



Department for
Business, Energy
& Industrial Strategy

Lord Callanan
Minister for Business,
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Lord Purvis of Tweed
House of Lords
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25 January 2022

Dear Lord Purvis,

I am writing to thank you for your contributions to the Second Reading debate of the Subsidy Control Bill on 19 January 2022. I would like to respond to your question with regards to the geographical area of a market, in the context of the term “market failure” used in the Bill.

As you noted at Second Reading, Principle A in Schedule 1 of the Bill makes clear that an identified market failure is an appropriate reason for pursuing remedy via a subsidy. Under the provisions of the Bill, public authorities awarding subsidies will be responsible for assessing subsidies or schemes against the subsidy control principles. This includes demonstrating that there is a clear public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns. As such, public authorities will be able to define the relevant market failures and the areas that these apply to as part of their assessment.

For the purposes of the assessment, a market failure would be deemed to be present where market forces alone do not produce an efficient outcome and society could potentially be made better off by state intervention to address this, for instance through a subsidy.

Market failures can occur for a number of reasons, one of which is negative or positive externalities. For example, implementing measures to decarbonise manufacturing processes in a factory may create wider benefits for society that are not fully realised privately by the factory owners or their customers (representing a positive externality), and this could result in underinvestment in decarbonisation.

The geographic scope of a market depends on the goods, services and activity in question – which means geographic scope can vary. A key factor is the distance over which these goods or services can be supplied and the preferences of

customers. Some goods are only supplied over very limited distances whilst others are traded on a national level. There are also many services that can be supplied electronically and are available to customers on a global basis. Geographic markets are therefore not necessarily confined to any particular administrative area, such as Northumberland Unitary Authority.

Public authorities are not required to precisely delineate geographic markets for their assessment. Rather, they should undertake such assessments in a proportionate and balanced way and are expected to limit their assessments to what is necessary to determine whether a market failure is present or not, and therefore whether there is clear rationale for addressing through a subsidy.

We will be publishing guidance to support public authorities with their assessment against the principles and, ahead of this, publishing illustrative guidance to support Peers with their scrutiny of this legislation.

If of interest, the Government's Green Book (paragraph 4.22 and 4.23), which can be found at <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government> provides further detail on what situations are characterised as "market failures" and some causes of market failure.

Additionally, my officials have prepared illustrative regulations, guidance and Streamlined Routes (also known as Streamlined Subsidy Schemes in the Bill text) that I hope will support noble Lords' scrutiny of the Subsidy Control legislation at Grand Committee. I am sharing these products in order to provide more information about some of the Bill concepts; to give an indication of how Government may use these elements to support its priorities; and to encourage comments on the proposed policy direction.

These documents can be accessed on GOV.UK¹.

I am grateful for your interest in this important piece of legislation and I look forward to discussing further as the Bill continues its passage. I will place copies of this letter in the libraries of the House.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew Callaghan', with a long horizontal flourish extending to the right.

Lord Callanan

Minister for Business, Energy and Corporate Responsibility

¹ <https://www.gov.uk/government/publications/subsidy-control-bill-2021-illustrative-regulations-guidance-and-streamlined-routes>