

# SUBSIDY CONTROL BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- These Explanatory Notes relate to the Lords Amendments to the Subsidy Control Bill as brought from the House of Lords on 29 March 2022 (Bill 296).
- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 84, the Bill as first printed for the Lords.
- These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- All the Lords amendments for this Bill were tabled in the name of the Minister.

# Commentary on provisions of Bill

## Lords amendments to clause 10

### Lords amendment 1

1. This amendment provides that streamlined subsidy schemes, made under clause 10 of the Bill, are subject to the negative procedure after they are laid in both Houses of Parliament.
2. The effect of this amendment is that streamlined subsidy schemes (either new schemes or amendments to existing schemes) may be prayed against by either House, and thereby annulled, during a period of 40 days after a new or amended scheme is laid.
3. This amendment relates to a recommendation contained in the Delegated Powers and Regulatory Reform Committee's seventeenth report of session 2021/22 published on 13 January 2022<sup>1</sup>.

### Lords amendment 2

4. This amendment provides that those public authorities making subsidy schemes and streamlined subsidy schemes will be able to define the value of subsidies awarded under them by reference to their gross cash amount or gross cash equivalent, as defined in regulations made under clause 82.

## Lords amendments to clause 11

### Lords amendment 3

5. This amendment ensures that regulations made under clause 11(1) to define subsidies and schemes of interest or subsidies and schemes of particular interest can make reference to their gross cash amount or the gross cash equivalent, as determined in accordance with regulations made under clause 82.

### Lords amendment 4

6. This amendment clarifies that the list in subsection (2) of what may be referred to in regulations made under clause 11(1) is intended to be non-exhaustive.

## Lords amendments to clause 16

### Lords amendment 5

7. This amendment requires the exercise of the power in clause 16(4), which allows the Secretary of State to remove a country from the 'list of marketable risk countries' where the specified conditions are met, to be via regulations (subject to the negative procedure).
8. This amendment relates to a recommendation contained in the Delegated Powers and Regulatory Reform Committee's seventeenth report of session 2021/22 published on 13 January 2022<sup>2</sup>.

### Lords amendment 6

---

<sup>1</sup> Delegated Powers and Regulatory Reform Committee Seventeenth Report of Session 2021-22 - published 13 January 2022 - HL Paper 140; <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/140/14002.htm>

<sup>2</sup> Delegated Powers and Regulatory Reform Committee Seventeenth Report of Session 2021-22 - published 13 January 2022 - HL Paper 140; <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/140/14002.htm>

9. This amendment is consequential on amendment 5 and reflects that the exercise of the power in clause 16 is to be by the making of regulations.

#### Lords amendment 7

10. This amendment is consequential on amendment 5 and requires any revocation under subsection (5) to be via regulations.

#### Lords amendment 8

11. This amendment is consequential on amendment 5 and specifies that any regulations made under this clause to be subject to the negative procedure.

## Lords amendments to clause 18

#### Lords amendment 9

12. This amendment provides an exemption to the prohibition on relocation of activities by allowing subsidies that meet three conditions on reducing social or economic disadvantage specified in subsections (5), (6) and (7).
13. The three conditions ensure that a public authority can only give a relocation subsidy that has the effect of reducing social or economic disadvantage in both the area to which the relocation takes place and within the UK generally, while also changing the economic behaviour of the beneficiary.

## Lords amendments to clause 25

#### Lords amendment 10

14. This amendment removes the Treasury power to make regulations to alter the meaning of “deposit taker”.
15. This amendment, alongside amendments 11 and 12, relates to the recommendations contained in the Delegated Powers and Regulatory Reform Committee’s seventeenth report of session 2021/22 published on 13 January 2022<sup>3</sup>.

## Lords amendments to clause 26

#### Lords amendment 11

16. This amendment removes the Treasury power to make regulations to alter the meaning of “insurance company”.

## Lords amendments to clause 27

#### Lords amendment 12

17. This amendment removes the Treasury power to make regulations to alter the meaning of “insurer”.

## Lords amendments to clause 32

#### Lords amendment 13

18. This amendment places a duty on the Secretary of State to keep the subsidy database under

---

<sup>3</sup> Delegated Powers and Regulatory Reform Committee Seventeenth Report of Session 2021-22 - published 13 January 2022 - HL Paper 140; <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/140/14002.htm>

review.

## Lords amendments to clause 33

### Lords amendment 14

19. This amendment reduces the threshold for the exemption from the requirement to upload to the subsidy database from £500,000 to £100,000.
20. The effect is to lower the transparency threshold for subsidies given under schemes from £500,000 per award, to £100,000 per award.

### Lords amendment 15

21. This amendment ensures that the one-year deadline for uploading to the subsidy database only applies to tax subsidies.

### Lords amendment 16

22. This amendment provides a 3-month deadline for uploading tax schemes to the subsidy database.

### Lords amendment 17

23. This amendment reduces the time limit for making an entry in the subsidy database from 6 months to 3 months in respect of a subsidy or scheme given in a form other than a tax measure.

### Lords amendment 18

24. This amendment ensures that the one-year deadline for uploading modifications to the subsidy database only applies to tax subsidies.

### Lords amendment 19

25. This amendment provides a 3-month deadline for uploading modifications to tax schemes to the subsidy database.

### Lords amendment 20

26. This amendment reduces the time limit from 6 months to 3 months for making an entry into the database with regard to modifications to a subsidy or scheme given in a form other than a tax measure.

### Lords amendment 21

27. This amendment is consequential on amendment 47 and clarifies that modifications to subsidies given under a scheme that remain below the transparency threshold specified in amendment 14 do not need to be uploaded to the database.

### Lords amendment 22

28. This amendment amends the regulation-making power to ensure that the transparency thresholds can be amended as long as they do not exceed £500,000.

### Lords amendment 23

32. This amendment provides a power to make regulations to amend the time limits in clause 33 for making entries in the subsidy database, subject to a cap.

### Lords amendment 24

33. This amendment provides that regulations made under subsection (8) and under the power inserted by the amendment 23, are subject to the affirmative procedure.

## Lords amendments to clause 36

### Lords amendment 25

34. This amendment removes the exemption from the transparency requirements in relation to minimal financial assistance, in respect of each individual subsidy which exceeds £100,000.

## Lords amendments to clause 38

### Lords amendment 26

35. This amendment removes the exemption from the transparency requirements in relation to services of public economic interest assistance, in respect of each individual subsidy which exceeds £100,000.

## Lords amendments to clause 41

### Lords amendment 27

36. This amendment removes the exemptions from the transparency requirements for services of public economic interest subsidies over £100,000.

### Lords amendment 28

37. This amendment is consequential on amendment 27.

## Lords amendments to clause 42

### Lords amendment 29

38. This amendment is consequential on amendment 27.

### Lords amendment 30

39. This amendment is consequential on amendment 27.

### Lords amendment 31

40. This amendment is consequential on amendment 33.

### Lords amendment 32

41. This amendment is consequential on amendment 27.

### Lords amendment 33

42. This amendment allows the new transparency thresholds inserted by amendments 25 and 26, to be amended by regulations.

### Lords amendment 34

43. This amendment is consequential on the amendment 35.

### Lords amendment 35

44. This amendment ensures that clause 42(2) operates to provide a cap on the amounts that may be specified by regulations under clause 42(1).

### Lords amendment 36

45. This amendment is consequential on amendment 27.

### Lords amendment 37

46. This amendment ensures that where the new transparency thresholds inserted by amendments 25 and 26, are amended by regulations, they are subject to a cap.

#### Lords amendment 38

47. This amendment provides that regulations made under the power inserted by amendment 33, are subject to the affirmative procedure.

## Lords amendments to clause 47

#### Lords amendment 39

48. This amendment provides that a financial stability direction is to be laid before Parliament. This amendment, alongside amendment 40, relates to a recommendation contained in the Delegated Powers and Regulatory Reform Committee's seventeenth report of session 2021/22 published on 13 January 2022<sup>4</sup>.

#### Lords amendment 40

49. This amendment ensures that the exemption from the requirement to publish a financial stability direction and lay it before Parliament is temporary.
50. A financial stability direction made under clause 47 must be published and laid before Parliament, unless the Treasury believes that conditions exist such that publication of the direction would undermine the purpose of issuing the direction. In such cases, directions must be published and laid before Parliament as soon as these conditions cease to apply.

## Lords amendments to clause 65

#### Lords amendment 41

51. This amendment increases the frequency of the CMA's monitoring reports under clause 65 of the Bill within the first six years of the regime. The amendment provides that a report will be required within the first three years of the implementation of the regime instead of the five years.

#### Lords amendment 42

52. This amendment provides that the CMA must prepare its second report three years after its first report, instead of five years after its first report.

#### Lords amendment 43

53. This amendment clarifies that the Secretary of State can only direct the CMA to report on specified periods after the first two reports in respect of the first two relevant periods under subsection (3) have been prepared.

## Lords amendments to clause 78

#### Lords amendment 44

54. This amendment makes it clear that, in the case of financial assistance provided for directly by primary legislation, the subsidy control requirements under the Bill apply only so far as provided for by Schedule 3 to the Bill.
55. The amendment makes two changes to clause 78 and Schedule 3. Firstly, it makes it clear that Schedule 3 applies to "financial assistance" provided for in Westminster and Devolved primary legislation, rather than a "subsidy". This is because the word "subsidy" is defined in the Bill as financial assistance given by a public authority, whereas in clause 78 we are

---

<sup>4</sup> Delegated Powers and Regulatory Reform Committee Seventeenth Report of Session 2021-22 - published 13 January 2022 - HL Paper 140; <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/140/14002.htm>

referring to financial assistance which is given through legislation. Secondly, the amendment provides greater clarity by stating that it is only Schedule 3 that applies to financial assistance given by legislation, not the provisions in the rest of the Bill.

## **Lords amendments to clause 79**

### **Lords amendment 45**

56. This amendment adds the duty to provide pre-action information to the list of matters in clause 79 on which the Secretary of State may issue guidance.

### **Lords amendment 46**

57. This amendment provides that the requirement on the Secretary of State to consult on guidance issued under Clause 79(5) may be met by consultation on the guidance carried out before the Act comes into force.

## **Lords amendments to clause 81**

### **Lords amendment 47**

58. This amendment removes the exemption from the duty to enter modifications in the subsidy database, in relation to permitted modifications.

## **Lords amendments to clause 82**

### **Lords amendment 48**

59. This amendment ensures that regulations made under clause 82 may make provision about how the gross cash amount and the gross cash equivalent amount are to be determined for the purposes of regulations or schemes made under the Act.

## **Lords amendments to clause 87**

### **Lords amendment 49**

60. This amendment is consequential to the amendments to clause 65 which increase the frequency of the CMA's monitoring reports within the first six years of the regime. It extends the sunset of powers delegated to the Secretary of State under Part 4 of the Bill from one year after the publication of the first CMA monitoring report until one year after the publication of the second CMA monitoring report.

## **Lords amendments to schedule 1**

### **Lords amendment 51**

61. This amendment clarifies that Principle A of the subsidy control principles covers subsidies aimed at addressing local or regional disadvantage.

## **Lords amendments to schedule 3**

### **Lords amendment 51**

62. This amendment is consequential on amendment 47 and provides that for the purposes of paragraph 8 of Schedule 3, the requirements in Chapter 3 of Part 2 apply to modifications to subsidies and schemes made under primary legislation as they apply to public authorities.

## Financial effects of Lords Amendments

63. The Department does not consider that any of the Lords Amendments give rise to any significant expenditure.

# **SUBSIDY CONTROL BILL**

## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

These Explanatory Notes relate to the Lords Amendments to Subsidy Control Bill as brought from the House of Lords on 29 March 2022.

---

Ordered by the House of Lords to be printed, 29 March 2022

---

© Parliamentary copyright 2022

This publication may be reproduced under the terms of the Open Parliament Licence which is published at [www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS