



HOUSE OF LORDS

Select Committee on the Constitution

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Lord Callanan
Department for Business, Energy and Industrial Strategy
1 Horse Guards Road
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19 January 2022

Dear Lord Callanan,

Subsidy Control Bill

I write on behalf of the Constitution Committee in relation to the Subsidy Control Bill.

The Bill is designed to regulate the granting of subsidies by public authorities. We note that the Bill provides a definition of a subsidy which is cast in general terms. This includes financial assistance which is given “directly or indirectly from public resources by a public authority” that “confers an economic advantage on one or more enterprises” or that “benefits one or more enterprises over one or more other enterprises”. In addition, the financial assistance must have or be capable of having an effect on “competition or investment”, within the UK, or between the UK and another territory outside the UK. Although there are some provisions which clarify this definition, we are concerned that the general nature of these definitions may give rise to legal uncertainty.

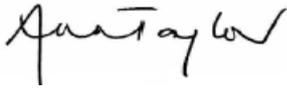
The Bill also provides a general definition of a public authority as “a person who exercises functions of a public nature”. Similar wording has been used in other legislation – for example the Human Rights Act 1998 – and has given rise to legal uncertainty concerning its scope of application.

Although clause 79 of the Bill empowers the Secretary of State to issue guidance concerning the practical application of other terms in the Bill, including the subsidy control principles and the energy and environment principles, this does not extend to the definition of a subsidy or to the definition of a public authority. We feel that to avoid such legal uncertainty greater clarification of the definitions of subsidy and public authority should be provided on the face of the bill.

The Committee would be grateful for further clarification on whether the Government intends to produce guidelines to clarify the scope of application of these provisions, particularly as this imposes obligations on public authorities to consider compliance with the subsidy control principles and the energy and environment principles.

Finally, we note that, as recently highlighted by the Delegated Powers and Regulatory Reform Committee in its report on the Bill¹, clause 47 enables the Treasury to issue financial stability directions in some circumstances without publication or any reference to Parliament. We have regularly warned about the implications for parliamentary scrutiny of the growing use by the Government of guidance and directions, which we deprecate, and take this opportunity to do so again.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anne Taylor'.

Baroness Taylor of Bolton
Chair of the Constitution Committee

¹ Delegated Powers and Regulatory Reform Committee, [Subsidy Control Bill](#), (17th Report, Session 2021–22, HL Paper 140)