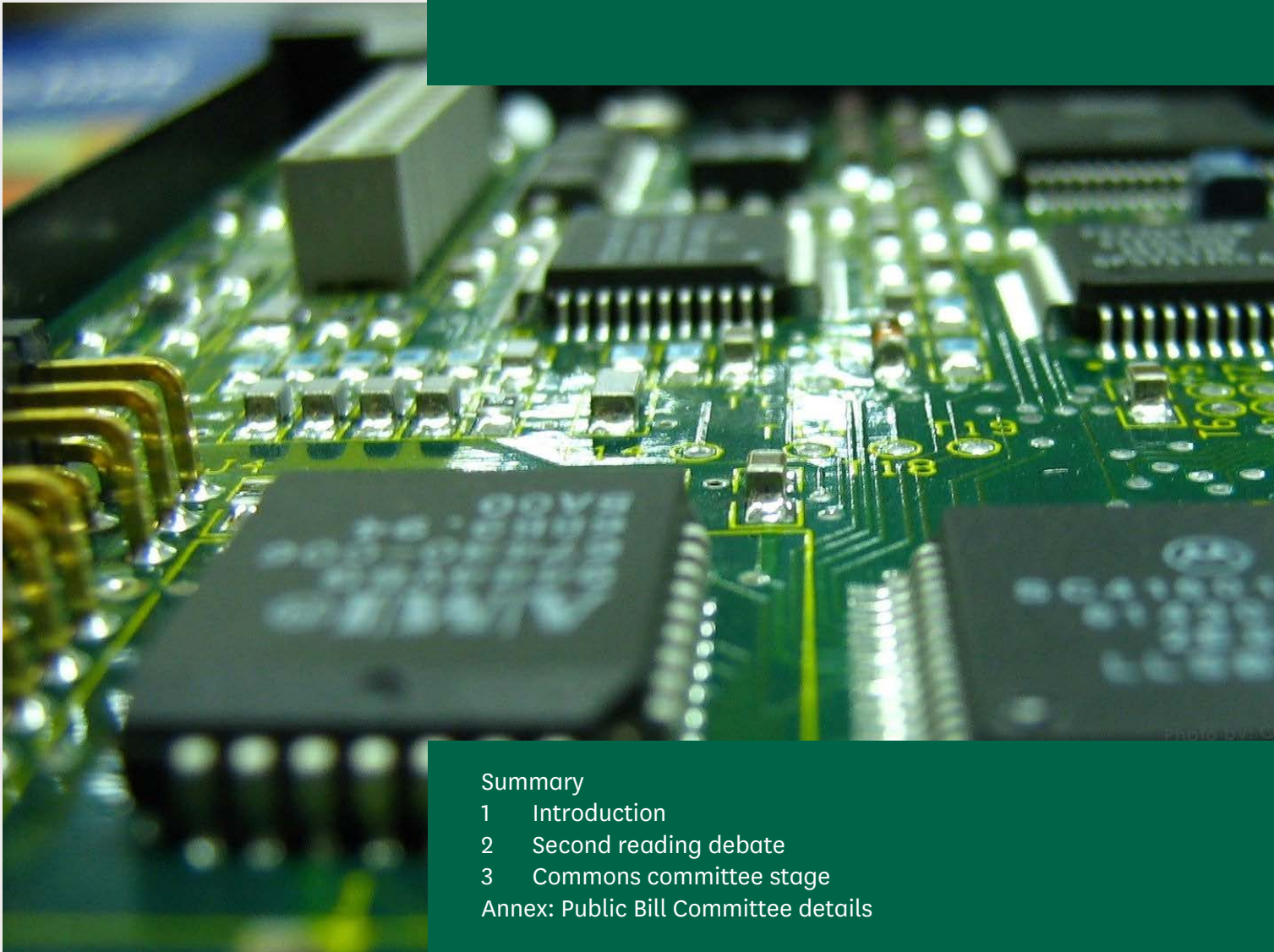


Research Briefing

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9 December 2021

Subsidy Control Bill: Progress of the Bill



Summary

- 1 Introduction
 - 2 Second reading debate
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- Annex: Public Bill Committee details

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Summary

On 30 June 2021, the Government presented the Subsidy Control Bill 2021-22 to Parliament. MPs debated the Bill at its [second reading](#) in the House of Commons on 22 September 2021 and its committee stage ended on 18 November.

This briefing has been prepared ahead of the remaining stages of the Bill, which are scheduled for 13 December 2021. It summarises what happened during second reading and committee stage.

What does the Bill do?

The Bill implements a subsidy control regime for the UK and sets out how central government, devolved administrations, local authorities, and other types of public authority, should make decisions to award subsidies. A subsidy refers to a grant, tax break, loan, or other form of financial assistance paid from public funds.

The Government's aim is for public authorities to make their own assessments of whether a new subsidy meets the requirements of the regime. It would replace EU state aid rules, which applied to the UK until 31 December 2020. Previously, the European Commission signed off specific subsidies.

The Bill gives the Competition and Markets Authority an advisory role for certain subsidies given by public authorities, including devolved administrations. The UK's regime would be enforced through the Competition Appeals Tribunal when the legal framework isn't followed.

Second reading

The central themes of the second reading debate were the role of the devolved administrations in the new subsidy control system; ways to direct subsidies to economically disadvantaged areas; transparency of public authority subsidy spending; and the place of Northern Ireland in the new framework. While the Labour Party didn't oppose the Bill and abstained in the vote, other opposition parties voted against submitting the Bill to committee stage.

Main issues in committee stage

87 amendments to the Bill and three new clauses were proposed in the Public Bill Committee, but no major amendments were agreed. The Committee passed five rather minor government amendments. These related to transparency obligations and drafting. No non-government amendments or new clauses were added to the Bill.

Opposition MPs argued that the Bill failed to provide an indication of how, where, and on what scale the Government wants to see subsidies spent. They proposed that two policy priorities are made more explicit in the Bill: targeting areas of economic deprivation and supporting the UK's net-zero objectives.

A series of amendments aimed to enhance the role of the devolved administrations in the new regime. Others were to re-balance efficiency and oversight. They were mainly related to transparency requirements and to the role of the Competition and Markets Authority.

To limit the prospect of future legal challenges of subsidies that might not comply with subsidy control rules, Opposition MPs urged the Government to set out various definitions of key terms in primary legislation.

1 Introduction

1.1 The purpose of the Bill

The Bill implements a subsidy control regime for the UK and sets out how central government, devolved administrations, local authorities, and other types of public authority, should make decisions to award subsidies.

A subsidy refers to public support to business activities and can take the form of “a grant, a tax break, a loan or guarantee on favourable terms, or the use of facilities below market price”.¹

The regime will replace the EU state aid rules which applied in the UK until the end of the transition period on 31 December 2020, and the interim provisions set out in the Government [guidance on the UK’s international subsidy control commitments](#).² It contributes to fulfilling the UK’s obligations under international agreements, such as the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM) and the UK-EU Trade and Cooperation Agreement (TCA).

The Bill has the following main functions:

- It sets out subsidy control principles which granting authorities must observe
- It exempts certain low risk subsidies, such as small grants, from the Bill’s requirements
- It prohibits certain subsidies which are generally not compliant with the UK’s international obligations, and places requirements on other subsidies
- It sets out additional administrative requirements, such as a requirement to publish information on a subsidy database
- It introduces a more detailed assessment for high risk subsidies.

The Bill establishes a Subsidy Advice Unit (SAU) in the Competition and Markets Authority (CMA). This will have an advisory role relating to certain subsidies given by public authorities, including devolved Scottish, Welsh and Northern Ireland administrations and local authorities.

¹ Subsidy Control Bill, Bill 135 of 2021-22, [Explanatory Notes](#), paras 1-6

² Department for Business, Energy and Industrial Strategy, [Guidance on the UK’s international subsidy control commitments](#), updated 24 June 2021

The SAU's advice will be non-binding and the ultimate decision to go ahead with a subsidy will be for a granting authority. The Subsidy Advice Unit will also monitor and oversee how the regime works.

The UK's regime will be enforced through the Competition Appeals Tribunal, which will effectively hear judicial reviews against a public authority's decision over a subsidy.

1.2

More information

More information about the Subsidy Control Bill is available on the following websites:

- [Bill pages](#) on the Parliament website
- [Hansard: Second Reading debate](#)
- [Public Bill Committee proceedings](#) (1,637 KB, PDF) (gives details of amendments and new clauses at Committee Stage in the House of Commons)

Full background on the Bill and its provisions as originally presented can be found in Commons Library briefing, [Subsidy Control Bill 2021-22](#), prepared for the Second Reading.

The clause numbers used in this briefing are the same as those in the [Subsidy Control Bill \(Bill 196\) 2021-22](#) (305 KB, PDF), as amended in Public Bill Committee.

2

Second reading debate

[Second Reading](#) of the Subsidy Control Bill 2021-22 took place on 22 September 2021. The Bill was granted a second reading with 287 votes to 50. The Labour Party abstained, while other opposition parties voted against it.

A [Subsidy Control Bill: Money resolution](#) was also passed, along with a Programme Motion, which meant the Bill went to a Public Bill Committee. This stage ended 18 November 2021.

2.1

Government position

The Secretary of State for Business, Energy and Industrial Strategy, Kwasi Kwarteng, introduced the Bill by stating that, having left the EU's regime, the Government is now free to set up a new bespoke system of subsidy control for the UK to deliver its national priorities.

The Secretary of State said the new UK regime would help public authorities provide subsidies “without facing excessive bureaucracy or lengthy pre-approval processes.”³ He contrasted the Bill's proposals with the EU regime, where the European Commission is required to sign off on specific subsidies.

Under the Government's proposals, public authorities would be able to make their own assessment of whether a new subsidy meets the requirements of the regime. He said that “in the vast majority of cases” public authorities would be able to proceed directly to granting the subsidy.⁴

Kwasi Kwarteng also set out the principles on subsidy control that are central to the Bill:

the subsidy must be designed to remedy a market failure. It must be designed to bring about a change in behaviour. It cannot normally cover costs that would have been funded in any case. It must be appropriate, proportionate, and designed to minimise any distortions to competition and investment in the United Kingdom. Finally, the public authority giving a subsidy must carry out a balancing test, and proceed only if the benefits of the subsidy outweigh any distortions to UK competition and investment, and to international trade.⁵

³ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c336

⁴ Ibid c337

⁵ Ibid c337

He said that government guidance, to be published under the powers granted by the Bill, would support public authorities to apply the principles.⁶

According to the Secretary of State, the Bill would give businesses certainty by protecting them from subsidies that threaten to distort competition and have harmful economic impact.⁷

Kwasi Kwarteng said that the emphasis of the more “permissive” UK regime would be on “transparency, accountability and, of course, agility.”⁸

2.2 Key issues of debate

Shadow Minister Seema Malhotra MP responded to the Government saying that the Labour Party recognised the need for a UK-wide subsidy control legislation. This would protect the UK’s internal market and ensure that public funds are being made available to businesses “with the appropriate safeguards in place.”⁹ She said, however, that the Bill did not indicate where the Government planned to see the subsidies being spent and at what scale:

We want to see well-designed, proportionate subsidies as part of the wider industrial strategy that we need to grow the businesses and industries of the future and to invest in our transition to net zero.¹⁰

The Shadow Minister acknowledged that there were benefits from “a more flexible and speedy subsidy regime”. At the same time, she raised several concerns about “gaps” in the proposals, with the main issues being:

- A lack of detail and scrutiny in the current proposals.¹¹
- The Bill does not reflect “a true four nation approach” with an imbalance of the power between the Secretary of State and the devolved administrations to challenge harmful subsidies.¹²
- A lack of balance between efficiency (speedy and flexible procedures) and effective oversight and enforcement.¹³

While the Labour Party didn’t oppose the Bill and abstained in the vote, other opposition parties voted against submitting the Bill to committee stage.¹⁴

⁶ [HC Deb 22 September 2021 \[Subsidy Control Bill\], c337](#)

⁷ Ibid c338

⁸ Ibid c340

⁹ Ibid, c340

¹⁰ Ibid, c343

¹¹ Ibid, c347

¹² Ibid, c347

¹³ Ibid, c346

¹⁴ Votes in Parliament: [Division 83: held on 22 September 2021](#)

The role of the devolved administrations

The Secretary of State reported that “extensive” consultations were held with devolved administrations before the Bill was published. Kwasi Kwarteng said these had shown that the Government and the devolved administrations agreed on “the fundamentals of the regime” and its objectives. He argued that the Bill was “a significant improvement and enhancement that represents much greater devolution” in this area than seen before.¹⁵

Following Labour’s comments, the SNP and Plaid Cymru strongly criticised the Bill’s approach to devolution. SNP members said the Bill undermined devolution¹⁶ and represented “a power grab”.¹⁷ Kirsty Blackman from the SNP said that this was “a Bill that undermines devolution, following on from the United Kingdom Internal Market Act 2020 and the shared prosperity fund.” Plaid Cymru’s Liz Saville Roberts MP said that the Bill would “steamroll devolved competence”.¹⁸

MPs were also concerned that the Bill would grant the Secretary of State power to call in subsidies designed by devolved administrations for a review by the Competition and Markets Authority (CMA), while devolved administrations would have no such power.¹⁹ The DUP’s Sammy Wilson, who welcomed the Bill in principle, said that devolved administrations should be able to challenge subsidies given by central government departments or ministers.²⁰

Several MPs noted said that devolved administrations should have an explicit role in both developing and implementing the UK subsidy regime, including in setting up the new independent body - the subsidy advice unit within the CMA.²¹

Scrutiny and enforcement

The Labour Party and the SNP were concerned about the lack of detail and scrutiny in the Bill, noting that important issues, such as defining which subsidies would be subject to enhanced scrutiny, were being left to secondary legislation. Large areas of policy would be explained in guidance, not subject to parliamentary scrutiny.

Opposition MPs emphasised the limited powers of the CMA’s subsidy advice unit. It lacks power to instigate an investigation on its own initiative or to take enforcement action.²²

¹⁵ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), cc 338-339

¹⁶ *Ibid*, c355

¹⁷ *Ibid*, c354, c362

¹⁸ *Ibid*, c337, c339

¹⁹ *Ibid*, c354

²⁰ *Ibid*, c367

²¹ *Ibid*, c354

²² *Ibid*, c346, c361, c374

To aid scrutiny, Seema Malhotra urged the Government to set out the timeline for consultation and the publication of secondary legislation for critical aspects of the new system.²³

Policy priorities and regional development

The Labour Party and Liberal Democrats stressed that subsidies must be a part of a wider industrial strategy. MPs said the Bill did not say how subsidies would be directed towards achieving economic recovery, levelling up, and net zero.²⁴

MPs from across the House asked for government guidance to clarify how disadvantaged areas or specific sectors such as steel would get support they might require.²⁵

The Government assured that the flexibility of the regime would allow authorities to deliver subsidies “where and when they are needed to support economic growth”.²⁶

Transparency of subsidies

MPs from across the House argued in favour of more robust rules on transparency and scrutiny. John Penrose, Nigel Mills, and several other Conservative MPs proposed lower thresholds for scrutiny and transparency of subsidies than included in the Bill.²⁷ Nigel Mills said that “[t]he quid pro quo of a regime without intrusive up-front clearance is that we must have transparency on what is being paid” so that subsidies are consistent with the rules.²⁸

Liberal Democrat, Sara Olney noted that transparency was needed for legal action to be a check on the system:

The only restraint on subsidies that this legislation allows for is the threat of legal action by competitors who might have missed out. Without that clear information about who is getting a subsidy and what for, it seems the information simply is not going to be available for those legal challenges to be mounted.²⁹

Minister for Small Business, Consumers and Labour Markets, Paul Scully, responded that the new regime would strike “a proportionate balance between minimising the administrative burden for public authorities and

²³ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c343

²⁴ *Ibid*, c342, c354, c364

²⁵ *Ibid*, c341, c355

²⁶ *Ibid*, c377

²⁷ *Ibid*, c348; Clause 33 of the Bill says that public authorities must include in a subsidy database information on subsidy schemes as well as individual subsidies within schemes where these are worth more than £500,000. Subsidies that qualify as “minimal financial assistance” and do not exceed £315,000 over three years, are exempt.

²⁸ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c355

²⁹ *Ibid*, c364

gathering more data.” Government guidance would help authorities apply the rules correctly.³⁰

Position of Northern Ireland

Under Article 10 of the Withdrawal Agreement’s Protocol on Ireland/Northern Ireland, EU state aid rules continue to apply to the UK if the state aid affects trade in goods and the wholesale electricity market between Northern Ireland and the EU. The Subsidy Control Bill would not change the status of subsidies in scope of Article 10 of the Protocol; they would be exempt from the UK regime.³¹

After the Subsidy Control Bill was presented, the Government published a Command Paper, [Northern Ireland protocol - next steps](#) on 21 July. The paper set out the Government’s approach to dealing with the problems arising from the Ireland/Northern Ireland Protocol.³²

One of the proposals included in the [Command Paper](#) was to remove Article 10 provisions from the Protocol in their current form. The Government argued that the UK-EU Trade and Cooperation Agreement and the Subsidy Control Bill would give the EU enough certainty that UK subsidies would not distort NI-EU trade and competition. Given the sensitivity of the issue, the UK would be willing to offer additional reassurances to the EU by “establish[ing] enhanced processes for any subsidies on a significant scale relating directly to Northern Ireland”, such as enhanced referral powers or consultation procedures.

At Second Reading of the Subsidy Control Bill, the Secretary of State, Kwasi Kwarteng said:

We are setting out the detail of a UK regime that is far from simply adhering to the EU, and it will clearly no longer be necessary for Northern Ireland to be subject to the EU state aid regime. That is precisely why we have proposed the change to the Northern Ireland protocol to bring all subsidies within scope of the domestic regime.³³

In response, Sammy Wilson (DUP) raised a concern that the Bill would place any attempt to attract business to Northern Ireland at a disadvantage, as Northern Ireland would effectively be subject to a dual subsidy regime: the UK and the EU state aid regime, while the rest of the UK would have access to the new, swift procedures.³⁴

³⁰ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c377

³¹ Subsidy Control Bill, Bill 196 of 2021-22, Clause 48(3)(a), see our Briefing [Subsidy Control Bill](#), section 2.4;

³² HM Government, Command Paper, [Northern Ireland protocol - next steps](#), CP 502, 21 July 2021, paras 63-65

³³ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c338

³⁴ *Ibid*, c338

Closing the Second Reading debate, Minister Paul Scully said “the UK will continue to be a responsible trade partner that respects our international obligations”³⁵

The Government has not submitted amendments to the Subsidy Control Bill which reflect its position in the Command Paper. UK and EU talks on the implementation of the Northern Ireland Protocol are ongoing.

2.3 Developments since Second Reading

The Government is seeking legislative consent for various provisions of the Bill, which “alter the competence of the devolved administrations”.³⁶

The Scottish Government has recommended against the Scottish Parliament giving consent to the Bill.³⁷

In July 2021, the Welsh Government recommended that the Senedd withholds consent unless the Bill is amended to address these concerns. The Senedd committees are considering the consent motion³⁸

Northern Ireland Executive is preparing a legislative consent memorandum.³⁹

On 23 September, the Commons Business, Energy and Industrial Strategy (BEIS) Committee opened an inquiry on state aid and post-Brexit competition policy, as part of its super-inquiry on post-pandemic economic growth. It held [evidence sessions](#) with experts on subsidy control on 2 and 30 November.⁴⁰

³⁵ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), c376

³⁶ Subsidy Control Bill, Bill 135 of 2021-22, [Explanatory Notes](#), paras 24-25, Annex A

³⁷ [Memorandum from the Scottish Government. Subsidy Control Bill](#), 25 October 2021.

The Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, Chris McCorkindale, Strathclyde University, [Subsidy Control Bill – some constitutional considerations](#), 23 November 2021

³⁸ Welsh Government, [Legislative Consent Memorandum](#), 13 July 2021

³⁹ [NI Assembly Brexit & Beyond Newsletter of 4 October](#)

⁴⁰ BEIS Committee, [Formal meeting \(oral evidence session\): Post-pandemic economic growth: State Aid and Post Brexit Competition Policy, 30 November 2021](#), HC 742; [Formal meeting \(oral evidence session\): Post-pandemic economic growth: State Aid and Post Brexit Competition Policy, 30 November 2021](#), HC 742; 2 November 2021

3 Commons committee stage

3.1 Summary

The Public Bill Committee (PBC) sat eleven times, beginning on 26 October and concluding on 18 November 2021. The Chairs of the Committee were Caroline Nokes and Virendra Sharma. For a list of Committee members see Annex 1.

Throughout the sittings, Paul Scully, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, was the Minister speaking on behalf of the Government. The Labour shadow team was represented by Seema Malhotra, Shadow Minister (Business, Energy and Industrial Strategy) and Bill Esterson, Shadow Minister (International Trade).

Public Bill Committee received a number of written submissions from outside bodies and individuals and held two oral evidence sessions on 26 October. The written evidence and transcripts of the Committee's sittings are available on the [Subsidy Control Bill 2021-22](#) pages of the Parliament website.

The clauses of the Bill not mentioned in this paper were those that were generally accepted and supported by all parties and which did not generate a large amount of discussion or debate.

Changes made in Committee

A total of 87 amendments to the Bill and 3 new clauses were proposed in the Committee. No non-government amendments or new clauses were added to the Bill.

Five government amendments were agreed.

- Amendments 1 and 2 to Clause 48 increase transparency of legacy subsidies given under schemes made before this Bill comes into effect, but exempt legacy subsidies for agriculture, fisheries and the audiovisual sector.
- Amendment 3 to Clause 54 and amendment 4 to Clause 62 are minor technical amendments.
- Amendment 5 to Clause 64 subjects nuclear energy subsidies to CMA referrals.

A total of 23 Opposition amendments were rejected following a vote. The remaining amendments were withdrawn after a debate or were not moved. However, Opposition MPs indicated that some similar amendments would be

introduced at Report stage, such as a new clause giving the CMA power to conduct a post-award investigation of subsidies if a public authority fails to comply with its requirements.

The Labour Party sought to address the following concerns in the Committee:

- The Bill fails to provide sufficient indication of how, where, and on what scale the Government plan to spend subsidies; for example there is no preferential system for support to disadvantaged regions
- The Bill fails to provide a fair role for the devolved administrations,
- There is not enough balance between efficiency and oversight, particularly related to the role of the CMA.⁴¹

Opposition MPs proposed that two policy priorities are made more explicit in the Bill: targeting areas of economic deprivation and support to the UK's net-zero objectives.

A series of amendments sought to change the role of the devolved administrations in the new regime. Other amendments were mainly related to transparency requirements and to the role of the Competition and Markets Authority.

In order to limit the prospect of future legal challenges of subsidies that might breach subsidy control rules, Opposition MPs urged the Government to set out various definitions in primary legislation instead of regulations.⁴²

Evidence sessions

During the evidence sessions on 26 October, the Public Bill Committee took evidence from a number of experts:

- Professor Steve Fothergill, National Director, Industrial Communities Alliance, and Professor in the Centre for Regional Economic and Social Research (CRESR), Sheffield Hallam University
- Dr Serafin Pazos-Vidal, Head of Brussels Office, Convention of Scottish Local Authorities
- Thomas Pope, Deputy Chief Economist, Institute for Government
- Professor Stephanie Rickard, Professor of Political Science, London School of Economics
- Dr Roger Barker, Director of Policy and Corporate Governance, Institute of Directors
- George Peretz QC, Monckton Chambers
- Jonathan Branton, Partner, Head of Public Sector, Head of EU Competition, Leeds, DWF Group
- Alexander Rose, Director, Newcastle, DWF Group

⁴¹ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), c82

⁴² [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), c135

- Richard Warren, Head of Policy and External Affairs, UK Steel
- Daniel Greenberg CB, Parliamentary Counsel for Domestic Legislation, House of Commons
- Rachel Merelie, Senior Director for the Office of the Internal Market, Competition and Markets Authority
- Ivan McKee MSP, Scottish Government Minister for Business, Trade, Tourism and Enterprise

See Hansard reports of the [1st sitting](#) and [the 2nd sitting](#) of Public Bill Committee.

3.2 Part 1: Overview and key definitions

Part 1 (Clauses 1 to 11) of the Bill sets out the definitions of a “subsidy”, “public authority”, “enterprise”, and other key terms.

During the debate MPs asked the Government to clarify definitions, such as “subsidy”, “enterprise”. They sought to clarify the circumstances when tax measures are a form of financial assistance (Clause 4). Seema Malhotra highlighted concerns that some witnesses had raised about certain tax reliefs potentially not being defined as a subsidy, but having the same outcome as a subsidy.⁴³

MPs also sought to clarify that social enterprises and charities would be seen as enterprises with regard to any economic activities they perform (Clause 7).

Cause 8 clarifies the definition of “persons under common control”. Minister Paul Scully explained that the clause would ensure that the subsidy control measures apply regardless of the way an enterprise is structured. The clause would make sure that a public authority does not give a subsidy to a business that is a subsidiary of a large parent company without considering that large enterprise as a whole.⁴⁴ He later clarified the Bill’s provisions on ‘persons under common control’ in a letter to Seema Malhotra.⁴⁵

The Minister assured the committee that guidance announced in the Bill would clarify the definitions and give advice to public authorities on the application of its provisions in a way that is consistent with the subsidy control principles. The guidance would be developed in consultation with stakeholders.⁴⁶

⁴³ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), c85

⁴⁴ Ibid, c89

⁴⁵ [Letter from Paul Scully MP to Seema Malhotra MP](#) (126 KB, PDF) regarding a point raised during the committee stage: how ‘persons under common control’ are treated under the provisions of the Bill, 2 November 2021

⁴⁶ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), c85

Subsidy control principles

Clause 9 introduces Schedule 1 containing the Subsidy Control Principles and Schedule 2 that sets out further principles for subsidies in relation to energy and environment. Minister Paul Scully described the principles:

The schedule sets out the seven general subsidy controls, including how public authorities should consider and assess a policy objective, and make sure a subsidy is proportionate and that it incentivises and leads to a change of behaviour in a beneficiary that would not have happened had they not had the subsidy. It does not include normal business expenses. It provides that alternative policy levers that are likely to cause less distortion should be considered before a subsidy, and that subsidies should be designed in a way that meets the policy objective and minimises the impact on competition and investment within the UK's internal market.

Finally, principle G requires public authorities to conduct a balancing test to assess the effects on competition and investment in the UK and on international trade or investment, and to determine whether the benefits of a subsidy are greater than the negative effects of providing it.⁴⁷

Opposition MPs raised two policy priorities that should be made explicit in the bill: targeting areas of economic deprivation and support to the UK's net-zero objectives.

As raised in the Second Reading debate, Seema Malhotra pointed out that the Bill lacked explicit provisions on targeting subsidies towards policy priorities, such as the levelling up agenda. She noted that under EU state aid rules subsidies could be, and were "successfully" targeted at areas of economic deprivation, and argued that a successor scheme to support that would be beneficial. Referring to Professor Fothergill's evidence to the Committee, she said:

as the Bill currently stands we could be treating investment in a wealthy part of Guildford on the same basis as a potential investment in a less prosperous part of Grimsby. That seems counterintuitive to the oft-quoted term "levelling up" [...]⁴⁸

The Minister responded that "as currently drafted, schedule 1 clearly covers investment in disadvantaged or deprived areas" and said that Government guidance published separately, would offer more clarity.⁴⁹

MPs discussed how the consideration of the UK's net-zero commitments is integrated in the Subsidy Control Bill. Labour party Amendment 7 to Schedule 1 would have explicitly required public authorities to consider the UK's net-zero commitments before giving subsidies. Amendment 8 to Schedule 2 would have required that energy and environment subsidies incentivise beneficiaries to deliver the UK's net-zero targets. Minister Scully said that the Government

⁴⁷ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), c100

[HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), cc118-121

⁴⁸ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), cc90-91

⁴⁹ *Ibid*, c92

is championing net zero and environmental protection and showing global leadership in this area. He argued that both amendments were “unnecessary”. For example, amendment 7 might give “undue prominence to net zero considerations with respect to subsidies that may have entirely unrelated objectives”. The Committee voted against both amendments.⁵⁰

MPs agreed to unamended Clauses 1 to 9 without a vote. Schedules 1 and 2 to were agreed to stand part of the Bill.

Subsidy schemes

Clause 10 defines “subsidy schemes” and “streamlined subsidy schemes.” The latter can only be made by the UK Government and must be laid before Parliament after they have been made or modified. The streamlined schemes are intended to facilitate the awards of low-risk subsidies, without having to assess them separately against the subsidy control principles and requirements.⁵¹ Their purpose is to ease the administrative burden for other public authorities when giving subsidies within these schemes.

The Committee debated the role and involvement of devolved administrations in making these definitions. Seema Malhotra proposed that the power to make streamlined subsidy schemes is extended to the devolved administrations (amendment 9). Minister Scully said that

[t]he Government intend that streamlined subsidy schemes will be a pragmatic means of establishing schemes for commonly awarded subsidies, including in areas of UK strategic priority, that all public authorities in the UK would be able to use if they wish. They will therefore function best when they apply across the entire UK.⁵²

The amendment was rejected following a vote.

Clause 11 contains provisions on “subsidies or subsidy schemes of interest” and “subsidies or subsidy schemes of particular interest”. It grants the Secretary of State power to make regulations which define these categories, subject to the affirmative procedure.

The Government explained that these categories would involve subsidies that would be more likely to pose a risk of distorting international trade or competition within the UK. As a result they would warrant scrutiny by the Subsidy Advice Unit of the Competition and Markets Authority (CMA).

Labour Amendment 12 would require that the SoS seeks consent of devolved administrations before making regulations under Clause 11. Where such consent is not given within one month, the Secretary of State would be able to go ahead, but would have to make a statement to the House of Commons explaining their decision.⁵³ Paul Scully noted that the Internal Market Act

⁵⁰ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), cc93-99

⁵¹ Subsidy Control Bill, Bill 135 of 2021-22, [Explanatory Notes](#), para 46

⁵² [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), c108

⁵³ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), Cc 112-117

2020 has determined that subsidy control is a reserved matter but that the Government will continue to engage with the Scottish and Welsh Governments and the Northern Ireland Executive during the passage of the Bill and beyond. The Committee rejected the amendment.⁵⁴

Several subsidy experts and business representatives have commented on the absence of definitions at this stage of the Bill as a deficiency. The future definitions of “interest” and “particular interest” would significantly influence the role and remit of the Subsidy Advice Unit and with it, the nature of the entire system.⁵⁵

Seema Malhotra said later that the Opposition would raise the issue of definitions at future stages and expects that, “at the very least,” the definitions are published soon after the Bill receives Royal Assent.⁵⁶

3.3

Part 2: Prohibitions and requirements

Clause 12 requires public authorities to consider subsidy control principles when awarding subsidies. Clause 13 requires consideration of additional energy and environment principles in relation to energy and environment. These key clauses of the Bill were agreed without a vote.

Clauses 14 to 31 relate to prohibited subsidies and subsidies subject to special requirements. These include prohibitions regarding unlimited guarantees to businesses, export related subsidies and the use of domestic goods and services, as mandated by UK’s international obligations. The Committee agreed to clauses 14 to 17 unamended.

Relocation of economic activities

In order to protect competition in the UK market, Clause 18 prohibits subsidies that explicitly require companies to relocate their economic activities from one part of the UK to another, where this relocation would not have occurred without the subsidy. The intent of this clause is to prevent subsidy races between different public authorities. In this context, MPs debated the bill’s relation to the support for levelling-up and “shared prosperity” within the UK.

During the Second reading debate, Steven Flynn and Kirsty Blackman (SNP) had expressed concerns that by excluding relocation subsidies, the Bill might discourage investment in disadvantaged areas.⁵⁷ In the Committee, the Opposition MPs questioned whether the prohibition would be consistent with reducing deprivation across the UK, as in certain circumstances relocation

⁵⁴ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), c116

⁵⁵ BEIS Committee, [Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy. HC 742](#) (230KB, PDF), 30 November 2021, Q107; [Official Report, Subsidy Control, Public Bill Committee](#), 26 October 2021; c.38, Q50

⁵⁶ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), c221

⁵⁷ [HC Deb 22 September 2021 \[Subsidy Control Bill\]](#), cc 353-354

could be beneficial.⁵⁸ Opposition MPs also asked whether the prohibition would effectively rule out freeports.⁵⁹

The Labour party proposed amendment 13 that would have required the Government to explain in a report to Parliament, how the prohibition of Clause 18 would be consistent with reducing deprivation across the UK, and the Government's freeports policy.⁶⁰

Paul Scully said that the bill would not prevent local authorities from offering subsidies to support regeneration. The purpose of the provision was only to prevent subsidies that are explicitly contingent on a relocation, that is, when a business would cease its economic activities in the previous area. The Minister also explained that freeports would not be caught out by this prohibition because their focus was to encourage new investment and create new jobs, rather than "harmful displacement". The tax sites would be designated only once the successful bidders had demonstrated that displacement had been mitigated.⁶¹ He said that the Government would publish guidance explaining the circumstances in which a relocation may be permitted.⁶²

Bill Esterson (Labour) said that additional reassurance was required in the Bill to prevent that attempts to give subsidies to support local areas would be left open to legal challenge:

I am afraid that without additional content going in at this stage, or on Report, or in the House of Lords, we will be left in a position where the framework will leave awarding bodies open to judicial review because of the uncertainty and the contradiction that will almost inevitably be left in place between the primary legislation of clause 18 and whatever he [the Minister] puts in guidance.⁶³

The Public Bill Committee rejected this opposition amendment. Clause 18 was agreed to.

Rescuing and restructuring of ailing or insolvent companies

Clauses 19 and 20 set out conditions under which subsidies to ailing and insolvent enterprises are permitted. These include a credible restructuring plan and the requirement that the subsidy is in public interest.

⁵⁸ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), cc124-131

⁵⁹ Ibid; Government Freeports programme is intended to create hubs for global trade and investment across the UK. Freeports also aim to promote regeneration and job creation as part of the Government's policy to level up communities. See [UK Government policy on freeports](#), Commons Library Briefing - [CBP 8823](#).

⁶⁰ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), cc 125-127

⁶¹ Ibid, c128

⁶² Ibid, c127

⁶³ Ibid, c131

The Labour party moved amendments to allow support to protect critical national infrastructure or national security in exceptional circumstances. The Minister offered assurances that the clauses and other provisions of the Bill provided for this.⁶⁴

Clause 24 defines the meaning of an “ailing or insolvent” business. Bill Esterson observed that the definition in Clause 24 were “arguably more demanding” than those under EU state aid rules. Referring to evidence by Alexander Rose of DWP law firm, he questioned whether the Government had considered the consequences of broader definitions in relation to start-ups that are capital-intensive for significant periods before profits are made and thus might lose out on subsidies. He referred to a similar point made by Rolls Royce regarding scale-ups, who had suggested that a distinction is made between short-term and long-term liabilities of enterprises, to prevent businesses from unjustly being classed as insolvent.⁶⁵

Paul Scully said that the Government wanted to be less prescriptive than relevant EU law and did not want to prevent giving of subsidies to viable businesses “with a longer route to market and profitability”. He said that Subsection (2) of Clause 24 would allow the Secretary of State to make regulations setting out what is meant by “would almost certainly go out of business in the short to medium term without subsidies”. The intention was to use current insolvency legislation as a starting point for a discussion.⁶⁶

Clause 19 to 31 were agreed to stand part of the Bill.

Transparency

The Public Bill Committee reserved a full sitting to debate the transparency of subsidies.

Chapter 3 (Clauses 32 to 34) sets out a requirement for a publicly accessible database of subsidies. Clause 32 sets out the obligation for the Secretary of State to provide a database for subsidies and subsidy schemes, so that public authorities can adhere to the transparency requirements set out in the Bill, including those in clause 33. Clause 33 puts a duty on public authorities to upload certain information on to the database. It also sets out rules for public authorities granting stand-alone subsidies and subsidy schemes.⁶⁷

The Labour Party and the SNP tabled various amendments to this part of the Bill, but none of them were agreed.

Seema Malhotra argued that the accuracy of data was particularly important given that interested parties would use information on the database to assess whether subsidies meet the subsidy control principles. Based on this information they might decide whether a subsidy should be challenged before

⁶⁴ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Fourth sitting\)\]](#), cc 131-135, amendments 14, 15

⁶⁵ *Ibid*, cc138-139

⁶⁶ *Ibid*, c139

⁶⁷ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), c171

the Competition Appeal Tribunal. Incomplete information could also lead to misguided legal challenges or result in harmful subsidies failing to be addressed.⁶⁸

Opposition MPs criticised the current database for lacking information on subsidies which could be expected to be included. They asked the Government to consider improvements of both the content and the functional design of the database, such as a better search function.⁶⁹

Opposition amendment 34 to Clause 32, requiring that the subsidy database is subject to routine audit to verify the accuracy and completeness of records, was put to a vote but rejected.⁷⁰

Paul Scully argued that amendments were superfluous as the Bill had an in-built incentive for public authorities to “ensure that the information that they upload was timely, complete and accurate”. In most cases, public authorities would be required to upload subsidies within six months. He said that the Government was open to suggestions on improving the database.⁷¹

Clause 33 says that public authorities must make entries in the database for:

- Subsidy schemes, and
- Individual subsidies exceeding £315,000 over three years (Minimal financial assistance), unless they are under subsidy schemes that are already in the database. Large awards under a scheme, that is, exceeding £500,000, must be entered in the database.

A subsidy or scheme must be uploaded within six months of the confirmation of the decision to grant or make a subsidy or scheme, except for tax measures which must be uploaded within one year.

Jonathan Branton, partner at DWF group, said, giving evidence to the Committee, that there were no compelling reasons why an authority would need six months to publish a subsidy. He noted that a large enough subsidy potentially could make a competing business insolvent within six months.⁷²

MPs debated a group of amendments that seek to widen the scope of subsidies that must be entered in the database in order to provide maximum transparency. Kirsty Blackman said while speaking to the amendments:

It is impossible to overstate the importance of the transparency database. It is the key place—the only place—where organisations and local authorities will be able to find information about the subsidies being granted.⁷³

⁶⁸ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), cc 147-148

⁶⁹ *Ibid*, cc 149-151

⁷⁰ See related amendment 39

⁷¹ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), c151

⁷² [Official Report, Subsidy Public Bill Committee](#), 26 October 2021; c 58, Q79; c53

⁷³ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), c156

She said that it would be impossible to scrutinise the permissive system unless data on subsidies paid out were complete and transparent.⁷⁴ Some legal experts have laid the link between enforcement by judicial review and the importance of a timely and complete information in the database.⁷⁵

Arguing for enhanced transparency, Seema Malhotra spoke to amendment 35 requiring that all subsidies outside a subsidy scheme, including the smaller ones, are on the database.⁷⁶

SNP amendment 33 would have ensured that minimal financial assistance subsidies under £315,000 (Clause 36) are uploaded on the subsidy database as required in clause 33, despite being exempt from the other control requirements in Part 2 of the Bill.⁷⁷

Paul Scully said that the Government had currently no intention of changing the overall threshold. It was looking at adjusting the thresholds for specific sectors, such as agriculture. These sectors would be characterised by smaller businesses where a relatively small subsidy could have a distortive effect.⁷⁸

The Minister explained further that the database had been designed to focus solely on those subsidies and schemes that could be challenged on subsidy control grounds before the Competition Appeal Tribunal. It was not a general database of public authority spending. He argued that it was therefore not necessary to include individual subsidies under a scheme (because the scheme itself was challengeable), or minimal financial assistance subsidies. The Government also wanted to avoid creating an unnecessary administrative burden for public authorities.⁷⁹

Amendment 33 was pushed to a vote but rejected.

The Opposition said they would return to transparency issues at future stages of the Bill.⁸⁰

3.4

Part 3: Exemptions

Part 3 (Clauses 35 to 51) of the Subsidy Control Bill describes subsidies that are exempt from the subsidy control requirements and conditions that apply to them. Certain types of subsidies are exempt from the framework entirely, or from different elements of it.

⁷⁴ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), c157

⁷⁵ BEIS Committee, [Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742](#) (230KB, PDF), 30 November 2021, Q106

⁷⁶ See related amendments 32 and 35

⁷⁷ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), cc 156-163

⁷⁸ *Ibid*, cc 169-171

⁷⁹ *Ibid*, cc 157-158

⁸⁰ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), c185

Minimal financial assistance

Clause 36 exempts subsidies where the total amount of financial assistance received by an enterprise is less than £315,000 over a three financial year period. Such subsidies are deemed unlikely to have distortive impact on international trade and investment, or UK competition and investment.

On the sixth sitting, MPs first voted against a requirement that, for transparency purposes, information on these limited subsidies be uploaded on the subsidy database, despite being exempt from the other control requirements.⁸¹

Kirsty Blackman (SNP) said that the procedural requirements of Clause 37 (2) would be impossible to police as they are based on self-reporting by beneficiary businesses.⁸²

The Labour party opposed Clause 36 standing part of the Bill, because in its view, the subsidy control and transparency requirements should apply to subsidies regardless of their size. Clause 36 was agreed following a vote.

Clause 37 containing procedural requirements, was agreed. The Minister set out in [a letter to Kirsty Blackman and Seema Malhotra](#) further details of the procedural requirements in Clause 37, for the provision of minimal financial assistance (MFA).⁸³

Services of public economic interest

Services of public economic interest (SPEI) are vital services that would not be supplied (or would not be supplied under the required conditions) without public support. Clause 38 sets out that services of public economic interest are exempt from the subsidy control principles. Clause 39 details the procedural requirements for this exemption to apply.

Seema Malhotra noted that for the sake of transparency, the Government should consider a requirement that notifications of both MFA and SPEI subsidies must be published. Both clauses were agreed without a debate.⁸⁴

Clause 40 on mergers and acquisitions was agreed. It ensures that exemptions cannot be exploited by enterprises restructuring themselves in such a way as to receive more exempt subsidies.

Clause 41 exempts provides that when the total SPEI assistance is less than £14.5 million per task, information about this assistance does not have to be

⁸¹ Amendment 33, debated earlier; see section 3.3, Transparency, above

⁸² Before awarding an MFA subsidy, a public authority has to provide the intended beneficiary with an MFA notification containing certain information. The beneficiary enterprise must confirm that the subsidy together with earlier MFA subsidies, will not exceed the MFA threshold.

⁸³ [Letter from Paul Scully MP to Kirsty Blackman MP and Seema Malhotra MP](#) (128KB, PDF) regarding clarification on Clause 37 and the procedural requirements for the provision of Minimal Financial Assistance (MFA), as discussed during the committee stage, 9 November 2021

⁸⁴ [HC Deb 9 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), c193

included on the subsidy database. Assistance to other specified public services, such as hospital care is exempt from the transparency requirements altogether.

Bill Esterson (Labour) said his party did not believe that the clause should stand part of the Bill:

That is consistent with our approach to the problems with the lack of content on the database and the lack of transparency. [...]

[W]e understand that the subsidies to services of public economic interest should not have to obey the subsidy control requirements, but we cannot see why they should not be published on the database. [...]

The clause unnecessarily reduces the transparency for subsidies that could amount to tens of millions of pounds—perhaps more in some cases.⁸⁵

The Minister responded that SPEI subsidies were at a lower risk of distorting competition, and that this justified a higher transparency threshold, of £14.5 million. He also said that the Government sought the appropriate balance between transparency and minimal administrative burden, and noted that the Bill did not exempt SPEI subsidies in general from referral to the CMA.⁸⁶ Clause 41 was agreed to following a vote (Ayes 9, Noes 5).

Clause 42 gives the Secretary of State power by regulation – subject to the affirmative procedure – to adjust the value thresholds of minimal and SPEI financial assistance.

Labour moved Amendment 45 to Clause 42, that would require the Secretary of State to seek the consent of the devolved administrations before making regulations under this section. The Government argued that the amendment was superfluous because the regulations would mainly seek amendments in response to changing UK's international obligations – exchange rate fluctuations or new international agreements. It said that devolved administrations would be consulted where appropriate.

Earlier in the Committee, in relation to Clause 33, the Minister had said that the Government was considering adjusted/lower threshold for specific sectors, and had given an example of agricultural subsidies where a relatively small subsidy could have a distortive effect and a lower threshold might be needed.⁸⁷

The amendment was rejected following a vote, and Clause 42 was agreed as proposed.⁸⁸

⁸⁵ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), cc195-196

⁸⁶ *Ibid*, c195

⁸⁷ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Fifth sitting\)\]](#), c170

⁸⁸ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), C200

Other exemptions

The following clauses cover the remaining exemptions from the subsidy control principles; Clauses 43 (Natural disasters), 44 (National or global economic emergencies), 45 (National security), 45 (Bank of England monetary policy), 47 (Financial stability). These clauses were agreed without a division.

Clause 48 covers legacy and withdrawal agreement subsidies. Legacy subsidies refer to subsidies given under schemes which have been made before the day this Bill comes into effect. Clause 48 (1) fully exempts legacy and withdrawal agreement subsidies from the subsidy control requirements.

Government amendment 1 to Clause 48 was agreed. The amendment inserts a new subsection clarifying that, although subsidy control requirements do not apply to certain legacy subsidies, the transparency requirements in chapter 3 of part 2 of the Bill will apply to subsidies awards that are given after the Bill comes into force, but that are provided under legacy schemes.

The new subsection also provides that agriculture, fish and the audiovisual sector subsidies given under legacy schemes are exempt from the transparency requirements, as these sectors are excluded from the relevant chapter of the TCA.⁸⁹

Subsection (2)(a) of Clause 48 exempts the subsidies covered by Article 10 of the Ireland/Northern Ireland Protocol from the subsidy control requirements.

Bill Esterson moved Amendment 47, that would have required the Secretary of State to make a statement to the House of Commons regarding the application of Article 10 of the Northern Ireland Protocol on the date on which the Act is passed. He explained:

Clause 48 provides that the requirements of the subsidy control regime do not apply to subsidy schemes that are subject to the Northern Ireland protocol. The Minister will suggest, I imagine, that this gives comfort to public authorities and avoids the double jeopardy of both regimes applying to a subsidy scheme—I take that from what he and the Secretary of State said on Second Reading.

If the Minister were to say that, he would be assuming that there is clarity on which subsidies and schemes are subject to the protocol. On this vital question that public authorities will need to interpret, there is no agreement between the UK Government and the European Commission. There is significant uncertainty about the extent of the reach back—that is, where EU state aid rules will continue to apply across the UK. Where a subsidy is applied in Wales, Scotland or England has consequences in Northern Ireland.⁹⁰

⁸⁹ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), c206

⁹⁰ *Ibid*, c206

Kirsty Blackman supported the amendment saying that “people literally do not know which regime will apply“, meaning the EU state aid regime or the UK regime.⁹¹

The Minister pointed towards the Department’s guidance published on 31 December 2020, as required by Section 48 of the United Kingdom Internal Market Act 2020.⁹² Referring to the proposals included in the Government Command Paper on Northern Ireland Protocol of July 2012, he said that:

The Government are in intensive discussions with the EU with the aim of delivering significant changes to the Northern Ireland protocol, including article 10. Although it would be inappropriate to comment on the talks at this time, it is worth pointing out that the status and applicability of article 10 at the time the Bill is passed will depend heavily on them.⁹³

For more information on the Government Command Paper see section 2.2.

The Committee rejected amendment 47. The Committee agreed to Government technical amendment 2, to Clause 48 consequential to Amendment 1. After that, the Labour party pushed for a vote on Clause 48 stand part of the Bill, but lost by 9 to 4 votes.

3.5

Part 4: CMA referrals and functions

Part 4 (Clauses 52 to 69) establishes the CMA as an independent body with an advisory and oversight role in the regime. The Committee considered this part of the Bill over three sittings on 4 and 16 November.

In his introduction, Minister Paul Scully set out the practical relationship between the CMA and the Subsidy Advice Unit (SAU) – a new sub-unit of the Competition and Markets Authority established by the Bill:

Technically speaking, the provisions in part 4 confer various responsibilities on the CMA, and it is for the CMA to decide which of its responsibilities it will delegate to the SAU. [...] While the decision on how to organise its work rests with the CMA, in practice it is likely that most if not all of the responsibilities under part 4 will be delegated to the SAU.⁹⁴

Paul Scully clarified the role of the SAU:

[..] the SAU is not a regulator or a gatekeeper, but rather acts as that impartial adviser for the most potentially harmful subsidies and schemes. Its reports are non-binding, and it will provide an important way of scrutinising

⁹¹ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), c208

⁹² BEIS, [Guidance on the UK’s international subsidy control commitments](#), updated 24 June 2021

⁹³ [HC Deb 2 November 2021 \[Subsidy Control Bill \(Sixth sitting\)\]](#), cc 208-209

⁹⁴ *Ibid*, c221; The mechanics of the process are laid out in Clause 68.

the underlying assumptions in the design of subsidies and schemes, as well as identifying potential weaknesses.⁹⁵

The CMA has no power to start an investigation of its own motion or in response to a third party complaint. It has no power to consider a subsidy unless the subsidy is referred to it by the granting authority or the Secretary of State.⁹⁶

Mandatory referral

Clause 52 provides that subsidies and schemes of “particular interest”, considered to present the highest risk of causing harmful distortion, are subject to a mandatory pre-award referral to the CMA. Clause 55 gives the Secretary of State (SoS) power to issue a direction asking a public authority to refer a subsidy or scheme to the CMA, before it is given or made. The SoS may call in a subsidy or a scheme of interest, or any other subsidy or scheme which the SoS considers posing certain risks.

As set out in section 3.2 above, the Government will make the definitions of the two categories of subsidies – those of “interest” and “of particular interest” – in regulations, subject to the affirmative procedure (clause 11). The Minister said that the definitions will capture subsidies that are more likely to give rise to trade disputes, as well as subsidies that are more likely to distort UK competition and investment”.⁹⁷

Seema Malhotra reiterated Labour concerns about the lack of detail regarding definitions of subsidies “of particular interest” and called for them to be part of primary legislation.⁹⁸

Clauses 52 and 53 were agreed without a vote.

Clause 54 establishes the cooling-off period that must elapse before a public authority may give a subsidy or make a subsidy scheme that has been referred to and reported on by the Subsidy Advice Unit, following a mandatory referral.⁹⁹ The Clause was agreed, including Government technical amendment 3.

Call-in direction

Clause 55 gives the Secretary of State (SoS) power to issue a direction (“a call-in direction”) asking a public authority to refer a subsidy or scheme to the CMA, before it is given or made.

The Labour party tabled amendment 52 to extend the call-in power under this clause to the devolved administrations. Bill Esterson referred to the earlier

⁹⁵ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Seventh sitting\)\]](#), c226

⁹⁶ George Peretz, Tax implications of the Subsidy Control Bill, *Tax Journal*, 1 October 2021, p17

⁹⁷ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Seventh sitting\)\]](#), c222

⁹⁸ *Ibid*, c221. See also section 3.2 above

⁹⁹ *Ibid*, c229

debate (see section 2.2 above) and quoted expert evidence recommending that the Bill better reflects the devolution settlement.¹⁰⁰ He said that the devolved administrations should have powers like those of the Secretary of State to call in subsidies, which could be damaging to their own economies.¹⁰¹

Conservative members Simon Baynes and Robin Millar noted that subsidy control is a reserved power, and said it was appropriate for these matters to be the responsibility of the SoS.¹⁰²

The Minister said that the annual report of the CMA would allow for Parliamentary oversight of the SoS's use of this power. In the majority of cases, most harmful subsidies would be subject to mandatory referral. The call-in direction was a safety net for some harmful subsidies not covered by the "subsidies of particular interest" definition. He argued that it was therefore appropriate for the SoS to exercise this reserved power UK wide.¹⁰³

Amendment 52 was rejected on division and Clause 55 agreed unamended.

Clause 59 covers the contents of CMA reports following mandatory or voluntary referrals. The Minister set out that the CMA report would evaluate the public authority's assessment of whether the subsidy or scheme complies with the subsidy control principles, prohibitions and other requirements. Not being an enforcement body but an advice unit, the CMA would not directly comment on the legitimacy of a subsidy.¹⁰⁴

Bill Esterson moved amendment 53 that would have removed the power of the Secretary of State to amend this section by regulations.¹⁰⁵ The Opposition was concerned that the clause allows the Secretary of State to use regulations to influence the content and form of CMA reports and this would jeopardise the CMA's independence.¹⁰⁶

The Government said that the clause allows the SoS to make provision about the content and form of the independent report, but not to change its text.¹⁰⁷ Amendment 53 was rejected on division and Clause 59 agreed.

Post-award referrals

Under Clause 60, the Secretary of State may refer a subsidy to the CMA after it has been awarded or a subsidy scheme has been made. This applies in cases where an awarded subsidy does not comply with the subsidy control

¹⁰⁰ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Seventh sitting\)\]](#), c230

¹⁰¹ *Ibid*, c231

¹⁰² [HC Deb 4 November 2021 \[Subsidy Control Bill \(Seventh sitting\)\]](#), c230

¹⁰³ *Ibid*, c232

¹⁰⁴ *Ibid*, c245

¹⁰⁵ See consequential amendment 54

¹⁰⁶ *Ibid*, c240-242

¹⁰⁷ *Ibid*, c241

principles and requirements, or risks having negative effects on competition or investment within the UK.

In order “to provide the devolved administrations with the proportionate and fair symmetry of powers”, Labour amendment 55 proposed to extend the post-award referral powers to the devolved administrations. The Committee voted against the amendment.¹⁰⁸

Seema Malhotra spoke to a proposed new clause giving the CMA power to conduct a post-award investigation of subsidies “where the public authority has or may have failed to comply with its requirements”.¹⁰⁹ This would allow the CMA to conduct such investigations on its own initiative.

She referred to expert evidence given to the Committee, that the bill lacked provisions to address subsidies that would be, either deliberately or mistakenly, categorised as not being subsidies and would therefore avoid scrutiny.¹¹⁰ She had earlier recalled the view of some experts, that there was a gap in auditing the quality of the public authority assessment.¹¹¹

Similarly, the CMA lacking an enforcement role was raised by experts before the Business, Energy and Industrial Committee. Isabel Taylor, Partner at law firm Slaughter and May said that from the perspective of individual businesses that might be aggrieved by a subsidy decision, the enforcement regime in the Bill was weaker compared to the EU regime:¹¹²

At the moment, the system basically says, “You have to be prepared to go to court over this and, by the way, you have to go very, very quickly”. That is the logical consequence of wanting a lighter, brighter, easier and lower-risk regime. The structure is by design rather than by accident, but that is a consequence for individuals. It is harder to challenge.

In terms of giving the CMA a role, it is very hard to separate that from the question of remedies. If you give the CMA a formal role in relation to complaints, you would have to give them the power to do something about complaints. Otherwise that is just going to cause frustration.¹¹³

Government’s view was that this new clause would give an investigatory role to the CMA that was at odds with the specific and limited role set out in the Bill.¹¹⁴ They said that judicial review was the main tool of enforcement. New clause 3 was not put to a decision but Seema Malhotra has put it forward for report stage.

¹⁰⁸ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Eighth sitting\)\]](#), cc 245-248

¹⁰⁹ *Ibid*, cc 252-253, new clause 3

¹¹⁰ [Official Report, Subsidy Control Public Bill Committee](#), 26 October 2021; c. 42, Q61.

¹¹¹ [HC Deb 28 October 2021 \[Subsidy Control Bill \(Third sitting\)\]](#), c84

¹¹² Under EU state aid law, interested parties such as aggrieved competitors can lodge a complaint with the European Commission, who has power to investigate allegedly unlawful subsidies.

¹¹³ BEIS Committee, [Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742](#) (230KB, PDF), 30 November 2021, Q91

¹¹⁴ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Eighth sitting\)\]](#), c254

The Committee agreed to Government amendment 4, bringing forth a minor change to clause 62(4) to ensure consistency of the Bill, and agreed that the amended Clause 62 be part of the Bill.

Later, in a letter to Kirsty Blackman, the Minister clarified the conditions in Clauses 60 and 62 which would allow the SoS to make a referral.¹¹⁵

Exemptions from referrals

Clause 64 lists a limited number of exemptions from some or all of the provisions regarding the referral of subsidies and schemes to the CMA.

The Labour party moved amendment 59 to Clause 64 to remove the exemptions in relation to streamlined subsidy schemes and minimal financial assistance.¹¹⁶ Bill Esterson argued that this would ensure adequate transparency for subsidies awarded in “unexceptional circumstances”.¹¹⁷

The Minister said that it was not necessary for streamlined subsidy schemes or minimal financial assistance subsidies to be referred to the CMA, because these types of subsidy were less likely to distort competition in the first place. The streamlined subsidy schemes would already be subject to additional scrutiny and transparency through other means, such as Government engagement with other public authorities and experts during their development.¹¹⁸ The amendment was rejected after a vote.

Government Amendment 5 would remove nuclear energy subsidies and subsidy schemes from the list of subsidies that are exempt from the CMA referral provisions in chapter 1 of part 4 (Clauses 52 to 55) and would bring them back into the referral regime. The amendment was agreed without a division and Clause 64 was agreed as amended.¹¹⁹

Clause 65 requires the CMA to monitor and report every five years on the overall effectiveness of the Act and its impact on competition or investment within the UK. The Secretary of State may direct the CMA to produce a report on another specified period.

Kirsty Blackman (SNP) spoke to amendments 29 and 30, requiring that the CMA publish an initial monitoring report after two years, and annually thereafter.¹²⁰ Opposition MPs argued that publishing an initial report at an earlier date, and more frequent reporting thereafter, would increase transparency and give an insight into effectiveness of the new regime. The

¹¹⁵ [Letter from Paul Scully MP to Kirsty Blackman MP and Seema Malhotra MP](#) (178 KB, PDF) regarding Clause 60 (post-award referrals) of the Bill, as discussed at Committee stage (eighth sitting), 9 November 2021

¹¹⁶ See related amendment 60

¹¹⁷ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Eighth sitting\)\]](#), c261

¹¹⁸ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Seventh sitting\)\]](#), cc235-236

¹¹⁹ [HC Deb 4 November 2021 \[Subsidy Control Bill \(Eighth sitting\)\]](#), cc256-257, c266

¹²⁰ See related amendment 30 and amendments 61 and 62 pertaining to the frequency of CMA reporting, *ibid*, cc 271 -278

Minister argued that the amendments were unnecessary; the Bill allowed the Secretary of State to ask for an earlier report if it should be considered necessary. Amendment 29 was rejected after a vote.

The next amendment put to vote was Labour amendment 63 to Clause 65 requiring the CMA to consult with the Secretary of State and the devolved administrations before preparing a report under this section. In line with previous opposition amendments, it sought to enhance the role of the devolved administrations in the regime. The amendment was rejected on division.¹²¹

Clause 65 was accordingly agreed.

Subsidy Advice Unit

Clause 68 of the Bill establishes an independent body: the Subsidy Advice Unit (SAU) in the CMA, to which the CMA may delegate its powers under the Bill.

The Committee debated a group of amendments in relation to enhancing the role of the devolved administrations in relation to the CMA's role. Labour amendment 67 would have allowed the CMA Chair to appoint up to three non-executive members, to ensure that the Subsidy Advice Unit includes at least one person with experience in relation to each of Wales, Scotland and Northern Ireland was put to vote.¹²²

Paul Scully said that these amendments appeared to misinterpret the relationship between the CMA and the SAU. SAU appointments were internal CMA appointments. He said that the amendment risked “undermining its independence”, and added that the CMA already could recruit staff and members from across the UK and consult experts with interest in Scotland, Wales and Northern Ireland.¹²³ The amendment was rejected following a division.

The Minister set out in a letter to Kirsty Blackman the differences within the CMA between the position of the SAU and that of the Office of the Internal Market, established under the Internal Market Act 2020.¹²⁴

Clauses 67 to 69 were agreed.

¹²¹ [HC Deb 16 November 2021 \[Subsidy Control Bill \(Ninth sitting\)\]](#), cc 278-282

¹²² *Ibid*, cc 290-294, related amendments 68 and 69

¹²³ *Ibid*, c292

¹²⁴ [Letter from Paul Scully MP to Kirsty Blackman MP](#) regarding issues discussed during the Committee stage: Clause 68, the governance arrangements for the Subsidy Advice Unit (SAU), the misuse of subsidies, Minimal Financial Assistance, 22 November 2021

3.6

Part 5: Enforcement

During the tenth sitting on 16 November, Public Bill Committee considered the enforcement mechanisms created by the Bill.

Clause 70 allows an “interested party” to challenge a subsidy decision by a public authority. “Interested party” means anyone whose interests are affected by the decision (such as a competitor to the business which received the subsidy), or the Secretary of State. The Competition Appeals Tribunal would be given power to hear these challenges. These will be the same powers to review subsidies as the High Court (in England, Wales and Northern Ireland) or the Court of Session (in Scotland).

MPs debated the definition of an “interested party” and suggested that it could have the effect of not allowing indirectly interested parties to bring a challenge.¹²⁵

Legal experts have suggested widening the circle of privileged applicants to enhance enforcement. George Peretz QC of Monckton Chambers has, for example, suggested creating a class of “automatically interested parties” so as to include devolved administrations and possibly local authorities and any other person who would have standing under ordinary public law principles.¹²⁶ James Webber, Partner at Shearman & Sterling, has said that the CMA could be given a role of a privileged applicant. The CMA then would be able to bring judicial reviews of its own motion, thus enhancing enforcement.¹²⁷

The SNP moved amendment 23 to Clause 70, which would have designated the devolved administrations as interested parties able to challenge subsidy decisions, alongside the Secretary of State.¹²⁸

The Minister replied that the intention of the clause was to allow a default right to stand as an interested party to challenge subsidies. The specific role was reserved for the Secretary of State to oversee the whole system and ensure compliance with international agreements. He said it would not be appropriate or necessary for any other public authority to have the same standing. Any public authorities, including local councils or any awarding body could be an interested party under the Bill.¹²⁹

The amendment was rejected on division and Clause 70 was agreed.

¹²⁵ [HC Deb 16 November 2021 \[Subsidy Control Bill \(Tenth sitting\)\]](#), c306

¹²⁶ George Peretz QC, [The Subsidy Control Bill: Part II – Application to legislation, questions & concerns](#), UK Constitutional Law Association website, 29 October 2021, accessed 7 December 2021

¹²⁷ BEIS Committee, [Oral evidence: Post-pandemic economic growth: state aid and post-Brexit competition policy, HC 742](#) (230KB, PDF), 30 November 2021, Q90

¹²⁸ [HC Deb 16 November 2021 \[Subsidy Control Bill \(Tenth sitting\)\]](#), cc303-309

¹²⁹ [HC Deb 16 November 2021 \[Subsidy Control Bill \(Tenth sitting\)\]](#), cc 307-309

Clause 71 states that unless exceptional circumstances apply, the time limit for an “interested party” to apply to the CAT to challenge a decision is one month from the later of (i) receipt of the response to any pre-action information request; or (ii) the date on which the CMA publishes its post-award referral report.

During evidence sessions, some experts made the case for extending the period in which someone can appeal a subsidy decision.¹³⁰

The Labour party proposed to establish longer time limits for making an application for a CAT review. Amendment 75 would have provided for an extended period of challenge where a public authority has not complied with transparency obligation under section 33 (duty to include information in the subsidy database).¹³¹ Amendment 73 would have extended the period for interested parties to submit an application for review of a subsidy to three months from the current one month. These amendments were debated but not voted on.

The Minister responded that the clauses reflected the balance that the Government have found between certainty of subsidy beneficiaries, that the subsidy decision can no longer be challenged, on the one hand and allowing interested parties to challenge potentially unlawful subsidies on the other hand. Amendments were withdrawn.¹³²

Clauses 71 to 77 were agreed without a vote.

3.7

Part 6: Miscellaneous and general

Clause 78 introduces Schedule 3 which sets out which provisions of the Bill apply to subsidies given or subsidy schemes made by means of primary legislation, referring primarily to devolved primary legislation. It also ensures that subsidies in devolved primary legislation are not subject to mandatory referrals to the CMA. The schedule provides that subsidies in Acts of Parliament are subject to the transparency requirements on voluntary referrals to the Subsidy Advice Unit.¹³³ Clause 78 and Schedule 3 were agreed to without a vote.

Clause 79 gives the Secretary of State power to issue and update guidance on the new subsidy regime. MPs debated what aspects of the new regime the guidance should cover.¹³⁴ Minister Scully said that guidance would be:

¹³⁰ [Official Report, Subsidy Control, Public Bill Committee](#), 26 October 2021; cc56-58, Q77, Q79

¹³¹ [HC Deb 16 November 2021 \[Subsidy Control Bill \(Tenth sitting\)\]](#), c310, related amendment 74

¹³² *Ibid*, c315

¹³³ [HC Deb 18 November 2021 \[Subsidy Control Bill \(Eleventh sitting\)\]](#), c329

¹³⁴ *Ibid*, cc 332-336, amendments 80, 24, 81

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.¹³⁵

Guidance would be published “in time for the Bill’s coming into force”, expected to be in the autumn of 2022.¹³⁶

Paul Scully confirmed that the Government would consult stakeholders, which “may well include” devolved administrations, to ensure that the guidance is fit for purpose.

In another attempt to strengthen the role of devolved administrations in the new regime, Seema Malhotra moved an amendment that would have required the Secretary of State to gain the consent of the devolved administrations before issuing guidance.¹³⁷ The Committee rejected the amendment following a vote and agreed to Clause 79 stand part of the Bill.

Clause 81 allows for limited amendments to be made to subsidies or schemes. A permitted modification would not be treated as a new subsidy or scheme as long as it meets the parameters set out in the clause.

Seema Malhotra argued that this clause would allow potentially distortive modifications to subsidies, without sufficient transparency. Two Labour amendments to limit the permitted modifications, were rejected on division. The Government argued that the clause was balanced and would reduce bureaucratic burden on public authorities of having to reassess a subsidy when modifications are minor.¹³⁸

Clauses 80 to 92 were added to the Bill without division.

Finally, the Committee considered two new clauses proposed by Kirsty Blackman and Seema Malhotra:

- requiring each new Government to make a statement to Parliament about any changes it intends to make to the subsidy control principles,¹³⁹ and
- requiring the Secretary of State and devolved administrations to report annually on their subsidies.¹⁴⁰

The Committee debated the amendments but they were not put to a vote.

¹³⁵ Ibid, c335

¹³⁶ Ibid, c335

¹³⁷ Amendment 82; Amendment 86 to Clause 87 would require the Secretary of State to seek the consent of the devolved administrations before making regulations under Subsidy Control Act, but it was not called.

¹³⁸ [HC Deb 18 November 2021 \[Subsidy Control Bill \(Eleventh sitting\)\]](#), cc342-346, amendments 83 and 84

¹³⁹ [HC Deb 18 November 2021 \[Subsidy Control Bill \(Eleventh sitting\)\]](#), c354, new clause1

¹⁴⁰ [HC Deb 18 November 2021 \[Subsidy Control Bill \(Eleventh sitting\)\]](#), c356, new clause 4

Annex: Public Bill Committee details

Members of the Committee

- 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).

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