



Department for
Business, Energy
& Industrial Strategy

Lord Callanan
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Lord Fox
House of Lords
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Dear Lord Fox,

I am writing in response to points you raised during the second Committee session of the Subsidy Control Bill on 2 February. This letter addresses your questions regarding challenging a subsidy that falls within a scheme, and on the permissibility of using data collected on local content for previously awarded subsidies to ensure a prospective subsidy targets a specific UK policy objective. I will also copy this letter to Baroness Sheehan, as I will be addressing the points she made on the topic of subsidy schemes to my noble friend Baroness Bloomfield.

Scheme transparency and challenge

Your question on this matter centred around the mechanics by which individual subsidies are awarded under schemes. You also asked about the extent to which the subsidy control regime's transparency requirements will allow for any interested parties to be aware of subsidies granted under a scheme, to ensure that they are open to challenge and scrutiny.

As my noble friend Baroness Bloomfield stated during the Committee session, all schemes must be uploaded to the transparency database. This database will be freely accessible and is a key part of the new subsidy control regime, enabling the public and any interested parties to see which subsidies have been awarded, and to whom.

In accordance with the terms of clause 33 (subsection 2(c)) of the Bill, individual subsidies that are awarded under schemes and are greater than £500,000 in value must be separately uploaded to the database. These transparency requirements strike the appropriate balance between minimising the administrative burden on public authorities by ensuring that schemes have real administrative benefits, while simultaneously ensuring appropriate levels of transparency for individual subsidies awarded under schemes.

Furthermore, and as Baroness Bloomfield noted, a subsidy scheme will be assessed against the subsidy control principles and public authorities must not make the scheme unless they are of the view that subsidies provided for by the scheme will be consistent with those principles; all individual subsidies awarded under a scheme must be compliant with its terms. If a subsidy does not comply with the terms of the



scheme that it has been awarded under, then a challenge to this effect may be brought by an interested party, on the grounds the subsidy ought to be treated as a standalone subsidy.

If the Competition Appeal Tribunal finds that the subsidy should have been treated as a standalone subsidy, it could also be asked to determine whether the relevant subsidy control principles have been met. This will ensure that there is proportionate scrutiny and transparency of subsidies, irrespective of whether they are awarded under a subsidy scheme.

To address the specific point raised by Baroness Sheehan in the debate, it is indeed right that the amendments tabled would not prevent subsidies being given under schemes – of course public authorities would continue to deliver subsidies through specific policy programmes and common application portals, and so on. However, the amendments would strip out the key benefits of schemes provided by the Bill, in terms of administrative simplicity and confidence for public authorities, and therefore there would be no particular reason why public authorities would make use of these provisions in the Bill.

Use of local content data

Your second point related to public authorities using data on the proportion of 'local content' in activities they subsidise. You asked whether public authorities may use historic data of this kind in making decisions about whether or not to award future subsidies to a particular recipient.

As you noted, the World Trade Organisation's Agreement on Subsidies and Countervailing Measures (WTO ASCM) prohibits subsidies that are contingent on the use of domestic goods; the Trade and Cooperation Agreement with the European Union prohibits subsidies that are contingent on the use of domestic services and goods (without prejudice to specific provisions on investment liberalisation). The prohibitions in clause 17 are a consequence of these international obligations - which I believe are essential to the global trading system which UK businesses benefit from so greatly.

In light of this prohibition, I would be concerned about any consideration of 'local content' as part of the decision on whether or not to give a subsidy to a specific recipient, although of course any legal advice would need to be case-specific. And as I said in the debate on Monday, I would be especially concerned if that 'local content' data were collated centrally on a subsidy control database.

Instead, I would emphasise that any subsidy should benefit the UK because it should be tailored to a specific policy objective that addresses a market failure or equity rationale in the UK, as specified in principle A of the subsidy control principles in this Bill. It is of course good practice for a public authority to evaluate and monitor any



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intervention, including a subsidy, for its impact in addressing the desired policy objective, and to consider any lessons learned when designing future subsidies.

I would also emphasise that the 'local content' prohibition does not prevent public authorities providing incentives to locate production in the UK, or to train or employ workers in the UK.

I hope that this additional information provides the clarity you were hoping for. I will be placing a copy of this letter in the Libraries of the House.

Yours sincerely,

Lord Callanan
Minister for Business, Energy & Corporate Responsibility