

Policy note on Subsidies and Schemes of Interest and Particular Interest

1. It is the Government's intention to ensure that additional scrutiny and review are given to subsidies and schemes that are more likely to cause negative effects on competition and investment within the United Kingdom or in relation to the United Kingdom's international trading partners. To enable this, the Subsidy Control Bill provides for two distinct categories of subsidy: Subsidies or Schemes of Interest, and Subsidies or Schemes of Particular Interest.
2. Public authorities intending to grant a subsidy, or establish a scheme, in either category will be encouraged, via guidance, to undertake a more extensive and involved initial analysis of the subsidy or scheme's consistency with the subsidy control principles. The new Subsidy Advice Unit (SAU) – which the Subsidy Control Bill will establish within the Competition and Markets Authority – will review their assessment of the subsidy or scheme against those principles.
3. **Voluntary referrals:** Public authorities intending to grant Subsidies or Schemes of Interest will have the *option* to send their assessment to the SAU for review prior to award. The Government's view is that the voluntary referral process for Subsidies or Schemes of Interest will generally be suitable for subsidies or schemes which may potentially pose a substantial risk of negative effects on domestic competition and investment or international trade, but where there is scope for public authorities to make their own judgements about the existence and extent of that risk.

Mandatory referrals: Public authorities intending to grant Subsidies or Schemes of Particular Interest will be *required* to send their assessment to the SAU for review prior to award. The Government's view is that the mandatory referral process for Subsidies or Schemes of Particular Interest will generally be suitable for subsidies or schemes which can be assumed to be more likely to pose a substantial risk of negative effects on domestic competition and investment or international trade.

4. The SAU will have discretion on whether to carry out reviews for Subsidies or Schemes of Interest. The SAU's reports will be non-binding on public authorities, regardless of whether the referral is voluntary or mandatory. The SAU will report on mandatory and voluntary referrals in under 30 working days after acceptance of referral in normal circumstances.¹

¹ Under clauses 53 and 57 of the Bill, the CMA and the public authority making the referral may extend the reporting period by mutual agreement. The Secretary of State may also extend the reporting period in individual mandatory referral cases, at the request of the CMA.

5. These categories will be defined in regulations that will be laid before Parliament for approval under the draft affirmative procedure before the commencement of the regime, allowing sufficient time for public authorities to become familiar with their terms before they take effect.
6. The Government is publishing a set of illustrative regulations that set out a first proposal for how these categories of subsidies could be defined. This paper provides a short rationale for this proposal. These illustrative regulations are being published to assist Parliamentarians in understanding the intended scope of the referral process and to facilitate effective scrutiny of the proposals contained within the Bill, particularly on the proposed powers to define Subsidies and Schemes of Interest and of Particular Interest.

The proposal set out in illustrative regulations and the Bill

Criteria for Subsidies or Schemes of Interest and Particular Interest

7. The Government intends to develop thresholds that are clear and easy for public authorities to apply. The thresholds are designed to capture only those Subsidies of Interest which may potentially pose a substantial risk, as well as Subsidies of Particular Interest which can be assumed are more likely to pose a substantial risk of negative effects on domestic competition and investment or international trade and are therefore more likely to benefit from a review by the SAU. The illustrative regulations include monetary values in square brackets and with ranges to give an indication of the order of magnitude that the Government is proposing for the thresholds. The Government will develop criteria with fixed values rather than ranges for the purposes of the final regulations.
8. **Subsidies of Particular Interest are:**
 - a. All subsidies that concern a sensitive sector² in excess of £[1 to 5]m per enterprise
 - b. All subsidies regardless of sector in excess of £[5 to 10]m per enterprise
 - c. All subsidies for restructuring ailing or insolvent enterprises, including insurance companies and deposit takers, which are subject to the additional requirements in clauses 20-21 of the Bill.
9. **Subsidies of Interest are:**
 - a. All subsidies between £[1 to 5]m (regardless of any design features) which do not fall within the Subsidies of Particular Interest definition.
 - b. For subsidies between these values, guidance will set out the design features that – where present – public authorities would be encouraged

² Defined in regulation 3(5) of the illustrative regulations.

to make use of the referral option, i.e., public authorities should typically not refer a subsidy to the SAU unless one or several design features are present.

- c. All subsidies for rescuing ailing or insolvent enterprises, or for liquidating or providing liquidity support to deposit takers or insurance companies which are subject to the additional requirements in clauses 19 and 22-23 of the Bill.
10. A **Scheme of Particular Interest** is one in which the parameters of the scheme would allow an in-scheme subsidy award that meets the definition of a Subsidy of Particular Interest to be granted. Schemes for which eligibility is based on objective factors, and which do not favour specified economic activities or input activities, are not subject to the lower thresholds for subsidies in sensitive sectors³. A **Scheme of Interest** is one in which the parameters of the scheme would allow an in-scheme subsidy award that meets the definition of a Subsidy of Interest to be granted.
 11. As per clause 63 of the Bill, subsidies granted under Schemes of Interest or Particular Interest will be able to be awarded under the scheme without further referral.
 12. Subsidies to the same enterprise will **count towards the monetary thresholds** in the regulations only in circumstances where they are related – i.e., they are for the same project, cost or activity and contribute to the same specific policy objective, and were given within the last three financial years. This approach has been designed to be simple by cumulating subsidies that are truly related to one another.
 13. For subsidies to enterprises engaged in activities that sit outside of the ‘sensitive sector’ definition, public authorities will determine whether the subsidy is a Subsidy of Interest or Particular Interest by reference to the pound sterling value of the award. For subsidies to enterprises, engaged activities which fall within the ‘sensitive sector’ definition (i.e., specified economic activities or input activities), public authorities will also need to apply an additional ‘economic advantage’ test to determine whether the lower threshold for sensitive sector subsidies will apply. Guidance will set out clearly how to apply these tests and will be published before the commencement of the regime.
 14. The Government has chosen the list of specified economic activities in the illustrative regulations to reflect those sectors where there is a record of international trade policy disputes; evidence of global overcapacity within the sector; or there is evidence that the sector will be subject to one or both of these features in the future.

³ Defined in regulation 2 of the illustrative regulations.

15. The Government will set out – in guidance - the **design features** that will enable voluntary referral. These are likely to include situations where:
- a. There is evidence of a subsidy race between public authorities i.e., where two or more public authorities identify that each authority has offered or intends to offer a *competing* subsidy to a particular business.
 - b. The same, or a substantially similar, subsidy has been repeatedly made to the same recipient.
 - c. The subsidy is linked to the ongoing economic activity of an enterprise, rather than being a one-off activity i.e. a subsidy totalling £[1 to 5]m or over if paid on the basis of each unit of clean energy they use would have this design feature, but the same subsidy for a one-off transformation of energy use for that business would not.
 - d. The subsidy is only open to one firm (i.e., there is no competition in award).
16. **Rescue and Restructuring Subsidies or Schemes** – recognising that, depending on the circumstances, rescue and restructure⁴ subsidies can lead to negative effects on domestic competition and investment or international trade, the Government proposes that all restructure subsidies will be Subsidies of Particular Interest (and thus subject to mandatory SAU review). Rescue subsidies may need to be granted with expediency as a matter of urgency, depending on the financial circumstances of the recipient. Accordingly, the Government proposes that rescue subsidies will be Subsidies of Interest, permitting public authorities to refer them to the SAU; if, however, after the referral is made, financial pressures on the intended recipient(s) are such that the rescue subsidy needs to be granted urgently, the subsidy can be immediately granted before the SAU has prepared its report. The Government anticipates, and will recommend in guidance, that public authorities will ordinarily refer any rescue subsidies or schemes to the SAU wherever possible.

Subsidies or Schemes exempt from referral requirements

17. As per clause 63 of the Bill, subsidies granted under Schemes of Interest or Particular Interest, will be able to be awarded under the terms of the scheme without further referral once the scheme is established. In the case of referred schemes, the scope of the SAU review is over the assessment of the whole scheme against the subsidy control principles – as this review is conducted at scheme level, individual referrals are not necessary for each individual in-scheme subsidy award.

⁴ Rescue subsidies are temporary liquidity support for ailing and insolvent businesses whilst restructuring subsidies are subsidies for ailing and insolvent business after the enterprise has prepared a restructuring plan. Clauses 19 to 26 of the Bill set out the relevant conditions and definitions for these subsidies for different types of enterprises.

18. **Subsidies and Schemes not subject to optional or mandatory referral** – as set out in the Bill - the Government has developed appropriate exemptions to ensure that the provisions on mandatory and voluntary referral do not apply to subsidies or schemes where a review would not be appropriate or reasonably practical:⁵
- a. Streamlined Subsidy Schemes.
 - b. Subsidies given as Minimal Financial Assistance.
 - c. Subsidies given as SPEI assistance.
 - d. Subsidies in response to natural disaster and other exceptional circumstances.
 - e. Subsidies in response to national or global economic emergencies
 - f. Subsidies for national security.
 - g. Subsidies given by the Bank of England for the purposes of monetary policy.
 - h. Legacy and withdrawal agreement subsidy schemes.
 - i. Tax measures permissible under Article 413 of the EU/UK Trade and Cooperation Agreement.
 - j. Subsidies for large cross-border or international cooperation projects.
 - k. Subsidies given under a financial stability direction.
 - l. Treasury or Bank of England subsidies used for prudential reasons.
19. **Streamlined Routes** - alongside these illustrative regulations the Government has also published *illustrative* Streamlined Routes (or “Streamlined Subsidy Schemes” as they are referred to in the Subsidy Control Bill), and an accompanying policy statement. Streamlined Routes will be exempt from the SAU referral process as set out in the Bill. The Government will therefore establish Streamlined Routes for categories of subsidies at low risk of causing negative effects on competition and investment within the UK, or on international trade, and which the Government judges to be consistent with the subsidy control principles.
20. **Legacy subsidy schemes** – consistent with the provisions of the Bill,⁶ subsidies will still be able to be awarded under schemes that are established ahead of the regime’s commencement and neither the scheme nor individual awards under these schemes will be subject to the SAU referral process.
21. Where subsidies or schemes may warrant a review, but are not captured by the mandatory referral criteria for Subsidies or Schemes of Particular Interest, the Bill sets out a process where the **Secretary of State can call in subsidies or schemes** for review. This process is intended to be a

⁵ This list of exemptions is set out in Clause 64 by reference to the specific provisions of the Bill which define the circumstances in which each of the individual exemptions applies.

⁶ Clause 48 sets out the exemptions for legacy subsidies and the conditions for when this applies.

safeguard, and the Bill limits its use to Subsidies or Schemes of Interest that have not been voluntarily referred or subsidies or schemes where there is a risk of negative effects on competition and investment within the UK.

Next steps

22. The draft regulations are illustrative only. These regulations will be subject to further policy development and Parliamentary scrutiny ahead of being made as final regulations after Royal Assent.
23. Where monetary values are used in the illustrative regulations, they are to be applied using the Gross Cash Value or the Gross Cash Equivalent of the subsidy. The Bill contains a separate power⁷ to define the Gross Cash Value Gross Cash Equivalent, as these concepts will apply more broadly beyond the regulations defining Subsidies or Schemes of Interest or Particular Interest. The Gross Cash Amount or Gross Cash Equivalent will be defined so that different types of subsidies – such as grants, loans and guarantees – can be compared in monetary terms to each other and therefore simple monetary thresholds can be applied across all types of subsidies and schemes.
24. To allow for early scrutiny of these illustrative regulations, there are square brackets around the monetary thresholds and the title of the anticipated clause 82 regulations to indicate that the drafting in these areas is incomplete pending further policy decisions.
25. The Government will continue to develop the policy on Subsidies or Schemes of Interest and Particular Interest criteria ahead of final regulations.
26. To accompany the final regulations the Government will publish guidance that will assist public authorities and businesses in identifying when a subsidy or scheme meets the criteria for Subsidies or Schemes of Interest or Particular Interest. Guidance will also be used to explain the processes for referrals to the SAU. The guidance will be published before commencement, allowing sufficient time for public authorities and other stakeholders to become familiar with their terms before they take effect.
27. After implementation, it is anticipated the SAU will review the criteria for both Subsidies or Schemes of Interest and Particular Interest alongside its broader review of the functioning of the new regime. This will ensure that the criteria will continue to be clear and capture only as Subsidies of Interest those subsidies which may potentially pose a substantial risk, as well as Subsidies of Particular Interest those subsidies which can be

⁷ See clause 82.

assumed to be more likely to pose a substantial risk, of negative effects on domestic competition and investment or international trade as the regime continues in force.