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Dear Seema,

I am writing in response to your request for clarification during the Committee session on 28 October about how 'persons under common control' are treated under the provisions of the Subsidy Control Bill.

The key point is that the provisions on 'persons under common control' in Clause 8 further elaborate the definition of 'enterprise'. As set out in Clause 7(1)(b), *'a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity'* can constitute a single 'enterprise' for subsidy control purposes.

This means that a public authority will need to consider the entirety of the enterprise which will receive a subsidy (that is to say, the group under common control) when assessing a subsidy or scheme against the subsidy control principles. One example is in the calculation and cumulation of Minimal Financial Assistance: two companies under common control should not both receive subsidies of, for example, £200,000 as Minimal Financial Assistance, as this would exceed the threshold of £315,000 for a single enterprise.

The Bill does not make provision explicitly to enable or prevent a subsidy being shared between different companies in a group under common control. This will be a matter for the public authority to consider when giving the subsidy to ensure that the subsidy is used for the intended purpose, both as a matter of subsidy control and as a point of good practice when managing public money. The Bill makes provision on misuse of subsidies to give public authorities the right to recover a subsidy that has been used for a purpose that is not the purpose for which it was given. Of course, many subsidies will be given on the basis of contractual terms to that effect.

You also asked for clarification on whether an enterprise, perhaps a foreign-owned company with a UK-based subsidiary, may use a subsidy outside of the UK. This would depend on the precise circumstances and the facts of the individual case. If the subsidy had been misused by the enterprise and improperly channelled outside the UK, the provisions on misuse would be relevant; and as a matter of managing public money, I would expect public authorities to take steps to ensure this does not happen when designing subsidies and schemes.

On the other hand, if the money had been given by the public authority for the purpose of activities outside the UK, the public authority would need to consider the fourth limb of the test of 'subsidy': this requires that the measure has, or is capable of having, an effect on UK competition or investment, or on trade or investment between the UK and another country.

If the measure did meet this test, then the provisions of the Subsidy Control Bill will apply, even if the subsidy was given to an enterprise that was based outside of the UK. If there was no effect (or potential effect) on UK competition or investment or on trade or investment between the UK and another country, then the financial assistance measure would not be in scope.

As I set out on Thursday, the Government will provide guidance that will help public authorities and recipients understand the practical application of the regime and what authorities will need to do to comply with it.

I trust that this additional information addresses your query. I am copying this letter to all members of the Public Bill Committee, and I will be placing a copy of this letter in the Libraries of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Scully', with a stylized flourish at the end.

PAUL SCULLY MP

Minister for Small Business, Consumers & Labour Markets
Minister for London