on how any adverse impact on competition and investment could be mitigated to ensure consistency with the subsidy control principle. Subsection (4)(b) is therefore unnecessary. The amendment removes the redundant paragraph for the clarity and consistency that I talked about, with the pre-award referral reports detailed under clause 59, where there is no separate provision of that kind.

2.45 pm

Amendment 5 would remove nuclear energy subsidies and subsidy schemes from the list of subsidies that are exempt from the referral provisions in chapter 1 of part 4. It would, in essence, carve nuclear energy subsidies

back into the referral regime. The Bill carves nuclear energy subsidies out of the referral provisions. The list of exempt areas in clause 64 includes matters such as subsidies under the minimal amounts of financial assistance threshold and subsidies for national or global economic emergencies, or else subsidies to which specific international obligations apply. There is a clear rationale that these subsidies are either of generally low risk, in urgent need of being granted or subject to bespoke arrangements established elsewhere in the Bill because of our international obligations. These rationales do not apply to nuclear energy subsidies.

The Government are clear that nuclear energy subsidies and subsidy schemes should be subject to the terms of the subsidy control regime. This includes referral to the subsidy advice unit in cases where the subsidy or scheme in question is of interest or particular interest.

**Kirsty Blackman:** I am baffled by this Government amendment. It seems to be directly opposite to what the Opposition moved. The Opposition were concerned that one of the principles was mentioned in the post-award referrals clause, but the others were not. With amendment 5, the Minister concedes that one of the principles should not be mentioned and is therefore asking for it to be taken out of clause 62 but not of the post-award referrals clause. To clause 60, he argued, I think, that it was okay to include one of the principles, but not the others. I am confused about why he made one argument at one point in the debate but is now arguing the opposite—for the removal of one of those principles.

**Bill Esterson (Sefton Central) (Lab):** It is good to see you back in the Chair, Mr Sharma. The hon. Member for Aberdeen North makes a good point, which we reiterate, about amendment 5, which we will come to because of its relation to our amendments to clause 64.

**Paul Scully:** On the point made by the hon. Member for Aberdeen North, in the previous sitting we talked about UK competition and investment. It simply emphasises the point about UK competition and investment. It does not have any significant effect, because it is already captured in the guiding principles. We want to make sure that there is absolute clarity for businesses and public authorities with clause 62.

**Kirsty Blackman:** So the principle has been removed from clause 62 but is being kept under clause 60? Is that correct? There is no Government amendment to remove that provision from clause 60, but the Government felt it was so important that they need to remove it from clause 62, even though it is literally the same—whether it is post-award referrals or CMA reports following a post-award referral. I am just baffled by the inconsistency, to be honest.

**Paul Scully:** There is no Government amendment to clause 60.

*Amendment 4 agreed to.*

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

**Paul Scully:** Clause 62 specifies the content of the subsidy advice unit's report on a subsidy or scheme that is referred by the Secretary of State after being given or made. The subsidy advice unit must evaluate any assessment

that the public authority has provided as to whether the subsidy or scheme would comply with the subsidy control principles, prohibitions and other requirements. If an assessment was not provided, that fact must be recorded in the report, along with any reasons provided by the public authority as to why an assessment was not provided. If the subsidy or scheme is ongoing, the subsidy advice unit may also provide advice about how the subsidy or scheme might be modified with a view to ensuring compliance with the principles, prohibitions and other requirements. Finally, the Secretary of State may make further provision by regulation as to the content and form of the post-award referral report.

*Question put and agreed to.*

*Clause 62, as amended, accordingly ordered to stand part of the Bill.*

### Clause 63

#### REFERRALS IN RELATION TO SUBSIDY SCHEMES

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

**Paul Scully:** Clause 63 excludes individual subsidies granted through the mechanism of a subsidy scheme from being capable of referral to the subsidy advice unit under part 4. That aligns with the approach taken throughout the Bill. Public authorities may create subsidy schemes providing for the giving of individual subsidies. It is the scheme itself that must be assessed for its compliance with the subsidy control requirements, rather than the individual subsidies granted within the scheme. It is likewise the scheme that falls to be challenged in the CAT for failure to comply with the subsidy control requirements. Ultimately, it is not necessary to refer subsidies given under a scheme because they can be given only within the set parameters of that scheme, and the scheme itself is capable of being referred to the subsidy advice unit.

**The Lord Commissioner of Her Majesty's Treasury (Michael Tomlinson):** Very good.

**Bill Esterson:** I say to the hon. Member who spoke from a sedentary position that it was not very good. As we have said throughout the—

**Michael Tomlinson:** For Mid Dorset and North Poole.

**Bill Esterson:** I think he is trying to intervene. I would not take an intervention from him anyway, because he does not wear a mask.

I rise to reiterate our concern about the lack of transparency throughout the Bill and how subsidies cannot be called in when they are under schemes. That is a continuous thread. The real concern is that potential abuses can be missed as a result of that approach. The clause exempts subsidies under schemes from a review, from post-award referrals and from voluntary referrals. We agree that schemes provide a quicker and easier route to provide subsidies, but that should not mean that subsidies awarded under those schemes should escape due scrutiny. If there is not a problem with a subsidy, there is nothing to be concerned about, but if there is a problem with a subsidy awarded under a scheme, there needs to be a mechanism, and I hope the Minister will explain what that mechanism will be,

because I do not think we have heard during our deliberations about the scrutiny of potential problems with subsidies awarded under schemes.

There is the potential for a back door of free, unscrutinised public cash being opened up. We have seen problems throughout the pandemic where scrutiny was removed. I will not go over them in too much detail. We have heard about them already, such as the Health Secretary's pub landlord, advisers to the Board of Trade, and the problems of Radox and the now former right hon. Member for North Shropshire (Mr Paterson)—I understand, hot off the press, that he has resigned. Some £3.5 billion-worth of covid-19 contracts were awarded to firms with links to the Conservative party, according to Government procurement data. That is an example of why we need adequate scrutiny.

**The Chair:** Order. That is not within scope.

**Bill Esterson:** It is an example of why scrutiny is required in this legislation.

**The Chair:** I am advised that that is not in the scope of this stand part debate.

**Bill Esterson:** There is a monumental lack of scrutiny in the clause that should not be allowed to continue, so we will oppose it.

**Kirsty Blackman:** I have a few questions. Are there any circumstances in which a subsidy given under a subsidy scheme could be considered of interest or of particular interest where the scheme itself is not considered of interest or particular interest? If that is the case, is it possible to ensure that a subsidy scheme in which any of the potential subsidies are considered as possibly of interest or particular interest is subject to the mandatory or voluntary referral, rather than the subsidies given under those schemes not being subject to any referral, despite the fact that some of them might tick the boxes and some will not? Does the Minister see what I mean?

I understand that the question is complicated but, specifically, I am concerned about the lack of ability to refer individual subsidies. Only subsidy schemes may be referred to the mandatory or voluntary referral process; the subsidies made under those schemes may not be referred. However, if we had a scheme that seems to tick all the normal boxes to make it acceptable as a subsidy scheme—it is given under clause 10 and all makes sense—but one of the subsidies given under that scheme is something that is of interest or particular interest, will the Minister confirm that that scheme will therefore be subject to mandatory referral, even if only one of the subsidies given under the scheme is of interest or particular interest?

Even from reading clause 10, I am not sure quite how tight “subsidy scheme” is drawn. Subsidy schemes—given the schemes we have seen in relation to covid, for example—can be incredibly wide and apply to a significant number of industries, whereas the Secretary of State might have made it clear that any subsidies given under agriculture, for example, are considered as particular interest. A scheme could apply to everything in a certain area—widely drawn—but might not be challengeable in its own right.

**Paul Scully:** If a scheme can contain a subsidy of interest or particular interest, that scheme becomes a scheme of interest or particular interest, depending on the circumstances. That is therefore very much the case.

In answer to some of the points made by the hon. Member for Sefton Central on hiding subsidies and distorted payments, we have the basic level of how to treat public money—the statutory obligations on those public authorities that we discussed earlier—but the schemes themselves do not provide a back door for potentially multiple subsidies; public authorities have to consider the principles of the scheme, in the same way as they would for individual subsidies. They must not make a scheme if they judge that any subsidy within that scheme conflicts with any of the principles.

The decision to make the scheme has exactly the same risk-based scrutiny of the potential challenges as the decision to award a subsidy—especially those schemes of particular interest, which are called in by the Secretary of State and must be referred to the subsidy advice unit.

**Bill Esterson:** I want to tease out some information from the Minister. He used the phrase “risk-based scrutiny”, but I get no sense of what, if there is abuse of a scheme, the mechanism is to ensure that the subsidies within the schemes are not applied in a distorted way or in a way that misuses public money. That is the bit that I do not get.

**Paul Scully:** The scheme itself will be challengeable.

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

*The Committee divided: Ayes 8, Noes 3.*

#### Division No. 19]

#### AYES

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

#### NOES

Esterson, Bill	Malhotra, Seema
Fletcher, Colleen	

*Question accordingly agreed to.*

*Clause 63 ordered to stand part of the Bill.*

#### Clause 64

#### OTHER EXEMPTIONS

**The Chair:** I call Seema Malhotra to move amendment 59

**Bill Esterson** *rose*—

**The Chair:** Apologies. I call Bill Esterson.

3 pm

**Bill Esterson:** I beg to move amendment 59, in clause 64, page 36, line 11, leave out paragraphs (a) and (b).

*This amendment removes the exemptions in relation to the CMA's referrals and functions, for streamlined subsidy schemes and minimal financial assistance.*

[Bill Esterson]

We are all having fun changing our minds this afternoon—well, maybe the Government are not changing theirs too much. We have tabled amendments 59 and 60, and the combined effect of those amendments would be to remove

“the exemptions in relation to the CMA’s referrals and functions, for streamlined subsidy schemes and minimal financial assistance.”

We understand that it may well be appropriate to exempt certain subsidies from review. During a natural disaster or a national or global economic emergency, it makes sense that subsidies designed to alleviate those emergencies should be exempt from the regulations. The same goes for a national security emergency; matters related to Bank of England monetary policy; legacy and withdrawal agreement subsidies; tax measures; special public economic interest assistance; and large cross-border or international co-operation projects. However, Government amendment 5 acknowledges that it would not be appropriate for subsidies in relation to nuclear energy to be exempt from due scrutiny, so this is about being consistent. That goes to the point that the hon. Member for Aberdeen North has made a number of times today alone, about whether subsidies awarded in unexceptional circumstances—namely, streamlined subsidy schemes and minimal financial assistance—should be free from appropriate transparency and scrutiny. We are being consistent by continuing that point.

During the debate on clause 63 stand part, I did not get an answer to my question about why the Minister believes that those subsidy schemes should be exempt from regulations. I go back to what Professor Rickard told us in Committee:

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

The Minister—and, from memory, the Secretary of State on Second Reading—talked about this domestic subsidy scheme being an opportunity to demonstrate a new way of operating a state aid regime, having left the EU system behind us. Indeed, some of the questions that hon. Members asked during the evidence session were of a similar nature: they were about what we could learn and what we could do in order to have the best possible system and lead the world. That is what the spirit of this amendment is about: improving transparency to deliver the best quality of regime possible. As Thomas Pope said when summed up his evidence:

“My view is that there is a benefit to more transparency.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 20, Q24.]

We have made the point multiple times about the importance of transparency in public expenditure and what a good thing it is, because without it, there is a danger of public finances being spent recklessly without consideration of value for money. Our amendments would ensure that when a subsidy is awarded in unexceptional circumstances, there is adequate transparency. Again, I have to ask the Minister why he is so resistant to increased transparency in this part of the Bill.

**Kirsty Blackman:** I want to raise specific concerns about the first part of this amendment—I am not concerned about the amendment, but I have concerns relating to the first part of it, which is about taking out paragraph (a). Paragraph (a) relates to streamlined subsidy schemes, which were discussed in clause 10. In clause 10, the streamlined subsidy schemes are allowed to be made only by a Minister of the Crown, rather than by anybody else. I understand the Minister’s desire for an ability to make streamlined subsidy schemes—that makes sense. Unfortunately, the amendments that were tabled to widen that out to allow the devolved Administrations to make streamlined subsidy schemes were not accepted.

The exemption of streamlined subsidy schemes from the whole of chapter 1 of part 4 bothers me. If the whole point of the streamlined subsidy schemes is in order for things to happen quickly, I understand that the Minister would not want the mandatory or voluntary referral process to apply in respect of them. However, I do not understand how he can justify the post-award referrals not taking place specifically for streamlined subsidy schemes. It is completely reasonable that, should a streamlined subsidy scheme be about a subject of interest or particular interest, a post-award referral should take place.

I understand completely that the subsidy scheme needs to go before Parliament in order to become a streamlined subsidy scheme, but Parliament is not always right. Sometimes Parliament is wrong, and sometimes it bears scrutiny from experts such as the CMA, which should have the ability to look at this as a post-award thing. I would probably not have gone quite as far as the Labour Front Bench, although I will support this amendment, but I have particular concerns about the lack of post-award scrutiny for streamlined subsidy schemes. If we have a parliamentary process, we are not getting the benefit of the CMA’s advice or its consideration.

It is the case that mistakes were made during the course of covid. Things were done too quickly, and errors were made as a result. An after-the-fact examination to find out what went wrong and whether it is possible to do better next time would be helpful, particularly around streamlined subsidy schemes. Once again, that is not about trying to remove the speed of the process—I understand why the Minister wants that speed—but about a post-award or post-subsidy scheme set-up check to ensure that things are going the way the Government intend them to go.

**Paul Scully:** Clause 64 provides for a limited number of exemptions from some or all of the provisions on the referral of subsidies and schemes to the SAU. The objective of subsections 1 and 2 is to list the types to which it is inappropriate for the SAU referral provisions to apply.

In some cases, the substantive subsidy control requirements do not apply, so it is not possible to evaluate a public authority’s compliance with those requirements. In other cases, the subsidy needs to be given so quickly, as we have heard, that it would not be appropriate to add an additional process that could delay the subsidy.

In the case of streamlined subsidy schemes, the subsidy or scheme will already be subject to additional scrutiny and transparency through other means. They will be developed by the Government through engagement with

experts and other public authorities and, once made, they will be laid before Parliament. I take the point of view of the hon. Member for Aberdeen North, but it is the development beforehand that will provide the scrutiny, input and engagement that will then come to this place.

Amendment 59 would bring streamlined subsidy schemes and minimal financial assistance subsidies into the scope of part 4, chapter 1, and therefore make them subject to referrals to the CMA. Of course, the CMA's role in this regime is to help public authorities to make assessments against the subsidy control requirements, so that subsidies do not unduly distort competition. It is not necessary for streamlined subsidy schemes or minimal financial assistance subsidies to be referred to the CMA, because these types of subsidy are those that are less likely to distort competition in the first place.

We as a Government intend to use streamlined subsidy schemes for low-risk and non-contentious subsidies, to ease the administrative burden for other public authorities of giving subsidies within those terms. The streamlined schemes are available for public authorities to use, if they choose to, when granting commonly used subsidies. As such, streamlined routes will be carefully designed to minimise distortive effects on competition. Streamlined subsidy schemes will be developed and publicised as part of the subsidy control regime. As I have already said, we will continue to engage with experts, public authorities and subsidy recipients as we prepare for implementation, and that engagement will cover streamlined subsidy schemes. If necessary, the Government will also be able to obtain advice from the experts in the subsidy advice unit in developing the schemes under existing powers. Once made, they will be laid before Parliament, so that Members will be able to examine the schemes for themselves. Finally, I should emphasise that the schemes are still subject to the subsidy control requirements. In the very unlikely event that there are grounds to think that they may not comply with the subsidy control principles, they can be challenged in the Competition Appeal Tribunal.

The subsidy control requirements do not apply to the exemption for minimal financial assistance, simply because small subsidies are not generally capable of causing serious distortions of competition. We have previously heard from the Opposition that MFA exemptions should not exist at all, but that position is fundamentally at odds with the Government's intention that the new subsidy control regime should enable public authorities to award subsidies more quickly and easily in order to meet local needs and drive economic growth. Although the subsidy control requirements are not burdensome, they would still constitute an unnecessary barrier to giving small, less distortive subsidies, and I would draw the attention of the hon. Member for Sefton Central to the consultation, in which 92% of respondents agreed with the Government's proposal that subsidies below the threshold of £325,000 special drawing rights, which approximates to £336,000, should be exempted from the subsidy control requirements. We have therefore proposed a threshold of £315,000 in the Bill, to account for exchange rate fluctuations.

I have already made the case for exempting minimal financial assistance from the subsidy control requirements. As I have said, the role of the subsidy advice unit is to advise public authorities in assessing subsidies against the subsidy control requirements. When those requirements

do not apply, as in this case, it is illogical for there to be a possibility of referrals to the subsidy advice unit. As such, I believe it is unnecessary for streamlined subsidy schemes and minimal financial assistance to be subject to the referral provisions in part 4 of the Bill. For that reason, I urge the hon. Member for Sefton Central to withdraw the amendment.

**Kirsty Blackman:** I have a quick question for the Minister, which he does not have to answer now. I would appreciate it if he could consider when a streamlined subsidy scheme is being published and set before Parliament. He has made it clear that a number of people will be consulted and that it will be drawn up in parallel with thinking from experts and potential recipients of the subsidy scheme. That is fine, but when we are assessing those streamlined subsidy schemes, it would be helpful for Parliament to have that information, and particularly to have a view from the SAU, or from the CMA more generally, about the streamlined subsidy scheme. Even if the SAU just says, "We think this looks good," that is at least more information for Parliament. It would give me more comfort to know that the scheme fulfils the principles, or at least that the SAU thinks the scheme fulfils the principles as they are laid out. Therefore, it would be much more reasonable for clause 64(1)(a) to be included if we were given that level of comfort.

**Bill Esterson:** Again, we just are not getting from the Minister certainty about the creation of the regime, and this is a common problem all the way through. We are waiting and it is uncertain exactly how this will operate, which makes it very difficult for us to judge whether what we will end up with will provide a degree of scrutiny and transparency in the use of public funds. That applies both to streamlined subsidy schemes and to minimal financial assistance. Although I think the Minister is right about the broad point that smaller payments are unlikely to have the potential to distort in economic terms, they can still be misused. As part of the regime, we are still missing an adequate way to scrutinise, and the hon. Member for Aberdeen North gave some good pointers on how that might be addressed. For those reasons, we will push the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 4, Noes 8.*

#### **Division No. 20]**

#### **AYES**

Blackman, Kirsty  
Esterson, Bill

Fletcher, Colleen  
Malhotra, Seema

#### **NOES**

Baynes, Simon  
Benton, Scott  
Buchan, Felicity  
Hollinrake, Kevin

Millar, Robin  
Mortimer, Jill  
Scully, Paul  
Tomlinson, Michael

*Question accordingly negated.*

*Amendment made: 5, in clause 64, page 36, line 22, leave out paragraph (k).—(Paul Scully.)*

*This amendment omits the exemption for subsidies, or subsidy schemes, relating to nuclear energy from the referral requirements of Chapter 1 of Part 4.*

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

**Paul Scully:** Clause 64 provides for a limited number of exemptions from some or all of the provisions on the referral of subsidies and schemes to the subsidy advice unit. Subsections (1) and (2) exempt from the provisions of chapter 1 of part 4 various subsidies or schemes where either the subsidy control principles, prohibitions and conditions do not apply or it would otherwise be inappropriate for the provisions on referrals to apply. Subsection (3) confers a reserve power on the Secretary of State to exempt subsidies or schemes from the mandatory referral requirements where there are urgent and certain exceptional circumstances that mean that it is in the public interest that the scheme or subsidy can be given without the delay that would result from a referral. The power does not exempt the subsidy or scheme from the

subsidy control requirements under part 2 of the Bill. It will still be necessary for the public authority to comply with the duty to apply the principles and other requirements.

**Bill Esterson:** We have debated the amendment and the need for the change to this clause. We have tested the will of the Committee already and will not oppose clause stand part.

*Question put and agreed to.*

*Clause 64, as amended, accordingly ordered to stand part of the Bill.*

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

3.18 pm

*Adjourned till Tuesday 16 November at twenty-five minutes past Nine o'clock.*

**Written evidence reported to the House**

SCB04 The Centre for Public Data

