

Subsidy Control Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 27th January 2022, as follows –

Clauses 1 to 9	Schedule 3
Schedules 1 and 2	Clauses 79 to 92
Clauses 10 to 78	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 33

LORD MCNICOL OF WEST KILBRIDE

38 Page 17, line 19, leave out paragraphs (a) and (b)

Member’s explanatory statement

This amendment removes the declaration exemption for individual subsidies given under a scheme, meaning those subsidies would have to be entered into the subsidy database.

LORD MCNICOL OF WEST KILBRIDE
BARONESS HUMPHREYS
LORD LAMONT OF LERWICK

39 Page 17, line 21, leave out “£500,000” and insert “£500”

Member’s explanatory statement

This amendment would reduce the threshold for entering subsidies into the subsidy database from £500,000 to £500.

LORD MCNICOL OF WEST KILBRIDE
LORD LAMONT OF LERWICK

40 Page 17, line 24, leave out “one year” and insert “three months”

Member’s explanatory statement

This amendment would require subsidies or schemes to be entered in the database within three months of being made, rather than one year, if given in the form of a tax measure.

41 Page 17, line 26, leave out “six months” and insert “one month”

Member’s explanatory statement

This amendment would require subsidies or schemes to be entered in the database within one month of being made, rather than six months, if given in any form other than a tax measure.

42 Page 17, line 33, leave out “one year” and insert “three months”

Member’s explanatory statement

This amendment would require that modifications to subsidies or schemes entered into the database are made within three months of that modification, if given in the form of a tax measure.

43 Page 17, line 35, leave out “six months” and insert “one month”

Member’s explanatory statement

This amendment would require that modifications to subsidies or schemes entered into the database are made within one month of that modification, if given in any form other than a tax measure.

Clause 34

LORD MCNICOL OF WEST KILBRIDE
LORD FOX

44 Page 18, line 27, at end insert –

“(j) the date the subsidy or scheme was entered onto the database.”

Member’s explanatory statement

This amendment would require the date a subsidy or scheme was entered onto the database to be included in the information public authorities are required to enter into the database.

45 Page 18, line 27, at end insert –

“(2A) Where a subsidy relates to the provision of goods or works and the value of that subsidy exceeds the amount specified in section 36(1), the regulations must require a public authority’s entry to include information on –

(a) the share of domestically sourced content by value, and

(b) the recipient of the subsidy’s progress against a benchmark of 60% domestically sourced content across the lifetime of that subsidy.

(2B) For the purposes of subsection (2A), “domestically sourced content” means components or materials that were wholly produced in the United Kingdom.”

Member’s explanatory statement

This probing amendment would require public authorities to submit to the subsidy database information regarding domestically sourced content. Notwithstanding the prohibition contained in Clause 17, it is intended to facilitate a discussion on the extent to which public authorities can monitor the use of domestic goods.

- 46 Page 18, line 32, at end insert –
 “(ba) a statement outlining how the terms and conditions for subsidy eligibility are consistent with the subsidy control principles;”

Member’s explanatory statement

This probing amendment would allow regulations specifying the information to be included in the subsidy database to include a statement outlining how the subsidy scheme’s terms and conditions ensure adherence to the subsidy control principles.

Clause 36

LORD MCNICOL OF WEST KILBRIDE
 BARONESS HUMPHREYS
 LORD LAMONT OF LERWICK

- 47 Page 19, line 20, leave out “£315,000” and insert “£500”

Member’s explanatory statement

This amendment would make the subsidy control requirements applicable to minimal or SPEI financial assistance worth more than £500.

Clause 41

LORD MCNICOL OF WEST KILBRIDE
 BARONESS HUMPHREYS
 LORD LAMONT OF LERWICK

- 48 Page 23, line 15, leave out “£14,500,000” and insert “£500”

Member’s explanatory statement

This amendment would make Clause 33 applicable to SPEI subsidies worth more than £500.

LORD MCNICOL OF WEST KILBRIDE

- 49 Page 23, line 16, leave out paragraph (b)

Member’s explanatory statement

This probing amendment removes the exemption for various SPEI services from the reporting requirements in Clause 33.

Clause 46

BARONESS BENNETT OF MANOR CASTLE

Baroness Bennett of Manor Castle gives notice of her intention to oppose the Question that Clause 46 stand part of the Bill.

Member’s explanatory statement

This probing amendment is intended to elicit why Bank of England monetary policy subsidies are excluded from the provisions of the Bill.

Clause 47

LORD MCNICOL OF WEST KILBRIDE
 LORD JUDGE
 LORD FOX
 LORD THOMAS OF CWMGIEDD

50 Page 26, line 27, leave out subsection (7)

Member's explanatory statement

This amendment removes the proposed ability for the Treasury to keep financial stability directions secret from Parliament and the public, thereby enacting a recommendation of the Delegated Powers and Regulatory Reform Committee.

Clause 48

LORD DODDS OF DUNCAIRN
 BARONESS HOEY

51 Page 27, line 13, at end insert –

“(3A) The subsidy control requirements under the Act do not apply if they have the effect of causing any unfair economic disadvantage to Northern Ireland as a result of the implementation of Article 10 of the Northern Ireland Protocol.”

Clause 51

BARONESS JONES OF MOULSECOOMB

Baroness Jones of Moulsecoomb gives notice of her intention to oppose the Question that Clause 51 stand part of the Bill.

Member's explanatory statement

This probing amendment is intended to elicit why nuclear energy is excluded from the energy and environment principles in the Bill.

After Clause 51

BARONESS RANDERSON
 LORD BRUCE OF BENNACHIE

52 Insert the following new Clause –

“Agriculture

The subsidy control requirements in Part 2 of this Act do not apply to –

- (a) the giving of an agricultural subsidy, or
- (b) the making of a subsidy scheme, so far as it relates to the giving of agricultural subsidies.”

Member's explanatory statement

This new Clause would exempt agricultural subsidies from the subsidy control requirements.

Clause 52

LORD PURVIS OF TWEED
LORD FOX

53 Page 28, line 21, at end insert –

“(c) if the subsidy or subsidy scheme is in connection with economic activity in Northern Ireland, in order to determine whether any EU regulations are required to be followed in its operation.”

Member’s explanatory statement

This amendment would require a public authority to request a report from the CMA if the subsidy or subsidy scheme is in connection with economic activity in Northern Ireland.

Clause 55

LORD MCNICOL OF WEST KILBRIDE
LORD HOPE OF CRAIGHEAD
LORD BRUCE OF BENNACHIE
LORD WIGLEY

54 Page 30, line 40, after “State” insert “, the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland”

Member’s explanatory statement

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

LORD FOX

55 Page 30, line 40, after “State” insert “or appropriate local authority”

Member’s explanatory statement

This amendment probes whether the call-in powers under this section should be extended to Local Authorities.

LORD LAMONT OF LERWICK
LORD THOMAS OF CWMGIEDD

55A Page 30, line 40, after “State” insert “or the CMA”

LORD MCNICOL OF WEST KILBRIDE
LORD HOPE OF CRAIGHEAD
LORD BRUCE OF BENNACHIE

56 Page 31, line 2, after “State” insert “, the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland”

Member’s explanatory statement

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

LORD FOX

57 Page 31, line 2, after “State” insert “or appropriate local authority”

Member's explanatory statement

This amendment probes whether the call-in powers under this section should be extended to Local Authorities.

LORD LAMONT OF LERWICK
LORD THOMAS OF CWMGIEDD

57A Page 31, line 2, after "State" insert "or the CMA"

57B Page 31, line 7, leave out subsection (3) and insert –

- “(3) If a direction is made under this section by the Secretary of State –
- (a) the Secretary of State must send a copy of the direction to the public authority and the CMA, and
 - (b) the Secretary of State must publish the direction in such manner as they consider appropriate.
- (4) If a direction is made under this section by the CMA –
- (a) the CMA must send a copy of the direction to the public authority and the Secretary of State, and
 - (b) the CMA must publish the direction in such manner as they consider appropriate.”

LORD MCNICOL OF WEST KILBRIDE
LORD HOPE OF CRAIGHEAD
LORD BRUCE OF BENNACHIE
LORD WIGLEY

58 Page 31, line 7, after "State" insert “, the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland, as appropriate”

Member's explanatory statement

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

LORD FOX

59 Page 31, line 7, after "State" insert "or appropriate local authority"

Member's explanatory statement

This amendment probes whether the call-in powers under this section should be extended to Local Authorities.

LORD MCNICOL OF WEST KILBRIDE
LORD HOPE OF CRAIGHEAD
LORD BRUCE OF BENNACHIE

60 Page 31, line 10, leave out "Secretary of State" and insert "relevant authority"

Member's explanatory statement

This is a tidying up amendment consequential on previous amendments to this Clause in the name of Lord McNicol of West Kilbride.

Clause 58

LORD LAMONT OF LERWICK
LORD THOMAS OF CWMGIEDD

60A Page 32, line 31, after “State” insert “or the CMA”

After Clause 62

LORD MCNICOL OF WEST KILBRIDE

61 Insert the following new Clause –

“Post-award investigations

- (1) The CMA may conduct an investigation in relation to a subsidy that has been granted or a subsidy scheme that has been made.
- (2) A decision under subsection (1) may be made in relation to any subsidy or subsidy scheme in respect of which the CMA considers –
 - (a) that there has or may have been a failure to comply with the requirements of Chapters 1 and 2 of Part 2, or
 - (b) that there has or may have been a failure to comply with the transparency obligations set out in Chapter 3 of Part 2.
- (3) Where the CMA makes a decision to investigate a subsidy or scheme under subsection (1), it must direct the public authority to provide it with –
 - (a) any assessment carried out by the public authority as to whether the financial assistance fell within the meaning of “subsidy” or “subsidy scheme” for the purposes of this Act, and the reasons for that conclusion,
 - (b) any assessment carried out by the public authority as to whether the financial assistance, if assessed to constitute a subsidy or subsidy scheme, would comply with the requirements of Chapter 1 and 2 of Part 2 and the reasons for that conclusion,
 - (c) any evidence relevant to those assessments,
 - (d) in a case where such assessments were not provided, the reasons for the assessments not being provided,
 - (e) any information that the public authority failed to enter in the subsidy database in accordance with Chapter 3 of Part 2, and
 - (f) such other information as is specified in regulations under section 60(8)(a).
- (4) Where the CMA decides to conduct an investigation under subsection (1), the direction given under subsection (3) must be made before the end of 20 working days beginning with the day on which the subsidy is given or the scheme is made.
- (5) The CMA must send a copy of the direction given under subsection (3) to the public authority and the Secretary of State.
- (6) The public authority must provide to the CMA the information required under subsection (3) before the end of the information period as defined in section 60(7).”

Member's explanatory statement

This new Clause would provide the CMA with the power to conduct post-award investigations in cases where it believes a public authority has or may have failed to comply with its requirements.

Clause 66

LORD MCNICOL OF WEST KILBRIDE

62 Page 38, line 5, at end insert –

“(2) The annual report must also contain an assessment by the CMA, on the basis of the reports it has prepared, of the extent to which the subsidy control regime under this Act is meeting its stated policy objectives.”

Member's explanatory statement

This amendment would require the CMA to opine, in its annual report, on the extent to which the new subsidy control system is meeting its stated policy objectives.

BARONESS BOYCOTT
BARONESS SHEEHAN
LORD WHITTY

63 Page 38, line 5, at end insert –

“(2) The annual report referred to in subsection (1) must include a review of the operation of this Act as it relates to progress towards the target in section 1 of the Climate Change Act 2008 (carbon target for 2050) and the targets set out in the Environment Act 2021.”

Member's explanatory statement

This amendment requires the CMA to consider the impact of the subsidy control regime as a whole on progress towards net zero and environmental goals in its annual report.

Clause 68

LORD MCNICOL OF WEST KILBRIDE
LORD BRUCE OF BENNACHIE
LORD WIGLEY

64 Page 39, line 1, at end insert –

“(3A) The Chair of the CMA Board may appoint up to three non-executive members to the Subsidy Advice Unit established under subsection (1) in order to ensure that the Unit includes at least one person with relevant experience in relation to each of Wales, Scotland and Northern Ireland.”

Member's explanatory statement

This amendment would allow the CMA Chair to appoint up to three non-executive members to ensure that the Unit includes at least one person with experience in relation to each of Wales, Scotland and Northern Ireland.

After Clause 69

LORD MCNICOL OF WEST KILBRIDE
LORD GERMAN
LORD WIGLEY

65 Insert the following new Clause—

“CMA resourcing

- (1) This Part may not come into force until the Secretary of State has—
 - (a) undertaken an assessment of the CMA’s capacity to undertake the functions contained within this Part, and
 - (b) laid before both Houses of Parliament a statement confirming whether, in the Secretary of State’s opinion, the CMA has the appropriate resourcing to meet its obligations under this Part.
- (2) If the assessment under subsection (1)(a) determines that the CMA is not sufficiently resourced, the statement under subsection (1)(b) must outline what steps Her Majesty’s Government intends to take to remedy this.”

Member’s explanatory statement

This probing amendment seeks clarification around the CMA’s resourcing and general readiness to undertake the various new roles envisaged under the legislation.

LORD PURVIS OF TWEED
LORD FOX

66 Insert the following new Clause—

“Prohibition of references to the Office for Internal Market

- (1) The United Kingdom Internal Market Act 2020 is amended as follows.
- (2) In section 32 (Office for the Internal Market panel and task groups) after subsection (1) insert—

“(1A) The CMA may not make a reference of a subsidy or subsidy scheme under the Subsidy Control Act 2022 to an Office for the Internal Market task group.””

Member’s explanatory statement

This amendment seeks to probe the interaction between this bill and the United Kingdom Internal Market Act 2020.

Clause 70

LORD THOMAS OF CWMGIEDD
LORD LAMONT OF LERWICK

67 Page 39, line 33, after “decision” insert “or, where the CMA has made a report on a subsidy or subsidy scheme after a referral under section 53, 57 or 61 in respect of which a subsidy decision has been made, the CMA”

Member’s explanatory statement

The purpose of the amendment is to give the CMA standing to exercise enforcement powers through the Competition Appeal Tribunal in respect of decisions on subsidies where it has made a report.

LORD MCNICOL OF WEST KILBRIDE

68 Page 39, line 35, leave out subsection (2)

Member's explanatory statement

This amendment would allow individual subsidies given under a subsidy scheme to be reviewed, without the requirement for the broader subsidy scheme to be reviewed too.

LORD THOMAS OF CWMGIEDD
LORD MCNICOL OF WEST KILBRIDE
BARONESS RANDESON
LORD HOPE OF CRAIGHEAD

69 Page 40, line 16, at end insert “, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department”

Member's explanatory statement

The purpose of this amendment is to remove any doubts about the position of the devolved governments being interested parties.

Clause 71

LORD MCNICOL OF WEST KILBRIDE

70 Page 40, line 37, leave out “one month” and insert “three months”

Member's explanatory statement

This amendment would extend the time limit for applications to the tribunal under Clause 70 from one month to three.

After Clause 73

LORD FOX
LORD LAMONT OF LERWICK
LORD THOMAS OF CWMGIEDD

71 Insert the following new Clause—

“CAT powers for pre-emptive enforcement

- (1) The Competition Appeal Tribunal may pre-emptively investigate a subsidy decision without an application if it has reasonable suspicion that it does not comply with the subsidy control principles as outlined in this Act.
- (2) The Tribunal must produce a report of the outcome of any investigation under subsection (1).
- (3) The Tribunal must also—
 - (a) publish the report on its website, and
 - (b) send a copy of the report to the Secretary of State and any relevant national or local authority.”

Member's explanatory statement

This amendment probes whether the CAT should have a pre-emptive enforcement role.

After Clause 77

LORD PURVIS OF TWEED
LORD FOX
LORD WIGLEY

72 Insert the following new Clause—

“Duty of the CMA to act even-handedly

- (1) The CMA must, in carrying out its functions under this Part, have regard to the need to act even-handedly as respects relevant national authorities .
- (2) “Relevant national authority” means any of the following—
 - (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) a Northern Ireland department.”

Member’s explanatory statement

This amendment would place a duty on the CMA to have regard to the need to act even-handedly as respects the relevant national authorities.

Clause 78

LORD CALLANAN

73 Page 45, line 15, leave out from second “of” to end of line 16 and insert “financial assistance provided, or schemes for the provision of financial assistance made, by means of primary legislation.

- (2) Nothing in this Act applies to the giving of any such assistance, or to the making of any such schemes, except so far as provided for by that Schedule.”

Member’s explanatory statement

This amendment clarifies that the subsidy control requirements under the Bill apply in the case of financial assistance provided directly by primary legislation only so far as provided for by Schedule 3 to the Bill.

Clause 79

LORD GERMAN
LORD THOMAS OF CWMGIEDD

74 Page 45, line 18, after “issue” insert “non-binding”

Member’s explanatory statement

This amendment probes how guidance under Clause 79 will be issued.

LORD THOMAS OF CWMGIEDD

74A★ Page 45, line 34, leave out “meaning or”

Member's explanatory statement

This amendment would prevent the meaning of the principles being dealt with in guidance instead of on the face of the Bill.

74B★ Page 45, line 35, leave out “meaning or”

Member's explanatory statement

This amendment would prevent the meaning of the principles being dealt with in guidance instead of on the face of the Bill.

LORD MCNICOL OF WEST KILBRIDE
LORD HOPE OF CRAIGHEAD
LORD GERMAN
LORD WIGLEY

75 Page 46, line 10, at end insert –

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

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

(5C) If guidance is issued in reliance on subsection (5B), the Secretary of State must publish a statement explaining why the Secretary of State decided to issue the guidance without the consent of the authority or authorities concerned.”

Member's explanatory statement

This amendment would require the Secretary of State to gain the consent of the Devolved Administrations before issuing guidance under Clause 79.

LORD CALLANAN

76 Page 46, line 13, at end insert –

“(7) The requirement in subsection (5) may be met by consultation carried out before this section comes into force.”

Member's explanatory statement

This amendment ensures that the requirement in Clause 79(5) to consult on the guidance issued under Clause 79 may be met by consultation on the guidance carried out before the Act comes into force.

Clause 82

LORD CALLANAN

77 Page 47, line 35, at end insert –

“(e) provision in regulations or schemes made under this Act.”

Member's explanatory statement

This amendment ensures that regulations made under Clause 82 may make provision about how the gross cash amount and the gross cash equivalent amount are to be determined for the purposes of regulations or schemes made under the Act.

After Clause 83

LORD PURVIS OF TWEED
LORD FOX

78 Insert the following new Clause—

“UK internal market

A subsidy or a subsidy scheme under the provisions of this Act—

- (a) is not to be regarded as a regulatory provision under the United Kingdom Internal Market Act 2020, and
- (b) is not to be considered as impacting upon the effective operation of the internal market of the United Kingdom.”

Member's explanatory statement

This amendment seeks to probe the interaction between this bill and the United Kingdom Internal Market Act 2020.

LORD GERMAN
LORD WIGLEY

79 Insert the following new Clause—

“Dispute resolution: Heads of Governments Council

Any dispute between the UK Government and the devolved administrations arising from the interpretation of measures in and under this Act in respect of their respective roles and responsibilities must be referred to the Prime Minister and Heads of Governments Council for resolution.”

Member's explanatory statement

This amendment would require disputes between the UK Government and the Devolved Administrations on subsidies to be referred to the Prime Minister and Heads of Governments Council (as outlined in the Intergovernmental Relations Review) for resolution.

Clause 85

LORD BERKELEY

80 Page 48, line 20, leave out paragraph (c)

Member's explanatory statement

This amendment is to probe the application of the Act to the Duchy of Cornwall.

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3 February 2022
