Supplementary Delegated Powers Memorandum

Subsidy Control Bill

Prepared by the Department for Business, Energy and Industrial Strategy

1. This supplementary memorandum has been prepared by the Department for Business, Energy and Industrial Strategy for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Subsidy Control Bill ("the Bill").

2. This memorandum identifies Government amendments to the Bill tabled ahead of Lords Report Stage, which amend or affect the operation of provisions of the Bill containing powers to make delegated legislation. It explains in each case the effect of the amendment, why the power has been taken and the nature of, and the reason for, the procedure selected.

<u>**Clause 33(8): Duty to include information in the subsidy database**</u>

The Secretary of State may by regulations:

(a) Substitute a different amount for the amount specified in subsection (2)(c);
(b) Provide for a different amount to apply, instead of an amount specified in subsection (2)(c), in case of particular descriptions of subsidy.

(8A) An amount specified in regulations under subsection (8) may not exceed £500,000.

Power conferred on: Secretary of State
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

<u>Context and purpose</u>

3. Clause 33 subsection (2) provides that where a subsidy scheme has been uploaded to the subsidy database, subsidies given under that scheme which do not exceed £100,000 are not required to be uploaded. Under new subsection (8)(a) the power to make regulations has been amended. This power will allow the Secretary of State to make regulations to specify a different 'in scheme' transparency threshold. Subsection (8)(b) also allows the Secretary of State to make regulations which provide for a different 'in scheme' transparency threshold to apply to different types of subsidy. New subsection (8A) ensures that the threshold that these regulations may provide for is capped at £500,000.

<u>Justification for taking the power</u>

4. It may be appropriate to adopt different thresholds for the 'in scheme' transparency obligations where the threshold of £100,000, which is on the face of the Bill, is not appropriate. There may be different sectors for which a different threshold is appropriate.

Similarly, as the regime develops it may become apparent that the threshold of £100,000 is no longer appropriate and should be amended for all types of subsidies, not just specific sectors. This would allow the Secretary of State to reflect any further evidence gathered on the operation of the new regime on the benefits and costs of uploading subsidies to the database, including that provided by the Subsidy Advice Unit in their monitoring report.

Justification for procedure selected

5. The Government considers that the affirmative resolution procedure is appropriate as amending the 'in scheme' transparency threshold will determine how much subsidy transparency is demanded by the regime. Subsidy transparency is an important part of the subsidy control regime and its enforcement, it is therefore appropriate that the affirmative procedure is used to provide Parliament with sufficient scrutiny over how the subsidy control regime operates.

Clause 33(8B): Duty to include information in the subsidy database

"(8B) The Secretary of State may by regulations —
(a) amend subsections (3) and (5) so as to substitute a different period of time for the period of time specified;

(b) provide for a different period of time to apply, instead of a period of time specified in subsection (3) or (5), in the case of particular descriptions of subsidy or subsidy scheme

(8C) A period of time specified in regulations under subsection (8B) may not exceed—
(a) one year in respect of a subsidy given in the form of a tax measure;
(b) one year in respect of a subsidy scheme made in the form of a tax measure;
(c) six months in respect of a subsidy given or scheme made in any other form.

Power conferred on: Secretary of State
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Context and purpose

6. Clause 33(8B) provides the Secretary of State with the power to make regulations to amend the time limits in Clause 33(3) and (5), which apply to public authorities making entries in the database. Government amendments provide that the time limit for public authorities to make entries for subsidies, or subsidy schemes is to change to three months beginning with the date of the confirmation of the decision to give the subsidy or make the scheme for non-tax subsidies and all schemes. For subsidies given as tax measures, the time limit for uploading subsidies will remain as one year beginning with the date of the tax declaration. There will also be a three-month deadline for uploading modifications to non-tax subsidies and all schemes, and a one-year deadline for uploading modifications to tax subsidies. New clause 33(8C) places a cap on the power to amend these time limits, so they may not be amended to exceed 6 months, or in the case of tax measures, 12 months.

Justification for taking the power

7. It may become necessary for the Secretary of State to amend these time limits if evidence of the regime suggests that the time limits on the face of the Bill are not appropriate. For example, if there is evidence that the time limits impose an undue burden on public authorities or, conversely, if it is clear that upload deadlines should be shortened. The Secretary of State therefore needs the power to respond to evidence that the time limits listed in clause 33 (3) or (5) need to be amended.

Justification for procedure selected

8. The Government considers that the affirmative resolution procedure is appropriate. Subsidy transparency is an important part of the subsidy control regime and its enforcement, it is therefore appropriate that the affirmative procedure is used to provide Parliament with sufficient scrutiny over how the subsidy control regime operates.

Clause 42(1): Chapter 2: supplementary and interpretative provision

> ***(c) amend section 36(3A) or 38(3A) so as to substitute a different amount for the amount specified;***
> ***(d) provide for a different amount to apply, instead of an amount specified in section 36(3A) or 38(3A), in the case of particular descriptions of subsidy.***
> ***………***
> ***(3A) An amount specified in regulations under subsection (1)(c) or (d) which amend section 36(3A) may not exceed the amount specified in section 36(1).***
> ***(3B) An amount specified in regulations under subsection (1)(c) or (d) which amend section 38(3A) may not exceed the amount specified in section 38(1)***

Power conferred on: Secretary of State
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Context and purpose

9. The amendments at clauses 36(3A) and 38(3A) introduce transparency requirements above a certain threshold for minimal financial assistance (MFA) given under clause 36 and for Services of Public Economic Interest (SPEI) assistance given under clause 38. The Government has added subsection (c) to clause 42(1) to enable the Secretary of State to make regulations amending these transparency thresholds as it applies to MFA and SPEI Assistance. Subsection (d) has been added to enable the Secretary of State to make regulations specifying different transparency thresholds to apply to particular descriptions of subsidy. New subsections 3A and 3B place a cap on the power to amend these transparency thresholds up to the amount of the overall threshold under which MFA and SPEI assistance may be given.

Justification for taking the power

10. For the same reasons that other general transparency thresholds may need to be amended, such as new evidence being provided on why the thresholds set out in the Bill are not

appropriate, the Government will need the ability to amend the threshold for the transparency of MFA and SPEI Assistance. As with the general transparency thresholds, the Bill provides for a cap to the powers to amend these thresholds.

Justification for procedure selected

11. The Government considers it appropriate that all regulations under clause 42 subsection (1) are subject to the affirmative procedure. Subsidy transparency is an important part of the subsidy control regime, it is therefore appropriate that the affirmative procedure is used to provide Parliament with sufficient scrutiny over how the subsidy control regime operates.

The following are amendments to existing regulation making powers in the Bill which have been amended: -

Clause 42(1): Chapter 2: supplementary and interpretative provision

"(1) The Secretary of State may by regulations—

(a) amend section 36(1), 38(1) or 41(1)~~(a)~~ so as to substitute a different amount ~~of total assistance~~ for the amount ~~for the time being~~ specified;

(b) provide for a lower amount to apply, instead of an amount specified in section 36(1), 38(1) or 41(1)~~(a),~~ in the case of particular descriptions of subsidy."

Context and purpose

12. This power has been amended as a consequence of amendments made to clause 41(1) that lowered the transparency threshold that applied under clause 41(1).

Clause 42(1): Chapter 2: supplementary and interpretative provision

"(2) The power to make regulations under subsection (1)(a) may be exercised so as to substitute a higher amount ~~only~~ for the purpose of securing that the amount specified in sterling is up to an equivalent of ~~equivalent to~~—

(a) 325,000 special drawing rights, in the case of the amount specified in section 36(1);

(b) 750,000 special drawing rights, in the case of the amount specified in section 38(1);

(c) 15,000,000 special drawing rights, in the case of the amount specified in section 4(1)(~~a).~~

Context and purpose

13. This power has been amended to ensure that clause 42(2) operates to provide a cap on the amounts that may be specified by regulations under clause 42(1).

Clause 65(4A): Monitoring and reporting on subsidy control

"4A The Secretary of State may exercise the power in subsection (4) only after the CMA has prepared its reports in relation to the first two relevant periods mentioned in subsection (3)."

Power conferred on: Secretary of State
Power exercisable by: Direction
Parliamentary procedure: None

Context and purpose

14. This additional clause changes the way the Secretary of State can exercise the direction making power in clause 65(4).

15. Clause 65(4) provides that the Secretary of State may direct the CMA to prepare a report in relation to a specified period. We have made provisions for the CMA to provide reports after the first two three-year periods of the regime. After these first two reports, the CMA will be required to provide a report every 5 years.

16. This amendment ensures that the Secretary of State can only direct the CMA to report on specified periods after the first two reports for the first two relevant periods are prepared. This will mean that the power in cl 65(4) can only be exercised after the first two CMA reports are prepared. These first two reports will be prepared after 3 years and then after a further 3 years.

17. This will mean that clause 65(5) of the Bill can operate without preventing the first two 3 years reports from being prepared by the CMA. Clause 65(5) provides that after a specified period has elapsed the CMA will continue to have to be required to provide reports every 5 years. This clause resets the reporting cycle to every 5 years should clause 65(4) be triggered so that the Secretary of State directs the CMA to prepare a report for a specified period. By inserting clause 65(4A) we ensure that the first two three-year reports can be prepared, and the reporting period cannot be reset to 5 years by clause 65(4) until after they have been delivered.

18. This amendment does not create a new power but rather amends the exercise of an existing power so that the Secretary of State cannot exercise the power for the first six years of the new subsidy control regime.

<u>Clause 87(6): Power to make consequential provision</u>

> ***"(6) Any power to make regulations under Part 4 to amend a provision of this Act may not be exercised after the period of one year beginning with the day on which the CMA publishes its second report under section 65."***

<u>Context and purpose</u>

19. As referred to at paragraph 17 of the Delegated Powers Memorandum, the original provisions of the Bill (clause 87(6)) included a sunsetting provision which provided that any power to make regulations under Part 4 to amend a provision of the Act could no longer be exercised after the period of one year after the first report was prepared by the CMA. This sunsetting provision was originally prepared when the CMA was required to prepare a report every 5 years.
20. However, the amendments to clause 65 will now require the CMA to prepare a first report after 3 years and a second report after a further 3 years. This amendment to clause 87(6) provides that the Secretary of State may no longer exercise the Part 4 regulation making powers one year after the second CMA report. This change is justified by the need to compensate for the shortening of the original reporting period

under clause 65. This amendment is relevant to the following powers described in the Delegated Powers Memorandum: clause 53(12): Mandatory referrals: verification and reporting periods (see DPM paragraph 151); clause 54(7)(a): Mandatory referrals: cooling off period (see DPM paragraph 155); clause 54(7)(b): Mandatory referrals: circumstances in which cooling off period may be extended (see DPM paragraph 160); clause 57(8): Voluntary referrals: verification and reporting periods (see DPM paragraph 170); clause 59(4): Mandatory and voluntary referrals: content and form of CMA report (see DPM paragraph 174); clause 60(8)(c): Post-award referrals: Length of time periods (see DPM paragraph 187); clause 61(11): Post-award referrals: Length of CMA reporting period (see DPM paragraph 191; and clause 62(5): Post-award referrals: content and form of CMA report (see DPM paragraph 196).