

<p><b>Title:</b> Subsidy Control: Designing a new approach for the UK Impact Assessment  <b>IA No:</b> BEIS026(F)-21-MF  <b>RPC Reference No:</b> RPC-BEIS-5049(2)  <b>Lead department or agency:</b> Department for Business, Energy and Industrial Strategy  <b>Other departments or agencies:</b> N/A</p>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 14 March 2022		
	<b>Stage:</b> Final – Amended		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
	<b>Contact for enquiries:</b> <a href="mailto:subsidycontrolconsultation@beis.gov.uk">subsidycontrolconsultation@beis.gov.uk</a>		
<b>Summary: Intervention and Options</b>	<b>RPC Opinion: Fit for purpose; Green</b>		
<p><b>This updated Impact Assessment has been published to provide Parliamentarians the best possible evidence on the impacts of an extended list of options of the transparency requirements of the Bill. This has not changed the Department’s assessment of the Bill as introduced or the short list considered in the Final Stage Impact Assessment – the RPC opinion relates to the original Final stage IA only.</b></p> <p><b>The Impact Assessment has been slightly adjusted since the Opinion was issued by the RPC in response to it, following extensive quality assurance. Therefore, some of the figures quoted in the Opinion and in the Impact Assessment may differ. In instances where the figures differ, the figures in the Impact Assessment are the appropriate figures to use.</b></p>			
<b>Cost of Preferred (or more likely) Option (in 2019 prices, 2022 present value)</b>			
<b>Total Net Present Social Value</b> -£26.6m	<b>Business Net Present</b> -£1.6m	<b>Net cost to business per year</b> £0.2m	<b>Business Impact Target Status</b> Qualifying provision £0.9m
<b>Overview</b>			
<p>This document looks at the Subsidy Control Bill and gives an overarching assessment of the impact the measures introduced will have on public institutions and business. It focuses on the subsidy control regime’s framework, rather than the individual subsidies that may be awarded under it. It has identified, and where possible quantified, costs to business of the regime. There are considerable unknowns – because key features of the regime will be defined later in secondary legislation or statutory guidance. The analysis of the regime’s impact is also based on historical data when UK public authorities had to comply with the EU State aid regime. We should expect the behaviour of public authorities and the resulting distribution of subsidies to change under the new regime – although it is not possible to forecast how this will change.</p>			
<p>The additional administrative costs of the measures outlined in the Bill will predominantly fall on public authorities awarding subsidies rather than recipient businesses and, for the majority of subsidies awarded, these costs will be small. For a small number of very complex subsidy awards or schemes, there will be more significant costs for public authorities and recipient businesses. However, most of the costs will not be additional – because many of the activities that public authorities will have to undertake to comply with the regime are activities that they would have to do anyway to award public money. These costs should also reduce over time, as Government publishes updated guidance and introduces ‘streamlined routes’ – where compliance has already been pre-assessed. The broader benefits of the regime, such as greater flexibility for public authorities and measures to protect competition and investment within the UK and with trade partners, which should enable subsidies which are better tailored to specific need and reduce instances of litigation and remedial trade measures, cannot be quantified but will accrue across a broader set of businesses – both subsidy recipients and market competitors.</p>			
<p>The total net direct cost to business sectors of the regime is estimated to be £0.2m per year. These costs will fall on recipient businesses only when they engage with public authorities to receive potentially higher risk ‘Subsidies of (Particular) Interest’ (which will be higher value in most cases). Therefore, these costs are likely to fall on a small number of large businesses and will be factored into relevant businesses’ decision to apply for the subsidy.</p>			
<b>What is the problem under consideration? Why is government action or intervention necessary?</b>			
<p>Subsidy control policy is used to refer to a policy or regime that is concerned with the regulation of the award of subsidies, including minimisation of the harm, or potential harm, arising from them. The rationale for our proposed subsidy control mechanisms is based on creating a balance between, on the one hand, facilitating public authorities to award subsidies tailored and bespoke for local needs to meet permitted public policy objectives, where there is a rationale to do so, and on the other, limiting both the negative effects on domestic competition or investment, and the negative effects on international trade and investment.</p>			

Now that the UK has left the European Union, it is no longer bound by the detailed set of EU rules and regulations on subsidies known as State aid, where in some cases a lengthy notification process must take place before approval can be secured from the European Commission for the subsidy to be awarded. The UK has the freedom to design a domestic subsidy control regime that reflects our strategic interests and particular national circumstances.

**What are the policy objectives of the action or intervention and the intended effects?**

The UK needs a modern subsidy control system for supporting businesses to grow and thrive in a way that suits our strategic objectives and is consistent with a dynamic and competitive economy. The Government's objectives for the future subsidy control regime are:

- Facilitating interventions to deliver on the UK's strategic interests
- Maintaining a competitive and dynamic market economy
- Protecting the UK internal market
- Acting as a responsible trade partner

Specifically, the new system has been designed to be more flexible and agile than the previous State aid regime, to allow public authorities to deliver subsidies to viable businesses where they are needed and support the pursuit of key domestic policy objectives and the economic recovery, without facing excessive bureaucracy or lengthy pre-approval processes. Authorities will also have the freedom to act quickly to provide support to respond during economic emergencies or natural disasters.

The regime will be tailored to allow authorities to develop subsidies which support business growth and innovation, with measures in place to maintain a competitive free market economy and protect the UK internal market. The regime will be based on a set of clear, proportionate, and transparent principles underpinned by guidance, to ensure that public authorities fully understand their legal obligations and how to assess compliance. It will embed strong competition principles in subsidy design.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The counterfactual or 'do minimum' option is determined by the UK's international commitments that have applied as of 1 January 2021, most notably the commitments in the UK-EU Trade and Cooperation Agreement (TCA). Although commitments in other FTAs and in the WTO Agreement on Subsidies and Countervailing Measures also form part of the 'do minimum' option, the TCA obligations generally represent a 'high water mark' and we have therefore used them to develop the 'do minimum' option.

The consultation set out a range of options for building on this 'do minimum' for each of the key elements or 'building blocks' of the UK's future domestic regime: definition and scope of subsidies; principles; prohibitions and conditions; streamlined routes; measures to protect UK competition and investment; transparency; and oversight and enforcement. Each of these 'building blocks' has sub-options described in this Impact Assessment and the main consultation response document. For each building block we have typically compared the preferred option with the 'do minimum'.

**Will the policy be reviewed?** There will be a commitment to review the regime after implementation.

Is this measure likely to impact on international trade and investment?		Yes		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 14/03/2022

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Implement the preferred option set out in the Government response to the Subsidy Control Consultation.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -46.3	High: -15.7	Best Estimate: -25.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	1.8	16.1
High	0.0	5.1	46.3
Best Estimate	0.0	2.8	25.6

### Description and scale of key monetised costs by 'main affected groups'

As subsidy control is regulation primarily on public authorities, the vast majority of the direct costs fall on public authorities. However, there will be indirect impacts on business from regulation on subsidies they receive. The largest monetised cost in the regime relates to the costs to Government from establishing and running an independent body (it should be noted that these figures are not intended to anticipate or inform future government decisions on funding).

The only non-negligible additional monetised costs for businesses are with respect to Subsidies of (Particular) Interest and include familiarisation with additional assessments, engagement of legal professionals and monitoring the progress of these subsidies with present value costs of £0.01m, £1.2m and £0.5m over the appraisal period, respectively.

### Other key non-monetised costs by 'main affected groups'

- Potential indirect competition impacts (businesses and consumers)
- Potential indirect trade impacts (businesses and consumers)
- Potential indirect value for money impacts (society)

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.1	0.4
Best Estimate	0.0	0.0	0.1

### Description and scale of key monetised benefits by 'main affected groups'

The only monetisable benefits identified were the cost saving to public authorities (the public sector) of the reduced administrative burden associated with the prohibition of subsidies contingent on relocation (£0.03m NPV over the appraisal period) and the inclusion of the exemption for Minimal Financial Assistance subsidies (£0.1m NPV over the appraisal period).

### Other key non-monetised benefits by 'main affected groups'

The vast majority of the benefits of a bespoke, flexible subsidy control regime targeted at the UK's strategic objectives as set out at consultation stage relate to the award of subsidies themselves. These are therefore indirect, and non-monetisable – the key benefits are:

- A system that delivers more efficient subsidies
- Potential indirect competition impacts
- Potential indirect trade impacts.

Key assumptions/sensitivities/risks	3.5%
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These estimates are based on the historic volume and value of subsidies awarded in the UK. All impacts are therefore sensitive to the indirect impact that the regime – and wider policy context – will have on the scale, size and type of subsidy awarded.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.2	Benefits: 0.0	Net: 0.2	
			0.9

## Contents

Impact Assessment (IA) .....	1
Summary: Intervention and Options .....	1
Summary: Analysis & Evidence Policy Option 1 .....	3
Evidence Base.....	6
Problem under consideration and rationale for intervention.....	6
Background.....	6
What is a subsidy? .....	6
What is subsidy control? .....	6
What is the policy context? .....	7
What is the economic rationale for subsidy control?.....	7
Domestic subsidy control overview .....	10
Policy objectives .....	11
Description of options considered .....	12
Summary and preferred option with description of implementation plan .....	14
Analytical approach.....	17
Cost and benefits .....	19
Key assumptions.....	25
Volumes .....	25
Familiarisation and administrative costs .....	26
Public authorities .....	27
Subsidy recipients (businesses) .....	30
Risks .....	33
Analysis of building blocks .....	34
Definition .....	34
Scope.....	34
Subsidy control principles.....	35
Exemptions .....	37
Prohibitions and conditions .....	49
Measures to protect UK competition and investment.....	50
Streamlined routes .....	63
Specific obligations for energy and environmental subsidies .....	67
Transparency.....	67
Independent body.....	78
Judicial enforcement.....	93
Direct costs and benefits to business calculations.....	102
Impact on small and micro businesses .....	102
Wider impacts.....	104

Equalities impacts.....	104
Regional impacts .....	106
Environmental impacts .....	107
Competition impacts.....	108
Trade impacts .....	109
Monitoring and Evaluation .....	111
Objectives of the regime.....	112
Past research and evidence on the objectives of the regime .....	113
Purpose of the various strands of monitoring and evaluation review, methods and approach, and expected end users.....	114
Proportionality, resourcing and data collection.....	115

# Evidence Base

## Problem under consideration and rationale for intervention

### Background

1. As set out in our consultation document 'Subsidy Control - Designing a new approach for the UK', published 3 February 2021, now that we have left the European Union (EU), and are no longer subject to State aid rules, the UK has the freedom to design a domestic subsidy control regime that reflects our strategic interests and particular national circumstances. The Government has consulted on the design of the new UK subsidy control system and explored a range of policy options.
2. Since the consultation closed, the Government has been carefully examining the responses given to the various options and sub-options set out for each of the 'building blocks' at the consultation stage. The Government has also been analysing how these options would fit together to form a coherent regime that carefully balances Government's strategic objectives, including the objectives to minimise regulatory burden on public authorities and recipient businesses and introduce appropriate measures to preserve competition.
3. The Government will introduce a Bill setting out key elements of the new domestic subsidy control regime in primary legislation, and then allow for certain details of these elements to be set out and adjusted in secondary legislation or statutory guidance. This Impact Assessment only examines the impacts from the elements that will be set out in primary legislation. Further analysis of impacts will be published as the details of these elements are determined.
4. The remainder of this section provides background information on what is meant by 'subsidies' and 'subsidy control', as well as the policy context and problem under consideration.

### What is a subsidy?

5. In general terms, a subsidy is a financial contribution using public resources which confers a benefit on a specific recipient. This could include, for example, a cash payment, a loan with interest below the market rate, or a guarantee. Subsidies are administered by all levels of government in the UK.
6. The World Trade Organisation (WTO) subsidy rules are set out in the 1995 Agreement on Subsidies and Countervailing Measures (ASCM), which contains an internationally recognised definition of a subsidy. Many Free Trade Agreements (FTAs) use the WTO ASCM definition of a subsidy as the basis of what is in scope of their subsidy chapter, but some agreements build upon that definition to extend the scope to the supply of services, as well as goods, and they can include additional prohibitions.
7. The Government consulted on the definition of a subsidy for the purposes of the UK's future domestic regime. This is discussed in more detail below alongside analysis of options considered and a description of the Government's preferred option set out in paragraphs 100 to 103.

### What is subsidy control?

8. Subsidy control policy is used to refer to any policy or regime that is related to the regulation of the award of subsidies, including minimisation of the harm, or potential harm, arising from them. In general, such policies/ regimes guide or control public authorities in their award of

subsidies to shape the way in which subsidies are used. There are a wide variety of potential models, and examples from other countries, for managing the award and administration of subsidies by public bodies. These are discussed in more detail in the consultation document ‘Subsidy Control - Designing a new approach for the UK’, published 3 February 2021. Subsidy control is not spending control, and issues relating to the financial management and value for money of awarding public money are covered elsewhere, for example Government guidance on Managing Public Money<sup>1</sup> and the Green Book<sup>2</sup> for appraisal and evaluation.

9. The consultation (and this Impact Assessment) relates to the overarching subsidy control system in the UK rather than the awarding of specific subsidies. However, as these are interrelated issues, both are discussed in this Impact Assessment.

### **What is the policy context?**

10. Previously, when the UK was a member of the EU, the UK followed the EU’s State aid regime which governs the awarding of subsidies. Under State aid, all subsidies are prohibited unless exempt under specific block exemptions or pre-approved by the European Commission. The regime applies strict rules, designed for the particular circumstances of the EU, to avoid subsidies (or ‘State aid’ in EU terminology) distorting competition between member states within the EU single market. This approach to subsidy control is unique to the EU; other advanced economies have less extensive subsidy control rules and lighter-touch or more limited processes to enforce them.
11. Since 1 January 2021, the UK has followed the commitments on subsidy control set out in its FTAs with other countries, notably the provisions of the UK-EU Trade and Cooperation Agreement (TCA), and the WTO rules on subsidies, as well as the relevant provisions relating to Article 10 of the Protocol on Ireland/ Northern Ireland of the Withdrawal Agreement with the EU.<sup>3</sup> A summary of these commitments is set out in the consultation document ‘Subsidy Control - Designing a new approach for the UK’, published 3 February 2021.
12. How to implement our international commitments in UK law is a domestic decision, as is how to use the subsidy control regime to address distortions to competition and investment within the UK. The Government therefore consulted on how to develop a bespoke domestic subsidy control system for the UK and has explored a range of options. In doing so, the government has reflected that the UK needs a modern system for supporting businesses to grow and thrive in a way that suits our interests and is consistent with a dynamic and competitive economy.

### **What is the economic rationale for subsidy control?**

13. In brief, the rationale for introducing subsidy control mechanisms is to ensure a balance is struck between facilitating public authorities to award subsidies that are tailored and

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<sup>1</sup> <https://www.gov.uk/government/publications/managing-public-money>

<sup>2</sup> <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

<sup>3</sup> The Protocol on Ireland/ Northern Ireland, part of the UK-EU Withdrawal Agreement, contains provisions relating to subsidy control. Article 10 of the Protocol provides that the EU State aid rules will continue to apply in the limited circumstances where subsidies affect trade in goods between Northern Ireland and the EU, and therefore, in principle, aid that is granted to service providers is not covered. The State aid rules will also apply to trade in respect of wholesale electricity between Northern Ireland and the EU. Article 10 of the Protocol has been subject to specific further consideration as part of the work of the UK-EU Joint Committee overseeing the implementation of the Protocol. The EU’s declaration in the Joint Committee has clarified that subsidies granted in Great Britain are only in scope of Article 10 where there is a clear benefit from, and a genuine, direct link between the subsidy and companies in Northern Ireland.

bespoke for local needs, where there is a rationale to do so, and limiting the harmful, sometimes unintended, consequences of poorly designed subsidies.

14. Subsidies, if designed well, can be used to correct a wide variety of market failures and to meet government and societal objectives. This means that different subsidies will have different rationales according to their aims and the market failure they seek to address. For example, a few of the well-known market failures and the rationale for using subsidies to address these:
- **Externalities** – subsidies can be used to encourage a range of behaviours where there are defined benefits to wider society.<sup>4</sup> For example, subsidy schemes can be used to support the renewable energy transition necessary for meeting the UK's net zero greenhouse gases target by 2050 – where the wider benefits fall on society as a whole – but without a subsidy, the risk of upfront investment would fall on the business investing in the technology.<sup>5</sup> Subsidies, if designed correctly, can be used to incentivise business investment in technologies where wider benefits to society exceed private benefits to the business.
  - **Information failures** – subsidies can be used to encourage beneficial behaviours that would not ordinarily take place due to uncertain or asymmetric information.<sup>6</sup> For example, the fixed cost for lenders associated with undertaking credit assessments for small businesses can mean that small businesses may fail to access credit even when they are viable, and their growth would benefit wider society.<sup>7</sup> Some types of subsidies can be used to allow viable small businesses to access credit easier.
  - **Coordination failures (when combined with externalities or information failures)** – can strengthen the rationale for awarding a subsidy as it provides an additional reason for intervention where other market failures are present.<sup>8</sup> For instance, businesses may underinvest in certain activities, such as research and development, that bring wider benefits to society.<sup>9</sup> Underspending on research and development typically occurs where businesses do not capture all the benefits stemming from their investment.<sup>10</sup> Other businesses may be able to learn from or copy the resulting inventions or innovations without providing compensation to the business that carried out the research. Often this innovation can only be achieved if multiple businesses invest in related technology at similar times.<sup>11</sup> Well-designed subsidies to fund high-risk, high-payoff research can therefore coordinate activity and help foster a greater level of innovation than would otherwise have happened, benefitting society as a whole.
  - **Social equity rationales** – subsidies can also be used to address equity issues, for example to address regional inequality across the United Kingdom.<sup>12</sup> For instance, a key Government priority is to help those regions that have been left behind and level up prosperity across the UK. Subsidies, alongside other forms of intervention, can be important tools in helping address regional imbalances.

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<sup>4</sup> Haucap, J., & Schwalbe, U. (2011). Economic principles of state aid control (No. 17). DICE Discussion Paper.

<sup>5</sup> Rubini, L. (2015). Rethinking International Subsidies Disciplines: Rationale and Possible Avenues for Reform. Overview Paper. E15 Initiative.

<sup>6</sup> Rodrik, D. (2004). Industrial policy for the twenty-first century.

<sup>7</sup> Hainz, C., & Hakenes, H. (2012). The politician and his banker – How to efficiently grant state aid. *Journal of Public Economics*, 96(1-2), 218-225.

<sup>8</sup> Rodrik, D. (2004). Industrial policy for the twenty-first century.

<sup>9</sup> <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

<sup>10</sup> Rodrik, D. (2004). Industrial policy for the twenty-first century.

<sup>11</sup> Mazzucato, M. (2013). *The Entrepreneurial State: Debunking Public vs. Private Sector Myths*, 1.

<sup>12</sup> Criscuolo, C., Martin, R., Overman, H., & Van Reenen, J. (2012). The causal effects of an industrial policy (No. w17842). National Bureau of Economic Research.

15. Whilst the above provides the rationale for a system that allows for strategic, well-designed, subsidies to deliver public policy objectives, there are a number of harms that a subsidy control regime could be designed to minimise:

- **Competition impacts** – subsidy control mechanisms can seek to limit subsidies that distort the efficient operation of the market. Poorly designed subsidies can give businesses an unfair advantage or allow the misuse of public resources. Subsidies are usually awarded to incumbent businesses, and due to government information failures often benefit less productive businesses.<sup>13,14</sup> This distortion can be transmitted through a number of channels, including encouraging poor use of inputs, suboptimal product choice and, supporting unprofitable businesses.<sup>15,16</sup>
- **'Subsidy races' and other inefficient uses of public resources** – subsidy control mechanisms can seek to limit poorly designed subsidies that can lead to wasted public resources because of 'bidding wars' (or 'subsidy races') between public authorities competing to attract businesses<sup>17</sup> or other sources of government failure such as supporting unproductive industries where there is no market failure or social equity rationale for intervention.<sup>18</sup>
- **International trade impacts** – subsidy control mechanisms can be used to demonstrate a commitment to existing and potential future international commitments and Free Trade Agreements.<sup>19</sup> This can encourage investment by giving businesses certainty, while mitigating trade impacts for UK businesses and consumers by minimising the risk of trade disputes and retaliatory measures.<sup>20,21</sup> It can also boost Foreign Direct Investment, and therefore productivity, as foreign businesses know there is a clear regime that will not discriminate against them in favour of domestic businesses.
- **Impacts on expectations** – subsidy control mechanisms can help to maintain more efficient expectations amongst businesses about future subsidies.<sup>22</sup> This can limit rent seeking behaviour, the negative effects of lobbying, and continued investment in inefficient activity.<sup>23</sup> Expectations of a subsidy can also lead to a 'soft budget constraint' whereby businesses take overly risky investments when they anticipate the potential of a subsidy if the investment does not deliver. This can have negative productivity impacts for the UK economy as a whole.<sup>24</sup>

16. The overall rationale for a subsidy control regime is to allow effective subsidies that meet economic and wider objectives whilst aligning incentives to avoid harms. Some features of a

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<sup>13</sup> Baldwin, R. E., & Robert-Nicoud, F. (2007). Entry and asymmetric lobbying: why governments pick losers. *Journal of the European Economic Association*, 5(5), 1064-1093.

<sup>14</sup> Gustafsson, A., Tingvall, P. G., & Halvarsson, D. (2020). Subsidy entrepreneurs: an inquiry into firms seeking public grants. *Journal of Industry, Competition and Trade*, 20(3), 439-478.

<sup>15</sup> Oxera. (2017). Ex post assessment of the impact of state aid on competition. Publications Office of the European Union, Luxembourg.

<sup>16</sup> Chindooroy, R., Muller, P., & Notaro, G. (2007). Company survival following rescue and restructuring State aid. *European Journal of Law and Economics*, 24(2), 165-186.

<sup>17</sup> <https://www.instituteforgovernment.org.uk/publications/state-aid>

<sup>18</sup> Trefler, D. (1993). Trade liberalization and the theory of endogenous protection: an econometric study of US import policy. *Journal of political Economy*, 101(1), 138-160.

<sup>19</sup> Shaffer, G., Wolfe, R., & Le, V. (2015). Can informal law discipline subsidies? *Journal of International Economic Law*, 18(4), 711-741.

<sup>20</sup> Brander, J. A., & Spencer, B. J. (1985). Export subsidies and international market share rivalry. *Journal of international Economics*, 18(1-2), 83-100.

<sup>21</sup> Friederiszick, H. W., Röller, L. H., & Verouden, V. (2006). European state aid control: an economic framework. *Handbook of antitrust economics*, 625-669.

<sup>22</sup> Ibid.

<sup>23</sup> Mazzucato, M. (2013). The Entrepreneurial State: Debunking Public vs. Private Sector Myths, 1.

<sup>24</sup> <http://www.oecd.org/regreform/sectors/48070736.pdf>

subsidy control regime will potentially achieve both of these objectives but, in other circumstances, there may be a balancing exercise needed to ensure that the overall benefits outweigh the disbenefits.

## Domestic subsidy control overview

17. Before designing a subsidy control system, it is important to understand the scale of the UK's overall subsidy landscape and how this relates to key aspects. We have provided the contextual data below to help provide an appreciation of scale, including:
- a. Distribution in number and value of subsidies, by sector, for those sectors that have historically received the most subsidies by volume.
  - b. Distribution in number and value of subsidies by type of public authority – given competition between different areas of the UK can be sensitive to distortion from subsidies.
  - c. Distribution in number and value of subsidies, by objective, for those objectives that have historically been granted the highest volume of subsidies.
18. Data on historical UK subsidy awards is available from the European Commission's Transparency Award Module (TAM) database<sup>25</sup> for the period between 1 July 2016 and 31 December 2020.<sup>26</sup> While the historical data on UK subsidies could be used to provide a purely illustrative estimate of the total number of subsidy awards that would fall under scope of the new regime in a given year, it should not be interpreted as a forecast of future subsidies as we should expect the behaviour of public authorities and resulting distribution of subsidies to change under the new regime. Covid-19 related subsidies have been excluded from all figures in this Impact Assessment unless stated otherwise, as these were awarded in unusual circumstances and are unlikely to be representative of subsidy awards over a more typical period.

**Table 1: Total approximate value of reported subsidies by country in 2018<sup>27</sup>**

Country	Total value (£)	Total value (% of country GDP in 2018)
UK	£8bn	0.4%
France	£16bn	0.8%
Germany	£49bn	1.5%

<sup>25</sup> European Commission. Transparency Award Module. <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>. [Accessed on 7 May 2021].

<sup>26</sup> The database likely underreports subsidies below €500,000 as State aid awards below this threshold are not required to be reported under EU State aid rules. Sectors and objectives are defined under European Commission definitions in the database, so may not precisely align with TCA definitions and should only be interpreted as estimates. Per year figures are calculated by taking a smoothed annual average of the relevant total figure to account for differences in year lengths given data is only available from July 2016. Monetary values have been adjusted for inflation and expressed in 2019 prices.

<sup>27</sup> Figures in this table are quoted from the European Commission's State aid Scoreboard 2019 for France and Germany, given their relative similarities to the UK in terms of wider economic conditions. Corresponding figures based on the European Commission's TAM database are included in this footnote for reference as there exist discrepancies likely due to missing data on the database, figures from the Scoreboard are therefore assumed to be complete. According to the TAM database, the UK on average reported approximately 1,500 subsidies worth £4bn per year between July 2016 and December 2020. For comparison, France reported 1,600 subsidies worth £4.1bn per year while Germany reported 4,100 subsidies worth £7.2bn per year over the same period.

**Table 2: Number and value of reported subsidies by sector (July 2016 – December 2020)**

Sector	% of total number	% of total value
Information and Communication	24%	24%
Manufacturing	23%	13%
Professional, Scientific and Technical Activities	23%	15%
Energy	10%	38%
Other	20%	10%

**Table 3: Number and value of reported subsidies by objective (July 2016 – December 2020)**

Objective	% of total number	% of total value
Research and Development (R&D)	32%	19%
Environmental Protection	30%	47%
Culture	19%	22%
Other	19%	12%

19. On average, from 2016 to 2020 the UK Government granted approximately 1,300 reported subsidies per year, Devolved Administrations (DAs) granted 170 per year and Local Authorities (LAs) granted 13 per year. Large enterprises (those with more than 250 employees) received approximately 520 reported subsidies worth £2.5bn per year, whilst Small and Medium-sized Enterprises (SMEs) received 1,000 reported subsidies worth £1.5bn per year. This is equivalent to £4.8m per subsidy to a large enterprise and £1.5m per subsidy to an SME, on average. During this period, reported subsidies have been granted under 94 subsidy schemes and 25 subsidies have been granted as ad hoc measures.<sup>28</sup>
20. If Covid-19 related subsidies were included in the total figure of UK subsidies, the majority of reported subsidies granted in the UK from July 2016 to December 2020 would have been small and to address the recent national economic emergency related to the pandemic. Approximately 14,000 Covid-19 related subsidies were reported in 2020 worth £520m. These subsidies were mostly less than £315,000 in value and would have accounted for around 66% of the total number of reported subsidies (but less than 3% of the total value).

## Policy objectives

21. The Government wants a subsidy control system that strikes the right balance between allowing the benefits that can be derived from subsidies while managing the risks associated with the potential harmful impacts. At the consultation stage, Government set out the following objectives for the future subsidy control regime:
- Facilitating interventions to deliver on the UK's strategic interests
  - Maintaining a competitive and dynamic market economy
  - Protecting the UK internal market
  - Acting as a responsible trade partner

<sup>28</sup> The number of subsidy schemes and ad hoc subsidies are calculated from the number of unique "aid measure titles" reported on the TAM database, where subsidies awarded as part of a wider scheme are reported under the same "aid measure title" and ad hoc measures are reported under individual "aid measure titles". These figures therefore assume that all "aid measure titles" which are reported only once on TAM represent ad hoc subsidies and all other "aid measure titles" represent subsidy schemes.

22. Specifically, the Government wants to ensure the new regime provides a framework to:

- Empower local authorities, public bodies, and central and devolved administrations to design subsidies that deliver strong benefits for the UK taxpayer.
- Enable public authorities to deliver subsidies that are tailored and bespoke for local needs to support the UK's economic recovery and deliver UK government priorities such as levelling up and achieving net zero.
- Provide certainty and confidence to businesses investing in the UK, by protecting against subsidies that risk causing distortive or harmful economic impacts, including to the UK domestic market.
- Contribute to meeting the UK's international commitments on subsidy control, including its international commitments at the World Trade Organization and in Free Trade Agreements.

### Description of options considered

23. We have taken a 'building blocks' approach to assessing the different options that have been considered to inform design of the overall regime.

24. The design of the UK's new domestic subsidy control regime needs to be compliant with our international obligations, including the UK-EU TCA. There are elements of the TCA that we must implement domestically – these are often the 'do minimum' option under each 'building block'. It is for the UK to determine how we implement these in the design of our subsidy control regime in domestic law. The consultation set out proposals for how these elements might be implemented, and options for going further than the 'do minimum'. Equally, there are areas where the UK is not bound by and previous commitments and has more discretion, and the Government openly consulted on a broad range of possible policy options for these.

25. The consultation set out a model for the UK's future domestic regime that is consistent with the UK's international agreements and has the following features or 'building blocks.'

- **Definition and scope** – The first step in setting out a bespoke domestic subsidy control regime for the UK is to define what is meant by a subsidy, and which financial contributions to companies or enterprises by public authorities would fall within this regime.
- **Subsidy control principles** – The UK and EU have agreed a set of principles in the TCA that must be implemented through the design of the domestic subsidy regime. The Government proposes a legislative regime to be built around a set of subsidy control principles that are based on the TCA principles<sup>29</sup> but also require impacts on UK competition and investment to be taken into account (with the addition of Principle 6).<sup>30</sup> Compliance with the principles will involve a judgement by the decision maker; this can provide flexibility and discretion for public authorities. The proposed subsidy control principles are set out in Table 4 below.

### Table 4: Seven main subsidy control principles

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<sup>29</sup> Principles 1-5 and 7 in Table 4.

<sup>30</sup> Limited additional principles may apply to energy and environmental subsidies, in line with the UK's international obligations

Principle	Explanation
1. Subsidies are provided to meet a specific public policy objective to remedy an identified market failure or to address an equity concern.	Public authorities will need to consider, explain and assess the policy objective behind the subsidy to ensure there is a benefit to wider society in providing the subsidy. Social equity objectives could include providing transport for residents of remote areas.
2. Subsidies are proportionate and should be the minimum size necessary to achieve the stated public policy objective.	Subsidies should be the minimum necessary to achieve the desired aim. In choosing a subsidy the body granting the subsidy (“the public authority”) must adopt those causing the least possible disruption in pursuit of the public policy objective.
3. Subsidies are designed to bring about a change in the practices of the subsidy beneficiary that would not be achieved in the absence of a subsidy and that will assist with achieving the stated public policy objective.	Subsidies must incentivise and lead to a change in the behaviour of the beneficiary. They must help to address the public policy objective being pursued.
4. Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.	Subsidies should be targeted to bring about an effect that is additional to any that would occur in the absence of the subsidy. They should not normally cover everyday business expenses.
5. Subsidies are an appropriate policy instrument to achieve the stated public policy objective and that objective cannot be achieved through other less distortive means.	Alternative policy levers that are likely to cause less distortion to competition should be considered before turning to subsidies.
6. Public authorities should seek to minimise any harmful or distortive effects on competition within the UK internal market that might arise from a subsidy.	Public authorities should assess the material competition effects which are likely to arise from providing the subsidy. This is a domestic test to ensure that a subsidy does not unduly favour one firm to the detriment of a competitor or new entrants to the UK market, or unduly reduce competition within the UK market.
7. Subsidies’ positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on domestic competition and international trade or investment.	Public authorities will need to assess the material effects on competition and international trade or investment and judge whether the benefits of the subsidy are greater than the harmful impacts of providing the subsidy.

- **Exemptions** – The Government is proposing to introduce exemptions for specific categories of subsidies (such as those below a certain value threshold) from certain provisions or requirements.
- **Prohibitions and conditions** – The Government intends to prohibit outright a limited category of subsidies. The Government also intends to attach further or stricter conditions on the award of an additional limited set of subsidies.

- **Streamlined routes** – The Government will introduce specific provisions to ensure that categories of subsidy which are low risk and aligned with Government priorities, can proceed with minimum administrative burden and maximum legal certainty.
- **Additional measures to protect the UK competition and investment** – The Government intends to introduce several additional measures that would be applied to public authorities, where appropriate, in order to protect UK competition and investment.
- **Transparency** – The Government proposes placing a legal obligation on public authorities to submit information on any subsidies awarded above set values in a central database set up by the Department for Business, Energy and Industrial Strategy (BEIS).
- **Oversight and enforcement** – The UK is committed to establishing an independent body or authority with an appropriate role in our subsidy control system. The UK is also committed to maintaining a court and tribunal enforcement system which is compatible with its commitments in the TCA.

26. We have used these ‘building blocks’ at the basis for the structure of this Impact Assessment. The range of options that the Government has considered under each of the ‘building blocks’ are set out below under ‘Analysis of building blocks’ from paragraph 100 onwards.

## Summary and preferred option with description of implementation plan

### *Principles and rules*

27. The foundation of this new regime is a clear, proportionate, and transparent set of principles, underpinned by guidance, that will ensure public authorities fully understand their legal obligations and embed strong value for money and competition principles. There are seven main principles; and a limited number of additional principles will apply to energy and environment subsidies. Under this regime, public authorities will be able to take subsidy decisions that facilitate strategic interventions to support the UK’s economic recovery and deliver government priorities such as levelling up and achieving net zero. It will also give them the freedom to act swiftly to deliver support to where it is most needed. Subsidies below a small amounts of financial assistance (minimal financial assistance) threshold, subsidies for Services of Public Economic Interest under a certain threshold and certain subsidies in response to economic emergencies or natural disasters will be exempt from some or all requirements. In addition to this, certain categories of subsidies that are always damaging – such as unlimited subsidies to shore up failing companies, where there is no plan for their restructure – will be prohibited.
28. This new approach to subsidy control will provide a coherent framework to protect the internal market, a priority for both government and consultation respondents. This will ensure a consistent approach throughout the UK that maintains a competitive free market economy, is live to taxpayer interests and is clear to business. To maintain a consistent approach, the sectoral scope will be broad, including agricultural, fisheries and audio-visual sector subsidies.
29. As part of these protections to UK competition and investment a series of additional measures will be introduced. This includes introducing a prohibition on subsidies that are explicitly contingent on relocation within the UK.
30. Through these principles and rules, our subsidy control regime will also play its part in ensuring that the UK remains a reliable trading partner that upholds its international commitments.

## *Tools that enable public authorities to make their assessments*

31. Guidance will be produced to help public authorities comply with the obligations set out in the regime, assisting them to award subsidies that are compliant with the subsidy control principles that are at the core of the new regime. This guidance will promote considerations intrinsic to the levelling up agenda and set out the criteria for promoting economic development of relatively disadvantaged areas, as well as protecting UK competition and investment against subsidy races and other harmful distortive effects of subsidies. There will be a statutory duty for public authorities to use this guidance. This guidance will be published ahead of this regime coming into force.
32. The foundation of this new regime is a clear, proportionate and transparent set of principles supported with guidance, that will ensure public authorities fully understand their legal obligations and embed strong value for money and competition principles. The great majority of subsidies can be granted as long as they can demonstrate compliance via one of two self-assessment routes: either by undertaking a principles-based assessment of compliance against the subsidy control principles or through streamlined routes.
33. Our guidance will show how the assessment of compliance against the principles should be carried out and how different benefits and distortive impacts should be assessed, for different kinds of subsidies. This is a proportionate, risk-based approach that balances the need to manage potential risks to UK competition and investment against our aim to minimise burdens on public authorities. This route will be taken for any subsidies that do not meet the criteria for streamlined routes, Subsidies of Interest or Subsidies of Particular Interest, which are outlined in more detail below.
34. The Government will create streamlined routes to demonstrating compliance for categories of subsidies at low risk of causing market distortions, that promote our strategic policy objectives and which the Government judges to be compliant with the principles of the regime. These routes will be even simpler than the process of principle-by-principle assessment, as public authorities need only demonstrate that they meet the published compliance criteria for that route. This will ensure that these authorities are able to deliver these subsidies with minimum bureaucracy and maximum certainty.
35. In order to protect UK competition and investment, there will be certain subsidies in respect of which public authorities will be required to obtain a report from the independent body on their assessment of whether the subsidy complies with the principles, and in certain other cases public authorities will have the option of doing so.
36. As part of their assessment of the subsidy against each of the seven main principles, public authorities granting Subsidies of Interest will be strongly encouraged to undertake a more extensive analysis into the potential distortion of the UK internal market. These authorities will have the option to have the independent body review their assessment of compliance. The independent body may also provide advice on how that assessment and the design of the subsidy might be improved.
37. For Subsidies of Particular Interest, public authorities will be required to seek advice from the independent body on their assessment of compliance before the subsidy can be awarded. After the independent body has carried out that review, there will be a short 'cooling off period' after its publication, which the Secretary of State may extend for a limited period if necessary.
38. We will set out the specific criteria for Subsidies of Interest and Subsidies of Particular Interest in a way that makes it simple for authorities to determine whether a particular subsidy falls into those categories. This will enable closer scrutiny of subsidies which are considered to be at greater risk of having harmful or distortive effects. Both categories are

likely to be a very small proportion of the overall number of subsidies granted under the new domestic regime.

39. The Secretary of State will also have a power to require in limited circumstances that the public authority refers other subsidies to the independent body before or after they are given for review. A subsidy may only be called in by the Secretary of State where the subsidy threatens to have negative effects on competition and investment in the UK, or there is a risk that the subsidy would or may have failed to comply with the subsidy control requirements. This will again result in the body reviewing the assessment of compliance undertaken by the public authority and may likewise include advice on how that assessment and the design of the subsidy might be improved.

#### *Oversight and enforcement mechanisms*

40. The independent body will be the Subsidy Advice Unit – a body established within the Competition and Markets Authority (CMA). The CMA has the experience and expertise to act as an authoritative, objective body for subsidy control.
41. The Subsidy Advice Unit will have a role in monitoring and reporting on how the regime is working as a whole. The Subsidy Advice Unit will provide advice to public authorities on Subsidies of Interest and Subsidies of Particular Interest, as set out above, and will also provide advice in respect of other subsidies where it has been requested by the Secretary of State either before or after a subsidy has been granted.
42. Under the new regime, enforcement will be through the UK's courts and tribunal system. The Competition Appeal Tribunal (CAT) will be responsible for hearing applications for the review of a subsidy decision applying the judicial review standard. This means the CAT will not be reviewing whether the public authority made the 'correct' decision, but whether it was within its powers, procedurally fair, and rational.
43. The CAT will be able to award the same remedies as are available to the courts in judicial review proceedings. In addition, the CAT will have discretion to make a recovery order where a subsidy is found to contravene the subsidy control requirements. The Government expects high levels of compliance by public authorities throughout the UK. We therefore anticipate that it will be rare for recovery orders to be made.
44. Public authorities will also be required to upload information to the transparency database, which they are already using, on subsidies and subsidy schemes above certain thresholds, which may vary depending on whether the subsidy is to a Service of Public Economic Interest (SPEI); whether it is an individual award or part of a scheme; and the sector it is in. In most cases, public authorities will be obliged to upload information to the database within six months of committing to award the subsidy.

#### *Implementation*

45. Many elements of the regime be introduced in primary legislation, although some of the details, such as the specific criteria for 'streamlined routes' and 'Subsidies (or Schemes) of Particular Interest' will be set out later, in secondary legislation or statutory guidance. Streamlined routes will be made once the Bill comes into force and are laid in Parliament.
46. The regime will come into effect in Autumn 2022. Given this will be an entirely new regime, there will need to be significant emphasis on evaluation, with the lessons from this feeding into changes to improve the operation of the regime. The independent body will have a significant role in monitoring the ongoing operation of the regime and will have a duty to produce a report on the overall functioning of the regime at least every 5 years. Overall policy responsibility for subsidy control will remain with BEIS and the Secretary of State will

have powers to seek advice from the independent body on matters related to its functions or on any aspect of the regime.

## Analytical approach

47. As mentioned, we have taken a ‘building blocks’ approach to assessing the different options that have been considered to inform design of the overall regime. The analytical approach has focused on assessing the options within each building block against the criteria outlined above – namely the extent to which the options enable public authorities to award well designed subsidies while minimising administrative burden and bureaucracy and reduce negative consequences such as distortions to competition and investment in the UK or triggering remedial measures under the UK-EU TCA.
48. As discussed above, this Impact Assessment and the prior consultation relate to the overarching subsidy control system in the UK, rather than the awarding of subsidies themselves. In general, the most significant impacts from a subsidy control regime relate to the costs and benefits to society of the subsidies that are actually awarded. However, there are challenges associated with quantifying these impacts:
- a. Subsidy control regimes tend not to be prescriptive enough over the specific subsidies allowed or not allowed for a direct link to be drawn. Moreover, it is hard to predict future government policy over any appropriate evaluation period and harder still to predict how this may change with respect to any subsidy control regime features. This means that the largest impacts are highly uncertain and indirect, and it has not been possible to quantify these impacts.
  - b. Even if the link between subsidy control regime features and subsidies awarded could be established, it is hard to evaluate the impacts of regimes as a whole because in many cases it is difficult to establish causation and predict the impact of an alternative scenario. Rodrik (2004)<sup>31</sup> explains that this is because the objectives of an individual subsidy are usually to do with broad economic factors – such as availability of skilled labour or productivity – and it is not possible to evaluate regimes whilst also controlling for these.
49. The use of qualitative descriptions for the broad, societal, and macroeconomic changes stemming from overarching rules and regulations is standard in government analysis. This is because the level of uncertainty and challenge to disaggregate causal impact means that quantitative assessments can be misleading. This Impact Assessment follows the precedent of the Impact Assessment for the creation of the Competition and Markets Authority (CMA),<sup>32</sup> which used qualitative descriptions to describe the expected impact from changes in regulation or oversight.
50. This Impact Assessment has quantified and monetised as many of the impacts as have been identified, where possible and appropriate. Evidence for these impacts is described in each individual section. The general approach taken was to utilise existing evidence and best practice from other policy areas, administrative data, academic research, and relevant comparator countries. Where this information was not available – or sufficiently similar to novel features of the new domestic regime – then anecdotal data and policy assumptions have been used based on previous internal experience on subsidy cases. Impacts have been quantified using, and in accordance with, Green Book and Better Regulation

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<sup>31</sup> Rodrik, D. (2004). Industrial Policy for the Twenty-First Century. Discussion Paper No. 4767. Centre for Economic Policy Research.

<sup>32</sup> <https://www.legislation.gov.uk/ukpga/2013/24/impacts/2013/1066>

Framework guidance – a 10-year appraisal period is used with a 2019 Price Base Year discounted to a 2022 Present Value Base Year.

51. As is standard for Impact Assessments, policy options have been compared against the relevant counterfactual. In this instance, the counterfactual is determined by the UK's international commitments that apply as of 1 January 2021. Importantly, the counterfactual includes the subsidy control commitments that are set out in the UK-EU TCA but does not include further details on their implementation. For this reason, when analysing options for implementing the UK's international commitments, including the TCA, we have taken the 'do minimum' option to be the relevant counterfactual.
52. Although commitments in other FTAs and in the WTO Agreement on Subsidies and Countervailing Measures also form part of the 'do minimum' option, the UK-EU TCA obligations generally represent a 'high water mark' and we have therefore used them to develop the 'do minimum' options.
53. The 'do minimum' has been defined as the minimum level of Government action that is needed to meet the UK's international subsidy control commitments. For example, having no exemptions is the 'do minimum' because introducing exemptions is not required under our international commitments and would require government action.
54. For public authorities and businesses, the additional impacts identified based on the counterfactual used in this Impact Assessment may differ from the 'real world' impacts when the costs of the regime are compared against different comparators, such as the policy that has been in place since 1 January 2021 or the State aid regime. In practice, both comparators may be better suited when determining 'real world' fiscal impacts. For example, in practice, a public authority considering the additional resourcing impact of the regime would compare the resources they require under the new regime to the resources they had allocated for subsidy control compliance since 1 January 2021 or under the State aid regime. However, neither of these comparators are appropriate to use as the counterfactual for this Impact Assessment because they do not properly identify the 'additional' impacts of the regime in economic terms compared to the minimum regime the Government is required to implement to comply with the TCA. Before 31 December 2020, subsidy control in the UK was governed by the European Union State aid system. The overarching principle of the State aid regime is that subsidies are explicitly prohibited unless they are approved by the European Commission. However, in practice, the vast majority of subsidies (82.2% of the total volume of subsidies granted in the UK)<sup>33</sup> were pre-approved through General Block Exemption Regulation (GBER). These are extensive, legalistic rules that are used to grant approval under the State aid regime. The remaining aid measures are notified and assessed by the European Commission – a process that can take at least 6-9 months.<sup>34</sup> The European Commission and associated courts also have a strong role in enforcing the system. For example, complaints can be made directly to the European Commission and the European Commission plays an active role in monitoring the regime ex-post (for example, through annual spot-checks on GBER schemes and bespoke subsidies and ex-officio investigations). It is likely that a similar system would not best meet the UK-specific objectives and circumstances for subsidy control as set out in the next section and the consultation document.
55. As set out in Green Book guidance, tipping point analysis involves the use of longlist and shortlist analysis as a form of comparative statics based on marginal changes to select

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<sup>33</sup> Of all 'new measures' in 2018 according to the State aid Scoreboard 2019: [https://ec.europa.eu/competition-policy/state-aid/scoreboard\\_en](https://ec.europa.eu/competition-policy/state-aid/scoreboard_en)

<sup>34</sup> According to withdrawn UK Government guidance: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/949173/withdrawn-state-aid-frequently-asked-questions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949173/withdrawn-state-aid-frequently-asked-questions.pdf)

preferred option choices. In particular, this method of analysis is of use in policy decisions involving tipping points, where small quantitative change in an input or parameter may shift the balance of costs and benefits and lead to a change in the preferred option. A wider context in which tipping point analysis can be of relevance is where creating transformational change, such as the introduction of a subsidy control regime, is a specific policy objective. In such cases, a complex system of policy decisions may have tipping points where a small quantitative change within the system may lead it to reach a level where it ‘tips over’ and categorically changes the preferred option of interrelated policy decisions.

56. Many of the actual impacts of the Subsidy Control Bill will be determined by secondary legislation and guidance. Whilst this policy uncertainty has meant that it has not been possible or appropriate to analyse all these impacts, we have instead identified the key impacts that further guidance and legislation might affect and provided a range of estimates to illustrate the scale of the potential impact. The Department for Business, Energy, and Industrial Strategy will continue to analyse these impacts in the appropriate and proportionate way following Green Book and Better Regulation Framework principles as the policy develops further.
57. The impacts of the regime, which will be monitored and evaluated, are likely to change over time for three main reasons. Firstly, public authorities are likely to change their behaviour over time as they adjust and react to the new system and how it is applied in practice. Secondly, there may be transition costs in terms of how public authorities, recipients and other actors involved in the system interact with the new regime – these have been costed where appropriate and possible. Lastly, the regime itself will change over time as details set out in secondary legislation and guidance are amended based on the information that is gathered on how the regime is operating in practice.

## Cost and benefits

58. Following the methodology in the previous section, this section describes the qualitative and, where possible, quantitative impacts associated with each of the ‘building blocks.’ Whilst the overall impacts of any building block will depend on the nature of the other building blocks, this section aims to describe the most relevant impacts as well as the major dependencies between building blocks.
59. For each ‘building block’, indirect impacts stemming from the award of subsidies themselves as well as the direct costs to businesses and public sector of maintaining a system are described. As the UK has spent approximately £4 billion per year on subsidies,<sup>35</sup> it is likely that **the indirect impacts that any changes to the design of the subsidy control system has on the number, size and nature of subsidies may outweigh the direct impacts of administering the system itself.**
60. In particular, the four main strategic objectives – by which each policy option has been evaluated against at long list stage – relate to broader societal impacts. These impacts, and resulting benefits, are likely to outweigh any of the monetised administrative costs of the regime. The impacts of these objectives are:

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<sup>35</sup> European Commission. Transparency Award Module. <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>. [Accessed on 7 May 2021]. This figure is based on the average annual total value of subsidies reported to the European Commission database from July 2016 to December 2020. Values are adjusted for inflation and expressed in 2019 prices. Values for tax measures have been estimated as the value of these are reported as ranges (for example, £50,000 - £100,000), rather than exact figures. This figure is likely to underrepresent the total value of subsidies, as awards below €500,000 are not required to be reported under EU State aid rules.

- a. **Facilitating interventions to deliver on the UK's strategic interests** – a system that enables public authorities to deliver subsidies with net benefits will lead to the net benefits associated with the subsidies themselves. A more flexible system should lead to more efficient subsidy design<sup>36</sup> and therefore greater value for money and benefits to society as a whole. These impacts will depend on the decisions of public authorities, they could range from the positive effects associated with post-covid recovery subsidies<sup>37</sup> and the positive impacts associated with net zero.<sup>38</sup>
- b. **Maintaining a competitive and dynamic market economy** – the positive benefits of a competitive and dynamic economy are set out in the 'What is the economic rationale for subsidy control?' section. These include the positive impact on consumers and competing businesses in the medium term in terms of the efficient use of resources.<sup>39</sup> In the long term there are also positive dynamic impacts associated with a competitive incentive for businesses to invest in infrastructure and research efficiently.<sup>40</sup>
- c. **Protecting the UK internal market** – ensuring that businesses and consumers compete on a more consistent basis across the nations and regions of the United Kingdom will lead to positive competition impacts described above but will also contribute to Levelling Up and therefore have positive regional equity impacts.
- d. **Acting as a responsible trading partner** – will lead to positive trade impacts as aspects of the subsidy control system contribute to the United Kingdom's international obligations. Positive trade impacts are broad societal benefits that will fall on businesses from a range of industries and consumers.<sup>41</sup>

61. Whilst it would not be appropriate or possible to quantitatively assess the regime against these objectives, the qualitative impact of this regime – compared to alternative subsidy control regimes – is likely to align with these benefits. In particular, the subsidy control regime has been designed to allow flexibility at the public authority level whilst also allowing sufficient scrutiny for Subsidies of (Particular) Interest. In the extreme, subsidies that are even less likely to lead to net benefits to the UK are prohibited. In contrast, subsidies that are lower risk will be able to be awarded with reduced administrative burden and maximum legal certainty through 'Streamlined Routes'. This targeted approach is designed to facilitate the anticipated benefits of more permissive regimes – i.e. that subsidy control regimes do not unnecessarily restrict public authority decision-making through excessive bureaucracy. The targeted additional review processes and prohibitions for higher risks subsidies are designed to facilitate the anticipated benefits of a more restrictive regime, by minimising impacts on domestic competition and investment, protecting UK competition and investment and acting as a responsible trading partner. Whilst providing these benefits, the costs of this approach are the additional administrative burden that public authorities will face to self-

<sup>36</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714185/regulation-goals-rules-based-approaches.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714185/regulation-goals-rules-based-approaches.pdf) and <https://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black5.pdf>

<sup>37</sup> Chen, S., Igan, D., Pierri, N., & Presbitero, A. F. (2020). Tracking the economic impact of COVID-19 and mitigation policies in Europe and the United States.

<sup>38</sup> <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035#:~:text=change%20and%20energy-,UK%20enshrines%20new%20target%20in%20law,emissions%20by%2078%25%20by%202035&text=The%20UK's%20sixth%20Carbon%20Budget,to%20net%20zero%20by%202050.v>

<sup>39</sup> Oxera. (2017). Ex post assessment of the impact of state aid on competition. Publications Office of the European Union, Luxembourg and Friederiszick, H. W., Röller, L. H., & Verouden, V. (2006). European state aid control: an economic framework. Handbook of antitrust economics, 625-669.

<sup>40</sup> <http://www.oecd.org/regreform/sectors/48070736.pdf>

<sup>41</sup> Coppens, D. (2014). WTO disciplines on subsidies and countervailing measures: Balancing policy space and legal constraints (Vol. 12). Cambridge University Press.

assess subsidies into each category. Tipping point analysis has been used where appropriate to illustrate this trade-off in each of the individual building block sections.

62. Table 5 below provides a summary of the costs and benefits associated with the preferred option for each building block. The analysis of each of these is presented in more detail in the following sections.

**Table 5: Summary of key impacts**

<b>Building block</b>	<b>Costs (£m)</b>	<b>Benefits (£m)</b>	<b>Included in NPV?</b>
Definition	No non-negligible, additional costs were identified	<b>For public authorities</b> administrative cost saving from increased clarity	It was not possible or appropriate to quantify the benefits
Scope	Proportionate increase in costs identified elsewhere  <b>For public authorities</b> additional administrative and familiarisation cost for alternative arrangements	Proportionate increase in benefits identified elsewhere	It was not possible or appropriate to quantify the costs or benefits
Subsidy control principles	<b>For public authorities</b> administrative cost associated with compliance with an additional principle  Additional oversight and enforcement costs of an additional principle	<b>Broad societal benefits</b> as subsidies will be better designed to target additional principles considered	The 'preferred option' was the 'do minimum' so, by definition, there were no additional impacts included in the NPV  It was not possible or appropriate to quantify the benefit or judicial and oversight costs of the alternative option.  The NPV of the administrative cost for the alternative option was costed at £0.02m (£0.01m and £0.05m for sensitivities)
Exemptions	<b>For public authorities and businesses</b> increased	<b>For public authorities</b> administrative cost saving of complying with	Administrative cost saving of the exemption for Minimal Financial Assistance subsidies is included in NPV £0.1m

Building block	Costs (£m)	Benefits (£m)	Included in NPV?
	<p>familiarisation costs (likely to be negligible)</p> <p><b>Broad societal cost</b> that public authorities may not consider the negative competition impacts to the same extent and, therefore, there may be a negative competition cost.</p>	<p>regime and reduced risk of legal challenge</p> <p><b>For subsidy recipients</b> faster receipt of subsidy awards with reduced risk of recovery (likely to be negligible for most exemptions but large for exceptional circumstances and national or global economic emergencies exceptions)</p> <p>Exemptions will also allow subsidies to be awarded in certain circumstances which might not be possible if one was following the standard procedure for awarding a subsidy.</p>	<p>(£0.0m and £0.3m as sensitivities)</p> <p>It was not possible or appropriate to quantify the impacts associated with other exemptions.</p>
Prohibitions and conditions	N/A Options analysis sits in the 'Measures to protect UK competition and investment' section	N/A Options analysis sits in the 'Measures to protect UK competition and investment' section	N/A Options analysis sits in the 'Measures to protect UK competition and investment' section
Measures to protect UK competition and investment	<p><b>For public authorities</b> administrative and familiarisation costs of all measures</p> <p><b>For public authorities, businesses and government</b></p>	<p><b>Broad societal benefit</b> of positive competition and trade impacts – i.e. a more efficient and effective domestic economy created</p>	<p>Administrative cost of additional principle is included in NPV at £0.02m (£0.01m and £0.05m as sensitivities)</p> <p>Administrative cost of more in-depth assessments is included in NPV at £1.9m (£0.6m</p>

Building block	Costs (£m)	Benefits (£m)	Included in NPV?
	<p>increased judicial and enforcement costs</p> <p><b>For businesses</b> familiarisation costs (only applies to a small number of large businesses receiving Subsidies of [Particular] Interest)</p> <p><b>For businesses</b> legal or expert advice and monitoring costs (only applies to a small number of large businesses receiving Subsidies of [Particular] Interest)</p> <p><b>Broad societal cost</b> that ‘creative compliance’ may lead to inefficient subsidy design</p> <p><b>Broad societal cost</b> that some subsidies that may be net-beneficial may be discouraged by prohibitions</p>	<p>by all of these measures</p> <p><b>Broad societal benefit</b> of prohibiting subsidies that relocate economic activity without providing net benefit</p> <p><b>Administrative cost saving</b> from prohibiting subsidies that otherwise would have had to comply with the principles and transparency requirements</p>	<p>and £4.7m as sensitivities)</p> <p>Administrative cost saving associated with the prohibition of subsidies contingent on relocation is included in NPV at £0.03m (with £0.0m and £0.15m as sensitivities)</p> <p>Familiarisation cost to public authorities of more in-depth assessments is included in NPV £0.01m (£0.00m and £0.03m as sensitivities)</p> <p>Familiarisation cost to business of more in-depth assessments is included in NPV £0.01m (£0.01m and £0.02m as sensitivities)</p> <p>The legal or expert advice cost to businesses is included in NPV at £1.2m (£0.3m and £4.9m as sensitivities)</p> <p>The cost to business of monitoring So[P]I process is included in the NPV at £0.5m (£0.2m and £0.9m as sensitivities)</p> <p>It was not possible or appropriate to quantify the benefit or costs of ‘creative compliance’, the net benefit of subsidies affected by the prohibition or the broader competition and trade impacts.</p>
Streamlined routes	<b>For central government</b> one off and ongoing cost of streamlined routes administration	<b>For public authorities</b> administrative cost saving as they do not need to conduct an	It was not possible or appropriate to quantify the benefit or costs of streamlined routes

Building block	Costs (£m)	Benefits (£m)	Included in NPV?
	<p><b>For public authorities and businesses</b> additional familiarisation cost</p> <p><b>For the independent body</b> cost to review streamlined routes process if directed</p>	<p>assessment against the principles and are exempt from the Subsidies of [Particular] Interest process</p> <p><b>For public authorities</b> greater legal certainty.</p> <p><b>For businesses</b> reduced risk of recovery stemming from greater legal certainty</p>	
Specific obligations for energy and environmental subsidies	'Do minimum' option is the preferred option so there are not additional costs or benefits by definition	'Do minimum' option is the preferred option so there are not additional costs or benefits by definition	'Do minimum' option is the preferred option so there are not additional costs or benefits by definition
Transparency	<b>For public authorities</b> administrative cost to upload data	<b>Broad societal benefit</b> from increased scrutiny and monitoring and evaluation enablement	The administrative cost to upload data was included in the NPV at £1.6m (with £0.8m and £2.9m taken for sensitivities)
Independent body	<p><b>For Government</b> to set up the independent body</p> <p><b>For public authorities</b> to interact with the independent body</p> <p><b>For businesses</b> to interact with the independent body</p>	<b>Broad societal benefit</b> of monitoring and oversight, to improve the overall functioning of the regime and design of specific subsidies	<p>It was not possible or appropriate to quantify the wider impacts associated with the independent body.</p> <p>The cost to HMG of running the independent body is included in NPV at £20.2m (with £14.1m and £32.4m as sensitivities)</p> <p>Interaction costs to public authorities of engaging</p>

Building block	Costs (£m)	Benefits (£m)	Included in NPV?
			<p>with the independent body on monitoring and oversight advice is included in NPV at £0.0m (with £0.0m and £0.01m as sensitivities).</p> <p>This same interaction cost for Subsidies of Interest and Particular Interest advice is included in NPV at £0.2m (with £0.1m and £0.4m as sensitivities)</p> <p>Interaction costs to businesses of engaging with the independent body on monitoring and oversight advice is included in NPV at £0.0m (with £0.0m and £0.0m as sensitivities).</p>
Enforcement	<p><b>For Government</b> to run the courts</p> <p><b>To litigants (including public authorities and businesses)</b> to pursue or defend cases</p>	<p><b>Broad societal benefit</b> of having an effective enforcement system to disincentives non-compliance and provide redress (particularly for business), driving competition.</p>	<p>It was not possible or appropriate to quantify the benefit or costs of enforcement.</p>

*Grey boxes denote where the impact is not included in the NPV.*

## Key assumptions

### Volumes

63. For the purposes of costing impacts, historic data on the volume and value of subsidies awarded in the UK has been used. Covid-19 related subsidies have been excluded from all figures, unless stated otherwise, as these were awarded in unusual circumstances and are unlikely to be representative of subsidy awards over a more typical period. This data, and its associated caveats, are set out in the 'Domestic subsidy control overview' section (see paragraphs 17 to 20).

64. This is an analytical assumption and may not be a good projection of future subsidy awarding decisions. All costs and benefits will be sensitive to the wider policy context and the indirect impacts of the regime on the size, scale and types of subsidies awarded.

## Familiarisation and administrative costs

65. To ensure consistency throughout our analysis of the building blocks in the following sections, we have developed a set of assumptions for how familiarisation and administrative costs are incurred under the subsidy control regime. We have also produced estimates for the scale of these costs under the counterfactual 'baseline' route of assessing compliance against the principles. These assumptions and estimates have been used to inform monetisation of additional familiarisation and administrative costs impacts under the various building blocks of the regime in the following sections of the Impact Assessment.
66. We define **familiarisation costs** as costs that public authorities and others incur when making themselves familiar with legislation and any regulatory changes.
67. We define **administrative costs** as expenditure of resources on tasks associated with demonstrating compliance with obligations under the subsidy control regime, rather than the wider design and delivery of subsidies themselves. For a public authority this includes:
- a. Determining whether a measure is a subsidy and what international obligations are relevant.<sup>42</sup>
  - b. Assessing whether the proposed subsidy is prohibited
  - c. Assessing the subsidy against the principles
  - d. Recording the award of the subsidy on the subsidy database
68. Administrative and familiarisation costs will disproportionately fall on public authorities as opposed to businesses. This is because the subsidy control regime regulates how public authorities can support businesses through subsidies, rather than regulating the recipient businesses directly. The regime is designed to guide and place conditions on public authorities in their award of subsidies. Therefore, we do not anticipate that there will be any direct administrative costs for recipient businesses attributable to the subsidy control regime, and that any familiarisation costs to business will be small and tend to fall on a small number of larger businesses potentially receiving larger, more complex subsidies. The rationale for this is explained in further detail below.
69. Public authorities will need to ensure that they design and award subsidies (and subsidy schemes) in a way that is consistent with their obligations under the subsidy control regime. We anticipate that most public authorities will develop requirements and guidance for businesses to refer to in developing their application for a particular subsidy or scheme.
70. In producing estimates for the familiarisation and administrative costs of the counterfactual 'baseline' route there is some important context to note:
- a. Prior to 1 January 2021, the UK was subject to the EU State aid regime. As such, public authorities faced different requirements and administrative costs when awarding subsidies. The UK is no longer bound by the definitions and guidelines in the EU's State aid rules. Therefore, although there are some similarities, data on the administrative costs of awarding subsidies under the EU State aid regime would not

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<sup>42</sup>This includes assessing whether their proposed measure might fall within the Protocol on Ireland/ Northern Ireland, part of the UK-EU Withdrawal Agreement. All public authorities should consider the definition of a subsidy. In addition, in so far as public authorities need to assess whether their proposed measure might fall within the Northern Ireland Protocol or a relevant UK-EU Withdrawal Agreement obligation, they should use the EU definition of State aid. For more information see the published BEIS technical guidance on the UK's international subsidy control commitments [BEIS \(2020\) technical guidance on the UK's international subsidy control commitments](#).

be a good indicator to use to determine the administrative costs under the interim or the new regime.

- b. The interim period, between the repeal of the EU State aid rules on 1 January 2021 and the commencement of a new UK subsidy control regime, is also not a good indicator for the administrative costs applied by the future domestic subsidy control regime in steady state. The Government will publish updated guidance to help public authorities to assess compliance with principles under the new regime. Collecting data on the familiarisation and administrative costs over the interim period, a simply transitional state, would not be wholly representative of the costs public authorities will face under the new regime. For these reasons, it would not be proportionate to gather data on familiarisation and administrative costs faced by the public authorities that have been awarding subsidies since January 2021. However, we have engaged with the Department for Business, Energy, and Industrial Strategy team responsible for providing advice to these authorities, to understand the themes that are emerging from early awards under the interim regime.
- c. The eventual familiarisation and administrative costs of the regime will, to some extent, be dependent on the design of the updated guidance and the templates designed for public authorities to record how they have complied with the principles in designing their subsidy under the new regime. However, the exact design of these has not been determined, as they will be set out later in statutory guidance. The Department for Business, Energy, and Industrial Strategy will continue to analyse these impacts in the appropriate and proportionate way following Green Book and Better Regulation Framework principles as the policy develops further.

71. For these reasons, it has not been feasible to gather meaningful data on the current administrative cost associated with conducting an assessment against the TCA principles under the new regime, and other familiarisation and administrative costs, while in this interim period.

## **Public authorities**

### *Familiarisation costs*

72. At the point at which public authorities are exploring policy options for supporting businesses and/ or are getting ready to award a subsidy, they will need to dedicate resources to reading and understanding the subsidy control regime guidance. Anecdotal early indications from the interim period (since 1 January 2021), and under the State aid regime, suggest that public authorities will refer to and familiarise themselves with the guidance each time they look to design and award a new subsidy, rather than incurring a one-off up front familiarisation cost when the updated guidance is published. When they review this guidance, public authorities are likely to focus on the sections that are most relevant to the specific subsidy that they are looking to design. The time that it will take an individual to familiarise themselves with and draw on the guidance is likely to reduce through repeat interactions with it.

73. On 31 December 2020, the Government published guidance for public authorities explaining the subsidies chapter of the Trade and Cooperation Agreement (TCA) between the UK and the EU, World Trade Organisation rules on subsidies, and other international commitments.<sup>43</sup> We anticipate that all public authorities that have awarded or considered awarding subsidies since January 2021 will have already familiarised themselves with this guidance to some extent.

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<sup>43</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

74. The Government will publish updated guidance setting out the best way to assess compliance with the principles to provide public authorities with information to help them fulfil their obligations under the new domestic subsidy control regime. This will build on the existing guidance. As is set out in the following 'building block' analysis, the Government will also publish guidance on the additional elements of the new domestic regime. Therefore, the only *additional* familiarisation burden from the new regime will be the difference in the time that it would take public authorities to read and understand the existing guidance and the updated guidance. The counterfactual is that public authorities would need to familiarise themselves with the current published guidance and requirements under the UK's international agreements when they look to design a new subsidy scheme or bespoke subsidy.
75. For simplicity we have assumed that the *additional* familiarisation burden would be incurred each time that a new subsidy scheme or ad hoc subsidy is designed. This is likely to overestimate the true burden because, as outlined above, the familiarisation time is likely to reduce over time as public authorities become more familiar with the guidance each time that they refer to it. We also note that, when they review the updated guidance, public authorities are likely to focus on the sections that are most relevant to the specific subsidy that they are looking to design rather than reading the entire guidance in full for every subsidy scheme or ad hoc subsidy.
76. Our analysis of the TAM database indicates that, for the period between July 2016 and December 2020, and noting the caveats set out in paragraphs 18 to 19, there was a smoothed average of approximately 60 unique "aid measure titles" per year.<sup>44</sup> We have taken this to be a proxy for the number of unique subsidy schemes and ad hoc measures per year, and have assumed that additional familiarisation costs would apply to approximately 60 subsidy schemes per year. We note that this figure represents the volume of awards that went through to completion. A higher volume of subsidy schemes or ad hoc subsidies are likely to be considered by public authorities per year, with not all going through to completion. 60 unique subsidy schemes or ad hoc measures per year may, therefore, be an underestimate for the number of times that public authorities need to familiarise themselves with the guidance. Data is not available to produce an informed estimate for the number of subsidy schemes or ad hoc subsidies that would be considered but not go through to completion per year.
77. We have estimated that it will take public authorities approximately half a working day (or 3.7 hours) to read and understand the technical guidance on the UK's international subsidy control commitments, that was published on 31 December 2020.<sup>45</sup> This is based on the length of the guidance and an assumed reading speed of 75 words per minute.<sup>46</sup> We have also sense checked this with the Department for Business, Energy, and Industrial Strategy team responsible for providing subsidy control advice to public authorities. The Government assumes that, on average, two FTEs per public authority will familiarise themselves with the current published guidance per subsidy scheme or bespoke subsidy. We note that this is likely to vary between organisations and will depend on the size and complexity of a subsidy. This is likely to be an overestimate because, as outlined above, we assume that public

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<sup>44</sup> Smoothed average per year = (Total / 54) \* 12. Numbers have been rounded to the nearest 10.

<sup>45</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/technical-guidance-on-the-uks-international-subsidy-control-commitments>

<sup>46</sup> Technical (EFTEC 2013) guidance referenced in the *Government's Business Impact Target Guidance (2017)*, page 15, provides an estimate of the average time to read technical text of 50-100 words per minute. We have assumed a central value of 75 words per minute. The technical guidance on the UK's international subsidy control commitments, published 31 December 2020, was approximately 16,400 words long (including footnotes and excluding annexes) at the time of drafting. Based on this, we estimate that it will take around half a day to read this guidance. It is assumed that there are 7.4 hours in a working day, which is based on a 37-hour working week.

authorities are likely to focus on the sections that are most relevant to the specific subsidy that they are looking to design.

78. As a central estimate for the grade, it is assumed that it would be Grade 7 (G7) Civil Servants that would familiarise themselves with the guidance. For sensitivities we have assumed that this would be Higher Executive Officer (HEO) for the lower bound and Grade 6 (G6) as an upper bound. Salaries have been uplifted by 21.80 percent to account for non-wage costs. Estimated baseline familiarisation costs are outlined in the table below. The equivalent hourly rate is calculated by taking the uprated median salary, dividing by 52.2 (weeks in a calendar year) and dividing by the number of full-time hours (assumed to be 37 per week).

**Table 6: Public authority baseline familiarisation costs per subsidy scheme**

Scenario	Grade	Number of FTEs	Uprated Median Annual Salary <sup>47</sup>	Equivalent Hourly Rate per FTE	Hours per FTE	Total <sup>48</sup>
Central	G7	2	£64,689	£33	3.7	£250
High	G6	2	£80,633	£42	3.7	£310
Low	HEO	2	£39,428	£20	3.7	£150

79. The following table sets out how the estimated familiarisation costs associated with the new domestic subsidy control regime are to be calculated in the following ‘building block’ sections of the Impact Assessment. Familiarisation costs associated with new elements of the regime, over and above the baseline route, may be significant and are analysed below under the relevant building blocks.

<b>Box 1:</b> Formula for calculating the additional familiarisation costs for public authorities associated with the new domestic subsidy control regime
The additional familiarisation cost per average subsidy scheme or ad hoc subsidy = (Number of FTEs reading guidance) x (The uplifted wage estimate, in pounds per hour) x (Additional time spent reading guidance in hours)
Total <u>additional</u> familiarisation costs per year = (The estimated <u>additional</u> familiarisation cost per average subsidy scheme or ad hoc subsidy) x (Estimated number of subsidy schemes or unique subsidies per year)

*Administrative costs*

80. We have assumed, under our central estimate, that for each subsidy scheme or bespoke subsidy it will take public authorities 1 day, on average, to conduct an assessment against the principles.<sup>49</sup> Given the uncertainty, it is appropriate to apply a broad range for the assumed time taken to demonstrate compliance with the principles. We have assumed a central estimate it will take 1 day, on average, to conduct an assessment against the principles with a range of 0.5 days to 2 days.

81. It is assumed that it will take public authorities half a day, on average, to complete the other administrative tasks associated with the baseline route listed in paragraph 67 above.<sup>50</sup> Given the uncertainty we have applied a range of between 2 hours to 1 day. As set out in more

<sup>47</sup> Civil Service median salaries by grade as at the end of 2019 financial year, uplift by 21.80 percent (based on Eurostat, 2019) to include employer’s National Insurance and pension contributions, allowances, overtime and performance payments. Median across all employees <https://www.gov.uk/government/statistics/civil-service-median-salary-by-uk-region-and-grade-2020>

<sup>48</sup> Rounded to the nearest 10 in 2019 prices.

<sup>49</sup> It is assumed that there are 7.4 hours in a working day, which is based on a 37-hour working week.

<sup>50</sup> (i) Determining whether a measure is a subsidy and what obligations are relevant; (ii) Evaluating whether a measure is a prohibited subsidy; (iii) Assessing the likelihood of triggering a dispute under the WTO ASCM rules and other FTAs; (iv) Recording the award of the subsidy on the subsidy database.

detail, under our analysis of the transparency ‘building block’ starting in paragraph 282, it is assumed that of this, it will take approximately 2 hours to record the award of the subsidy on the subsidy database for subsidies where a complete entry is needed under the baseline route as the central estimate, with 1 hour and 4 hours used as high and low sensitivities. However, in practice, there are likely to be ‘economies of scale’ with the upload of subsidies – where the cost of data management and uploading is likely to be negligible for each additional subsidy or scheme uploaded by each public authority. These per item cost estimates will, differ based on the category of subsidy being uploaded. The administrative costs for transparency are, therefore, adjusted to account for this following the methodology set out in the ‘Transparency’ section of this Impact Assessment.<sup>51</sup>

82. We have engaged with the BEIS team responsible for providing advice to public authorities, to sense check these assumptions, and note that:

- a. There is likely to be significant variation between cases, with more complex cases potentially taking longer than this and simple cases taking less than a day.
- b. There is significant overlap between assessing compliance against the principles and the assessments that public authorities are already required to conduct for spending control purposes. For example, for both, public authorities will need to demonstrate rationale for intervention and the value for money of the measure. Therefore, much of what is required to assess compliance against the principles is not likely to be *additional* burden.

83. The Government assumes that, on average, it will take two FTEs per public authority to complete these administrative tasks. We note that this is likely to vary between organisations and will depend on the size and complexity of a subsidy. As a central estimate for the grade, it is assumed that it would be Grade 7 Civil Servants that would familiarise themselves with the guidance. For sensitivities we have assumed that this would be HEOs for the lower bound and Grade 6 as an upper bound. Salaries have been uplifted by 21.80 percent to account for non-wage costs. Estimated baseline familiarisation costs are outlined in the table below. The following table provides the range of estimated administrative burden per subsidy.

**Table 7: Public authority baseline administrative costs per subsidy scheme**

Scenario	Grade	Number of FTEs	Uprated Median Annual Salary <sup>52</sup>	Equivalent Hourly Rate per FTE	Total hours per FTE <sup>53</sup>	Total <sup>54</sup>
Central	G7	2	£64,689	£33	11	£740
High	G6	2	£80,633	£42	22	£1,850
Low	HEO	2	£39,428	£20	6	£230

**Subsidy recipients (businesses)**

*Familiarisation costs*

<sup>51</sup> As there are 27 unique public authorities per year within the UK that have uploaded per year on average on the previous European Commission transparency database then the per subsidy or scheme cost has been adjusted by 27/60 (where 60 is the number of unique schemes or subsidies per year).

<sup>52</sup> Civil Service median salaries by grade as at the end of 2019 financial year, uplift by 21.80% (based on Eurostat, 2019) to include employer’s National Insurance and pension contributions, allowances, overtime and performance payments. Median across all employees. <https://www.gov.uk/government/statistics/civil-service-median-salary-by-uk-region-and-grade-2020>

<sup>53</sup> Rounded to the nearest hour.

<sup>54</sup> Rounded to the nearest 10 in 2019 prices. Numbers shown may not add up due to rounding.

84. As outlined in more detail in paragraph 68, the familiarisation and administrative costs associated with the subsidy control regime will disproportionately fall on public authorities as opposed to businesses.
85. At the point of due diligence, businesses thinking of applying for a particular subsidy will have to spend resource to understand and apply the relevant rules and guidance and shape their application accordingly. We anticipate that businesses applying for a specific subsidy will primarily focus on the relevant requirements and any bespoke guidance for the specific subsidy or scheme, rather than the subsidy control regime guidance for public authorities. Guidance published by public authorities may, however, state that the information provided should not be seen as substitute for taking legal or professional advice, which is the responsibility of the individual applicant.<sup>55</sup> This could incentivise businesses to seek advice if they are risk averse, however, this would not be additional to the new regime.
86. Anecdotal early indications from the interim and previous system indicates that a small proportion (an estimated 10-20%) of businesses will look to understand the regime-level guidance for public authorities and the legal implications of this. Businesses will not necessarily obtain legal or professional advice to explain the guidance, although management may wish to discuss and/or consult with lawyers or other experts about the implications of the regime. This is particularly likely of large companies which receive substantial amounts of subsidies from Government, and for more ad hoc or complex subsidies. These costs can be substantial. However, the cost of this legal advice is likely to be small as a proportion of the value of the subsidy involved.
87. Evidence indicates that SMEs are more likely to be recipients of smaller, less complex, subsidies therefore it is assumed that they will be less likely to familiarise themselves with the guidance public authorities. Familiarisation costs and legal fees are assumed to be somewhat proportional to the size of the subsidy to account for the relative complexity. We note that this may not always be the case and that some SMEs may seek external legal advice. However, early anecdotal evidence indicates that it is the larger recipients of large subsidies who are more likely to seek external legal advice.
88. Between July 2016 and December 2020, subsidies of over £2 million in value accounted for 21% of the total number of UK subsidies reported on the EU's State aid TAM database, subsidies over £5 million accounted for 8%. However, these values are likely to be an overestimate because data available from the TAM database is likely to significantly underreport the total number of low value subsidies. The reasons for this are set out in paragraphs 18 to 19 above.<sup>56</sup>
89. We have, therefore, assumed that 20% of subsidy recipient businesses will familiarise themselves with the updated guidance and seek legal counsel.
90. We anticipate that the only *additional* familiarisation burden will be the difference in the time that it would take these businesses to understand the 31 December 2020 guidance and the updated guidance. This is because we envisage that businesses would familiarise themselves with the requirements for a particular subsidy at the point of due diligence, when they are thinking of, or in the process of, applying for it. Under the counterfactual, businesses would still familiarise themselves with the relevant guidance. However, we note

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<sup>55</sup> For example, see DCMS 5G Create 'General Guidance for Grant Applicants' [accessed June 2021] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878276/DCMS\\_5GTT - General Guidance for Grant Applicants.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878276/DCMS_5GTT_-_General_Guidance_for_Grant_Applicants.pdf)

<sup>56</sup> This is because State aid awards below €500,000 are not required to be reported under EU State aid rules. Although some public authorities voluntarily report awards below this threshold, data on awards below €500,000 is likely to be incomplete. Data available from the database therefore likely underreports the total number and value of lower value subsidies awarded.

that the new regime may mean that some changes are needed to guidance for existing schemes, that businesses will need to familiarise themselves with.

91. As per familiarisation costs for public authorities, we have assumed that it will take a business approximately half a day (3.7 hours) to read and understand the existing guidance.<sup>57</sup> The Government assumes that (for the 20% businesses assumed to familiarise themselves with the regime-level guidance) three FTEs per business, on average, will familiarise themselves with the guidance per subsidy scheme. The Government assumes conservatively that the guidance will need to be read by corporate managers or directors, the 2019 median wage for whom was £24.35 per hour.<sup>58</sup> This has been uplifted by 21.80 percent to account for non-wage costs, giving an estimate of £29.66 per hour.
92. The government assumes conservatively that all such businesses will consult external legal counsel or other expert advice. As per familiarisation costs for public authorities, we have assumed that the cost would be for approximately half a day. We have based our estimate of legal fees on the inflation uprated solicitors' guideline hourly rates.<sup>59</sup> For this we have assumed the London Grade 1, Band A,<sup>60</sup> because anecdotal evidence indicates that large businesses applying for subsidies are likely to involve larger legal firms. We have assumed that two Band A solicitors or legal executives would be involved. The estimated cost per business would be £960 per hour, updated to 2019 prices.
93. Evidence from the TAM database indicates that a smoothed average of around 1,280 business per year receive subsidies from Government.<sup>61</sup> 20% of this figure is approximately 260 businesses.<sup>62</sup>
94. The following box sets out the estimated familiarisation costs associated with the new domestic subsidy control regime are to be calculated in the following 'building block' sections of the Impact Assessment.

**Box 2:** Formulae for estimating familiarisation and legal costs for businesses associated with the new domestic subsidy control regime

**The additional familiarisation cost to one business**

= (Number of people reading guidance per business) x (The wage estimate in pounds per hour) x (estimated additional time spent reading guidance in hours)

**The legal cost to one business**

= (Additional time with lawyers) x (Legal expense in pounds per hour per solicitor or legal executive) x (Number of solicitors or legal executives involved)

**Total additional cost to one business**

= Additional familiarisation cost + additional legal cost

**Total additional familiarisation cost to business per year**

= (The additional familiarisation cost to one business) x (estimated number of subsidy applicants familiarising themselves with the guidance)

**Total additional legal costs to business**

= (The additional legal cost to one business) x (estimated number of subsidy applicants familiarising themselves with the guidance)

<sup>57</sup> It is assumed that there are 7.4 hours in a working day, which is based on a 37-hour working week.

<sup>58</sup> ONS ASHE 2019 (Revised) table 14.5a Hourly Pay - Gross - For FTE jobs - Median wage for 'corporate manager or director'.

<sup>59</sup> <https://www.gov.uk/guidance/solicitors-guideline-hourly-rates> – uprated to 2019 prices. Fee per hour of £409 for Grade 1, Band A for 2010, uprated to £480 in 2019 prices.

<sup>60</sup> Pay band A: Solicitors and legal executives with over 8 years' experience.

<sup>61</sup> A description of the data and relevant caveats are set out in paragraph 18.

<sup>62</sup> Numbers have been rounded to the nearest 10.

## *Administrative costs*

95. We do not anticipate that there will be any direct additional administrative costs for businesses as a result of the new subsidy control regime. The subsidy control regime places obligations, such as respecting the subsidy control principles, on public authorities when awarding subsidies. Businesses are only required to conduct assessments for the specific subsidy or scheme that they are bidding for.
96. Depending on details to be set out in secondary legislation and/or future guidance, the obligations on public authorities under the new regime could indirectly impact the information that public authorities ask businesses to provide as part of their subsidy application, and the associated administrative burden. This information requirement would vary by subsidy and/or subsidy scheme and cannot be estimated at this stage. However, as is outlined above, we expect there to be significant overlap between the assessments that are required for spending control purposes and an assessment against the principles. We do not, therefore, anticipate that any additional information requirements, and therefore indirect administrative costs for businesses would be significant.

## **Risks**

97. The 'Key assumptions' and 'Analytical approach' sections describe the assumptions and methodological choices that will most effect the analysis presented in this Impact Assessment. As noted in these sections the 'counter-factual' problem means that many of the benefits cannot be quantified or monetised, and existing data is of limited use due to the novel nature of changes to the regime. For these reasons existing evidence on individual subsidies, existing Impact Assessments and evidence-informed assumptions have been used to identify, describe and where appropriate monetise the impacts associated with the regime. The causal link between a subsidy control regime and the impact of the individual subsidies given under this regime represents the major gap in the evidence base. There is thus an unintended consequence that the regime does not maximise these benefits relative to costs or that certain aspects of the regime could be improved in order to meet the strategic objectives. As the costs of the regime do not largely fall directly on businesses, these unintended consequences largely fall on the public sector and wider society.
98. As a large proportion of the costs and benefits fall on public authorities and indeed depend on public authority behaviour there is a risk that benefits of the regime are not realised to a maximal degree or that the costs are higher than expected. More specifically there is a risk that the 'balance' of flexibility versus prescriptiveness might not be optimal. For example, the counterfactual problem means that it is impossible to know for certain whether an alternative regime would be more net beneficial, therefore there is a risk that even the preferred well-functioning regime is not the best possible regime that could be adopted at this time.
99. To manage these risks, this Impact Assessment takes three major steps:
- a. Large sensitivities are included around each of the central estimates where impacts are monetised – these sensitivities are informed by conservative readings of existing formal and informal evidence
  - b. Academic evidence and previous Impact Assessments are drawn on to inform and describe the impact of options where it was not possible to monetise these impacts. A large majority of these impacts relate to the benefits of the regime rather than the costs.
  - c. A robust monitoring and evaluation strategy is included to review the effectiveness of the regime and to facilitate future changes to the policy.

## Analysis of building blocks

### Definition

100. The first step in setting out a bespoke domestic subsidy control regime for the UK is to define what is meant by a subsidy, and what type of support by public authorities would fall within this regime.
101. At consultation stage the Government proposed a definition for subsidies for the purposes of the new domestic regime, and the consultation stage Impact Assessment set out a long list of options that included using this definition – the ‘do minimum’ and preferred option – or to extend the definition to cover more subsidies. Substantially extending the definition to cover more measures within scope of the regime was rejected at long list stage as it did not meet the strategic objective of providing a flexible regime that minimised bureaucratic burden. Therefore, the impacts of adopting this definition – the ‘do minimum’ option – are by definition non-additional. As set out in the accompanying consultation response document, following consultation responses, the Government has tweaked the definition for consistency with existing UK law and for clarity.
102. This is likely to reduce the administrative cost for public authorities and subsequent judicial enforcement costs. However, it is not possible to quantify these cost savings due to lack of comparable similar previous Impact Assessments, lack of data on the behavioural impact on public authorities and due to policy uncertainty – any impact of increased clarity can only be assessed once the relevant guidance is produced and this analysis would continue to be limited by lack of data.
103. Further analysis of options around the guidance for the definition of a subsidy will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

### Scope

104. At consultation stage the Government set out that agricultural subsidies subject to the WTO Agreement on Agriculture (AoA)<sup>63</sup>, subsidies related to trade in fish and fish products, and audio-visual subsidies could or could not be in scope of the future domestic subsidy control regime. The consultation stage set out two simple options for each of these categories of subsidies – inclusion into the regime or exclusion. For subsidies that are excluded, they would still be subject to the relevant international obligations for these subsidies.
105. As the Government would have to explicitly choose to exempt these from the regime’s definition of a subsidy then the ‘do minimum’ in this instance is to include all of these subsidies within the regime. By definition there are no costs and benefits associated with this option – however it is assumed that this would cost £740 per ad hoc subsidy or scheme in the central case, £230 in the low case and £1,850 in the high-cost case as set out in the ‘Key assumptions’ section of this IA. It is not appropriate or possible to fully model the impact of including these in the regime under the ‘do minimum’. However, the overall value of subsidies in these categories can be used as a simple proxy to illustrate the scale of these impacts. Agricultural subsidies make up approximately 7% of all subsidies<sup>64</sup>, subsidies related to trade in fish and fish products make up 0.03%<sup>65</sup> and audio-visual subsidies make

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<sup>63</sup> Agricultural subsidies subject to the WTO Agreement on Agriculture are referred simply as ‘agricultural subsidies’ onwards.

<sup>64</sup> [https://ec.europa.eu/competition-policy/state-aid/scoreboard\\_en](https://ec.europa.eu/competition-policy/state-aid/scoreboard_en)

<sup>65</sup> [https://ec.europa.eu/competition-policy/state-aid/scoreboard\\_en](https://ec.europa.eu/competition-policy/state-aid/scoreboard_en)

up 1% of all subsidies<sup>66</sup>. Scaling these percentages over the overall cost of the regime to business gives a NPV of £0.1m in the central scenario with £0.0m and £0.5m as sensitivities and a cost to public authorities of £1.5m in the central scenario with £1.0m and £2.4m as sensitivities. These figures have not been included in the impacts for the ‘preferred option’ as they relate to the ‘do minimum’ only.

106. As the overall cost of the regime included the estimates for transparency requirements then this implicitly has captured the administrative cost for transparency requirements at the ‘do minimum’ thresholds. The costs associated with transparency for alternative transparency thresholds is included in the ‘Transparency’ section of this IA.
107. The rationale for excluding each of these categories of subsidies within the regime is that there are different international obligations for these subsidies and that a bespoke set of arrangements may offer more flexibility in these circumstances. The rationale for including these categories within the regime is to protect against distortive UK competition and investment impacts within these sectors, ensuring consistency of subsidy obligations, maximising certainty and investor confidence across these sectors and other related sectors and to reduce the complexity and administrative burden of excluding these from the regime.
108. As was set out at consultation stage, the impacts of excluding each of these categories of subsidies within the regime would be a proportionate decrease in the costs and benefits identified elsewhere in the regime. As the details of specific guidance on various aspects of the regime – and particularly how these specific sectors will be considered within the regime – has not been produced yet it is not possible to fully assess these impacts.
109. In addition, in reflection of consultation responses, there may also be additional costs of operating parallel arrangements for these subsidies – and the associated familiarisation costs and administrative costs for public authorities of interacting with these arrangements. This cost may be partially mitigated by the non-additional cost of assessment set out in paragraph 83.
110. As the strategic and economic rationale that applies to remainder of the regime – i.e. the four objectives set out at consultation stage, and the economic rationale set out at the start of this IA – also apply to audio-visual, fisheries and agricultural subsidies then the preferred option is to undertake the ‘do minimum’ option of including all options. Any other option is likely to not represent a net benefit – as there may be a risk of competition distortion, and the administrative cost may be higher – and would not meet the strategic objectives of the policy.
111. Further details of how this will be implemented will be set out in secondary legislation and guidance. Further analysis of options around the guidance for these sectors and appropriate impacts will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

### **Subsidy control principles**

112. The consultation set out six main principles that would underpin the new domestic regime as per the UK-EU TCA.<sup>67</sup> All subsidies within the scope of the regime would have to adhere to these principles – and therefore the choice of principles impacts the functioning of the regime as a whole. In addition to these six main principles, an additional principle on the protection of UK competition and investment was proposed. Analysis around this additional

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<sup>66</sup> European Commission. Transparency Award Module.

<https://webgate.ec.europa.eu/competition/transparency/public?lang=en>. [Accessed 7 May 2021].

<sup>67</sup> Limited additional principles may apply to energy and environmental subsidies, in addition to the main subsidy control principles.

principle is included in the 'Measures to protect UK competition and investment' section of this IA. The consultation also asked an open question on whether there should be any further principles either in addition or instead of the UK competition and investment principle.

113. The rationale for including additional principles, beyond those that are focused on protecting UK competition and investment, would be to better meet broader policy objectives - such as encouraging a competitive and dynamic domestic economy - or to meet wider policy objectives - such as Net Zero or Levelling Up. More principles would add complexity to the system, including at public authority level, and therefore these objectives would have to be balanced against the strategic objectives of creating a less bureaucratic system that has the sufficient flexibility to allow to use subsidies to meet wider policy objectives.
114. The majority of responders at consultation stage did not support an additional principle, other than the principle to protect UK competition and investment, with 64% of responders who answered the question saying that they would not agree with an additional principle. Of those that suggested additional principles, several mentioned other strategic interests such as having an explicit Net Zero or Levelling Up principle, and many respondents suggested principles that are already captured by the existing principles such as having an explicit balancing test of the costs and benefits of subsidies. Any further principle that duplicates the existing principle has been rejected at long list stage as these would be unlikely to provide any benefits but would lead to a greater administrative cost throughout the system.
115. Therefore, at short list stage the following options have been considered based on consultation responses:
- **Option A:** The 'do minimum' option – to not include an additional principle.
  - **Option B:** To include an additional principle that explicitly encourages a specific strategic objective:
    - Achieving Net Zero
    - Levelling Up
    - Promoting Diversity and Inclusion
    - National Security
116. By definition the 'do minimum' does not include any additional impacts, however the costs of complying with principles and judicial enforcement under the 'do minimum' is set out in the 'Key assumptions' and 'Judicial enforcement' sections.
117. As set out at consultation stage the costs of including an additional principle would be:
- a. For public authorities – increased administrative costs from complying with the principle. There may also be an increased cost for using professional / legal services.
  - b. Unintended direct cost of limiting some subsidies that could be net beneficial – in instances where the principal may encourage over-caution.
  - c. Greater judicial and oversight costs – from considering subsidy award decisions against further principles.
118. Due to lack of data on the impact of a new principle implemented into a new domestic subsidy control regime, it is not possible to accurately assess these additional costs of complying with any additional principle. As an illustrative assessment, if we assume that this

adds an additional one-sixth onto the administrative costs identified in paragraph 83 for assessment against the principles this would lead to a cost of £41 per ad hoc subsidy or scheme in the central case, £103 in the high scenario and £13 in the low scenario. Over 60 unique measures per year, this would lead to a NPV of £0.02m in the central scenario, with £0.01m and £0.05m in the low and high scenarios, respectively. Due to the lack of data on how a novel principle will impact behaviour at a public authority level, it is not possible to assess the indirect, unintended cost that an additional principle may have on limiting some subsidies that could be net beneficial. However, as all of the principles proposed are aligned with current policy objectives and public authorities would still have to consider the final balancing test principle, it is assumed that this cost would be negligible – i.e. very few or zero net-beneficial subsidies per year would be influenced negatively by the inclusion of an additional principle.

119. The similar lack of data on how an additional principle would affect public authority behaviour also means that it has not been possible to monetise or quantify the increased judicial and oversight costs for reviewing an additional principle. The Government anticipates that this will likely only impact a small number of subsidies as set out in the ‘Judicial enforcement’ section of this Impact Assessment. Furthermore, the impact per subsidy affected is likely to be negligible as the marginal cost of considering an additional principle will be low compared to the fixed cost of enforcement and oversight per subsidy considered – i.e. the cost is unlikely to ‘scale up’ considerably based on an additional principle given that there are already 6 principles considered in the baseline.
120. The benefits of including any of the four additional principles included in the short list will likely include greater targeting of subsidies towards one of these four objectives. Due to the lack of data on how a novel principle will impact behaviour at a public authority level, it is not possible to assess the indirect benefits that these may have. Using tipping point analysis, this benefit would have to be 0.001% per subsidy awarded to be net beneficial.
121. It is unlikely that an assessment against these objectives will be relevant for every subsidy given the broad nature of subsidies currently given by UK public authorities. Therefore, it is likely that for some subsidies, requiring this principle will not be net-beneficial even if it is net beneficial on aggregate. More flexible, non-regulatory alternatives, such as setting out how subsidies might be assessed against these further objectives in guidance would likely lead to similar benefits on aggregate but with a lower level of costs, as it would not involve assessments against these principles for individual subsidies where these objectives are not relevant. Such an approach would also help to achieve the Government’s objective of designing a flexible and proportionate subsidy control regime.
122. Therefore, the preferred option is to not include any additional principles – other than the TCA principles and the additional domestic competition and investment principle considered later – and for the further principles to be considered in non-regulatory measures. This could include the broader subsidy control guidance, or individual measures determined at the public authority level.
123. Further analysis of options around the guidance for compliance with the principles and the nature of this guidance will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

## Exemptions

124. **Do minimum:** Exemptions or limited exemptions from obligations are set out in the TCA. However, the UK has the option not to introduce these exemptions into its domestic regime. The ‘do minimum’ counterfactual is, therefore, not to introduce any exemptions.
125. The Government is proposing to introduce exemptions in the following areas:

- a. Minimal Financial Assistance subsidies
- b. Low value Services of Public Economic Interest (SPEI) subsidies
- c. Subsidy awards to compensate for exceptional circumstances
- d. Subsidies granted temporarily to address a national or global economic emergency
- e. Subsidies where they are required for the purpose of defence or safe-guarding national security
- f. Activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives

126. In each of these areas the “do minimum” option has been discounted and introducing the exemption set out in the UK-EU TCA is the preferred option. The following sections set out rationale and impacts analysis for each of these exemptions.

#### *Objectives*

127. The Government’s aim is to develop a proportionate risk-based approach that balances the potential risk of distorting UK competition and investment and not complying with our international obligations against any potential increased burden to public authorities and recipient businesses. We want to ensure that public authorities are able to deliver the lowest risk and most time-critical subsidies with minimum bureaucracy and maximum certainty.

128. The Government wants to allow greater flexibility for maintenance of national security and to maintain confidentiality and secrecy for subsidies that are sensitive on national security grounds. (Relevant to the proposed exemption for subsidies where they are required for the purpose of defence or safe-guarding national security only). The Government also wants to ensure that the Bank of England has independence and legal certainty in taking monetary policy decisions. (Relevant to the proposed exemption for activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives only).

#### *Exemption for Minimal Financial Assistance subsidies*

129. To meet the objectives above there is a clear rationale for introducing exemptions for low value subsidies. This will ensure proportionality given these subsidies are significantly less likely to distort international trade and investment, or competition and investment in the UK. The TCA sets a value ceiling for the threshold at which subsidies are exempt from the obligations in the subsidy control chapter.<sup>68</sup> Under the terms of the TCA subsidies awarded to a single recipient below the value of 325,000 Special Drawing Rights (SDR)<sup>69</sup> over a three-year fiscal period are exempt from all of the obligations contained with the subsidy control chapter.<sup>70</sup>

130. At consultation stage the Government considered the following options:

- ‘Do minimum’ (no exemption for Minimal Financial Assistance subsidies)

<sup>68</sup> Under the terms of the TCA any subsidies awarded to a single recipient below the value of 325,000 Special Drawing Rights (SDR) over a three-year fiscal period are exempt from all of the obligations contained with the subsidy control chapter. See <https://www.gov.uk/government/consultations/subsidy-control-designing-a-new-approach-for-the-uk> (page 25) for further detail.

<sup>69</sup> Special drawing rights (SDR) are supplementary international reserve assets defined and maintained by the International Monetary Fund (IMF). They can be calculated into national currencies such as GBP.

<sup>70</sup> TCA, Article 3.2(4), 183.

- Exempt subsidies below the 325,000 Special Drawing Rights (SDR)<sup>71</sup> threshold from the legal duty to respect the subsidy control principles
- In addition, implement a partial exemption for subsidies below this threshold from the prohibitions and conditions<sup>72</sup>
- Introduce a lower value threshold
- Fixing the value threshold at an amount of pound sterling (GBP)

131. The Government's preferred option is to exempt Minimal Financial Assistance subsidies from all obligations under the domestic regime except the WTO prohibitions. As proposed in the consultation, the Government proposes that it will fix the amount in GBP rather than SDR. The amount expressed in GBP will be set below the SDR to GBP exchange rate in order to deliver stability to public authorities and recipients as well as ensure the implementation of the exemption remains compliant with the TCA in the face of currency fluctuations. Setting the amount below the exchange rate means the threshold only needs to be updated in response to sudden, large changes or changes brought about by long term trends. This is in line with the threshold ceilings set out in the UK-EU TCA and has been applied to all the SDR to GBP conversion in the Bill. As is set out in more detail in the Government's consultation response, the majority of respondents supported these proposals.<sup>73</sup>

132. The other options are, in comparison, not consistent with the Government's objectives of minimising the administrative burden for the lowest risk subsidies and have been discounted. Similarly, introducing a lower value threshold or limiting what the exemption covers has also been discounted, as this would result in a higher administrative burden for a subset of low value subsidies. We have therefore discounted these from our shortlist and not undertaken further analysis of the other options that would limit the scope of the exemption permitted under the TCA.

133. We envisage that the impact of fixing the value threshold in pound sterling (GBP) as opposed to SDR will be negligible and provide no material benefits so, for simplicity, this has not been analysed as a separate policy option in this final Impact Assessment. Fixing the value threshold in GBP will ensure simplicity for public authorities and subsidy recipients. As is set out in more detail in the Government response to the consultation on subsidy control, the majority of respondents to the relevant consultation questions supported this preferred option.

134. We have analysed the impact of introducing the Government's preferred option against the 'do minimum.'

- **Option A:** 'Do minimum'

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<sup>71</sup> Special drawing rights (SDR) are supplementary international reserve assets defined and maintained by the International Monetary Fund (IMF). They can be calculated into national currencies such as GBP.

<sup>72</sup> Under this proposal, Minimal Financial Assistance exemption subsidies would still have to comply with the WTO prohibitions for goods. These relate to subsidies that are contingent on export performance and subsidies that are contingent upon the use of domestic over imported goods.

<sup>73</sup> 45% of respondents answered Question 13 on whether thresholds for Minimal Financial Assistance subsidies should replicate the UK-EU TCA threshold of 325,000 Special Drawing Rights over a three-year period. Of those that responded to the question, 92% said yes. 39% of respondents answered Question 14 on whether thresholds should be fixed in GBP. Of those that responded, 88% said 'Yes'. 41% of respondents answered Question 15 on whether Minimal Financial Assistance subsidies should be exempt from all obligations under the domestic regime, except WTO prohibitions. Of those that responded, 93% said 'Yes'.

- **Option B:** Preferred option

#### Option A: 'Do minimum'

135. All subsidies in scope would be required to meet all obligations under the domestic regime under the baseline route. This option would, by definition, not lead to any additional impacts. However, the cost of complying with the baseline route is set out in the 'Key assumptions' section in paragraphs 80 to 83 of the Impact Assessment.

136. It should be noted that this 'do minimum' counterfactual differs from the interim regime adopted since 1 January 2021. The UK international subsidy control guidance<sup>74</sup> explained that this threshold applied to the UK from 1 January 2021.

#### Option B: Preferred option

137. The Government's preferred option is that:

- Minimal Financial Assistance subsidies will be exempt from all obligations under the domestic regime except the WTO prohibitions.<sup>75</sup>
- The threshold for exemption for Minimal Financial Assistance subsidies will replicate the threshold in the UK-EU TCA of 325,000 SDR<sup>76</sup> over a three-year period for most sectors.
- This will be fixed in GBP rather than SDR and at a level to account for a level of currency fluctuation. This value will be set at £315,000.<sup>77</sup>

138. Any subsidy given below the threshold can be exempt, but it does not have to be. The value threshold is a cumulative total that at a single recipient can receive over a three-year period. Such that, a recipient can receive a subsidy worth £315,000 through the exemption, but then it cannot receive any other subsidies through the exemption in the preceding three years and could not accept another subsidy through the exemption for the following three years. That recipient could still receive subsidies, but they must be awarded through the baseline route or another exemption.

#### Impacts analysis

139. The total scale of impacts from introducing an exemption for Minimal Financial Assistance subsidies will be proportionate to the number of subsidy schemes in scope of the exemption. Ideally, historical data on UK subsidies could be used to provide an illustrative estimate of the total number of subsidy awards that would fall below a value threshold each year. However, this is made difficult by data limitations:

- a. Data on historical UK subsidy awards is available from the European Commission's Transparency Award Module database.<sup>78</sup> However, State aid awards below €500,000 are not required to be reported under EU State aid rules. Although some public authorities voluntarily report awards below this threshold, data on awards below €500,000 is likely to be incomplete. Data available from the database is therefore

<sup>74</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

<sup>75</sup> Subsidies covered by the exemption for Minimal Financial Assistance subsidies would still have to comply with the WTO prohibitions for goods. These relate to subsidies that are contingent on export performance and subsidies that are contingent upon the use of domestic over imported goods.

<sup>76</sup> Special drawing rights (SDR) are supplementary international reserve assets defined and maintained by the International Monetary Fund (IMF). They can be calculated into national currencies such as GBP.

<sup>77</sup> We propose to take a power to set and amend these thresholds; they may be fixed at a lower amount of GBP to allow for exchange rate fluctuations.

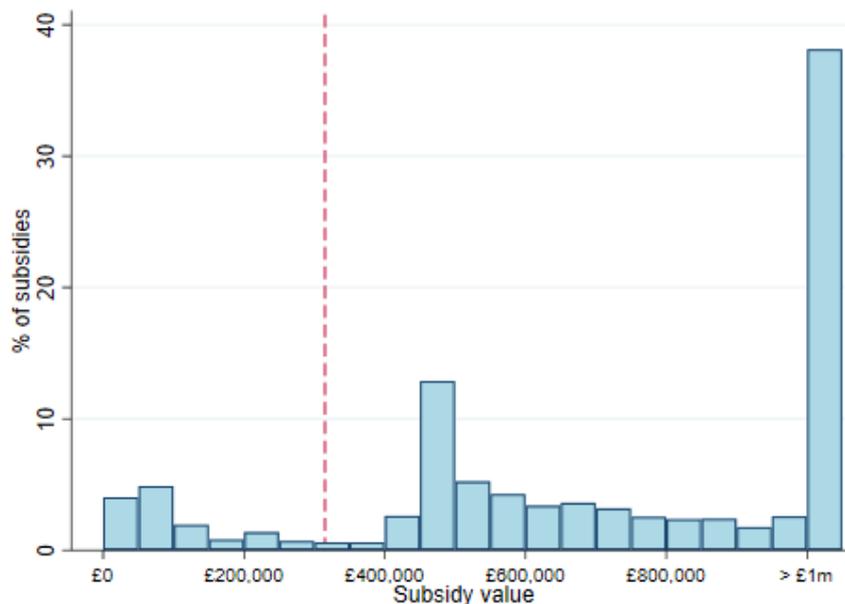
<sup>78</sup> European Commission. Transparency Award Module.

<https://webgate.ec.europa.eu/competition/transparency/public?lang=en>. [Accessed on 7 May 2021].

likely to significantly underreport the total number and value of lower value subsidies awarded.

- b. This data is also an imperfect indicator of the number of subsidies that could fall within the Minimal Financial Assistance exemption, as it gives the number of subsidies that fell below a particular value threshold, but not the cumulative value of subsidies awarded to individual subsidy recipients over a three-year period.
- c. We have explored through desk research and consultation whether any more complete data sources on the value distribution of subsidies granted exist. However, we have been unable to identify a more complete data source.
- d. The following graph (Figure 1) illustrates the distribution of subsidies reported by the UK from July 2016 to December 2020. Covid-19 related subsidies and tax measures have been excluded.<sup>79</sup> The red line marks a value threshold of £315,000.

**Figure 1: Value distribution of reported UK subsidy awards (July 2016 to December 2020, excluding tax measures and Covid-19 related subsidies)**



Source: BEIS analysis of European Commission Transparency Award Module data. Values in this graph are not inflation-adjusted. Tax measures and Covid-19 related subsidies have been excluded. This data is likely to underrepresent subsidies under the European Commission’s reporting threshold of €500,000 for the reasons explained above.

- e. Figure 1 shows that, excluding tax measures and Covid-19 related subsidies, approximately 14% of the total number of reported subsidies for this period were below £315,000 in value at the time of reporting. However, these subsidies only account for 0.4% of the total inflation-adjusted value of reported subsidies over this period.<sup>80</sup>

<sup>79</sup> Tax measures have been excluded as the value of these are reported as ranges (for example, £50,000 - £100,000), rather than exact figures. Covid-19 related subsidies have been excluded as they were awarded in unusual circumstances and are unlikely to be representative of subsidy awards over a more typical period. Reported Covid-19 related subsidies were mostly less than £315,000 in value and, if included, would account for around 30% of the total number of reported subsidies over this relevant period (but less than 1% of the total inflation-adjusted value).

<sup>80</sup> Figures comparing the total value of subsidies over the reported period are adjusted for inflation and expressed in 2019 prices.

- f. To compensate for the likely underreporting of lower value subsidies, we have analysed data on all reported subsidies (including tax measures) below £1 million in value at the time of reporting. Subsidies less than £1 million in value account for around 60% of the total number of reported subsidies, but only 13% of the total inflation-adjusted value of reported subsidies – lower value subsidies represent the majority of reported subsidies, but only a minor share of the total *value* of subsidy awards.
- g. Our analysis of the TAM database indicates that, for the same period, and noting the caveats set out above, there was a smoothed average of approximately 60 unique “aid measure titles” per year. We have taken this to be a proxy for the number of unique subsidy schemes and ad hoc measures per year. Our analysis indicates that around 20% of such schemes only provided subsidies below the minimal financial assistance exemption threshold value threshold.

140. Not all subsidies valued under the threshold will be given through the exemption. The value threshold is a cumulative total that a single recipient can receive over three financial years. Therefore, a subsidy awarded that is valued below the threshold can be given through the exemption but does not have to be nor is it exempt by default if the subsidy would push the recipients total amount received through the exemption over the threshold amount. For example, a recipient could receive three different awards through the exemption valued at £100,000 each (a total of £300,000). If the value threshold is set at £315,000 then the recipient could only receive £15,000 more through that exemption over the applicable three-year period. A public authority could award that recipient a subsidy of above £15,000 but it would need to be awarded through another exemption or through the normal route to awarding a subsidy. However, to account for the likely underreporting of low value subsidies we have uplifted this figure and assumed that, on average, as a central estimate, 15 subsidy schemes or unique subsidies would be covered by the minimal financial assistance exemption per year, with low and high sensitivities of 12 and 18 subsidy schemes per year respectively.

141. There will a benefit to public authorities in terms of reduced administrative costs associated with awarding subsidies in scope of the Minimal Financial Assistance exemption. We have produced an estimate for the total annual benefit by multiplying the estimated administrative burden per subsidy under the baseline route by the assumed number of subsidies that would be covered by the exemption. This leads to a central estimated total additional administrative burden saving of per year of approximately £11,100 and an NPV of £0.1m in the central scenario over 10 years with £0.0m and £0.3m as sensitivities.

**Table 8: Public authority administrative costs savings**

Scenario	Estimated administrative cost saving per subsidy scheme or bespoke subsidy <sup>81</sup>	Estimated number of subsidy schemes or bespoke subsidies covered by the exemption for Minimal Financial Assistance subsidies per annum	Estimated total administrative cost savings per annum
Central	£700	15	£11,100
High	£1,750	18	£33,300

<sup>81</sup> The calculations for producing these values for the ‘central’, ‘high’ and ‘low’ scenarios are set out in Table 7. Figures have been rounded to the nearest 10.

Low	£220	12	£2,760
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142. There may also be an indirect administrative cost saving for subsidy recipients in terms of the information that they are required to provide when they apply for a subsidy. However, we expect this impact to be small for the reasons set out in paragraph 82.
143. There will also be some benefit to public authorities in the form of reduced risk of legal challenge. This could also have an indirect impact on subsidy recipients as it would reduce the risk of recovery. However, we expect that this impact would be small, as evidence from case studies of subsidies granted within the EU indicates that the value of subsidies, relative to market size, is a key factor in determining the size and likelihood of competition distortions.<sup>82</sup> All else being equal, lower value subsidies have lower risk of causing distortions, therefore exempting them from the regime is unlikely to have a significant impact on the number of legal challenges brought. Caveats on the interpretation of evidence from historical EU State aid data on the number of subsidies or schemes which would have presented possible candidates for judicial challenge are set out in paragraphs 453 to 462.
144. We anticipate that additional familiarisation costs for public authorities and subsidy recipients from the exemption will be negligible, as the concept of exemptions for low value subsidies is well established and simple to follow. The UK international subsidy control guidance<sup>83</sup> explained that the threshold set out in the TCA applied to the UK from 1 January 2021. Under the EU State aid regime there is also a “De Minimis” exemption for low value subsidies, so public authorities familiar with the State aid regime will be familiar with the concept.
145. There could be some indirect benefit for subsidy recipients in terms the speed at which subsidies can be awarded, as a result of the reduced administrative burden. However, we do not anticipate that this impact will be significant for most subsidies because, as discussed in paragraph 83, we estimate that it will take public authorities approximately 11 hours, on average, to respect their obligations under the domestic regime via the baseline route.
146. The exemptions created by the Bill will also allow subsidies to be awarded in certain circumstances which might not be possible if one was following the standard procedure for awarding a subsidy.
147. Exempt subsidies may not be subject to the same level of scrutiny against the principles, so there may be some small increased risk of subsidies in scope having distortive effects, compared to the counterfactual. It is not possible to quantify this risk as impacts as this would vary on a subsidy scheme basis. However, as is outlined above, evidence indicates that lower value subsidies are generally less distortive. As such, is proportionate to minimise the requirements on lower value, and therefore, generally lower risk subsidies. There will also be significant overlaps with scrutiny conducted for spending control purposes, which means that any impact is likely to be negligible.

#### *Services of Public Economic Interest (SPEI)*

148. SPEIs are public services that would not be supplied (or would not be supplied under the required conditions) without public intervention, and which are of particular importance to citizens. Examples of an SPEI include social housing or rural public transport services.

<sup>82</sup> Oxera. (2017). Ex post assessment of the impact of state aid on competition. Publications Office of the European Union, Luxembourg.

<sup>83</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

149. The TCA sets out a higher exemption value threshold ceiling for Services of Public Economic Interest (SPEI) subsidies. The subsidy chapter does not apply to SPEIs below 750,000 SDR over a three-year period. There is an additional, specific exemption for SPEIs related to transparency. Further to the UK's TCA obligations, subsidies granted for SPEI will be required to meet certain conditions.

150. At the consultation stage the Government considered the following options:

- 'Do minimum' (no exemption for SPEI subsidies)
- Introduce exemption for SPEI subsidies, below the SDR value thresholds set out in the TCA
- Introduce lower value thresholds than those set out in the TCA
- Fixing the value threshold at an amount of pound sterling (GBP)

151. The Government's preferred option is to set the threshold at a fixed amount in GBP. This value will be set at £725k to account for currency fluctuations. As per the TCA, transparency exemptions will also apply to SPEI subsidies below 15 million SDR. Options for reducing this reporting threshold are considered in paragraphs 318 to 320 of the 'Transparency' section of this IA.

152. As is set out in more detail in the Government's response to the consultation on subsidy control, the majority of respondents to the relevant consultation questions supported this preferred option.<sup>84</sup>

153. The option of introducing a lower value threshold is, in comparison, not consistent with the Government's objectives, of minimising the administrative burden for lowest risk subsidies and has been discounted. Introducing a lower value threshold would result in fewer subsidies being exempt, and so result in a higher administrative burden for a subset of subsidies. We have, therefore, discounted this from our shortlist and not undertaken further analysis of this option.

154. We envisage that the impact of fixing the value threshold in pound sterling (GBP) as opposed to SDR will be negligible so, for simplicity, this has not been analysed as a separate policy option in this final Impact Assessment. Fixing the value threshold in GBP will add simplicity for public authorities and subsidy recipients.

155. We have analysed the impact of introducing the Government's preferred option against the 'do minimum.'

- **Option A:** 'Do minimum'
- **Option B:** Preferred option

#### Option A: "Do minimum"

156. Under the "do minimum counterfactual", all subsidies in scope would be required to meet all obligations under the domestic regime under the baseline route. This option would, by definition, not lead to any additional impacts. However, the cost of complying with the

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<sup>84</sup>38% of respondents answered Question 18 on whether the threshold for exemptions for SPEIs should reflect the terms of the UK-EU TCA. Of those that responded, 95% said 'Yes'. 34% of respondents then answered Question 19 on whether SPEI thresholds should be fixed at an amount of GBP. Of those that answered, 87% said 'Yes'.

baseline route is set out in the 'Key assumptions' section in paragraphs 80 to 83 of the Impact Assessment.

157. It should be noted that this "do minimum" counterfactual differs from the interim regime adopted since 1 January 2021. The UK international subsidy control guidance<sup>85</sup> explained that this threshold applied to the UK from 1 January 2021.

#### Option B: Preferred option

158. There is a rationale for having a higher exemption value threshold for SPEIs. SPEIs are public services that would not be supplied (or would not be supplied under the required conditions) without public intervention, and which are of particular importance to citizens. Given this, it is important to have additional flexibility, subject to additional conditions. Such subsidies are also less likely to be market distorting.

159. The nature of the impacts for public authorities and subsidy recipients would broadly be the same as those described above under our analysis of the Minimal Financial Assistance exemption.

160. The total scale of impacts from introducing the exemption for low value SPEIs will be proportionate to the number of subsidy schemes and/or bespoke subsidies in scope of the exemption. Ideally, historical data on UK subsidies could be used to provide an illustrative estimate of the total number of subsidy awards that would fall below a value threshold each year. However, this has not been feasible due to definitional challenges and data limitations:

- a. The definition of SPEIs will not be set out in legislation. The policy intention is to allow public authorities as much flexibility as possible to decide when to grant a subsidy for an SPEI, subject to guidance to be given by the Secretary of State. This mirrors the approach taken within the EU State aid rules for Services of General Economic Interest (SGEIs).
- b. Broadly speaking, the SPEI exemption is intended to achieve a similar effect in the UK as the EU State aid rules achieve in respect of Services of General Economic Interest (SGEIs). Under the State aid regime, there is a SGEI De Minimis Regulation for support of up to €500k over any three-year period. Support of up to €15m per annum is block exempted under SGEI. Only aid for SGEI that cannot be granted under the De Minimis or the SGEI must be notified under the SGEI Framework and approved by the European Commission before it can be granted.<sup>86</sup> TAM data does also not indicate whether a subsidy is for an SGEI. As such, the European Commission's TAM database cannot be used to provide an indication of the scale of impacts from the proposed SPEI exemption. We have not been able to identify any alternative data sources.

#### *Other exemptions*

161. At consultation stage the Government proposed:

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<sup>85</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

<sup>86</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/949159/withdrawn-state-aid-manual.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949159/withdrawn-state-aid-manual.pdf)

- a. Introducing an exemption for compensation in response to natural disasters and other exceptional circumstances.<sup>87</sup> The Government proposed to exempt these subsidies from provisions on principles, prohibitions and conditions in the subsidy control regime. They would still be subject to transparency obligations and subject to challenge through the courts on the relevant grounds.
- b. Introducing an exemption for subsidies granted temporarily to address a national or global economic emergency.<sup>88</sup> The Government proposed exempting this category of subsidies from the rules on prohibited and conditional subsidies.
- c. Introducing an exemption for subsidies where they are required for the purpose of defence or safe-guarding national security.

162. The Government also considered whether to explicitly carve out activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives.<sup>89</sup>

163. The Government's preferred option is to adopt the approaches proposed in the consultation for exemptions for subsidies for exceptional circumstances and for national and global emergencies. The government will also implement an exemption for subsidies where they are required for the purpose of defence or safe-guarding national security. The Bill will also make explicitly clear that activities conducted by the Bank of England in pursuit of monetary policy do not fall within the scope of the domestic subsidy control regime.

164. We have analysed the impact of introducing each of these exemptions in turn below. For each of these exemptions the 'do minimum' counterfactual is not to have an exemption.

165. Under the "do minimum" counterfactual, all subsidies in scope would be required to meet all obligations under the domestic regime under the baseline route. This option would, by definition, not lead to any additional impacts. However, the cost of complying with the baseline route is set out in the 'Key assumptions' section in paragraphs 80 to 83 of the Impact Assessment.

#### Exemption to compensate for exceptional circumstances

166. Under the TCA, subsidy awards to compensate for natural disasters and exceptional circumstances are exempt from principles, prohibitions, conditions and remedial measures.<sup>90</sup>

167. Subsidy awards in this category may include compensation for drought, flood, severe storms or wildfire or other exceptional non-economic circumstances such as compensating businesses for the immediate economic impact of a pandemic.

168. The Government wants to ensure that public authorities are able to deliver these time-critical subsidies with minimum bureaucracy and maximum certainty. The preferred option is therefore to introduce the exemption set out in the TCA. This proposal received strong support from consultation respondents.<sup>91</sup>

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<sup>87</sup> Such subsidies would be exempt from provisions on principles, prohibitions and conditions in the subsidy control regime. Under this proposal these subsidies would still be subject to transparency obligations and challenge through the courts.

<sup>88</sup> Such subsidies would be exempt from provisions on principles, prohibitions and conditions in the subsidy control regime. These subsidies would still be subject to transparency obligations and challenge through the courts.

<sup>89</sup> Bank of England Act 1998, section 11.

<sup>90</sup> TCA, Article 3.2 (1), 183. See <https://www.gov.uk/government/consultations/subsidy-control-designing-a-new-approach-for-the-uk> (page 26) for further detail.

<sup>91</sup> 44% of respondents answered Question 16 on whether relief for exceptional circumstances should be exempted from the principles, prohibitions and conditions of the regime. Of those that responded, 89% said 'Yes'.

169. The nature of the impacts for public authorities and subsidy recipients would broadly be the same as those described above under our analysis of the Minimal Financial Assistance exemption. The scale of impacts from this exemption will depend on the extent to which exceptional circumstances occur and the extent to which the Government decides to use subsidies as a mechanism to compensate for these. Given the unpredictable nature of exceptional circumstances, and the dependency on future Government decisions, it is not appropriate to use historical data to estimate the future volumes of subsidies awarded to compensate for exceptional circumstances.

#### Exemption for subsidies granted temporarily to address a national or global economic emergency

170. There is an urgent need for public authorities to rapidly respond and disburse temporary subsidies to address the effects of a national or global economic emergency, such as a financial crisis, and for measures taken by the UK authorities for prudential reasons, such as the protection of depositors or investors or to maintain the stability of the UK's financial system.

171. Under the TCA, subsidies granted temporarily to address a national or global economic emergency are exempt from the prohibition and remedial measures articles under the TCA, but public authorities still need to follow other provisions, including the subsidy control principles and transparency rules, when granting these subsidies.

172. The Government wants to ensure that public authorities are able to deliver these time-critical subsidies with minimum bureaucracy and maximum certainty. The preferred option is therefore to introduce the exemption set out in the TCA. This proposal received support from consultation respondents.<sup>92</sup>

173. The scale of impacts from this exemption will depend on the extent to which national or global economic emergencies occur and the extent to which the Government decides to use subsidies as a policy lever. Given the unpredictable nature of economic emergencies and the dependency on future Government decisions, it is not appropriate to use historical data estimate to attempt to estimate the future volumes of subsidies that would be granted to temporarily to address a national or global economic emergency.

#### Exemption for subsidies where they are required for the purpose of defence or safe-guarding national security

174. The rationale for this exemption is to allow time-critical subsidies to be delivered at pace; to maintain confidentiality for these sensitive subsidies; and to allow greater flexibility for the measures that can be used to support national security objectives.

175. The Government's preferred option is to provide a broad national security exemption, in line with the approach in other areas of UK law. This exemption reflects the unique nature of such subsidies – a State must be able to consider and address its own national security issues and take measures in response. The scale of impacts will depend on the volume of subsidies that fall within scope of the exemption. It is not appropriate nor feasible to use historical data to estimate future volumes of subsidies because information on such subsidies is too sensitive to be shared beyond the relevant Government departments.

176. Under EU State aid rules, measures for the purpose of defence or national security have never been considered to amount to aid or be within the scope of State aid control.

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<sup>92</sup> 42% of respondents answered Question 17 on whether temporary subsidies to address national or global emergencies should be exempted from the rules on prohibited subsidies and SPEIs. Of those that responded, 86% said 'Yes'.

Therefore, because these interventions have never been subject to a subsidy control regime, and Government does not intend to apply this in the future, we have not estimated the implicit saving from exempting national security subsidies from the regime.

Activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives

177. For the TCA, the UK and EU agreed to enter into a Joint Declaration to “confirm their mutual understanding that activities conducted by a central bank in pursuit of monetary policies do not fall within the scope of Chapter 3 [Subsidy control] of Title XI [Level playing field for open and fair competition and sustainable development] of Heading One [Trade] of Part Two of the TCA.”
178. The Government’s preferred option is to explicitly use this carve-out to exempt activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives.
179. In the BEIS consultation, it was noted that the Government is considering whether to explicitly carve out activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives from the scope of the regime. It did not, however, invite views as it was believed there was a strong case for this, though further policy development was needed in conjunction with HMT (Her Majesty’s Treasury) and the Bank of England.
180. This exemption reflects the unique nature of such activities. The Bank has statutory independence for monetary policy, and this is a crucial part of the macroeconomic framework. The absence of a carve-out could undermine the Bank’s independence in taking monetary policy decisions if subject to oversight and enforcement. Monetary policy decisions being overseen by a separate body could reduce its flexibility in designing appropriate monetary policy operations and hinder the ability of the Bank to respond quickly to crises. There are certain actions taken by the Bank in pursuit of monetary policy which, without a clear carve-out, could be subject to subsidy control requirements where they can be argued to fall within the definition of a subsidy. A carve-out is necessary to ensure that the Bank can carry out these monetary policy operations with increased certainty on their legal position.
181. Proposals must provide sufficient legal certainty for action for the Bank of England and HMT, while ensuring we remain consistent with the TCA – which would not be the case if subsidies were simply excluded from conditions and prohibitions. The TCA includes specific conditions for liquidity and restructuring subsidies to banks and insurance companies (insofar as they might affect trade with the EU). These are subject to exemptions including for economic and non-economic emergencies and a broad Prudential Carve-Out (PCO). It will be important that the new domestic regime allows for the Bank of England and HMT to intervene to support specific financial sector firms, if necessary, on financial stability grounds in circumstances other than a national emergency. The PCO provides an exception for such measures at an international level. Our competition objectives must also be met in a way that is consistent with the effective exercise of our powers under the Banking Act, including the framework for intervention set out in the Special Resolution Regime (SRR), and does not undermine our capabilities for swift and effective intervention (including covert action where necessary).
182. Any other policy option, such as transparency requirements, would be insufficient to put beyond doubt in the domestic legislative regime the position agreed by way of the Joint Declaration and would not give legal certainty as to how monetary policy measures are to be treated by the courts.
183. Under EU State aid rules, measures that are implemented by central banks in pursuit of monetary policy have never been considered to amount to aid or be within the scope of State aid control. Therefore, as above, because monetary policy has never been subject to a

subsidy control regime, and Government does not intend to apply this in the future, we have not estimated the implicit saving from exempting monetary policy subsidies from the regime.

## Prohibitions and conditions

184. At consultation stage the Government set out a number of prohibitions and conditions that will have to be implemented into the domestic regime due to the UK's international obligations. These prohibitions include unlimited guarantee subsidies, subsidies that are contingent on export performance, domestic-content subsidies and 'rescue' without 'restructure' subsidies. Bans of export subsidies and domestic-content subsidies are key to the UK's obligations under the WTO's Subsidies and Countervailing Measures Agreement. Further to this the UK EU TCA sets out three categories of subsidies where specific conditions apply. There are several conditions on subsidies to banks, credit institutions and insurance companies, including the need for a credible restructuring plan that restores long-term viability. Subsidies granted to an air carrier for the operation of routes must meet specific conditions, including, for example the satisfaction of a public interest test. There are specific conditions – relating mainly for the need to demonstrate societal benefit in another country – for projects that involve large cross-border or international cooperation. In addition the consultation asked whether there should be any further categories of subsidies that should either be outright prohibited or whether there should be any further subsidies where further prohibitions apply.

185. Therefore, at long list stage there are the following options:

- a. The 'do minimum' option to implement the prohibitions and conditions that are set out in international obligations but only for subsidies that affect trade with the specific trading partner that the obligations relate to
- b. To define the 'do minimum' categories of subsidies more broadly so that they cover all subsidies that fall into these categories rather than just goods or those that affect trade with a specific partner.
- c. To include further conditions or prohibition on different categories of subsidies

186. At long list stage option a) was rejected as this would require public authorities to self-assess compliance against several trade agreements. The subsidies prohibited in the TCA are those which would also affect the UK's WTO and other FTA commitments, and do not include subsidies which have net-beneficial impacts. Therefore, asking public authorities to conduct different assessments is unlikely to be proportionate and would generate unnecessary administrative costs at the public authority level. This is counter to the Government's strategic objective of having a flexible system that minimises bureaucratic burden for subsidy awarders and recipients.

187. To preserve flexibility to use subsidies to deliver policy objectives at long list stage it has only been deemed preferable to add additional prohibitions or conditions in instances where this would meet other strategic objectives. The two relevant objectives – where prohibitions or conditions may deliver these objectives – are the desire to protect UK competition and investment and to ensure a flourishing, market centric domestic economy. As prohibitions and conditions that meet these objectives are considered alongside other policy instruments to deliver these strategic objectives in the 'Measures to protect UK competition and investment' section of this Impact Assessment then these impacts have not been reconsidered in this section.

188. Therefore, the remaining options on the short list are the 'do minimum' options and the relevant sections of the 'Measures to protect UK competition and investment' section. As that section sets out, an additional rule to protect UK competition and investment – which

effectively prohibits a narrow proportion of subsidies relating to the relocation of economic activity is the preferred option in this area beyond the 'do minimum'. The impacts of this option are considered in the relevant section.

## Measures to protect UK competition and investment

189. Two of the four objectives of the subsidy control regime set out in the consultation were to protect the UK internal market and to maintain a competitive and dynamic market economy. The consultation set out that the subsidy control regime should discourage or prohibit subsidies that are likely to cause harmful distortion to competition and investment in the UK, such as giving a business in one nation or region an unfair competitive advantage over those operating in another area. Furthermore, it set out issues around the misuse of subsidies for reasons other than addressing forms of market failure or to deliver other social equity objectives such as providing transport for residents of remote areas.
190. Subsidies can set harmful business expectations about the extent and nature of future support. A 'culture of subsidies' can lead to businesses relying on government support rather than taking action to address inefficiencies.<sup>93</sup> Similarly, if subsidies are for a specific activity – such as investing in research and development – an expectation of a subsidy may discourage businesses from undertaking this activity pre-emptively.<sup>94</sup> Relatedly, subsidies can make inefficient use of government resources by funding activity that would have happened anyway.<sup>95</sup> Repeated subsidies to the same industry can also lead businesses to lobby for further subsidies and continue investing in activity that may not be efficient in the long term.<sup>96</sup>
191. Green Book supplementary guidance,<sup>97</sup> economic theory,<sup>98</sup> past evidence from case studies,<sup>99</sup> and best practice in other competition areas<sup>100</sup> overwhelmingly suggest that it is not the size of the subsidy but the size of the subsidy relative to size of the market and size of the recipient relative to the market that impacts competition. Economic theory and current EU best practice under State aid rules suggests that any measure that is targeted at subsidies that distort domestic competition, would also reduce the risk of cross-border domestic and international trade distortions.<sup>101</sup>
192. The consultation set out a series of measures that have been considered as the long list of options for addressing these objectives. In all areas the minimal level of administrative burden to achieve these policy objectives has been considered including non-regulatory options. The long list of options as set out in the consultation document are:

### Option A: 'Do minimum'

- No additional measures beyond assessment against the principles as the 'baseline' route

### Option B: Additional assessments undertaken at the public authority level

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<sup>93</sup> Friederiszick, H. W., Röller, L. H., & Verouden, V. (2006). European state aid control: an economic framework. Handbook of antitrust economics, 625-669.

<sup>94</sup> Ibid.

<sup>95</sup> Mazzucato, M. (2013). The Entrepreneurial State: Debunking Public vs. Private Sector Myths, 1.

<sup>96</sup> Ibid.

<sup>97</sup> <https://www.gov.uk/government/publications/green-book-supplementary-guidance-competition>

<sup>98</sup> [http://www.ofc.gov.uk/shared\\_ofc/reports/comp\\_policy/ofc750.pdf](http://www.ofc.gov.uk/shared_ofc/reports/comp_policy/ofc750.pdf)

<sup>99</sup> <https://ec.europa.eu/competition/publications/reports/kd0617275enn.pdf> and [Ex-post evaluation of the impact of restructuring aid decisions on the viability of aided \(non-financial\) firms.](#)

<sup>100</sup> <https://www.gov.uk/government/publications/merger-assessment-guidelines>

<sup>101</sup> [https://ec.europa.eu/economy\\_finance/publications/pages/publication\\_summary813\\_en.htm](https://ec.europa.eu/economy_finance/publications/pages/publication_summary813_en.htm)

- Additional principle and amendment of existing principles to include domestic impacts
- Further detailed assessment

Option C: Additional assessments and measures undertaken by independent body

- Pre-award review

Option D: Additional rules and prohibition on the relocation of economic activity

193. The Government's aim is to develop a proportionate risk-based approach that balances the potential risk of distorting UK competition and investment and not complying with our international obligations against any potential increased administrative burden to public authorities. To achieve this, the Government will ensure that the core requirement for the vast majority of subsidies will be a simple assessment of compliance against the main subsidy control principles.
194. To ensure that additional attention is given to subsidies that are more likely to cause negative competition effects within the UK and on international trade or investment, we will create two further categories of subsidy beyond the 'baseline route': Subsidies of Interest, and Subsidies of Particular Interest. In addition, there is a further category of subsidies that relocate economic activity without net benefit that the Government proposes to prohibit.
195. All of the long list options have been considered for each of these categories of subsidies, and the remaining sections focus on the shortlist of options for the treatment and definition of each of these categories.

*Baseline subsidies*

196. For a subsidy to be granted it must be designed to specifically address a policy issue or market failure. Once this criteria has been satisfied, the subsidy will have a lower risk of distortionary effects and have greater potential to be net beneficial. Therefore, for the vast majority of subsidies, introducing prohibitions or increased assessments undertaken by the independent body have been ruled out at long list stage. Lengthy independent assessments or blanket prohibitions are unlikely to be a proportionate way to determine subsidies with net economic benefit and introducing such processes would not fulfil the Government's wider strategic objective to create a flexible regime that reduces administrative burden where appropriate. There are therefore three broad options in the short list for baseline subsidies: 'do minimum'; introducing an additional principle on protecting UK competition and investment alongside explicitly stating that the wider principles should focus on domestic impacts; and additional principles that are not specifically related to the protection of UK competition and investment. The consideration of 'additional principles' is set out in an above section, therefore the two remaining short list options considered in this section is the 'do minimum' option and to introduce an addition principle.
197. By definition, the 'do minimum' approach – of not requiring an additional principle for 'baseline' subsidies would not lead to any *additional* impacts. However, the cost of complying with the baseline principles is set out in the 'Key assumptions' section earlier in the IA. The rationale for not requiring an additional principle is that it reduces the administrative burden to public authorities, however this may be at the expense of a consideration of the impacts that any subsidy might have on UK competition and investment.
198. In comparison introducing an additional principle alongside amending existing principles would reduce the risk that a subsidy that distorts UK competition and investment is awarded – and encouraging these subsidies to be redesigned or avoided by giving public authorities the tools and incentives to consider these impacts at the stage of award. To support public

authorities to comply with this principle and to consider domestic impacts elsewhere in assessments when granting a subsidy, the Government will publish guidance on how to assess these impacts. The combination of additional principle, amendments to the existing principles and guidance will seek to reduce the risk of “subsidy races” between authorities by setting out how authorities should consider impacts on other areas in the UK (including the impact of new investment not going to those other areas).

199. At consultation stage the following costs were identified in association with the additional principle, these costs will also apply to amendments to the existing principles:
- a. **For public authorities** – the increased administrative cost of complying with the principle. There may also be an increased cost for using professional / legal services.
  - b. **Unintended indirect cost** – of limiting some subsidies that could be net-beneficial – in instances where the principle may encourage over-caution.
  - c. **Greater judicial and oversight costs** – from considering subsidy award decisions against a further principle.
200. Due to lack of data on the impact of a new principle and amending existing principles implemented into a new domestic subsidy control regime, it is not possible to accurately assess these additional costs of complying with any additional principle or amended principle. As an illustrative assessment, if we assume that this adds an additional one-sixth onto the administrative costs identified in paragraph 83 for assessment against the principles this would lead to a cost of £41 per ad hoc subsidy or scheme in the central case, £102 in the high scenario and £13 in the low scenario. Over 60 unique measures per year this would lead to a NPV of £0.02m in the central scenario, with £0.01m and £0.05m in the low and high scenarios respectively. Due to lack of data on how an additional principle would affect public authority behaviour, it has not been possible to monetise or quantify the unintended indirect cost described above. The risk of this unintended consequence is likely to be mitigated by clear guidance, and therefore there is also insufficient policy detail to monetise or quantify these costs. The Government anticipates that this unintended indirect consequence will likely only impact a small number of additional subsidies per year as the high standard for Judicial Review may mitigate any excessive cautiousness in instances where the other principles are complied with. In instances where there is not a demonstrable net benefit then the cost of reducing these subsidies may be negligible – as for these subsidies there may be a greater chance that there is no net benefit.
201. The similar lack of data on how an additional principle would affect public authority behaviour also means that it has not been possible to monetise or quantify the increased judicial and oversight costs for reviewing an additional principle. The Government anticipates that this will likely only impact a small number of subsidies – as set out in the ‘Judicial enforcement’ section of this Impact Assessment. Furthermore, the impact per subsidy affected is likely to be negligible as the marginal cost of considering an additional principle will be low compared to the fixed cost of enforcement and oversight per subsidy considered – i.e. the cost is unlikely to ‘scale up’ considerably based on an additional principle given that there are already 6 principles considered in the baseline.
202. At consultation stage two benefits were also identified in relation to the additional principle – the indirect positive competition impacts and the indirect greater value for money from the indirect impact that the greater consideration of these costs before subsidies are awarded. These benefits will also apply to amending existing principles to also focus on domestic impacts. Earlier sections of this IA set out the academic evidence on the ways that subsidies impact competition – and the associated impacts that these have on businesses and consumers. Economic theory and policy knowledge also would suggest that an additional principle would lead to a greater consideration of these costs – and therefore

subsidies that may be at risk of distorting UK competition and investment would be more likely to be redesigned to reduce the risk of this distortion or not awarded all together. There is however insufficient data on the behavioural impact that a new additional principle or amendments to existing principles would have on public authority behaviour and there is no existing evidence on the overall quantitative cost that a distortive subsidy may have to society. These benefits will cover the same volume of subsidies so using tipping point analysis they would have to be 0.0001% of each award on average to account for the costs.

203. Based on the balancing test of the costs and benefits the Government takes the view that the benefits in terms of increased consideration of UK competition and investment impacts are sufficient to account for the increased administrative cost. Therefore, the Bill includes an additional principle that requires public authorities to consider UK competition and investment impacts prior to awarding subsidies. This view is reinforced by consultation responses, where 78% of the 44% that responded to the relevant question<sup>102</sup> said that there should be an additional principle to protect the UK internal market.

204. Further analysis of options around the guidance for 'baseline subsidies' and appropriate UK competition and investment impacts will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

#### *Subsidies of Interest*

205. Beyond the 'baseline' route there are a further category of subsidies that may be at a higher risk of distorting the UK competition and investment and international trade and investment, however these may require additional specific knowledge – beyond what would be possible in a simple screening exercise – to determine the need for a further assessment. These subsidies have the potential to have net benefit, but a further assessment may be desirable to determine the full range of costs and benefits. Therefore, for these subsidies, a direct prohibition at one end of the spectrum and a reliance on principles alone on other end has been ruled out at long list stage. The former is likely to not be value for money and would not meet the strategic objective of protecting UK domestic competition and investment and maintaining a dynamic market economy the latter would also likely not be net beneficial and would contravene the objective for a flexible regime with minimal administrative costs. The short list of options in this area include [optional] further technical assessments against the subsidy control principles and pre-award advice.

206. In this instance the 'do minimum' approach – of not designating a category of 'Subsidies of Interest' – is for subsidies to go through the 'baseline' subsidies route by definition this would not lead to any *additional* impacts. However, the cost of complying with the baseline principles is set out in the 'Key assumptions' section earlier in the Impact Assessment.

207. For these subsidies, the Government is considering at short list stage a further in-depth assessment of the principles encouraged via guidance but non-mandatory and that covers domestic competition impacts only. This form of assessment is based on the strategic rationale for a flexible light touch approach which is appropriate here as specific details on the subsidy design and recipient itself may be needed to determine whether a further assessment would be useful at the individual subsidy level. Further details of this more in-depth assessment – including precisely what it will entail – will be set out in guidance, and thus the specific impact of these features has not been possible to incorporate at this stage. For the purposes of identifying impacts the Competition Impact Review detailed at consultation stage is used as an illustrative example to demonstrate impacts of the in-depth assessments – in practice the further technical assessments are likely to touch upon

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<sup>102</sup> Question 10: "Do you agree with the inclusion of an additional principle focused on protecting the UK internal market by minimising the distortive effects on competition?".

competition impacts as well as the wider principles. At consultation stage the following costs were associated with this type of Competition Impact Review:

a. **For public authorities** – familiarisation costs and administrative costs

208. In addition – following the publication of the consultation stage Impact Assessment – we have also identified a potential judicial cost for recommending an additional process and an additional familiarisation costs, legal and monitoring cost to businesses who are likely to familiarise themselves with the guidance in relation to further technical assessments.
209. We follow the Standard Cost Model for familiarisation and administrative costs to both businesses and public authorities. For the administrative cost the time taken per technical assessment is taken from an OECD survey of competition impact assessments that currently apply across the OECD<sup>103</sup> – a figure of 0.17 FTEs is taken from this source. This data source is used as there is no similar evidence base on the time taken to undertake the similar UK specific competition assessments that currently exist. To apply this time figure to the UK context we assume that the central, high and low wage per year is consistent with paragraph 83 of the ‘Familiarisation and administrative costs’ section. A 21.80% wage uplift is applied to this to account for accommodation and related non-labour costs. Whilst details to be included in future guidance will determine which subsidies are designated as ‘subsidies of interest’ an illustrative figure of 10 subsidies or schemes per year is taken as central assumption for the number that opt to undertake a competition impact review with 5 and 20 per year taken as conservative sensitivities. Using these assumptions the administrative burden for undertaking further technical assessments of the principles is £11k per subsidy in the central scenario, with £7k and £14k as the low and high scenarios respectively. Multiplied over the illustrative number of subsidies per year this gives an NPV of £0.9m in the central scenario and £0.3m and £2.4m for low and high sensitivities respectively.
210. As the Subsidies of Interest process only applies to a small number of subsidies it is assumed that only public authorities and businesses that award or are awarded subsidies will familiarise themselves with the guidance relating to Subsidies of Interest. We assume that the wage assumptions in the low, central, and high scenarios are in line with the broader subsidy control regime familiarisation costs as set out in paragraphs 72 to 79. Whilst the exact details of the further detailed assessment will be set out in guidance, the current Green Book guidance<sup>104</sup> has been taken as an illustration for the length of guidance. We assume that it takes 75 words per minute to be familiar with this guidance taking the low point of the technical guidance estimates provided in the Business Impact Target Appraisal Guidance. The illustrative assumptions around the number of subsidies and schemes and therefore businesses and public authorities affected is taken from paragraph 208. Taken together these assumption lead to a cost of £74 per subsidy in the central assumption for the cost to public authorities and £45 and £92 for the sensitivities. For businesses, the familiarisation cost per subsidy is £65 in the central, low and high scenarios. This leads to a NPV of £0.01m for public authorities in the central scenario and £0.00m, and £0.02m for the respective sensitivities. For business the NPV in the central scenario is £0.01m, with £0.00m and £0.01m for respective sensitivities.
211. Further to this cost there may also be a direct cost to business that go through the Subsidies of Interest Process as they may wish to seek legal counsel on the process and likely outcome. This is associated with the cost to business of seeking legal advice itself as well as the cost to monitor the process. Consistent with the ‘Key assumptions’ section, it is assumed that this legal advice would take the equivalent of two counsels, costing £480 per hour the equivalent of one day in the central scenario, half a day in the low scenario and two

<sup>103</sup> (Figure 13, Competition IA FTE, page 35) <https://www.oecd.org/daf/competition/Comp-Assessment-ImplementationReport2014.pdf>

<sup>104</sup> <https://www.gov.uk/government/publications/green-book-supplementary-guidance-competition>

days in the high scenario. These assumptions have been used in the absence of empirical data on the business response to a new process. This gives a cost of £7k per subsidy of interest under the central scenario, £3.5k under the low scenario and £14k under the high scenario. Multiplied over the volumes assumption this gives an NPV in the central scenario of £0.6m with £0.2m and £2.4m as sensitivities. In addition to this cost there may also be a direct cost to business of hiring and interacting with legal counsel and monitoring the subsidies of interest process. Consistent with the 'Key assumptions' section, it is assumed that a business this will require the equivalent of half of a full time 'business manager' over half of a working month to undertake. This wage rate is taken from the Annual Survey of Hourly Earnings<sup>105</sup> and has been updated by 21.80% to account for non-wage costs. These assumptions have been used in the absence of empirical data on the business response to a new process. Using these assumptions the cost to business for monitoring this process is approximately £3k. Multiplied over the assumed volume of Subsidies of Interest this gives a NPV of £0.2m in the central scenario with £0.1m and £0.5m as sensitivities.

212. The benefit of a further assessment against the principles as set out in the consultation Impact Assessment is the positive impact this has on competition. Earlier sections of this IA set out the academic evidence on the ways that subsidies impact competition – and the associated impacts that these have on businesses and consumers. Economic theory and policy knowledge also would suggest that there an additional competition impact review would lead to a greater consideration of these costs – and therefore subsidies that may be at risk of distorting UK competition and investment would be more likely to be redesigned to reduce the risk of this distortion or not awarded all together. There is however insufficient data on the behavioural impact that further assessment would have on public authority behaviour and there is no existing evidence on the overall quantitative cost that a distortive subsidy may have to society.
213. The cost to government of interacting with the independent body for pre-award advice, as well as the cost to the independent body itself to undertake the advice is set out in the 'Independent body' section of this Impact Assessment.
214. Due to the fact the existing evidence on the potential harms of some subsidies and the minimal additional regularity cost the 'preferred option' is for an optional further assessment against the principles and/or an optional assessment undertaken by the independent body. As these are not mandated, the regularity burden will only fall on subsidies where the public authority believes there is a risk of domestic distortions impacts – for this reason, and due to the low administrative cost compared to the potential benefits – it is likely only to be undertaken in situations that are net beneficial. The preferred option for Subsidies of Interest is that subsidies in this category are to be allowed to seek pre-award advice from the independent body and are recommended to undertake a further detailed assessment.
215. Further analysis of options around the guidance for subsidies of interest in instances where they do not receive pre-award advice, the specific definition of Subsidies of Interest, and the nature of advice will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

#### *Subsidies of Particular Interest*

216. As well as Subsidies of Interest there are a further category of subsidies, Subsidies of Particular Interest that may be at an even higher risk of distorting UK competition and investment or be subject to domestic or international challenge. These may be so high risk that they could be meaningfully identified using a simple screening exercise to determine the need for a further assessment. These subsidies have the potential to have net benefit, but a

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<sup>105</sup>ONS ASHE 2019 (Revised) table 14.5a Hourly Pay - Gross - For FTE jobs - Median wage for 'corporate manager or director'.

further assessment may be desirable to determine the full range of costs and benefits. Therefore, for these subsidies, a direct prohibition at one end of the spectrum and a reliance on principles alone at the other has been ruled out at long list stage. The former is likely to not be value for money and would not meet the strategic objective of protecting the UK domestic competition and investment and maintaining a dynamic market economy the latter would also likely not be net beneficial and would contravene the objective for a flexible regime with minimal administrative costs. The short list of options in this area include [mandatory] further technical assessments against principles and pre-award advice.

217. In this instance the 'do minimum' approach – of not designating a category of 'Subsidies of Particular Interest' – is for subsidies to go through the 'baseline' subsidies route by definition this would not lead to any *additional* impacts. However, the cost of complying with the baseline principles is set out in the 'Key assumptions' section earlier in the Impact Assessment.
218. The rationale and impacts associated with the further in-depth assessments and pre-award advice are set out in the 'Subsidies of Interest' section. The rationale and benefits will be similar for Subsidies of Particular Interest – with the difference being that the benefits may be a larger magnitude, and the rationale for these features to be at the discretion to the public authority does not apply to Subsidies of Particular Interest. This is because this category of subsidies will be specifically designed to capture subsidies that can be screened for a high level of risk using simple screening metrics alone.
219. As the details will be set out in future guidance it is not possible at this stage of policy development to definitively determine how many subsidies per year this would capture. Thresholds will be based on publicly available or easily accessible information, which could include the subsidy's absolute value, its value relative to the size of the market in which the recipient is operating, the sensitivity of the sector, and other factors based on the objective of the subsidy and how it has been awarded. Both categories will be a small proportion of the overall number of subsidies granted under the new domestic regime. On this basis – as an illustrative assumption – we assume that this will cover 10 subsidies per year, with 5 and 15 taken as the low and high sensitivities.
220. Using this volumes assumption and the methods set out in the 'Subsidies of Interest' section the NPV for administrative costs to public authorities of the further in-depth assessments is £1.0m in the central scenario and £0.3m and £2.4m for low and high sensitivities respectively.
221. Applying the methods described in the 'Subsidies of Interest' section the familiarisation cost to public authorities is of £0.01m in the central scenario and £0.00m, and £0.01m for the respective sensitivities. For business, the NPV in the central scenario is £0.01m, with 0.00m and 0.01m for respective sensitivities.
222. Applying the methods described in the 'Subsidies of Interest' section the cost to business of seeking legal counsel is £0.6m in the central scenario with £0.2m and £2.4m for sensitivities. Similarly, the cost to businesses of monitoring the Subsidies of Particular Interest process is £0.2m in the central scenario, with £0.1m and £0.5m for sensitivities.
223. The cost to government of interacting with the independent body for pre-award advice, as well as the cost to independent body itself to undertake the advice is set out in the 'Independent body' section of this Impact Assessment.
224. Requiring these processes – rather than making them optional as per 'Subsidies of Interest' – may have an unintended consequence of 'creative compliance'. Public authorities might redesign their subsidies to avoid scrutiny or potential beneficiaries to scale-back their

ambitions (e.g., carve programmes up into smaller projects at the expense of synergies) leading to lower net benefits.

225. Due to the fact the existing evidence on the potential harms of some subsidies and the minimal additional regularity cost, the ‘preferred option’ is for a mandatory further in-depth assessment and a requirement to undergo an assessment undertaken by the independent body. On the assumption that the simple screening method is successful at identifying the highest risk subsidies, the regularity burden will fall only on subsidies where there is a risk of negative domestic competition impacts – for this reason, and due to the low administrative cost compared to the potential benefits – it is likely only to be undertaken in situations that are net beneficial. Therefore, the preferred option for Subsidies of Particular Interest is that subsidies in this category are required to seek pre-award advice from the independent body and to undertake further technical assessments.
226. Further analysis of options around the guidance for, the specific definition of Subsidies of Particular Interest, and the nature of advice will continue to be produced in the appropriate, and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

#### *Prohibited subsidies*

227. A key priority of this Government is to help those regions that have been left behind and level up prosperity across the UK. Subsidies, alongside other forms of intervention, will be important tools as all levels of government work together to address regional imbalances. However, it is also important that this vital support is delivered in a way that protects UK domestic competition and investment. At long list stage we have therefore ruled out a prohibition on all ‘location-specific’ subsidies, as the cost of unintentionally prohibiting some subsidies which would be net beneficial will likely outweigh the benefit of capturing the subset of subsidies that would be harmful to UK domestic competition and investment. Such a measure is not in line with the wider strategic objective to create a flexible regime that reduces administrative burden where appropriate and enables public authorities to deliver support where needed. Instead, the Government has sought to develop a narrower measure that specifically limits the use of subsidies contingent on relocation within the UK which are designed to ‘poach’ economic activity and jobs from one area to another without providing net benefit for the UK as a whole.
228. Economic activity is defined in this context as business’ use of labour and capital to produce goods and services. A subsidy therefore leads to relocation if increased economic activity in the public authority’s jurisdiction is offset by a decrease in the same or similar activity conducted by the subsidy recipient in another location.
229. Subsidies that solely aim to relocate economic activity from one region of the UK to another may appear to add value at a local level, but will not provide a net benefit at a UK-wide level since no additional economic activity is generated by the subsidy. This type of subsidy generates a deadweight loss both in terms of the inefficient allocation of resources within the UK economy and the cost of raising public funds allocated to these subsidies. The movement of economic activity also incurs transaction costs which further reduce the economic efficiency of the subsidy. The Government therefore proposes a measure to protect UK domestic competition and investment by prohibiting the use of this narrow category of particularly distortive subsidies.
230. There is an additional risk of subsidy races occurring if public authorities can use subsidies to compete to relocate potential recipients between jurisdictions with no net benefit to the UK as a whole. This would waste significant public resources, with no net benefit for the wider economy and only narrow financial benefit for the subsidy recipient. The occurrence of subsidy races would be especially detrimental to regions where public

authorities are unable to compete against other authorities with greater spending power as subsidies are 'bid up' in value to attract potential recipients.

231. At the consultation stage we proposed the following options:

- a. **Option A:** 'Do minimum', i.e. no rules on the use of subsidies for the relocation of economic activity
- b. **Option B:** Introducing a rule that explicitly limits the use of subsidies for the relocation of economic activity within the UK, drawing upon a similar system that limits relocation subsidies between provinces in Canada

232. The consultation asked whether a measure would be beneficial to prevent subsidies that encourage uneconomic migration of jobs between the four nations.<sup>106</sup> Of the respondents who answered this consultation question, 63% agreed with the inclusion of such a measure. A few respondents referenced the need to balance the considerations around protecting the UK internal market with the levelling up agenda. Of these respondents, the majority referenced producing new UK "Assisted Area" maps as a way to achieve this.

233. Under State aid, assisted areas maps are used to guide public authorities on where they can allocate regional aid subsidies, although they limit the use of these subsidies to just these areas. A map prescribing disadvantaged areas is not required for the functioning of the new regime. However, in parallel to these options, work is underway to consider if a future UK map may be relevant to consideration of disadvantaged areas for the purposes of the subsidy control system.

234. Academic stakeholders were broadly in agreement with the need for a measure to limit or require extra scrutiny for subsidies that relocate economic activity. This was driven by the reasoning that public authorities may not be sufficiently incentivised or equipped to account for the effects of relocation on other regions at a UK-wide level when granting subsidies.

235. There are therefore four options in the short list for addressing subsidies that aim to relocate economic activity:

- a. **Option A ('Do minimum')**: There is no international obligation requiring any specific rule on subsidies intended to relocate economic activity within the UK. The 'do minimum' is therefore to have no additional rules for this type of subsidy. The rationale for not introducing additional rules is that it reduces the administrative burden and enforcement cost to public authorities and the independent body respectively.
- b. **Option B:** This option introduces a prohibition on subsidies that are explicitly contingent on the relocation of existing economic activity in the UK, where a public authority offers a subsidy with the intention of moving existing economic activity from another jurisdiction to its own jurisdiction. The prohibition would only apply to subsidies targeting activity located in the UK and not to economic activity located offshore.
- c. **Option C:** This option introduces a prohibition on subsidies that are explicitly contingent on the relocation of existing *and* new economic activity in the UK, extending the prohibition to subsidies targeting new activity (from either foreign or

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<sup>106</sup> Question 26: "Should there be additional measures to prevent subsidies that encourage uneconomic migration of jobs between the four nations?". 27% of consultation respondents answered this question.

domestic investment) which would have located elsewhere in the UK in the absence of a subsidy.

- d. **Option D:** This option introduces a prohibition on subsidies that are explicitly contingent on the relocation of existing economic activity in the UK *and* subsidies that are explicitly contingent on the retention of existing economic activity which would have relocated elsewhere in the UK in the absence of a subsidy.

### *Rationale*

#### Option B

236. A prohibition which precisely targets all 'location-specific' subsidies of concern would be difficult to define without unintentionally deterring authorities from granting subsidies that are net beneficial at the UK-wide level, due to the risk of challenges ex-post. This narrow prohibition focuses on a tightly-defined set of subsidies that are not explicitly covered by proposed or existing subsidy controls. The additional principle and assessments proposed in earlier sections are likely to be sufficient to address other concerns related to protecting UK competition and investment by more broadly ensuring that distortive impacts are taken into account.

#### Option C

237. Extending the prohibition would additionally capture subsidies that solely aim to attract new economic activity away from other regions of the UK and therefore generate no net benefit at the UK-wide level when compared to the counterfactual outcome. Without this explicit prohibition, there is a risk that public authorities will not have sufficient incentive to consider the net impact of this type of subsidy on economic activity in areas outside of their own jurisdictions.

#### Option D

238. Extending the prohibition would additionally capture subsidies that solely aim to prevent economic activity from relocating and therefore generate no net benefit at the UK-wide level when compared to the counterfactual outcome. Without this explicit prohibition, there is a risk that public authorities will not have sufficient incentive to consider the net impact of this type of subsidy on economic activity in areas outside of their own jurisdictions.

### *Impact analysis*

239. The scale of impact from introducing a prohibition will be proportionate to the number of subsidy schemes and unique subsidies in scope of the prohibition, but it is not possible to precisely identify which subsidies would be in scope based on the historical data available. The volume of regional development subsidies from the TAM database is therefore used as a purely illustrative example, assuming that regional development subsidies may be most likely to be impacted by a prohibition related to the regional distribution of economic activity. However, this figure will clearly be an overestimate of the number of subsidies that would be in scope of the prohibition, given that it is highly unlikely that all such subsidies would be explicitly contingent on the relocation of economic activity.

240. From July 2016 to December 2020, there was a smoothed average of approximately 11 regional development subsidy schemes or unique subsidies per year. As caveated above, the Government does not anticipate this figure to be representative of subsidies in scope of the prohibition and instead interprets this as an upper bound. As an illustrative example, we therefore assume that 6 subsidy schemes or unique subsidies would be in scope of the

prohibition per year as a central estimate, with low and high sensitivities of 1 and 11 subsidy schemes or unique subsidies per year respectively.

## Costs

241. At consultation stage, the following costs were identified in association with the introduction of a prohibition:
- a. **For public authorities** – the increased administrative cost of complying with the prohibition. However, this would be offset by a reduction in administrative cost from subsidies that are not granted due to the prohibition.
  - b. **Unintended indirect cost** – of limiting some subsidies that could be net beneficial in instances where the prohibition may encourage over-caution.
  - c. **Greater judicial and oversight costs** – from considering subsidy award decisions against the prohibition.
242. There will be a benefit to public authorities in terms of reduced administrative costs associated with subsidies not granted due to the prohibition, which would have been granted under the 'do minimum' option. Of the administrative costs set out in paragraph 81 of the 'Familiarisation and administrative costs' section, public authorities would not incur costs from assessing subsidies against the principles or recording the award of the subsidy on the subsidy database compared to the counterfactual as these tasks would not be undertaken once it is determined that the subsidy is prohibited. Using the assumptions set out in earlier sections of this Impact Assessment on time taken, wages and uplift, the reduction in administrative costs is approximately £3,800 per year in the central scenario, with £200 and £17,300 as the low and high scenarios respectively. This gives an NPV of £0.03m over 10 years in the central scenario and £0.00m and £0.15m for low and high sensitivities.
243. Although it is possible that there will be an administrative cost for public authorities to consider an additional prohibition when designing a subsidy or subsidy scheme, the Government anticipates that this will likely only impact a small number of public authorities. Furthermore, the impact per subsidy affected is likely to be negligible as the marginal cost of considering an additional prohibition will be low compared to the fixed cost of enforcement and oversight per subsidy considered – i.e. the cost is unlikely to 'scale up' considerably based on an additional prohibition given that there are already 4 prohibitions considered in the baseline. This overall administrative cost incurred by public authorities under the subsidy control regime is set out in the 'Familiarisation and administrative costs' section.
244. The lack of data on how a prohibition would affect public authority behaviour also means that it has not been possible to monetise or quantify the increased judicial and oversight costs from considering subsidy award decisions against a prohibition. The Government anticipates that this will likely only impact a small amount of subsidies – as set out in the 'Judicial enforcement' section of this Impact Assessment.
245. Introducing a prohibition on a defined set of subsidies may have the unintended consequence of deterring authorities from granting subsidies due to uncertainty around the specific definition of the prohibition and the consequent risk of challenges ex-post, but which would have been net beneficial to the UK if granted. This disincentive effect would apply to subsidies which can be demonstrated (at an administrative cost to the public authority) to be net beneficial but would otherwise fall into one of the prohibited categories of 'location-specific' subsidies.

## Option B

246. Of the three prohibitions proposed, the unintended consequence of deterring net beneficial subsidies is least likely to apply under this option as the prohibition targets the narrowest band of subsidies that are explicitly contingent on relocation and therefore provide no net benefit. Nevertheless, there exists a risk in some instances where concerns over triggering the prohibition mean authorities choose not to grant potentially beneficial subsidies. The cost per subsidy is therefore the net benefit of the subsidy which would have been granted otherwise, under the 'do minimum' option.

#### Option C

247. The extended prohibition may deter authorities from granting a net beneficial subsidy to attract new and additional economic activity to the public authority's jurisdiction which may not have located in the UK otherwise. The cost per subsidy is therefore the net benefit of the subsidy which would have been granted under the 'do minimum' option.

#### Option D

248. The extended prohibition may deter authorities from granting a net beneficial subsidy that supports existing activity in the jurisdiction of the public authority. The cost per subsidy is therefore the net benefit of the subsidy which would have been granted under the 'do minimum' option.

#### *Benefits*

249. At consultation stage, two benefits were also identified in relation to the prohibition – greater value for money from the direct impact of preventing subsidies with no net benefit from being granted and greater productivity from the allocation of subsidies to more efficient uses. Firstly, introducing a prohibition on subsidies that provide no net benefit increases the value for money of public authority spending, compared to the counterfactual outcome where such subsidies are able to be granted under the 'do minimum' option. Prohibiting a subsidy with no net benefit prevents resources from being used inefficiently, freeing up these resources to be allocated to more productive activities.

#### Option B

250. The economic gain from prohibiting a subsidy that is explicitly contingent on relocation, and so provides no net benefit, would be at least the full amount of the potential subsidy, given that zero additional activity or value is generated at the cost of the subsidy. As there would also be a transaction cost from relocating economic activity from one region to another, the total benefit per subsidy prohibited would therefore be the sum of the economic gain and the transaction cost incurred to relocate potential recipients' economic activity.

#### Option C

251. The economic gain from prohibiting a subsidy that solely targets new economic activity without providing net benefit would also be the full amount of the potential subsidy for the reasons as set out in Option B. However, there are no associated transaction costs as no existing activity would be relocated as a result of the subsidy. Therefore, the benefit per subsidy of extending the prohibition is just the economic gain of prohibiting a subsidy that targets new activity.

#### Option D

252. The economic gain from a subsidy that solely prevents relocation without providing net benefit would also be the full amount of the potential subsidy for the reasons set out in Option B. However, there are no associated transaction costs as no activity would be

relocated as a result of the subsidy. Therefore, the benefit per subsidy of extending the prohibition is just the economic gain of prohibiting a subsidy that prevents relocation.

253. Secondly, preventing a subsidy with no net benefit from being granted additionally represents a public sector saving in terms of reduced spending, compared to the counterfactual outcome where the subsidy is granted under the 'do minimum' option. For each potential subsidy prohibited, this reduction in cost to the public sector is equal to the full amount of the subsidy considered. For a given subsidy, the benefit per subsidy is therefore equivalent across the options considered. However, if it is expected that the broader prohibitions under Options C and D will prevent more subsidies from being granted compared to the counterfactual, the total public sector saving of each of these options would be greater than under Option B.

#### *Preferred option*

254. Under Options C and D, net beneficial subsidies are more difficult to distinguish from those with no net benefit so public authorities may be deterred from granting such subsidies due to the risk of challenge. A prohibition on subsidies targeting new economic activity could deter public authorities from competing for international investment. A prohibition on subsidies to prevent relocation of activity could deter net beneficial subsidies granted to local recipients to meet other policy objectives.

255. Additional subsidies prohibited under Options C and D are not as costly to the public sector as those prohibited under Option B because no transactional costs are incurred from relocating new activity or preventing relocation, so the total benefit from each prohibited subsidy is less than under Option B.

256. Subsidies that would be prohibited under Options C and D should in theory be captured by the proposed principles, the regime as a whole and existing spending controls. Therefore, extending the prohibition as proposed under Options C and D would only increase the risk of deterring net beneficial subsidies as set out in paragraphs 246 to 247 without theoretically leading to any additional benefits.

257. It has not been possible to monetise the most significant sources of costs and benefits of each of the proposed options, namely the risk of a prohibition deterring net beneficial subsidies and the economic gain from prohibiting 'location-specific' subsidies that provide no net benefit. In comparison, the additional judicial cost of enforcing a prohibition and administrative cost savings identified are likely to be negligible relative to the value of subsidies potentially affected by a prohibition. As such, tipping point analysis has not been used in this context given that the largest costs and benefits will depend on the subsidies that are not prohibited or deterred as a result of a prohibition.

258. Due to the likely limited net benefit of extending the prohibition as proposed under Options C and D, the Government takes the view that the 'preferred option' is for a narrowly defined prohibition which targets subsidies explicitly contingent on the relocation of existing activity without net benefit. A tightly defined prohibition as proposed under Option B protects UK competition and investment from the most distortive of 'location-specific' subsidies and avoids unduly adding administrative costs or deterring authorities from granting net beneficial subsidies. This is in line with the Government's objectives to protect the UK internal market from the most distortive impacts while allowing public authorities to target levelling up and equity objectives through a flexible subsidy control regime. Without extending this prohibition, compliance with the additional principle and assessments proposed in earlier sections will be sufficient for public authorities to demonstrate that subsidies targeting new activity or preventing relocation are net beneficial to the UK.

259. Further analysis of options around the guidance for prohibited subsidies will continue to be produced in the appropriate and proportionate way according to the principles set out in the Green Book and Better Regulation Framework.

### **Streamlined routes**

260. The Government is proposing to create 'streamlined routes' (these will be schemes, per the terms of the TCA) to demonstrating compliance for particular categories of subsidies, in order to ensure that the objectives set out in paragraph 21 are met.

261. **Do minimum:** The relevant counterfactual would be to 'do nothing', and not introduce streamlined routes for demonstrating compliance, as this is not a requirement under the TCA or the UK's other international obligations.

### *Objectives*

262. The Government's aim is to develop a proportionate risk-based approach that balances the potential risk of distorting UK competition and investment and not complying with our international obligations against any potential increased burden to public authorities. We want to ensure that public authorities are able to deliver low-risk subsidies with the minimum of bureaucracy and maximum of certainty, and to facilitate rapid award of subsidies for policies that are HMG priorities. Streamlined route schemes will achieve this by being pre-assessed against the subsidy control principles, and by being exempt from the Subsidies of Interest test. They will facilitate the rapid award of uncontroversial subsidies and subsidies in line with Government priorities.

263. The Government wants to encourage local initiative and policy experimentation with a flexible approach. It wants to avoid the detailed and prescriptive approach to rule-setting under the EU General Block Exemption Regulation (GBER). This type of approach would not be appropriate in a subsidy control regime that differs in fundamental terms from EU State aid, in that it does not require ex ante (pre award) approval for all subsidies not caught within block exemptions.

### *Options*

264. We have analysed the rationale for, and impacts of, introducing streamlined routes compared to the "do minimum". As is set out in more detail below, these routes will be developed and adjusted over time. The specific categories of subsidy that these routes apply to, and the precise nature of these, are still to be defined. As such, it is not proportionate to analyse the range of possible implementation options at this stage, and it is not feasible to provide a robust indication of the scale of impacts in aggregate. As policy develops, the appropriate level of impact analysis will be undertaken, in line with the guidance set out in the Government's Green Book.<sup>107</sup>

- **Option A:** "Do minimum"
- **Option B:** Introduce streamlined routes

265. The 'do minimum' option has been discounted and Option B is the preferred option. The rationale for this is set out below.

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<sup>107</sup> HM Treasury. (2020). The Green Book (2020).

266. The Government also considered whether a UK equivalent of the GBER should be established. However, this option was discounted as this would not meet the Government's objectives set out in paragraph 21.
267. The Government also considered whether a list of streamlined route schemes should be defined in primary legislation. However, the Government considers that this approach would be prohibitively rigid and prevent adjustment of streamlined assessment routes where Government priorities change. As such, this option has also been discounted.
268. The Government also considered whether non-statutory guidance would be a suitable vehicle for enacting streamlined routes. However, the Government considers that guidance which has no basis in legislation would not provide sufficient levels of certainty over compliance for public authorities and recipients. As such, this would not achieve the Government's objectives and this option has also been discounted.

#### Option A – 'Do minimum'

269. Under the "do minimum" counterfactual, all subsidies in scope would be required to meet all obligations under the domestic regime under the baseline route. This option would, by definition, not lead to any additional impacts. However, the cost of complying with the baseline route is set out in the 'Key assumptions' section in paragraphs 80 to 83 of the Impact Assessment.

#### Option B – Introduce streamlined routes (preferred option)

270. The Government's preferred option is to create streamlined subsidy scheme routes to demonstrating compliance for categories of subsidies at especially low risk of causing market distortions, that promote our strategic policy objectives and which the Government judges to be compliant with the principles, prohibitions and conditions of the regime.
271. The purpose of these routes will be to provide a process for demonstrating compliance that is even simpler than the process of assessment against the principles. Each route will be a scheme for TCA purposes, and will be designed by departmental officials to be fully compliant with the subsidy control principles, and will have parameters attached to it that public authorities using it must follow. Through these routes, authorities will only need to demonstrate that they meet specific parameters for that route. This will ensure that public authorities are able to deliver these subsidies with the minimum of bureaucracy and maximum of certainty.
272. Streamlined routes will be considered for any categories of subsidy where they will add clarity for public authorities and make the assessment of compliance simpler. The routes will be reviewed and adjusted over time to meet the needs of public authorities.
273. The Bill will provide a power for a Minister of the Crown to establish streamlined subsidy schemes.<sup>108</sup> Use of these schemes by public authorities will ensure that the subsidies awarded under them have reassurance that they are deemed by the Government to be automatically compliant with the subsidy control principles and, following expiration of the challenge period, will not ordinarily be subject to recovery procedures. In addition to removing the requirement to assess compliance with the principles, any subsidy granted via streamlined assessment routes will not be subject to a Subsidy of Interest test (analysed below). Subsidies awarded through a streamlined route will be subject to the normal transparency requirements. The use of streamlined routes would be voluntary for public authorities, and they will still be able to use the baseline method.

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<sup>108</sup> This type of scheme is considered to be equivalent to a streamlined route.

274. As is set out in more detail the Government’s response to the consultation on subsidy control, the majority (91%) of respondents to the relevant consultation question agreed that additional measures would be helpful for ensuring lower risk subsidies are able to proceed with maximum legal certainty and minimum bureaucracy.<sup>109</sup>

*Impacts analysis*

275. The aggregate scale of impacts from streamlined routes will depend on which types of subsidies they apply to and the extent to which public authorities choose to use streamlined route.

276. The specific categories of subsidy that streamlined routes apply to, and the precise nature of these, are yet to be decided. As such, it has not been possible to monetise the aggregate impacts at this stage. Instead, we have provided a qualitative description of impacts, and used illustrative examples to provide some indication of possible scale. The following table provides an overview of impacts.

Option	Benefits	Costs
Introduce streamlined routes	<p><b>For public authorities</b> – streamlined routes will facilitate the rapid award of net beneficial subsidies. There would be an administrative burden saving for subsidies in scope of streamlined routes as they would not need to conduct an assessment against the principles. They will also be exempt from the Subsidies of [Particular] Interest process and reflection period. It is anticipated that these administrative burden savings would outweigh any additional familiarisation costs imposed by this option.</p> <p>Paragraphs 80 to 83 under “Key Assumptions” provide an estimate for the cost per subsidy scheme or bespoke subsidy associated with demonstrating compliance with the principles under the baseline route, and therefore, the potential savings from introducing ‘streamlined routes.’</p> <p><b>For public authorities</b> – greater legal certainty as they will not be subject to judicial</p>	<p><b>For HM Government</b> – One-off cost to central Government associated with developing streamlined routes. There may also be ongoing costs in terms of developing and updating the guidance over time. At this stage, the policy details are still very open, and it is not feasible to estimate the scale of this cost.</p> <p><b>For public authorities</b> – There will be an additional familiarisation cost, as public authorities will need to read and understand the guidance on streamlined routes. At this stage, the policy details are still very open and it is not feasible to estimate the length and complexity of such guidance and, therefore, the scale of any additional familiarisation costs. However, it is anticipated that the administrative burden savings would outweigh any additional familiarisation costs. The methodology for calculating additional familiarisation costs is outlined above under “Key Assumptions” in paragraphs 72 to 79.</p> <p><b>For subsidy recipients</b> – there may be some additional</p>

<sup>109</sup> Question 27: “Could additional measures help ensure that lower risk subsidies are able to proceed with maximum legal certainty and minimum bureaucracy? What should be included within the definition of ‘low-risk’ subsidies?.” 34% of consultation respondents answered this question.

Option	Benefits	Costs
	<p>review or recovery procedures for failing to assess against the subsidy control principles, when using streamlined routes. There will be no risk of legal challenge after the challenge window has expired. We anticipate this impact to be small per subsidy, but that the aggregate impact across all subsidies in scope will be significant. This is because streamlined routes will be designed for lower risk subsidies, where the risk of legal challenge is likely to be small. There will also be no more legal certainty associated with ‘streamlined routes’ once the limitation period has passed. However, if a high volume of small subsidies is covered by streamlined routes, then the cumulative impact for public authorities could be significant.</p> <p><b>For subsidy recipients</b> – streamlined routes will facilitate the rapid award of net beneficial subsidies. There will be a benefit from any increased legal certainty and reduced risk of recovery. We anticipate this impact to be small per subsidy, for the reasons outlined above, however the aggregate impacts are likely to be significant.</p> <p><b>Wider society</b> – streamlined routes will help facilitate the rapid award of net beneficial uncontroversial subsidies and subsidies in line with Government priorities, which will have wider economic and societal benefits.</p>	<p>familiarisation costs, but we anticipate that this impact will be small. The methodology for calculating additional familiarisation costs is outlined above under “Key Assumptions” in paragraphs 72 to 79.</p> <p><b>For the independent body</b> – The Secretary of State may direct the independent body to review the operation of specific streamlined assessment schemes, or the operation of streamlined assessment schemes in general. There would be a resourcing costs associated with this. The cost and benefits associated with the independent body are analysed below. However, it has not been feasible to provide an indication of scale of impacts from this specific power at this stage, as many details of streamlined routes are still to be determined at a future stage.</p>

*Other impacts*

277. There could be an indirect impact on the design of subsidies and, as a result, the information required from businesses in their application for a particular subsidy. The scale and direction of any impact will depend on the design of a particular streamlined route. As policy develops, the appropriate level of impact analysis will be undertaken, in line with the guidance set out in the Government's Green Book.<sup>110</sup> However, as is set out in paragraph 82, we expect there to be significant overlap between the assessments that are required for spending control purposes and an assessment against the principles. We do not, therefore, anticipate that any impacts on the information required from businesses would be significant.

278. There is a risk that, as they are less burdensome than the baseline route, public authorities could be incentivised to use streamlined routes in circumstances where a more bespoke or novel scheme would be more appropriate. This would have an indirect impact on subsidy recipients.

### **Specific obligations for energy and environmental subsidies**

279. **Do minimum:** Under the TCA, the UK has specific obligations for energy and environmental subsidies.<sup>111</sup> As a minimum, the UK will be required to comply with these obligations where such subsidies may materially affect UK-EU trade. These obligations are given effect in the Subsidy Control Bill as principles that energy and environmental subsidies must be assessed against, in addition to the main subsidy control principles, where relevant.

280. The Government consulted on and considered whether these conditions should apply only in so far as they are necessary to comply with trade agreements or whether they should apply under the domestic regime more generally.

281. The Government considers that going further than the "do minimum" would not be consistent with its objective of meeting our international obligations whilst maintaining maximum flexibility. As such, this option has been discounted from our shortlist and more detailed analysis of this has not been conducted. The Government's preferred option is in line with the "do minimum" counterfactual. By definition, the "do minimum" option does not introduce any additional impacts.

## **Transparency**

### **Explanation of updates**

*Existing analysis published at Bill Impact Assessment*

282. The Bill Impact Assessment estimated the administrative costs and identified the benefits for the transparency requirements set out in Bill as introduced and a short list of alternative options. This short list included the preferred option of a requirement to upload subsidies above a £500k threshold for subsidies within schemes and in line with the Minimal Financial Assistance threshold of £315k and SPEI threshold of £14.5m for subsidies given as MFA or SPEI respectively.

283. The alternative options considered within the Bill Impact Assessment short list included lowering the monetary thresholds for non-tax MFA subsidies to £175k and £0k. At that stage options to lower thresholds for SPEI, in-scheme subsidies or agricultural subsidies were not analysed as these were rejected at long list stage based on the analysis of consultation responses and the strategic objective to maintain a light touch regime to minimise administrative burden for public authorities. There was, therefore, no additional administrative burden estimated for categories of subsidies other than MFA beyond the

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<sup>110</sup> HM Treasury. (2020). The Green Book (2020).

<sup>111</sup> TCA, Article 3.5(12), 186, and Annex ENER-2 Energy and Environmental Subsidies, page 782.

baseline, as only one option - the baseline option - was considered for these categories of subsidies at short list stage.

284. The analysis also included a preferred option of including one additional item of data for all subsidies – the business identifier or equivalent – to aid monitoring and evaluation versus an alternative option of not including this item.

285. As explained in the Bill and Consultation stage Impact Assessments, this analysis was based on data from the TAM database operational under State Aid which had a minimum upload requirement of €500,000 (c. £418,000). Whilst some public authorities voluntarily uploaded data below this level, this was not required, and therefore assumptions had to be used in the original Impact Assessment to estimate the number of subsidies below these thresholds in lieu of having the data. As a result, the initial estimates contained a significant degree of uncertainty, and the Government has kept this analysis under review to account for this.

#### *Summary of updated analysis*

286. Since publishing the Final Stage Impact Assessment, the Department has worked with relevant departments to bolster the evidence base, which has led to updating our consideration of all the evidence available. Based on data recently available from HMRC and Defra on the number of subsidies awarded below the existing transparency thresholds, the Department has been able to expand the scope of the analysis to cover a wider short list, including the options of setting thresholds at £315k, £100k, £25k and £500 for in-scheme awards (both tax and non-tax), SPEIs, agricultural subsidies and MFA subsidies.

287. This list of options was chosen based on the suggested range and scope of thresholds raised in Parliamentary debates on the Bill. The analysis is being published at this stage to aid Parliamentary scrutiny of the Bill and related amendments and to ensure that the best existing evidence on the impacts of these options is made publicly available.

288. The options for each category of subsidy are distinct - a different threshold could technically be chosen for each type of subsidy within the range of options chosen. However, introducing different thresholds for each type of subsidy would introduce complexity into the regime and this may increase administrative costs for those public authorities that award subsidies in different categories. The table below summarises the updated estimates of the administrative cost at each of these levels for each category of subsidy:

Additional administrative costs of extending transparency requirements, totalled across all public authorities, compared to Bill requirements (NPV over 10-year appraisal period, central estimate, £m)						
Options	MFA	Agricultural subsidies	In-scheme (tax)	In-scheme (non-tax)	SPEI	Total
Analysis as at Bill Impact Assessment (lowering the MFA transparency threshold to £500)	0.02	N/A	N/A	N/A	N/A	<b>0.02</b>
<b>Lowering thresholds for MFA, agricultural, in-scheme tax, in scheme (non-tax) and SPEI</b>						
£315k	0.00	0.02	0.45	0.03	0.24	<b>0.74</b>
£100k	0.02	0.29	0.98	0.05	0.27	<b>1.61</b>
£25k	0.02	3.65	3.75	0.06	0.28	<b>7.76</b>
£500	0.02	7.08	6.71	0.07	0.28	<b>14.17</b>

289. **This expanded analysis has not changed the Department’s assessment of the narrower set of options considered at the time the Bill was introduced.**

290. Including the new suite of transparency thresholds in the analysis that the recently available data from HMRC and Defra has allowed the Department to consider has led to an increase in administrative costs estimated for each monetary threshold. In NPV terms, the overall impact of reducing the monetary threshold to £500 has increased from £20k to £14.7m over the ten-year appraisal period. The key changes to the analysis that has driven this increase has been:

- a. **Agricultural subsidies** – including this category in the analysis adds an increase of £7.08m for a £500 threshold
- b. **In-scheme tax awards** – Including this category in the analysis adds a further increase of £6.7m for a £500 threshold.
- c. **In-scheme non-tax awards** – Including this category in the analysis adds a further increase of £0.07m for a £500 threshold.
- d. **SPEIs** – Including this category in the analysis adds a further increase of £0.28m for a £500 threshold.

291. The table above shows that the estimated rise in administrative costs is £0.74m or £1.61m if thresholds are lowered from £500k to £315k or £100k respectively. Estimated costs increase substantially if thresholds are lowered below £100k, for example to £25k and £500. Therefore, there is a ‘long tail’ of estimated costs, where the administrative burden to public authorities increases significantly if thresholds are lowered below £100k. In contrast, the benefits in terms of increased public scrutiny on subsidies for decreased thresholds will decrease per subsidy as the thresholds are lowered as the benefits in terms of increased efficiency will be proportional to the value of the subsidy.

Key assumptions

292. The estimated costs rely heavily on a number of key assumptions: the volume of subsidies awarded above each threshold, the time taken to collate the necessary information, upload, and quality assure each subsidy and the wage and non-wage costs of this time. These differ depending on the category of subsidy considered.
293. The estimates for volume of subsidies for MFA, SPEI and in-scheme non-tax subsidies are based on the EU State Aid database – described in paragraph 17 - 20. These datasets are not complete for subsidies with values below the thresholds considered in the baseline option, therefore we have estimated the number of subsidies awarded above each lower threshold option analysed by extrapolating from the number of subsidies awarded above the baseline threshold. Therefore, whilst the analysis was based on the best possible evidence available at the time these estimates can be considered relatively imprecise with a high degree of uncertainty.
294. The estimates for volume of subsidies for in-scheme tax subsidies and agricultural subsidies are based on datasets recently made available by HMRC and Defra respectively. These datasets give complete information for certain subsidies and schemes at each threshold considered, the TAM database has been used in conjunction with these datasets to estimate the number of subsidies at each threshold across all relevant subsidy or schemes. Therefore, these estimates can be considered relatively precise with only a moderate degree of uncertainty.
295. The estimated cost per subsidy is made up of the time to upload each subsidy and the cost of this time to upload. Estimates for the time burden per subsidy are based on evidence and existing impact assessments for comparable transparency requirements faced by UK public authorities. Based on these sources, the estimated time impact for each category of subsidy analysed differs based on the comparability of these datasets to the additional requirements analysed for each category of subsidy. For example, it is assumed that the additional time to upload agricultural subsidies will be minimal as this will largely be based on administrative data that is already published in this format by Defra<sup>112</sup>, whereas the time to upload each SPEI award is estimated to be small but much greater in comparison as the additional number of fields required to be published compared to the baseline is also much greater. Time estimates based on comparably sized datasets is used to evidence the differing assumptions for each category of subsidy.
296. Estimates for cost of time taken to upload, in terms of wage and non-wage costs, have been taken from the civil service average cost and uplift as per paragraph 83 of this Impact Assessment.

#### *Residual uncertainty and mitigations*

297. For non-tax and non-agricultural subsidies there still remains a considerable amount of uncertainty over the number and value of subsidies awarded at each monetary threshold. The Government highlighted this uncertainty at consultation stage and explicitly asked for evidence on the size and nature of UK subsidies awarded below these monetary thresholds through the consultation; no further information was received. As a result, the Government has had to estimate the number of subsidies at each threshold based on a partial dataset. As the best estimate for the number of subsidies at lower thresholds based on reasonable assumptions is relatively low for these categories of subsidies the costings may be *substantially* higher (or *slightly* lower) than those presented in this Impact Assessment. We have conducted sensitivity analysis to account for this risk and will continue to keep this analysis under review.

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<sup>112</sup> <https://cap-payments.defra.gov.uk/Search.aspx>

298. For all types of subsidies, it is likely that manual processes to upload information may be more efficient when the number of subsidies required to upload is small but it becomes cost effective to invest in developing digital processes with lower unit costs as the number of subsidies required to be uploaded increases. This suggests that the cost per subsidy award may decrease as the thresholds are lowered and each public authority uploads more subsidies. This efficiency saving is not explicitly modelled in the central scenario but as the evidence base that the time per award was based on included data sets with multiple items per authority then this has been captured using the sensitivity analysis.
299. Both sources of uncertainty increase and have opposite impacts on the estimated impacts as the monetary thresholds are lowered. For options with lower thresholds the full range of estimates should be considered carefully alongside the central estimate.
300. Given this uncertainty and the range of options considered, this analysis is not intended to be the basis for future government funding decisions and the financial cost may differ from the economic costs set out in this Impact Assessment.

## Analysis

301. The Department has developed a new publicly accessible subsidy database for public authorities to record subsidies. The database was launched in early 2021. This will be beneficial in providing greater public scrutiny of subsidies that have been awarded – reducing rent seeking and encouraging better designed subsidies – and enabling new analysis of subsidies given in the UK and their effectiveness.
302. Both the UK's international obligations under the WTO and certain free trade agreements require transparency on subsidies. Both the WTO agreement and certain FTAs specify a small number of fields covering basic information on subsidies that have to be published after a subsidy is provided. The TCA requires information to be uploaded within 6 months after award and applies to most subsidies, with certain exemptions. This is therefore the 'do minimum'.
303. The consultation stage Impact Assessment set out several 'long list' options for going beyond these obligations in terms of transparency:
- a. The fields can be expanded – so that public authorities are required to report more information than is required under international obligations.
  - b. Public authorities can be obligated to report earlier than 6 months.
  - c. The exemption threshold for reporting can be lowered below that agreed in the TCA for each category of subsidy. The following categories are considered at this expanded short list stage:
    - i. MFA subsidies
    - ii. In-scheme tax subsidies
    - iii. In-scheme (non-tax) subsidies
    - iv. SPEI subsidies
    - v. Agricultural subsidies
304. The consultation stage Impact Assessment also set out a preferred option to expand the fields to include an additional business identification variable to allow for improved

monitoring and evaluation. Based on strategic rationale and responses to the consultation, at long list stage the option not to include the field to allow for monitoring and evaluation was rejected. Not including the additional field would not allow for the strategic objective of enabling new analysis of the future regime and individual subsidies.

305. At this updated short list stage, the costs and benefits of lower thresholds are compared to the 'do minimum' with the assumption that this would cover the additional monitoring field mentioned at consultation stage. Under the preferred option – a threshold of 100k across all relevant categories of subsidies: tax subsidies within schemes, non-tax subsidies within schemes, MFA subsidies and SPEI subsidies is used as a requirement to upload. It was not appropriate or possible to estimate the cost for reducing the time limit for the reporting obligation for tax and non-tax subsidies but these costs are described qualitatively at this updated short list stage.
306. As the vast majority of fields required for the subsidy database are also required by the TCA for subsidies above the values set out in the TCA the administrative cost to public authorities is just for supplying additional fields. The Department has already set up the database itself, so the cost to set up and maintain this database is sunk. However, in addition to the counterfactual, public authorities providing subsidies may have to supply information on a small number of fields beyond the international requirements. Administrative costs are quantified using precedent from previous assessments that include public authority data and transparency requirements.

#### *Additional item*

307. To estimate the impact of including an additional item, time assumptions are taken from the new burdens assessment for Aluminium Composite Material panels (ACM) data collection and Local Government Transparency Code. An uplift of 21.80% taken is applied for 'on costs'. Grade assumptions are in line with the wider administrative cost assumptions in paragraph 83 of this Impact Assessment – we assume that an equivalent to Civil Service G7 pay band in the central assumption, with the HEO and G6 pay band taken as a low and high scenario assumptions.
308. The same sources provide a range of 5 minutes to 2 hours per item so 1 hour is taken as a rounded average for the central estimate. As the consultation document proposes a small number of extra fields, it is similar in requirements to the ACM data collection and therefore the time burden is likely to be at the lower end of the range for the preferred option for most types of subsidies. Adding additional fields beyond this is likely to push the administrative cost closer to the higher end estimate. It is assumed that marginal cost for each public authority of uploading an additional item of data is negligible – this is to reflect the fact that the subsidy database allows the bulk upload and there is likely to be no additional data collection burdens as the information required is standard administrative data that would be used frequently by the public authority to manage and award a subsidy. As there are an average of c. 30 unique annual public authorities using the previous EU transparency database in the UK, this is used as the assumption for the number of items upload with non-negligible marginal costs. Together this leads to a central estimate of £0.01m with £0.00m and £0.03m for sensitivities in NPV terms under the preferred option.

#### *MFA threshold*

309. The administrative cost to the public authority of lowering the threshold for MFA subsidies is calculated in a similar way using the same grade assumptions as above for high, central and low estimates. As there are no requirements on transparency for these subsidies set out in the TCA then the additional administrative cost would cover the whole dataset rather than

the additional field. To reflect this, the time per item is taken from the Local Government Transparency Code with 2 hours taken as the central estimate per subsidy, with 1 hour and 4 hours used as the high and low sensitivities. The overall number of unique public authorities uploading subsidies between £0k and £500k is also taken to be 25% in the central case. The original analysis has been updated by applying a sensitivity range of 20% to 30% for the low and high scenarios respectively, to account for uncertainty in the data below the reporting requirement. This figure is scaled linearly over the remaining thresholds so that it is assumed that 17% of public authorities award MFA subsidies above £100k, 21% above £25k and 25% above £500 in the central scenario. As these subsidies fall below the MFA exemption threshold, they would be exempt from the wider requirements of the regime. Therefore, introducing a transparency requirement for these subsidies would also introduce an additional requirement for public authorities to determine whether the measure was indeed a subsidy. The administrative burden per subsidy or scheme associated with this is set out in paragraphs 80 to 83 and has been included in the costs for each of these options. Using these assumptions, the central estimate for lowering the threshold to £100k is £0.02m, with £0.00m and £0.05m as sensitivities in NPV terms. Similarly, the cost of lowering the threshold to £25k is £0.02m, with £0.00m and £0.02m as sensitivities in NPV terms and for £500 the central estimate is £0.02m with £0.01m and £0.07m as sensitivities. There are no additional costs from lowering the MFA threshold from £500k to £315k as the MFA exemption does not apply to subsidies higher than £315k.

### *Tax in-scheme*

310. HMRC have recently shared with the Department of Business, Energy and Industrial Strategy additional information on the estimated cost to collate and upload additional subsidies for in-scheme tax measures based on experience of uploading existing subsidies at the current transparency threshold. As this information is based on the exact activity that is being analysed, where possible this data is used instead of the Local Government Transparency Code or ACM Collection.
311. HMRC have estimated the financial cost based on existing functions and management information at the current transparency thresholds. This analysis was based on HMRC's experience with R&D SME tax relief<sup>113</sup>, Creative industry tax reliefs<sup>114</sup>, Tax relief for investors using venture capital schemes<sup>115</sup>, Capital Allowances – Zero emission goods vehicles and plant and machinery in designated assisted areas<sup>116</sup>, Climate Change Levy – Businesses entering into Climate Change Agreements<sup>117</sup> and Enterprise Management Incentives<sup>118</sup>. These indicated an increase in costs associated with an increase in the existing activity undertaken by HMRC as the number of awards and businesses in scope of these reliefs increases as the thresholds are set at £100k and £10k.
312. Based on this information the Department for Business, Energy and Industrial Strategy has estimated the impact in economic terms over the range of options considered in this Impact Assessment. Whilst the time cost associated with each type of relief is likely to vary substantially for each relief the Department for Business, Energy and Industrial Strategy has used this information to estimate, for illustrative purposes, the average time taken per award in the central scenario to be 1 hour per subsidy to upload, with 40 minutes and 85 minutes in

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<sup>113</sup> <https://www.gov.uk/government/statistics/corporate-tax-research-and-development-tax-credit/research-and-development-tax-credits-statistics-september-2021>

<sup>114</sup> <https://www.gov.uk/government/statistics/creative-industries-statistics-august-2021/creative-industries-statistics-commentary-august-2021>

<sup>115</sup> <https://www.gov.uk/government/statistics/venture-capital-trusts-2021>

<sup>116</sup> <https://www.gov.uk/capital-allowances>

<sup>117</sup> <https://www.gov.uk/guidance/climate-change-levy-rates>

<sup>118</sup> <https://www.gov.uk/tax-employee-share-schemes/enterprise-management-incentives-emis>

the low and high cost scenarios. Similarly, the Department for Business, Energy and Industrial Strategy has estimated this upload time burden would be split across staff at AO, HEO, SEO and G7 grades. As per paragraph 83, the median civil service wage at these grades is used, with an uplift of 21.80% this gives an average wage across the wage mix of £38k with £34k and £41k as sensitivities.

313. To estimate the number of awards for the remaining thresholds, the Department for Business, Energy and Industrial Strategy has scaled the estimates provided by HMRC linearly using tax reliefs entered on the TAM database between 2016 and 2020 to estimate the number of awards at £315k, £25k and £500. This is consistent with the approach for MFA subsidies described in paragraph 309. These estimates may include some legacy subsidies given in the audiovisual sector that are exempt from the transparency requirements, as these are likely to be a small fraction of the overall number of subsidies it was not deemed appropriate or possible to split these subsidies out of the estimates for the purpose of this Impact Assessment.
314. Using these assumptions, the central estimate for lowering the threshold to £315k is £0.5m, with £0.3m and £0.7m as sensitivities in NPV terms over the appraisal period. Similarly, the cost of lowering the threshold to £100k is £1.0m, with £0.6m and £1.5m as sensitivities in NPV terms, for £25k the central estimate is £3.8m with £2.2m and £5.8m as sensitives and for £500 the central estimate is £6.7m with £3.9m and £10.4m as sensitivities.
315. As paragraph 300 states: these economic estimates are not intended to inform future government funding decisions and the eventual financial cost may differ from the economic costs set out in this Impact Assessment for a number of standard, analytical reasons. For example, economic estimates are considered over a standard 10-year appraisal period and are expressed in real, NPV terms. The economic costs have also not included costs for overheads where these are sunk and indivisible over a small change in FTE. HMRC have estimated the financial cost on a full cost basis using a standard approach used to set government charges<sup>119</sup>, these estimate the financial cost to be £2.8m over the scorecard period for a threshold of £100k and £8.1m for a threshold of £25k on the same basis. These estimates are subject to revision as more in-depth financial analysis is undertaken on the preferred option.

#### *In-Scheme (non-tax)*

316. The administrative cost to the public authority of lowering the threshold for in-scheme, non-tax subsidies is calculated in a similar way to the MFA assumptions, using the same grade assumptions as MFA subsidies for high, central and low estimates. Whilst there are no requirements on transparency for these subsidies at these thresholds set out in the TCA the additional administrative cost would likely only cover a partial dataset as many of the fields would be uploaded at scheme rather than individual subsidy level. To reflect this, the time per item is taken from the ACM data collection and Local Government Transparency Code with 1 hours taken as the central estimate per subsidy, with 5 minutes and 2 hours used as the high and low sensitivities. Historically the UK has reported 470 in-scheme subsidies per year above the existing reporting thresholds, consistent with the methodology for MFA subsidies it is assumed that there are 25% again below these thresholds in the central estimate and 20% and 30% in the sensitivities. This figure is scaled over the remaining thresholds in the same manner as MFA subsidies (see paragraph 309).

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<sup>119</sup> <https://www.gov.uk/government/publications/managing-public-money>

317. Using these assumptions, the central estimate for lowering the threshold to £315k is £0.03m, with £0.00m and £0.08m as sensitivities in NPV terms. Similarly, the cost of lowering the threshold to £100k is £0.1m, with £0.0m and £0.2m as sensitivities in NPV terms, for £25k the central estimate is £0.1m with £0.0m and £0.2m as sensitivities and for £500 the central estimate is £0.1m with £0.0m and £0.2m as sensitivities.

### *SPEI*

318. The administrative cost to the public authority of lowering the transparency threshold for in-scheme non-tax subsidies is calculated in a similar way to the MFA assumptions using the same grade assumptions as MFA subsidies for high, central and low estimates. As there are no reporting requirements in the TCA for SPEI subsidies at these thresholds, so the whole dataset is additional and the time taken per upload is estimated to be in line with the assumptions for MFA subsidies.

319. Under State Aid there was no requirement to publish information on SGEI measures unless they were above €15,000,000. To estimate the number of SPEI awards below this threshold, the number of non-tax SPEI measures as a percentage of non-tax schemes is multiplied by the number of non-tax in-scheme awards. This number is then updated and scaled linearly across the monetary thresholds analysed in the same way as in-scheme subsidies (see paragraph 316).

320. Using these assumptions, the central estimate for lowering the transparency threshold to £315k is £0.2m, with £0.1m and £0.6m as sensitivities in NPV terms over the ten-year appraisal period. Similarly, the cost of lowering the threshold to £100k is £0.3m, with £0.1m and £0.7m as sensitivities in NPV terms, for £25k the central estimate is £0.3m, with £0.1m and £0.7m as sensitivities and for £500 the central estimate is £0.3m with £0.1m and £0.7m as sensitivities. As highlighted in paragraph 297, due to uncertainty in the data for SPEI subsidies below the existing transparency requirements the true costs at the full range of cost estimates should be considered for options with lower transparency thresholds

### *Agricultural subsidies*

321. The administrative cost to public authorities of lowering the threshold for agricultural subsidies is calculated in a similar way using the same grade assumptions as MFA subsidies for high, central and low estimates. Whilst there are no requirements set out in the TCA to upload agricultural subsidies, the additional administrative burden per award is likely to be very small as much of the information required is likely to be uploaded at the funding programme level and most of the residual award level information is already published so is likely to already be collated in an appropriate format by the relevant public authorities. To reflect this, the time per item is taken from the ACM data collection only with 5 minutes taken to be the central and high and low sensitivities.

322. The UK CAP Payments Search Portal<sup>120</sup> is used to estimate the number of awards in scope of each transparency threshold. Both years of data – 2019 and 2020 – are used to estimate the number of awards at each threshold and an average is taken to return to estimate a per annum figure. Subsidies above £500k have been removed as these would have been in scope of the requirements of the regime as analysed at Bill stage – these costs are therefore already captured by the analysis under the agricultural section of this Impact Assessment (see paragraph 106) and have not been included in this section to avoid double-counting these burdens. After removing these subsidies and rounding to the nearest

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<sup>120</sup> <https://cap-payments.defra.gov.uk/Default.aspx>

ten, this data shows that 380 recipients were given subsidies totalling above £315k per year, 6050 above £100k, 75,910 above £25k and 147,340 above £500.

323. Whilst the Common Agricultural Policy (CAP) Payments Portal does not cover the entirety of agricultural subsidies, it has been used in this instance as it includes consistent data on individual awards and their value, and it covers the entirety of the United Kingdom – including Wales, Scotland, England and Northern Ireland. As the United Kingdom no longer has to follow the CAP, then the size, number and nature of individual awards at each threshold may differ substantially from these estimates. To account for both these sources of uncertainties the number of awards at each threshold is adjusted down by 25% in the low cost scenario and up 25% in the high cost scenario.
324. Using these assumptions, the central estimate for lowering the threshold to £315k is £0.02m, with £0.00m and £0.03m as sensitivities in NPV terms. Similarly, the cost of lowering the threshold to £100k is £0.3m, with £0.1m and £0.5m as sensitivities in NPV terms, for £25k the central estimate is £3.6m with £1.7m and £5.7m as sensitivities and for £500 the central estimate is £7.1m with £3.2m and £11.0m as sensitivities.

#### *Time-limits*

325. In the Department's review of the available evidence and work with affected departments it was found that for non-tax subsidies shortening the time-limit from 6 months to 3 months would not have a significant cost burden. This is because the information required to upload for most subsidies is generally available within the first 3-months after awarding the subsidy and there are limited benefits of economies of scale in upload between 3 and 6 months.
326. Below this level – if time limits were reduced to a number of days or weeks – some affected departments indicated that there may be additional administrative costs associated with having to prioritise gathering, checking and uploading the necessary information over other tasks. It was not possible or appropriate to quantify the impact of these costs as they are likely to vary significantly, differ between different public authorities and we have not identified any previous analysis that could inform quantitative estimation.
327. For tax subsidies, evidence from HMRC identified that reductions in the time limit below 12-months would significantly increase costs. This is because the information needed to upload information on tax subsidies is held in tax returns that have to be processed by HMRC and can be revised up to 12 months after the claim is made. This manual processing and revision makes up the majority of the cost to HMRC to upload individual awards and would have to be repeated more frequently if the time needed to upload dropped below 12 months. For example, if the time-limit for uploading was reduced to 3 months, HMRC would have to undergo this process, and face the associated administrative burden, up to 4 times more frequently. In the first year of implementation, reducing the time period effectively reduces the time to implement the new transparency requirements – this is likely to lead to an increase in costs given the limited time available to develop more efficient data upload and revision processes.
328. As claims can be revised by recipients in this time any information uploaded inside of this 12-month period would not be final and therefore there would be limited benefits in terms of improved accuracy of information, scrutiny and knock-on impacts on more efficient subsidy design. For these reason options to reduce the time limit for tax subsidies are unlikely to be net-beneficial so have not been considered at this revised short-list stage.

#### *Cost benefit comparison*

329. Compared to the 'do minimum', the benefits of including an additional field to aid monitoring and evaluation is improved monitoring and evaluation of the regime as a whole. This will allow a greater use of data to inform future improvements of the regime and the impacts of this will be more efficient regime and subsidy design. The 'benefits' of reducing the threshold from the 'do minimum' will be increased scrutiny on subsidies awarded, and potential for better subsidy design – however these may be minimal as they would only apply to subsidies that are below £500k. Moreover, the positive impacts on monitoring and evaluating may be decreased from lowering the threshold as data quality will likely decrease as public authorities may not be sufficiently incentivised to go through the process of assessing measures against the regime's subsidy definition before upload. This is likely to lead to inconsistencies over which measures are included in the database at values below the MFA exemption threshold and therefore the monitoring and evaluation benefits of this dataset would be limited.
330. The Government has used the total value of subsidies captured by each threshold to undertake a balancing test as it was not possible or appropriate to quantify the benefits of each option and therefore compared the costs and benefits directly. As the benefits of each option can be summarised as 'efficiency' improvements to individual subsidies effected the balancing test compares the estimated cost with the necessary improvement in efficiency over the total value of relevant subsidies to compare between options.
331. Applying the balancing test, the £500k threshold provides greater net benefit than the 'do minimum' assuming that the improved efficiency of the regime as a whole through the monitoring and evaluation it allows is worth 0.00002% a year compared to the maximum size of the subsidy awarded at each threshold. Across all categories of subsidies there is a small increase in costs as the monetary thresholds decrease from £500k through to £100k but a large, disproportional increase as the thresholds decrease below this first to £25k and then £500. In contrast the additional benefits of increased scrutiny and improved subsidy design will decrease as the value increases as these will be proportional to the value of the subsidy all things being equal. Applying the balancing test this shows, for example, that lowering the thresholds for each category of subsidy to £100k would be value for money compared to the £500k threshold if the benefits of scrutiny are worth 0.00004% a year but the net benefits would have to be 0.0002% at £500. On balance the government believes that the monitoring and evaluation benefits would be sufficient to lead to positive net benefit, but as the scrutiny benefits would decrease as subsidy values decrease below £100k but the costs rise significantly for uploading these compared to the counterfactual means that lower thresholds are less likely to have a net benefit compared to the £100k threshold. The option to have an extended field, a three-month uploading period for non-tax subsidies and 12-month period for tax subsidies and a reporting threshold of £100k across MFA, SPEI, in-scheme tax and non-tax subsidies and agricultural subsidies is therefore considered the preferred option.
332. The updated scope of the analysis has therefore led the Government to change its preferred option – instead of the preferred option set out in the Bill stage IA the Government now favours a lower threshold of £100k over each category. As the balancing test shows, despite the increase in costs for this option this brings a greater number of subsidies in scope of the transparency requirements and therefore the a greater potential benefit. Whilst lower thresholds would also lead to an increase of benefits, this increase is disproportionate to the costs as the average value of each subsidy, and therefore the potential for efficiency gains, is also decreased. On balance the Government therefore favours a reporting threshold of £100k across all categories of subsidies as the preferred option.
333. It should be noted that the transparency rules do not require cumulation for subsidies given under a scheme. Additionally, there are fewer subsidy control requirements for the

granting of subsidies under a scheme compared to ad hoc subsidies.. The Government will reserve the ability to change this in the future if necessary.

## **Independent body**

### *Consultation proposal and response*

334. The Government is committed, under the terms of the TCA, to the establishment of an independent body that will have an appropriate role within the UK subsidy control regime. The consultation sought views on what role the independent body should play within the UK subsidy control regime. It was noted that there are a broad spectrum of options for the functions of the independent body.
335. As such, views were sought on specific options for each potential function. This included the potential review function, what advisory role the independent body should play pre-award, the type of complaints the body could receive and from whom, and what enforcement powers the body should have (see the Consultation Response).
336. Not all of these functions would necessarily be appropriate and coherent within the regime the UK establishes, or it may be the case that certain functions would only be suitable in a limited number of circumstances. For these reasons, it was not appropriate to present a short list of alternative independent bodies, each with a set of fixed functions, at the consultation stage. It was highlighted that consideration would need to be given on how any post-award role for the independent body interacts with provisions for judicial enforcement.
337. Many respondents to the consultation agreed with each of the proposed functions for the independent body.<sup>121</sup> Over the functions this ranged from 90% of respondents to the relevant question agreeing with a role for information and enquiries to 69% agreeing that the body should have enforcement powers. However, opinions were mixed on what these functions would look like, with wide variation across respondents in what they envisaged and when used.
338. The consultation noted that there are a range of available options for how the body could carry out the work and its governance. This included establishing a new Committee, a new statutory or non-statutory body, or subsuming the functions within an existing body. Different elements of the regime could also be overseen by a combination of bodies. In addition to their thoughts on the form of the body, respondents were also asked to suggest how the independent body could be established to ensure its independence and impartiality when delivering its functions.
339. However, it was inappropriate to suggest a short list for the form or governance structure of the independent body at the consultation stage as these follow from the body's functions, which themselves were open to consultation. A similar approach has been taken here, with the form of the body discussed only in the context of the preferred functions of the body.

### *Policy objectives*

340. As discussed, there are a multiplicity of bodies which would satisfy the conditions of the TCA. To narrow the choice of design elements, the Government set out specific objectives for the independent body (see the Consultation Document, paragraphs 102 to 104). These

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<sup>121</sup> Question 36: "What should the functions of the independent body be? Should it be responsible for any of the following: information and enquiries; review and evaluations; subsidy development advice; post-award review; and/or, enforcement."

are derived from the four overarching objectives for the regime (see paragraph 21) and state that an independent body with the right functions:

- could help improve the quality of decision-making by public authorities, evaluate the effectiveness of the regime, and maintain public trust in the system;
- should not create unnecessary burdens and bureaucracy or hinder the ability of subsidy providers to offer timely interventions;
- must be appropriate, and commensurate with the legal obligations placed on public authorities;
- needs to be consistent with the overarching emphasis on giving greater flexibility to public authorities that award subsidies; and
- needs to complement the judicial enforcement route.

341. The preferred independent body needs to complement the preferred judicial enforcement route, as both form parts of the wider oversight and enforcement mechanisms alongside clear guidance and the subsidy database. Oversight and enforcement mechanisms, that incentivise public authorities to comply with the rules and hold them to account where they do not, are the means through which the Government achieves its desired regime (see the Consultation Response).

#### *Options considered*

342. The Government has considered the following options for the functions of the body:

- **Option A:** Do the minimum required to satisfy the terms of the TCA and establish a body which produces ad hoc high-level statistics or reports on the functioning of the regime.
- **Option B:** Establish a body with a role in monitoring and overseeing how the regime is working as a whole including the ability to recommend and be consulted on changes to Government guidance. This independent body will provide advice to public authorities for Subsidies of Interest and Subsidies of Particular Interest and will also provide advice where it has been requested by the Secretary of State either before or after a subsidy has been granted (see the 'Measures to protect UK competition and investment' section).

343. The 'do minimum' option has been discounted and Option B is the preferred option. The rationale for this is set out below.

344. Stronger and more interventionist options have been excluded from the short list as they fail to meet two of the independent body's specific policy objectives: the requirement that the body does not to create unnecessary burdens and bureaucracy or hinder the ability of subsidy providers to offer timely interventions and the need for the body's functions to be consistent with the overarching emphasis on giving greater flexibility to public authorities that award subsidies. Furthermore, options close to the 'do maximum' body would not meet the ambition set out by the Secretary of State in his Foreword to the Consultation Response to seize the opportunity afforded by the UK's exit from the EU to design a more flexible and agile system which allows authorities to deliver subsidies where they are needed without facing excessive bureaucracy or lengthy pre-approval processes.

345. Options which sit between the 'do minimum' and Option B have also been discounted as there are no less powerful models that coherently fulfil the preferred options outlined in the rest of the regime (including measures to protect UK competition and investment) or meet the Government's specific objectives for the body.

346. Globally very few countries beyond the EU and EEA/Switzerland have an independent body with oversight of domestic subsidy control regulations. Of the countries that implement further controls, many, like Canada and Australia respectively, only have limited and targeted measures in place to mitigate the impact of ‘poaching’ on their internal markets<sup>122</sup> or ensure competitive neutrality,<sup>123</sup> and are narrower in reach as they do not extend to the full scope of domestic subsidy control. Furthermore, the parameters in the TCA which delimit the function and form of the independent body are unique and exclude examples like the US, which has no independent body, or are not operationally independent (e.g., the Japanese Ministry of Economy, Trade, and Industry). While international comparisons provide valuable input with which to refine the options for the independent body, they do not provide suitable models for the UK’s domestic regime and have been excluded from the short list.

#### Option A – ‘Do minimum’

347. The terms of the TCA require that the Government establish an independent body which is ‘operationally independent’ but does not require the body to exist as a separate legal entity. As this body will require external technical expertise and political impartiality, the Cabinet Office taxonomy for the classification of public bodies<sup>124</sup> indicates that any Arm’s Length Body (ALB) with an equivalent or greater degree of Government separation than as an Executive Agency would fulfil international obligations.

348. The TCA also requires the independent body to have an ‘appropriate role’. Under the counterfactual, one interpretation for the ‘do minimum’ role of the independent body is the production of high-level statistics on a non-periodic basis to monitor the whole regime. This follows the near precedent set by the Migration Advisory Committee (MAC) which advises the government on migration issues via its commissioned reports.<sup>125</sup> In producing high-level statistics rather than a report, the ‘do minimum’ body would not be obligated to employ more costly actions such as releasing timed calls for evidence, engaging stakeholders or commissioning external modelling. However, it could operate on a similar ad hoc basis through commission from its sponsoring department (BEIS) and carry out in-house data gathering, analysis and modelling before writing up its findings and (more limited) conclusions.

349. As discussed, the independent body is only one part of a package of measures that ensures good oversight and enforcement of the regime and reduces the number of distortive subsidies. When they are entered onto the subsidy database, interested parties are able to challenge subsidies via judicial enforcement (see the ‘Transparency’ section). The additional degree of self-assessment imposed by the regime for Subsidies of Interest and Subsidies of Particular Interest might improve their design and reduce their negative impacts. However, pre-award intervention mitigates these risks at the outset and the review of public authority compliance assessment by a specialist independent body provides objective and expert insight which authorities themselves may not be best placed to provide. Public authorities may not fully internalise the impact of their policy, lacking the resources, skills, information, or incentives to do so.

350. Due to its limited ambit, this option would not meet the policy objective of ensuring that that the independent body has sufficient opportunity and the regime adequate powers (via the Secretary of State) to scrutinise and advise on critical subsidies which raise the most proportionate risk-based concerns and are most likely to cause negative effects on UK

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<sup>122</sup> See the ‘Measures to protect UK competition and investment’ section.

<sup>123</sup> The OECD defined competitive neutrality as It is a fundamental principle of competition law and policy that firms should compete on the merits and should not benefit from undue advantages due to their ownership, i.e. whether they are privately or publicly owned.

<sup>124</sup> <https://www.gov.uk/government/publications/classification-of-public-bodies-information-and-guidance>

<sup>125</sup> <https://www.gov.uk/government/organisations/migration-advisory-committee/about>

competition and investment, and international trade or investment. Nor would this body be fit to provide the support to public authorities required to undertake more extensive and involved analysis as part of their assessment of compliance with the principles for Subsidies of Interest and Subsidies of Particular Interest. This does not meet the specific objective for the independent body to help improve the quality of decision-making by public authorities or be commensurate with the legal obligations placed on them. For these reasons, the 'do minimum' option has been discounted.

### Option B - Preferred option

351. The Government's 'minded to' response is set out in the Consultation Response. The preferred functions for the body and the rationale for them are set out below.

#### Monitoring and oversight

352. The independent body will have a role in monitoring and oversight of how the regime is working as a whole. The independent body could examine how the regime is being implemented and its effectiveness at delivering the government's objectives. Using insights from this monitoring, the independent body could then advise on matters relating to subsidy control and offer its expertise on government guidance, streamlined routes, and any other proposed changes to the regime (including the processes of the independent body itself).

353. It is assumed that the following activities might be required for the delivery of this function, the exact activities will be determined closer to the point at which the regime comes into effect:

- **Annual performance report** including information on the number of subsidies and schemes in respect of which the independent body has exercised its Advice function (see the 'Advice' section), and the body's performance with respect to the delivery of this advice.
- **Periodic review and report** on the effectiveness of the operation of the subsidy control regime and its impact on domestic competition and investment (roughly every 5 years).
- **Ad hoc reviews and reports** required to provide advice to the Secretary of State on the Secretary of State's functions under the Subsidy Control Bill which include the creation of guidance, streamlined routes and secondary legislation (e.g., the criteria for Subsidies of Interest and Subsidies of Particular Interest).

354. Any reports against this function will review the regime as a whole or specific elements of the regime (e.g., categories of subsidies) rather than individual awards or schemes. The body will have the requisite powers to support this function (e.g., to request information or commission research where necessary).

355. This function addresses an information failure and explicitly meets the independent body's specific objective to evaluate the effectiveness of the new regime, which is expected to evolve over time. There is limited data and analysis with respect to international subsidy control regimes and no sources which reflect the novel and unique parameters of the UK's proposed system (see paragraph 346). An independent body with this proactive monitoring function will likely result in more accurate and relevant information about the UK's domestic subsidy control regime and analysis of how it is functioning, ensuring that issues and areas of concern are identified in a timely and systematic fashion. This will furnish Government with the best possible evidence, enabling it to act responsively and make the best choices when refining the design of the regime in the context of UK needs and policy objectives. Better regime design will lead to better alignment with these policy objectives resulting in a better functioning regime with better outcomes for the UK.

## Advice

356. The independent body will produce pre-award reviews of the compliance assessments undertaken by public authorities in the following circumstances:
- upon request for Subsidies of Interest;
  - on a mandatory basis for Subsidies of Particular Interest (the public authority will also need to inform the Secretary of State for Business, Energy and Industrial Strategy of their intentions); and,
  - in exceptional circumstances, where the Secretary of State requires it for prospective subsidies.
357. This review will be non-binding. It will consist of a report that reviews the public authority's assessment of its subsidy's compliance with the principles, and will make suggestions on how the authority's analysis and subsidy design could be improved, where appropriate. The advice will not include any formal recommendations nor will it provide an overall rating or score of the public authority's assessment.
358. For Subsidies of Particular Interest and prospective subsidies called in by the Secretary of State, a 'reporting period' will apply while the independent body is carrying out that review. This period begins once the independent body has notified the public authority that it has sufficient information to proceed. It may be extended for a limited period if necessary.
359. After the report has been issued, a short 'cooling-off period' would apply, which the Secretary of State may extend for a limited period if necessary. This allows the public authority time to consider whether to proceed with or make changes to the subsidy in light of the report, and to give interested parties a short window to seek an interim injunction to prevent the subsidy being granted.
360. The Secretary of State will also be able to request the advice of the independent body after a subsidy had been granted.
361. These reports address a potential information and capability failure. Even under conditions where public authorities have access to all the requisite guidance, they may not be able to comply or fully understand how to use the information to make decisions. This may be because a public authority does not have the necessary expertise, data or time to (accurately) assess the quality of their proposed subsidy design against the regime, principles or risk of challenge. Voluntary compliance levels can be improved through the provision of this support. This may be particularly true for smaller authorities for whom the barriers to compliance are more acute, although it is unlikely that these fall into the categories eligible for review. Where the independent body's suggestions are adopted, this could reduce the risk of distortion of UK competition and investment and breaches of international obligations, meeting key regime objectives.
362. These reports will also provide additional transparency about the awarding of the subsidy, as well as reassurance to public authorities and subsidy recipients. This transparency will help build confidence in the objectivity and expertise of the independent body both domestically and abroad. Increased legal comfort for public authorities and subsidy recipients should translate into a more decisive and swifter delivery of subsidies, implementation of the projects these awards support, and their intended benefits.
363. Any dissonance between the views of the independent body and the subsidies awarded may increase the probability that interested parties bring a judicial review. The non-binding nature of the report places the emphasis firmly on public authorities to decide how to design the subsidy and internalise the legal risk. As such, publishing the advice could also act as a

disincentive to non-compliance (discouraging highly harmful or distortive subsidies) or further drive the adoption of the independent body's suggestions by public authorities.

364. The non-binding nature of the advice ensure that the independent body makes no judgement on the merits of the subsidy, its policy objective, and the balance of its impacts. As such, the integrity and political neutrality of the body is maintained.
365. Publishing advice addresses a potential broader information failure for a wider set of stakeholders by highlighting best practice. Through increasing the awareness of innovative, compliant instruments, these reports could reduce the probability of public authorities defaulting to subsidies which are known to comply (with a more stringent regime) and increase the use of subsidies which best make use of the flexibilities inherent in the new regime. To the extent these 'case studies' are applicable to the streamlined and baseline routes, the reports could also help public authorities understand how to most efficiently demonstrate compliance, reducing any temptation to 'gold-plate' compliance. This would reduce the burden on public authorities and improve the quality of their decision-making.
366. This risk-based triage optimises the number of pre-award reviews the independent body must complete, making the most effective use of the bodies' resources whilst ensuring that the proposed subsidies that are most likely to be distorting or expose the UK to international risk are fully examined. The independent body will have discretion, based on clearly defined resource prioritisation criteria set out by the BEIS Secretary of State in an appropriate instrument, to determine which of the Subsidies of Interest referred to it will be reviewed where the number of requests exceeds its capacity.
367. It would not be proportionate for the independent body to offer advice to all public authorities. As such, there is a possibility that public authorities may use improper routes to demonstrate compliance or fail to notify to the subsidy database for subsidies at the margin (where there are respectable arguments that the measure would not meet the criteria for being a subsidy). This could lead to public authorities being exposed to legal action which would otherwise have been mitigated by pre-award discussions with the independent body and presents a risk of additional burdens on enforcement. However, the Government plan to mitigate this through its review of guidance, ensuring that it is fit for purpose.
368. The introduction of 'reporting' and 'cooling-off' periods (known together as the 'reflection period') might have a chilling effect on business. Subsidies of Particular Interest, however, are likely large projects with long lead times which mitigate the impact of these waiting times where they run in parallel with the project planning period. The effect may be more significant where there is increased uncertainty over whether a given period will be extended. However, these impacts are again constrained through the clear limits to their maximum duration.

#### Enforcement by the independent body

369. Under the new regime, enforcement will only be via the route of parties bringing a judicial review to be heard by the Competition Appeal Tribunal (CAT, see the 'Judicial enforcement' section). The independent body will not have enforcement powers.
370. As neither the preferred nor 'do minimum' body would have this function, it does weigh the analytical balance towards either option. However, as the enforcement role of the independent body is only one part of a package of measures that ensures good oversight and enforcement of the regime, it is worth exploring this in the round. The rationale for this is set out below.
371. If the independent body were to have a complaints function or enforcement role, interested parties would have more routes to redress. Additionally, the cost (in time, money, effort and reputational capital) and evidentiary bar of pursuing a complaint via the

independent body is lower than pursuing a challenge via the courts. More routes and a lower barrier to redress (which may disproportionately impact smaller plaintiffs) would likely drive up the number of non-compliant subsidies brought into the domain of enforcement, benefiting the regime as a whole. Where it is cheaper to complain to the independent body than lobby the public authority for equal treatment or pursue a distortive subsidy through the courts, this more interventionist body would also reduce the exposure of public authorities to capture and reduce the burden on the courts.

372. However, the low cost of complaint could lead to vexatious complaints which the independent body must investigate, generating additional delays and uncertainty for subsidy recipients. This would likely have a chilling effect on investment and is at odds with the overarching ambitions of the regime.
373. Furthermore, this dual route to redress generates the possibility of diverging standards of review between the independent body and the courts. This would create unnecessary uncertainty and the incentive for interested parties and complainants to ‘forum shop’. Where numerous vexatious challenges are raised or the courts and the independent body rulings differ, this could undermine the perceived credibility of the body as the public may not have adequate information or the narrow technical expertise to discern the quality of the challenges or interpret these contradictions.
374. The absence of an enforcement function also ensures that the independent body is insulated from lobbying and its resources optimally allocated and not diverted to handling complaints brought without sufficient grounds.
375. The visibility of subsidies provided by the subsidy database and the reports produced by the independent body under its advisory functions, should supplement the information of interested parties. This reduces the cost to business to raise a challenge and allows them to better judge their expected benefit of pursuing a case. Overall, this ensures that the market for redress, via the courts, works more efficiently.
376. This balance of enforcement roles, therefore, ensures that the Government’s overarching objectives are best met regime-wide. Moreover, the Government expects high levels of compliance by public authorities throughout the UK; a view informed by the UK’s high degree of compliance under EU State aid.<sup>126</sup>

#### Form of the body

377. Allocating responsibility for these functions to a visible and independent body means that its recommendations and actions can be considered outside of governmental mechanisms and separate from the incentives of public authorities. Insulated from capture, the independent body is well placed to provide long-term advice on the health of the regime and objective reviews of the compliance assessments. This helps the body achieve its specific objective to maintain public trust in the system and increases stakeholder confidence. Where this resonates internationally, the independent body contributes to the regime’s fourth overarching objective to enable the UK to act as a responsible trading partner.
378. Having a single, authoritative entity that fulfils the proposed monitoring and oversight, and advice roles will enable the independent body to accumulate knowledge and develop as a centre of excellence in the field and ensure that the most robust and consistent approach is taken.
379. As previously discussed, the form of the independent body follows from its functions. While it is possible that an entirely new body could have been established to support the

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<sup>126</sup> Since 1999, European Commission negative State aid decisions issued to Member States: UK 11 (7 with recovery, 4 without) Germany 88 (64 with recovery, 24 without), France 46 (29 with recovery, 17 without).

UK's domestic subsidy control regime, given its functions, the Government intends for the role of the independent body to be carried out by an existing body, the CMA.

380. This allows the Government to bring the independent body into operation and transition from the interim to the steady state regime as swiftly as possible, thereby reducing uncertainty and delays which are detrimental to the regime, while also leveraging the CMA's existing expertise and reputational capital. This is a view shared by consultees, whose most frequent suggestion was that making the CMA the independent body would best guarantee its independence and impartiality. The rationale for the CMA as the particular existing body is outlined below.
381. The CMA has the relevant experience and expertise to act as an authoritative, objective body for subsidy control. It has produced whole economy reports<sup>127</sup> and performed ex-post evaluations of the impact of its interventions,<sup>128</sup> under commission from BEIS and on its own initiative, making it well placed to fulfil monitoring and oversight functions. Similarly, the CMA's role in merger control provides a model for the advice function of the independent body, albeit at a very high level with the latter being a lighter touch process. The Secretary of State's power to intervene in mergers which are designed to raise wider public interest concerns also provides a precedent for the corresponding call-in powers under the domestic subsidy control regime.
382. Subsidy control requires an understanding of competition, the UK internal market and international trade. Creating the independent body within the CMA with close links to the Office for the Internal Market (OIM) which executes similar functions in these highly adjacent fields, will establish the body in good standing and enable ongoing economies of scope and scale (e.g., estates, IT, corporate functions). A coordinated approach to management should enable more efficient allocation of resources, expertise, knowledge and information, as well as a consistent strategy across the shared policy landscape.
383. The CMA also has an excellent reputation and its existing relationships with international bodies will help achieve the Government's objective to act as a responsible trading partner.

#### *Impacts analysis*

384. This section focuses on the cost-benefit analysis of the proposed independent body, setting out the limitations of the analysis, the potential benefits of the regime, and the costs to central government, public authorities and business. The balance between the costs and benefits is then reviewed.
385. The figures in this section are not intended to anticipate or inform future government decisions on funding.

#### *Wider impacts*

386. The following section uses domestic ALBs with similar functions (or a subset of functions) to illustrate the wider impacts of the preferred independent body. This is because there are few countries with subsidy control measures and none which capture the UK's unique international obligations or provide useful evaluative data with which to quantify the wider impacts of the proposed independent body outlined above.
387. Where the independent body's monitoring and oversight functions support advice to Government on regime-wide implementation and effectiveness, the Law Commission of England and Wales provides a possible comparator body for the benefits of evaluating and

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<sup>127</sup> For example, the State of UK competition report 2020. <https://www.gov.uk/government/publications/state-of-uk-competition-report-2020>

<sup>128</sup> For example, the CMA's Assessment of merger control decisions in digital markets (2019). <https://www.gov.uk/government/publications/assessment-of-merger-control-decisions-in-digital-markets>

improving a regime in line with its key objectives. The Law Commission conducts research and consultations in order to make systematic recommendations on law reform for consideration by Parliament, it does not provide advice or have an enforcement role. A 2019 economic report<sup>129</sup> of this work found: the predicted economic gains from the five highest-value projects in recent years exceeded more than £3 billion over ten years; the 11 projects assessed by the economists affected, positively, the lives of at least 27 million individuals; and, of the 45 reports published between 2010-17 only two have not been accepted by Government.

388. The Office of Gas and Electricity Markets (Ofgem) have a function similar to the independent body's proposed pre-award advice role. Their Innovation Link supports businesses looking to launch new products, services or business models by providing *fast, frank feedback*. It is designed to help organisations with ground-breaking ideas navigate the regulatory framework and provide an informal steer on the regulatory implications for propositions. The feedback cannot act as a substitute for the organisation's own due diligence and does not provide a public, commercial endorsement or certification of compliance with Ofgem regulation.<sup>130</sup> Ofgem gave feedback to almost 100 innovators within its first 10 months, of which 88% of those surveyed said the advice given was very useful and helped to shape their business model. The work is also expanding entrants to the sector with only 17% of innovators that accessed Link service (more broadly) involved in the energy sector already.<sup>131</sup> This demonstrates the sentiment of advice recipients and how this type of advice can expand the degree of innovation in a given policy area. Within the context of this regime this could be interpreted as how advice might support public authorities to better understand how to demonstrate compliance and design subsidies in specific cases where advice is sought (paragraphs 356 to 362) and discourage the award of distortive subsidies (paragraph 363).

## Direct impacts

### *Impact to Government*

389. There will be a cost to Government to run the independent body. On the basis that the body will be created within the CMA and given the difficulty in estimating the exact extent of the body's monitoring and oversight function and the likely volume of advice it will provide, costs cannot be estimated with precision or certainty at this stage. In this situation an approach based on examining the precedent of bodies with similar powers is the preferred method to determining an indicative range for the costs associated with estimating the transition and ongoing running costs. The top-down approach been taken here is similar to the one used in the Withdrawal Agreement Bill Impact Assessment<sup>132</sup> to provide an illustrative cost for the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA).

390. It should be noted that any figures presented are initial high-level estimates that rely on strong assumptions, and additional work will be needed to identify the exact resourcing requirements and data collection specifications. These will be determined closer to the point at which the regime comes into effect and will be assessed more comprehensively at the upcoming Spending Review and so estimates included in this Impact Assessment are subject to revision as part of the Spending Review process. These figures are not intended to anticipate or inform future government decisions on funding. Figures have been rounded to avoid spurious accuracy. Given the degree of uncertainty inherent in these estimates, we

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<sup>129</sup>Derrick Jones and Ruth Wainwright. (2019). *Value of Law Reform*. The Law Commission of England and Wales.

<sup>130</sup> Ofgem. (2018). *What fast, frank feedback can and cannot offer*. There is also a clear legal disclaimer which states that the feedback 'is made without prejudice to any decision or action Ofgem may take in the future, including enforcement or other regulatory action. Ofgem accepts no legal liability in contract or in tort for the accuracy and/or quality of the information provided.' *Innovation Link Legal Disclaimer*.

<sup>131</sup> Pamela Taylor. (2017). *Enabling innovation in the energy sector*.

<sup>132</sup> <https://www.gov.uk/government/publications/eu-withdrawal-agreement-bill>

have applied a 40% contingency uplift to the total cost estimates that have been used to calculate NPVs.

#### Precedent bodies

391. The body's monitoring and oversight, and advice functions are considered separately. We have considered the following bodies as comparators:

- Monitoring and oversight: The Law Commission of England and Wales, Migration Advisory Committee (MAC), National Infrastructure Commission (NIC) and the Office for the Internal Market (OIM).
- Advice: Regulatory Advisory Committee (RPC).

392. The Law Commission of England and Wales aims to: ensure that the law is as fair, modern, simple and as cost-effective as possible; conduct research and consultations in order to make systematic recommendations for consideration by Parliament; and, codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes. To do this it consults a wide range of interested parties (every 3-4 years) on which areas to review and focuses on delivering tangible beneficial change rather than wider systematic monitoring across all areas of law. The projects undertaken require extensive resource, including consultations and policy development. It is likely then that its monitoring activities would necessitate significantly more resource than for the proposed independent body.

393. The MAC has a UK-wide remit and works across government, providing transparent, independent and evidence-based advice. It receives regular commissions from Government, in response to which it will: release a timed call for evidence; initiate stakeholder engagement; perform in-house data gathering, analysis and modelling; commission external research where necessary; and report its findings with policy recommendations. It is required to produce an annual report. The MAC appears to be a relatively close match to the proposed independent body and related resourcing needs for monitoring and oversight.

394. The NIC produces: a National Infrastructure Assessment once in every Parliament, setting out the Commission's assessment of long-term infrastructure needs, with recommendations to government; specific studies on pressing infrastructure challenges as set by Government; and, an Annual Monitoring Report, taking stock of the Government's progress towards previously accepted recommendations. These activities align closely with the monitoring and oversight functions envisaged for the preferred independent body. In addition, the NIC works collaboratively with relevant bodies in Scotland, Wales and Northern Ireland.

395. The OIM's remit includes: providing independent, expert ex-ante advice to administrations on the UK internal market impacts of proposed regulation; continued assessment of the UK internal market impacts of the existing regulatory landscape, at a macro level as well as targeted to specific sectors and regions; and, intelligence gathering from businesses, consumers and public bodies. As such, the scope of the OIM is broader than just monitoring and oversight. However, with these caveats in mind, it is considered a reasonable comparator for the independent body particularly as both will have regard to the UK internal market (albeit to differing degrees) and reside within the CMA.

396. The RPC assess the quality of evidence and analysis used to inform regulatory proposals by providing 'opinions', which take the form of publicly available green or red ratings. The RPC will issue an opinion on a Regulatory Impact Assessment within 30 working days (although this was reduced to 20 days for EU Exit regulation). While the reports produced will not be rated and the RPC do provide informal pre-review engagement, the advice function of the independent body is broadly similar in nature. However, we

envisage that the independent body's advice function will be more resource-intensive than the RPC advice function, given the commercial significance of its reports (even without an explicit 'red' or 'green' rating), the need to publish its report, and the need to redact commercially sensitive information prior to publication. The independent body will also need to verify the information provided to it by public authorities and we envisage that it will work on its review throughout the allocated time-period.

397. Given that the independent body will reside within the CMA, we have focused on the UK Internal Market Bill Impact Assessment to inform several key assumptions on costs, such as staff salaries and research and consultancy costs.<sup>133</sup> However, we have also looked at the other analogous bodies to inform other assumptions, such as staff numbers. This is set out in more detail in the following sections.

#### Staff numbers

398. Only the additional staff required by the preferred body to perform its wider monitoring and oversight, and additional advice functions above the counterfactual body are included in this illustrative estimate. Data from comparable public bodies suggests that an initial headcount assumption could be around 5 additional staff for monitoring and oversight, and 14 to fulfil the body's advice function (with a range of 7 to 28 to fulfil the advice function for sensitivities). Given the novelty of these functions, there is considerable uncertainty around the levels of staffing required.

399. These headcounts are based on annual average staff numbers across each set of bodies for a number of years, which have then been prorated according to the following assumptions:

- Monitoring and oversight: Analogous bodies produce reports annually while the independent body will likely report less frequently. The independent body will have a duty to produce a report on the overall functioning of the regime at least once every 5 years.
- Advice: The RPC reviews and provides advice on c. 80 Impact Assessments per year<sup>134</sup> while the independent body will provide advice on 10 Subsidies of Interest and 10 Subsidies of Particular Interest as a central estimate, with 5 and 20 each for sensitivities. We have conservatively assumed that the review conducted by the independent body will be twice as resource intensive as an RPC review, for the reasons outlined in paragraph 396.

#### Staff costs

400. Data from precedent public bodies suggest that staff costs (including salaries, national insurance and pensions) will be the body's biggest expense. To produce an indicative estimate of the body's total annual staff costs, the

401. average annual cost of staff at the Office for the Internal Market (OIM) has been multiplied by the indicative assumed headcount. Staff costs have been taken from the UK Internal Market Bill Impact Assessment.<sup>135</sup>

402. We have used this as a best estimate of staff costs as the OIM is a comparable body that also resides in the CMA. In the absence of a more robust estimate and for simplicity, it is

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<sup>133</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0177/UK%20Internal%20Market%20Bill%20Impact%20Assessment%2008092020.pdf>

<sup>134</sup> [RPC Corporate Report 2018-2020 \(Figure 1\)](#)

<sup>135</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0177/UK%20Internal%20Market%20Bill%20Impact%20Assessment%2008092020.pdf>

assumed that the grade and skills distribution within the OIM are identical to that of the body. This gives an indicative average salary of approximately £64,000 per FTE.<sup>136</sup>

403. Based on this data, an indicative estimate of the body's annual salary costs, that are additional to the counterfactual, would be approximately £1.2 million per year (the indicative estimated per capita staff costs multiplied by the indicative assumed additional headcount of 19), with a range of £0.8 to £2.1 million (reflecting the low and high estimates for advice staff).

#### Overhead costs

404. To provide an indicative estimate of the body's overhead costs, the total additional headcount is multiplied by per capita uplifts taken from the UK Internal Market Bill Impact Assessment<sup>137</sup> and used to estimate the running costs of the OIM for the following categories:

- IT: Includes network user licences, laptops, mobiles, email service help desk
- SSCL: Includes contract charges, Oracle licences, bank charges, payroll
- General: Human resources, DDTS, procurement, finances, estates

405. This increases the additional cost to run the independent body by approximately £170,000 per annum, with sensitivities of £110,000 and £300,000 per annum.<sup>138</sup>

#### Research and consultancy costs

406. To account for any research or consultancy that may need to be commissioned by the independent body, we have included an annual cost of research and consultancy. This is estimated at £150,000 per annum.<sup>139</sup> The figure is derived from OIM Impact Assessment. The whole cost is additional as it is assumed that the counterfactual body would not incur perform activities of this kind.

#### Panel salary costs

407. It is currently envisaged that CMA Panel members may be formally accountable for the undertaking of the independent body's functions and to provide objective expert input to the advice function. It is assumed that the equivalent of five panel members would be engaged with these cases, with an expected total annual remuneration of around £130,000. This is illustrative but consistent with the Office for Internal Market Impact Assessment<sup>140</sup>.

408. The whole cost is additional as it is assumed that the counterfactual body would also be created within an established body whose existing panel has sufficient capacity to encompass the much smaller role of the counterfactual body.

#### Transition costs

409. It is assumed that transition costs for independent body under both the counterfactual and preferred options will be negligible. This is based on the assumption that both bodies will be created within an already established larger body (the CMA) and, as the illustrative headcounts are small compared to the overall head count, the body has the capacity to simply redirect resource.

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<sup>136</sup> Rounded to the nearest thousand.

<sup>137</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0177/UK%20Internal%20Market%20Bill%20Impact%20Assessment%2008092020.pdf>

<sup>138</sup> Figures rounded to the nearest ten thousand

<sup>139</sup> Figure rounded to the nearest ten thousand

<sup>140</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0177/UK%20Internal%20Market%20Bill%20Impact%20Assessment%2008092020.pdf>

Contingency

410. As the indicated costs are very high level and not yet fully developed, it is only prudent to build in a high degree of contingency associated with the following risks:

- The precise nature of the body’s monitoring and oversight function may vary by year.
- Demand for advice may fluctuate by year and is difficult to establish at the outset; this may impact resourcing needs at both an operational and panel level.
- Overhead costs of the body may depend on its location; the CMA have staff in London, Edinburgh, Belfast and Cardiff.

411. Given the degree of uncertainty surrounding these estimates, the figures provided should be treated with appropriate caution. They are indicative estimates which are based on high level analytical assumptions. It may be that the independent body requires more specialists (i.e. more legally qualified professionals or economists), or staff of a higher grade to support its work, which is not reflected in the precedent bodies used: this would place upward pressure on the estimate via per capita staff costs. In addition, while we cannot model the volume of cases for either pre-award or post-award review which may be brought to the CMA by SoS referral, these could increase resourcing burdens on the CMA. To account for these factors, a 40% contingency adjustment is applied to reflect the significant degree of uncertainty inherent in these estimates.

412. This results in a total estimated additional cost to Government of running the independent body of approximately £2.3m per annum (with £1.6m and £3.8m as sensitivities). In NPV this is equivalent to £20.2m (with £14.1m and £32.4m as sensitivities) over a 10-year period.

413. The modelled fiscal cost of running the independent body - that is the cost to government before the “do minimum” counterfactual is accounted for - is estimated to be £2.6m per annum (with £1.9m and £4.0m as sensitivities). Table 9, below, provides a breakdown of independent body costs.

414. Despite the contingency applied, it is likely that this illustrative figure underestimates the costs to Government of funding the independent body. This may be because the pro-rated assumptions may be too severe, producing lower headcount estimates than appropriate. Additionally, there may be annual fixed costs not covered in the research and consultancy estimates or transition costs (e.g., new specialist IT equipment or software licences) not accounted for under the modelling assumptions. More board members may also be required. The exact cost of the body will be determined closer to the point at which the regime comes into effect and will be assessed more comprehensively at the upcoming Spending Review and so estimates included in this Impact Assessment are subject to revision as part of the Spending Review process. These figures are not intended to anticipate or inform future government decisions on funding.

**Table 9: Summary of independent body costs**

<b>Costs</b> (£m and per annum, unless stated otherwise)	<b>Low estimate</b>	<b>Central estimate</b>	<b>High estimate</b>
<b>Fiscal costs</b>			
Staff numbers (FTEs)	15	22	36
Salary costs	1.0	1.4	2.3
Non-salary costs	0.4	0.5	0.6
Contingency	0.6	0.8	1.2

Total fiscal cost	1.9	2.6	4.0
<b>Counterfactual costs</b>			
Staff numbers (FTEs)	3	3	3
Salary costs	0.2	0.2	0.2
Non-salary costs	0.0	0.0	0.0
Contingency	0.1	0.1	0.1
Total counterfactual cost	0.3	0.3	0.2
<b>Additional costs</b>			
Staff numbers (FTEs)	12	19	33
Salary costs	0.8	1.2	2.1
Non-salary costs	0.4	0.5	0.6
Contingency	0.5	0.7	1.1
<b>Total additional cost (inc. contingency)</b>	1.6	2.3	3.8
<b>NPV (over 10 years)</b>	14.1	20.2	32.4

### *Impact to public authorities*

415. This section looks at the impacts of the regime on public authorities through their engagement with the independent body. The administrative cost and benefits of demonstrating compliance are addressed elsewhere, including for Subsidies of Interest and Particular Interest (see the 'Measures to protect UK competition and investment' section).

416. To support the independent body in its monitoring and oversight role, public authorities may be requested to provide feedback on the functioning of the regime. Due to the wide range of potential needs and designs of this engagement requiring different survey methods, it is difficult to provide a definitive price estimate. The following estimate is provided purely as an indicative example of costs.

417. Based on historic EU TAM data, there are c. 30 unique public authorities that award subsidies per annum. In order to obtain statistically robust results a target representative sample size of 21 has been used for the central estimate (with 17 and 25 for sensitivities in the low and high-cost scenarios).<sup>141</sup> It is assumed that public authorities may be asked to engage in the following ways according to the scenario:

- Low-cost scenario: Complete a 15 min web survey.
- Central cost scenario: Engage in a 45 min telephone interview.
- High-cost scenario: Complete both the 15 min web survey and engage in a 45 min telephone interview; a total of 1 hour.

418. It is assumed that Grade 7 Civil Servants are responsible for demonstrating compliance (see paragraph 83) and, therefore, also liaise with the independent body. For sensitivities we have assumed that this would be HEOs for the lower bound and Grade 6 as an upper bound, with all staff costs uplifted by 21.80 percent to include non-wage costs. It is assumed that the body only surveys public authorities in step with its report on the health of the regime, once every 5 years; it is not possible to anticipate the frequency with which the Secretary of State might request ad hoc reviews. An illustrative estimate for the total annual cost to public authorities of engaging with the independent body on monitoring and oversight is produced by multiplying together the target sample size, time spent by public authorities engaging and the hourly cost for of that engagement within each cost scenario. This leads to

<sup>141</sup> According to the sample size calculator used by Sport England, this sample size produces results with a  $p < 0.05$  (confidence level) and confidence interval of  $\pm 10\%$ , with sensitivities of  $\pm 15\%$  and  $\pm 5\%$  respectively.

a central estimated total engagement cost per year of approximately £440 and an NPV at £0.004m in the central scenario over 10 years (with £0.001m and £0.009m as sensitivities).

419. The benefits of this engagement to public authorities is not readily monetisable but may materialise in the guise of clearer guidance which reduces the familiarisation costs to public authorities (and businesses) or changes in the design streamline routes which enable more subsidies to be granted using a lighter-touch compliance process.
420. In addition, public authorities may need to engage with the independent body to assist it in completing its pre-award report. It is assumed that the 'reporting period' is approximately 25 working days based on a process that is analogous to the RPC (which takes 30 days but was reduced within 20 days for EU Exit cases). The exact length of this period will be determined once the regime comes into effect. The proportion of time the CMA engages with parties to a merger in 'state of play' discussions during Phase I merger investigations has been used to pro-rate the total 'reporting period'. It is estimated public authorities will spend one-eighth of the 25 working days engaging with the independent body (3 days). It is assumed that Grade 7 Civil Servants are responsible for demonstrating compliance (see paragraph 83) and, therefore, also liaise with the independent body. For sensitivities we have assumed that this would be HEOs for the lower bound and Grade 6 as an upper bound, with all staff costs uplifted by 21.80 percent to include non-wage costs. It is expected that the criteria which define Subsidies of Interest and Subsidies of Particular Interest will result in approximately 5 to 20 cases in each category per annum. These have been used as the low and high volume estimates respectively, with a central value of 10. An illustrative estimate for the total annual cost to public authorities of engaging with the independent body on advice is produced by multiplying together the number of subsidies, the length of engagement in hours and the hourly cost of that engagement within each category of subsidy and cost scenario. This leads to a central estimated total engagement cost per year of approximately £19,400 and an NPV at £0.2m in the central scenario over 10 years (with £0.1m and £0.4m as sensitivities).
421. It is not possible to monetise the costs to public authorities from interacting with the independent body for pre- or post-award referrals from the Secretary of State, as there is no realistic estimate for volume of subsidies that might be 'called in'. This is because this mechanism is entirely novel, within the context of domestic subsidy control regimes, and will depend on the design of the regime and the behaviour of public authorities. Moreover, it is anticipated that this power will only be used in the most exceptional of circumstances.
422. These narrow costs to public authorities to engage with the independent body on Subsidies of Interest and Particular interest are likely offset by the non-monetisable benefits they bring. For public authorities providing these controversial or uncertain subsidies, advice provides reassurance which may reduce the risk of future judicial challenge and, therefore, may also reduce a potential future cost. While for all public authorities, the published reports may help further clarify their compliance obligations and encourage the design of less distortive subsidies which benefits the wider economy.

#### *Impact to businesses*

423. Our central assumption is that there will be no costs to business from interacting with the independent body outside of its monitoring and oversight role. As the regime places a burden on public authorities rather than businesses, it is assumed that any data that is collected to satisfy the body's advice function and the majority of its monitoring and oversight role will be obtained from the public authority without recourse to subsidy recipients (or wider businesses). Any information needed from the recipient will have been provided to the public authority as part of their subsidy application.

424. However, the independent body will be given compulsory information gathering powers in line with powers given to the Office for the Internal Market in the UKIM act.<sup>142</sup> As part of its monitoring and oversight function, e.g. as part of the ‘health of the regime’ report, the body may wish to gather primary data from business. This burden might fall upon subsidy recipients, competitors and broader market participants. For illustrative purposes, it is assumed that this will take the same time burden as for public authorities – i.e. we have used the same assumptions for sample size and time spent interacting as the monitoring and oversight burden for public authorities. This is combined with a wage of £24.35 for corporate managers or directors take from the Annual Survey of Hours and Earnings,<sup>143</sup> uplifted by 21.80% to account for non-wage costs. This gives an overall NPV of £0.001m in the central scenario with £0.000m and £0.001m as sensitivities.

#### Summary of cost benefit analysis

425. While it is not possible to monetise the wider benefits from having an independent body with the preferred functions, given the scale of benefits suggested by other bodies (see the ‘Wider impacts’ section) these will likely far outweigh the direct costs enumerated in the ‘Direct impacts’ section.

### Judicial enforcement

#### *Consultation proposal and response*

426. The UK committed within the UK-EU TCA to maintain a court and tribunal enforcement system which is analogous to the UK’s judicial review process in the national courts (‘Courts’)<sup>144</sup>: the procedure for challenging the process by which decisions are made by public authorities. The UK has also committed to providing a discretionary remedy for the courts, in limited circumstances, to issue a recovery order to undo the distortive effects of an unlawful subsidy. Finally, the TCA commits the UK to ensuring that UK courts and tribunal can hear claims from ‘interested parties’ in respect of subsidies, who also have the right to request pre-action information and legally intervene in challenges to a subsidy.

427. 25% of respondents answered the question on whether specialist judicial forums should hear challenges to subsidy schemes and awards.<sup>145</sup> Of those that responded, 79% believed that the CAT, or a similar specialist forum, should hear challenges. This was in recognition of the existing expertise that the CAT has dealing with competition cases.

#### *Policy objectives*

428. The Consultation Response emphasises that oversight and enforcement mechanisms that incentivise public authorities to comply with the rules and hold them to account where they do not, are critical to achieving the Government’s overarching objectives for the regime. As the independent body has no direct enforcement role, disincentives for non-compliance must be introduced by way of judicial routes supported by the ecosystem of transparency nurtured by the proposed regime (which includes the subsidy database and the independent body’s published reports).

#### *Options considered*

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<sup>142</sup> <https://www.legislation.gov.uk/ukpga/2020/27/contents>

<sup>143</sup> ASHE 2019 table 14a Median wage for 'corporate manager or director':

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable15>

<sup>144</sup> Administrative Court for proceedings in England and Wales, the Court of Session for proceedings in Scotland, and the High Court of Northern Ireland.

<sup>145</sup> Question 43: “Should a specialist judicial forum such as the Competition Appeal Tribunal hear challenges to subsidy schemes and awards? If not, why?”.

429. List of options:

- **Option A:** Do minimum and amend the courts procedures and available remedies to be TCA compliant.
- **Option B:** Enable the Competition Appeal Tribunal (CAT) to hear challenges to subsidy decisions and make the necessary procedural amendments and remedies available to the CAT to be compliant with the TCA.

430. Option A has been discounted; Option B is the preferred option.

#### Option A – ‘Do minimum’

431. The terms of the TCA commitment on courts and tribunals are met through the UK’s judicial review process, which is already accessible through the domestic Courts. As explained in the Consultation Document, judicial review is the normal procedure for challenging a decision made by a public authority. It is not concerned with the merits of a decision but on the process by which decisions were made and whether the decision by the public authority was within the range of reasonable decisions. A judicial review will examine whether a public authority has complied with its statutory duty or acted in a way that is inconsistent with general public law principles (for example, if the public authority acted unlawfully, irrationally, or with procedural unfairness). The Government considers that this is an appropriate standard of review, given the non-judicial nature of the subsidy assessment (and in particular whether the positive benefits of a subsidy outweigh any negative effects).
432. Under the ‘do minimum’, the creation of a recovery remedy is a key element required to satisfy the TCA. Recovery must be available via judicial review for instances where subsidies are alleged to be non-compliant with the principles, prohibitions or conditions of the regime (‘core subsidy control grounds’) and must be available to ‘interested parties’ who challenge a subsidy decision within the specified time period (STP). The STP lasts one month and is triggered by a public authority fulfilling its obligation to notify the subsidy to the subsidy database (which can be up to six months after the decision to award). The STP can be extended by a further month following a pre-action information request (PAIR).<sup>146</sup> No bespoke right of standing is required to capture the TCA concept of ‘interested parties’. Under the general standing and intervention rights of the Courts, this subset of entities is already entitled to raise and intervene in judicial review. However, these entities would need to be given rights to request pre-action information to meet the terms of the TCA.
433. It is necessary to ensure that the limitation period – the time limit in which claimants must bring a challenge to a subsidy – is consistent with the STP in which the recovery remedy needs to be available to be TCA compliant. To ensure that the limitation period does not expire before the possibility of making a claim for a recovery order, there is a need to align the limitation period to the STP. This will ensure that interested parties will always be able to challenge a subsidy decision and if required make a claim for a recovery order. This is shorter than the limitation period attached generally to judicial review challenges where claims have to be made within three months. However, within that three-month period a claimant must act promptly and cannot wait unnecessarily to the end of the three-month period. The start of the limitation period is also generally from when the decision is made which is potentially much earlier than the start of the STP which runs from the publication of

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<sup>146</sup> Under the terms of the TCA, Article 3.7, interested parties are entitled to make a pre-action request for information (PAIR). The public authority has 28 days to respond to a PAIR and provide the interested party with ‘*information that allows the interested party to assess the application of the principles*’. An interested party can make a PAIR in response to a public authorities decision to award a subsidy as well as any other ‘*relevant decision*’ by the public authority. Therefore, circumstances in which the TCA says the PAIR should be available is broader than information the public authority is required to provide under the terms of the agreement.

the subsidy decision on the database (which could be up to six months after the decision has been made).

434. An initial month-long limitation period, even though it can be extended through the use of a pre-action information request, may have the following impacts:

- **Shoot first mentality:** A shorter limitations period may encourage speculative litigation and, in many cases, may lead to poor quality applications via the CAT. This may place a great burden on the CAT via two channels. First, as speculative litigation, more court resources will be needed to be triage these cases. Second, poor-quality submissions may need to be amended after the claim had been made, leading to longer case proceedings. This will likely increase the number and cost of cases reviewed under the preferred option.
- **Access to justice:** It is likely that only larger law firms would be able to handle the burden of preparing a case in such short notice. This might 'price out' the ability of some interested parties out to challenge a subsidy. Additionally, smaller or less vigilant competitors might not register the notification to the database of a subsidy (or scheme) which might potentially harm their competitive position within a shorter timeframe. Both these factors would likely reduce the number of cases raised under the preferred option.
- **Burden to respond:** To ensure the system is fair, public authorities might only be given an equal length of time to prepare a defence (one month). This might place a disproportionate burden on small public authorities, which may not have sufficient access to legal advice. This may lead to longer timelines to ultimate resolution as submissions need to be amended by both sides, increasing the cost of cases under the preferred option.

435. The 'do minimum' option would fulfil the UK's international obligations under the TCA and meet its overarching objective for the domestic subsidy control regime. However, the same outcomes could be achieved in a more efficient manner under Option B, better meeting the objectives of the regime. The details of this are explored in below.

#### Option B - Preferred option

436. The Government will give the CAT jurisdiction to hear challenges to a public authority's decision to award a subsidy or make a subsidy scheme. The CAT will apply the judicial review standard when hearing challenges to the award of a subsidy. This means the CAT will not be asked whether the public authority made the 'correct' decision, but whether it was a decision was legal, procedurally fair, and within the range of potential reasonable decisions that the authority could have taken.

437. The CAT will have remedies available to it which will be equivalent to those available to the courts on an application for judicial review and the discretion to award an additional remedy of recovery, where the subsidy is alleged to be non-compliant with the principles, prohibition and conditions. All these elements are identical in their effects to the counterfactual 'do minimum' option and do not influence the analysis.

438. The tribunal does not have a general standing bar and therefore it will be necessary to set out a right to standing for 'interested parties' and the Secretary of State. This is potentially a narrower right of standing compared to the normal judicial review test but it is still considered a broad right of standing that will enable those who are impacted by a subsidy to challenge it before the CAT if they so wish. This may lead to comparatively fewer cases when compared to the counterfactual.

439. As set out in the Consultation Response, the CAT has the advantage of being a UK-wide tribunal that has expertise in related area of competition law. It is, therefore, well suited to hearing challenges to the award of subsidies for compliance with the subsidy control regime. The tribunal is well-regarded by practitioners and has experience in applying the ‘judicial review standard’ as part of its current jurisdiction.
440. The UK-wide nature of the CAT means that there are representatives from the four nations within its appointed panel members but that all cases are held by a single body. This makes it the most suitable forum in which to hear disputes pertaining to subsidy control, which is a reserved matter.
441. A single tribunal also mitigates the risk of forum shopping. The courts have slightly different powers and listings pressures which might incentivise parties with standing to raise challenges in the nation which offers the possibility of the most favourable or swiftest outcome.
442. A singular tribunal means the amendment to procedures and creation of an additional remedy of recovery are more straightforward. These changes need only be made to one tribunal, rather than across three distinct courts. Additionally, this avoids any unintended interactions or difference between the procedures for the use of existing remedies and new recovery powers, which would be derived from common law and statute respective under the ‘do minimum’ option.
443. The CAT will hear cases on a ‘judicial review standard’ for which it has experience as part of its current jurisdiction.<sup>147</sup> While the specialist knowledge the CAT holds on economics and competition are not required to rule on this standard, it could be helpful in determining objective questions of law relating to the subsidy control regime (i.e., determining if a measure is or is not a subsidy) or understanding the technical analysis and the macro socioeconomic policy judgements underpinning the deliberations of public authorities.
444. The same level of expertise is available via the Courts, as several high court judges sit on the CAT. However, the means by which high court judges are allocated in the Courts does not guarantee that the presiding judge has this specialist background. The expansion to the CAT’s remit to subsidy control will further facilitate the amassing of competency in economics and competition within a single expert enforcement forum.
445. Neither the Courts nor the CAT have much, if any, spare capacity. However, expanding the CAT may require less additional resource as, while the volume of disputes is not expected to be particularly high even accounting for a post-implementation peak, a sole body offers economies of scale.
446. It is reasonable to assume that the listing times for the CAT are shorter than those of the Courts, given their more expansive remit with regard to judicial review. Even accounting for their relative size, cases under the preferred option are likely to reach review sooner.

#### *Impacts analysis*

447. This section focuses on the cost-benefit analysis of the preferred judicial route, setting out the limitations of the analysis, the potential benefits of the regime, and the costs to central government and litigants (primarily public authorities and business).

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<sup>147</sup> See, for example, *BAA v Competition Commission* [2012] CAT 3 where the CAT made clear that it applies the same standard of review as the Courts.

## Wider impacts

448. As highlighted above, the CAT is likely to hear cases more quickly, reducing delays and uncertainty for business. It is not possible to monetise the effect of this or the impact of the CAT's specialist knowledge. However, swifter, more authoritative rulings are likely to have positive impact on domestic and international business confidence and investment which underpins the UK economy.
449. There are also wider, non-monetised impacts to an effective enforcement system for subsidies. Although it is difficult to determine the additional degree to which the following benefits and costs might flow above the counterfactual (where judicial redress is available via the Courts).
450. For example, the ability to raise judicial review is important to a third-party business in restoring their competitive position and remedying any harm experienced, indirectly ensuring that competition is maintained within the wider economy. An effective enforcement mechanism can act as a deterrent, disincentivising the award of distortive subsidies which might otherwise harm competition. A competitive economy ultimately benefits the whole of the UK, driving productivity and reducing consumer prices.
451. The existence of a robust enforcement process also positively signals to international trade partners, demonstrating the UK's commitment to subsidy control. Speculatively, this may pay dividends in attracting inward investment or improved terms in future trade agreements. It is not possible to forecast the exact impact.
452. However, there may also be a non-monetisable cost of challenge with respect to delayed or suspended policy. Whilst a subsidy is the subject of judicial review, any associated policy or project may need to be paused. This will impact the delivery of intended benefits particularly for large projects or programmes of work involving multi-year payments. Furthermore, the uncertainty of legal challenge may have negative economic impacts through 'chilling effects'; the threat of judicial review discouraging public authorities from providing awards and businesses from applying for them.

## Direct impacts

### *Estimating the volume of future judicial reviews*

453. The EU State aid Database<sup>148</sup> and a Study on the enforcement of State aid rules and decisions by national courts<sup>149</sup> provide a basis for estimating the number of subsidies (or schemes) which historically would have presented possible candidates for judicial challenge under a hypothetic domestic subsidy control regime with a scope identical to that of EU State aid (GBER, prohibitions, exemptions) and an independent body reflecting the preferred option present above.
454. In mapping EU State aid cases from the database into this theoretical model, it has been assumed that the following would present plausible demand for redress:
- All cases of existing aid for old pre-accession aid or previously authorised aid schemes which may no longer be compatible under currently prevailing EU conditions
  - All cases of formal complaint
  - All cases of unlawful aid (i.e., non-notified aid or aid that was notified but granted before the European Commission has reached a decision)

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<sup>148</sup> [https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3)

<sup>149</sup> Ibid.

- 40 percent of all cases of notified aid
455. Aid awarded under the EU’s General Block Exemption Regulations (GBER) have been excluded from the analysis on the assumption that they cannot be challenged via the courts and that this will be true analogously for Streamlined Routes within the new regime. It is implicitly assumed that a similar proportion of subsidies as GBER will be awarded under Streamlined Routes and will not be challenged in the courts.
456. The European Commission performs a pre-approval triage function to distinguish which cases of notified aid might pose a legitimate risk to the single market and therefore should proceed to Phase II scrutiny.<sup>150</sup> The Commission’s pre-approval process is binding and takes far longer than the proposed month-long, non-binding (but public) advisory role envisaged for the independent body in the new UK regime for a small number of Subsidies of (Particular) Interest. As such, there may be an additional burden placed on the CAT to filter out more speculative applications for judicial review, particularly as the new UK regime establishes itself and litigants test the system. This burden may be partially offset by the independent body’s advisory role and the ability for the Secretary of State to step-in (pre-award).
457. The volume for notified aid is used as a basis to account for the potential volume of speculative applications. Historically only 5% of all notified aid progresses to Phase II formal investigation (a reasonable proxy for legal challenge). However, based on the expectation of more speculative applications in the first few years, for the reasons set out above, it is assumed that speculative applications will be equivalent to 40% of all cases of notified aid. This provides a more appropriate estimate for volume of judicial reviews when modelling the initial phase of the UK’s new regime.
458. In addition, an annual average figure for the number of domestic private enforcement cases of State aid rules in the UK are included, based on statistics provided in a 2019 Study on the enforcement of State aid rules and decisions by national courts<sup>151</sup> prepared for the European Commission, which cover the period 2007-2018. These are private actions taken by third parties to demand that domestic courts uphold the EU standstill period where aid was alleged to have been awarded unlawfully.
459. For each class of estimate, the numbers have been rounded to the nearest five, either way, to provide a range to admit contingency for the additional caveats enumerated below. Finally, these classes are added together to provide a final estimate. This approximation likely overestimates the upper bound by rounding each class of estimate up and compounding the exaggeration through addition. Table 10 provides presents a summary of the calculations described above.

**Table 10: Annual judicial review volume estimate calculations**

Case type (SA procedure code)	Cumulative values		Annual volumes per annum	% included in estimate	Estimated volumes per annum	Rounded range
	Volumes	% of total				
Existing aid	3	0.1%	0.2	100%	7.0	<b>5-10</b>
Formal complaint	2	0.1%	0.1			
Unlawful aid	102	4.7%	5.1			

<sup>150</sup> Having completed a Phase I initial examination, the EU Commission is obligated to open a formal investigation procedure in cases where it has any doubts as to the compatibility of the measure with the common market. These are known as Phase II formal investigations.

<sup>151</sup> <https://op.europa.eu/en/publication-detail/-/publication/264783f6-ec15-11e9-9c4e-01aa75ed71a1/language-en/format-PDF/source-195560430>

Notified aid (Phase II)	32	1.5%	1.6			
Notified aid (< Phase II)	621	28.9%	31.1	40%	12.4	10-15
Block exempted aid	1391	64.7%	69.6	0%	0.0	0
UK private action*			1.8	100%	1.8	0-5
<b>Total number of cases</b>	<b>2151</b>	<b>100.0%</b>	<b>107.6</b>			<b>15-30</b>

*Source: All data is taken from the EU State aid Cases Database with the exception of the UK private action numbers(\*) which are sourced from Study on the enforcement of State aid rules and decisions by national courts.*

460. In addition to the previously raised caveats for the use of historic EU State aid data as a basis for estimates within the context of the UK's new domestic subsidy control regime (see paragraph 18 for the core argument) the following confounding factors make the estimates considerably more uncertain:

- Wider scope and differing subsidy compliance criteria of the UK regime (upward)** – The EU State aid regime starts by assuming all aid is prohibited and can only be awarded under block exemptions or pre-approval. In contrast, the UK domestic control regime starts by assuming all aid is permitted and can be awarded if it complies with the principles, conditions and exemptions. Therefore, it is possible that the UK's more flexible and permissive regime will increase the number of subsidies awarded. Even if the proportion of awards that were of concern to interested parties remained the same, this would increase the absolute number of enforcement actions demanded. Additionally, the introduction of unique criteria (e.g., the principle to protect UK competition and investment) could give rise to new grounds upon which to bring a challenge. This too could increase the number of judicial reviews.
- Reduced guidance role for the independent body and divergence from pre-approvals notification process under EU State aid (upward)** – This could cause an increase in the number of improperly awarded subsidies both through malfeasance (albeit unlikely) and accidental misinterpretation of the new regime, resulting in more enforcement cases being brought, most notably in the short run. This is particularly true as the independent body, unlike the European Commission, is not mandated to review all proposals that do not meet block exemption criteria. The oversight role of the UK's independent body will be limited to Subsidies of Particular Interest, pre-award referrals by the Secretary of State and some Subsidies of interest. It will not review all subsidies that do not follow the 'streamlined routes' which, moreover, are different in scope to GBER under EU State aid.
- No complaint role for the independent body (mixed, both upward and downward)** – This will increase demand for enforcement via the courts. However, the higher cost and evidentiary bar required to pursue a judicial review (when compared to raising a complaint) is likely the most significant factor and acts as a downward driver on these estimates. The wider scope of 'interested parties' within the UK's regime (which might in principle include public authorities as well as the competitor businesses covered by the term under EU State aid) may also have some small upward impact.
- No ex-post oversight and enforcement role for independent body (downward)** – Additionally, the European Commission actively monitors the State aid regime after awards were granted. For example, the Commission runs annual monitoring exercises for GBER schemes and the awards to individual companies (typically large ones or from certain sectors) to: ensure its proper functioning; identify any errors, omissions and incorrect interpretations in its use; and, provide interested parties with confidence in the functioning of these exemptions. The absence of this function within the UK regime, could cause a reduction in the number of improperly awarded subsidies systematically

identified within the regime and, therefore, the number of judicial reviews that are raised. Although there is likely some overlap with the potential for Secretary of State to refer awards to the independent body.

- **UK limitations and specific time period (mixed)** – Under EU State aid there is a limitation period of ten years for recovery unlawful aid is aid granted without prior Commission authorisation. However, once the period in which judicial review can be raised has expired, aid which is correctly notified to the UK's subsidy database can no longer be pursued through the courts. This may reduce or limit the number of challenges raised. However, plaintiffs may also take a 'shoot first ask later' approach, raising more speculative and poor-quality applications. This would likely increase the estimate in so far as it could increase the burden on the CAT to triage these applications, although they would not progress to full hearings.

461. It is not possible to disaggregate this estimate into judicial reviews which might fall within the jurisdiction of the CAT and left to the national courts. This is because some of these powers are new and not embodied by the EU State aid data and because, where there is overlap, the manner in which this information is stored by the European Commission makes identifying the reason for the case disproportionate to establish. Taking a conservative approach, it is assumed that the best estimate reflects those cases that will be reviewed at the CAT.

462. Based on this methodology, the best estimate for the volume of judicial reviews anticipated under the new domestic subsidy control regime is 23 per annum, with a range of 15-30 per year.

#### *Impact on Government*

463. The Government will need to fund the Courts under the counterfactual (due to its commitments in the TCA) and the CAT under the preferred option. Only the additional burden on Government should be included in this Impact Assessment. Due to the specialist nature of the tribunal, the CAT might reasonably be expected to offer cost savings to Government; with cases being heard more quickly, the cost of resourcing the CAT would be lower than under the counterfactual. Shorter hearings would also likely reduce the cost of judicial review for litigants. A swifter more efficient CAT might incentivise more challenges; this would likely increase the volume of cases brought under the preferred option. Given the uncertainty as to the costs of judicial review under the new regime and in the absence of more robust evidence, it is not possible to determine which of these factors would dominate (the lower unit cost per case of the CAT or the larger volumes compares to the counterfactual). Consequently, it is not possible to determine if this will result in an additional cost or cost saving to Government.

464. The estimated 15-30 judicial review cases anticipated under the new regime will likely place an additional burden on the judicial system employed under either option. For the preferred option, it is likely that the CAT may need to employ additional resource or hire more court space. At present, the CAT have c. 110 live cases and an annual running cost of c £6m per annum. On the assumption that the CAT is already running at full capacity, it is estimated that the CAT's running costs would need to increase by approximately 20% or £1.2m per annum in absolute terms for the central estimate of 23 new subsidy control cases per annum in the initial phase of the regime (with £0.8m to £1.6m for sensitivities to mirror the 15-30 estimated volumes range). These figures are highly illustrative and do not represent the net impact of the preferred enforcement arrangements. These costs are a consequence of the need to comply with the terms of the TCA. If enforcement were through the national courts rather than the CAT a similar adjustment cost would have been imposed

to absorb the new case load. The increased costs may (or may not) have been more substantive than enforcement via the CAT. Given the uncertainty as to these costs and in the absence of more robust evidence, it is not possible to determine if the preferred option will result in an additional cost or cost saving to Government. Where there is a net cost, its omission from the overall assessment risks underestimating the cost of enforcement. These impacts will be assessed more comprehensively at the upcoming Spending Review and so estimates included in this Impact Assessment are subject to revision as part of the Spending Review process. These figures are not intended to anticipate or inform future government decisions on funding.

#### *Impacts on litigants*

465. Under both options, litigants would be able to bring the same range of challenges. The key difference being the judicial forum. Only the additional impact on litigants should be included. Due to the specialist nature of the tribunal and its assumed shorter listings times, it might reasonably be expected that cases brought via the CAT might be less costly for litigants than those brought via the Courts; the specific cost of cases likely varying with complexity and length. This lower unit costs to litigants lower the barrier to challenge which likely increases the volume of judicial review expected through the CAT, including speculative challenges. Given the uncertainty as to the costs of judicial review under the new regime, and in the absence of more robust evidence, it is not possible to determine the magnitude of this cost differential or the increase in volumes compared to the counterfactual (i.e. which factor would dominate). Consequently, it is not possible to determine the sign of the aggregate additional cost to litigants. Where the cost differential to litigants is small and the unit cost to litigants of funding judicial review via the CAT is high compared to this differential, there is a risk that even a modest increase in volumes could increase the aggregate additional cost to litigants.
466. Where there is an aggregate additional cost (or cost saving) to litigants, it would not be appropriate to predict what proportion of this falls to Government. While the Secretary of State has standing within the CAT to raise judicial reviews, this would only be done in exceptional circumstances. It is impossible to predict whether, if ever, this situation would arise. As such it would be assumed that of the anticipated volumes of judicial review per annum, these cases would form a negligible percentage. Thus, the litigation cost to Government is zero.
467. At a minimum at least half of any aggregate additional cost (or cost savings) to litigants would fall to public authorities, who act as defendants in all judicial review. Where all challenges are raised by public authorities, the whole of this aggregate additional cost (or cost saving) to litigants would fall to public authorities.
468. Where no plaintiffs are businesses, there would be no additional enforcement cost to business from the regime. This could increase to half of all aggregate additional enforcement costs (or cost saving), where all plaintiffs are businesses.
469. However, where any narrow aggregate additional cost of litigation does fall on business, it should be considered in the context of the opportunity they afford to third parties with regard to redressing harm to their competitive position. This benefit it is non-monetisable and it is difficult to establish the additional benefit to these preferred enforcement arrangements above the counterfactual (where redress could be sought via the Courts). However, it is a key benefit and its expected value must outweigh the legal costs in order that a business decides to proceed with litigation. On an individual basis the cost to pursue a challenge is likely lower due to the efficacy of the CAT compared to the counterfactual Courts (i.e. the CAT will likely have a lower unit cost to litigants).

470. It is impossible to forecast the number of subsidy recipients (businesses) which may be affected by recovery. The UK has an excellent compliance record under the EU State aid regime and recovery is a remedy that is exercised at the discretion of the court. Furthermore, the aim of recovery is to relevel the playing field and reverse the impact of illegally awarded aid; as a transfer rather than a cost, it is not included in cost benefit analysis.

471. To address the uncertainty and ensure the regime maintains access to justice, the Government will continue to monitor:

- **The cost of enforcement:** to ensure that it is reasonable and proportionate.
- **The volume of applications to the CAT:** to ensure the body has sufficient capacity and adequately staffed to hear cases in a timely fashion.

## Direct costs and benefits to business calculations

**Table 11: Cost of Option**

<b>Cost of Option</b> (2019 prices, 2022 present value)			
<b>Total Net Present Social Value</b>	<b>Business Net Present Value</b>	<b>Net direct cost to business per year</b>	<b>BIT Score</b>
-23.8	-1.6	0.2	0.9
<b>Appraisal Period (Years)</b>	10		

472. As detailed throughout this Impact Assessment, the vast majority of the impacts of the regime fall on public authorities. For a small number of very complex subsidy awards or schemes, there will be more significant costs for public authorities and recipient businesses. However, most of the costs will not be additional – because many of the activities public authorities will have to undertake to comply with the measures in the regime they would have to do anyway to award public money. These costs should also reduce over time as Government publishes updated guidance, and introduces ‘streamlined routes’ – where compliance has already been pre-assessed. The direct cost to business of the regime is estimated to be £0.2m per year. These costs and associated BIT score are provided in Table 11. These costs will not be recurring and instead will fall on recipient businesses only when they engage with public authorities to receive high risk ‘subsidies of interest’ (which will be higher value in most cases). Therefore, these costs are likely to fall on a small number of large businesses and will be factored into the business’ decision to apply for the subsidy. These estimates will change somewhat when policy decisions on judicial enforcement routes are finalised, but any additional costs will only fall on businesses in the small number of instances where they either bring or are involved in judicial review cases.

## Impact on small and micro businesses

Will the measure impact small and micro businesses (SMBs)?

473. Both subsidies specifically designed to target SMBs and subsidies with broader remit can impact SMBs. Whilst these impacts may be considered at the point that individual subsidies are designed and awarded, the overall regime will also have an indirect impact through any effect that it has on the size and nature of subsidies awarded to SMBs.
474. The new subsidy control regime is highly likely to affect SMBs, as it will impact the design of specific subsidies and indirectly impact subsidy recipients. However, the impact of this would be difficult to fully assess before further policy details are decided.
475. As set out in the relevant sections of this Impact Assessment, there are many aspects of the new regime that will be determined by secondary legislation and guidance. For example, the specific categories of subsidy that streamlined routes apply to, and the precise nature of these, are yet to be decided. These policy details, still to be determined, will affect the impacts of the new regime on SMBs.
476. Data on the subsidies granted to SMBs can be informative for background on the potential size of impacts but will not precisely reflect the broader impact of a legislative regime.
477. Background data on subsidies and SMEs more generally, as well as a consideration of which costs might fall disproportionately on SMBs are presented below. As there is still policy detail – yet to be decided – to follow in secondary legislation and guidance it is not possible or appropriate to provide further analysis on the potential impacts on SMBs at this stage of policy development. The Department for Business Energy and Industrial Strategy (BEIS) will continue to actively consider and analyse impacts on SMBs in the appropriate and proportionate manner in accordance with the Green Book as the policy develops.

What are the overall costs that fall on small and micro businesses? Would there be any disproportionate burdens on small and micro businesses?

478. We anticipate that the overall additional costs that fall on small and micro businesses will be negligible for several reasons:
- a. Administrative and familiarisation costs associated with the subsidy control regime will disproportionately fall on public authorities as opposed to businesses. This is because the subsidy control regime regulates how public authorities can support private companies, rather than regulating recipient businesses directly. The regime is designed to guide and place conditions on public authorities in their award of subsidies.
  - b. It is assumed that small businesses will familiarise themselves with guidance produced by public authorities for a particular subsidy scheme, rather than the updated regime-level guidance aimed at public authorities. It is, therefore, assumed that additional familiarisation costs for SMBs will be negligible.
  - c. We do not anticipate that there will be any direct administrative costs for businesses as a result of the subsidy control regime. The subsidy control regime places obligations, such as respecting the subsidy control principles, on public authorities when awarding subsidies. Businesses are only required to conduct assessments for the specific subsidy that they are engaging with, something that they would have to do anyway irrespective of whether this is under the new domestic regime.
  - d. Depending on details to be set out in secondary legislation and/or future guidance, the obligations on public authorities under the new regime could potentially directly impact the information that public authorities ask businesses to provide as part of their subsidy application. However, we do not anticipate that any additional

information requirements, and therefore indirect administrative costs for businesses would be significant.

### Background statistics

479. Data on subsidies is drawn from the European Commission State aid TAM database, which groups subsidy recipients as either “small and medium enterprises” (SMEs) or “large enterprises”. The limitation of this definition masks the impact of regime change on SMBs specifically, but provides at least some insight on the number and distribution of SMBs that will be affected. This data is retrospective and based on the EU State aid regime, which requires all subsidies above €500,000 in value to be notified to the European Commission. Some public authorities voluntarily notify subsidies below the reporting threshold, but this information is likely incomplete and thus only a partial representation of the subsidies given to SMEs.
480. 66% of the total number of non-Covid-19 related subsidies notified by the UK between July 2016 and December 2020 have been granted to SMEs, representing 3,268 unique SME recipients. However, subsidies to SMEs make up only 37% of the total observed value. Almost all subsidies notified under the Covid-19 Temporary Framework were granted to SMEs.
481. On average, the UK has reported approximately 1,000 subsidies, worth £1.5bn granted to SMEs per year. Of these reported subsidies, 27% of the total number (worth £424m per year) were granted to the Information and Communication sector, 27% (worth £360m per year) to the Professional, Scientific and Technical Activities sector, 15% (worth £120m per year) to the Manufacturing sector and 9% (worth £310m per year) to the Energy sector. 39% of the total number of reported subsidies granted to SMEs (worth £500m per year) were granted for the objective of R&D, 20% (worth £350m per year) for Environmental Protection and 19% (worth £340m per year) for the objective of Culture. In particular, 88 reported subsidies worth £140m per year were granted for the objective of “SMEs including risk capital”, related to providing access to finance for SME recipients. On average, the UK Government granted 890 reported subsidies to SMEs per year, Devolved Administrations granted 100 per year and Local Authorities granted 9 per year.
482. Overall, subsidies granted to SMEs and large enterprises respectively target similar sectors and objectives. Although more subsidies are granted to SMEs per year, the average subsidy granted to an SME is worth £1.5m compared to £4.8m for large enterprises. It should be noted that subsidies granted to SMEs may be underrepresented in this data due to the voluntary reporting of subsidies below €500,000 by public authorities, particularly if subsidies below this threshold are more likely to be granted to SMEs than large enterprises.
483. Based on this data, many SMBs may be indirectly impacted by the new regime.

### **Wider impacts**

484. In the following sections we set out our consideration of the wider impacts.

### **Equalities impacts**

485. Subsidies can cover a range of purposes from encouraging research and development to promoting local growth or supporting small businesses. Therefore, there are a broad range of equality considerations for the subsidies themselves. This equality consideration, however, will continue to be undertaken by public authorities at the point that subsidies are administered.

486. In identifying equalities impacts, however, a distinction must be made between the decision to award subsidies and the rules and conditions which apply to the award of subsidies. The new subsidy control framework will set the rules and conditions under which subsidies can be granted. They only place a duty on public authorities and apply to subsidies given to enterprises (a person, or group of persons, who is engaged in economic activity that entails offering goods or services on a market) and not to individuals in their private capacity.
487. This process is separate to a decision of who should benefit from this subsidy (at which point assessment of discrimination for Public Sector Equality Duty (PSED) purposes may become more relevant). The latter equality consideration will continue to be undertaken by public authorities at the point that subsidies (or schemes) are administered.
488. Similarly, whenever a power is exercised under the Bill, its use will need to comply with the PSED and require further specific assessment under the duty.
489. Whilst this means that equality impacts are considered where relevant under any subsidy control regime, it is important not to 'bake in' negative equality impacts into the regime itself. It is not possible to undertake a full equalities assessment at this stage because, as set out in the relevant sections of this Impact Assessment, there are many aspects of the new regime that will be determined by secondary legislation and in guidance.
490. We anticipate that the impacts of the new regime on people with protected characteristics will largely depend on levels of detail that go beyond what is to be set out on the face of the Bill. For example, the principles are broad enough that placing a duty on public authorities to comply with them *per se* may not have an impact on the type and nature of subsidies that affect protected groups. The impacts of streamlined routes on protected groups will depend on which types of subsidies these apply to.
491. This is strongly substantiated by the responses to the public consultation. As part of the Government consultation, a question was posed to obtain any information relevant to the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010:
- a. Of the 47 respondents (20% of a total of 234 response) that answered the question on potential equalities impacts, 41 (87%) replied saying there were no relevant equalities impacts to consider. Respondents that explicitly identified impacts mentioned age, disability and race as protected characteristics which might be impacted differently by some elements of the domestic regime.
  - b. One relevant response provided evidence, mentioning the Government's Taking Part Survey 2019/20 on the differences in engagement with the arts by ethnicity. However, this comment simply reflected how subsidies can support more diverse engagement and not the impact of the regime as a whole.
  - c. Another highlighted that the EU's existing state aid exemptions include "aid for the employment of workers with disabilities in the form of wage subsidies" and "aid for the recruitment of disadvantaged workers". No similar measure will be placed on the face of the Bill (since the Bill will remain neutral as to the purpose of subsidies), but the flexibility of the regime will allow subsidies to be given for these purposes by public authorities with minimum bureaucracy and hindrance, reflecting in part the same policy intention as the EU exemptions. These objectives may also be considered as part of the design of streamlined routes, at which point its impact of groups with protected characteristics will again be considered under the PSED.
492. There are, however, two main elements of the Bill that we have identified may have some possible positive effects in its treatment of protected groups:

493. Firstly, the legal obligation on public authorities to submit information on any subsidies awarded above set values in a central database set up by BEIS will enable parties to identify potentially distortive subsidies or schemes against which to raise judicial review. This transparency could help facilitate groups with protected characteristics who consider they have been impacted by a specific subsidy, to investigate their concerns further.
494. Additionally, the exemption of Services of Public Economic Interest (SPEI) subsidies from certain provisions or requirements may have some possible positive effects. SPEI are public services that would not be supplied (or would not be supplied under the required conditions) without public intervention, and which are of particular importance to citizens. Examples of which include social housing or rural public transport services. Their exemption is allowable under the TCA, however, their inclusion within the regime is a domestic policy decision which will actively facilitate the award of subsidies and schemes to deliver SPEIs by reducing legal risk, administrative and compliance costs (to public authorities and business) and increasing the scope to award such subsidies. Indirectly, this may advance equality of opportunity through enabling the provision of and access to additional SPEIs.
495. Based on responses to the consultation, other analysis and stakeholder engagement, we have reached a provisional conclusion that the Subsidy Control Bill does not create any foreseeable impacts of concern under the PSED. Overall, we consider the Bill to be broadly neutral in its treatment of protected groups, with some possible positive effects flowing from the inclusion of SPEI exemptions within the regime, and do not believe it will deliver different outcomes for any individuals with protected characteristics in comparison to others. As such, we have reached a provisional conclusion that the Subsidy Control Bill does not create any foreseeable impacts of concern under PSED.
496. We will continue to analyse equalities impacts as we develop further details of the new domestic regime. Similarly, whenever a power is exercised under the Bill, its use will need to comply with the PSED, requiring further specific assessment under the PSED.

## **Regional impacts**

497. Both subsidies specifically designed for regional development and subsidies with broader objectives can have large regional impacts. Whilst these may be considered at the point that individual subsidies are designed and awarded, the overall regime will also have an indirect impact on regions through its effects on the nature of subsidies that will be granted.
498. As discussed in the main consultation response document and the 'Policy objectives' section, preserving flexibility to meet public sector objectives, including levelling up, and balancing the need to protect domestic competition are two key factors for designing subsidy control policy. This approach ensures public authorities are able to grant subsidies with positive regional impacts, such as targeting regional development, while limiting subsidies which are most at risk of introducing competition distortions across regions. The regime should therefore have a positive regional impact overall, compared to the counterfactual where a regime is not designed around these key factors. Most aspects of the regime are unlikely to have significant regional impacts specifically but will instead ensure that measures apply consistently across all subsidies and consequently all regions of the UK. For example, the establishment of an independent body as part of the CMA, which is based across all four nations, should ensure that regions are treated consistently by the independent body without risk of negative regional impacts.
499. The aspects of the regime related to the protection of UK competition and investment will be most likely to have positive regional impacts through the effects of the measures on subsidy design, as the measures focus on minimising the risk of subsidies negatively impacting different regions of the UK. Compared to the counterfactual, the additional principle focused on protecting UK competition and investment is likely to lead to positive

regional impacts by more explicitly obliging public authorities to ensure that a subsidy does not unduly reduce UK competition and investment. Similarly, the prohibition of subsidies contingent on the relocation of economic activity should prevent subsidies with greatest risk of negative regional impacts from being granted.

500. As set out in relevant sections of this Impact Assessment, there are many aspects of the new regime that will be determined by secondary legislation and guidance. Details around updated guidance throughout the regime, including on minimising the risk of subsidy races and the specifics of the prohibition of 'relocation' subsidies, will likely have further impacts on how public authorities consider the regional impact of subsidies. This should therefore further reduce the negative impact that subsidies could have on different regions of the UK compared to the counterfactual 'do minimum'. Moreover, specific details around the designation of subsidies under streamlined routes or Subsidies of Interest should lead to more positive regional impacts overall by respectively preserving flexibility to grant subsidies with positive impact and protecting domestic competition.

501. Data on the location of subsidy recipients and volume of regional development subsidies can be informative for background context on the potential distribution and scale of regional impacts, but will not precisely reflect the broader impact of a legislative regime. For the period between July 2016 to December 2020:

- a. 74% of reported subsidy recipients were located in England, 10% in Scotland, 5% in Wales and 5% in Northern Ireland (the remaining 6% were unspecified). These figures likely overrepresent the proportion of recipients in England, as the location of recipients is defined in this data as where a business is registered rather than where it is operating. As such, 31% of recipients are reported as located in London but it is more likely that any regional impacts of the regime will depend more on the regions where businesses are operating.
- b. On average, 61 regional development subsidies worth £98m were granted by authorities per year. These subsidies are a likely source of regional impacts given their region-specific objectives, therefore aspects of the regime related to this category of subsidy will likely have indirect regional impacts. However, these figures should only be considered as an illustration of some of the potential impacts of the regime, as other categories of subsidies may also have regional impacts depending on the objective and design of individual subsidies.

502. As there is still policy detail – yet to be decided – to follow in secondary legislation and guidance it is not possible or appropriate to provide further analysis on the potential regional impacts at this stage of policy development. The Department for Business Energy and Industrial Strategy will continue to actively consider and analyse regional impacts in the appropriate and proportionate manner in accordance with the Green Book as the policy develops.

## **Environmental impacts**

503. Both subsidies specifically designed to target environmental objectives and subsidies with broader objectives can have large environmental impacts. Whilst these may be considered at the point that individual subsidies are designed and awarded, the overall regime will also have an indirect environmental impact through any effect that it has on the size and nature of these subsidies.

504. The Government's proposed approach is designed to allow flexibility to meet public sector objectives including those relating to the environment and climate change.

505. Under the TCA, the UK has a general duty to ensure that energy and environmental subsidies are aimed at delivering, and duly incentivising the beneficiary in delivering, a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy.<sup>152</sup> The UK also has specific obligations under the TCA, with respect to subsidies to energy and environmental projects; these are given effect in the Subsidy Control Bill as principles that energy and environmental subsidies must be assessed against, in addition to the main subsidy control principles, where relevant. These requirements form part of the “do minimum” counterfactual and so would, by definition, not have additional impacts.

506. The Government intends to use further guidance and the creation of streamlined routes to reflect the specific nuances for different categories of subsidies, which may include subsidies for energy and environmental projects. However, as is set out earlier in this Impact Assessment, the details of further guidance and ‘streamlined routes’ are still to be determined and will not be on the face of the Subsidy Control Bill.

507. Data on the scale of energy and environmental subsidies can be informative for background on the potential size of impacts but will not precisely reflect the broader impact of a legislative regime. For the period between July 2016 to December 2020, and excluding Covid-19 related subsidies:

- a. 10% of the total number of reported UK subsidies were to the energy sector. This represented 38% of the total value of reported UK subsidies.<sup>153</sup> 88% of these subsidies were granted for the purpose of environmental protection.
- b. 30% of the total number of reported UK subsidies were granted for environmental protection purposes, including energy savings. This represented 47% of the total value of reported UK subsidies.<sup>154</sup> 30% of these subsidies were granted to the energy sector.
- c. As a smoothed average, the UK has reported approximately 160 subsidies, worth around £1.5bn, granted to the energy sector per year.
- d. As a smoothed average, the UK has reported approximately 450 subsidies, worth around £1.9bn, granted for environmental protection purposes per year.

508. As there is still policy detail – yet to be decided – to follow in secondary legislation and guidance it is not possible or appropriate to provide further analysis on the potential environmental impacts at this stage of policy development. The Department for Business Energy and Industrial Strategy will continue to actively consider and analyse environmental impacts in the appropriate and proportionate manner in accordance with the Green Book as the policy develops.

## Competition impacts

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<sup>152</sup> TCA, Article 3.5(12), 186, and Annex ENER-2 Energy and Environmental Subsidies, page 782.

<sup>153</sup> BEIS analysis of the European Commission’s Transparency Award Module database. Values have been adjusted for inflation and expressed in 2019 prices. Covid-19 related subsidies have been excluded. The values of tax measure subsidies are reported to the database in ranges and are therefore estimated in this analysis. This data likely underrepresents subsidies under the European Commission’s reporting threshold of €500,000 for the reasons explained in paragraph 18.

<sup>154</sup> BEIS analysis of the European Commission’s Transparency Award Module database. Values have been adjusted for inflation and expressed in 2019 prices. Covid-19 related subsidies have been excluded. The values of tax measure subsidies are reported to the database in ranges and are therefore estimated in this analysis. This data likely underrepresents subsidies under the European Commission’s reporting threshold of €500,000 for the reasons explained in paragraph 18.

509. As discussed in the main consultation response document and the ‘What is the economic rationale for subsidy control?’ section, a key factor for designing subsidy control policy are competition considerations. Compared to the counterfactual – where competition impacts are only considered through standard public spending criteria and wide international commitments, such as the TCA – principles relating to competition impacts are likely to lead to positive competition impacts as far as they deter the most distortive subsidies. Policy details that allow for more discretion on minimising negative competition impacts may however lead to less large positive competition impacts compared to more stringent options.
510. It is not possible or appropriate to produce a full competition assessment on such a broad policy change – potentially affecting a large number of subsidies and therefore markets. However, as appropriate for a policy of this nature, competition impacts have been considered actively throughout the policy development process. Evidence relating to competition impacts and subsidies including past case studies, economic theory and best practice from other competition policy areas have been drawn on in this Impact Assessment and throughout the broader policy development process.
511. As set out in the ‘Measures to protect UK competition and investment’ section of this Impact Assessment, the Government has considered a range of measures designed to lead to positive competition impacts. These range from specifically including an additional principle that requires public authorities to consider distortions to UK competition and investment for all subsidies to an outright prohibition of the most distortive relocation subsidies, where there is no net economic benefit to the UK. For subsidies that may have a significant or greater risk of distorting domestic competition the Government has designated two categories of subsidies – Subsidies of Interest and Subsidies of Particular Interest – where further assessments are either recommended or required. For these subsidies independent review of these assessments is also either optional or required and the independent body has been given the appropriate powers and duties to undertake these reviews. These policies together are specifically designed to address domestic competition and investment risks in a manner that is targeted at the specific risks associated with different types of subsidies.
512. Elsewhere in the regime, the more flexible approach taken to subsidies under the ‘baseline route’ and ‘streamlined assessments’ may lead to a greater chance of negative domestic competition impacts compared to a more maximalist approach. However, these subsidies will be at a lower risk of leading to negative trade impacts, so these impacts may be small in expected terms, and likely outweighed by the strategic and economic rationale of allowing subsidies to be given with minimal administrative costs in instances where there is a clear market failure or policy rationale and the risks of distortions are low.
513. As set out in the relevant sections of this Impact Assessment there are many aspects of the new regime that will be determined by secondary legislation and guidance. Many of these will have both positive and negative competition impacts. For example, specific details around the designation of subsidies within scope of and treatment of these subsidies when designated with the streamlined routes or subsidies of interest will both have a potential impact on competition. Moreover guidance around the assessment against the principles – and in particular around the additional UK competition and investment principle – are also likely to have an impact on competition.
514. As there is still policy detail – yet to be decided – to follow in secondary legislation and guidance it is not possible or appropriate to provide further analysis on the potential impacts at this stage of policy development. The Department for Business Energy and Industrial Strategy will continue to actively consider and analyse regional impacts in the appropriate and proportionate manner in accordance with the Green Book as the policy develops.

## **Trade impacts**

515. As discussed at consultation stage and the ‘What is the economic rationale for subsidy control?’ section, a key factor for designing subsidy control policy are trade considerations. Compared to the counterfactual – where trade impacts are only considered through standard public spending criteria – principles relating to trade impacts are likely to lead to positive trade impacts as far as they deter subsidies that impact current and future Free Trade Agreements. Policy details that allow for more discretion on trade impacts may however lead to less large positive trade impacts compared to more stringent options. Furthermore, policy details that increase clarity with respect to complying with international obligations are likely to reduce the risk of awarding subsidies that may be at risk of leading to countervailing, remedial or other rebalancing measures levelled against the UK.
516. It is not possible or appropriate to produce a full trade assessment on such a broad policy change – potentially affecting a large number of subsidies and therefore markets.
517. As set out throughout this Impact Assessment, the preferred option for each option is consistent with the UK’s international obligations and in some instances the preferred option goes above the ‘do minimum’ set by these obligations. This approach throughout the regime will have positive trade impacts compared to a regime that did not meet these international obligations. In several instances – for example the definition, or prohibitions and conditions – the preferred option to have the relevant measure apply to all subsidies, rather than those that affect trade with a specific partner, is likely to lead to greater clarity in the system. This clarity will likely lead to fewer inadvertent breaches of these international obligations by public authorities and will have a positive trade impact compared to the counterfactual ‘do minimum’. Furthermore, the designation of a Subsidies of Interest and Subsidies of Particular Interest, alongside the Secretary of State call in power – all targeted at subsidies that may have a risk of domestic or international distortions – gives a route for independent assessment of the small number of subsidies that may lead to negative trade impacts. These routes to independent assessment will also have positive trade impacts compared to the counterfactual ‘do minimum’.
518. Elsewhere in the regime, the more flexible approach taken to subsidies under the ‘baseline route’ and ‘streamlined assessments’ may lead to a greater chance of negative trade impacts compared to a more maximalist approach. However, these subsidies will be at a lower risk of leading to negative trade impacts, so these impacts may be small in expected terms, and likely outweighed by the strategic and economic rationale of allowing subsidies to be given with minimal administrative costs in instances where there is a clear market failure or policy rationale and the risks of distortions are low.
519. As set out in the relevant sections of this Impact Assessment, there are many aspects of the new regime that will be determined by secondary legislation and guidance. For example, details around the specifics of the updated guidance throughout the regime will impact the clarity of the regime and therefore the risk of inadvertent breaches of international obligations at public authority level. Moreover, specific details around the designation of subsidies within scope of and treatment when designated with the streamlined routes or subsidies of interest will both have a potential impact on trade.
520. As there is still policy detail – yet to be decided – to follow in secondary legislation and guidance it is not possible or appropriate to provide further analysis on the potential trade impacts at this stage of policy development. The Department for Business Energy and Industrial Strategy will continue to actively consider and analyse regional impacts in the appropriate and proportionate manner in accordance with the Green Book as the policy develops.

## Monitoring and Evaluation

521. The Department for Business, Energy and Industrial Strategy is committed to the monitoring and evaluation of major policy and legislative changes, in accordance with the Magenta Book.<sup>155</sup> As this is a major policy change, with the introduction of a significant new framework, the Department considers it appropriate to robustly monitor and evaluate the regime both in the short term and over multiple years. As the regime has multiple features and building blocks, there are four key aspects of the regime which the Department for Business, Energy and Industrial Strategy plans to focus on in its monitoring and evaluation plan:

- a. The broader tools to allow for Monitoring and Evaluation – including the subsidy database
- b. The functioning of the regime as a whole – for example this could cover the usefulness of guidance, effectiveness of rules and compliance with prohibitions amongst other aspects of the regime
- c. The effectiveness of individual subsidy awards
- d. The functioning of the independent body and judicial enforcement – including the independent body's effectiveness in carrying out its statutory duties and functions

522. As discussed in the 'Analytical approach' section, there is a large degree of external factors that will impact how the overall regime is performing – including decisions at public authority level and the wider macroeconomic environment. These risks can be partially mitigated by regular reporting, timely data and a focus on process evaluation as detailed in the following paragraphs.

523. As the final details of the policy are yet to be decided, or will follow in secondary legislation and guidance, it is not possible or appropriate to provide specific details on the plan for monitoring and evaluation at this stage. Given the framework nature of this Bill, and that it will be introducing a wholly new regulatory regime, The Department for Business, Energy and Industrial Strategy will need to place significant emphasis on monitoring and evaluation, particularly in the first years of operation for the new regime. A full and proportionate approach to monitoring and evaluation will be developed once the remaining policy decisions for the regime have been made and will be published alongside the updated analysis. The plan will be reviewed and updated accordingly.

524. This interim monitoring and evaluation plan is designed to provide as much detail as is appropriate and relevant at this stage of policy development. As the regime develops further via guidance and secondary legislation, the monitoring and evaluation plan will continue to be developed. This plan covers the following key areas:

- a. The objectives of the regime as a whole, including SMART objectives
- b. Past research on the objectives of the regime and how these are impacted by subsidy control arrangements
- c. Purpose of the various strands of monitoring and evaluation review, methods and approach, and expected end users.
- d. Proportionality, resourcing and data collection

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<sup>155</sup> <https://www.gov.uk/government/publications/the-magenta-book>

## Objectives of the regime

525. As set out in paragraph 21 the objectives of the regime as a whole are to:

- a. Facilitate interventions to deliver on the UK's strategic interests
- b. Maintaining a competitive and dynamic market economy
- c. Protecting the UK internal market
- d. Acting as a responsible trading partner

526. Paragraph 47 and the wider 'Analytical approach' section sets out the broader issues associated with drawing a causal link between these objectives and the operation of a subsidy control regime. However, within this constraint, the Government has identified the Specific, Measurable, Achievable, Realistic and Time-limited (SMART) objectives that sit underneath the four strategic objectives of the regime as a whole. Due to the framework nature of this Bill, and the general intuition that aspects of the regime and the way that relevant participants interact with the regime change over time it has been deemed that five-year intervals are appropriate to measure the functioning of the regime against these objectives. This period was chosen to balance the time needed to observe how the regime operates in practice and the benefit of timely information. Flexibility has been built into the monitoring and evaluation plan to allow for regular monitoring and the ability to report early so that the monitoring and evaluation can be delivered when appropriate within this five-year period. However, the objectives are formally defined over each five-year period in order for these to be full time-limited, SMART objectives.

527. **Facilitate interventions to deliver on the UK's strategic interests** – there are two key specific aspects to this broad objective. Firstly, that subsidies align with the UK's strategic interests, and secondly that the regime allows for sufficient flexibility that public authorities can deliver net-beneficial subsidies without unnecessary levels of regulatory burden. Whilst it is not possible or appropriate to measure causal differences in both of these aspects of the regime, it does lead to two separate SMART objectives interventions:

- a. That interventions have a clear policy and strategic policy objective can be measured via the subsidy database. This objective is built into the subsidy control principles and is a realistic objective for public policy interventions such as subsidies.
- b. That the regime is flexible and does not lead to excessive burden on public authorities or businesses is difficult to measure quantitatively or causally, however, this can be measured using qualitative measures (see paragraph 543 that describes methods and data requirements). In lieu of comparing the regime as a whole against alternative regimes, specific aspects of the regime should be considered so as to both focus the report and allow for a comparison across features. For example, one such feature might be on the usefulness of guidance – and whether public authorities and businesses actively engage with the guidance, when appropriate, and find this easy to understand. This focus on specific features means this objective will be specific and measurable. As there are certain burdens to the regime that are specific to international regimes or wider public policy requirements it would not be realistic to have an objective to minimise all administrative burdens. Moreover, it would not be optimal to minimise burdens where there may be a net benefit. Therefore, for this objective to be reasonable and realistic it should be targeted at excess burdens, where there is no clear benefit as discussed throughout the rest of this Impact Assessment.

528. **Maintaining a competitive and dynamic market economy** – as set out in the ‘Policy objectives’ section of this Impact Assessment, this objective is twofold.

529. Firstly, it requires that the subsidy control system allows subsidies that are net-beneficial, i.e. those that address specific market failures in a cost-effective way, as these will have knock-on positive impacts on the economy. Conversely, it requires there to be appropriate controls in place so that subsidies that may be at risk of having negative competition impacts, that damage the functioning of a dynamic market economy, are less likely to be awarded. Whilst it is not possible or appropriate to measure causal differences in both of these aspects of the regime, it does lead to two separate SMART objectives interventions:

- a. Linking to the first objective – interventions have a clear policy and strategic policy objective and that these are net beneficial. The objective can be measured by the subsidy database and at an individual subsidy level by public authorities themselves. This objective is built into the subsidy control principles, and is a realistic objective for public policy interventions such as subsidies.
- b. That subsidies are designed in a way to minimise negative competition impacts and are discouraged from being awarded where negative competition impacts mean that the subsidy is not net-beneficial. As competition impacts are often difficult to measure without in depth analysis these have to be measured at the individual subsidy level by public authorities. At a regime level it would not be possible or appropriate to measure competition impacts across all subsidies, but conclusions can be drawn from targeted case studies of subsidies and standard competition measures. This objective is built into the subsidy control principles, and is a realistic objective for public policy interventions such as subsidies.

530. **Protecting UK competition and investment** – as set out in paragraph 191 of the Impact Assessment, subsidies that distort competition are likely to also be those that distort the operation of the UK internal market. Therefore, the SMART objectives in relation to this strategic objective can be seen as the same as those that relate to maintaining a competitive and dynamic market economy.

531. **Acting as a responsible trading partner** – whilst it is not possible to draw a strong causal conclusion between the regime as a whole and international trade arrangements, it is possible to monitor the number of trade disputes that are associated with subsidies awarded in the United Kingdom. Specifically, the objective can be measured through WTO and wider trade agreement disputes on subsidies. Ideally no aspect of the subsidy control regime would positively contribute to the number of successful disputes against the United Kingdom, so a realistic target would for these disputes to be at the minimum level possible.

### **Past research and evidence on the objectives of the regime**

532. As detailed throughout this Impact Assessment, existing evidence has been drawn on extensively to develop the policy. Paragraphs 60 to 61 details the existing evidence associated with the individual objectives and a broader evidence base was identified in the ‘What is the economic rationale for subsidy control?’ section and in the consultation document.

533. Critically this evidence base highlights the lack of causal evidence on how a subsidy control regime as a whole impacts certain objectives such as the nature and volume of the subsidies awarded under the regime. Moreover, as the UK’s new domestic subsidy control regime is bespoke to the specific circumstances of the UK there are limited historic, or international comparators for the regime as a whole beyond those described within the consultation document. This is mitigated in the monitoring and evaluation plan in three distinct ways:

- a. The monitoring and evaluation programme is designed to be holistic and comprehensive. This combined with the deliberately flexible nature of the regime should allow the regime to be tailored to the evidence base, and results of monitoring and evaluation as the regime develops.
- b. There is a focus on extensive monitoring and process evaluation at a regime level – as the functioning of each individual aspect of the regime may lead to more fruitful recommendations than a review of the regime level outcomes due to the counterfactual problem.
- c. Downside regime level outcomes, in terms of competition impacts, will be evaluated as these may be more comparable across subsidies. The benefits of individual subsidies will continue to be monitored at an individual subsidy level to allow for a tailored approach appropriate for the individual aspects of each subsidy.

### **Purpose of the various strands of monitoring and evaluation review, methods and approach, and expected end users**

534. As is set out in paragraph 521 there are four key strands for the monitoring and evaluation plan. Each of these have different methods, approaches and expected end users. This plan has been designed to be targeted for the specific circumstances of the regime as a whole, and therefore each strand has been covered separately.

535. The Government has launched a subsidy database in order to meet international obligations and to gather the necessary information required for monitoring and evaluating. This includes details of the subsidy instrument, amount, date granted, public authority, and the purpose of the subsidy. It will also include details on the size, region, and sectors of subsidy recipients. Subsidy awarding public authorities have an obligation to upload information to the database within a 3-month period following the award, or commitment to award, most types of subsidies. The subsidy database has been designed specifically to allow for future evaluation, as standard company identifiers have been included to allow for linking with wider data sets. This will allow for a richer ability to evaluate both individual subsidies and the regime as a whole. As this data is publicly available this will support monitoring and evaluation both inside and outside of government at all levels of the regime identified in paragraph 521. Therefore, there are a broad range of uses and expected end users for this quantitative monitoring – as such user needs have been tested and built into the design of the subsidy database.

536. Using the independent body's oversight powers, the Government plans for the monitoring and evaluation of the regime as a whole to be undertaken by the independent body. To deliver this, the independent body will be given a duty to report on the effectiveness of the operation of the subsidy control regime and the impact of the operation of the regime on domestic competition, international trade and investment. This report is likely to draw on qualitative methods focussed on process evaluation as well as desk-based research drawing on the independent body's own case work and knowledge. This duty includes a requirement to report before the end of each five-year period after the regime is implemented – this period was chosen to balance the time needed to observe how the regime operates in practice and the benefit of timely information. The duty allows flexibility to report early so that the monitoring and evaluation report can be delivered outside of the currently assumed five-year cycle. This report will be used so that the Department for Business Energy and Industry can determine whether any changes should be made to the regime as a whole or certain aspects of the regime. As a result, the Department and all users of the regime will be the ultimate end users – this report will therefore be publicly available and accessible for each of these users.

537. Formal policy responsibility for subsidy control policy will remain with the Department for Business Energy and Industrial Strategy. The Secretary of State will have the power to ask the independent body to review or examine any aspects of the regime and bring forward recommendations. The Government envisages that this would involve monitoring and reporting on key aspects of the regime, such as the user experience of guidance, the broader methods that public authorities use to demonstrate compliance with principles, or how the independent body's pre-award review role is working. This role could also extend into the evaluation of similar aspects of the regime – for example this could cover the impacts of the quality of the guidance on administrative costs or on subsidy design itself. This strand is also likely to draw on qualitative methods focussed on process evaluation as well as desk-based research drawing on the independent body's own case work and knowledge. Further details of this plan are being developed alongside further details of the policy that will sit outside of primary legislation. The purpose of these reports is for timely expert input to further feed into continual policy development and review in specific areas. The end user is therefore the Department for Business, Energy and Industrial Strategy as the responsible department for the regime as a whole.
538. The oversight, monitoring and evaluation of the independent body itself and specialist judicial enforcement route will be undertaken by the Department for Business, Energy and Industrial Strategy. The methods around this monitoring role will be largely informal, involving regular contact with the independent body and reviewing public authorities' interaction with the body.
539. This latter role may involve more formal qualitative research methods undertaken by the Department. It is appropriate that any such evaluation focusses on processes rather than impacts due to the counterfactual problem described above. The aim of this evaluation is for the independent body to be as effective as possible through all functions, the Department will draw upon this evaluation to monitor and review the functions and wider role of the independent body. The ultimate end users of this strand of the monitoring and evaluation plan will be the Department and independent body itself, as well as (indirectly) public authorities and businesses that may engage with the independent body through the Subsidies of (Particular) Interest process.
540. As well as information already available at public authority level the subsidy database allows for monitoring of the effectiveness of both individual subsidies and schemes. The Government will work together with other public authorities and consider as part of its programme of evaluation of the regime as a whole how to encourage evaluation of these individual subsidies and schemes as part of the policy development cycle. The methods and end users of individual subsidy evaluations will be bespoke to the individual subsidy being awarded – they will likely include the public authority and recipient as well as future recipients of similar subsidies, competitors and other public authorities who may also be looking to award similar subsidies.

### **Proportionality, resourcing and data collection**

541. As this is a new framework policy with a degree of uncertainty over the impacts the Department for Business, Energy and Industrial Strategy recognises that there is a need for robust monitoring and evaluation. Specifically, the continual monitoring at the national level of the vast majority of subsidies, regular and complete process reviews of the system as a whole and the evaluation of individual subsidies at public authority level are all proportionate elements of the monitoring and evaluation plan. As described above it would not be appropriate, possible or proportionate to evaluate the impacts of the regime as a whole, including its indirect impact on the subsidies given, due to the counterfactual problem.
542. The resourcing for many of the strands of the monitoring and evaluation plan has already been described elsewhere in this Impact Assessment. The impacts associated with the

quantitative monitoring of subsidies is set out in the 'Transparency' section of this Impact Assessment. The impacts of monitoring and evaluation of the regime as a whole have been set out in the 'Monitoring and oversight' sub-section within the 'Independent body' section of this Impact Assessment. In addition to this there will be a cost to the Department to monitor the functioning of the independent body, this will be subsumed into the analytical team within the Department that supports subsidy control. This cost is however non-additional, as the counterfactual set out in the 'Independent body' section would likely entail some role for the Department to monitor and evaluate an independent body. There is also a non-additional cost associated with public authorities evaluating individual subsidies that will continue to be resourced in the proportionate way, according to the Magenta Book and related guidance at public authority level.

543. There are two key strands of data collection, firstly quantitative monitoring of all subsidies to facilitate comparative evaluation at all levels of the monitoring and evaluation plan. Secondly, this is supplemented by qualitative research that will facilitate a richer, process evaluation of individual aspects of the regime.
544. The Government has launched a subsidy database in order to meet international obligations and to gather the necessary information required for monitoring and evaluating. This includes details of the subsidy instrument, amount, date granted, public authority, and the purpose of the subsidy. It will also include details on the size, region, and sectors of subsidy recipients. Subsidy awarding public authorities have an obligation to upload information to the database within a 3-month period following the award, or commitment to award, of most types of subsidies. The subsidy database has been designed specifically to allow for future evaluation, as standard company identifiers have been included to allow for linking with wider data sets. This will allow for a richer ability to evaluate both individual subsidies and the regime as a whole. As this data is publicly available this will support monitoring and evaluation both inside and outside of government at all levels of the regime identified in paragraph 521.
545. Given that a body within the Competition and Markets Authority (CMA) will perform the role of the independent body it may be appropriate in the future to transfer the database from Secretary of State to the independent body; the Bill will contain a power for the Secretary of State to delegate responsibility for the database to the CMA in future if appropriate. This will build upon the body's responsibility to monitor the functioning of the regime. Flexibility for this will be included in the Bill. In addition to this process evaluation over the state of the regime as a whole will require additional qualitative data gathering from public authorities and businesses on various aspects of the regime. As there is a large degree of policy detail still to be decided in secondary legislation and guidance it would not be possible or appropriate to fully set out the parameters and extent of this data gathering process as this stage of policy development. This will, however, likely take place at least once during each 5-year policy period in order to fulfil the statutory requirement for the independent body to report on the regime as a whole. Further to this an illustrative approach to this data gathering process is set out in the 'Monitoring and oversight' sub-section of this Impact Assessment.