



Department for
Business, Energy
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Lord Callanan
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Lord Leigh of Hurley
House of Lords
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25th January 2022

Dear Lord Leigh,

May I thank you for your comments at the Second Reading of the Subsidy Control Bill on 19 January. Following a substantive debate with many contributions from members across the House, I apologise for not answering your questions at the time. I hope the information in this letter is helpful and answers the questions you raised.

Value for money is indeed an important concept which should be kept in mind when granting subsidies. According to the most recent available data, the total value of subsidies granted in the UK was £11 billion in 2019. This is not a small sum of money by any standard. With regards to your question as to whether value for money will be a key driver for subsidies, I would like to stress that this framework will not replace the normal spending controls that the Government puts in place. These controls ensure that we maximise value for money and avoid wasteful spending that is contrary to Managing Public Money and Green Book requirements. Nevertheless, the subsidy control requirements in this Bill support value for money for taxpayers, for example, in ensuring that subsidies are used to incentivise behaviour change and that they do not fund day-to-day running costs.

I note your point about how the substance of the regime, as implemented through secondary legislation, will be important for stakeholders to consider how subsidies should be given. The Government fully intends to ensure that the requisite guidance and regulations for the regime will be published in advance of the formal commencement of the regime.

To support Noble Lords' scrutiny of the Bill, as I mentioned at Second Reading, my officials have prepared illustrative regulations, guidance and Streamlined Routes. These documents intend to give an indication of how the powers to make regulations under the Subsidy Control Bill might be used and how the subsidy control principles will be applied by public authorities.

These documents can be accessed on GOV.UK¹.

I hope that these documents will be helpful for Members across the House when it comes to reviewing the provisions in the Bill, and I will be considering any and all comments with regards to them throughout Grand Committee stage and beyond. This scrutiny will be vital to ensuring that these are as helpful and clear as possible for supporting Public Authorities, the Courts and other stakeholders in navigating the regime.

I believe that the statutory guidance will ensure that stakeholders should not need to refer to the CMA for advice on low risk or straightforward subsidies, and indeed, not all subsidies will be eligible for CMA advice. The CMA will not itself be responsible for approving subsidies but will provide an additional layer of scrutiny for the most potentially distortive subsidies through the Subsidy Advice Unit (SAU). This will ensure that public authorities are incentivised to apply the principles to their prospective subsidies and schemes thoroughly and reasonably, in line with the guidance that BEIS produces. The SAU will be an expert Unit with an important advisory role. It will provide advice that is useful to public authorities in designing their subsidies and in assessing them against the requirements of the subsidy control regime.

It may be helpful to add that the Bill provides for Streamlined Routes to be established – referred to as Streamlined Subsidy Schemes in the Bill. Streamlined Routes are a way of granting subsidies quickly, with little administrative burden, whilst also providing legal certainty to both the public authority awarding the subsidy and the beneficiary of the subsidy. These should facilitate the award of low-risk and uncontentious subsidies, and subsidies in areas of policy that are strategically important to the UK. Establishing such Streamlined Routes will empower public authorities to give such low-risk subsidies quickly and effectively, without need to refer to the SAU.

In response to your question about further controls and restraints, I believe that our approach in the Bill strikes the right balance. In addition to the scrutiny provided by the SAU for subsidies that meet the criteria of being a ‘Subsidy of Particular Interest’, the Secretary of State will have powers to refer a specific subsidy or scheme to that unit if it raises concerns but does not meet the definition set out in regulations. The Secretary of State will also be able to extend the cooling-off period between the publication of the SAU’s report and the point at which the public authority can award the subsidy (or make the scheme). If the subsidy or scheme does go ahead, the Secretary of State has the option to refer it to the SAU after it has been granted and will always have standing in the Competition Appeal Tribunal to raise a challenge against it, and to make a pre-action information request to obtain further information from the public authority.

Finally, in relation to your points about ailing and insolvent enterprises and related matters, the definition of ‘ailing or insolvent’ in this Bill is one that incorporates both domestic and international terminology. It combines the existing concept in UK law of insolvency with the wider concept of ‘ailing or insolvent’ agreed in the Trade and

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

Cooperation Agreement. This definition is therefore both compliant with our international commitments and has a strong basis in UK law.

It is worth noting that the definition of 'ailing and insolvent' only applies in the Bill for the purposes of giving rescue and restructuring subsidies. It will replace the EU's 'Undertaking in Difficulty' test which applied much more widely in the EU state aid rules. It was disliked by stakeholders for being highly prescriptive and not meeting the requirements of modern business. Medical technology firms and start-ups, for instance, were denied subsidies on the basis that they had a longer route to market. The new rules in the Bill on rescuing and restructuring set strict, sensible conditions on when a subsidy may be given to ensure the proper use of public money. They ensure that start-ups that invest heavily to grow, and larger businesses with leveraged financing structures, are not unfairly affected.

Regardless of whether aid is given to rescue or restructure an ailing or insolvent enterprise, or for any other purpose, subsidies must be given prudently, judged on a case-by-case basis, and be subject to wider policy considerations

I hope this has been a helpful response to your comments and questions at Second Reading of the Bill and I look forward to engaging with you further as it progresses through the House. I will place copies of this letter in the libraries of the House.

Yours sincerely,

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

Lord Callanan

Minister for Business, Energy and Corporate Responsibility