



Department for
Business, Energy
& Industrial Strategy

Government response to the consultation on Subsidies and Schemes of Interest and of Particular Interest

Subsidy Control Act 2022

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Overview

Summary

1. The Subsidy Control Act 2022 provides the framework for a new, United Kingdom-wide subsidy control regime. This regime will enable public authorities, including devolved administrations and local authorities, to deliver subsidies that are tailored and bespoke for local needs to deliver government priorities such as levelling up and achieving net zero carbon, as well as supporting the economy's recovery from COVID-19.
2. The new subsidy control regime will identify subsidies and schemes that have greater potential to lead to undue distortion and negative effects on domestic competition or investment and/or international trade or investment. These subsidies and schemes should be subject to more in-depth assessment by the public authority before they are given, and in some cases, they will be referred to the new Subsidy Advice Unit (SAU) within the Competition and Markets Authority for additional scrutiny and review of the public authority's assessment. The two distinct categories of subsidies, as provided for in the Act, that will be subject to additional scrutiny are:
 - Subsidies or Schemes of Interest (SSoI), which may be referred to the SAU by the public authority giving or making the subsidy or scheme, and which the SAU has discretion over whether to accept the referral, and;
 - Subsidies or Schemes of Particular Interest (SSoPI), which must be referred to the SAU by the public authority giving or making the subsidy or scheme. The SAU must accept all SSoPI referrals.
3. The SAU's review will evaluate the public authority's assessment of the subsidy or scheme, and may include non-binding recommendations of ways in which the assessment, or the subsidy design itself, may be improved. Upon acceptance of the referral, the SAU will publish its report within 30 working days, under normal circumstances.
4. Between 25 March and 6 May 2022, the government undertook a public consultation which sought views on:
 - how these categories of subsidies and schemes should be defined;
 - the accompanying draft regulations setting out the government's intended approach to setting criteria and definitions; and
 - the initial proposals for related guidance.

Consultation details

5. The consultation was published online and responses were submitted through an online response platform (Citizenspace) or by email. BEIS also held a roundtable discussion for legal and academic experts during the consultation period. The consultation received 40 responses. Respondents included a broad range of stakeholders from across the UK including charities, academics, members of the public, business representative organisations and trade industry groups, local government and other public sector organisations.
6. The government has analysed the responses to this public consultation and this document includes a summary of the responses received based on this analysis. A full list of respondents to this consultation is provided in annex A.
7. Respondents expressed broad support for the approach set out in the consultation document and in the accompanying draft regulations. Several respondents proposed approaches that differed from the proposals set out by the government. This was the case regarding cumulation rules, sensitive sectors and subsidies conditional on relocation. We have considered these suggestions and set out the government's response below.

Responses received to the consultation

Overview of responses

8. In the government response sections, 'we' refers to the UK government.
9. We received a total of 40 responses to the consultation. Of these, 7 responded through the online platform and 33 responded by email. Of the responses, 4 were from businesses, 9 from business representative organisations and trade industry groups, 5 from local government, 10 from other public sector organisations, 7 from experts or academics, 4 from charities and one from a private citizen.
10. BEIS continues to liaise with the Devolved Administrations on the roll-out of the new regime. The Secretary of State for Business, Energy, and Industrial Strategy (BEIS) received letters from the Scottish and Welsh Governments explaining they would not formally respond to this public consultation but would instead provide views directly in correspondence. Due to the suspension of the Executive committee, Northern Ireland Ministers have not been able to respond to this public consultation.

Overall approach and thresholds

11. The following questions were posed in the consultation:
 1. **Do you agree with the first part of the overall approach, to base SoPI and Sol criteria solely on monetary thresholds in the majority of cases?**
 2. **Do you agree with the second part of the approach, of applying lower SoPI thresholds for sensitive sectors?**
 3. **Do you agree with the third part of the approach, of defining certain categories of subsidies such as rescue and restructuring subsidies as SoPI or Sol regardless of value?**

Consultation position

12. The government presented its proposed overall approach for defining SSol and SSoPI. This approach aims to ensure that subsidies and schemes that have greater potential to lead to undue distortion and negative effects are captured and subjected to additional in-depth assessment against the subsidy control principles, where necessary. Public authorities will have a clear framework and set of criteria through guidance and regulations to follow to ensure such subsidies and schemes are referred to the SAU where required.
13. The proposed approach is comprised of the following three main parts:

- General £ value thresholds for SSol and SSoPI which apply in the majority of cases;
- A specific lower SSoPI £ threshold for subsidies which concern sensitive sectors; and
- ‘Category’ based criteria which define some types of subsidy as Subsidies of Particular Interest or Subsidies of Interest regardless of £ value.

14. The draft regulations set out the following monetary thresholds:

- Subsidies given outside of sensitive sectors are Subsidies of Particular Interest if they are over £10m;
- All other subsidies of between £5 to £10m which do not meet the Subsidy of Particular Interest criteria are Subsidies of Interest;
- Lower monetary thresholds for subsidies given in sensitive sectors; these subsidies are Subsidies of Particular Interest if they are over £5m.

Summary of stakeholder responses to the consultation

15. 55% of respondents answered question 1, with 95% of these respondents in agreement with the government’s proposed approach to base SSoPI and SSol criteria solely on monetary thresholds in the vast majority of cases.

16. 55% of respondents answered question 2, with 77% of these respondents in agreement with the government’s proposed approach of applying lower SSoPI thresholds for sensitive sectors. Of those respondents that disagreed, some stated their preference for a sector agnostic approach. One respondent stated that the proposed SSoPI thresholds are too low.

17. 60% of respondents answered question 3, with 88% of these respondents agreeing with the government’s approach of defining certain categories of subsidies, including rescue and restructuring subsidies, as SSoPI or SSol regardless of value. Of those respondents that disagreed, concerns were raised around a lack of clarity on the definitions of ‘rescue’ and ‘restructuring’ subsidies. Furthermore, several respondents stated whether the use of the language ‘regardless of value’ meant that the minimal financial assistance (MFA) exemption would not apply to rescue or restructuring subsidies.

Government response

18. The government believes that the soundness and proportionality of its overall approach is demonstrated by these strongly positive responses. As such, we do not propose to change the government’s overall approach.

19. In relation to the arguments raised by those respondents that disagreed with the approach of applying lower SSoPI thresholds for sensitive sectors, we do not believe that the SSoPI thresholds are too low. This is supported by the analysis that the

government has updated and published as part of the accompanying analytical document which is discussed further under question four below.

20. The government remains of the view that it is important that we identify subsidies in sensitive sectors and subject them to additional scrutiny, since they are likely to have greater potential to lead to undue distortion and negative effects at lower values and are at a higher risk of challenge relative to subsidies in other sectors, and this justifies retaining a distinct lower monetary threshold in the regulations.
21. We also consider it appropriate to define the category-based criteria for rescue and restructuring subsidies by reference to the existing provisions in the Act which apply to these kinds of subsidies. Where a subsidy is given as MFA in accordance with the Act, the subsidy control requirements set out in the Act, including the prohibitions and other requirements relating to rescue and restructuring subsidies in sections 19-23 will not apply.
22. The following question was posed in the consultation:

4. Do you agree with the £5m threshold proposed for Sol and SoPI in sensitive sectors and the £10m threshold for SoPI not in sensitive sectors?

Consultation position

23. The government has calibrated the SSol and SSoPI thresholds with the intention of capturing only a small number of the largest subsidies and schemes that have a greater potential to lead to undue distortion and negative effects on domestic competition or investment, and/or international trade or investment.
24. The government has expanded its analysis of the likely number of SSol and SSoPI beyond that of the Subsidy Control Bill's impact assessment, which was based on historic data, to include subsidies given under the TCA-based regime that has applied since 1 January 2021. This new dataset is more informative of public authority behaviour under a principles-based system that more closely resembles the new regime that will be in place following the commencement of the Subsidy Control Act.
25. Based on this analysis, which is set out in full in the accompanying analytical document, the government anticipates that proposed SSoPI thresholds would have captured 15 unique subsidies or schemes per year as SSoPI, before taking account of the exemptions to the referral process (such as those for Streamlined Routes). By contrast, a threshold of £5m would have captured 26 subsidies or schemes per year as SSoPI.

Summary of stakeholder responses to the consultation

26. 60% of respondents answered question 4, with 50% of these respondents agreeing with the government's proposed values. Of the respondents that disagreed, several stated that the proposed thresholds are too low and would consequently place greater administrative burden on public authorities and lead to an increased workload on the SAU, one respondent thought that the thresholds were too high, and several disagreed

because they believed the categories of subsidies subject to different thresholds were either too broad, or not broad enough.

Government response

27. The government welcomes the support for the proposed values for the monetary thresholds. Half of respondents supported the proposed thresholds, and those disagreeing with the proposals were not agreed on an alternative. We will keep them unaltered in the regulations we lay before Parliament.
28. We do not agree that the proposed thresholds are too low; we remain of the view that the number of subsidies and schemes caught by the thresholds will be proportionate to the level of risk that they may pose and will be consistent with our intention of capturing only a small number of the largest subsidies and schemes that have a greater potential to lead to undue distortion and negative effects on domestic competition or investment, and/or international trade or investment. This is further set out in the analysis that the government has published as part of the accompanying analytical document.

Cumulation rules

29. The following questions were posed in the consultation:

- 5. Do you agree with the proposed approach to cumulation rules?**
- 6. Do you agree that the proposed approach to cumulation would be simple and easy to administer?**
- 7. Do you agree with the way that 'related subsidy' has been defined?**
- 8. If you disagree with the government's proposed overall approach, monetary thresholds or cumulation rules please explain why.**

Consultation position

30. The government has proposed cumulation rules which mean that several smaller subsidies that are given to the same recipient will count (or 'cumulate') together towards the monetary thresholds when the subsidies are genuinely related. This is necessary for the monetary thresholds to function as intended, and to avoid the theoretical risk of public authorities 'gaming' the thresholds to avoid referral of a particular subsidy or subsidies.

31. Public authorities should cumulate previous subsidies for the purpose of determining whether the latest subsidy is a Subsidy of Interest or Subsidy of Particular Interest when all four of the following conditions apply:

- The subsidy is given to the same enterprise by any public authority;
- The subsidy is for the same or substantially same project, costs or activities;
- The subsidy is for the same or substantially the same specific policy objective under Principle A of schedule 1 to the Subsidy Control Act; and
- The subsidy has been given within the last three financial years.

32. Subsidies that are exempted from the SSoPI referral process, such as those given under Streamlined Routes or Minimal Financial Assistance, will also be exempt from the cumulation test.

33. For subsidy schemes, where the assessment of the principles may be undertaken before the recipients of individual subsidies made under the scheme are known, scheme makers will need to consider the effect of these cumulation rules when determining whether subsidies given under that scheme may qualify as a Subsidy of Interest or Subsidy of Particular Interest as this will determine whether the scheme may or must be referred to the SAU.

Summary of stakeholder responses to the consultation

34. 48% of respondents answered question 5, with 74% of these respondents agreeing with the government's proposed approach to cumulation rules. Of the respondents that disagreed, one stated that cumulation rules should not apply at all whilst another indicated that there should be simpler rules for medium and smaller-sized businesses.
35. 53% of respondents answered question 6, with 48% of these respondents agreeing that the proposed approach to cumulation would be simple and easy to administer. One respondent described the government's proposed approach as 'sensible and pragmatic', whilst another respondent stated that they agreed with the 'balance drawn between administrative ease and ensuring minimal trade or competition effect'. Most respondents agreed, in principle, but wanted clear guidance to aid understanding. Of those that disagreed, respondents felt that the approach was too complex, particularly as it involved multiple tests and could potentially involve multiple public authorities.
36. 50% of respondents answered question 7, with 75% of these respondents agreeing with the way that 'related subsidy' has been defined in the consultation document. Of the respondents that disagreed, one stated that they would want a clear, narrower definition while another indicated that the definition is too narrow and may not be effective. Respondents also stated that this definition may place additional administrative burdens on public authorities.
37. Question 8 asked respondents who disagreed with the government's proposed overall approach to monetary thresholds or cumulation rules to provide reasons for doing so. Of the respondents who disagreed with the government's proposed approach, most did so on the basis that the proposed cumulation rules would be too burdensome, and that the due diligence associated with it would be costly and present a further legal risk for public authorities.

Government response

38. We welcome respondents' clear support for the cumulation rules in principle.
39. We acknowledge respondents' concerns regarding the potential complexity of cumulation rules; however, it is important that we have them in place to maintain the integrity of the monetary thresholds. We have developed cumulation rules that require multiple conditions to be met before they are applicable, and have noted responses that considered the narrow scope of these cumulation rules to be useful and well-judged. We believe, in practice, that narrow and targeted cumulation rules will maximise the extent to which they are simple for public authorities to use.
40. Some respondents raised concerns in relation to the way that 'related subsidy' has been defined in the consultation document. Respondents presented a range of views; however, the majority of respondents indicated that they agreed with the way that it was defined. We believe that the proposed definition is not prohibitively complex for public

authorities and is sufficiently narrow that it does not generate significant administrative burden for public authorities.

41. We also understand concerns in relation to the potential administrative costs that cumulation rules may place on some public authorities and recipients. We intend, therefore, to retain the general approach to cumulation, but modify its application to reduce the burden on public authorities.
42. We will modify our approach to cumulation by introducing a minimum value for referral, reducing the potential for additional administrative burden on public authorities. This will mean that public authorities will only have to refer a subsidy if the subsidy in question exceeds £1m, as well as meeting the relevant cumulated threshold. A worked example of how a minimum value for referral would operate is below.
43. This change strikes a balance between managing administrative burden on public authorities while retaining a narrowly-drawn set of rules to track subsidies given for similar purposes.

Example

- Enterprise X receives a subsidy from public authority A to a value of £9,500,000.
- Enterprise X then receives a subsidy of £600,000 from public authority B that meets the conditions for cumulation with the subsidy from public authority A.
- The £600,000 subsidy, as it is below the minimum value for referral of £1m, would not be subject to referral to the SAU. (In the absence of a defined minimum value for referral the £600,000 subsidy would have to be referred to the SAU as a Subsidy of Particular Interest).

44. While we do not want to define complex sets of rules for recipient businesses of different sizes, which could lead to further administrative burden, having a minimum threshold will manage the administrative burden on both public authorities and the SAU by minimising referrals that are low value and therefore pose a lower risk of distorting domestic competition or investment and/or international trade or investment. As set out in the accompanying analytical document, the government estimates the total administrative costs across public authorities, the SAU and businesses per referral is estimated to be £93,000 (see accompanying analytical document). These costs are therefore approximately 10% of the value of a subsidy of a value of £1m.
45. As the government does not consider that the benefits from a review – in terms of better subsidy design and minimisation of potential negative effects – are likely in general to exceed 10% of the value of the subsidy being referred, then the government does not consider that subsidies of less than £1m should be subject to mandatory referral even if caught by the cumulation rules (except where other specific features are present e.g.

restructuring subsidies). Creating a minimum value for referral therefore ensures that these kinds of referrals are not required.

46. The final regulations laid before Parliament will be revised to include this additional condition.

Sensitive sectors

Specified economic activities

47. The following questions were posed in the consultation:

9. Do you agree with the use of SIC codes to define ‘specified economic activities’ in general?

10. Do you agree with the list of ‘specified economic activities’ that has been set out? Are there any activities that you would add or omit?

Consultation position

48. The government has proposed that subsidies which concern sensitive sectors should be subject to a lower SSoPI threshold of £5m. These sensitive sectors should include areas of economic activity in which there is a record of international trade policy disputes; evidence of global overcapacity within the sector; or where there is evidence that one or both of these features will apply to the sector in the future.

49. Subsidies in these sectors are considered to have a greater potential for substantial distortion, even at lower monetary values, and are at a higher risk of being subject to challenge relative to subsidies in all other sectors.

50. The government has proposed to include a list of specified economic activities defined by reference to Standard Industrial Classification (SIC) codes contained in the United Kingdom Standard Industrial Classification of Economic Activities published by the Office for National Statistics¹. The following specified economic activities have been identified within the draft regulations:

- Manufacture of basic iron and steel and of ferro-alloys (SIC code 24.10)
- Aluminium production (SIC code 24.42)
- Copper production (SIC code 24.44)
- Manufacture of motor vehicles (SIC code 29.10)
- Building of ships and floating structures (SIC code 30.11)

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<https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities/uksic2007>. Full descriptions of what is included within and excluded from each SIC code is included in the explanatory notes in the main volume.

- Manufacture of motorcycles (SIC code 30.91)
- Manufacture of air and spacecraft and related machinery (SIC code 30.30)
- Production of electricity (SIC code 35.11)

51. The government recognises that economic conditions change. We will accordingly keep the list of specified economic activities under review to ensure they are correctly targeted at sectors where there may be greater potential of substantial distortion at lower values. This may include periodic review of the composition of the list of sensitive sectors by the SAU.

Summary of stakeholder responses to the consultation

52. 50% of respondents answered question 9, with 85% of these respondents in agreement with the government's use of SIC codes to define sensitive sectors. One respondent disagreed with the sectoral approach entirely and stated that they would prefer a single set of thresholds that did not include special provision for sectors.

53. 40% of respondents answered question 10, with 63% of these respondents agreeing with the list of 'specified economic activities' set out by the government. Respondents were also asked if there were any activities that they would add or omit. A number of respondents stated their agreement with the proposed list, with one stating that these are the areas where most trade disputes have arisen and are sensibly the areas where further scrutiny is most likely to be called for. Of the respondents that disagreed some pressed for sensitive sectors to be dropped entirely, with one stating that "having a lower SSoPI threshold, at £5m, for sensitive sectors places an unnecessary burden on public authorities". Other respondents felt that sensitive sectors will be disadvantaged relative to their close competitors in other countries, and argued instead that the general SSoPI thresholds should be sufficient to mitigate the risk of challenge; other respondents believed that there should be a greater focus on domestic competition or investment, rather than international trade or investment, and that the list should include transport, the operation of ports, airports or air carriers.

Government response

54. Given consultation respondents' overall strong support for this approach, we will use SIC codes to define sensitive sectors.

55. Some respondents suggested that the lower thresholds may not capture any additional subsidies, beyond those that would already be captured by the £10m threshold, that have the potential to lead to substantial negative effects on domestic competition or investment and/or international trade or investment. In light of the evidence set out in the consultation and the accompanying analysis, and the strong agreement from consultation responses for including lower thresholds for subsidies concerning sensitive sectors, the government believes that, on balance, the lower thresholds are likely to capture additional potentially substantially distortive subsidies and that this justifies retaining a distinct lower monetary threshold in the regulations.

56. We have carefully considered the feedback received from respondents regarding the list of sensitive sectors set out in the draft regulations.
57. The list is necessary to ensure that subsidies and schemes that have a greater potential to lead to undue distortion and negative effects on domestic competition or investment and/or international trade or investment are subject to a proportionate level of additional review by the SAU. As expressed by the majority of respondents, it is important that such subsidies and schemes are subject to a lower SSoPI threshold, of £5m, to reflect the additional risk of challenge that subsidies in these sectors are likely to entail.
58. Considered against the criteria outlined in the consultation, respondents did not provide sufficient evidence to justify the addition of the sectors mentioned above, including transport, the operation of ports, airports or air carriers, to the list of sensitive sectors. Several respondents suggested that the list of sensitive sectors should have a greater focus on sectors where subsidies between £5m and £10m may have greater potential negative effects on domestic competition or investment. The SAU will periodically review, following commencement and as part of its duties under s.65 of the Subsidy Control Act, the effectiveness of the Act and the subsidy control regime as a whole. This review may include the composition of the list of sensitive sectors.

Input activities and the economic advantage test

59. The following questions were posed in the consultation:

- 11. Do you agree with the application of an additional economic advantage test for subsidies granted within sensitive sectors?**
- 12. Do you agree with the inclusion of input activities within the approach to define sensitive sectors?**

Consultation position

60. Due to the nature of business supply chains, economic activities may span several different sectors – some of these may be subject to frequent international trade disputes, while others may not. To reflect this complex reality, the government has developed a test to capture the potential that a subsidy has to create substantial distortions within a sensitive sector. The test was set out in regulation 3(5) of the draft regulations accompanying the consultation, which determines when a subsidy ‘concerns a sensitive sector’.
61. The first limb of the test requires that the subsidy is given to an enterprise which is engaged in a specified economic activity or an input activity. The draft regulations define ‘input activity’ to mean an economic activity that involves the provision of goods or services for the purpose of a specified economic activity. This definition is intended to capture wider supply chain activities which fall outside the specific SIC codes identified above but which are linked to those activities.

62. The second limb of the test is based on the concept of economic advantage. This requires that the subsidy confers, directly or indirectly, an economic advantage on an enterprise which is engaged in a specified economic activity in relation to that activity. It is not sufficient, therefore, that the recipient is merely engaged in an input activity or a specified economic activity. The effects of the subsidy must also be considered.
63. The inclusion of an economic advantage test should help public authorities identify those subsidies that are more likely to risk distorting international trade or investment.

Summary of stakeholder responses to the consultation

64. 38% of respondents answered question 11, with 53% of these respondents agreeing with the government's application of an additional economic advantage test for subsidies given within sensitive sectors.
65. 40% of respondents answered question 12, with 56% of these respondents agreeing with the government's approach on the inclusion of input activities within the approach to define sensitive sectors. One respondent stated that the SIC codes are already "over inclusive" and that including input activities will lead to more complicated guidance and an overly burdensome assessment. Another respondent stated that it "may be very difficult to apply in practice given its imprecision" and that this will cause uncertainty.

Government response

66. We have carefully considered the responses and welcome the majority agreement for our proposed application of an economic advantage test for subsidies given within sensitive sectors. We also welcome agreement by many respondents with the inclusion of input activities within the definition of sensitive sectors. This is important to ensure that subsidies concerning sensitive sectors are captured, particularly where the SIC codes do not capture all relevant activity.
67. In response to the view expressed by some respondents that this will lead to complex guidance, we are currently consulting on the wider statutory guidance, and we will ensure that the final version, which will include specific guidance on SSoPI and SSoI to reflect the outcome of this consultation, is practical and supports public authorities.

Carveouts for general schemes

68. The following questions were posed in the consultation:

- 13. Do you agree with the government's proposed approach to carveout general schemes from the sensitive sectors test?**
- 14. If you disagree with the government's proposed approach to subsidies in sensitive sectors, please explain why.**

Consultation position

69. The government proposed that general schemes which are open to a broader range of enterprises, including those that would otherwise be caught by the sensitive sectors test, should not be subject to the lower thresholds for sensitive sectors.
70. The government has, therefore, developed an exemption from these thresholds for subsidies given under schemes where the criteria or conditions that determine whether an enterprise is eligible to receive a subsidy under the scheme are based on objective factors – such as the size of enterprise, number of employees, or geographic location – that do not favour enterprises engaged in specified economic activities or input activities over others.
71. The government has chosen to base this exemption on the presence of objective eligibility requirements, and has chosen the list of example objective factors based on precedent drawn from the WTO Agreement on Subsidies and Countervailing Measures (ASCM)².

Summary of stakeholder responses to the consultation

72. 53% of respondents answered question 13. 81% of these respondents agreed with the government's proposed approach of carving out general schemes from the sensitive sectors test.
73. Question 14 asked respondents who disagreed with the government's proposed approach to subsidies in sensitive sectors to explain their reasons for doing so. Views expressed by respondents to this question have been included in the summaries of the relevant responses above.

Government response

74. Given respondents' strong agreement with the government's proposal to carve out general schemes from the sensitive sectors test, we will proceed with this approach.
75. We acknowledge respondents' concerns regarding the potential complexity of the government's proposed approach to subsidies in sensitive sectors. Although guidance on SSoPI in general, and sensitive sectors in particular, is not included in the draft statutory guidance that is currently subject to consultation, the statutory guidance that will be published before the commencement of the regime will set out further guidance on how to apply the tests set out in the regulations to determine when a subsidy concerns a sensitive sector. In addition, the SAU will keep the list of sensitive sectors

² See the footnote to Article 2.1(b) of the WTO ASCM. Article 2.1(b) provides that a subsidy will not be 'specific' for under the ASCM where eligibility for, and the amount of, the subsidy, is governed by 'objective criteria or conditions'. The footnote to Article 2.1(b) provides that 'objective criteria or conditions' means criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise. In addition, Article 2.2 of the ASCM is relevant to determining when a subsidy which is available only to enterprises located within a designated geographical region is a 'specific' subsidy.

under review, following regime commencement, to ensure that it is functioning as intended and is targeted effectively.

76. Finally, we accept that, as set out in the consultation, there are certain definitional challenges associated with the use of SIC codes. These codes are, however, a standard and widely accepted way to categorise sectors in the United Kingdom. It is theoretically possible to create bespoke textual definitions for individual economic activities at a higher level of detail within the regulations, rather than to refer to existing SIC codes. However, on balance we do not consider that producing novel and untested sectoral definitions for this purpose would be justified or any less burdensome for public authorities to apply in practice.

Rescue and Restructuring Subsidies

77. The following questions were posed in the consultation:

15. Do you agree with rescue subsidies being categorised as a Sol and restructuring subsidies as SoPI?

16. Do you agree with subsidies to insurance companies and deposit takers to support liquidity provision or for the purpose of liquidating being categorised as Sol?

17. Do you agree restructuring subsidies to deposit takers and insurance companies should be categorised as a SoPI?

18. If you disagree with the government's proposed treatment of rescue and restructure subsidies, please explain why

Consultation position

78. Rescue and restructuring subsidies may pose particular risks of distorting domestic competition or investment and/or international trade or investment. Defining rescue subsidies as Subsidies of Interest and restructuring subsidies as Subsidies of Particular Interest will enable the SAU to review and, where appropriate, make recommendations for public authorities to improve the way in which these subsidies are designed. The difference in the time-sensitivity of these subsidies has led the government to propose a differential approach for rescue and restructure subsidies.

79. Rescue subsidies are often time-critical, since the ailing or insolvent enterprise may need the subsidy urgently or else go out of business. Therefore, the government proposed that rescue subsidies are Subsidies of Interest – permitting public authorities to refer them to the SAU, and we will recommend that they do so wherever practicable in the statutory guidance. If, after the referral is made, financial pressures on the intended recipient(s) are such that the rescue subsidy needs to be given urgently, the subsidy can be immediately given without waiting for the SAU to report. The government proposed that the same approach should also apply to subsidies for

liquidating or providing liquidity support to ailing or insolvent deposit taker or insurance companies under sections 22 and 23 of the Act.

80. Restructuring subsidies are less likely to be subject to the same time pressures as rescue subsidies, given that they provide medium-term support for enterprises with restructuring plans. Therefore, the government proposed to define restructuring subsidies as Subsidies of Particular Interest. The same approach would apply for subsidies to restructure an ailing or insolvent bank, other deposit taker or insurance company.

Summary of stakeholder responses to the consultation

81. 48% of respondents answered question 15, with 84% of these respondents agreeing with the government's proposed approach of rescue subsidies being categorised as Subsidies of Interest and restructuring subsidies as Subsidies of Particular Interest.

82. 33% of respondents answered question 16, with 77% of these respondents in agreement with the government's proposal that subsidies to insurance companies and deposit takers to support liquidity provision, or for the purpose of liquidating, should be categorised as Subsidies of Interest.

83. 35% of respondents answered question 17, with 93% of these respondents in agreement that restructuring subsidies to deposit takers and insurance companies should be categorised as Subsidies of Particular Interest.

84. Question 18 asked respondents that disagreed with the government's proposed treatment of rescue and restructuring subsidies to explain their reasons for doing so. Of those that responded, several respondents questioned the interaction between the MFA rules and rescue and restructuring subsidies, with one respondent suggesting that rescue or restructuring subsidies below the MFA threshold should not be subject to SAU referral. One respondent stated that restructuring subsidies of a small amount to SMEs should be Subsidies of Interest, given that there is a negligible risk of undue distortion or negative effects on domestic competition or investment and/or international trade or investment in such cases.

Government response

85. We welcome respondents' strong support for the government's approach to subsidies in relation to rescue and restructuring. We remain of the view that rescue and restructuring subsidies pose a disproportionately high risk of negative effects on the normal functioning of markets and accordingly merit additional SAU scrutiny.

86. On a point of clarification to points raised to this effect by respondents, and as described in the initial consultation, referrals of a SSol to the SAU may be withdrawn after they are made. For example, a rescue subsidy has been referred to the SAU. During the referral period the recipient's financial circumstances deteriorate, and the public authority deems it appropriate to give the subsidy as a matter of urgency. In such a case the

referral may be withdrawn, and the subsidy given immediately. Where a subsidy is given as MFA in accordance with the Act, the subsidy control requirements set out in the Act, including the prohibitions and other requirements relating to rescue and restructuring subsidies in sections 19-23 will not apply.

Subsidies conditional on relocation

87. The following questions were posed in the consultation:

19. What is your view on classifying some or all relocation subsidies as either Sol or SoPI?

20. Do you support one of the particular approaches set out above? If so, which one? If not, which other approach would be appropriate? Please provide examples.

Consultation position

88. An exemption from the general prohibition for subsidies that are explicitly conditional on relocation is available providing that they meet the following conditions (and comply with the subsidy control principles):

- They must have the effect of reducing social or economic disadvantage in a particular locality or region;
- They must be designed to result in an overall reduction in social or economic disadvantages within the United Kingdom; and
- They must be designed to bring about a change in the size, scope or nature of the relocated activity

89. The potential negative effects and undue distortion that might arise from relocation subsidies mean the government considers that an additional layer of scrutiny will likely be appropriate. There are several ways in which subsidies that utilise the relocation exemption could be subject to the additional scrutiny provided by the SAU's review of a public authority's assessment against the principles. These would include, but not be limited to:

- Defining all permitted relocation subsidies as Subsidies of Particular Interest, regardless of monetary value;
- Defining permitted relocation subsidies of this kind as Subsidies of Particular Interest when their value falls within a monetary range that does not exceed £10m (since any subsidy in excess of £10m is a Subsidy of Particular Interest in any case);
- Defining permitted relocation subsidies as Subsidies of Particular Interest based on measures that may give a direct indication of the social or economic disadvantage in the vacated areas, such as the number of jobs relocated; or

- Defining permitted relocation subsidies as a Subsidies of Interest that should be referred to the SAU when other design features of concern, such as those set out in the next section are also present

90. The government welcomed stakeholders' views on the appropriate treatment for these subsidies.

Summary of stakeholder responses to the consultation

91. 15% of respondents answered question 19, with 83% of these respondents of the view that some or all relocation subsidies should be classified as Subsidies of Interest or Subsidies of Particular Interest. The respondent who disagreed thought that the general SSoPI thresholds would suffice.

92. Question 20 asked respondents to set out which suggested approach they thought was most appropriate or to suggest their own approach. The main themes of these responses included taking account of the number of jobs relocated and or other design features of concern, opposed to a catch all approach or significant financial thresholds, aligning with the other monetary thresholds for simplicity. A small number of respondents suggested prohibiting relocation subsidies entirely.

Government Response

93. Most respondents agreed with the proposition that some or all relocation subsidies should be Subsidies of Interest or Subsidies of Particular Interest. We will therefore class smaller relocation subsidies that do not fall under the exemptions to the referral process, such as the MFA exemption, as Subsidies of Interest that may be referred to the SAU. Larger relocation subsidies will be Subsidies of Particular Interest.

94. The government considers that the inherent risks to competition, and to the welfare of the place from which a beneficiary relocates (the vacated area), mean that a lower SSoPI threshold of £1m is appropriate rather than the general thresholds as suggested by one respondent. While a financial threshold does not directly relate to the design features of the relocation subsidy and the extent of possible harm in the vacated area, it will ensure that relocations involving all but a very small number of employees will be referred to the SAU. As set out in paragraph 42, the government believes the costs of an SAU review will generally start to be outweighed by its positive effects on a subsidy of £1m or more for most relocation subsidies. For relocation subsidies with a monetary value below £1m, the government believes that public authority discretion is necessary to know whether a review would be beneficial given the cost.

95. The £1m threshold introduces a particular financial threshold that is only relevant for relocation subsidies and we recognise that in some ways this does not offer the simplicity that some respondents argued for. However, we expect relocation subsidies to be extremely unusual. As a result, this threshold will only be relevant in rare circumstances.

Future Guidance

96. The following questions were posed in the consultation:

- 21. Do you agree with the approach to set out design features for Subsidies of Interest in guidance and to encourage public authorities to seek voluntary referral if they identify that these are present?**
- 22. Do you agree with the suggested design features mentioned? If not, explain why not and whether there are any that you would add or omit?**

Consultation Position

97. There is clear evidence that specific design features, where present, are likely to increase the potential that a subsidy is unduly distortive. In the case of SSol which may be voluntarily referred to the SAU, Public authorities are best placed to identify where these features are present as they work through their assessment of compliance against the principles. The government therefore proposed that the design features are set out in guidance rather than regulations. Public authorities will be advised to make a voluntary referral to the SAU when one or more of these design features are present.

98. The government will publish detailed guidance setting out the characteristics of design features prior to the commencement of the regime. These are likely to include, but are not limited to, cases in which:

- There is evidence of a subsidy race, or bidding war, where two or more public authorities are vying for new investment;
- The same, or a substantially similar, subsidy has been repeatedly made to the same recipient;
- The subsidy is linked to the ongoing economic activity of an enterprise, rather than being a one-off activity;
- The subsidy is only open to one firm (i.e. there is no competition in the giving of the subsidy).

Summary of stakeholder responses to the consultation

99. 53% of respondents answered question 21, with 90% of these respondents in agreement with the government's intention to set out design features for SSol in guidance.

100. 35% of respondents answered question 22, with 79% of these respondents in agreement with the government's indicative design features. Of the respondents that disagreed, a number cited the importance of detailed guidance from the government and also stressed that the proposed list, while a reasonable basis from which to start, is currently too broad, subjective and undefined. One respondent stated that SSol should also be subject to mandatory referral and that the relevant design features should be set

out in regulations, not in guidance. Another respondent stated that the design features should include; (a) evidence that a firm has market power and/or serves the majority of the market (prior to the provision of the subsidy) and (b) that the subsidy is given to a firm in a market with a high degree of market concentration and/ or where there are high barriers to entry.

Government Response

101. Respondents demonstrated strong agreement with the government's proposed approach of setting out design features for SSol in guidance and encouraging public authorities to seek voluntary referral if they are present. As such, we will proceed on this basis when drafting guidance.
102. We acknowledge the importance of further clarity on the terms of these features for public authorities and will address this in the statutory guidance that will be published prior to the commencement of the regime.
103. The subsidies and schemes which pose the highest level of risk are SSoPI and it is right that they are subject to mandatory referral; it is important to have an element of public authority discretion in the regime for the referral of subsidies that have lesser potential to have undue distortive or negative effects on domestic competition or investment and/or international trade and investment. This will help manage the SAU's workload and ensure that its work is focused on more contentious subsidies.
104. The government notes the suggestion by one respondent for additions to the list of relevant design features for SSol. We believe that adding a market power and concentration test to the current list of features fully meets the objectives set out in the consultation (namely, that the SSol definition is simple and captures only subsidies that have the potential for substantial negative effects on domestic competition or investment and / or international trade and investment). The government will therefore include these additional design features within its guidance on SSol.
105. The following questions were posed in the consultation:

- 23. Do you agree with the government's suggested form for guidance in relation to the in-depth assessment? Is there anything in particular that this should cover?**
- 24. If you disagree with the government's proposed approach to future guidance, please explain why.**

Consultation Position

106. The government has recently consulted on the draft statutory guidance that will support public authorities in undertaking the principles assessment. The government will encourage public authorities to undertake more detailed assessments for subsidies or schemes that are categorised as SSol and SSoPI. This in-depth assessment will form the basis of the SAU's review.

107. The government intends that this guidance will:

- Explain how to carry out in-depth assessment under every subsidy control principle, but will in particular focus on detailed assessments under Principle B (proportionality), Principle F (distortions to the United Kingdom's competition or investment) and Principle G (the balancing test) of Schedule 1; and
- Cover both quantitative and qualitative methods for assessing compliance against the principles.

Summary of stakeholder responses to the consultation

108. 53% of respondents answered question 23, with 95% of these respondents agreeing with the government's suggested form for guidance in relation to the in-depth assessment. Of the respondents that suggested particular points that the guidance should cover, a number stressed that it should adopt a practical perspective, take account of key compliance risks and that it should also include focussed and targeted templates alongside worked examples.

109. Question 24 asked respondents that disagreed with the government's proposed approach to future guidance to explain their reason for doing so. Of those that answered, several stated that the guidance should clarify what does and does not constitute a subsidy whilst another respondent mentioned that general guidance is unlikely to be useful to public authorities.

Government Response

110. Given the positive responses from respondents regarding the government's suggested approach for guidance in relation to the in-depth assessment, we will proceed with the approach set out in the consultation. The guidance will be written in a clear and practical way, including worked examples, so that it is easy for public authorities to understand the obligations placed on them by the Act. We launched the public consultation on the statutory guidance³ on 1st July 2022 and it closed on 10th August 2022. This did not include guidance on SSol or SSoPI, as we awaited the findings of this consultation; guidance on SSol and SSoPI will be published before the commencement of the regime. The draft guidance sets out an accessible framework for public authorities to follow in determining what constitutes a subsidy.

Cumulation and valuation of tax subsidies and schemes

Consultation Position

111. The consultation, and the draft regulations published alongside it, did not distinguish between tax and non-tax subsidies and schemes in relation to how they are

³ The consultation on the statutory guidance can be found here:
<https://www.gov.uk/government/consultations/statutory-guidance-on-the-subsidy-control-act-2022#:~:text=The%20aim%20of%20the%20guidance,in%20compliance%20with%20the%20Act>

valued or cumulate. The draft regulations provided that the amount of any subsidy (including any 'related subsidy') shall be determined by reference to its Gross Cash Equivalent Amount or its Gross Cash Amount and these are the values that will be used to determine whether a subsidy exceeds the individual and cumulative monetary SSoPI and SSol thresholds. The government intends to make separate regulations under section 82 of the Act to set out how these concepts should be applied in practice (GCE/A regulations).

112. Regarding schemes, public authorities will need to consider the amount of any subsidy which could be given, and the potential for cumulation with other 'related subsidies', when designing their own schemes and determining whether a voluntary or mandatory referral to the SAU is required. As set out in the consultation, in most cases we consider that public authorities will be able to address these issues by using mechanisms such as caps built into their scheme conditions and / or the public authority will need to refer the scheme as a Scheme of Particular Interest in cases where the use of such mechanisms to limit the amount of subsidies beneath the SSoPI threshold is not considered to be appropriate, taking into account the wider requirements of the Act.

Government Update

113. As part of the government's continuing policy development, it has become clear that there are unique features of tax schemes that would make the application of this approach especially burdensome. The government has therefore revised its approach to tax schemes to better meet the objectives set out in the consultation.
114. It is important that public authorities have a clear framework and criteria to follow to ensure that the right subsidies and schemes are subject to additional scrutiny by the SAU. This principle will continue to apply to tax subsidies and schemes.
115. The unique features of tax schemes, however – including the intrinsic difficulty of forecasting, at the time a tax scheme is made, the maximum amount that a recipient may subsequently claim under it and, by extension, how that amount might cumulate with any other 'related subsidies' at the point those claims are made – justify special provision.
116. The government considers that the use of a mechanism such as caps is likely to be especially and uniquely burdensome for tax schemes and could impose disproportionate burdens on public authorities administering such schemes even where they are highly unlikely to breach the SSoPI thresholds. Therefore, the government intends to set out special provisions in the GCE / A regulations and final regulations defining SSoPI and SSol which will establish a distinct approach for the valuation of tax schemes and in regard to how tax schemes cumulate for the purpose of the SSol and SSoPI monetary thresholds.
117. The provisions will have the following effects:

- Valuing tax schemes: the GCE / A regulations will establish that public authorities will be able to estimate the maximum likely value of any award under a tax scheme. This value will then be the basis for determining whether the SSoPI threshold is exceeded or not.
- Cumulation for tax schemes: in light of the difficulty of estimating the value of all 'related subsidies' that could potentially cumulate with tax subsidies at the point they are claimed, the cumulation rules set out in the consultation will be adapted for tax schemes. In this context, only subsidies given as part of the same tax measure within the applicable period of 3 financial years will constitute a 'related subsidy' which will count towards the cumulative thresholds for SSoPI. As an example, a tax scheme that is estimated to have a maximum likely value of £4m per recipient per financial year would be a SSoPI as the value would cumulate to £12m over the applicable period.

118. Given these changes, the government also considers that it would be appropriate for all tax schemes to be defined as Schemes of Interest (where they do not meet the SSoPI criteria) so that if there is significant potential for cumulation with other subsidies given outside of the tax scheme for a similar purpose, a referral to the SAU can be made on a voluntary basis. The likelihood of such cumulation will be identified in the guidance as a design feature that, where present, should generally result in a voluntary referral to the SAU, if the tax scheme is a Scheme of Interest.

Public Sector Equality Duty

Consultation position

119. We provisionally considered that the proposals set out in the consultation document, and the accompanying regulations, did not create any foreseeable impacts of concern under the Public Sector Equality Duty.

Summary of stakeholder responses to the consultation

120. Question 25 invited respondents' views on whether the proposed regulations, including the way they will function, may have any potential impact on people who share a protected characteristic, in different ways from people who do not share them. Several respondents stated that an overly burdensome subsidy control regime would have the effect of discouraging subsidies with the purpose of directly or indirectly assisting people with protected characteristics, unless subsidies with this purpose were specifically exempted from the Subsidies of (Particular) Interest process. Other respondents suggested that subsidy design guidance should cross-refer to existing guidance on the inclusion of people with protected characteristics, or that subsidies should include explicit reference to existing policies for the inclusion of people with protected characteristics.

Government response

121. We welcome respondents' engagement with this question. We do not consider that it would be appropriate to exempt subsidies or schemes that are targeted at people

with protected characteristics from referral under the SSol and SSoPI processes. Review of a subsidy or scheme by the SAU is intended to improve, where appropriate and by means of non-binding recommendations, a public authority's assessment of such a subsidy or scheme against the subsidy control principles; this may result in the subsidy or scheme being more efficacious in addressing its policy objective – that is, in this scenario, supporting people with protected characteristics. SAU referral does not constitute an approval point, nor will it entail a significant delay to the giving of the subsidy or the establishment of the scheme.

122. The government considers that cross-referring to existing PSED guidance is good practice and will consider doing so where appropriate in statutory guidance. More broadly, we consider that incorporating existing legal requirements beyond those related to subsidy control into the design of subsidies or schemes is the responsibility of individual public authorities.

Policy Overview

123. Having taken the consultation responses into account, the government's revised policy position is set out below. The final regulations will reflect this position and set out the criteria and thresholds that will determine whether a subsidy or scheme is a SSol or a SSoPI:

- Subsidies given outside of sensitive sectors are Subsidies of Particular Interest if they are over £10m, or cumulate above this threshold.
- All other subsidies of between £5 to £10m, or which cumulate to such a value, that do not meet the Subsidy of Particular Interest criteria are Subsidies of Interest.
- Subsidies given in sensitive sectors will be Subsidies of Particular Interest if they are over £5m, or cumulate above this threshold.
- Where subsidies cumulate above the SSoPI threshold, there will be a minimal value for referral of £1m. Public authorities will only be required to make a mandatory referral if the subsidy in question exceeds £1m.
- All restructuring subsidies will be Subsidies of Particular Interest.
- All rescue subsidies will be Subsidies of Interest.
- Subsidies that are explicitly conditional on relocation and meet the conditions set out for an exemption from the general prohibition in section 18 of the Act will be treated as Subsidies of Interest below a value of £1m, and Subsidies of Particular Interest above that value.

124. Regarding subsidy schemes, if the parameters of a scheme allow a subsidy award to be given under that scheme that meets the definition of a Subsidy of Particular Interest, then that scheme will be defined as a Scheme of Particular Interest. Similarly, a scheme which would allow a subsidy award of a Subsidy of Interest is defined as a

Scheme of Interest (unless it is already a Scheme of Particular Interest). Referral to the SAU will take place at scheme level, when the scheme is made.

125. Subsidies given to the same recipient for the same purpose (which meet the definition of a “related subsidy”) within a defined period of three financial years (the “applicable period”) will count, or “cumulate”, together for the purposes of the monetary thresholds for SSoI and SSoPI. This will avoid cases in which an enterprise receives several similar subsidies that are just under the threshold for referral. We have added a minimum referral value of £1m to the cumulation mechanism so that public authorities will only be required to make a mandatory referral if the subsidy in question exceeds £1m.
126. A distinct approach will apply to tax schemes. The GCE / A regulations will enable public authorities to use estimates to ascertain the maximum likely value of any award under a tax scheme for the purposes of determining whether the scheme is a Scheme of Particular Interest (i.e. because it would allow for subsidies which exceed the SSoPI threshold). Furthermore, the general cumulation rules will apply differently to subsidies given under tax schemes. Only subsidies given as part of the same tax measure within the applicable period will count towards the cumulative SSoPI thresholds. All tax schemes will be Schemes of Interest (and may be referred to the SAU but would not be required to do so) unless they would in themselves allow for the giving of subsidies which cumulate over the SSoPI thresholds within the applicable period (in which case they will be Schemes of Particular Interest). The government will set out in guidance that, where there is significant potential for cumulation with other subsidies given outside of a tax scheme for a similar purpose, this is a design feature which should generally result in a referral to the SAU.

Next Steps

127. The government will finalise and lay draft regulations before Parliament which reflect the outcome of this consultation. These regulations will be subject to the affirmative procedure. The main changes to the draft regulations published alongside the consultation will be as follows:
- the introduction of a minimum value of £1m for referral of cumulated subsidies to the SAU, to avoid small subsidies that are above the cumulated threshold being subject to referral (see section on cumulation rules);
 - the definition of relocation subsidies of £1m or more as Subsidies of Particular Interest and those below £1m as Subsidies of Interest due to the higher risk that they present of distorting competition and causing harm (see section on subsidies conditional on relocation) and
 - special provisions for the valuation and cumulation of tax schemes and subsidies (see section on cumulation and valuation of tax subsidies and schemes).

Annex A: List of respondents to the consultation on subsidies and schemes of interest and of particular interest

BEIS continues to liaise with the Devolved Administrations on the roll-out of the new regime. The Secretary of State for Business, Energy, and Industrial Strategy (BEIS) received letters from the Scottish and Welsh Governments explaining they would not formally respond to this public consultation but would instead provide views directly in correspondence. Due to the suspension of the Executive committee, Northern Ireland Ministers have not been able to respond to this public consultation.

Arts Council England

British Film Institute

Big Society Capital

Joint Working Party on Competition Law

Aerospace Technology Institute

The National Lottery Community Fund

UK Chamber of Shipping

Development Bank of Wales

Hutchinson Port

Access - The Foundation for Social Investment

Shearman & Sterling LLP

DWF Law LLP

West Yorkshire Combined Authority

Anthony Collins Solicitors LLP

ADS Group Limited

South of Scotland Enterprise

Ardtornish Hydro

British Film Commission

Consultation on Subsidies and Schemes of Interest and of Particular Interest: government response

UKspace

Pembrokeshire County Council

Association of Commercial Broadcasters and On-Demand Services

Advance Propulsion Centre

Social Investment Business

Southampton City Council

Society of Motor Manufactures and Traders Limited

National Lottery Heritage Fund

British Hydropower Association

Scottish National Investment Bank

Laing O'Rourke

Seafood Scotland

Rolls-Royce

Competere

Oxera, Pinsent Masons and King's College London

Private Citizen

Ecomar Propulsion Ltd

New Anglia LEP

National Trust

Warwickshire County Council

Local Government Association England

British Ports Association

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