

SUBSIDY CONTROL BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

- These Explanatory Notes have been produced by the Department for Business, Energy and Industrial Strategy to assist the reader. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

Overview of the Subsidy Control Bill

- 1 The purpose of the Subsidy Control Bill is to implement a domestic subsidy control regime in the United Kingdom that reflects the UK's strategic interests and particular national circumstances, providing a legal framework within which public authorities make subsidy decisions.

Policy background

- 2 A subsidy is where a public authority – for example central, regional or local government – provides support to a business, or other organisation, that gives them an advantage over competitors.
- 3 This 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.
- 4 Having left the European Union, the UK is no longer subject to EU State aid rules (the EU's particular approach to subsidy control).¹ In September 2020, the Government announced its intent to design a new domestic subsidy control regime that best suited the needs of the UK, representing value for money to the UK taxpayer, and complying with international obligations.
- 5 The Government ran a consultation between 3 February and 31 March 2021, inviting views from a wide range of stakeholders on how best to design a domestic approach to subsidy control.
- 6 The Government aims to deliver a regime that:
 - a. Empowers local authorities, public bodies, and central and devolved administrations to design subsidies that deliver strong benefits for the UK taxpayer.
 - b. Enables public authorities to deliver strategic interventions to support the UK's economic recovery and deliver UK Government priorities such as levelling up and achieving net zero.
 - c. Provides certainty and confidence to businesses investing in the UK, by protecting against subsidies that risk causing distortive or harmful economic impacts, including to the UK internal market.
 - d. Contributes to meeting the UK's international commitments on subsidy control, including its international commitments under the World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM), the Trade and Cooperation Agreement with the EU (TCA) and other free trade agreements.
- 7 The key provisions of the Bill involve:
 - a. Setting out the subsidy control requirements public authorities are subject to when granting subsidies to an enterprise:
 - i. The Bill sets out seven principles that public authorities must assess their proposed subsidies against. The Bill defines these as the subsidy control principles. Additional principles may apply to specific energy and environmental subsidies.

¹ Subject to the State aid provisions under the terms of Article 10 of the Northern Ireland Protocol.

- ii. The Bill prohibits certain subsidies and requires that certain subsidies can only be granted where specified requirements are met.
 - iii. The Bill requires certain subsidies to be published on a database.
 - b. Exempting certain subsidies from some or all of these requirements.
 - c. The establishment of a new Subsidy Advice Unit in the Competition and Markets Authority (CMA), which will monitor and report on the regime and report on certain subsidies and schemes before and after they are given or made.
 - d. Making provision for the Competition Appeal Tribunal (CAT) to hear applications to review subsidy decisions and to order recovery in certain cases, imposing a duty on public authorities to provide pre-action information at the request of an interested party, and conferring a right on public authorities to recover subsidies which are misused.
- 8 The Bill provides for measures which will support the UK to remain compliant with its international obligations under the ASCM, the TCA, and other free trade agreements.

Subsidy control definitions and requirements

- 9 Part 1 of the Bill sets out the key definitions that are used in the rest of the Bill.
- 10 Part 2 of the Bill sets out the principles that underpin the subsidy control regime, including seven main principles and nine additional energy and environment principles. It also places a duty on a public authority to consider the principles, when taking a decision whether to give a subsidy, or make a subsidy scheme. Public authorities have a duty to consider the energy and environment principles in addition to the subsidy control principles if they are making a scheme or giving a subsidy in relation to energy and environment. The public authority must not give the subsidy, or make the subsidy scheme, unless the public authority considers that doing so is consistent with the principles.
- 11 The Bill also provides powers for the Secretary of State to issue guidance on the meaning and effect of the principles, as well as on how public authorities should comply with their duty to consider the principles.

Exemptions

- 12 Part 3 of the Bill sets out certain types of subsidies that are exempt from the subsidy control requirements in Part 2. Chapter 2 of Part 3 sets out that subsidies given as minimal financial assistance (subsidies for less than £315,000) and as services of public economic interest assistance (subsidies for less than £725,000) are exempt from the subsidy control requirements. This Part also contains procedural requirements related to the award of these subsidies.
- 13 Chapter 3 of Part 3 contains exemptions from the subsidy control requirements for subsidies given to address different emergencies. Subsidies given to compensate for natural disasters or other exceptional occurrences are exempt from all the subsidy control requirements apart from the transparency obligations. Subsidies given in response to a national or global economic emergency are exempt from complying with prohibitions and requirements imposed by clauses 15 to 29 in Chapter 2 of Part 2.
- 14 Chapter 4 sets out further exemptions from the subsidy control requirements for subsidies given for the purpose of national security, those given as part of the Bank of England's monetary policy activity, financial stability directions, large cross-border or international projects, legacy and withdrawal agreement subsidies and certain tax measures.

CMA: Referrals and functions

- 15 Part 4 provides for the functions of the Competition and Markets Authority (CMA) under this Bill. Chapter 3 of Part 4 requires the CMA to establish a body called the Subsidy Advice Unit for the purposes of carrying out those functions.
- 16 Chapter 1 requires that certain subsidies and schemes must be referred by public authorities to the CMA before they may be given or made (a 'mandatory pre-award referral'). Public authorities must wait for the CMA to publish its report, and for a cooling-off period to elapse following the publication of that report, before giving or making those subsidies or schemes. Public authorities may also voluntarily refer certain other subsidies or schemes to the CMA before they are given or made (a 'voluntary pre-award referral'). The CMA's report further to a mandatory or voluntary pre-award referral will include an evaluation of the public authority's assessment as to whether the subsidy or scheme would be consistent with the subsidy control requirements in Chapters 1 and 2 of Part 2.
- 17 The Secretary of State may also refer a subsidy or scheme to the CMA after it has been given or made (a 'post-award referral'). The CMA is required to publish a post-award report on the subsidy or scheme, which must include an evaluation of any assessment that was carried out by the public authority as to why the subsidy or scheme would be consistent with the subsidy control principles, prohibitions and requirements (or stating that no such assessment was provided).
- 18 Chapter 2 of Part 4 makes provision for the CMA to produce a five-yearly report on the effectiveness of the operation of this Bill and its impacts on domestic competition and investment in the UK. The CMA will also need to report annually on the number and types of subsidies or schemes in respect of which it has prepared a report under Chapter 1 of Part 4.

Enforcement

- 19 Part 5 contains provisions relating to the enforcement of the subsidy control requirements. Interested parties will be able to apply to the Competition Appeal Tribunal (CAT) to review a decision to give a subsidy or make a subsidy scheme (a 'subsidy decision'). The CAT will apply the same principles when hearing an application for review as would be applied by the High Court on application for judicial review and will be able to grant the same types of relief as are available in such proceedings. In addition, the CAT will be able to make a recovery order if a subsidy control decision is found to have breached the subsidy control requirements in Chapters 1 and 2 of Part 2. The Bill also amends the Tribunal Procedure Rules to make provision as to the time limits within which a claim needs to be made and the forum for appealing points of law arising from a decision of the CAT.
- 20 Part 5 also imposes a duty on public authorities to provide certain information to interested parties about a subsidy or subsidy scheme. An interested party may request the information for the purpose of deciding whether to apply to the CAT for a review of a subsidy or scheme on the grounds that it failed to comply with the relevant subsidy control requirements. Part 5 also gives public authorities a right to recover subsidies that are misused by a beneficiary of the subsidy.

Legal background

- 21 The relevant legal background is explained in the policy background of these notes.

Territorial extent and application

- 22 Clause 90 in Part 6 sets out the territorial extent of the Bill, that is the legal jurisdictions of which the provisions in the Bill are intended to form part of the law.
- 23 The provisions in the Bill extend to the whole of the UK (apart from Clause 48(3), which does not extend to Northern Ireland).
- 24 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the Government to seek the consent of the devolved legislatures for provisions that would alter the competence of those legislatures or the devolved administrations in Scotland, Wales and Northern Ireland.
- 25 The regulation of the provision of subsidies that are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business is a reserved matter in the Scotland Act 1998 and Government of Wales Act 2006, and an excepted matter in the Northern Ireland Act 1998 (as inserted by section 52 of the United Kingdom Internal Market Act 2020). See the table in Annex A for a summary of the position regarding territorial extent and application in the UK, and the provisions for which the Government will seek legislative consent, as these provisions alter the competence of the devolved administrations.

Commentary on provisions of Bill/Act

Part 1: Overview and key interpretation

Clause 1: Overview and application of Act

- 26 This clause sets out what the different Parts of the Bill cover.
- a. This Part (Part 1) sets out definitions of key terms used in the Bill.
 - b. Part 2 sets out the subsidy control requirements: the principles, prohibitions and requirements, and transparency requirements that apply to the giving of subsidies.
 - c. Part 3 sets out subsidies that are exempt from some or all of the subsidy control requirements.
 - d. Part 4 sets out the CMA's functions in relation to subsidy control.
 - e. Part 5 sets out the enforcement provisions.
 - f. Part 6 includes miscellaneous and final provisions.
- 27 Subsections (6) and (7) specify that if a subsidy is given (or scheme created) under powers in primary or secondary legislation then the subsidy control requirements will apply unless an Act of Parliament specifies otherwise.

Clause 2: "Subsidy"

- 28 This clause defines a subsidy for the purposes of the Bill. It is a four-limbed test, which has been designed in such a way to allow the UK to meet national policy objectives and international obligations. Where each limb is met the financial assistance given by a public authority to an enterprise will be a subsidy. This definition applies to both the production of goods and the provision of services.
- 29 Subsection (1) sets out the four limbs.
- 30 Subsection (2) provides examples of the way in which financial assistance may be given.
- 31 Subsection (3) and (4) explain that financial assistance that is given by a person who is not a public authority will still constitute a subsidy where certain conditions are met. These conditions relate to the origin of the funds used to pay the financial assistance, and the control exercised by a public authority over the decision to give financial assistance.
- 32 Subsection (5) explains the point in time at which a subsidy is considered to have been given to the enterprise.

Clause 3: Financial assistance which confers an economic advantage

- 33 This clause confirms that financial assistance is not considered to confer an economic advantage if it could reasonably be considered to have been provided on the same terms on the market. For example, a loan would not be considered to confer an economic advantage to an enterprise if that loan might have been provided by a bank on the same terms.

Clause 4: Financial assistance which is specific

- 34 This clause elaborates on where financial assistance is not considered to be specific.
- 35 Subsection (2) confirms that financial assistance is not considered specific if different enterprises are treated differently in a way that can be justified by reasons that are inherent to

the assistance arrangements. For example, in the case of a special levy for environmental purposes, a differentiated treatment for certain goods or services can be justified by the objective pursued by the levy.

- 36 Subsections (3) to (7) set out further considerations relevant to whether a taxation measure or levy should be considered specific. Subsection (4) sets out examples of the reasons for which tax measures may treat enterprises differently without being considered specific by reference to the normal taxation regime. For example, a tax relief measure by a local authority that advantages one or more enterprises over another in its area is likely to be specific but it will not be specific if all enterprises in its area benefit and the local authority is acting autonomously in relation to that measure. Subsection (5) makes provision for identifying the normal taxation regime by reference to the internal objective and features of the regime and the level of autonomy of the public authority in the design of the regime. Subsections (6) and (7) confirm that a levy with a non-economic public policy objective would not be specific if any difference in treatment of enterprises could be justified by objective criteria; and nor would any carve-out ('forgoing of an amount') from that levy if the same conditions applied.

Clause 5: Section 2: modification for air carriers

- 37 This clause specifies that the second limb of the test to define a subsidy to air carriers is that the measure could have an effect on competition between UK air carriers and air carriers in other countries, in the provision of air transport services. This replaces the test for other subsidies that consider effect on international trade, international investment and UK competition and investment that is found in clause 2.

Clause 6: "Public authority"

- 38 This clause contains a broad definition of public authority by reference to a person who exercises functions of a public nature. This definition does not include either House of Parliament or the three devolved legislatures (Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly). Provisions relating to the devolved legislatures are covered separately under clause 78 and Schedule 3.

Clause 7: "Enterprise"

- 39 This clause sets out the definition of enterprise as a person, or group of persons under common control (see below), engaged in an economic activity.
- 40 This clause also explains the circumstances when an activity is not to be considered to be economic activity, or when a person or group of persons is not to be considered an enterprise.

Clause 8: Persons under common control

- 41 This clause elaborates on what it means for a group of persons to be under common control. This includes circumstances in which a person or group of persons can control or materially influence, directly or indirectly, the group, even if they do not have a controlling interest.

Clause 9: The subsidy control principles and the energy and environment principles

- 42 Clause 9 points to Schedule 1 as the location of the subsidy control principles, and to Schedule 2 as the location of specific principles relating to energy and the environment (the energy and environment principles).

Clause 10: Subsidy schemes and streamlined subsidy schemes

- 43 Subsections (1) to (3) define what a 'subsidy scheme' is.

- 44 A subsidy scheme provides a means for public authorities to award a number of subsidies to enterprises on a discretionary basis. This is as opposed to subsidy awards made on a case-by-case basis to an individual enterprise.
- 45 The eligibility and delivery of subsidies under schemes will differ. For example, a scheme may invite bids for grants from interested parties that will be assessed on the basis of the strength of their application against set criteria, or it may grant tax incentives to all businesses who meet set eligibility criteria. Examples of schemes include the Covid Financing Scheme or the Retail Grant Scheme. Clauses 12 and 13 sets out the duties on public authorities to consider the subsidy control principles and the energy and environment principles when establishing a scheme. Schemes may be made for the public authority to grant subsidies itself, or for a primary public authority to facilitate the granting of subsidies by other public authorities. A 'primary public authority' is defined as the UK Government, a devolved administration, or any other public authority that makes schemes for the giving of subsidies by other public authorities.
- 46 Subsections (4) to (6) define what a 'streamlined subsidy scheme' is (referred to as a 'streamlined route' in policy documents). This is a particular kind of subsidy scheme which can be used by any public authority that complies with its parameters, and can only be made by the UK Government and must be laid before Parliament after it has been made (or modified). Streamlined subsidy schemes are intended to allow the Government to make provisions to allow lower-risk subsidies to be given by public authorities more quickly and easily, without their needing to assess compliance with the principles or other subsidy control requirements.
- 47 The difference in effect between an 'ordinary' scheme and a streamlined subsidy scheme is that under clause 63, a streamlined subsidy scheme cannot be the subject of a voluntary or a mandatory pre-award referral to the CMA.

Clause 11: Subsidies and schemes of interest or particular interest

- 48 This clause makes provision as to the meaning of a Subsidy or Scheme of Interest, and a Subsidy or Scheme of Particular Interest. Both will be defined in regulations made by the Secretary of State. It is envisaged that regulations made under this clause will capture a relatively small number of subsidies and schemes that are more likely to be inconsistent with the subsidy control requirements, or have distortive effects on competition and investment within the UK.
- 49 Chapter 1 of Part 4 makes provision as to the referral of these subsidies or schemes to the CMA. Subsidies or Schemes of Particular Interest must be referred to the CMA before they may be given or made. A failure to refer these subsidies or schemes, or to follow the mandatory referral process through to its conclusion once a referral has been made, will result in the subsidy or scheme being treated as a prohibited subsidy or scheme (see clause 32). Public authorities may also voluntarily refer Subsidies or Schemes of Interest to the CMA but there is no requirement to do so (see clause 56).

Part 2: Subsidy control requirements

Chapter 1: Principles

Clause 12: Application of the subsidy control principles

- 50 Subsection (1) of this clause establishes a duty for public authorities to consider the subsidy control principles set out in Schedule 1 before deciding whether to grant an individual

subsidy (i.e. a subsidy not granted within a subsidy scheme). It also requires the public authority not to grant the subsidy unless they are of the view that it is consistent with the principles contained in Schedule 1.

- 51 Subsection (2) of this clause explains that a public authority giving a subsidy under a subsidy scheme is not subject to the subsection (1) duty.
- 52 Similarly, subsection (3) of this clause places an obligation on public authorities, before making a subsidy scheme, to consider the principles in Schedule 1. It also requires public authorities not to make the scheme unless they are of the view that believe that the scheme is consistent with the principles contained in Schedule 1.

Schedule 1: The subsidy control principles

53 Schedule 1 describes the seven main subsidy control principles. Six of these are derived from the TCA. The UK Competition and Investment Principle (Principle F), is an additional domestic principle that was proposed in the consultation document.

54 The effect of each principle is:

- a. Principle A: Public authorities will need to consider, explain and assess the policy objective behind the subsidy to ensure there is a benefit to wider society in providing the subsidy.
- b. Principle B: Subsidies should be both proportionate and limited to what is necessary to achieve the policy objective.
- c. Principle C: Subsidies must incentivise and lead to a change in the behaviour of the beneficiary. They must help to address the public policy objective being pursued.
- d. Principle D: Subsidies should be targeted to bring about an effect that is additional to any that would occur in the absence of the subsidy. They should not normally cover everyday business expenses.
- e. Principle E: Alternative policy levers, that are likely to cause less distortion to competition and investment in the UK, or trade and investment internationally, should be considered before turning to subsidies.
- f. Principle F: Public authorities should design the subsidy in a way that minimises the impact on competition and investment within the UK's internal market. This will require them to assess the effects which are likely to arise from providing the subsidy. This is a domestic test to ensure that a subsidy does not unduly favour one firm to the detriment of a competitor or new entrants to the UK market, or unduly reduce competition within the UK market.
- g. Principle G: Public authorities should assess the material effects on competition and investment in the UK, and international trade and investment, and decide whether the benefits of the subsidy are greater than the harmful impacts of providing the subsidy.

Clause 13: Application of energy and environment principles

55 This clause is similar to clause 12, setting out that subsidies given in relation to energy and environment, and schemes made that provide for giving these subsidies, must consider the energy and environment principles in Schedule 2 and should not give the subsidy or make the scheme unless they are of the view that it is consistent with the principles.

Schedule 2: The Energy and Environment Principles

- 56 This schedule sets out the additional principles that must, where relevant, be applied to specific categories of energy and environmental subsidies. These are derived from the UK's international obligations, specifically under the ENER-2 annex within the TCA.
- 57 The effect of each principle is:
- a. Principle A: energy and environment subsidies must be aimed at, and shall incentivise the beneficiary in either delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy.
 - b. Principle B: energy and environment subsidies shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of any of the nations of the UK.
 - c. Principle C: Subsidies for electricity generation adequacy, renewable energy and cogeneration shall not undermine the ability of the UK to meet its relevant obligations under the TCA, and shall be determined by means of a transparent, non-discriminatory and effective competitive process. A non-competitive process may, however, be used to determine a subsidy for renewable energy and cogeneration if appropriate measures are put in place to prevent overcompensation and the market supply (i.e. the number of potential subsidy beneficiaries) is insufficient to ensure a competitive process, the eligibility capacity is unlikely to have a material effect on any competition or investment within the UK, trade between the UK and any country or territory outside the UK, and investment as between the UK and any country or territory outside the UK, or if the subsidy is given for a demonstration project.
 - d. Principle D: Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO₂ emission limits.
 - e. Principle E: Subsidies for renewable energy and cogeneration shall not affect beneficiaries' obligations or opportunities to participate in electricity markets
 - f. Principle F: Subsidies in the form of partial exemptions from energy-related taxes and levies in favour of energy-intensive users shall not exceed the total amount of the tax or levy concerned.
 - g. Principle G: Subsidies in the form of compensation for electricity-intensive users given in the event of an increase in electricity costs resulting from climate policy instruments shall be restricted to sectors at significant risk of carbon leakage due to the cost increase.
 - h. Principle H: Subsidies for the decarbonisation of emissions linked to industrial activities in the UK shall achieve an overall reduction in greenhouse gas emissions, and reduce the emissions directly resulting from the industrial activities.
 - i. Principle I: Subsidies for improvements of the energy efficiency of industrial activities in the UK shall improve energy efficiency by reducing energy consumption, either directly or per unit of production.

Chapter 2: Prohibitions and other requirements

Clause 14: Introductory

- 58 This clause sets out the purpose of this chapter in general terms. All but one of these provisions (the relocation condition) are derived from and implement the UK's international obligations, including the TCA and the ASCM.

Clause 15: Unlimited guarantees

- 59 This clause prohibits any subsidy that would guarantee an unlimited amount of liabilities or debts, or which would guarantee a finite amount of liabilities or debts but over an indefinite period.
- 60 This clause gives effect to the UK's international obligations, including under the TCA (Article 3.5).

Clause 16: Export performance

- 61 This clause establishes rules around subsidies for goods and services designed to be contingent, whether in law or in fact, on export performance. These may include, for instance, subsidies to cover the price difference between domestic market prices and international market prices. Subsidies of this kind are prohibited unless specific conditions or terms are met, in line with the UK's international obligations under the WTO's ASCM and the TCA.
- 62 The clause establishes that short-term export credit support, where this support is not in the form of support for marketable risk for buyers in marketable risk countries, or in export support that is permissible under the terms of the ASCM, is not prohibited. Marketable risk countries (such as, for instance, the United States, or Member States of the EU) have higher levels of private insurance market capacity such that Government short-term export credit support is not appropriate.
- 63 Subsection (3) provides relevant definitions of terms used in this clause.
- 64 Subsections (4) to (6) establishes that the Secretary of State can publish a statement to the effect that a marketable risk country is no longer to be treated as such, provided the Secretary of State considers that specific conditions regarding the capacity of the private market in the relevant country are met. The Secretary of State will withdraw this statement when the Secretary of State considers that the specific conditions are no longer met.

Clause 17: Use of domestic goods or services

- 65 This clause prohibits subsidies that are contingent on preferences for domestically produced goods or services, often known as 'local-content' subsidies.
- 66 Local content subsidies for goods are a key prohibition of the WTO ASCM; as noted in the explanation for clause 15, the ASCM is a core part of the UK's obligations as a WTO member. Local content subsidies for many services sectors are prohibited under many FTAs, including the TCA with the EU.
- 67 Subsection (2) provides that the prohibition does not apply to subsidies related to the audiovisual sector.
- 68 Subsection (3) provides that this clause is without prejudice to Article 132 and Article 133 of the TCA. These articles allow for the provision of local-content subsidies in the certain circumstances, e.g., to incentivise the location of production or service supply, or the hiring of workers in a territory without being non-compliant with the prohibition on local-content subsidies.

Clause 18: Relocation of activities

- 69 This clause prohibits subsidies that explicitly require enterprises to relocate economic activities from one part of the UK to another, where this relocation would not have occurred in the absence of the subsidy.
- 70 Subsection (1) states that a subsidy may not be given on condition of an enterprise relocating any aspect of economic activities and may not be given if that relocation would not occur without said subsidy.
- 71 Subsection (2) clarifies, for the purpose of subsection (1), that an enterprise relocates its existing economic activities where it is conducting activities in an area of the UK before the subsidy is given, halts those activities after the subsidy is given, and continues them in another area of the UK.
- 72 Subsection (3) defines economic activities.

Clause 19: Rescuing

- 73 This clause establishes rules around subsidies designed to rescue ailing or insolvent enterprises. Subsidies of this kind are prohibited unless specific requirements are met. A rescue subsidy is one that is given temporarily to allow an enterprise to stay in business so that a restructuring plan can be prepared. An ailing or insolvent enterprise is one that would almost certainly go out of business in the short to medium term without subsidy.
- 74 Subsection (2)(a) establishes that these subsidies are permitted only where the subsidy would prevent social hardship or a severe market failure. Subsection (2)(b) establishes that, the conditions in Subsection (2)(a) notwithstanding, rescue subsidies for ailing or insolvent enterprises should only be granted in exceptional circumstances.
- 75 Subsection (3) establishes that rescue subsidies should only be given as temporary liquidity support, as a loan or loan guarantee, to provide time for the enterprise to prepare a restructuring plan.
- 76 This clause does not apply to subsidies for rescuing ailing or insolvent banks, other deposit takers, or insurance companies; see clauses 21–23 for provisions for subsidies to ailing and insolvent banks, other deposit takers, or insurance companies.

Clause 20: Restructuring

- 77 This clause establishes rules around subsidies for the purpose of restructuring ailing or insolvent enterprises. A restructuring subsidy is one given to support the restructuring of an enterprise subsidies of this kind are prohibited unless specific requirements are met. An ailing or insolvent enterprise is one that would almost certainly go out of business in the short to medium term without subsidies.
- 78 Subsections (2) to (5) set out the relevant conditions, including that:
- a. The recipient enterprise should have a credible restructuring plan in place.
 - b. The public authority giving the subsidy is satisfied that this plan is based on realistic assumptions, with a view to restoring the enterprise to long-term viability within a reasonable time period.
 - c. Where the recipient is not a small or medium-sized enterprise, the enterprise, or its owners, creditors, or new investors, have made a considerable contribution to the cost of restructuring or have a contractual obligation to do so.

- d. The public authority giving the subsidy is satisfied that the subsidy contributes to an objective of public interest, including by preventing social hardship or a severe market failure.

79 Subsection (6) establishes that in principle restructuring subsidies should not be granted to the same beneficiary more than once every five years. This does not apply in genuinely unforeseeable circumstances.

80 Subsection (7) establishes that temporary liquidity support may be extended to enterprises preparing a restructuring plan under subsection (2).

81 Different rules apply for subsidies to restructure ailing or insolvent banks, other deposit takers, or insurance companies; see Clause 20.

Clause 21: Restructuring deposit takers or insurance companies

82 This clause establishes rules around subsidies for the purpose of restructuring ailing or insolvent banks, other deposit takers or insurance companies. Subsidies of this kind are prohibited unless specific requirements are met.

83 These conditions are set out in subsections (2) to (4), and include:

- a. that the recipient enterprise should have a restructuring plan in place which the public authority giving the subsidy is satisfied is credible and likely to restore long term viability;
- b. that the enterprise, its shareholders, creditors, or investors, should have made a considerable contribution to the cost of restructuring from their own resources, or have a contractual requirement to do so; and
- c. that the public authority should expect to be remunerated for the cost of the subsidy.

Clause 22: Liquidating deposit takers or insurance companies

84 This clause establishes rules around subsidies for the purpose of liquidating ailing or insolvent banks, other deposit takers or insurance companies. Subsidies to a bank, other deposit taker or insurance company unable to credibly demonstrate that it can be restored to long-term viability are prohibited unless specific conditions or terms are met.

85 These conditions are set out in subsections (3) to (5), and include:

- a. that the purpose of the subsidy is to ensure the orderly liquidation and exit from the market of the beneficiary of the subsidy;
- b. that the public authority giving the subsidy is satisfied that the subsidy is limited to what is strictly necessary to ensure an orderly exit from the market, and is limited to minimise any negative effects on competition or investment within the UK or trade or investment between the United Kingdom and countries and territories outside the United Kingdom; and
- c. that the beneficiary of the subsidy, its shareholders, its creditors (or the business group it belongs to) should make a significant contribution to the cost of its own restructuring, or else have a contractual obligation to do so.

Clause 23: Liquidity provisions for deposit takers or insurance companies

86 This clause establishes rules around subsidies for the purpose of supporting liquidity provisions to ailing or insolvent banks, other deposit takers or insurance companies.

- 87 Subsidies of this kind are prohibited unless specific requirements are met.
- 88 These conditions are set out in subsections (2) to (4), and include:
- a. that the subsidy should be temporary;
 - b. that the subsidy should not be used by the recipient to cover losses or become capital support; and
 - c. that the public authority giving the subsidy should reasonably expect to be remunerated for the cost of the subsidy.

Clause 24: Meaning of “ailing or insolvent”

- 89 This clause defines ailing or insolvent enterprises, specifically in relation to clauses 19 to 23.
- 90 Ailing or insolvent businesses are those that would almost certainly go out of business in the short to medium term in the absence of subsidies, or are unable to pay debts as they fall due, or the value of the enterprise’s assets is less than its liabilities.
- 91 The Secretary of State may make regulations on the specific meaning and terms of ‘almost certainly go out of business’.

Clause 25: Meaning of “deposit taker”

- 92 A deposit taker, for the purpose of clauses 19 to 24, is defined in this clause.
- 93 A deposit taker is a person who has permission to carry on the regulated activity of accepting deposits, listed under the relevant provisions of the Financial Services and Markets Act 2000. This does not include a person who accepts deposits solely in connection with another regulated activity in the Financial Service and Markets Act.
- 94 The Treasury may make regulations altering the meaning of deposit taker, but must consult the Financial Conduct Authority (FCA) and the Prudential Regulation Authority before it does so.

Clause 26: Meaning of “insurance company”

- 95 This clause defines insurance companies, for the purpose of clauses 19 to 24.
- 96 An insurance company is a body corporate that may carry out the regulated activity of effecting insurance contracts under Part 4A of the Financial Services and Markets Act 2000. Insurance companies do not include friendly societies (under the Friendly Societies Act 1992), a registered society under the Co-operative and Community Benefit Societies Act 2014, or a member of Lloyd’s that is not a company under section 1 of the Companies Acts.
- 97 The Treasury may make regulations altering the meaning of insurance companies, but must consult the FCA and the Prudential Regulation Authority before it does so.

Clause 27: Subsidies for insurers that provide export credit insurance

- 98 This clause prohibits subsidies to insurers providing export credit insurance unless this insurance for marketable risk is either provided on commercial terms or does not directly or indirectly benefit the insurer’s export credit insurance business.
- 99 Definitions in this clause are the same as those made in Clause 15 (export credits) and Clause 24 (meaning of insurer); the Secretary of State may by regulation amend the meaning of insurer in this clause but must consult with the FCA and the Prudential Regulation Authority before doing so.

Clause 28: Subsidies for air carriers for the operation of routes

100 This clause establishes that subsidies for air carriers for the operation of routes are prohibited unless they meet one of the conditions set out in subsections (2) to (4), which are:

- a. that the air carrier is undertaking a public obligation as a consequence of the regulation for common rules for the operation of air services between the EU and the UK;
- b. that the public authority giving the subsidy is satisfied that the subsidy will provide wider societal benefits; or
- c. that the subsidy is a start-up subsidy that will establish a new route to a regional airport, and that the public authority giving the subsidy is satisfied that the new route will increase travellers and facilitate regional development.

Clause 29: Services of public economic interest

101 Services of Public Economic Interest (SPEI) are public services that would not be supplied (or would not be supplied under the required conditions) without public intervention, and which are of particular importance to society. Examples of an SPEI could include social housing or rural public transport services.

102 A public authority can only award a subsidy for the delivery of a SPEI if it does so in a transparent manner and it is satisfied that the value of the subsidy is restricted to what is necessary to deliver that service. Public authorities should take into consideration the cost of delivering the service and what would be a reasonable profit for the enterprise delivering the task when deciding the value of the subsidy.

103 Subsections (4) and (5) set out the steps a public authority has to take to award an SPEI subsidy in a transparent manner.

104 Public authorities must review an SPEI subsidy to ensure it remains what is necessary to deliver the service and, if the compensation is above what is necessary, then the public authority must recover the excess. Public authorities must conduct such a review at least every three years and upon final delivery of the service of public economic interest.

105 The subsidy control principles in Schedule 1 only apply to the award of a subsidy for the delivery of an SPEI insofar as applying them does not obstruct the delivery of the service.

Clause 30: Effect of prohibitions etc in relation to subsidy schemes

106 This clause prohibits subsidy schemes to the extent that the scheme in question provides for a prohibited subsidy (for example, a subsidy that is explicitly conditional on relocation within the UK as prohibited by clause 18) or otherwise does not meet the relevant requirements provided for in this Bill. If the scheme also allows for subsidies that do meet the subsidy control requirements, then those subsidies may still be awarded under that scheme.

Clause 31: Subsidies or schemes subject to mandatory referral

107 Chapter 1 of Part 4 deals with mandatory referrals to the CMA. This clause prohibits a subsidy or scheme which is given or made in circumstances where:

- a. a mandatory referral request should have been made to the CMA but none was submitted by the public authority in accordance with the requirements that apply to such requests; or
- b. a mandatory referral request was submitted but the public authority did not wait for the mandatory referral process to conclude before giving the subsidy or making the scheme.

Chapter 3: Transparency

Clause 32: Subsidy database

- 108 This clause provides that the Secretary of State must make arrangements for a database of subsidies and subsidy schemes for the purposes of transparency.
- 109 This clause also requires the Secretary of State to ensure that the database is accessible to the public and free of charge, and that public authorities who are obliged to upload details of a subsidy or subsidy scheme to the database are enabled to do so.
- 110 The Secretary of State may direct the CMA to take on responsibility for maintaining the database in future. Part 4 sets out the CMA's functions in relation to subsidy control. Were responsibility for the subsidy database to be taken on by the CMA in future, it would be responsible for maintaining the database, rather than the Secretary of State, as set out in subsections (1) and (2).
- 111 The Secretary of State may amend or revoke any direction to the CMA to maintain the database. This means that the Secretary of State could, if considered appropriate, choose to take back the responsibility for the database from the CMA in future.

Clause 33: Duty to include information in the subsidy database

- 112 This clause details the specific obligations that a public authority has with regard to uploading subsidies and subsidy schemes onto the subsidy database. A public authority must ensure that an entry is made in the database in respect of any subsidy scheme that the public authority has made. There is no threshold for the uploading of a subsidy scheme, all schemes must be uploaded, unless a relevant exemption in Part 3 applies. This includes subsidy schemes made by primary public authorities which can be used by other public authorities to grant a subsidy.
- 113 A public authority must also make an entry in the database in respect of any individual subsidy it provides. However, there are a number of key exemptions from the requirement to upload an individual subsidy award. First, subsection (2) exempts a subsidy from the requirement to be uploaded if it has been given under an uploaded scheme and the individual award is less than £500,000. Secondly, Part 3 of the Bill contains further exemptions from the transparency requirements. In particular, Clause 36 provides that minimal financial assistance which does not exceed £315,000 over three years is exempted from the subsidy control requirements, including the transparency requirements. Clause 41(1) outlines further exemptions from the transparency requirements where the subsidy is for a SPEI.
- 114 Subsection (3) states that if a subsidy or scheme needs to be uploaded, it must be uploaded within six months of the confirmation of the decision to grant the subsidy or to make the subsidy scheme. However, those subsidies, or subsidy schemes, provided in the form of a tax measure must be uploaded within one year of the date of the tax declaration.
- 115 Public authorities must ensure that the subsidy or scheme is maintained on the database for at least six years or the duration of the subsidy or scheme if longer.
- 116 Public authorities may make changes to subsidies or schemes without needing to update the database entry. Clause 81 provides whether the modification of a subsidy, or subsidy scheme, is a permitted modification.
- 117 According to subsection (6), where the modification is permitted, it does not need to be uploaded to the database. Otherwise, similar deadlines apply for uploading a modification to a subsidy or scheme. This means a change should be uploaded within one year of the

modification where it is given in the form of a tax measure. Where the modification is for any other type of subsidy, the entry to the database should be made within six months of the modification.

Clause 34: Information to be included in the subsidy database

- 118 Clause 34 provides the Secretary of State with a power to make regulations which specify what information should be included in the database when a public authority uploads a subsidy or a subsidy scheme.
- 119 Subsections (2) and (3) provide an illustrative list of the sort of information that may be specified for inclusion when uploading either a subsidy or subsidy scheme. Some of these categories reflect information which the UK is under an obligation to provide under international agreements, such as the TCA. In the case of subsidy schemes, the regulations may also require a public authority to demonstrate how it calculates the subsidy amount.
- 120 Subsection (2)(h) specifies that the regulations may require public authorities to indicate where the information described in subsections (2)(a) to (g) and (3) can be found. This could be on a linked website for example. This is to ensure that those viewing a public authority's entry in the database can find all the required information if it is not directly hosted within the database itself.

Part 3: Exemptions

Chapter 1: Introductory

Clause 35: Introductory

- 121 This clause explains that this part of the Bill sets out where certain subsidies and schemes are exempt from the requirements of the regime.

Chapter 2: Minimal and SPEI financial assistance

Clause 36: Minimal financial assistance

- 122 Subsection (1) sets out the 'minimal financial assistance' exemption. Subsidies given through the exemption do not have to apply the subsidy control requirements if the total amount of 'minimal and SPEI financial assistance' received by the intended beneficiary totals less than £315,000 over a three financial year period.
- 123 The definition of 'minimal or SPEI financial assistance' is set out at clause 42(6). The three-year period is calculated as the two previous financial years and the elapsed part of the current financial year.
- 124 Public authorities giving a subsidy within this exemption must confirm they are doing so to the recipient of the subsidy.
- 125 For subsidies given as cash grants, it is the gross amount that determines the value of the subsidy. Where a subsidy is given within this exemption through another means, such as a loan, the value of the subsidy must be expressed as a gross cash equivalent. The methodology for determining the gross cash equivalence of a subsidy may be set out in regulations, as provided for in Clause 82.
- 126 Subsidies relating to goods awarded through this exemption are not exempt from the prohibition on 'export performance and 'use of domestic goods or services'.

Clause 37: Section 36 procedural requirements

- 127 Clause 37 sets out the procedural requirements attached to subsidies given under Clause 36 (minimal financial assistance).
- 128 Subsection (1) and (2) set out the requirements for a public authority before they award a subsidy under this exemption. They must provide the intended recipient with a notification and subsection (2) sets out what should be contained in that notification including obtaining written confirmation from the recipient that the amount it is receiving will not lead to it breaching the threshold set out in Clause 36(1). A public authority cannot award a subsidy until it has received such confirmation from the intended recipient of the subsidy (subsection (3)).
- 129 Subsection (4) and (5) sets out the details of the confirmation a public authority is required to give a recipient receiving a subsidy as set out in Clause 37(4). Subsection (6) and (7) requires the recipient on the subsidy to keep records about subsidies they have received through this exemption for at least three years.

Clause 38: Services of public economic interest assistance

- 130 Subsection (1) sets out the exemption for SPEI assistance. Subsidies given through the exemption do not have to apply the subsidy control requirements if the total amount of minimal and SPEI financial assistance received by the intended beneficiary totals less than £725,000 over a three financial year period.
- 131 The definition of ‘minimal and SPEI financial assistance’ is set out at Clause 42(6). The three-year period is calculated as the two previous financial years and the elapsed part of the current financial year.
- 132 A public authority giving a subsidy within this exemption must confirm they are doing so to the recipient of the subsidy. A subsidy given through the SPEI assistance exemption must be given to an enterprise that is delivering a particular task in the public interest.
- 133 For subsidies given as cash grants, it is the gross amount that determines the value of the subsidy. Where a subsidy is given within this exemption through another means, such as a loan, the value of the subsidy must be expressed as a gross cash equivalent. The methodology for determining the gross cash equivalence of a subsidy may be set out in regulations, as provided for in Clause 82.
- 134 Subsidies relating to goods awarded through this exemption are not exempt from the prohibition on ‘export performance’ and ‘use of domestic goods or services’.

Clause 39: Section 38 procedural requirements

- 135 Clause 39 sets out the procedural requirements attached to subsidies given under Clause 38, ‘SPEI assistance’.
- 136 Subsection (1) and (2) set out the requirements for a public authority before they award a subsidy under this exemption. They must provide the intended recipient with an ‘SPEI assistance’ notification and subsection (2) sets out what should be contained in that notification including obtaining written confirmation from the recipient that the amount it is receiving will not lead to it breaching the threshold set out in clause 38(1). A public authority cannot award a subsidy until it has received such confirmation from the intended recipient of the subsidy (subsection (3)).
- 137 Subsections (4) and (5) sets out the details of the confirmation a public authority is required to give a recipient receiving a subsidy as set out in clause 39(3). Subsections (6) and (7) obligates

the recipient on the subsidy to keep records about subsidies they have received through this exemption for at least three years.

Clause 40: Mergers and acquisitions

- 138 In the case of mergers and acquisitions, all prior minimal and SPEI financial assistance subsidies granted before the merger or acquisition should be taken into account when calculating the sum total of exempted subsidy the ‘single enterprise’ has received.
- 139 Equally, where a ‘single enterprise’ separates into two or more enterprises, the enterprise taking over the activity which the small subsidy was granted in respect of should be allocated the subsidy value. Where that is not possible, the subsidy value is to be allocated proportionately between the new enterprises at the effective date of their separation.

Clause 41: Subsidy database: exemption for SPEI assistance

- 140 Clause 41 contains exemptions from the duty to upload information to the subsidy transparency database in clause 33. It lists two categories of SPEI assistance that do not need to be uploaded. The definition of a SPEI assistance is provided elsewhere in the Bill, in Clause 38(3)(a).
- 141 First, any SPEI assistance which totals less than £14.5 million per task does not need to be uploaded.
- 142 Second, even if the SPEI assistance is more than £14.5 million, it does not need to be uploaded if the subsidy is for:
- a. hospital care, including research;
 - b. the provision of long-term care, childcare, access to the labour market, social housing and the social inclusion of vulnerable groups;
 - c. air or maritime links to islands where the passenger numbers average less than 300,000 passengers annually in the two years preceding the giving of the subsidy;
 - d. airports where the passenger numbers average less than 200,000 passengers annually in the two years preceding the giving of the subsidy; and
 - e. ports where the passenger numbers average less than 300,000 passengers annually in the two years preceding the giving of the subsidy.

Clause 42: Chapter 2: supplementary and interpretative provision

- 143 Subsection (1) allows the Secretary of State to make secondary legislation to; a) amend the value thresholds for the ‘minimal financial assistance’ and ‘SPEI assistance’ exemptions as well as the transparency exemption for SPEI assistance; and b) provide for a lower threshold for the ‘minimal financial assistance’ and ‘SPEI assistance’ exemptions, and the transparency exemption for SPEI assistance, for specific sectors.
- 144 The power under subsection (1)(a) can only be used to increase the threshold in response to a change in currency valuation between the value of special drawing rights and pound sterling. This is without prejudice to section 31 of the Future Relationship Act 2020 which allows the Secretary of State to make regulations to amend legislation in response to changes in the TCA.
- 145 Subsection (6) defines ‘minimal and SPEI financial assistance’. This sets out the different categories of subsidies that should cumulate as part of determining whether the value threshold for the ‘minimal financial assistance’ and ‘SPEI assistance’ exemptions have been breached.

Chapter 3: Emergencies etc.

Clause 43: Natural disasters and other exceptional circumstances

146 Subsection (1) states that subsidies given to compensate damage caused by a natural disaster or other exceptional circumstances are exempt from complying with the subsidy control requirements. Subsection (5) states that for the purpose of this exemption subsidies are not exempt from the transparency requirements of the regime.

147 Subsection (2) clarifies that an exceptional circumstance cannot be only economic in nature.

148 The use of this exemption is restricted in that it can only be used when the Secretary of State has published a notice stating a particular emergency has occurred and therefore the 'natural disasters and other exceptional circumstances' exemption can be used to remedy that situation. A published notice must be laid in Parliament, and may be withdrawn by the Secretary of State.

Clause 44: National or global economic emergencies

149 Subsection (1) states that the provisions on prohibited and restricted subsidies in the Bill do not apply to subsidies that are given in response to a national or global economic emergency. Subsection (2) clarifies those subsidies given through this exemption must be temporary in nature as part of responding to the damage caused by such an economic emergency.

150 The use of this exemption is restricted in that it can only be used when the Secretary of State has published a notice stating a particular emergency has occurred and therefore the 'national or global economic emergency' exemption can be used to remedy that situation. A published notice must be laid in Parliament, and may be withdrawn by the Secretary of State.

Chapter 4: Other miscellaneous exemptions

Clause 45: National security

151 This clause makes clear that subsidies given to safeguard national security are not subject to the subsidy control regime. This clause is without prejudice to our international commitments and must be interpreted in light of them.

Clause 46: Bank of England monetary policy

152 This clause sets out that the Bank of England's monetary policy activities are not subject to the subsidy control regime.

Clause 47: Financial stability

153 This clause provides the power for HM Treasury to give financial stability directions for prudential reasons providing that one or more of the subsidy control requirements (such as transparency obligations) do not apply to the giving of a subsidy or subsidy scheme set out in the financial stability direction.

154 Subsection (2) establishes that a financial stability direction is a direction given by the Treasury, providing that certain subsidy control requirements set out in the financial stability direction do not apply to the giving of specified subsidies or the making of specified subsidy schemes. A financial stability direction may also disapply subsidy control requirements in relation to types of subsidies or subsidy schemes specified in the financial stability direction.

155 Subsection (3) establishes that the Treasury may only give financial stability directions where appropriate for prudential reasons. These prudential reasons can include, for example: (a) the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is

owed by a financial services supplier, or (b) ensuring the integrity and stability of the financial system of the UK.

156 Subsections (4) and (5) establishes that the Treasury must consult the Bank of England before giving a financial stability direction. A financial stability direction in relation to a subsidy given only by the Bank of England or a subsidy scheme made only by the Bank of England may only be given at the request of the Bank of England.

157 Subsection (6) establishes that financial stability directions can be amended or revoked by the giving of further directions.

158 Subsections (7) and (8) establish that the Treasury has power to publish the financial stability direction in the manner which it considers appropriate, including establishing that the Treasury can choose not to publish the direction at all if doing so would undermine the purpose of the financial stability direction.

Clause 48: Legacy and withdrawal agreement subsidies

159 This clause makes provision for the disapplication of the subsidy control requirements in relation to certain legacy and withdrawal agreement subsidies.

160 Subsection (1) sets out those legacy subsidies for which the subsidy control requirements will not apply.

161 Subsection (2) sets out that the rules on transparency will apply to subsidies given under legacy schemes except for those subject to the WTO Agreement on Agriculture or relating to fish or the audiovisual sector.

162 Notwithstanding the application of transparency requirements, the subsidy control regime set out in this Bill will not impose additional requirements on subsidies that are granted under schemes that were made in compliance with the relevant rules at the point the scheme was made, including:

- a. legacy schemes that were made under EU State aid rules before the end of the Implementation Period on 31 December 2020 (including schemes that were set up before the UK's accession to the EU and were considered 'existing aid' for EU State aid purposes);
- b. legacy schemes that were made between 1 January 2021 and the date on which this Bill comes into force; and
- c. subsidies given under Regulation (EC) No 1370/2007 (which is directly applicable as retained EU law in the UK² and operates analogously to a scheme set up under EU State aid rules.

163 Nor will the requirements in this Bill be imposed on subsidies or subsidy schemes that are subject to the Northern Ireland Protocol or Article 138 of the Withdrawal Agreement, which covers (amongst other things) the application of EU State aid rules to subsidies given for programmes and activities already committed (European Union law applicable after 31 December 2020 in relation to the United Kingdom's participation in the implementation of the European Union programmes and activities committed under the MFF 2014–2020 or previous financial perspectives).

164 Subsection (4) omits Article 9 from the subsidies permitted in subsection (1)(b). Article 9 of Regulation (EC) No 1370/2007 states in accordance with the common market which England,

² <https://www.legislation.gov.uk/eur/2007/1370/contents>

Wales and Scotland are not a part of. The territorial extent of subsection 48(3) is limited to England, Wales and Scotland in Clause 90.

Clause 49: Tax measures

165 This clause specifies that the subsidy control requirements do not apply to a tax measure which is permitted under Article 413 of the TCA. This Article specifies that if there is any conflict between that Agreement and any tax convention, then the tax convention shall prevail to the extent of the inconsistency and that the provisions on subsidy control in the Agreement do not apply to an advantage accorded pursuant to a tax convention.

166 Article 413 also specifies that the subsidy control provisions do not to prevent the adoption, maintenance or enforcement of any non-discriminatory measure that aims at ensuring the equitable or effective imposition or collection of direct taxes or distinguishes between taxpayers who are not in the same situation.

Clause 50: Large cross-border or international cooperation projects

167 This clause excludes subsidies for large cross-border or international cooperation projects from the duty in Clause 12 where the condition in subsection (3) is met. These projects typically include, for instance, efforts between two or more states to develop new technologies.

168 The condition in subsection (3) is that:

- a. the benefits of the project must not be limited to just that of the participating enterprises, sectors, or States; and
- b. the project must have wider positive effects that are not limited to the participating enterprises, sectors, or the UK.

169 Subsection (4) includes illustrative and non-exhaustive examples of large cross-border and international cooperation projects.

Clause 51: Nuclear energy

170 This clause excludes nuclear energy from the requirements in clause 13.

Part 4: CMA: Referrals and functions

Chapter 1: Functions on referrals of subsidies and schemes

Clause 52: Mandatory referral to CMA

171 This clause deals with the making mandatory pre-award referrals to the CMA. Public authorities must request a report from the CMA before giving:

- a. a subsidy, or subsidy scheme, of particular interest; or
- b. a subsidy or scheme which the Secretary of State has directed the public authority to refer to the CMA before it is given or made.

172 The public authority's request to the CMA (a 'mandatory referral request') must contain certain information including an assessment by the public authority as to whether the subsidy or scheme would be consistent with the requirements of Chapters 1 and 2 of Part 2 of the Bill, and the reasons for that conclusion, together with any supporting evidence. The Secretary of State may make further provision by regulations as to the content and form of the request.

Clause 53: CMA reporting period for mandatory referral

173 This clause makes provision as to the period during which the CMA must report on a subsidy or scheme which is subject to a mandatory referral by a public authority. The CMA must generally publish its report on the subsidy or scheme before the end of the period of 30 working days beginning with the day on which the CMA notifies the public authority that its mandatory referral request contains the required information. If the public authority withdraws its mandatory referral request then the CMA will cease to have a duty to report.

174 The reporting period may be extended by agreement between the CMA and the public authority, or by the Secretary of State further to a request by the CMA (with the request having the effect of pausing the reporting period until the Secretary of State determines whether to grant the extension). The Secretary of State may also make regulations which amend the length of the reporting period and the period prior to that during which the CMA must determine whether the mandatory referral request contains the required information.

Clause 54: Cooling off period following mandatory referral

175 This clause makes provision as to the ‘cooling-off’ period that must elapse before a public authority may give a subsidy or make a scheme on which the CMA has published a report before the end of the reporting period. This ensures that the public authority must wait for a short period during which it may wish to reflect on the CMA’s findings before deciding whether to give the subsidy or make the subsidy scheme.

176 The Secretary of State may extend the cooling-off period if the Secretary of State considers that the report has identified serious deficiencies in the public authority’s assessment as to whether the subsidy or scheme would comply with the subsidy control requirements in Chapters 1 and 2 of Part 2. The cooling-off period may not be extended by more than 30 working days.

Clause 55: Call-in direction

177 This clause gives the Secretary of State a reserve power to direct a public authority to request a report from the before it may give a proposed subsidy or subsidy scheme. A direction may be made in relation to a subsidy or scheme of interest (see Clause 12), or subsidy or scheme that the Secretary of State considers to be at risk of failing to comply with the requirements in Chapters 1 and 2 of Part 2, or of having negative effects on competition and investment within the United Kingdom.

Clause 56: Voluntary referral to CMA

178 This clause enables public authorities to request a report from the CMA on a subsidy or scheme of interest (a ‘voluntary referral request’). The request must include the same information as is required in relation to a mandatory referral request. The Secretary of State may likewise make provision by regulations as to the content and form of the request.

Clause 57: CMA reporting period for voluntary referral

179 This clause makes provision as to the period within which the CMA must report on a subsidy or scheme of interest in cases where it decides to prepare a report further to a voluntary referral request. The CMA must publish its report before the end of the period of 30 working days starting from when the CMA notifies the public authority that it is willing to produce a report in response to the public authority’s voluntary referral request (which it must do before the end of the period of five working days beginning with when it receives the request). It is for the CMA to decide at its discretion whether to produce a report further to a voluntary referral request. If the CMA decides to produce a report, it is not obliged to publish it if the

public authority withdraws its request, or gives or makes the proposed subsidy or scheme before the CMA has reported.

180 The CMA and public authority may agree to a different reporting period, or to extend the reporting period. The Secretary of State may also make regulations which amend the reporting period, and the period within which the CMA must determine whether it will prepare a report in response to a request.

Clause 58: Call-in direction following voluntary referral

181 This clause makes provision as to the effect of a call-in direction made by the Secretary of State in respect of a subsidy or scheme of interest that a public authority has already voluntarily referred to the CMA.

Clause 59: CMA report following mandatory or voluntary referral

182 This clause makes provision as to content of the report which is to be produced by the CMA further to a mandatory or voluntary referral. The CMA must contain an evaluation of the public authority's assessment as to whether it considers the subsidy or scheme would be consistent with the requirements of Chapters 1 and 2 of Part 2. The report may also include advice from the CMA about how that assessment might be improved, and how the proposed subsidy or scheme might be modified with a view to complying with the relevant subsidy control requirements. The Secretary of State may by regulations make provision as to the content and form of the report.

Clause 60: Post-award referrals

183 This clause makes provision as to the referral by the Secretary of State of subsidies or schemes after they have been given or made (a 'post-award referral'). A post-award referral may be made to the CMA at any time before the end of the period of 20 working days beginning with the day on which the subsidy or scheme was published on the database (or if information about the subsidy or scheme does not need to be published on the database, the date on which the subsidy or scheme was given or made).

184 The Secretary of State must at the same time as making a referral direct that the public authority provide certain information including any assessment undertaken by the public authority, before the subsidy or scheme was given or made, as to whether the subsidy or scheme would comply with the requirements in Chapters 1 and 2 of Part 2 (or in a case where the assessment is not provided, the reasons for that) (a 'post-award referral direction'). The public authority must provide the relevant information before the end of the period of 20 working days beginning with the day on which the post-award referral direction is given.

185 The Secretary of State may by regulations amend the periods mentioned above, and the form in which the relevant information must be provided by the public authority further to a post-award referral direction.

Clause 61: CMA reporting period for post-award referrals

186 The CMA must publish a report on the subsidy or scheme before the end of the period of 30 working days beginning with the earlier of the day on which the required information is provided by the public authority to the CMA, or the day after the deadline expires for providing that information.

187 The reporting period may be extended by agreement between the CMA and public authority, or the CMA may in exceptional circumstances request an extension from the Secretary of State (with the request having the effect of pausing the reporting period until the Secretary of State

determines whether to grant the extension). The Secretary of State may also make regulations that amend the length of the reporting period.

Clause 62: CMA report following post-award referral

188 This clause makes provision as to the content of the report which must be published by the CMA following a post-award referral (the 'post-award referral report'). The CMA must evaluate any assessment which the public authority has provided as to whether the subsidy or scheme would comply with the subsidy control principles, prohibitions and requirements. If an assessment was not provided then that fact must be stated in the report along with any reasons provided by the public authority as to why an assessment was not undertaken. The CMA may, if the subsidy or scheme is ongoing, provide advice about how the subsidy or scheme might be modified with a view to ensuring compliance with the principles, prohibitions and requirements. The Secretary of State may make further provision by regulations as to the content and form of the post-award referral report.

Clause 63: Referrals in relation to subsidy schemes

189 This clause excludes from Chapter 1 of Part 4 subsidies which are given under a subsidy scheme. It is instead the scheme which would be subject to referral to the CMA.

Clause 64: Other exemptions

190 This clause provides for the exemption of certain subsidies and subsidy schemes from some or all of the requirements of Chapter 1 of Part 4. Subsections (1) and (2) exempt from the requirements of Chapter 1 of Part 4 various subsidies or schemes where either the subsidy control principles, prohibitions and conditions do not apply, or it would otherwise be inappropriate for them to apply.

191 Subsection (3) confers a reserve power on the Secretary of State to exempt subsidies or schemes from the mandatory referral requirements of Chapter 1 of Part 4 where there are considered to be urgent and exceptional circumstances which mean that it is in the public interest that the subsidy or scheme can be given without delay. In the event that the Secretary of State exempts a subsidy or scheme for these purposes, the subsidy or scheme would still need to meet the subsidy control requirements under Part 2.

Chapter 2: General functions

Clause 65: Monitoring and reporting on subsidy control

192 This clause requires the CMA to undertake a periodic review of the effectiveness of the operation of this Act, and its impact on competition and investment within the UK. The CMA must carry out reviews every five years. The Secretary of State may also direct that the CMA prepare a report in respect of a specified period. The CMA must publish its report and arrange for copies to be laid before each House of Parliament.

Clause 66: CMA annual report

193 This clause requires that the CMA's annual report include certain information as to the number and types of subsidies or schemes in respect of which it has prepared a report under Chapter 1 of Part 4.

Clause 67: Information-gathering powers

194 This clause applies sections 41 to 43 of the United Kingdom Internal Market Act 2020 for the purpose of assisting the CMA in carrying out any of its functions (monitoring and reporting on subsidy control). It confers a power on the Secretary of State to make regulations to make

such further modifications to clause 41 to 43 as are considered necessary for these purposes, with the exception of modifying the amounts in Clause 43(6).

195 Section 41 to 43 of the United Kingdom Internal Market Act confer information-gathering powers on the CMA for the purposes mentioned in section 41(1) of that Act and deal with the enforcement of those powers. As provided in Clause 41(2) and (3), the CMA will be able to give an information notice or require the production of a document by an individual, business or public authority. Clause 42 establishes what action the CMA is able to take in response to non-compliance with the information requests described in the previous clause.

196 Under Section 43 of the United Kingdom Internal Market Act, subsections (4) and (5) set out the conditions where financial penalties may not be imposed because more than 4 weeks have expired since the CMA exercised its relevant functions. This clause modifies subsection (4) to make provision as to when the CMA is to be treated as having exercised its functions. Clause 42(6) requires the CMA to publish its policy approach in relation to subsequent action should it decide that a request for information has not been adequately fulfilled.

197 If the CMA decides that a person has not fulfilled the request or has obstructed the production of documents, it is able to impose a financial penalty as described under Clause 42(1) of the United Kingdom Internal Market Act. Section 43 sets out how the CMA will decide on appropriate financial penalties in cases of non-compliance with a notice. The CMA will be able to choose between a range of possible types of penalties and fix appropriate amounts having regard to their statement of policy on penalties and the facts of the case.

198 Sections 43(2) to (4) of the United Kingdom Internal Market Act state that the penalty can be a single, fixed amount, a daily rate or both. In any of these cases, the Secretary of State must specify maximum amounts through secondary legislation not exceeding £30,000 for a fixed amount and £15,000 for the daily rate, as stated in subsection (6). Those amounts cannot be modified by regulations made under this clause.

Chapter 3: Subsidy Advice Unit

Clause 68: Subsidy Advice Unit

199 The clause requires the CMA to establish a new committee of its Board which is to be referred to as the Subsidy Advice Unit. The CMA is given the power to delegate its functions under or by virtue of this Bill to the Unit, which must consist only of persons who are members of the CMA or its staff.

Clause 69: References to subsidy control groups

200 This clause enables the Subsidy Advice Unit to make a reference to the CMA Chair for the constitution of a CMA panel group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (ERRA 2013). A CMA group must consist of at least three members of the CMA Panel (paragraph 38 of Schedule 4 ERRA 2013). The CMA may refer its subsidy control functions to that group. A reference must specify the subsidy control functions being referred, and (where relevant) the subsidy or scheme in respect of which the functions are to be carried out.

Part 5: Enforcement

Clause 70: Review of subsidy decisions

201 This clause enables interested parties to apply to the Competition Appeal Tribunal (CAT) for the review of a decision to give a subsidy or to make a subsidy scheme (a 'subsidy decision').

A person whose interests may be affected a subsidy decision will be an interested party for these purposes. This might, for example, include competitors of a beneficiary of the subsidy or bodies representing persons whose interests stand to be affected (e.g. a local authority, where persons in the authority's area stand to be adversely affected by the subsidy decision). The Secretary of State is expressly included as an interested party.

202 Interested parties must bring claims in line with the CATs tribunal rules including sending their notice of appeal within the time limits provided in new Part 5A of the Competition Tribunal Rules 2015 (as inserted by this Bill).

203 This clause also makes provision as to the principles which the CAT must apply when determining an application for a review of a subsidy decision. In proceedings in England and Wales or Northern Ireland, the CAT must apply the same principles as the High Court applies in judicial reviews. For proceedings in Scotland, the CAT must apply the same principles as the Court of Session would apply on an application to the supervisory jurisdiction of the Court.

204 Any application to the CAT to review a subsidy control decision does not have the effect of suspending that decision unless otherwise directed by the Tribunal.

Clause 71: Time limits for applications under section 70

205 This clause amends the Competition Appeal Tribunal Rules 2015 (the 'Tribunal Procedure Rules') to set out the time limits that apply in relation to the making of an application to the CAT for the review of a subsidy control decision.

206 Interested parties must send their notice of appeal to the CAT within one month of the relevant date. The relevant date in relation to a subsidy decision will vary depending on the circumstances. If an interested party makes a pre-action information request within one month of the publication date then the relevant date will be the date on which the public authority provides notice that it has provided the required information in response to the request. If a post-award referral is made to the CMA in relation to a subsidy or scheme, the relevant date is the date on which the CMA publishes its post-award referral report. If both a pre-action request and post-award referral is made, the time limit will run from whatever happens later: the notification in response to the pre-action request or the publication of the post-award referral report. This ensures that an interested party will be able to take into account any response to its pre-action request or the publication of the post-award referral report in deciding whether to bring an application to review a subsidy decision.

207 If neither a pre-action request nor post-award referral is made, the one-month time limit will run from the date on which the transparency requirements are met through publication of the details of the subsidy or scheme on the subsidy database. A minor error or omission in an entry for the subsidy or scheme will be disregarded for these purposes. If the subsidy is exempt from the requirement to publish information on the subsidy database then the relevant date is the date on which the interested party first knew, or ought to have known, about the subsidy decision in question.

208 The CAT may not extend the one-month time limit unless there are exceptional circumstances that merit such an extension.

Clause 72: CAT powers on review: England and Wales and Northern Ireland

209 This clause confers power on the CAT to grant certain forms of relief similar to the High Court on an application for judicial review in England and Wales or Northern Ireland.

210 Where it has jurisdiction, the CAT may grant a mandatory order (an order that the respondent does something); a prohibiting order (an order that the respondent stops doing something); a

quashing order (an order setting aside a decision); a declaration; or an injunction. These remedies have the same effect as if made by the High Court. In determining whether to grant a remedy, the Tribunal must apply the same principles that would be applied by the High Court in deciding whether to grant relief on an application for judicial review.

211 The CAT may likewise refuse to grant relief in the same circumstances as the High Court may refuse to grant relief on an application for judicial review, namely where:

- a. there has been an undue delay in making the application, or the granting of the remedy sought would likely cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration; or
- b. if it appears to the CAT to be highly likely that the outcome for the interested party would not have been substantially different if the conduct complained of had not occurred (in which case the CAT must refuse relief unless there are reasons of exceptional public interest).

Clause 73: CAT powers on review: Scotland

212 This clause sets out that the powers of the tribunal in proceedings in Scotland are the same as those as the Court of Session in an application to the supervisory jurisdiction of that Court and they should apply the same principles as the Court of Session would in these cases.

Clause 74: Recovery orders

213 This clause confers a power on the CAT to make a recovery order if it has granted relief in respect of a subsidy decision (e.g. a quashing order) and found that the decision was in contravention of the subsidy control requirements in Chapter 1 and 2 of Part 2 of this Act.

214 A recovery order is an order that requires a public authority to recover the amount of the subsidy from the beneficiary (or beneficiaries) of the subsidy in accordance with the terms of the order. A recovery order may provide for how the subsidy is to be recovered, the amount to be recovered, or require that the subsidy is recovered within a particular period of time or that the payment of interest be made in accordance with the order. Where an order is made in respect of a subsidy scheme, the CAT may require that all or some of the subsidies under that scheme be recovered.

Clause 75: Appeals against decisions of the CAT

215 This clause provides the basis on which appeals can be made to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland. Appeals may be made on any point of law with permission either from the Tribunal or the relevant appellate court.

Clause 76: Duty to provide pre-action information

216 This clause imposes a duty on public authorities to provide certain information to interested parties about a subsidy or subsidy scheme. An interested party may request the information for the purpose of deciding whether to apply to the CAT for a review of a subsidy or scheme on the grounds that it failed to comply with the relevant subsidy control requirements. A request must be provided in writing and the interested party must state that they are considering applying for a review.

217 The public authority must respond to a request within 28 days. The public authority may impose such restrictions as it considers proportionate in order to protect commercial sensitive, confidential or legally privileged information, or information whose disclosure would otherwise be contrary to the public interest.

Clause 77: Misuse of subsidies

218 This clause confers a right on public authorities to recover subsidies which are used for a purpose other than that for which they were given. The right to recover is enforceable as if it were a contract right and it does not affect any other remedies that might be available to the public authority with respect to the award of the subsidy in question (for example, any remedies the public authority might have under contract law or the law of restitution).

Part 6: Miscellaneous and general

Chapter 1: Miscellaneous

Clause 78: Subsidies and schemes in primary legislation

219 This clause introduces Schedule 3, which applies provisions of this Bill to subsidies provided, or subsidy schemes made, by means of primary legislation.

Schedule 3: Subsidies provided by primary legislation

220 Schedule 3 deals with the application of this Bill in the case of subsidies provided by means of primary legislation. This may occur, for example, where an Act grants a subsidy or makes a scheme on its face, or places prescriptive spending provisions which would amount to a subsidy. This would not otherwise capture broad powers to grant financial assistance which are to be exercised at the discretion of a public authority.

221 The Schedule primarily deals with application to devolved primary legislation (i.e. Acts of the Scottish Parliament, Acts or Measures of Senedd Cymru, or Acts of the Northern Ireland Assembly). It is a constitutional principle that one Act of UK Parliament cannot bind future Acts of Parliament. This instrument does not purport to restrict the ability of the UK Parliament to pass Acts in the future that directly grant subsidies but does require Ministers (or HMRC Commissioners) to place any subsidy measures on the subsidy database.

222 Paragraphs 2 to 5 set out relevant definitions for the purpose of this Schedule.

223 Paragraph 6 applies Chapter 1 of Part 2 (principles) to subsidies or schemes provided by means of devolved primary legislation. In any proceedings, the appropriate court would be required to consider provisions by reference to the considerations and views of the promoter of the proposed legislation (that is, Ministers or other members of the devolved legislature introducing a Bill, or members who lodge amendments amounting to subsidies). Court proceedings in relation to such cases would be heard in the Court of Session, High Court in England and Wales, or High Court in Northern Ireland, as relevant, rather than the Competition Appeal Tribunal as in Part 5 of the Bill.

224 Paragraph 7 makes similar provision for Chapter 2 of Part 2 (prohibitions and other requirements) and Part 3 (exemptions), together with technical modifications to certain provisions in those Parts to ensure that they operate properly. The paragraph disapplies Clause 37 (minimal financial assistance procedural requirements) and Clause 39 (services of public economic interest assistance procedural requirements) for this purpose.

225 Paragraph 8 requires Scottish Ministers, Welsh Ministers or a Northern Ireland department (as relevant) to place subsidy measures in primary legislation on the subsidy database (in conformity with Chapter 3 of Part 2). This also applies to Ministers of the Crown or the Commissioners for HMRC in relation to a subsidy measure in an Act of Parliament.

226 Paragraph 9 enables voluntary referrals to the CMA in respect of subsidies of interest, or subsidies of particular interest, in proposed primary legislation (devolved or UK). Mandatory

referrals (for subsidies of particular interest or following a Secretary of State call-in direction) do not apply in respect of subsidies in primary legislation.

227 Paragraph 10 applies (and makes modifications to) Clause 74 to enable the appropriate courts to make recovery orders, requiring Scottish Ministers, Welsh Ministers or NI Department (as relevant) to recover a subsidy provided by means of devolved primary legislation.

228 Paragraph 11 requires Scottish Ministers, Welsh Ministers or a NI Department to provide pre-action information within the meaning of clause 76 to interested parties ahead of any proceedings.

229 Paragraph 12 makes explicit that the power to make consequential provisions in clause 86 includes power to make provisions for similar time limits for proceedings in the Court of Session or High Court, as in Clause 71 for proceedings in the CAT.

Clause 79: Guidance

230 Clause 79 describes the power the Secretary of State has in relation to issuing guidance on the meaning and effect of the principles, and how far they can compel public authorities to comply with the principles.

231 This gives the Secretary of State power to issue guidance on the practical application of the provisions in this Bill, particularly the principles. Guidance would provide greater detail on how to apply elements of the definition of subsidy (for example with regard to establishing that financial assistance is given on commercial terms) and how the principles should be used to assess individual subsidies and schemes, including:

- a. methodologies that could be used for assessing benefits and distortive effects, including on UK competition and investment and on international trade;
- b. the level and type of analysis that could be considered proportionate depending on the type of subsidy (this would be linked to the Subsidies and Schemes of Interest and Particular Interest criteria);
- c. what kinds of features may be generally considered 'best practice' examples of subsidy design making a subsidy more likely to be consistent with the principles, such as fair and open competitions for subsidies; and
- d. what kinds of features might merit closer attention from a public authority to ensure that negative effects on other parties had been properly taken into account, such as subsidy races.

232 The guidance could, for example, be used to explain how subsidies might be given to support disadvantaged areas in a way that is consistent with the principles, by indicating characteristics or criteria that a public authority may choose to use when deciding whether an area could be considered disadvantaged and how that might be used to justify more ambitious or extensive subsidy interventions consistent with the principles. The guidance could also indicate that those kinds of interventions may not be consistent with the principles in more advantaged areas. This guidance will be nuanced and will reflect that different areas face different types and levels of disadvantage depending on their geographical, economic and social situation.

233 The Government would look to the *Green Book: Central Government Guidance on Appraisal and Evaluation* as an example of detailed guidance for authorities making spending decisions (albeit in the notably different context of spending control, rather than subsidy control) and would consider any relevant read-across as well as ensuring that the guidance was mutually compatible (to provide for situations where both *Green Book* and subsidy control guidance applied simultaneously, for central Government subsidies).

234 The clause allows the Secretary of State to revise or review the guidance. The clause also places obligations on the Secretary of State. The obligations are to publish the guidance, keep it under regular review and consult persons that the Secretary of State deems appropriate before issuing the guidance.

235 The final effect of the clause is to obligate public authorities to have regard to the guidance when designing a subsidy scheme or giving an individual subsidy.

Clause 80: Disclosure of information

236 This clause establishes that any duty or power to divulge information provided for in this Bill does not override the provisions of data protection legislation.

237 The clause also makes amendments to the disclosure of information provisions of the Enterprise Act 2002, and establishes that CMA functions under this Bill are subject to absolute privilege (for the purpose of defamation law).

Clause 81: Modifications to subsidies and schemes

238 This clause establishes that, unless a modification of a subsidy or scheme is a 'permitted modification', changes to subsidies or schemes are regarded as being a new subsidy or scheme. Consequently, the public authority will have to comply with the subsidy control requirements.

239 The types of modifications that are 'permitted modifications' are listed in subsection 3. These include modifications to a legacy subsidy or legacy scheme, modifications that are necessary to allow a subsidy or scheme to operate effectively as a result of the UK withdrawal from the EU, an administrative modification, an increase of up to 25% of the original budget or an extension of the subsidy scheme by up to six years. As the effect of these modifications is considered to be limited, the public authority is not required to treat these modifications as a new subsidy or scheme.

240 Modifications that are not 'permitted modifications' must be treated as new subsidies or schemes to ensure the effects can be properly assessed, and to ensure the underlying subsidy or scheme can continue unaffected.

241 This clause also explains how the 25% increase should be calculated and uses the definitions of 'legacy subsidy' and 'legacy scheme' that are found in clause 49.

Clause 82: Gross cash and gross cash equivalent amount of financial assistance

242 This clause gives the Secretary of State the power to set out a methodology for calculating the gross cash equivalent of a subsidy that is not provided in cash terms (for example, a loan or guarantee), in order to determine whether particular thresholds have been met for the purposes of clauses 33, 36, 38 and 41 (thresholds for minimal and SPEI financial assistance and transparency requirements for subsidies granted under a scheme). We would also expect to refer to this clause in any regulations made under clause 11 (Subsidies and Schemes of Interest and of Particular Interest), which make reference to the value of a subsidy.

Clause 83: Minor amendment to the Financial Services Act 2021

243 This clause makes consequential amendment to the Financial Services Act 2021, specifically in relation to the meaning of 'insurance company', 'deposit taker', and 'insurer' in that Act.

Chapter 2: General

Clause 84: Financial provision

244 This clause sets out that expenditure incurred under the terms of this Bill is to be met from supplies provided by Parliament.

Clause 85: Crown application

245 This clause states that the Bill applies in full to the Crown, except to Her Majesty in Her private capacity, Her Majesty in right of the Duchy of Lancaster, or the Duke of Cornwall.

Clause 86: Power to make consequential provision

246 This clause provides for the Secretary of State to make consequential provision by regulations (that is, to make necessary corrections to other law, in light of any consequences of this Bill, intended or otherwise) to repeal or amend any primary or secondary legislation, or retained EU legislation. This power applies only to law in force before this Bill is passed.

247 This clause also explains what Parliamentary procedure applies to any regulations.

Clause 87: Regulations

248 This clause sets out various procedural matters that are relevant where regulations are made under powers in this Bill.

249 It also provides that any power to make regulations under Part 4 to amend a provision of this Bill cannot be exercised after the period of one year beginning with the day on which the CMA publishes its first report dealing with the effectiveness of the operation of this Bill, and its impact on competition and investment within the UK (see clause 65 (monitoring and reporting on subsidy control)).

250 The provisions of this clause do not apply to regulations under clause 91 (commencement).

Clause 88: Directions

251 This clause explains that any directions made under this Bill must be made in writing, may be varied or revoked.

Clause 89: Interpretation

252 This clause sets out definitions for various terms used in this Bill, whether these terms are defined elsewhere in the Bill or in external sources of law.

Clause 90: Extent

253 This clause establishes that the Bill applies to the entirety of the United Kingdom of Great Britain and Northern Ireland. The exception here (Clause 48(4)) is for the omission of Article 9 in the application of Regulation (EC) No 1370/2007, which specifies that 'common market'; this omission does not apply to Northern Ireland.

Clause 91: Commencement

254 This clause sets out what parts or clauses of the Bill come into force, and when. Some parts of the Bill, listed in this clause and including regulation-making power, come into effect on the day the Bill is passed. The remaining parts of the Bill come into force on a date specified by the Secretary of State in regulations.

255 The clause also provides for the Secretary of State to make transitional regulations via statutory instrument.

These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

Clause 92: Short title

256 This clause establishes a short title for the Bill, for ease of use.

Commencement

257 Clause 91 makes provision for certain powers enabling the making of regulations to come into force on the day of Royal Assent. That is when public authorities will need to start following the new regime when making new grants of subsidies. The remaining provisions of this Bill will come into force on days appointed by the Secretary of State by commencement regulations.

Financial implications of the Bill

258 Parts 4 and 5 of the Bill assign new functions to the Competition and Markets Authority to carry out a non-binding review of public authorities' assessment of compliance for certain subsidies and schemes. The CMA will need additional headcount and money to deliver these functions. This cost will be borne by the CMA.

259 The Competition Appeal Tribunal will also have a new jurisdiction to hear judicial reviews of subsidy decisions made by public authorities. The number of cases that the CAT will have to process and hear in the first years of the new regime is estimated at between 15 and 30 a year. At the lower end of these estimates, the CAT may be able to meet all costs within its existing funding arrangements. A higher caseload would require additional resources, which will be met by the Department for Business, Energy and Industrial Strategy.

Parliamentary approval for financial costs or for charges imposed

260 A money resolution is required for the Bill because it gives rise to charges on the public revenue. The money resolution was agreed in the House of Commons on 22 September 2021, to cover the expenditure outlined above in the 'Financial implications of the Bill' section. No ways and means resolution is required for the Bill, because the Bill does not authorise any new taxation or other similar charges on the people.

Compatibility with the European Convention on Human Rights

261 The Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

262 The Convention rights which are considered to be relevant to the Bill are Article 1 of Protocol 1 (A1P1) (protection of property), Article 6 (right to a fair trial), and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights (ECHR).

These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

263 The Bill is not considered to engage A1P1 for the most part since it will regulate the giving of financial assistance from public resources rather than the use of private property. There is no general right to receive subsidies which could constitute a ‘possession’ for the purposes of A1P1. Any enterprise receiving subsidies from public resources does so subject to the law which will include the constraints introduced by the Bill. Those constraints do not themselves constitute an interference with property which could engage A1P1. The recovery provisions contained in Part 5 of the Bill will only operate in circumstances where a beneficiary was not, or is no longer, lawfully entitled to a subsidy and cannot, therefore, claim any proprietary right over the subsidy which would be protected by A1P1. Even if A1P1 were engaged by the recovery provisions in the Bill, it is considered that any interference with property rights would be subject to conditions provided by law and by the general principles of international law, would be in the public or general interest, namely the need to ensure an effective subsidy control regime which promotes the economic wellbeing of the country, and would strike a fair balance between the public or general interest and the interest of individuals affected.

264 The Bill is not, for the most part, considered to engage Article 6(1) ECHR insofar as it relates to the determination of civil rights. Since there is no general right to receive subsidies, the provisions of the Bill which regulate subsidy decisions by public authorities do not affect the determination of any civil right. Even if Article 6(1) were engaged, the Bill makes provision for subsidy decisions to be reviewed by the Competition Appeals Tribunal (CAT). The CAT is an independent and impartial tribunal which sits in public and has full jurisdiction to grant appropriate relief, including the power to quash and remit subsidy decisions back to the original decision maker. This form of review would be sufficient to comply with the requirements of Article 6. The imposition of a civil penalty for breach of the requirement to produce documents and information to the CMA under clause 67 would engage the right to a fair trial in Article 6(1) ECHR. The limits within which a civil penalty may be imposed and the independent appeal procedure that is available ensure this is compatible with Article 6(1) ECHR. The Bill does not create any new criminal or quasi-criminal offences which attract the additional protection set out in Article 6(3). The Bill will amend the Enterprise Act 2002 so that certain existing offences relating to the disclosure of information will apply to information received by the Competition and Markets Authority (CMA) in the course of performing its functions under the Bill. Such offences would fall to be prosecuted in the criminal courts in the normal manner, and would be subject to the relevant safeguards provided by Article 6(3) for criminal proceedings.

265 The Bill contains provisions requiring public authorities to publish or disclose information about subsidies which could in rare cases include non-sensitive personal data or business correspondence. The functions of the CMA under the Bill may also involve the use of powers to gather or disclose similar information. Obtaining or disclosing such information could interfere with rights protected by Article 8 ECHR. However, any such interference is considered to be compatible with Article 8 as it would be made in accordance with the law (including existing protections contained in data protection legislation and the restrictions on disclosure contained in Part 9 of the Enterprise Act 2002), it would pursue the legitimate aim of ensuring an effective subsidy control regime which promotes the economic wellbeing of the country, and it would be necessary and proportionate to that aim.

Related documents

266 The following documents are relevant to the Bill and can be read at the stated locations:

- [Consultation – Subsidy Control: Designing a new approach for the UK.](#)
- [The Government Response to the Subsidy Control Consultation](#)
- [Subsidy Control: Designing a new approach for the UK Impact Assessment](#)
- [The Government’s Written Ministerial Statement on the Subsidy Control Bill](#)
- [The EU-UK Trade and Cooperation Agreement \(TCA\)](#)
- [The Protocol on Ireland/Northern Ireland to the Withdrawal Agreement \(Northern Ireland Protocol\)](#)
- [The WTO Agreement on Subsidies and Countervailing Measures \(ASCM\)](#)

Annex A – Territorial extent and application in the United Kingdom

267 This Bill extends and applies to the whole of the UK (with the exception of Clause 48(3) which amends Regulation (EC) No 1370/2007 for England and Wales, and Scotland, only). References to clauses or Parts of the Bill below do not necessarily mean that an LCM is being sought for the whole clause or Part. The table below sets the position out in more detail.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion sought?
Part 1: OVERVIEW AND KEY INTERPRETATION	Yes	Yes	Yes	Yes	No
Part 2: SUBSIDY CONTROL REQUIREMENTS					
Chapter 1 (Principles)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Chapter 2 (Prohibitions and other Requirements)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clause 32 (Subsidy database)	Yes	Yes	Yes	Yes	No
Clause 33 (Duty to include information)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clause 34 (Information to be included in the database)	Yes	Yes	Yes	Yes	No
Part 3: EXEMPTIONS					
Clauses 35-47	Yes	Yes	Yes	Yes	Yes (S,W, NI)
Clause 48	Yes	Yes	Yes	In part (not subsection (3))	Yes (S, W, NI)
Clauses 49-51	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 4: CMA: REFERRALS AND FUNCTIONS					
Clauses 52-62 (Mandatory and voluntary referrals, and post-award referrals)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clauses 63-64 (Exemptions)	Yes	Yes	Yes	Yes	No
Chapter 2 (General Functions)	Yes	Yes	Yes	Yes	No
Chapter 3 (Subsidy Advice Unit)	Yes	Yes	Yes	Yes	No

These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

Part 5: ENFORCEMENT					
Clauses 70-75 (Enforcement)	Yes	Yes	Yes	Yes	No
Clause 76 (Duty to provide pre-action information)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clause 77 (Misuse of subsidies)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 6: GENERAL PROVISIONS					
Clause 78 (Subsidies and schemes in primary legislation)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clause 79 (Guidance)	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Clauses 80-92	Yes	Yes	Yes	Yes	No
Schedule 1	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Schedule 2	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Schedule 3	Yes	Yes	Yes	Yes	Yes (S, W, NI)

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SUBSIDY CONTROL BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Subsidy Control Bill as brought from the House of Commons on 14 December 2021 (HL Bill 84).

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