

**Submission from COSLA  
Legislative Consent on the UK Subsidy Control Bill  
December 2021**

**Overview**

The Convention of Scottish Local Authorities (COSLA) is the national and international voice of the 32 Scottish Councils. We have actively engaged with the Scottish, UK and EU institutions throughout the process of EU withdrawal, repatriation of EU powers and supporting preparedness of Councils to this new context.

We are grateful to have been invited to give evidence to this inquiry, which complements other views expressed at the Finance and Constitution Committees. We have also actively engaged with the officials in charge of the Bill and we closely collaborate with the Scottish Government and Scottish stakeholders that are directly impacted by this Subsidy Control Bill. We have also had the opportunity to give evidence to the Commons last November as the Bill had reached Committee stage and we will continue to do so as it reaches the Lords. The below submission is based on the mandate given to COSLA by the Leaders of the 32 Scottish Local Authorities last August 22.

**Detail**

The Internal Market Act 2020 and its direct complement the Subsidy Control Bill are very likely to have a lasting but as yet untested impact on the Devolution settlement through the practical implementation of the mutual recognition and non-discrimination principles such as they are specifically framed in the Act, across the UK.

At the same time the Internal Market Act provides a very welcome recognition of and gives legal standing to the UK-wide Common Frameworks to deal with EU returned powers requiring UK-wide arrangements, and which the UK and Devolved administrations have been negotiating since 2018.

The Act also declares subsidy control (the successor of the EU state aid regime) as a reserved power, as it does on the successor to the EU Structural Funds (UK Shared Prosperity Fund).

Notwithstanding the Devolution settlement in the Scotland Acts that does recognise in various ways and forms the free movement of goods and persons across the UK as a reserved power, there is limited explicit recognition in the Internal Market Act (and the subsequent Subsidy Control Bill as well as the prospectus documents over the replacement of EU funds) of the Devolved and local Government powers on these matters.

There is in these various documents some general provisions on consultation or, in the case of the Scottish Parliament, duty of information over the functioning of the UK Internal Market by the Office of the Internal Market.

This is insufficient and should be improved both in terms of a more explicit recognition of the Devolved settlement as well as predictable mechanisms whereby the Scottish Parliament can scrutinise and the Scottish Government and Local Government can coproduce the new UK wide arrangements stemming from the Internal Market Act.

Of course the Scottish Government and indeed the Scottish Parliament are already proactively monitoring and making representations on these new frameworks and on the Subsidy Control Bill, such as in this new inquiry, which COSLA is happy to continue to engage with.

- **In practical terms, how do you see the subsidy control regime, established by this Bill, affecting the delivery of economic development and business investment in Scotland?**

In our successive policy positions on issues such as state aid and procurement we have never been shy of asking to maximise the flexibilities that the new EU-UK Trade and Cooperation Agreement (TCA) provides in terms of policy divergence.

Quite clearly COSLA does expect that the UK and its constituent parts honour the level playing field provisions of the TCA. To support this COSLA has continued regulatory dialogue with our EU peers through the UK-Committee of the Regions Contact Group, a body to which the Scottish Parliament also sends representatives.

That said, many EU rules were created as one-size-fits-all, lowest common denominator measures for 28 very different economies, with very different attitudes towards transparency, fair trade and enforcement of rules. Thus it is right that the UK and Scotland, which are rather sophisticated economies with robust legal and enforcement systems, should be able to make use of these new flexibilities.

Two key issues that we have consistently argued for are that of 'buy local' clauses in procurement and more localised and simpler state aid/subsidy control rules.

That said, these new flexibilities must both respect the level playing field across the UK and the EU and our trading partners, and also the existing Devolution settlement. For instance, we welcome the UK Procurement Green Paper proposals for 'buy local' clauses in UK Government procurement operations. However procurement is uniquely devolved to Scotland and it is up to the Scottish Parliament to legislate if and how to define 'buy local' clauses in those areas governed by Scottish procurement regulations.

The same would apply with regard to the Subsidy Control Bill

Last but not least, a yet untested but potentially important risk is the impact of the non-discrimination clauses of the Internal Market Act 2020, as the fear of potential remedial action being launched might deter one part of the UK to significantly depart from what other parts of the UK will be doing with these EU returned powers.

- **Do you have suggestions for specific amendments to the UK Bill, including for example, where more detail on the face of the Bill would be preferable to being left to regulations?**

The three rather surgical **amendments** below reflect the key agreed positions as Scottish local authorities. In essence, we are suggesting creating a **new Clause 7** to define what is an ‘assisted area’, as this concept existed in EU State Aid and is seen as vital to support regeneration in post-industrial areas as well as remote and peripheral ones, which the Secretary of State can then provide specific guidance on, hence a second amendment makes is proposed for **Clause 79**.

A third and last amendment concerns how Ministers issue guidance. Clause 79 (5) is extremely vague and leaves complete discretion to UK ministers to set up subsidy limits without having heard the view of the competent public authorities giving aid, namely devolved and local authorities. Just like the European Commission during EU membership, the UK Minister will have ample discretionary powers to set those aid limits, but the Commission had a very robust and evidence-based consultation procedure that ensured the buy in of the member governments and indeed local authorities and other persons or bodies that were directly concerned.

Thus it is a matter not just of good practice to retain a similar system with post EU exit Subsidy Control but important constitutionally given the UK Government’s choice of making Subsidy Control a reserved power under the Internal Market Act 2020, and thus not subject to Common Frameworks that this Act also foresees to deal with UK-wide returned powers.

Furthermore a robust system of consultation (even if the UK Government is ultimately free to decide on the way forward) will help the UK whenever the EU raises level playing field concerns over a specific subsidy – as the issue is already under scrutiny in the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement - , as the UK will be able to prove that there was a sound and robust reasoning behind authorising a given scheme.

The wording suggested here replicates a similar section in the Scottish EU Continuity Act 2021 that we negotiated in Scotland. It is equally consistent with the yet unfulfilled commitment by the UK Government dating back to 2018 to set up a consultation mechanism for EU returned powers such as subsidy control.

## **DRAFT AMENDMENTS**

**Page 5, line 22, at end insert —**

### **8 “Assisted area”**

- (1) In this Act, “assisted area” means —
  - (a) an area that is awarded subsidies to stimulate additional investment or economic activity in those areas, in well identified cases, to compensate for severe limitations in attracting and maintaining economic activity.

### **Explanatory statement**

Local areas suffering permanent disadvantage or severe limitations in attracting and maintaining economic activity due to geographical accessibility, environmental or economic decline may be subject to dedicated support schemes and guidance.

### **Clause 79, page 45, line 20, at end insert - (h) subsidies for assisted areas**

### **Explanatory statement**

Local areas suffering permanent disadvantage or severe limitations in attracting and maintaining economic activity due to geographical accessibility, environmental or economic decline may be subject to dedicated support schemes and guidance.

### **Clause 79, page 45, line 29, at end leave out –**

“ such persons as the Secretary of State considers appropriate”

and insert –

“ the Devolved Administrations by a dedicated mutually agreed intergovernmental mechanism, such persons appearing to them to be representative of the interests of local authorities, public authorities generally, as well as such persons as the Secretary of State considers appropriate.”

### **Explanatory statement**

Following the parliamentary debates on the Local Government consultation in the Withdrawal Act 2018, the UK Government (through Communities Secretary Sajid Javid to the Chair of the Communities and LG Committee) [indicated its intention](#) to find another way forward. On 18 March 2018 the Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office, Lord Bourne, confirmed for the government [its goal](#) “of a flexible, non-statutory mechanism that, in essence, replicates the kind of engagement local government has on EU policy through the [Committee of the Regions](#), but in a lighter-touch arrangement.”<sup>1</sup>

The terms of this consultation procedure would ensure that UK ministers when issuing guidance have a formal mechanism to inform the Ministers views that is at

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<sup>1</sup> Hansard debate on UK Withdrawal Bill 19 March 2018 [column 87](#)

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con):

*“Through a ministerial Statement to Parliament, the Government will give local government a clear assurance about how it can expect to be consulted on certain matters which, following their repatriation from Europe, will now be handled at the United Kingdom level. These matters will be those which local government would have been consulted on through the mechanism of the Committee of the Regions. In this way, we could have a flexible, non-statutory mechanism that, in essence, replicates for local government the rights and responsibilities it had through the Committee of the Regions, but in a lighter-touch, non-bureaucratic way. Any such new consultative arrangements will need to complement the wide range of domestic processes and procedures the Government already have for consulting local government.”*

least as robust as the one that existed with the European Commission before issuing State Aid guidelines.

The specific wording replicates that of [Section 9 \(7\)\(a\)\(ii\)](#) UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 that deals also with this same issue in Devolved legislation.

- **Do you have any other comments?**

On August 22 the Leaders of the 32 Scottish councils agreed the following statement on this Bill:

“It is welcome that the UK Government has decided to end the present uncertainty over subsidies by moving to table primary legislation. It is also welcome that the UK Government has decided to develop guidelines for specific sectors, as this will reduce the uncertainty for public authorities. It is equally welcome that, while keeping with WTO rules and UK-EU commitments, more flexibilities are sought to allow for subsidising public services, with higher thresholds than were the case during EU membership.

We note that, under the UK Internal Market Act 2020, subsidy control has been declared a reserved power. While the governance proposed in the Subsidy Control Bill is consistent with that, we would prefer that the provisions that are also foreseen in that Act to ensure a UK-wide partnership-based approach were used, to define the new subsidy rules and guidelines.

COSLA will argue during the passage of the Bill to introduce provisions that ensure that the expertise of local and devolved authorities is put to best use to ensure that there is fair competition across the UK but that local circumstances are understood by the UK Government and the Subsidy Control Unit.

Lastly, we call for the regional aid Assisted Area maps to be produced to support the subsidies provided by the UK Shared Prosperity Fund and the levelling up agenda.”

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**Head of Brussels Office**  
**COSLA**