

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## SUBSIDY CONTROL BILL

*Eleventh Sitting*

*Thursday 18 November 2021*

*(Morning)*

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CLAUSE 78 agreed to.  
SCHEDULE 3 agreed to.  
CLAUSES 79 TO 92 agreed to.  
New clauses considered.  
Bill, as amended, to be reported.  
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**not later than**

**Monday 22 November 2021**

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**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 18 November 2021

(Morning)

[CAROLINE NOKES *in the Chair*]

### Subsidy Control Bill

11.30 am

**The Chair:** Before we begin, I have some preliminary announcements, particularly about face coverings. Members are expected to wear them, unless exempt, when they are not speaking, and are expected to maintain distancing as far as possible, which I can see you have all done. That is in line with current Government and House of Commons Commission guidance. Please give each other space when leaving the room. I remind Members that they should have a lateral flow test twice a week if they are coming on to the estate, which can be done either in the testing centre in Portcullis House or at home. Please send speaking notes by email to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk). Officials in the gallery should communicate electronically with Ministers. Can I have phones on silent, please? I gently remind Members that tea and coffee are not allowed during sittings.

#### Clause 78

SUBSIDIES AND SCHEMES IN PRIMARY LEGISLATION

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

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully):** It is a pleasure to serve under your chairmanship, as ever, Ms Nokes. Clause 78 applies the provisions in the Bill to subsidies made by means of primary legislation, as set out in schedule 3. Because of the specific nature of the subsidies given by means of primary legislation, the obligations on those responsible for subsidies in primary legislation needs to be set out separately, rather than being included in the scope of the core clauses of the Bill.

The core purpose of schedule 3 is to apply the subsidy control requirements to subsidies in devolved primary legislation. The schedule makes the necessary technical provisions to that end, and ensures that subsidies in devolved primary legislation are not subject to mandatory referrals to the subsidy advice unit. The schedule provides that subsidies in Acts of Parliament are subject to the transparency requirements on voluntary referrals to the subsidy advice unit. The measures ensure that the subsidy control regime will be comprehensive and robust while taking into account the UK's unique constitutional make-up.

Before I go into detail about clause 78, it will be helpful to explain what I mean when I refer to subsidies provided by primary legislation. Primary legislation in Westminster or the devolved legislatures can provide for granting subsidies in a number of ways. The most common is by conferring a discretion on Ministers or other public authorities to provide financial assistance, for example section 7 of the Industrial Development Act 1982 in respect of financial assistance in assisted areas. That provides the necessary statutory underpinning for financial assistance but does not mandate financial assistance to be given. The amount and conditions of

any financial assistance are at the discretion of the public authority. A subsidy that is granted under a power conferred by a primary enactment is not a subsidy granted by primary legislation. For these purposes, therefore, a subsidy is granted by primary legislation only if the Act itself makes provision that directly amounts to a grant of a new subsidy, or requires a grant of a new subsidy by a public authority with no room for discretion on the part of that authority. Apart from taxation, that is very rare. The reference to the subsidy granted by primary legislation is in practice therefore usually concerned with the grant of a statutory entitlement to a specific tax relief or credit that amounts to a subsidy, for example a tax credit for small businesses to carry out research and development.

I will quickly set out in further detail why each paragraph was included in schedule 3, to which clause 78 relates. Paragraph 1 sets out the intention of the schedule, which I have explained. Paragraph 2 sets out the relevant definitions for the purposes of the schedule, and they are mainly self-explanatory. Paragraph 3 sets out how certain terms of the Bill should be read for the purposes of the schedule, so that the Bill applies to subsidies provided by means of primary legislation. Paragraph 4 provides for the distinction that I discussed before: that subsidies given under a duty imposed by primary legislation are covered by this schedule, but those given under a power in primary legislation are not.

Paragraph 5 confirms that references to a subsidy in schedule 3 should also be taken to refer to a subsidy scheme, as is the case in the rest of the Bill. Paragraphs 6 and 7 apply the subsidy control principles, prohibitions and other requirements, and exemptions in the Bill to subsidies granted or subsidy schemes made by means of devolved primary legislation. In any court proceedings, the provisions in schedule 3 require the courts to consider the views and considerations of the promoters of the Bill, that is, those introducing the Bill or Members of the devolved legislatures who lodge amendments amounting to subsidies, so that courts are not put in the constitutionally novel position of questioning the internal proceedings of the relevant legislature. Paragraph 8 applies the transparency requirements to subsidies in primary legislation, including Acts of Parliament and devolved legislation.

Paragraph 9 deals with the referrals of subsidies in primary legislation to the subsidy advice unit in the Competition and Markets Authority. Voluntary referrals may be made in respect of subsidies or schemes of interest, or subsidies or schemes of particular interest, made in devolved primary legislation or in Westminster Acts of Parliament. That means that the appropriate Ministers, Departments or the Member promoting the subsidy may refer to the SAU those subsidies that have a higher likelihood of distortion. This allows them to make a referral at their discretion, where they judge that the advice or transparency report would be beneficial. That provision does not require mandatory referrals, in view of the unique legislative position and procedure of those subsidies. That means there will be no procedural delays or disruption to primary legislation.

Finally, paragraphs 10, 11 and 12 make the necessary modifications to the enforcement provisions in part 5 of the Bill to apply them to subsidies in devolved primary legislation, which will allow subsidies given by the means of devolved primary legislation to be challenged by

judicial review and will include the ability for courts to order devolved Ministers or a Northern Ireland Department to recover a non-compliant subsidy provided by means of devolved primary legislation. Given their expertise in the sensitive task of considering the lawfulness of provisions in devolved primary legislation, the appropriate courts to review such subsidies will be the Court of Session in Scotland, the High Court of England and Wales in respect of Wales, and the High Court in Northern Ireland.

**Seema Malhotra** (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Ms Nokes. There are a number of technical provisions here relating to how implementation will take place. I thank the Minister for his opening remarks. There are areas relating to the application of principles, transparency referrals and recovery orders that we have covered in other debates, and I do not propose to go over those arguments. There are points that the Minister is coming back to us on and we will also review the areas to take further ahead of the Bill moving to Report stage.

I have a couple of queries, which I would be grateful if the Minister could clarify. When subsidies are provided by the means of primary legislation, will he clarify whether there will be any differences on reporting, transparency and so on, or will they be expected to be subject to the same control arrangements?

Secondly, the application of principles in paragraph 6 of schedule 3 also

“applies to subsidies provided by means of devolved primary legislation”.

Are there any either unintended, or intended, effects on the competencies of the devolved Administrations? This issue was one that came up in evidence with the devolved Administrations. There was a concern from the Welsh Government about where there could be overlap, or unintended consequences, with policy decisions being made under devolved competencies, particularly on economic development—that there could be some interplay between the provisions in this Bill and existing competencies. I would be grateful if the Minister could respond on those points.

**Paul Scully:** Essentially, the subsidy control regime differentiates between the subsidies in devolved primary legislation and the subsidies in an Act of Parliament in a way that respects the devolved legislatures and reflects the UK constitution.

The devolved legislatures have a unique constitutional status. We have made sure that the requirements are proportionate and respectful of their status and processes, but it is important that the requirements apply comprehensively and we do not create exemptions. The distinctions in the Bill implement the trade and co-operation agreement, which recognises the sovereignty of Parliament; we would clearly not be compliant with our international requirements if we introduced further exemptions for the subsidies in devolved primary legislation. We will clearly have to ensure compliance within this, and the UK Government will make sure that we comply with our international obligations when giving any subsidies. We will also consider the effects of any subsidy advanced by means of an Act of Parliament during its normal impact analysis and considerations for managing public money.

*Question put and agreed to.*

*Clause 78 accordingly ordered to stand part of the Bill.*

### Schedule 3

#### SUBSIDIES PROVIDED BY PRIMARY LEGISLATION

*Question proposed,* That the schedule be the Third schedule to the Bill.

**Paul Scully:** I think I covered schedule 3 in my opening remarks on clause 78.

**Seema Malhotra:** I think the Minister did cover schedule 3. We will reflect further on the Minister’s responses to points that we have made, and I will not raise any further issues now. We will support that the schedule stand part of the Bill.

*Question put and agreed to.*

*Schedule 3 accordingly agreed to.*

### Clause 79

#### GUIDANCE

**Seema Malhotra:** I beg to move amendment 80, in clause 79, page 45, line 9, leave out “may” and insert “must”.

*This amendment, together with Amendment 81, would require the Secretary of State to issue guidance about the practical application of the areas listed under 79(1)(a), (b), and (c).*

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

Amendment 24, in clause 79, page 45, line 9, leave out “issue guidance” and insert

“by the affirmative procedure make regulations”.

*This amendment ensures that the Secretary of State’s guidance is made by affirmative regulation in order that parliament can debate the matter before implementation.*

Amendment 81, in clause 79, page 45, line 12, at end insert—

“(1A) The Secretary of State may issue guidance about the practical application of –”.

*This amendment, together with Amendment 80, would allow the Secretary of State to issue guidance about the practical application of the area listed under 79(1)(d), (e), (f) and (g).*

**Seema Malhotra:** It is a pleasure to move amendment 80 and to speak to amendment 81. Clause 79 gives the Secretary of State the power to issue guidance on the new subsidy regime. We agree with the general principle of the clause, which is that the Secretary of State should be able to provide clarity and advice on the practical application of the regime, but we believe that clause 79 is lacking in significant ways and it is important that we look to strengthen it.

Clause 79 states that the Secretary of State “may issue guidance” on the areas listed under subsection (1). However, there are areas of the Bill where we think that guidance is not just beneficial, but necessary for the effective and fair running of the regime, and we should not leave that to chance. In particular, we believe that guidance must be issued for the subsidy control principles, the energy and environment principles and the control requirements laid out in part 2, chapter 3 and chapter 4.

Those areas are crucial to the regime. They will ensure that public authorities create subsidies that match the aims of this Bill; that British subsidies meet the requirements of the TCA; and that public authorities and interested parties are aware of the transparency

[Seema Malhotra]

and scrutiny expected of subsidies. That is why we believe it is vital that the Secretary of State provides information and clarity about what he—or she, in the future, or even the Minister, as we have discussed—expects around the principles and requirements of the new regime, how they should be interpreted and carried out by public authorities and interested parties, and the expectations of subsidy recipients. That is why we propose amendment 80, which would mandate the Secretary of State to issue guidance on the practical applications of subsection (1)(a), (b) and (c).

We want to draw the distinction that we are not being overly prescriptive, so amendment 81 would continue to allow the Secretary of State the option to issue guidance on subsection (1)(d) to (g). We hope that the Minister will appreciate the importance of guidance on the principles and requirements of this new regime, and why the Bill ought to state that they will be—not that they may be—issued for the practical application of those parts of the Bill. If the Minister does not believe that guidance on those areas should be mandated, could he tell us how he expects the Secretary of State to issue guidance on subsection (1)(a) to (c), and indeed (d) to (g), and what the timeframe for such guidance is expected to be?

11.45 am

**Kirsty Blackman** (Aberdeen North) (SNP): As has been common throughout, I agree with almost everything that the hon. Lady has said, and I agree that we lack information on what this will look like. I get all the arguments that the Government have made about the structure being permissive, but we could do with more information on several of these things. That is why I have tabled amendment 24, which is a probing amendment to try to find out how the Government intend the guidance to be drafted.

Clause 79(5) states:

“Before issuing guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.”

It would have been helpful to have more information on that, and it would be useful to have that from the Minister. With subsection (1)(a), (b), (c) and (e), will the Secretary of State consider the devolved Administrations to be reasonable organisations to contact before issuing guidance around the subsidy control principles, the energy and environment principles, the subsidy control requirements and, crucially, the criteria for determining whether something is of interest or particular interest? That is a really important part of the Bill, and we do not have enough information on what interest and particular interest will mean.

The shadow Minister is absolutely correct that there is a hierarchy. In some areas, the Secretary of State must issue guidance because otherwise the scheme will not work, but in others it is more flexible. I probably would have included subsection (1)(e) among the areas on which the Secretary of State must issue guidance, because I do not think the scheme works if people do not know what interest and particular interest will mean. The Minister has spoken an awful lot about certainty for granting authorities and for organisations that will be receiving subsidies, and about trying to cut down the length of the period of uncertainty. In the absence of

proper guidance that we have been able to scrutinise in any way, that uncertainty becomes much higher—definitely at this point, and I hope that will not be the case when the Act comes into force and begins to work.

I have one other question for the Minister. Clause 79 says that

“the Secretary of State must consult such persons as the Secretary of State considers appropriate.”

I have asked before—I have been reasonably happy with the answers—about how long in advance of the Act coming into play the guidance will be published. I think it is hugely important that the consultation period is long enough to ensure that that guidance is right, not just in lining up with the principles that have been set out and achieving the Government’s intentions, but in covering all the gaps that organisations foresee and answering the questions that granting authorities or enterprises might have. That length of time is needed to provide the right level of certainty and enable people to study what is a very big change.

We have had state aid rules in place for a long time, and that is why, in practice, an awful lot of the decisions that are being taken just now are based not on the interim regime but on state aid itself. A lot of people who are going to lawyers for advice are being told, “We will apply the state aid principles to this, because that is the easiest course of action just now.” We want to make sure that that does not continue to happen. For the new regime that the Government intend to be in force, we need to make sure that legal experts have the time to get up to speed on how they should advise people, because it is technical, and it is important that people get it right. It is important that subsidies are allowed to be made—that is the point of the Bill—but that regulation is in place to ensure that public money is spent wisely and properly, and that inappropriate distortion of competition is removed so far as possible.

Amendment 24 asks for that guidance to be made by the affirmative procedure, because I do not think that enough scrutiny will be brought to bear on the guidance that will be issued. If the Minister feels that there will be scrutiny, it will be helpful if he lays out how parliamentarians might interact with that guidance, either before or after—preferably before—it is issued. It is obvious that we have an interest, and it is obvious that we have concerns, but we also have ideas; a number of the amendments that we have tabled have been constructive and intended to improve the Bill. None of us suggests that there should not be a subsidy control regime. We are trying to make it the best subsidy control regime, in order that it works for our constituencies and the countries and people that we represent. Any information that the Minister could give on that would be incredibly useful.

**Paul Scully:** The power to issue statutory guidance, as is currently provided for in clause 79, will allow the Government to offer greater colour and detail to public authorities in how to comply with the subsidy control requirements. We plan to provide extensive guidance on the new regime, set out in clear, plain language and including useful explanatory material, case studies, practical explanations and additional matters that public authorities may wish to consider. For instance, it might be used to explain how subsidies could be given to support disadvantaged areas in a way that is consistent with the principles; among other things, it could describe

characteristics or criteria that a public authority could use to identify a disadvantaged area, which would help to ensure that the subsidy is addressing an equity objective and is consistent with principle A.

The Secretary of State will consult such persons as appropriate before issuing the guidance. This may well include the devolved Administrations, businesses and public authorities. This will allow public authorities plenty of time to consider the guidance before the new regime comes into force. The hon. Member for Aberdeen North talked about the devolved Administrations. Clearly, the Government cannot do this in isolation. It is incumbent on us to make sure that we speak to the people who will use the guidance, to make sure that it is fit for purpose. I cannot give a precise list of stakeholders that we will engage and consult, but it is in our best interest to ensure that we have the widest, broadest range of stakeholders to make sure that guidance is useful, rigorous and fit for purpose.

On timing, I said earlier that, depending on parliamentary time, the commencement of the Bill will be next autumn, which gives us plenty of time. We have already started the process of engaging with officials, and we will make sure to continue our engagement with officials in the devolved Administrations, as well other public authorities, to make sure that we can publish this guidance in time for the Bill's coming into force.

**Kirsty Blackman:** Will the Minister confirm that, should there be a requirement to update the guidance in the future, which there is likely to be, a consultation process will be undertaken in advance of that updating, and that there will be a reasonable length of time before changes are made to the guidance so that authorities can comply with it?

**Paul Scully:** It is incumbent on us to engage on any changes. How we engage and the timing of that will depend on the circumstances. However, if we are going to do this and make it work, clearly we need to engage as widely as possible to make sure that those changes are fit for purpose.

Amendment 24 would effectively remove the power to issue statutory guidance and replace it with one for the Secretary of State to make binding delegated legislation on the practical application of key elements of the domestic subsidy control regime. We do not believe that regulations are a suitable vehicle for setting out information and advice on the practical application of parts of the subsidy control regime. Regulations are restrictive in their content and must be drafted in a specific, technical way. Guidance, on the other hand, serves the purpose of explaining and clarifying the regime, in ordinary language, for the benefit of those who will need to use and understand the practical effect of the legislation. It can also be quickly updated should circumstances change.

I know that the right hon. Member for Aberdeen North—sorry, the hon. Member; that was another promotion for a colleague. I am sharing the love. I know that she wants to scrutinise future regulations made under the Bill, and it is right that there be additional parliamentary scrutiny of those regulations, as they impose new legal obligations that are additional to those in the Bill, but that is not true of any guidance that will need to be issued under clause 79. The guidance will need to be consistent with, and cannot change, the law to which it relates.

Amendments 80 and 81 would compel the Secretary of State to issue guidance under subsection 1(a) to (c)—that is, on the subsidy control requirements. I understand the intent behind the amendments, but in practice they are unnecessary. While the Secretary of State “may” issue such guidance, in practice he must do so for the regime to function effectively.

Going back to the Government response to the subsidy control public consultation, as we have consistently said, the foundation of the new regime is a clear, proportionate and transparent set of principles, supported by guidance that will ensure that public authorities fully understand their legal obligations and embed strong value-for-money and competition principles. The guidance will show how the assessment of compliance with the principles should be carried out, and how different benefits and distortive impacts should be assessed for different kinds of subsidies. I assure hon. Members that the Secretary of State certainly does not propose to commence the regime without first issuing clear guidance on the subsidy control requirements.

**Seema Malhotra:** It is heartening that the Minister has said that where the clause says “may”, he thinks it means “must”. From that we conclude that the Secretary of State will issue guidance. It would be helpful to know how soon we can expect that guidance. That was one of the questions. That will be very important in making sure that implementation is accelerated as much as possible, but that there is scrutiny, and time to review the guidance.

**Paul Scully:** I can commit to this: we want to share parts of the draft guidance as we develop it, because we want to make sure that the guidance is there as we go through this process. Officials from the Scottish Government and Welsh Senedd in particular told us, before we even introduced the Bill, that they wanted more involvement in drafting the guidance. We talked about getting the framework right in the Bill, and issuing the guidance once we knew what the framework looked like; that is the right way round. We consulted and engaged heavily on the framework. It is right that we do a similar job of engagement with parliamentarians, key stakeholders and public authorities as we develop the guidance. We want to make sure that it is put in place—and not just five minutes before commencement of the provisions next autumn. We want to make sure that public authorities have that understanding. We will try to share as much of the guidance as we can as we develop it, rather than having people wait until final publication.

The inclusion of clause 79 in the Bill clearly shows that the Government understand the need for, and importance of, guidance for public authorities on these elements of the regime. For those reasons, I ask the hon. Member for Feltham and Heston not to press amendments 80 and 81 to a vote.

**Seema Malhotra:** I thank the Minister for his comments, and for his strengthened interpretation of “may” in the clause. I appreciate his saying that he hopes that guidance will be issued, perhaps in stages, so that there is time for scrutiny. I will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

12 noon

**Seema Malhotra:** I beg to move amendment 82, in clause 79, page 45, line 39, leave out subsection (5) and insert—

“(5) Before issuing guidance under this Section, the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(5A) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(5B) If regulations are made in reliance on subsection (5B), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.”

*This amendment would require the Secretary of State to gain the consent of the devolved administrations before issuing guidance under Clause 79.*

**The Chair:** With this it will be convenient to discuss amendment 86, in clause 87, page 49, line 9, at end insert—

“(7A) Before making regulations under this Act, the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(7B) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.

(7C) If regulations are made in reliance on subsection (7B), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned”.

*This amendment requires the Secretary of State to seek the consent of the devolved administrations before making regulations under this Act.*

**Seema Malhotra:** This is again about devolution. There is some overlap with the debate we just had. I would have hoped that we were in a position where by the end of this Committee we were not having debates similar to the ones that I feel we had at the start. However, it is important to keep coming back to where engagement with the devolved Administrations matters in particular parts of the Bill, and to say why.

Devolution gives all nations of the UK the chance to make more decisions locally. We have respect for our devolved Administrations and their respective powers, and their input into our economic and social development and our UK-wide democracy. That is why we feel that, if there are ways in which that very important role in our constitutional settlement may be diminished by the way this legislation is crafted and then implemented, it is important for us to consider that issue and also what should be made more explicit in the Bill.

I believe, and I am sure that the Minister believes it too, that all four nations of the UK are stronger together. This Bill is an example of post-Brexit legislation and we are looking at elements of how what was done previously via our membership of the EU will be implemented in a way that will stand the test of time and retain the confidence of all the devolved Administrations. So we must consider how we act in line with those intentions to ensure the importance of devolution and the framework

that we have, and how inevitably there will need to be some adjustment, as what happened through the EU is absorbed within our constitution. We must consider some of those roles, responsibilities and judgments about where there needs to be some tweaking of the way our constitution works, with the main principles of devolution—as they have been established and how they are working effectively—and the importance of ensuring that the voices of Scotland, Wales and Northern Ireland are put into legislation that affects all of our nations, and the UK as a whole.

The devolved Administrations will have perspectives that are closer to their own nations. As we have seen, perspectives is a theme running through this legislation, which will be an integral part of how the UK works as a whole, and it will be a more effective regime if those voices are loudly heard.

We agree that Westminster is primary in the way that the legislation is implemented. However, we call on the Minister to consider amendments 82 and 86 seriously. Amendment 82 would mandate the Secretary of State to seek the consent of the devolved Administrations, with a fair backstop, before issuing guidance under clause 79. Amendment 86 stipulates that the Secretary of State must also seek the consent of the devolved Administrations before making the regulations under clause 87.

We have said throughout the debates on the Bill that we want to ensure that there is a settlement that will stand the test of time, that will be flexible in terms of how we all work together, and will be successful for the UK as a whole. It is not just the Labour party or indeed the SNP that thinks along those lines; we have heard evidence from a number of our witnesses alluding to it. I quote Dr Pazos-Vidal, who is head of the Brussels office at the Convention of Scottish Local Authorities, who outlined that the Bill currently is,

“too general and not reflective of the territorial constitution of the UK as it stands. There should be a provision that the Secretary of State must consult the devolved Administrations in a dedicated system that should also involve local law. There should be a duty to make sure that different parts of the UK have full ownership of the final outcome—it is true that the Secretary of State will issue the guidance—but also the intelligence and the local know-how about these ideas.”—[*Official Report, Subsidy Control Public Bill Committee*, 26 October 2021; c. 8, Q4.]

I ask the Minister, for the final time, to support amendments 82 and 86, which in our view give the devolved Administrations the role they should have and that is appropriate in the Bill. The guidance that the Secretary of State issues on the new regime and the regulations that will be put in place will have just as large an effect on Wales, Scotland and Northern Ireland as on England. Therefore, guaranteeing that the devolved Administrations are involved in the decisions that affect them too will only improve the way in which the guidance is developed and confidence in how it will be implemented.

**Kirsty Blackman:** As I have said, I largely agree with everything the hon. Member for Feltham and Heston has said and I would be happy to back these amendments, should they be pushed to a vote, but I want to make it clear that I do not agree that the four nations are stronger together, and I look forward to the day—not that far off—when we will prove how much more successful we can be when we are out of this political Union.

**Paul Scully:** I will speak first to amendment 82. As I have previously stated in addressing other amendments to this clause, the power to issue statutory guidance in clause 79 will allow the Government to add greater colour and detail to public authorities on how to comply with the requirements.

This amendment would require the Secretary of State to gain the consent of the devolved Administrations before issuing guidance, but since subsidy control is a reserved policy matter, it is right that the UK Government do not need to seek the formal consent of the devolved Administrations before issuing guidance. I should reiterate that the Bill as currently drafted already says:

“Before issuing any further guidance ... the Secretary of State must consult such persons as the Secretary of State considers appropriate.”

I believe that is the right approach for guidance relating to a reserved policy area.

**Stephen Kinnock** (Aberavon) (Lab): Which persons does the Minister think the Secretary of State should consider to be appropriate?

**Paul Scully:** I think that would depend on what the guidance is, especially with changes to guidance, because this is clearly looking at the wider future. I will come back to engagement, because attaching a formal consent mechanism to the clause could slow and inhibit the issuing and updating of statutory guidance, so it is important that the Government are able to update guidance quickly, should circumstances change—for example, due to the development of new UK case law—and delaying changes would be unhelpful for public authorities and subsidy recipients alike. That said, we have engaged extensively with the devolved Administrations in developing the policy for the new subsidy control regime and will continue to work closely with them while developing the guidance in the way I described in the previous clause. It is in all our interests to ensure that the regime works for the whole of the UK and enables the UK’s domestic market to function properly.

**Stephen Kinnock:** The Minister has confirmed that consultation with the devolved Administrations has taken place. Does he therefore consider that the devolved Administrations are persons that would be considered appropriate by the Secretary of State for consultation?

**Paul Scully:** It is really important that we continue to engage with the devolved Administrations—with the Welsh Senedd, the Scottish Government and the Northern Ireland Assembly. The key issue we are talking about here, though, is that the consent mechanisms contained in the amendment may risk delay, and may change the dynamic of the fact that subsidy control is a reserved matter. None the less, as I say, it is really important that we continue to work closely with the Welsh Senedd, the Scottish Government and the Northern Ireland Assembly, because we have to make sure that this Bill works for the UK as a whole, and for every part of the UK as well.

Amendment 86, which has also been tabled by the hon. Member for Feltham and Heston, would, as I said, require the Secretary of State to seek the consent of each of the devolved Administrations before making regulations under the Bill. The amendment would not require the Secretary of State to obtain that consent before making regulations, but if it was not forthcoming,

the Secretary of State would be required to make a statement to the House explaining why they chose to proceed with the regulations regardless. However, as I noted while addressing the previous amendment, since subsidy control is a reserved policy matter, it is right that the UK Government do not need to seek the formal consent of the devolved Administrations before making regulations creating streamlined subsidy schemes or issuing guidance.

However, again, I am absolutely clear about the importance of engaging with the devolved Administrations as the Bill progresses through Parliament, as well as the process towards implementation and beyond. That engagement will, and has to, continue as we develop guidance and draft regulations. Throughout, the Government will take into account the specific needs and concerns of authorities and other interested parties. Furthermore—we will discuss this issue further in relation to clause 91 and the commencement provisions of this Bill—we are committed to ensuring the timely passage of the necessary regulations to ensure commencement of the Bill as soon as possible. I therefore ask the hon. Lady to withdraw the amendment.

**Seema Malhotra:** I thank the Minister for his comments, and I agree with his statement that this regime needs to work for the UK as a whole: I think that is something on which we all agree. I am not quite clear, though, on whether the Minister is saying that there is an incompatibility between the reserved competence and seeking consent, because I am not sure that there is. If there was, we would not have had evidence—including from Daniel Greenberg, parliamentary counsel—about how there could be some co-ordination mechanisms and consultations in and around how the Bill operates.

**Stephen Kinnock:** To fortify the argument that my hon. Friend is making, the Minister claimed that our amendment would force the UK Government to seek the formal consent of the devolved Administrations, but that is not the case. It would require consultation, but if consent is not given, the UK Government can go ahead with their original plan anyway. Just for the record, we are not saying that formal consent should be given: it is simply a requirement for consultation.

**Seema Malhotra:** My hon. Friend is correct, and that is the reason I wanted to make this point. I do not think that the arguments the Minister has made about risking delay and changing the dynamic are really arguments against this amendment, which clearly says that

“Before making regulations under this Act, the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland...If consent to the making of the regulations is not given by any of those authorities within the period of one month”—

so this is not an extensive delay—

“beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent”,

but it will be on the record that consent was sought.

Thirdly, the amendment says that

“If regulations are made in reliance on subsection (7B), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned”.

[Seema Malhotra]

I cannot see anything in the amendment that is incompatible with the fact that this is an area of reserved competence. It simply seeks transparency on where there may be disagreements and why. In my view, that is part of how we have a mature relationship between Westminster and the devolved Administrations—not everyone is always going to agree, but they should be included and views on how the Bill is implemented should be respected. Being able to disagree on the record is, I think, part of how our democracy should be working.

12.15 pm

My hon. Friend the Member for Aberavon made some very important points as well. In the light of all those points, I wish to push the amendment to a vote.

*Question put*, That the amendment be made.

*The Committee divided*: Ayes 4, Noes 7.

#### Division No. 25]

#### AYES

Blackman, Kirsty  
Fletcher, Colleen

Kinnock, Stephen  
Malhotra, Seema

#### NOES

Baynes, Simon  
Bowie, Andrew  
Buchan, Felicity  
Hollinrake, Kevin

Millar, Robin  
Scully, Paul  
Tomlinson, Michael

*Question accordingly negated.*

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

**Paul Scully:** The clause gives the Secretary of State the power to issue and update guidance on the practical application of the provisions in the Bill. It places a duty on public authorities to have regard to the guidance when designing a subsidy scheme or giving an individual subsidy. The Secretary of State is also required to publish the guidance and keep it under regular review, and may revise or replace that guidance. The Secretary of State must also consult persons they deem appropriate before issuing guidance.

**Kirsty Blackman:** I wonder whether the Minister would commit to ensuring that there are links to the guidance on the subsidy control database. People who are interested in the database are likely to be interested in the guidance, particularly if they are considering making a challenge. Will he ensure that the links are on the website, so that people can find them more easily? That would be helpful.

**Seema Malhotra:** The Minister has outlined the details of the clause. Notwithstanding the points we have already made, we support clause stand part.

**Paul Scully:** In answer to the hon. Member for Aberdeen North, the guidance will be on the gov.uk website. I will reflect on how best to make it accessible. It is important that it is accessible to everybody.

*Question put and agreed to.*

*Clause 79 accordingly ordered to stand part of the Bill.*

#### Clause 80

##### DISCLOSURE OF INFORMATION

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

**Paul Scully:** The clause ensures that the powers and duties contained in the Bill to disclose or use information will operate compatibly with existing data protection legislation. It also amends schedule 14 of the Enterprise Act 2002 to include the new subsidy control functions of the CMA. It will ensure that the information obtained by the CMA in its functions under the new subsidy control regime is subject to the same restrictions on disclosure that apply to existing functions. The clause further ensures that the CMA is protected from defamation law when providing advice or reports under the provisions in the Bill.

**Seema Malhotra:** As the Minister outlined, the clause establishes that any duty to disclose information under the powers in the Bill does not override provisions laid out in the data protection legislation. This is technical and important, and we support the clause.

*Question put and agreed to.*

*Clause 80 accordingly ordered to stand part of the Bill.*

#### Clause 81

##### MODIFICATIONS TO SUBSIDIES AND SCHEMES

**Seema Malhotra:** I beg to move amendment 83, in clause 81, page 46, line 39, leave out “of up to 25%” and insert

“up to the rate of inflation”.

*This amendment would prevent modifications that increase subsidy budgets by up to 25% from being permitted, and would instead permit modifications that increased subsidy or scheme budgets by up to the rate of inflation.*

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

Amendment 84, in clause 81, page 46, line 41, leave out “paragraph (g)”.

*This amendment would prevent extensions of subsidy schemes from being permitted modifications.*

Amendment 85, in clause 81, page 47, line 10, leave out “25%” and insert “inflation rate”.

*This amendment relates to Amendment 83.*

**Seema Malhotra:** It is a pleasure to move amendment 83 and to speak to amendments 84 and 85. The clause establishes that unless a modification of a subsidy or scheme is a “permitted modification” listed in subsection (3), including an uplift of up to 25% of the budget or an extension by up to six years, changes to a subsidy or scheme will be regarded as a new subsidy or scheme. Consequently, the public authority will have to comply with the subsidy control requirements. The clause outlines that most modifications to subsidies or schemes must result in said subsidies or schemes being treated as new. The issue is that it also outlines a list of permitted modifications that can be made without having to re-establish the subsidy.

Labour recognises the importance of allowing certain modifications to subsidies, especially under a regime that is intended to be quicker, where there is leave to support a subsidy's outcomes in line with the control principles and the underlying goals and principles of the legislation. However, such permitted modifications must be reasonable; otherwise, they risk allowing subsidies to undermine the principles of the regulations set out in the legislation.

I wonder whether the Minister has considered in detail subsection (3)(f), which allows an increase in a subsidy's budget by what seems to be a fairly high and fairly arbitrary 25%. I question whether that is a reasonable modification. There is also a question about subsection (3)(g), which allows the extension of a subsidy scheme by six years. That is longer than a parliamentary term. Again, I wonder whether detailed consideration was given to that. Perhaps the Minister can enlighten us on the basis for deciding to make a six-year extension and a 25% increase permitted modifications.

There is a risk that such modifications will have significant effects on subsidies and schemes. They could cause a previously finely-tuned subsidy to distort the market or become out of proportion. As such, we should question whether they should be allowed to occur without any checks or renewed transparency. Otherwise, there is a risk in increasing a subsidy, particularly a large subsidy, by up to 25%, and, indeed, in extending a subsidy scheme by six years—that is well beyond the period for which local authorities, devolved Administrations or almost anyone in any Administration is elected in this country—without it being subject to some renewal. There does not seem to be a clear explanation of why the clause is framed as it is.

We therefore also propose amendment 83, which would allow for subsidies to adapt to changing economic circumstances by allowing a subsidy's budget to be increased by no more than the rate of inflation, rather than by a whole 25%. While allowing for adaptation to changing economic circumstances, the amendment would ensure that any significant changes to subsidy amounts were still subject to appropriate transparency.

Amendment 85 would scrap subsection (3)(g), because those long extensions could have significant consequences for the market, and the market could change in that period of time. Any extension of a scheme's timetable should be subject to full transparency, and it should be treated as though a new subsidy was being created.

I would be grateful if the Minister could respond to our legitimate concerns and explain what underlies the decisions that led to subsections (3)(f) and (3)(g). If there is something that we have missed, we would be happy to reconsider, but in the interests of transparency, value for money and public confidence, we think these are two points that should be addressed.

**Paul Scully:** Clause 81 allows for limited amendments to be made to subsidies or schemes. A permitted modification will not be treated as a new subsidy or scheme as long as it meets the parameters set out in the clause. First, let me cover amendments 83 and 85. These amendments would remove from the list of permitted modifications an increase of up to 25% of the original budget of a subsidy or scheme. Instead, increases only up to the rate of inflation would be treated as permitted

modifications. In doing so, the amendments would greatly reduce the flexibility afforded to public authorities to moderately increase the budget of a subsidy or scheme without facing additional administrative burdens.

The Government have committed to reducing administrative burdens on public authorities wherever possible. That includes giving them the flexibility to make limited amendments to a subsidy or scheme without having to jump through additional procedural hoops. An increase of up to 25% is appropriate, as this level of uplift is unlikely to greatly change the distortionary effects of a subsidy or scheme, which is what we are measuring.

**Kirsty Blackman:** Will the Minister write to me in advance of Report setting out what would happen if the increase of 25% takes the subsidy above a certain threshold, whether that is the de minimis threshold or the threshold for reporting? It strikes me that it would be possible to use the provision in a negative way to get round the system. I am sure that it is not the Government's intention, so it would be useful to have advice on what might happen should that subsidy hit the threshold.

**Paul Scully:** To avoid the bureaucratic burden I talked about, the clause allows for a limited degree of modification without reassessment. That creates the right balance, and public authorities would need to determine whether the change is just administrative or not.

Permitted modifications do not have to be reassessed, and therefore it would not need to be considered whether they bump into subsidies of interest or subsidies of particular interest, for example, because those criteria apply only to new schemes. The public authority will have already carried out an assessment of compliance with the principles and other requirements for all the subsidies and schemes, so the increase in value is unlikely to meaningfully alter that. Clearly, if a public authority was attempting to mislead or exploit that as a loophole, it could be subject to judicial review on general public law grounds.

**Seema Malhotra:** I may have said in my remarks that amendment 85 scrapped subsection (3)(g), but it was amendment 84, as the Minister has outlined. It is important for our deliberations that the point raised by the hon. Member for Aberdeen North is addressed in writing. It is a fundamental point, and there does seem to be a loophole. Surely, we would not want an inefficiency in the regime that could mean public money being pushed through that little loophole by design. An increase of 25% is significant and could result in the subsidy being pushed over a particular threshold against the requirements of the legislation. Surely, we should design out loopholes rather than designing them in. It would be important, for the purposes of our deliberations and to have confidence in the regime, if the Minister were able to address that point, in writing, for the Committee.

On the Minister's point about "unlikely to", surely we do not want to design a system based on things that are unlikely. The way the legislation is drafted could incentivise particular behaviours. We do not want a regime or legislation that make more likely things that we want to be unlikely. There is a small financial incentive for people to look at ways of working around the legislation.

12.30pm

**Paul Scully:** I am happy to formally write again to clarify the situation, if necessary, but I am pretty sure that I would be repeating what I have just said in response to the hon. Member for Aberdeen North, which will be in the *Official Report*.

The likelihood and unlikelihood point goes back to the fundamental issue of the regime being a permissive one. If we regimented everything, we would be recreating the EU state aid scheme, which is far more prescriptive.

On the comments about the increases in values and times, let me cover why we believe that the 25% increase is appropriate. Even the strictest subsidy control regime in the world provides for the types of permitted modifications that are included in the clause. The EU state aid regime allows for an increase of up to 20% in the original budget of an existing aid scheme before public authorities need to notify and seek approval from the EU Commission. As I have said, the regime in the legislation is a far lighter-touch regime. I do not mean to suggest that we should start benchmarking every aspect of our subsidy control framework against EU state aid rules, but it is worth noting that the amendments would make the UK's rules on modifying subsidies far more restrictive than the previous bureaucratic rules. By providing for that level of budget uplift, clause 81 will help to reduce unnecessary processes and provide maximum certainty to public authorities and recipients of subsidies.

As I stated when addressing the preceding amendments, clause 81 allows for permitted modifications to be made for subsidies or schemes without them being treated as a new subsidy or scheme. Amendment 84 would remove from the list of permitted modifications the extension of a subsidy scheme by up to six years. Any extension to a scheme beyond the date on which it would otherwise have been terminated would therefore be treated as a new scheme.

There will be times when public authorities, in monitoring the outcomes of a subsidy scheme, decide it is beneficial to moderately prolong the length of the scheme. If a public authority incurs delays in rolling out the new scheme, for instance, it may wish to bridge the gap by extending the existing scheme. It is appropriate to provide public authorities with the ability to extend a scheme without requiring an assessment against the subsidy control requirements, as an extension of up to six years is unlikely to greatly increase any negative effects stemming from the scheme.

**Seema Malhotra:** It is important to recognise that if there are to be permitted modifications, they should be designed with transparency in mind, and with ways of tracking how and where they are used. The Minister has just said that the EU regime allows a 20% budget uplift and has an approvals process. The Government are proposing a 25% uplift, but there does not seem to be any clarity in the legislation about the publication of any decisions. Do the Government envisage that, in the event of a permitted modification—of over 5% or 10% of the budget, say—there will be public knowledge of that decision, and if so, where would that information be published?

**Paul Scully:** Other tools exist to provide the transparency in public authority spending, such as the data published by local authorities under the local government transparency

code. The regime is not intended to replace other mechanisms for ensuring that we have transparency and good management of public money.

I do not want to compare and contrast every single element of the regime against the EU, but on timescales, the Committee may find it useful to know that the EU state aid regime also allows for prolongation of an existing scheme by up to six years. The amendment would therefore make the UK's rules around the modification of subsidies and schemes much stricter than those under the EU without bringing any corresponding benefit. I therefore request that the amendment be withdrawn.

**Kirsty Blackman:** I appreciate the Minister's attempt to explain the 25% and what would happen should the subsidy increase above a certain threshold. However, I would very much appreciate it if he would write to us about what is likely to happen should that threshold be hit.

Subsection (3)(g) specifically relates to the length of time for subsidy scheme extensions. An enterprise could conceivably not have existed during the original term of the subsidy scheme but be later affected by the extension of the scheme, with no ability to challenge that scheme because the extension gives no opportunity for it to be challenged. This is not only about the length of time. We discussed the way in which individual subsidies made within a scheme cannot be challenged. It is distinctly possible that that could inadvertently distort competition for new enterprises that pop up during the period of a scheme and so have no ability to challenge it and no recourse to make their concerns known, because a system just does not exist for them to do so if they are outwith the period of being able to challenge the original scheme. If a scheme is not classed as new but extended, there is a bit of a problem.

I understand what the Minister says about the EU, and I assume—although he did not say this—that six years was likely chosen because that is analogous with the length of time the EU gives. However, because of the differences between this scheme and the EU state aid scheme, lifting the same number of years does not work as well as it could, because individual subsidies cannot be challenged. Only the scheme can be challenged, and there will be no ability for new enterprises to challenge the schemes, even though they may have a major distortive effect on competition.

**Seema Malhotra:** I thank the hon. Lady for her comments. We are extremely concerned about the Government's lines on this. I do not think there has been any clear explanation, nor any proper assessment of what this could mean and how it could create quite a significant loophole. We will push amendment 83 to a vote.

*Question put,* That the amendment be made.

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

#### Division No. 26]

#### AYES

Blackman, Kirsty  
Fletcher, Colleen

Kinnock, Stephen  
Malhotra, Seema

#### NOES

Baynes, Simon  
Bowie, Andrew  
Buchan, Felicity  
Hollinrake, Kevin

Millar, Robin  
Scully, Paul  
Stafford, Alexander  
Tomlinson, Michael

*Question accordingly negated.*

*Amendment proposed:* 84, in clause 81, page 46, line 41, leave out “paragraph (g)”.—(*Seema Malhotra.*)

*Question put,* That the amendment be made.

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

#### Division No. 27]

#### AYES

Blackman, Kirsty  
Fletcher, Colleen

Kinnock, Stephen  
Malhotra, Seema

#### NOES

Baynes, Simon  
Bowie, Andrew  
Buchan, Felicity  
Hollinrake, Kevin

Millar, Robin  
Scully, Paul  
Stafford, Alexander  
Tomlinson, Michael

*Question accordingly negated.*

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

**Paul Scully:** The clause allows for limited amendments to be made to subsidies or schemes, referred to as permitted modifications. They can be made to subsidies made under the terms of the Bill or to legacy schemes and withdrawal agreement schemes. Modifications are also permitted to legacy and withdrawal agreement subsidies or schemes in accordance with their terms. They can involve an increase of up to 25% of the original budget or the extension of a subsidy scheme by up to six years.

**Seema Malhotra:** The holes in this clause are bigger than those in a big piece of Swiss cheese, and I am concerned about that. We will not be voting against it, but if we had an equivalent of abstain, we would be doing that.

*Question put and agreed to.*

*Clause 81 accordingly ordered to stand part of the Bill.*

#### Clause 82

GROSS CASH AND GROSS CASH EQUIVALENT AMOUNT OF  
FINANCIAL ASSISTANCE

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

**Paul Scully:** The clause enables the Secretary of State to make secondary legislation to establish how gross cash and gross cash equivalent are to be determined when designing a subsidy or subsidy scheme. It is important to establish a common method for use by public authorities in calculating gross cash and gross cash equivalent values. The Government will set out a methodology to calculate gross cash and gross cash equivalent in regulations that are as clear and simple as possible and subject to the negative procedure.

**Seema Malhotra:** The clause is important and we support it.

*Question put and agreed to.*

*Clause 82 accordingly ordered to stand part of the Bill.*

#### Clause 83

MINOR AMENDMENT TO THE FINANCIAL SERVICES  
ACT 2021

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

**Paul Scully:** The clause makes consequential amendments to the Financial Services Act 2021, in relation to regulated activities in Gibraltar within the scope of the Act. In doing so, the clause ensures that the meanings of “insurance company”, “deposit taker” and “insurer” used in the Bill reflect definitions used in the 2021 Act.

**Seema Malhotra:** I thank the Minister for his remarks. We will be supporting the clause.

*Question put and agreed to.*

*Clause 83 accordingly ordered to stand part of the Bill.*

#### Clause 84

FINANCIAL PROVISION

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

**Paul Scully:** The clause establishes that expenditure incurred under the terms of the Bill in connection with the subsidies database, established under clause 32, is to be paid out of money provided by Parliament. It also establishes that expenditure, as a result of the CMA carrying out its functions, under or by virtue of part 4 of the Bill, will be paid for out of money provided by Parliament.

**Seema Malhotra:** I thank the Minister for setting out how clause 84 will ensure that the costs incurred by the Bill will be met by Parliament. We support the clause.

*Questions put and agreed to.*

*Clause 84 accordingly ordered to stand part of the Bill.*

#### Clause 85

CROWN APPLICATION

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

**Paul Scully:** The clause establishes a customary provision that the Bill applies in full to the Crown. As part of this customary provision, the Crown does not include Her Majesty in her private capacity, Her Majesty in right of the Duchy of Lancaster, or the Duke of Cornwall.

**Seema Malhotra:** I thank the Minister for his remarks. We will be supporting the clause.

*Question put and agreed to.*

*Clause 85 accordingly ordered to stand part of the Bill.*

**Clause 86**

## POWER TO MAKE CONSEQUENTIAL PROVISION

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

**Paul Scully:** The clause provides for the Secretary of State to make regulations that amend, repeal, revoke or otherwise modify existing primary or secondary legislation, including retained direct EU legislation, where such changes are consequential on the functioning of the Bill. It is important to note that regulations that change primary legislation or retained direct principal EU legislation are subject to the affirmative procedure. While the Bill makes provisions for changes to existing legislation, it is possible that possible technical changes to existing legislation may be required as a result of the Bill.

**Seema Malhotra:** I thank the Minister for his remarks. We have had various discussions over the course of the Bill about how regulations are to be made. Overall, we support the clause.

*Question put and agreed to.*

*Clause 86 accordingly ordered to stand part of the Bill.*

**Clause 87**

## REGULATIONS

12.45 pm

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

**Paul Scully:** The clause sets out the parliamentary procedures that apply in relation to powers to make regulations conferred on Ministers by the Bill. It sets out the procedure that applies where a power is exercisable by affirmative or negative resolution. It makes clear that any power to make regulations in this Bill is not intended to limit the general implementation regulation-making power in section 31 of the European Union (Future Relationship) Act 2020. Finally, the clause does not apply to clause 91 of the Bill. Clause 91 deals specifically with the commencement of the Bill, and it is normal practice that commencement regulations are not subject to either the negative or the affirmative procedure.

**Seema Malhotra:** I thank the Minister for his remarks. Clause 87 sets out the procedures for when regulations are made under the Bill. We have expressed earlier our opposition to the lack of involvement given to the devolved Administrations; I will not repeat myself, but we continue to have those concerns. However, we will not vote against this clause.

*Question put and agreed to.*

*Clause 87 accordingly ordered to stand part of the Bill.*

**Clause 88**

## DIRECTIONS

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

**Paul Scully:** The clause establishes that any directions made under the Bill must be made in writing, and also makes provision for a direction to be varied or revoked by a subsequent direction if required.

**Seema Malhotra:** We have no further comments on this clause, and will be supporting clause stand part.

*Question put and agreed to.*

*Clause 88 accordingly ordered to stand part of the Bill.*

**Clause 89**

## INTERPRETATION

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

**Paul Scully:** The clause establishes the definitions used for various terms within the Bill, whether those terms are defined elsewhere in the Bill or in external sources of law. It also explains how a trade and co-operation agreement or a supplementing agreement should be interpreted by a court or tribunal that is interpreting a provision of this Bill.

**Seema Malhotra:** I thank the Minister for his remarks. Throughout some of our discussions, the fact that we have not had greater definition of some of the terms used in the Bill has been a challenge, but we will support clause stand part. I hope that some of the more detailed definitions will come forward as soon as possible.

*Question put and agreed to.*

*Clause 89 accordingly ordered to stand part of the Bill.*

**Clause 90**

## EXTENT

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

**Paul Scully:** The clause establishes that, barring one exception, the Bill extends to England, Wales, Scotland and Northern Ireland. The one exception is clause 48(3) of the Bill.

**Seema Malhotra:** We obviously agree with this clause. It is a shame that a four-nations approach has not come forward in the drafting of some of the Bill, but in any case, we are not opposing clause stand part.

*Question put and agreed to.*

*Clause 90 accordingly ordered to stand part of the Bill.*

**Clause 91**

## COMMENCEMENT

**Seema Malhotra:** I beg to move amendment 87, in clause 91, page 50, line 26, at end insert “which must be no later than six months following the day on which this Act is passed.”

*This amendment would require that the Act comes into force no later than six months following Royal Assent.*

**The Chair:** With this it will be convenient to discuss amendment 25, in clause 91, page 50, line 26, at end insert—

“(2A) The Secretary of State may not make regulations to bring the rest of this Act into force until—

- (a) regulations under section 34 and section 52 of this Act have been made and been in force for at least three months; and
- (b) guidance under section 79 of this Act has been issued and publicly available for at least three months.”

*This amendment allows a period of three months after the issuing of regulations relating to the subsidy database and mandatory referrals, and the publication of guidance, before parts of the Act come into force.*

**Seema Malhotra:** We broadly support clause 91, which sets out which parts of the Bill will come into effect and when. We recognise the need to establish when and how various parts of the Bill will come into force. However, at the same time, we want to ensure that this important new regime is not implemented unnecessarily slowly, because the implementation of legislation can sometimes get delayed when it is not at the forefront of Parliament’s attention. The Bill is fundamental to supporting the levelling-up agenda, which is of great concern to us all, and net zero implementation. That is still a disappointment—I am sure we will come back to the need for net zero to be more explicit in the principles. It is important that we move forward as quickly as possible to ensure certainty in the subsidy control regime, and that we support research and investment. All of those measures are necessary. In this low-growth environment, it is important to get investment, and the necessary incentives for it, as soon as possible.

An interim subsidy regime is in now place, but it does not provide the guidance or reassurance necessary for the long-term effectiveness of subsidies, nor does it take advantage of the potential opportunities provided by designing and scoping a new regime now that we have left the European Union. Amendment 87 would mandate that the Bill comes into force no later than six months following Royal Assent, reflecting the important need to make quick progress on introducing the regime, the guidance and the regulations. There should be no avoidable delays. It is important that the guidance is introduced in good time so as to ensure that the Bill receives proper scrutiny as it continues its passage through Parliament.

I expect that the hon. Member for Aberdeen North will speak to amendment 25. We want to make sure that the process moves more quickly, and there is a discussion to be had about the best way to make that happen. I would be grateful if the Minister could outline the Government’s planned timetable for bringing the Bill into force and the important and necessary steps they will take as part of that road map.

**Kirsty Blackman:** Very unusually, although we are discussing two Opposition amendments, we disagree with one of them. I cannot support amendment 87. As I have said on a number of occasions, I am concerned about ensuring compliance with the regime. There will be compliance only if people have a good understanding of the regime before it kicks in. I do not have a problem with the period following Royal Assent being more than six months, because I would rather that organisations such as public authorities had the time to digest the guidance and regulations in order to be able to adequately comply. We do not want people to accidentally not comply.

I understand the Opposition’s desire to push forward, given the current interim regime, but it is important to get this right. I do not think any of us are comforted that we will be able to judge whether there is a high level of compliance with the regime. The Minister expects that that will be the case, but the lack of transparency data means that it will not be terribly easy to judge the situation.

Under amendment 25, which we have tabled, the Secretary of State would not be able to make regulations to bring the rest of the Bill into force until regulations under clauses 34 and 52 had been made and been in force for at least three months. Those clauses relate to mandatory Competition and Markets Authority referrals and the operation of the subsidy database. It is really important that both those measures are well understood in advance of the rest of the provisions coming into force, which is why the amendment seeks a three-month time period, so that everyone is able to comply.

The second condition that the amendment would require, where I am asking that guidance be in place for three months, is about guidance under clause 79. We spoke at some length during the debate on clause 79 about our concerns. It was useful to have the Minister confirm that the Secretary of State will be making guidance on a number of those things, despite the fact that the word “may” is in there. That is a helpful clarification for us, but it is important that that guidance is published.

I am pleased that the Minister plans to ensure that there is significant consultation and that the asks that come forward are considered. If somebody asks for specific guidance about a specific area because they know it is something they are likely to be dealing with on a regular basis and they are a regular granter, or likely to be a regular granter, of subsidies under this regime, I would like the Minister to have the opportunity to consider that. However, I would also like to ensure that there is a period of time, in advance of people being expected to comply with the regulations and guidance put forward, for them to digest them.

That is particularly important when we look at the operation of the subsidy control database and the method of challenging things on that database. People have only a short period of time—one month—to make those challenges and ask for pre-action information to be brought forward. The Minister’s stated aim is to reduce the length of the period of uncertainty, but the likelihood of there being uncertainty or challenges is increased if organisations do not properly understand the guidance. We all know that lawyers take a significant amount of time to digest things and to give the necessary advice to organisations.

As was stated during the witness sessions, the legal profession will have to do a huge amount of work to ensure that they are giving appropriate advice to organisations that are looking either to grant or to challenge subsidies. I do not think it would be appropriate for the regime to begin in the autumn, as the Minister has stated that the Government hope it will, without there being that period of time in advance.

All the indications the Minister has given are that it is likely that there will be a period of time in advance—that he is hoping that there will be and that consultation will happen. I tabled this amendment to try to ensure that that will definitely happen in the specific areas that are

[Kirsty Blackman]

important for organisations to be able to properly understand the guidance in advance. I am not trying to cause us problems or to make the Bill take longer to come into force; I am just trying to ensure that people are able to act in the way the Government would like them to act with this Bill and that anybody whose interests are affected by the giving of a subsidy is able and understands how to adequately challenge those subsidies.

**Paul Scully:** Rightly, the hon. Member for Aberdeen North does not want to extend the Bill—she has extended the Committee, but that is fair enough—

**Kirsty Blackman:** Oh!

**Paul Scully:** She has raised some really important points and it is important that she gets them on the record, because we have a shared aim to ensure that we get this right and make it work for the entire UK.

Amendment 25 would amend clause 91 to require the regulations to have been made and been in force for at least three months ahead of commencement of the new regime. I thank the hon. Lady for the amendment and I recognise her desire to ensure that the guidance on the new regime alongside regulations on the subsidy database and mandatory referrals are in place in good time for public authorities to familiarise themselves with the content.

I share that desire for those regulations to be in place in good time, alongside the clear guidance for public authorities, but I do not agree that it is necessary to restrict when the regime can commence based on those regulations having been in place for a three-month period. Of course we will continue to support and advise public authorities after regulations are made, but we will also ensure that when the Act is commenced, public authorities have a clear understanding of what is required of them under the new regime. That will include having robust guidance and regulation in place.

Amendment 87 would require that the Act comes into force no later than six months following Royal Assent. We recognise the importance of ensuring that the regime is fully operational in a timely fashion, so that public authorities have certainty about how the regime operates and are appropriately supported in interpreting the regime with sufficient guidance. It is not in the interest of Government or public authorities to delay commencement of the regime unnecessarily.

We will ensure that the subsidy control regime is in place as soon as is feasible, while allowing sufficient time for regulations to be made with a proportionate amount of lead-in time for public authorities. Establishing a specific deadline for implementation would remove the flexibility to modify the commencement date if it were in everyone's interest to do so—for example, if there were an emergency that significantly diverted Government resources or if the deadline fell during the Christmas or summer holidays.

Although seeking to place different restrictions on commencement of the new regime, these amendments serve to highlight the complexity of implementing the Bill and how important it is that the Government get it

right. We will ensure that the regime is introduced in good time and that those who need to use it have time to prepare. However, placing these additional restrictions on when commencement can occur would be disproportionate and unnecessary. Therefore, I request that the hon. Member for Feltham and Heston withdraw amendment 87.

1 pm

**Seema Malhotra:** I thank the Minister for his remarks. Amendment 87 is a probing amendment, and I hope he will be able to lay out a broad timetable as to what will happen after Royal Assent and what we can expect. I am sure that officials will be starting to map out the necessary activity. It would be helpful to know what may come out and in what order. 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 91 establishes which parts of the Bill will come into effect and when. It provides the Secretary of State with a power to bring certain provisions of the Bill into force by commencement regulations. Any power to make regulations under part 2, 3 or 4 or chapter 1 and chapter 2 of part 6 come into force on the day of Royal Assent. The clause also provides a power for the Secretary of State to make transitional or saving provisions in regulations when the Act comes into force, if that is necessary.

**Seema Malhotra:** We support the clause.

*Question put and agreed to.*

*Clause 91 accordingly ordered to stand part of the Bill.*

## Clause 92

### SHORT TITLE

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

**Paul Scully:** The clause establishes a short title for the Act, which is the Subsidy Control Act 2021.

**Seema Malhotra:** It is an excellent title, and we support the clause.

*Question put and agreed to.*

*Clause 92 accordingly ordered to stand part of the Bill.*

## New Clause 1

### SUBSIDY CONTROL PRINCIPLES: STATEMENT TO PARLIAMENT

“(1) Within six months of the opening of a new Parliament, the Secretary of State must make a written statement to Parliament on the subsidy control principles.

(2) The statement must include details of—

- (a) any legislation the Government intends to bring forward to change the Subsidy Control Principles; and
- (b) any changes the Government intends to make to guidance under section 79 of this Act.”—(Kirsty Blackman.)

*This new clause requires a new Government to make a statement to Parliament about any changes it intends to make to the subsidy control principles.*

*Brought up, and read the First time.*

**Kirsty Blackman:** I beg to move, That the clause be read a Second time.

This new clause is not unlike ones I have tabled in previous Committees, including the customs Bill Committee. The idea behind the new clause is to ensure that there is more accountability from Governments at the opening of Parliament in the event that they will intend to make changes to the subsidy control principles.

We have been clear about the way in which the regime works. The principles are fundamental. Should there be changes to the subsidy control principles, that would be pretty significant and would fundamentally alter the operation of the regime. Should the Government or a future Government be keen to make changes to the principles contained in the Bill, it would be reasonable for as much notice as possible to be given to Parliament and those who are likely to be operating within the Act.

New clause 1 states:

“Within six months of the opening of a new Parliament, the Secretary of State must make a written statement to Parliament on the subsidy control principles.”

It must include details of:

(a) any legislation the Government intends to bring forward to change the Subsidy Control Principles; and

(b) any changes the Government intends to make to guidance under section 79 of this Act.”

I would expect that if the Government were making drastic changes to subsidy control principles, they would want to give as much notice as possible. There is no doubt that if it was at the start of a new Parliament, any change would likely have been a manifesto commitment that they stood for in election, so it would be uppermost in their minds any way. I cannot imagine somebody wanting to alter drastically the operation of the subsidy control regime without mentioning it during an election campaign. That is not to suggest that people will necessarily want to make changes to the subsidy control principles; I do not know that they will want to. But we will not have this Government for ever—thank goodness—and different Governments will potentially make different decisions on subsidy control.

Chair, just before I end my remarks, I will just say thank you to everybody who has supported us through our consideration of the Bill and everybody who has spoken during our debates. Despite the fact that only three of us have dominated proceedings and spoken at length—as well, Chair, as your colleague, Mr Sharma; so, four of us perhaps—we are about to wrap up early and not go to the end of this day, which is surely testament to the excellent chairing.

**Paul Scully:** The subsidy control principles sit at the heart of the domestic regime. They will be underpinned by statutory guidance issued by the Government ahead of the regime’s commencement. I agree that there is no notion that this Government or indeed any Government in the foreseeable future would wish to modify the subsidy control principles; the principles should endure with Governments of any stripe or colour. They are common sense, they ensure good value for money and they help to protect the UK internal market, so I am confident that they will stand the test of time.

However, in the unlikely event that the Secretary of State wished to modify the principles, I do not believe that this amendment would strengthen the scrutiny

function of the House. The provisions of the Bill do not confer delegated powers that would enable the Secretary of State to modify and/or remove any of the principles, so any future changes would require the Government to introduce amending legislation and to conform with the necessary parliamentary processes and scrutiny that that would entail.

Guidance issued under clause 79 may of course be updated and revised, and that guidance may need to change in the future to reflect different future practices, or additional information for public authorities, and it is also necessary that that guidance is quickly updated should circumstances change. I do not believe that a statement at the beginning of each new Parliament would necessarily be the right time to announce those changes.

For the reasons that I have set out, I ask the hon. Lady to withdraw the new clause.

**Kirsty Blackman:** I thank the Minister. I will not push the new clause to a vote, but I will just point out that there are problems with the ability to scrutinise delegated legislation; it is not the most robust procedure in Parliament, as anybody who has sat through Delegated Legislation Committees will know. It is very different from being on the Floor of the House, and something like a written statement would mean that all parliamentarians would have the ability to scrutinise, understand and consider any changes that are likely to come through.

Nevertheless, I appreciate the point that the Minister has made that it is unlikely that there will be changes to the subsidy control principles and that any currently foreseeable or potential future Governments are unlikely to make changes to those principles. So, as I say, I will not push the amendment to a vote.

I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

**The Chair:** Does Seema Malhotra wish to move new clause 3?

**Seema Malhotra:** I do not wish to push new clause 3 to a vote today.

#### New Clause 4

“Secretary of State and Devolved Administrations: requirement to report

(1) The Secretary of State, Scottish Ministers, Welsh Ministers and Northern Ireland Department of Economy shall each report annually on subsidies and schemes which they have made.

(2) All reports made under subsection (1) shall be published.”

—(*Seema Malhotra.*)

*This new clause would require the Secretary of State and devolved Administrations to report annually on subsidies and schemes they make.*

*Brought up, and read the First time.*

**Seema Malhotra:** I beg to move, That the clause be read a Second time.

New clause 4 would provide for greater transparency under the new regime by mandating the Secretary of State and each of the devolved Administrations to publish annual reports on the subsidies and schemes

[*Seema Malhotra*]

they have made during the previous year. In our view, that would ensure that interested parties and the public generally are made aware of how their ruling bodies are using public money through subsidies and for what purposes. I am sure that the Minister recognises that transparency is important and that he will agree with Professor Rickard, who said that through transparency we can get better compliance and better value for money, and we can help to ensure that subsidies that have been granted better meet the goals that we are setting out to achieve.

Over the past few weeks, the Minister will have seen all too much, I am sure, both in the Chamber and in the news, the concerns in relation to whether public funds have been used in the way they should be, how contracts have been allocated and so on. I am sure that there will be a keenness to prevent any perceived or potential misuse of public funds or lack of transparency and to ensure that there can be adequate reporting of decisions that are made, particularly on larger subsidies by Administrations.

We will not necessarily press the new clause to a vote today, partly because we think that the issues raised by it could be absorbed within the discussions that we had about the role of the CMA in its reporting and the discussions that we had about the Minister, I think, putting in writing what he would see and how the reporting cycle might work. There may be ways to deal with some of these concerns—depending on what the Minister says—in the rounds of those discussions that we have talked about.

I will just mention also the way we see the CMA having a role. I have not moved new clause 3 today because I think we will want to bring that back. There will be ways in which we look in the round at the role of the CMA and its powers on decision making, advice and reporting. I look forward to the Minister's response.

**Paul Scully:** Transparency is absolutely an important part of the new subsidy control regime. It is right, therefore, that it has been a significant part of the discussion during Committee. It is key to the enforcement provisions in the Bill. We have thought carefully about the reporting requirements that we place on public authorities, to get the balance right. Other tools for general public authority financial transparency exist elsewhere already and are not limited to subsidies. We are trying to find the right balance between transparency and burdens on public authorities, as we have said. Although the subsidy database is still a relatively new tool, public authorities, including Departments and the devolved Administrations, are already using it and uploading information about the subsidies that they award. The database is a one-stop shop where both interested parties and the public can see the required subsidies awarded.

The new clause risks duplicating public authorities' transparency obligations through the making of an unnecessary report on granted subsidies in a way that risks confusing interested parties and undermining the streamlining of subsidy transparency that our one-stop database provides. For the reasons that I have set out, it is neither necessary nor appropriate to include a statutory obligation for the Secretary of State and devolved Administrations to report annually on the subsidies and schemes that they make. Therefore, I request that the hon. Member withdraw the new clause.

**Seema Malhotra:** On the basis that there will be further discussion, that we do not want there to be administration that is more time-consuming than it needs to be and that we will revisit the way we can have a very efficient reporting regime, I will withdraw the motion. I am not sure whether I will be speaking again—I am not sure of these final few stages—but perhaps I can take this opportunity to echo the comments from the hon. Member for Aberdeen North by thanking you, Ms Nokes, and Mr Sharma, who also chaired the Committee; all hon. Members who have contributed and been part of our deliberations; and the Clerks, *Hansard* and so on for helping to make the process extremely efficient. I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

*Question proposed,* That the Chair do report the Bill, as amended, to the House.

**Paul Scully:** I thank you, Ms Nokes, and Mr Sharma for your excellent chairmanship and getting us through this process efficiently and effectively. I also thank the witnesses and all members of the Committee, who have allowed us to go through significant scrutiny and to have significant discussions; the Clerks, the *Hansard* Reporters and the Doorkeepers for ensuring that we have been well looked after; of course my officials, who have done an incredible job to get us to this point efficiently; and of course the Whip—what an amazing Whip. Both Whips have been remarkable in getting us through this process.

**Seema Malhotra:** I echo the Minister's thanks to our witnesses. They gave us very good evidence at very short notice. I also thank both the Whips. We have hugely appreciated how they have managed time well. I also thank our staff—on our side, in particular, Francesca Sellors and Dan Jones—who have helped to ensure that we have had everything in time for the Bill proceedings, because it has been a journey.

*Question put and agreed to.*

*Bill, as amended, accordingly to be reported.*

1.15 pm

*Committee rose.*

**Written evidence reported to the House**

SCB 05 Ardtornish Hydro

SBC 06 Ivan McKee MSP, Minister for Business, Trade,  
Tourism and Enterprise, Scottish Government

