



Department for  
Business, Energy  
& Industrial Strategy

Paul Scully MP

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9 November 2021

Dear Kirsty,

I am writing to follow on from the Committee session on Thursday 4 November and our discussion in relation to Clause 60 (post-award referrals) of the Subsidy Control Bill. Given the points raised in relation to Clause 62 on a related issue, I thought it helpful to address this letter to you both.

In particular, you asked for clarification on subsection 2, which states:

*(2) referral under subsection (1) may be made in relation to any subsidy or subsidy scheme in respect of which the Secretary of State 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 is a risk of negative effects on competition or investment within the United Kingdom.*

As we discussed, Subsection (2)(a) allows the Secretary of State to make a referral in relation to subsidies or subsidy schemes that they consider to unduly distort UK competition or investment, or trade or investment between the UK and another country. This is because the requirements of Chapters 1 and 2 of Part 2 include the duties on public authorities to consider and act consistently with subsidy control principles. These include Principle G, which requires the beneficial effects of a subsidy to outweigh any negative effects, including in particular negative effects on competition or investment within the UK or international trade or investment. If the Secretary of State considers that a public authority has not acted consistently with this principle, then the referral power may be used – whether the negative effects in question relate to domestic competition or investment, international trade or investment, or both.

Subsection (2)(b) serves to emphasise that a referral may be made where there is a risk of negative effects on competition or investment within the UK. This is a different test to that contained in subsection (2)(a) as the Secretary of State needs only to consider that there is a risk of negative effects – as opposed to a failure on the part of a public authority to comply with the principles (e.g. a failure to properly consider whether the negative effects on UK competition or investment *outweigh* the positive effects of the subsidy). That is important, because it reflects the domestic character of the new subsidy control regime and emphasises our commitment to protecting our vibrant free market economy.

Points were also raised on the formulation of Clause 60(2) in light of the Government amendments made to Clause 62 of the Bill. Clause 62(4)(b) was entirely duplicative in the Bill as introduced, because the subsidy control principles include Principle F, which provides that subsidies should be designed to minimise any distortive effects on UK competition and investment, while achieving their specific policy objective. I considered it potentially confusing to suggest that this would be a separate section in the Subsidy Advice Unit's report. This was also inconsistent with Clause 59(3) which specifies matters which the CMA may include in a report published after a pre-award referral.

I appreciate the concern of the Committee to maximise clarity for public authorities and those interested in subsidies. As I have said, I will ensure that the requirements for public authorities are further clarified in guidance – including their responsibilities to consider distortions to UK competition and investment, and to international trade and investment.

I am copying this letter to other members of the committee and will place a copy in the Libraries of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Scully', is positioned below the closing text.

**PAUL SCULLY MP**

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

