



Department for  
Business & Trade

# Statutory Guidance for the United Kingdom Subsidy Control Regime

Subsidy Control Act 2022



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# Chapter 1: About this guidance

## How to use this guidance

- 1.1. This guidance is issued by the Secretary of State under section 79 of the Subsidy Control Act 2022 (the Act). Under section 79(6) public authorities must have regard to this guidance (so far as applicable to the authority and the circumstances of the case) when giving a subsidy or making a subsidy scheme.
- 1.2. This guidance explains the legal obligations on public authorities under the domestic subsidy control regime and provides a framework for designing and awarding subsidies in a manner consistent with the Subsidy Control Act 2022 (the Act). This guidance will help public authorities give subsidies in a way that minimises any negative impacts to competition and investment, as well as promoting the effective and efficient use of public money. Those in public authorities responsible for giving subsidies should read this guidance and ensure they understand the requirements set out in this document.

## Further resources

- 1.3. This guidance is not intended to be exhaustive, nor is it an authoritative statement of the law. Public authorities may therefore wish to seek their own legal advice if, and where, they are unsure of their legal obligations or the lawfulness of a proposed subsidy or scheme. Alternatively, public authorities can request support and guidance from the subsidy control teams in the Department for Business and Trade and the devolved governments. (See paragraph 1.19 for contact details.)
- 1.4. There is separate guidance for public authorities to help them understand the limited circumstances where subsidies are in scope of the Windsor Framework,<sup>1</sup> and therefore not in scope of the Act. There is also separate guidance on the application of subsidy control to agricultural subsidies.<sup>2</sup>
- 1.5. For public authorities awarding subsidies and schemes of interest (SSoIs), and subsidies and schemes of particular interest (SSoPIs), it may also be

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<sup>1</sup> More information is available here: <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework>.

<sup>2</sup> <https://www.gov.uk/government/publications/how-subsidy-control-applies-to-agriculture-guidance-for-public-authorities>

useful to refer to separate guidance published by the Subsidy Advice Unit at the Competition and Markets Authority (CMA),<sup>3</sup> which details their specific role and functions within the regime – including referral to the Subsidy Advice Unit.

### Who should use this guidance?

- 1.6. This guidance covers the legal obligations established by the Act and will be most useful to public authorities who are planning, or in the process of designing, financial assistance that might meet the definition of a subsidy. It is a good idea for those working for public authorities who play any part in supporting enterprises through financial assistance to familiarise themselves with the key features of the subsidy control regime.
- 1.7. Sections of this guidance may also be useful to the beneficiaries of subsidies. However, for the purposes of the subsidy control regime, the responsibility for designing financial assistance measures and assessing them against the subsidy control principles always belongs to the public authority giving the subsidy or making the scheme. By extension, the responsibility for ensuring subsidy beneficiaries understand the rules also lies with public authorities. In many cases, public authorities will need to work together with beneficiaries to establish details about the beneficiaries' plans, incentives, and previous subsidies received to fulfil the subsidy control requirements, but the public authority should not ask the beneficiary to confirm that the subsidy is compliant with the Act. There is a separate, dedicated guidance product for beneficiaries.<sup>4</sup>
- 1.8. Given the broad range of organisations that could be considered 'public authorities', it might not always be obvious where these responsibilities lie. Generally, the public authority responsible for the decision over whether to give a subsidy or make a scheme will bear the responsibility for ensuring compliance with the subsidy control requirements.<sup>5</sup>
- 1.9. In some situations, two bodies will be closely involved in the distribution of a subsidy, for example, where a central government department sets up a fund to support enterprises in a specific region, and the funds are distributed by a local authority. If the central government department has fully set out the details of the fund and the local authority is simply administering the money or applying a set of objective criteria, then the government department is the public authority for subsidy control purposes and the local authority is an

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<sup>3</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

<sup>4</sup> Available at <https://www.gov.uk/government/collections/subsidy-control-regime>

<sup>5</sup> As set out under Part 2 of the Act: <https://www.legislation.gov.uk/ukpga/2022/23/part/2/enacted>.

intermediary. Conversely, if the central government department is making the fund available for the local authority to make decisions on how it is spent, the local authority is the public authority for these purposes.<sup>6</sup> In cases such as the latter, it is good practice for the body setting up the funding programme to highlight the importance of subsidy control compliance as part of their due diligence in distributing the funds to smaller authorities.

- 1.10. See also paragraph 3.15 for more detail on the division of responsibilities and co-operation between public authorities where 2 or more public authorities are involved in giving a subsidy or related subsidies.

### Additional considerations

- 1.11. Compliance with the subsidy control requirements does not replace the assessments and considerations required in the ordinary course of policy appraisal and value for money assessments, such as the techniques found in the Green<sup>7</sup> and Magenta<sup>8</sup> Books and in Managing Public Money<sup>9</sup>. Similarly, the techniques described in Chapter 3 do not replace the assessments required to analyse the impact of a subsidy as part of the Public Sector Equality Duty.<sup>10</sup>

### Streamlined subsidy schemes (streamlined routes)

- 1.12. The government has created 3 streamlined subsidy schemes (known as 'streamlined routes' in this guidance), which any public authority may use to give certain types of subsidy without needing to carry out an assessment against the subsidy control requirements.
- 1.13. Streamlined routes offer public authorities a way to award subsidies more quickly. They are intended to promote confidence and increase legal certainty among public authorities and enterprises undertaking projects that are routine, at lower risk of creating competition distortions, or aligned to priorities of the UK and devolved governments.
- 1.14. A subsidy given correctly under a streamlined route cannot be reviewed in the Competition Appeal Tribunal, although it is possible to challenge a subsidy

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<sup>6</sup> For more information on intermediaries and the definition of 'public authority', please see [Chapter 2](#) and [Annex 1](#).

<sup>7</sup> <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

<sup>8</sup> <https://www.gov.uk/government/publications/the-magenta-book>

<sup>9</sup> <https://www.gov.uk/government/publications/managing-public-money>

<sup>10</sup> <https://www.gov.uk/government/publications/public-sector-equality-duty>

purporting to be given under a route that is not compliant with the terms of the route. A judicial review may still be brought for other breaches of public law.

- 1.15. The streamlined routes relate to energy usage; research, development and innovation; and local growth. Public authorities who wish to use a streamlined route must follow the specific eligibility rules and requirements of each route.<sup>11</sup>

### Windsor Framework and other international obligations

- 1.16. Subsidies in scope of the Windsor Framework and the Withdrawal Agreement are not in scope of the Subsidy Control Act.<sup>12</sup>
- 1.17. The Subsidy Control Act was developed to support compliance with our international obligations, including those under the UK–EU Trade and Co-operation Agreement (TCA) and the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).<sup>13</sup> Note that the TCA and all the UK’s other international obligations will continue to apply and must be complied with.
- 1.18. Public authorities giving a subsidy that is likely to trigger a dispute or unilateral measures under WTO ASCM rules or under one of the UK’s free trade agreements should consider the separate guidance on international commitments,<sup>14</sup> and contact the Department for Business and Trade (DBT) subsidy control team.

### Guidance on particular cases

- 1.19. Public authorities can request support and guidance on the subsidy control requirements from the subsidy control teams at the Department for Business and Trade, Department for Environment, Food and Rural Affairs (Defra), and the Subsidy Control teams in the devolved governments.

- UK Subsidy Control team: [subsidycontrol@businessandtrade.gov.uk](mailto:subsidycontrol@businessandtrade.gov.uk)
- Defra Subsidy Control team: [nick.howard@defra.gov.uk](mailto:nick.howard@defra.gov.uk)
- Defra WTO team: [wto.team@defra.gov.uk](mailto:wto.team@defra.gov.uk)
- DfE Subsidy Control team (Northern Ireland): [subsidycontrol@economy-ni.gov.uk](mailto:subsidycontrol@economy-ni.gov.uk)

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<sup>11</sup> <https://www.gov.uk/government/publications/subsidy-control-act-2022-streamlined-routes>

<sup>12</sup> <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework>

<sup>13</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/scm\\_e.htm](https://www.wto.org/english/docs_e/legal_e/scm_e.htm)

<sup>14</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#section-1>. This guidance also covers commitments under the WTO Agreement on Agriculture.

- DAERA State Aid Unit (Northern Ireland – Agriculture): [stateaid@daera-ni.gov.uk](mailto:stateaid@daera-ni.gov.uk)
- Subsidy Control Division (Scotland): [subsidycontrol@gov.scot](mailto:subsidycontrol@gov.scot)
- Subsidy Control Team (Wales): [SubsidyControlUnit@gov.wales](mailto:SubsidyControlUnit@gov.wales)

## Overview of the subsidy control regime

- 1.20. A subsidy is where a public authority – for example central, devolved, or local government – provides support to an enterprise that gives them an economic advantage, meaning equivalent support could not have been obtained on commercial terms. This can take the form of a grant, a tax break, a loan, guarantee or equity investment on favourable terms, or the use of facilities below market price, amongst other kinds of support. A fuller definition of ‘subsidy’ and related terms used throughout this guidance are set out in [Chapter 2](#) and [Annex 1](#).
- 1.21. The purpose of the subsidy control regime is to prevent public authorities from giving financial advantages to enterprises in a way that could create excessive distortions of competition. Over time, the ineffective use of subsidies can lead to inefficient and unproductive industries, preventing the emergence of new and more innovative enterprises that could deliver better products more cheaply, damaging the UK’s long-term prosperity. Preventing wasteful or harmful subsidies also means taxpayers’ money can be used in better ways.
- 1.22. Having left the European Union, the UK is no longer subject to EU State aid rules. In September 2020, the UK government announced its intent to design a new domestic subsidy control regime that best suited the needs of the UK, promoting value for money to the UK taxpayer, and complying with international obligations. The Act was introduced to Parliament as the Subsidy Control Bill in June 2021 and came into force on 4 January 2023.
- 1.23. The UK subsidy control regime:
  - empowers local authorities, public bodies, and central and devolved governments to design subsidies that deliver strong benefits for the UK taxpayer
  - enables public authorities to deliver strategic interventions to support the UK’s economic growth and allows them to deliver their policy priorities, such as levelling up and achieving net zero
  - provides 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 internal market

- contributes to meeting the UK's international commitments on subsidy control, including its international commitments under the WTO's ASCM, the TCA, and in other free trade agreements

## Executive summary

### Is it a subsidy?

- 1.24. Public authorities must establish if financial assistance they are proposing to provide meets the definition of a subsidy under the Act. For financial assistance to be a subsidy it must meet four specific conditions. These are discussed under [Chapter 2](#) of the guidance, and in further detail in [Annex 1](#).
- 1.25. The chapter also explains what financial assistance is, and what a subsidy scheme is.

### Assessment against the subsidy control principles

- 1.26. [Chapter 3](#) of the guidance explains the subsidy control principles and provides a four-part assessment framework to support public authorities in designing their subsidies in a way that is consistent with the principles.
- 1.27. Public authorities should consider the subsidy control principles when designing a subsidy, and they must not give a subsidy unless they are of the view that it is consistent with the subsidy control principles. The framework has been provided to aid public authorities in meeting this requirement.
- 1.28. Public authorities need to make sure that the depth of their analysis on a subsidy is commensurate to the size and potential distortive impact of the subsidy. This guidance offers a range of resources for public authorities considering the subsidy control principles for subsidies of differing sizes and risk profiles. For subsidies that pose a lower risk of distorting competition, the guidance on the four-part assessment framework at [Annex 2](#) may be used instead of Chapter 3.<sup>15</sup> For the highest-risk subsidies, public authorities should refer to [Annex 3](#), which describes how to carry out a more in-depth assessment.
- 1.29. Public authorities need to assess a subsidy scheme to ensure that any subsidy given under it will be compliant with the subsidy control principles and other requirements, enabling them to give subsidies under the scheme without

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<sup>15</sup> For the purposes of Annex 2, a small subsidy is generally one of less than £1 million, and a small scheme is one that allows individual beneficiaries to receive less than £1 million in total. Size is not the only component of risk, however. For example, Annex 2 should not be used as guidance on assessing rescue subsidies or relocation subsidies of any size, as these are inherently highly distortive.

delay in the future. As such, the steps required to assess a subsidy scheme are very similar to the steps required when assessing an individual subsidy.

- 1.30. Subsidies and schemes that are given in relation to energy or the environment are also subject to the energy and environment principles. Guidance for public authorities determining whether their subsidies are subject these additional principles and making these assessments is set out in [Chapter 4](#).

### Prohibitions and other requirements

- 1.31. The subsidy control regime prohibits some categories of subsidy outright. Other categories of subsidy may only be given where they meet certain conditions. This is because these categories of subsidy pose a greater risk of significantly distorting competition or investment in the UK, or international trade or investment.
- 1.32. Public authorities will find a description of the categories of subsidy that are prohibited outright under the regime in [Chapter 5](#) of the guidance. They will also find an explanation of the conditions some specific subsidies must comply with.

### Services of public economic interest (SPEI)

- 1.33. [Chapter 6](#) explains provisions in the Act for public authorities to provide subsidies for services of public economic interest (SPEI). These are subsidies for essential services provided to the public that would otherwise not be supplied in an appropriate way or may not be supplied at all by the market. Examples of SPEIs may include postal services, social housing, and some types of transport networks, particularly in rural or less populated areas of the country. Chapter 6 sets out the substantive and procedural requirements public authorities must follow to provide a SPEI subsidy.

### Exemptions and permitted modifications to subsidies

- 1.34. The subsidy control regime allows for exemptions for subsidies and schemes in specific cases.
- 1.35. [Chapter 7](#) sets out details of one such general exemption, for 'minimal financial assistance' (MFA), which allows public authorities to award small subsidies without needing to comply with the majority of the subsidy control requirements. MFA is capped at a financial threshold, meaning no recipient can receive more than £315,000 over 3 years if the public authority wishes to rely on the exemption.

- 1.36. There are also a number of partial or complete exemptions to the subsidy control requirements in exceptional circumstances. Examples of these exemptions include measures taken in response to natural disasters and natural or economic emergencies, and for reasons of national security and financial stability. [Chapter 8](#) contains further details.
- 1.37. Subsidies and schemes related to the Withdrawal Agreement with the EU and the Windsor Framework are exempt from the requirements of the regime. As are legacy subsidies given under schemes that were made before the Act comes into force. These are explained in [Chapter 9](#).
- 1.38. If a public authority makes a minor change to a subsidy or subsidy scheme, it may not need to carry out a full assessment of the altered subsidy or scheme against the subsidy control requirements. [Chapter 9](#) also discusses the permitted modifications that a public authority may make to a subsidy that has already been given or scheme that has already been made.

### Subsidies and schemes of interest and particular interest

- 1.39. The regime also requires certain categories of subsidy and subsidy scheme to receive closer scrutiny before a public authority can give them. Subsidies and schemes of interest (SSoIs) and subsidies and schemes of particular interest (SSoPIs) are subsidies which potentially pose a substantial risk of negative effects on competition or investment in the UK, or on international trade or investment.<sup>16</sup> [Chapter 10](#) sets out how SSoIs and SSoPIs are defined. Public authorities are required to ensure that any SSoIs or SSoPIs they give or make are compliant with the subsidy control requirements.
- 1.40. Because of the higher likelihood that these subsidies and schemes could be unduly distortive, public authorities should ensure their analysis is proportionate to the risk they pose. [Annex 2](#) describes additional in-depth assessments for SSoI and SSoPI that public authorities should consider using to ensure the subsidies are consistent with the principles.
- 1.41. The Subsidy Advice Unit (SAU) in the CMA is responsible for advising on subsidies referred to them (SSoIs, SSoPIs and those subsidies or schemes ‘called in’ by the Secretary of State), evaluating the public authority’s assessment of compliance with the regime and publishing a report of their findings. These reports are published and provide an additional layer of transparency for SSoPIs. They may also highlight examples of best practice.

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<sup>16</sup> The government consulted on these definitions with the consultation closing on 6 May 2022. The government response to that consultation can be found here: <https://www.gov.uk/government/consultations/subsidies-and-schemes-of-interest-and-of-particular-interest>

[Chapter 11](#) of this guidance explains the SAU's role and the process public authorities are required to follow when requesting a report. It is mandatory for public authorities to request a report from the SAU where they are giving or making a SSoPI, and they may consider requesting a report where they are giving or making a SSol. The CMA has issued separate guidance to explain the referral process to the SAU in detail.<sup>17</sup> Public authorities should refer to the CMA guidance when making an application to the SAU.

### Transparency requirements and enforcement of the regime

- 1.42. The transparency of subsidy decisions across the regime is important to ensure accountability and to allow interested parties to challenge subsidy decisions. Chapters 12 and 13 of the guidance detail the transparency requirements and enforcement mechanisms of the regime.
- 1.43. To ensure transparency of subsidy decisions, public authorities must upload details of the subsidies and subsidy schemes they have given or made to the subsidy database – which forms a single, publicly available record.<sup>18</sup>
- 1.44. Interested parties are able to challenge a public authority's decision to give a subsidy or make a subsidy scheme through the Competition Appeal Tribunal (the Tribunal). Details of making a challenge to a subsidy decision are discussed in [Chapter 13](#). The chapter explains who can ask the Tribunal to review a subsidy decision, which decisions can be reviewed by the Tribunal, and the conditions in which an application for review may be made.
- 1.45. The Tribunal has the power to grant relief as they would when deciding a legal challenge under judicial review. In addition, the Tribunal has the power to make a recovery order, directing a public authority to reclaim a subsidy from its beneficiary.
- 1.46. Potential interested parties should note the section on time limits for applying to the Tribunal for review of a subsidy decision. Generally, the time limit is one month from the date a public authority makes an accurate and complete upload to the transparency database in respect of a subsidy or a subsidy scheme.
- 1.47. It is also possible for potential interested parties to make pre-action information requests, in which they may ask a public authority for information to help them determine whether the subsidy was given, or scheme was made,

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<sup>17</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

<sup>18</sup> <https://searchforuksubsidies.beis.gov.uk/>

in accordance with the requirements of the Act. The procedure and best practice for pre-action information requests is also set out in [Chapter 13](#).

- 1.48. Where a subsidy is being misused, public authorities have the statutory right to recover the subsidy without needing an order from the courts. Subsidies may be recovered to the extent that they have been used for a purpose other than the purpose for which it has been given. However, public authorities have discretion to decide when to exercise their right to recover a subsidy and it may not always be appropriate to do so.
- 1.49. Chapter 13 also provides details of the considerations for a public authority if they are considering recovering a subsidy, or they believe a subsidy is being misused.

### Subsidies in primary legislation

- 1.50. Specific provisions in the Act apply to subsidies given and subsidy schemes made by primary legislation (that is, subsidies that are provided for directly by the UK Parliament, the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly). The application of the subsidy control rules in the context of primary legislation is discussed in [Chapter 14](#) of this guidance.

### Annexes

- 1.51. [Annex 1](#) sets out further detail on how to determine whether a particular financial assistance measure is a subsidy, following on from Chapter 2.
- 1.52. [Annex 2](#) offers guidance on using the four-step assessment framework to design and assess small subsidies and schemes, which may be used instead of the guidance on the assessment framework in Chapter 3. It includes a case study of an assessment for a small subsidy scheme.
- 1.53. [Annex 3](#) sets out further information for making an assessment against the subsidy control principles for SSols and SSoPIs, following on from Chapter 3.
- 1.54. [Annex 4](#) gives additional guidance on how to calculate the gross cash equivalent and gross cash amount of a subsidy.
- 1.55. [Annex 5](#) provides a glossary of terms used in this guidance

## Chapter 2: Is it a subsidy?

### Overview of the chapter

- 2.1. The subsidy control regime does not apply to all types of financial assistance given by public authorities. In the early stages of decision-making, it is therefore key that public authorities assess whether the proposed financial assistance falls under the definition of a subsidy that is set out in the Act.
- 2.2. Financial assistance – whether or not it constitutes a subsidy – can be given in a number of forms. This includes a grant, a tax break, a loan or guarantee, an equity investment, or the use of facilities. The first part of this chapter explains in more detail what financial assistance is, and the point at which it is considered to have been given.
- 2.3. The second part of the chapter sets out what public authorities should consider in determining whether the subsidy control regime is engaged. The definition of a subsidy consists of a four-limbed test, of which each condition must be met for the financial assistance to constitute a subsidy. This test allows the UK to meet national policy objectives and international obligations. Where each limb is met, the financial assistance will be a subsidy and therefore must be given in accordance with the Act.
- 2.4. Finally, this chapter of the guidance explains what a ‘scheme’ is for the purpose of the Act.

### What is financial assistance?

- 2.5. Financial assistance is a wide concept including any kind of support or market transaction that is considered to have a financial value for the recipient. It can include:
  - a direct transfer of funds (such as a grant, a loan or an equity investment)
  - a contingent transfer of funds (such as a loan or rent guarantee)
  - the forgoing of revenue that is otherwise due (such as a tax relief or exemption)
  - the provision of goods or services (either as a benefit-in-kind where no payment is received, or where payment is received)

- the purchase of goods or services (where payment is given in return)
- 2.6. The examples set out above should not be considered exhaustive. Financial assistance captures any provision of funds, goods, or services, regardless of whether anything is received in return. It also includes any commitment to provide those things in the future, or in certain scenarios.
- 2.7. For the purposes of the Act, the point that financial assistance is given is the point that there is a binding commitment from the giver to the recipient. This may not be the same date that funds (or goods or services) are transferred – and indeed, the subsidy may be given in multiple instalments over a longer period. It may also be much later than the original declaration of support or intention to provide the financial assistance.
- 2.8. The subsidy may also require further conditions to be fulfilled for the giving of the subsidy, or for the giving of subsequent instalments of the subsidy, after the point that the binding commitment is made. In these cases, the point that the financial assistance is given is the point at which the binding commitment was originally made by the public authority, and not the point at which any further conditions are fulfilled. This is relevant for considering the market value of the financial assistance.
- 2.9. The subsequent sections of this chapter set out the circumstances in which financial assistance should be considered a subsidy. If the financial assistance is indeed a subsidy, then the date that the financial assistance is given (that is, the date the binding commitment is made) will generally be the same as the date of the subsidy decision (the confirmation of the decision to give a subsidy). This is important for determining the deadlines for the public authority's transparency obligations and the relevant time periods for the purposes of legal challenge to a subsidy decision.

### Example

On 1 January, a local authority signs a contract with a business to provide support to enable them to develop an innovative green technology. The contract specifies that:

- on 1 January, a £1 million grant will be paid;
- on 1 June, a £1 million loan will be made at a 3% rate of interest if the business confirms it wants to take up the option; and
- at any point over the year, a further £1 million grant will be paid if the technology meets the metrics for success specified in the contract.

All this financial assistance set out above should be considered to be given on 1 January, because that is the date the contract came into effect, and this is also the date of the subsidy decision. This is the relevant date for:

- determining whether or not the option of the loan was financial assistance provided at market rate;
- determining the value of the loan and the performance-related grant; and
- the beginning of the month-month period during which the subsidy must be uploaded onto the database (as it is a non-tax measure).

- 2.10. If the financial assistance is given in the form of a tax measure (that is, a relief or exemption from a specific tax), it is given at the point at which the taxpayer becomes entitled to the subsidy. This will vary according to the nature of the tax. Where the taxpayer self-assesses entitlement to the financial assistance in a tax declaration, such as a corporation tax return, the financial assistance is given when the tax declaration is submitted. The date the subsidy is given is not altered by any enquiry into eligibility for the subsidy after the receipt of the tax declaration.
- 2.11. The date on which a subsidy scheme is considered to be made is set out in the section relating to schemes, below.

### Is it a subsidy? The four-limbed test

- 2.12. Financial assistance will be considered a subsidy where it satisfies all four of the following 'limbs' of the test contained in the Act. Each limb of the test is described below, and examples have been given of the types of financial assistance that are unlikely to meet the test, and therefore may not be considered a subsidy. [Annex 1](#) provides further information for public authorities to consider in circumstances where there is any doubt as to whether the tests are satisfied.
- 2.13. It is important to emphasise that there are many examples of financial assistance that satisfy one or more limbs, but not all four – these are therefore not subsidies. It is important for those giving financial assistance to be clear that their measure meets all four limbs, to understand whether to proceed to apply the subsidy control requirements as set out in the rest of this guidance.
- 2.14. For some measures, this will be straightforward to determine – for example, a grant given by central, devolved, or local government to a commercial business is very likely to be a subsidy. In other instances, it will be important

to consider carefully – for example, if there is a question as to whether the financial assistance is provided on commercial terms, or whether the recipient of the assistance is engaging in economic or non-economic activity.

- 2.15. Specific examples are given in [Annex 1](#) that relate to the fields of research, development and innovation; education; health; infrastructure; and cultural and heritage activity. These are fields in which much activity is not economic, and therefore public authorities should pay particular attention before concluding that financial assistance they are giving is a subsidy.
- 2.16. **Limb A:** The financial assistance is given, directly or indirectly, from public resources by a public authority. Public authorities include any entity which exercises functions of a public nature. Public resources include public funds that are administered by the UK government, the devolved governments, or local authorities, whether they are given directly, through other public bodies (such as agencies), or through private bodies.

Examples of financial assistance that may not meet this test include:

- where regulation requires a transfer between two private bodies, without the resources coming under the control of a public authority
- where a body with both public and private functions is giving the financial assistance in relation to its private functions, using private resources
- where the financial assistance is given by a private body in which a public authority has a minority shareholding and exercises almost no influence over its decisions

- 2.17. **Limb B:** The financial assistance confers an economic advantage on one or more enterprises. This limb has two components. First, the recipient of the assistance must be an enterprise, which is any entity (that is, any person, or groups of persons under common control) that is engaged in an economic activity, which means offering goods and services on a market.
- 2.18. Where an entity is operating pursuant to a public function in relation to activities where there is no market present, the purpose will not be economic in nature. However, the mere fact of operating with the intent of providing some benefit to the public does not automatically mean an entity is not engaged in an economic activity.

2.19. If the recipient is engaged in both economic and non-economic activity, it should be considered an enterprise only in relation to its economic activity. Examples of financial assistance that may not meet this test include:

- financial assistance to a recipient that does not provide goods or services on the market (for example, NHS providers of health services)
- a ringfenced grant to a charity for its non-economic activities (even if the charity also provides some goods or services on the market)
- support for an organisation that carries out non-economic activities with some ancillary economic activities (such as renting out equipment for less than 20% of the time, or a community space with an attached café or gift shop<sup>19</sup>)

2.20. Second, it must confer economic advantage, meaning that the financial assistance is provided on favourable terms<sup>20</sup>. Financial assistance will not confer an economic advantage if it could reasonably be considered to have been given on the same terms as it could have been obtained on the market. This is known as the ‘commercial market operator’ (CMO) principle.

Examples of financial assistance that may not meet this test include:

- purchasing goods and services following appropriate public procurement processes at market rate
- a loan, guarantee or equity investment provided on CMO terms (meaning that it could reasonably have been provided by a private investor on the market), for example by being given on the same terms at the same time as a significant private sector investment, or evidenced via benchmarking or profitability analysis, or both

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<sup>19</sup> It may not always be possible to separate the economic activity from the non-economic activity. In considering whether financial assistance given to such a ‘mixed entity’ amounts to a subsidy, an entity engaged in a small amount (note that the Subsidy Control Act does not provide specific definitions) of economic activity, such as that given in the example (“less than 20%”), might reasonably not be considered an enterprise for the purpose of subsidy control, provided that such economic activity is limited and ancillary to their primary, non-economic purpose. Public authorities should exercise their judgement in this regard.

<sup>20</sup> This advantage can be direct, from public authority to enterprise, or indirect, as in cases where the benefit of a subsidy is ‘passed down’ via another party, to a third party. See Annex 1 for more on indirect advantages.

- 2.21. **Limb C:** The financial assistance is specific, such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or provision of services. This definition covers financial assistance that is provided directly or indirectly to specific beneficiaries determined on a discretionary basis by the public authority, as well as assistance that benefits (directly or indirectly) only enterprises in a particular sector, industry, or area, or with certain characteristics.

Examples of financial assistance that may not meet this test include measures that treat equally all enterprises in the area for which the authority exercises its responsibilities (even if those enterprises are advantaged compared to those in the rest of the UK).

- 2.22. **Limb D:** The financial assistance has, or is capable of having, an effect on competition or investment within the UK, or on trade or investment between the UK and another country or territory, or both. To be a subsidy, financial assistance must be capable of producing a relevant effect, such that it is capable of having a genuine, adverse effect that is more than incidental or hypothetical on competition or investment in the UK, or international trade or investment.

Examples of financial assistance that may not meet this test include:

- where the enterprise is operating in a market inherently without competition and there is no evidence of any potential market entry (such as a hairdresser in a remote village)
- where the enterprise is providing a wholly unique good or service with no relevant competitors domestically or globally, and no evidence of any potential market entry

- 2.23. Further detail on each of the 4 limbs of the test is set out in [Annex 1](#). This annex describes how public authorities should consider whether the test is met, where there is any doubt.

## What is a scheme?

- 2.24. The Act makes provision both for the giving of standalone subsidies, and for making subsidy schemes.

- 2.25. A scheme is a set of rules that describes the eligibility, terms, and conditions for any number of possible subsidies to be given under the scheme for a similar purpose. Before making a scheme, a public authority must be of the view that any subsidy given compatibly with the scheme's terms and conditions would be consistent with the subsidy control principles. Further information on assessing a scheme against the subsidy control principles can be found in Chapter 3.

### **Example**

A public authority wants to improve the energy performance of social housing in order to reduce carbon emissions and lower fuel bills. It has determined through research that this will not happen without financial assistance due to capital constraints on social housing providers and therefore creates a scheme to provide them with grants for this purpose.

The public authority creates eligibility criteria limiting the scheme to social housing providers only, and designs terms and conditions such as how much funding is available per home, which improvement activities are permitted, and the new level of energy performance that the improvements should achieve.

The public authority carries out a principles assessment for the scheme, analysing how subsidies that could be given under the rules of the scheme comply with the subsidy control principles, and assessing the potential distortive impact by considering the largest subsidies that could be given under the scheme.

- 2.26. Similarly, a public authority must not make a scheme that would permit any prohibited subsidy to be given through the scheme (see the prohibitions listed in Chapter 5. In addition, where a public authority makes a scheme that engages the qualified prohibitions on subsidies for the relocation of economic activity, or for the purposes of rescuing or restructuring ailing or insolvent enterprises, they must satisfy themselves that all subsidies given under the scheme will be compliant. In this case, a public authority should consider whether a scheme is an appropriate way of approaching the assessment, as subsidies engaging the qualified prohibitions may often require a case-by-case consideration.
- 2.27. Once a proposed scheme has been assessed against the principles and the public authority is ready to finalise the terms of a scheme, those terms, conditions and other essential information should be recorded in a single scheme document. This is primarily for internal use within the public authority and will help demonstrate that a scheme has been properly constituted, assist

in responding to any pre-action information requests (see Chapter 13) and can be used to demonstrate that minor changes to the scheme should benefit from the arrangements for permitted modifications. See further at '[Scheme document](#)', in Chapter 3.

- 2.28. Not all policies, programmes or projects that distribute subsidies can be considered schemes under the Act. For broad programmes or projects that cover multiple activities, amounts or forms of funding and types of beneficiary, it may not be possible to do a meaningful single assessment against the subsidy control principles that contemplates in appropriate detail all the subsidies that might be given under the programme. In such a case, the public authority may need to consider the principles separately for each subsidy given under the programme or set up several subsidy schemes to cover the programme's full breadth of activities.
- 2.29. The Act also provides for the giving of subsidies under 'legacy schemes' – that is, those schemes that existed before the Act came into force. Further detail on legacy schemes is provided in [Chapter 9](#).

### Subsidy or scheme?

- 2.30. It is also important to distinguish a scheme from a subsidy with multiple components, or that is given in multiple instalments.
- 2.31. A subsidy is a binding commitment with a specific beneficiary. In general, a subsidy will be given to a single beneficiary, although in some cases multiple enterprises could benefit from the same subsidy, for example where they are collaborating on the activity for which the subsidy is given. A subsidy may include contingencies (such as a payment being made on a certain date if a target is met) but these contingencies should leave no discretion to the public authority if the relevant conditions are met.
- 2.32. A scheme, on the other hand, is usually not a binding commitment and may give a public authority a substantial degree of discretion in deciding exactly which possible subsidies under the scheme should be given. It can have any number of beneficiaries, who need have no connection to each other besides their receipt of subsidies under the scheme.
- 2.33. Certain schemes will create legal obligations on the public authority towards a general class of beneficiary, without any involvement of, or contracting with, specific beneficiaries. Examples could include a scheme in which consumers are given credits to purchase certain goods or services from local businesses which are then reimbursed by the government to the enterprise, or a tax scheme where the enterprise's tax liabilities are reduced by a greater amount

for expenditure on zero emission goods vehicles compared to expenditure on other types of vehicles.

- 2.34. For tax measures, a subsidy is generally considered to be given under the scheme on the date of the tax declaration. For non-tax measures where the scheme creates an initial legal obligation towards a general class of beneficiary, the date a subsidy is given under the scheme should be considered in a similar way, considering when it is appropriate to consider that a binding commitment has been made to a specific beneficiary. This may be the date on which a specific beneficiary submits a claim for reimbursement.

### Primary public authorities and streamlined routes

- 2.35. In general, subsidy schemes will be set up by public authorities for their own use and therefore those public authorities will also give out the subsidies under the scheme. The Act also sets out that the UK government, the devolved governments, or any other public authority that exercises its responsibilities over an area that includes other public authorities (for example, a mayoral combined authority) may act as a 'primary public authority'<sup>21</sup> and make schemes for the use of other public authorities. The Act places no obligation on those other public authorities to use such schemes.
- 2.36. Streamlined routes (known as streamlined subsidy schemes in the Act) are a type of scheme made by the UK government for the use of any public authority in the UK. They offer public authorities an optional way to give subsidies relating to energy usage, research, development and innovation, and local growth more quickly. They promote confidence and legal certainty for public authorities and businesses undertaking projects that are routine, low risk, and aligned to UK strategic priorities. More information on streamlined routes can be found on GOV.UK.<sup>22</sup>

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<sup>21</sup> The definition of a primary public authority is set out in section 10(3) of the Subsidy Control Act 2022.

<sup>22</sup> <https://www.gov.uk/government/publications/subsidy-control-act-2022-streamlined-routes>

## Chapter 3: Subsidy design and assessment

### Using this chapter

- 3.1. If a financial assistance measure meets the definition of a subsidy outlined in [Chapter 2](#), that subsidy will generally need to be assessed against the subsidy control principles. This chapter sets out the steps a public authority should take when making that assessment. Exemptions to this requirement are set out in Chapters 7 to 9.
- 3.2. Subsidy schemes must be assessed against the subsidy control principles and cannot be made unless the public authority decides the scheme is consistent with the principles. If the subsidy falls under an existing scheme, including a 'legacy scheme' or a streamlined route, there is no need to carry out an assessment against the subsidy control principles.
- 3.3. If a public authority is proposing a new subsidy or scheme that meets the criteria for a subsidy or scheme of interest (SSoI) or subsidy or scheme of particular interest (SSoPI), they should also follow the steps set out in [Annex 3](#) when making their assessment against the subsidy control principles.
- 3.4. There are also specific steps that public authorities should take if they are proposing a new subsidy or scheme related to energy or the environment. These additional steps are set out in [Chapter 4](#).
- 3.5. The design of a subsidy or a subsidy scheme will also need to consider the prohibitions described in [Chapter 5](#).

### Overview of the chapter

- 3.6. Subsidies can be important and useful tools to help deliver policy objectives, but they need to be designed carefully so that their benefits outweigh any negative effects.
- 3.7. Well-designed subsidies can bring about benefits for society by correcting market failures and addressing social equity issues. They can spur businesses to undertake activity which would not happen otherwise, such as research and development or increasing the uptake of low carbon technology,

and which would increase economic productivity and wider non-economic prosperity. However, subsidies also give rise to adverse effects on competition or investment in the UK, or on international trade or investment, which may prevent markets from delivering efficient outcomes that ultimately benefit society. The Act sets out seven principles that public authorities must consider when giving subsidies.<sup>23</sup> These principles are:

**Principle A:** Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).

**Principle B:** Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.

**Principle C:** Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change, in relation to a subsidy, should be conducive to achieving its specific policy objective, and something that would not happen without the subsidy.

**Principle D:** Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.

**Principle E:** Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.

**Principle F:** Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition and investment within the United Kingdom.

**Principle G:** Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on competition and investment within the United Kingdom, and international trade and investment.

3.8. The subsidy control principles help to ensure that public authorities design subsidies in such a way that they deliver strong benefits and good value for

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<sup>23</sup> Certain subsidies and schemes are also subject to the energy and environment principles (see [Chapter 4](#)). Unless otherwise stated, references to 'the principles' refer to the general principles set out in Schedule 1 of the Act.

money for taxpayers, minimise any negative effects on competition and investment in the UK, and help the UK meet its international obligations.

3.9. The subsidy control principles should be carefully considered as part of the subsidy design process. This chapter sets out a four-step assessment framework to help public authorities ensure that a subsidy is consistent with these principles. This involves public authorities considering the following steps:

- *Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use.*

This step ensures that the subsidy or scheme is consistent with Principle A and Principle E.

- *Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change.*

This step ensures that the subsidy or scheme is consistent with Principle C and Principle D.

- *Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible.*

This step ensures that the subsidy or scheme is consistent with Principle B and Principle F.

- *Step 4: Carrying out the balancing exercise.* This step ensures that the subsidy or scheme is consistent with Principle G.

## Carrying out an appropriate assessment

3.10. Section 12 of the Act requires public authorities, when taking a decision to give an individual subsidy or make a subsidy scheme, to consider the principles and to be of the view that the subsidy or scheme in question is consistent with those principles.

3.11. It is important to note that this affords public authorities an appropriate degree of discretion. To come to their view on consistency with the principles, they will need to carry out an assessment involving analysis. The depth of analysis should be commensurate<sup>24</sup> to the size and potential distortive impact of the subsidy or scheme in question. In most cases, assessing compliance with principles (using the four-step subsidy control assessment framework) should

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<sup>24</sup> 'Commensurate' is used in this guidance in place of 'proportionate' so as to distinguish it from the term as used in Principle B.

be done alongside the business case for the subsidy, using similar evidence sources and analysis.

- 3.12. The analysis can be less detailed where the subsidy is relatively lower in monetary value, has very few potentially distortive design features, or where there is established evidence that similar subsidies have resulted in few or limited adverse impacts. Conversely, the analysis should be more extensive for novel and contentious subsidies and for those with more distortive design features. If the subsidy meets the criteria for a SSol or SSoPI, the public authority should carry out more extensive analysis, as set out in [Annex 3](#).
- 3.13. Public authorities are advised to document the evidence, analysis, and conclusions formed as part of their principles assessment. This will be useful in the event of any pre-action information request or challenge (see [Chapter 13](#)). For guidance on record keeping see [Chapter 12](#).
- 3.14. When completing a principles assessment, any supporting evidence and analysis should be tailored to the scope and application of the subsidy control regime. In practical terms, this means that a scheme or subsidy made under the Subsidy Control Act 2022 should, where possible, disaggregate data that relates to the production of goods in Northern Ireland where aid would be within scope of Article 10 of the Windsor Framework, and instead base analysis on Great Britain data.

### Assessing subsidies funded by more than one public authority

- 3.15. In some projects, different public authorities may contribute to a single subsidy or may separately contribute subsidies that fund a single activity or related activities. Public authorities are encouraged to co-operate where possible on the design of such subsidies and to share information to ensure they can properly assess whether any subsidy they are giving is consistent with the subsidy control principles.
- 3.16. For any subsidy involving joint funding, even a single subsidy, there may be more than one public authority that is considered to be giving the subsidy. Each giver of a subsidy must fulfil the duties of a public authority under the Act. As a result, each public authority involved in jointly funding a project or related projects must establish whether it is giving a subsidy.
- 3.17. A public authority is a subsidy giver if it is both giving financial assistance (such as giving money or giving a guarantee) and its decisions determine how in practice that financial assistance reaches the particular beneficiary or beneficiaries (for example, if the authority selects the beneficiaries or sets the

detailed terms under which the assistance is to be received or applied by them). This includes determining matters that have a meaningful impact on the assessment of the proposed subsidy's consistency with the principles (for example, where the public authority sets the subsidy ratio or parameters such as loan interest rates for individual cases).

- 3.18. The paragraphs below set out two general examples, the first covering joint funding where only one public authority is a subsidy giver for the purposes of the Act, and the second example describes joint funding where more than one public authority is a subsidy giver.

### Subsidy with one subsidy giver

- 3.19. On occasion, a public authority may contribute funds to a second public authority, stipulating that they should be used for a general purpose or policy aim but leaving the substantive design of the subsidy to the second public authority. In these situations, only the second public authority is a subsidy giver. For example, the UK government may contribute to a large infrastructure project led by a devolved government, involving subsidy. Although the UK government is likely to provide broad parameters for the spending, the devolved government will make the final decisions about the nature and terms of the subsidy as applicable to the specific beneficiary (or beneficiaries) and will be the subsidy giver.
- 3.20. The second public authority will therefore be responsible for meeting all the requirements of a public authority under the Act, including making any referral to the Subsidy Advice Unit.
- 3.21. However, the first public authority should be prepared to give reasonable assistance to the second public authority in drafting its assessment against the subsidy control principles (for example, by sharing any relevant information and analysis it may have used to make its business case for allocating money to the project).<sup>25</sup>

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<sup>25</sup> Evidently, the first public authority will not hold sufficiently detailed information to be of assistance to the second public authority's principles assessment where it has only given a strategic steer about the use of the money it has provided. For example, by setting out investment priorities for the use of UK Shared Prosperity Fund monies.

## Subsidy or related subsidies with two or more subsidy givers

- 3.22. Where two or more public authorities contribute funding to a project or related projects, and all contribute to the detailed design of the subsidy and commit funds, give guarantees or similar, then each subsidy giver will have a legal obligation to base their decision on an assessment against the subsidy control principles and – where relevant – make an individual referral to the Subsidy Advice Unit. This could mean that there is more than one referral for a single subsidy.
- 3.23. However, the public authorities may benefit from collaborating as they assess their subsidies against the subsidy control principles. In particular, by sharing information and analysis about their proposed subsidies. This will allow each public authority to prepare a principles assessment that considers other subsidies that the beneficiary will receive for a related purpose. Without this information about other subsidies, it will not be possible for each public authority to prepare an adequate assessment that demonstrates the subsidy is proportionate or the minimum necessary to achieve the policy objective (among other things).
- 3.24. In view of this need to collaborate, public authorities may find it convenient to go further and work together on a joint assessment that, once complete, they individually adopt.
- 3.25. Where public authorities take this approach but have slightly differing policy objectives, representing their different interests in the project or projects, they should articulate their policy objectives alongside each other and if possible, frame an overarching common policy objective for the purposes of assessing the subsidy or subsidies against the subsidy control principles. Alternatively, the policy objectives could be stated distinctly and the principles analysis presented in distinct strands addressing each objective (and cross-referring where relevant) but amalgamated into the one overall assessment.
- 3.26. Where multiple public authorities have adopted a single assessment for a subsidy or scheme of particular interest, they may make a joint referral to the Subsidy Advice Unit (see [Chapter 11](#)). It should be made clear on the face of the referral request that it is being made on behalf of multiple (named) public authorities and that all of those public authorities have given active consideration to the assessment against the principles and therefore discharged their legal obligation under section 12 of the Subsidy Control Act.

## How to assess schemes

- 3.27. As set out in [Chapter 2](#), subsidy schemes may be created by any public authority. The purpose of a subsidy scheme is to enable multiple subsidies to be given to any number of beneficiaries for the same policy purpose. Streamlined routes are a specific type of subsidy scheme, also described in more detail in [Chapter 2](#).
- 3.28. Subsidy schemes (including streamlined routes) must be assessed against the subsidy control principles and cannot be made unless the public authority is of the view that all subsidies that could be given under the scheme will be consistent with the subsidy control principles.
- 3.29. A public authority must also consider the energy and environment principles in Schedule 2 to the Act (see [Chapter 4](#)) before making a scheme related to the energy or environment sectors. Again, a scheme must not be made unless the public authority is of the view that subsidies under the scheme will be consistent with those principles. The rules and parameters of the scheme should therefore be designed to ensure all potential subsidies within it meet the principles.<sup>26</sup>
- 3.30. A scheme's consistency with the subsidy control principles is in general assessed in the same manner as for individual subsidies. However, while an assessment for a standalone subsidy will focus on known facts about the proposed subsidy (such as the amount and form of the subsidy) and the beneficiary (such as its size, position in the market and the exact activities it will undertake using the subsidy), the assessment of a subsidy scheme should focus on the scheme-level conditions and eligibility criteria that can give a public authority reasonable confidence that every subsidy given under the scheme will be consistent with the principles.
- 3.31. One way of doing this is to explore the subsidies that could reasonably be given under the terms of the scheme that have the highest risk of being excessively distortive or otherwise inconsistent with the principles. This might be, for example, the largest possible subsidy that can be given under the scheme to the smallest eligible beneficiary, operating in the most concentrated relevant market. Such potential high-risk subsidies under the proposed scheme can be assessed against the principles in the same way as a standalone subsidy, using the same steps set out in this chapter.

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<sup>26</sup> A subsidy that is not given in line with the terms of the subsidy scheme is a new subsidy that must be separately assessed against the relevant subsidy control principles. Permitted modifications may, however, still be made to a subsidy or scheme without being required to carry out a further assessment against the subsidy control principles – see [Chapter 9](#) for more information.

3.32. Alongside appropriate terms and conditions, schemes may, in some cases, include process requirements and objective criteria to ensure compliance with certain principles. These would be built into the scheme's eligibility requirements and would need to be carried out before a subsidy is given. For instance, the scheme may require the recipient to confirm that it has not received any other subsidies for the project in question or to require the public authority to carry out a check that the prospective beneficiary meets the criteria. For more potentially distortive or more complex schemes, it may be appropriate for the public authority to carry out analysis to confirm that the prospective beneficiary meets the scheme rules and therefore for the methodology of that analysis to be set out as part of the scheme.

### Assessment Framework Step 1: Identifying the policy objective and determining whether a subsidy is the right tool to use

3.33. To ensure there is a benefit to wider society, public authorities may only give subsidies to pursue a specific policy objective which:

- remedies a market failure; or
- addresses an equity concern, meaning it helps redistribute resources between different groups or areas more fairly.

3.34. In doing so, the subsidy can improve overall societal welfare or distribute resources more fairly, or both. The identified policy objective may straddle both efficiency<sup>27</sup> and equity issues. A single subsidy or scheme may have more than one specific policy objective, as long as all objectives address a market failure or equity concern, or both.

3.35. It is also possible that the subsidy (or a wider policy intervention of which it forms part) may have policy benefits which do not fall into either of these two categories. These wider benefits should not be considered as part of this assessment against the subsidy control principles.<sup>28</sup>

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<sup>27</sup> As correcting market failure will lead to resources being allocated more efficiently.

<sup>28</sup> For example, they must not be taken into account in the fourth step of the assessment process, the balancing test, and they do not have a bearing on whether the Energy & Environment principles apply (see [Chapter 4](#)).

## Market failure

### Types of market failure and how to identify them

3.36. Market failure occurs where market forces alone do not produce an efficient outcome.<sup>29</sup> Where this arises, businesses may make investments that are financially rational for themselves, but not socially desirable. The most common cases of market failure which are relevant for subsidy control occur when at least one of the following features is present:

- the existence of externalities
- the involvement of public goods
- imperfect or asymmetric information

### Externalities

3.37. An externality occurs where a business's activities affect third parties.<sup>30</sup> These third parties do not pay for the benefits they derive (in the case of positive externalities) or are not compensated for the costs that fall on them (in the case of negative externalities).

3.38. An example of a negative externality is the discharge of untreated industrial effluent by a factory into a nearby river. This could impact river ecology and prevent people from swimming or fishing, thereby causing harm to people who have no involvement in the business's activities and to society at large. The full cost of the emissions is not directly factored into the decisions involved in producing them. As such, the factory's emissions will be higher than if the business had to compensate the affected third parties. A public authority may be able to improve overall welfare for society by intervening in the market, such as through a well-designed subsidy.

3.39. Although negative externalities constitute a market failure for the purpose of Principle A, it is important that public authorities note the general principle, known as the 'polluter pays principle', that those who produce pollution should bear the costs associated with it. Furthermore, public authorities looking to award subsidies in relation to energy and environment should also ensure that the subsidy is consistent with Principle B of the energy and environment principles in Schedule 2 of the Act.<sup>31</sup> This requires that subsidies do not relieve the beneficiary from their liabilities as a polluter under the law.

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<sup>29</sup> An efficient outcome is defined as a situation where no one can be made better off without making someone else worse off. In effect the outcomes for a group or society at large are maximised.

<sup>30</sup> These third parties are those that are not directly involved in the business's activities or related transactions.

<sup>31</sup> See [Chapter 4](#)

3.40. An example of a positive externality is a business providing in-house or external training to its employees. While the training is likely to benefit the business itself, it may also have positive effects on the economy because the employees can gain knowledge that they may take with them to other businesses or organisations in the future. Training can also increase the broader level of knowledge in society, collectively giving the workforce additional capability to be more productive. Because a business does not reap all the benefits of providing this training, it will undertake less of this activity than is desired by wider society. Although the business behaves perfectly rationally, this is an inefficient outcome for society. A public authority may be able to make society collectively better off by intervening, for instance by using subsidies, to support the business to provide more training.

3.41. Public authorities can establish whether externalities may be present by considering the following questions:

- Are there positive effects of an economic activity on a third party or wider society?
- Where there are positive effects, do the third parties insufficiently compensate the business for the enjoyment of the positive effects?
- Where there are negative effects, are the third parties less than fully compensated by the business?
- Where there are positive effects, is there an insufficient level of the relevant economic activity or an undersupply of the products or services involved?
- Where there are negative effects, is there too much of the relevant economic activity, an oversupply of the products or services involved, or too little investment in preventing negative effects stemming from these?

### **Public goods**

3.42. A public good is a product or service possessing two abstract features.<sup>32</sup> First, one person's consumption or enjoyment of the good or service will not diminish or deplete the amount of it available to others. Second, it is difficult to prevent people from accessing or enjoying the benefits of the good or service. Examples of public goods include cultural heritage, public parks, street lighting, and national defence. The market will tend to undersupply public goods. Where they are provided by private businesses, subsidies can be effective interventions to ensure they are supplied efficiently.

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<sup>32</sup> The economic definition of a public good should not be confused with whether a good is simply provided by a public body.

- 3.43. An example of this is certain forms of research and development (R&D). It may be difficult for an individual business to exclude other businesses or wider society from capturing some of the benefits of their privately funded R&D activity. As a result, the business may invest less in R&D than it would otherwise. Underinvestment is likely to be particularly pronounced for fundamental research – that is, research of an experimental or theoretical nature with no direct practical application or use in view. Fundamental research can increase the overall level of knowledge in society and may spur innovation in other businesses and sectors but may not provide sufficient commercial benefits to incentivise an individual business to undertake it. Therefore, intervention by public authorities through subsidies can incentivise businesses to provide more of this public good to make everyone better off.
- 3.44. Public authorities can establish whether a product or service has the characteristics of a public good, and therefore may benefit from intervention through a subsidy, by considering the following questions:
- Does the use of the product or service by one party still allow access of a benefit by other parties without reducing its availability?
  - Can people and businesses be prevented from accessing or benefitting from the product or service (such as through intellectual property rights)? If so, do these third parties pay no, or insufficient, compensation to be able to enjoy the benefits?
  - Is there undersupply of the public good in the absence of a subsidy?

### **Asymmetric or imperfect information**

- 3.45. When one party involved in a transaction has markedly better information or when all parties to a transaction do not have sufficient information, then beneficial transactions do not go ahead – or they do so on inferior terms.
- 3.46. For example, there can be information asymmetry involved in lending to small businesses that can justify subsidies in the form of loans or loan guarantees. Banks may focus on the financial statements and collateral of a business to assess their credit worthiness, rather than carrying out a more thorough but costly assessment of the business's viability. This can present market failures where new businesses cannot obtain finance from traditional lenders to grow their business, even though they are economically viable and potentially fast growing.
- 3.47. Imperfect information might lead to coordination failure. This occurs when two or more parties are unable to align their actions to achieve a mutually beneficial outcome. This could be because not all the parties have the same

information or mechanisms to deliver more optimal outcomes.<sup>33</sup> Coordination failure can be understood through the example of electric vehicles. In the UK, motorway service areas sometimes do not provide charging points for electric vehicles because there is not enough demand to use them. However, motorists in the UK often do not buy electric vehicles because there are not enough charging points. Here there is a coordination failure if all parties would have benefited from investing in electric vehicles, but did not because they did not know whether the other parties' would also invest. Subsidies could be used to correct this and help the market move towards a more desirable outcome.

3.48. Public authorities can establish the presence of asymmetry or imperfect information by considering the following questions:

- Does one or more market participant have different information to another?
- Is there genuine information asymmetry between relevant market participants rather than just different assessments of the available information (which may, for instance, simply stem from different risk appetites)? Alternatively, is there a lack of information that can reasonably be obtained by all relevant market participants?
- Does the asymmetry or lack of information hinder market participants in making transactions that are beneficial for society?

### **Assessing market failure**

3.49. Public authorities should establish the existence of a market failure as outlined above, assess its significance, and demonstrate how the subsidy will remedy it.

3.50. Evidence that a project or activity would not go ahead in the absence of subsidies is not necessarily a sign of market failure – in fact, it may show that a market is working well, and that the activity would not be an efficient use of resources. Public authorities need to also identify why the subsidy leads to a more beneficial outcome for society as a whole. Furthermore, the identification of a market failure does not in itself justify using a subsidy. As discussed later in this step, there may be other, more suitable ways of addressing that market failure.

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<sup>33</sup> Public Authorities designing subsidies to address coordination failure should ensure these do not incentivise collusion between enterprises. Please see guidance from the Competition and Markets Authority for more information about this.

## Equity objectives

### What is an equity objective?

3.51. In the absence of market failure, market forces tend to bring about efficient outcomes, but they can also lead to unequal or unfair outcomes. Equity objectives (or ‘equity rationales’) seek to reduce these disparities between different groups in society or geographic areas. That is, equity objectives do not aim to achieve a more efficient outcome, but instead aim to redistribute the benefits of economic activity between different groups or areas. Examples include subsidies targeted at:

- reducing social or economic disadvantage
- promoting employment of disadvantaged or disabled workers
- extending access to cultural or educational amenities
- rescuing and restructuring businesses to prevent serious social difficulties arising from the closure of a large employer (note that rescue and restructuring subsidies are subject to additional specific requirements)<sup>34</sup>

### Assessing equity objectives

3.52. The first step to establishing a social equity objective is to identify inequality. Public authorities should use supporting evidence which demonstrates unequal opportunities or outcomes between different groups or areas within the UK. This should include measures or statistical indicators set against appropriate comparators (such as regional or national averages).

3.53. The public authority should then identify how a subsidy could remedy this inequality. Public authorities may draw on the information used to underpin the ‘case for intervention’ in their business case for the subsidy or scheme to demonstrate how the subsidy would contribute to the equity objective.<sup>35</sup>

3.54. Finally, the public authority should satisfy itself that it is socially desirable to address the inequality, as not all unequal situations are inequitable. For example, a smaller proportion of 80-year-olds are in work compared to 30-year-olds: it does not follow that a public authority should subsidise employers to hire 80-year-olds.

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<sup>34</sup> Please refer to [Chapter 5](#) for further guidance on the requirements applicable to rescue and restructuring support.

<sup>35</sup> The ‘case for intervention’ is a description of the steps by which the subsidy should in theory impact the behaviour of the recipient, and eventual the policy objective. See HM Government Project Business Case guidance for a more in-depth explanation of a case for intervention: <https://www.gov.uk/government/publications/business-case-guidance-for-projects-and-programmes>.

- 3.55. Equity objectives must be aimed at addressing inequality in the opportunities and outcomes of people within the UK, rather than on equalising other measures which are unrelated or indirectly related to wellbeing. For example, it is not an equity objective to seek to equalise returns to capital investment in different regions of the UK unless the public authority can make the direct link to the wellbeing of people in disadvantaged regions. Similarly, it is not an equity objective to equalise the numbers of qualified shipbuilding engineers in coastal and non-coastal areas – but it may be an equity objective to increase the number of qualified engineers (of any sort) where that is linked to providing more career opportunities for people in disadvantaged areas.

### Is the subsidy an appropriate tool?

- 3.56. Once the policy objective has been identified, public authorities must determine whether a subsidy is the best means for achieving the chosen policy objective.
- 3.57. As part of this, there should be consideration of other ways of addressing the market failure or equity issue. There may be more appropriate tools available to the public authority, such as regulation, direct provision of the good or service by the authority, or loans or equity investment on commercial terms. Use of alternative levers may have a lower cost impact on the public authority, bring about less distortion, lead to a fairer outcome, or more effectively achieve the specified policy objective.
- 3.58. To comply with Principle E, public authorities should address the following questions:
- Why is the subsidy route the most appropriate instrument for addressing the identified policy objective?
  - What other means have been considered and why are they not appropriate for supporting the identified policy objective?

### Assessment Framework Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change

- 3.59. Subsidy control Principle C states that subsidies should be designed in a way that leads to a change in the economic behaviour of the beneficiary. Taken together with Principle D, this requires that subsidies bring about a change over and above what would occur with no subsidy.
- 3.60. First, public authorities should undertake an assessment of what would happen in the absence of the subsidy, which will establish the baseline for

assessing change.<sup>36</sup> Second, public authorities should assess whether the subsidy creates the right incentives for the recipient and brings about the desired change to achieve the policy objective.

- 3.61. For their analysis, public authorities will often have to rely on information provided by the prospective recipient(s) and third parties. Some recipients and third parties may have an incentive to provide information on the current situation or future developments that would make a subsidy appear more or less favourable. In light of this, public authorities are advised to consider gathering evidence from a range of different stakeholders, consider the information they have obtained in the round, and decide what weight to place on the different pieces of evidence in their assessment.

### The baseline for assessing change

- 3.62. Public authorities should consider what would happen in the absence of the subsidy, the 'do nothing' scenario. The baseline for this comparison would not necessarily be the current situation, but what would likely happen in the future – over both the short and long term – if no subsidy were awarded. In determining the 'do nothing' position, public authorities may find it helpful to refer to detailed guidance on the use of 'counterfactual' analysis'.<sup>37</sup> There will be cases where, without intervention, negative impacts are likely to occur in the future and subsidies may be needed simply to maintain the current situation.

- 3.63. For instance, to establish what the appropriate baseline for assessing change is, public authorities are expected to gather evidence on the most likely future development in markets such as:

- positive or negative impacts on recipients or competitors in the absence of the subsidy
- fast-moving technological or commercial developments
- changes in the set of competitors, for instance through exit, entry, or expansion (public authorities assessing SSol or SSoPI should see [Annex 3](#) for a methodology to identify competitors)
- the growth or decline of a market

- 3.64. The results of this assessment may be that the baseline for assessing change is different from the situation at the time of the assessment and, as a

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<sup>36</sup> Future developments can be difficult to assess not only by public authorities but also by recipients and other market participants. Nevertheless, the assessment should establish the most likely future scenario in the absence of the subsidy.

<sup>37</sup> For further information, see: <https://www.gov.uk/government/publications/rpc-case-histories-counterfactuals-september-2020--2>.

consequence, the subsidy may create stronger or weaker incentives to bring about a change. For example, in an industry that is undergoing a period of consolidation and a decreasing number of businesses in the market, the competitive constraints that the beneficiary faces may change in the future, and the subsidy may not create the right incentives to bring about the desired change in that competitive environment. Furthermore, in most cases, it is reasonable to assume that recipients and competitors will continue making investments in improvements, innovations, or new products.

### Additionality

3.65. Most subsidies will bring about a change in the economic decisions of the beneficiary to some extent. It is important for the public authority to establish that the intended change in behaviour supports the specific policy objective being pursued. To demonstrate how the subsidy will influence the economic behaviour of the beneficiary, public authorities should address the following questions:

- How will the subsidy influence the beneficiary to take one course of action over another?
- How will that change in behaviour contribute to the specific policy objective?

3.66. Subsidies must also bring about something that would not have occurred without the subsidy. In demonstrating this, public authorities should consider the likely change or additional net benefit stemming from the subsidy. Examples of when changes or additional benefits might arise include the following.

- A project or activity being carried out, which would have otherwise not gone ahead (or at least not in a way that benefited a certain group of people or a specific geographical area).
- A measurable improvement in the quality of the outputs or outcomes.
- An increase in the scale or scope of a project or activity, for instance in order to extend the geographic area or number of groups benefiting from it.
- A project or activity occurring at a significantly earlier point than it would have otherwise. A public authority must be satisfied that there are justifiable public policy benefits to using a subsidy to bring forward a project that would have happened without a subsidy.

- 3.67. As a result of the ‘additionality’<sup>38</sup> requirement, subsidies should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy. For instance, a project that has already been started by a potential beneficiary would likely struggle to meet this requirement and therefore should not be subsidised.
- 3.68. Similarly, subsidies should not normally compensate for ‘business as usual’ costs – in other words, those costs that the beneficiary would have incurred and had to fund itself in the absence of any subsidy. This means that public authorities should generally avoid using subsidies to cover the ongoing costs related to the normal day-to-day of running of the business, facility, or project such as rents, transport costs, and personnel costs. This is because Principle C and Principle D require that subsidies should be designed to bring about a change of economic behaviour of the beneficiary.
- 3.69. There are circumstances where the funding of day-to-day expenditure can be justified where that expenditure is directly linked to the subsidy’s policy objective. For instance, a subsidy used to increase the wages of disadvantaged workers would fund day-to-day expenditure (i.e., wages) but could be justified if incentivising hiring is necessary to achieve the specific policy objective of increasing the employment rates of disadvantaged workers. In the rare situations where the specific policy objective is met directly by keeping an enterprise in the market (including, but not limited to, rescue and restructure subsidies – see [Chapter 5](#)), the funding of day-to-day expenditure can be justified.

### **Additionality for schemes**

- 3.70. It will sometimes not be possible for the public authority to determine in advance whether the scheme will bring about a change in the behaviour of each and every potential beneficiary. This does not necessarily mean that the scheme is inconsistent with the principles.
- 3.71. To ensure consistency with the principles, public authorities must, where possible and reasonable, ‘design out’ non-additionality amongst potential beneficiaries. In other words, public authorities must exclude any groups or sub-populations of beneficiaries where it can be reasonably determined in advance that there is unlikely to be additionality. This could occur by building in appropriate criteria or checks into the scheme design in a way that is commensurate with the size of the subsidies being given. Higher value

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<sup>38</sup> Meaning the additional benefits, such as those listed above, that wouldn't have otherwise happened in the absence of the subsidy.

schemes should put more resource into both assessing additionality and excluding sub-groups of non-additionality.

- 3.72. In general, public authorities should seek to design schemes that they expect to bring about additionality in a high proportion of beneficiaries. Where the scheme is not expected to bring about a change in behaviour in a high proportion of beneficiaries, and the public authority is not reasonably able to 'design out' the non-additionality, then this should be factored into the balancing exercise in Step 4: only the 'additional' benefits should be considered, but the negative effects resulting from the entire scheme must be taken into account.

### **Assessing additionality**

- 3.73. To determine the cost of the activity and benefits to the beneficiary, public authorities should use information provided by the beneficiary and publicly available sources of data. Where data is available, and it is commensurate to do so, public authorities should consider using cost modelling to support their assessment of this 'additionality' requirement. The following questions should be considered:

- What are the types of costs the subsidy will be used to support?
- Why is the targeted project or activity and the associated costs not considered as 'business as usual'?
- Would the subsidy be needed by the beneficiary to maintain their market share or meet a legal or contractual obligation now or in the future? If the answer is 'yes', it is likely that the project or activity would be undertaken regardless of the subsidy.
- What would the likely outcomes be with and without the subsidy over the short- and long-term?

### **Assessment Framework Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible**

- 3.74. Competition between enterprises creates incentives to cut prices, increase output, improve quality, enhance efficiency, or introduce new products or services to gain a competitive advantage. This in turn influences enterprises' investment decisions as they direct resources towards improving their offer of products and services.
- 3.75. Well-designed subsidies can help correct or ameliorate market failures as well as social equity issues. They do this through changing the behaviour and operations of the beneficiary, for instance regarding what to produce, the way

in which to produce it, and at what price and level of output. However, they can give rise to adverse effects on competition and investment in the UK, and international trade and investment, which may prevent markets from delivering efficient outcomes which ultimately benefit consumers. Subsidies can distort markets by:

- allowing less efficient recipients to remain in the market, when they would otherwise have gone out of business
- failing to reward competitors to the subsidy recipient that are more innovative or more efficient (and would have produced better or cheaper goods and services for their customers)
- reducing beneficiaries' and their competitors' incentives to innovate and to invest
- shifting the location of economic activity from one place to another, affecting the local economy and employment rates, and wasting resources on the process of relocating
- for particularly large subsidies, creating or strengthening the market power of the recipient and allowing it to command higher prices without increasing the quality of goods or services
- creating knock-on effects on the recipient's customers and suppliers in their own markets

3.76. Principle F requires the public authority to minimise any negative effects on competition and investment within the UK. In other words, the public authority should be satisfied and show that any negative effects on competition and investment within the UK cannot be further reduced without harming the ability to meet the stated policy objective. To comply with this obligation, public authorities should examine the characteristics of the subsidy and whether these can be redesigned to further reduce the impacts of the subsidy on the affected market(s) and still achieve the policy objective. In considering the size of the subsidy, public authorities must also design subsidies to be proportionate to their specific policy objective and limited to what is necessary to achieve it so as to comply with Principle B.

3.77. As part of this process, it may also be helpful for public authorities to consider the impacts on international trade and investment. This will assist public authorities in carrying out the balancing exercise in step 4 of the assessment framework. Any excessive distortion to international trade and investment will make it difficult for the public authority to justify a judgement that the beneficial effects of the subsidy outweigh the negative and therefore comply with Principle G.

## The characteristics of the subsidy

- 3.78. Certain features and characteristics can make a subsidy more likely to have distortive impacts on competition or investment within the UK, or on international trade or investment. It is important to identify where these features are present and consider whether it would be possible to alter or offset them to reduce the levels of distortion they might cause.
- 3.79. The following sections explore each of the main subsidy characteristics in turn. The public authority should systematically review each of the relevant characteristics of the proposed subsidy which could increase the probability of the subsidy causing distortion and consider whether the subsidy could be redesigned to minimise the impact of distortive characteristics and thus the extent of distortion, whilst still meeting the policy objective. All subsidies are distortive, by definition, and it may not be possible to design a subsidy without some of the characteristics listed. The features set out below should therefore be considered in the round.
- 3.80. This should be done in a way that is commensurate with the size and potential distortive impacts of the subsidy. Although design features of a subsidy should not be discounted simply because of the cost or burden to the public authority, it is not necessary to ensure a subsidy or scheme has every one of the distortion-minimising characteristics set out below, where that would only lead to a negligible reduction in potential distortion. Similarly, if the expense or administrative burden of implementing a particular feature would be sufficient to prevent the subsidy being given at all, there is no obligation to introduce it.
- 3.81. There should be more thorough consideration of other options if the subsidy is more likely to lead to substantial distortion, such as those meeting the criteria for SSol or SSoPI. [Annex 3](#) provides in-depth assessment methods for public authorities awarding SSol or SSoPI to help them consider the distortive impacts that the subsidy may have and keeping them as low as possible. Public authorities awarding SSol or SSoPI should consider both the following sub-sections and Annex 3 when considering this step in the framework.

## The nature of the instrument

- 3.82. As set out in Chapter 2, subsidies can be given in many different forms, including grants, loans, equity investment, loan guarantees, tax breaks, and the provision of products or services at below-market prices. Some forms are less likely to distort competition and investment in the UK and international trade and investment than others. For instance, a loan typically leads to less distortion than a grant as it will ultimately need to be paid back by the beneficiary. Furthermore, a loan provided at close to commercial interest rates

is, all other things being equal, less distortive than a loan at a lower interest rate.

- 3.83. As a general rule, where a public authority is acting in a way more comparable to that of a rational private operator on the market (that is, closer to the ‘commercial market operator’ principle), the beneficiary is likely to derive a smaller economic advantage, and the subsidy is likely to be less distortive.<sup>39</sup>
- 3.84. Public authorities should consider the following question. Could a less distortive form of instrument be deployed whilst still meeting the identified policy objective?

### **The breadth of beneficiaries and the selection process**

- 3.85. Subsidies that are available to a broad set of recipients are less likely to distort than subsidies that are only made available to a single enterprise. Public authorities should consider whether a subsidy could be opened up to other market participants. For example, a subsidy to promote entrepreneurship that is made available to all small businesses in a specific area is likely to be less distortive than a subsidy given to one or two small businesses.
- 3.86. There may also be instances where it is appropriate for the awarding process for a subsidy to involve an element of competition between potential recipients. For instance, the public authority could select recipients on the basis of which enterprise(s) can demonstrate that they would best meet the policy objective. The best-placed enterprises may be identified by asking recipients to bid to win the subsidy and select the recipient(s) that require the smallest subsidy to achieve the policy objective. A competitive allocation process for a subsidy thereby may also help public authorities to meet Principle B.
- 3.87. When subsidies cannot be made available to a broad set of recipients or made available through a competitive process, public authorities should consider other mechanisms which introduce an element of competition, such as setting objective criteria, making the selection process transparent, or carrying out preliminary discussions with multiple potential beneficiaries.
- 3.88. Public authorities should consider the following questions:

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<sup>39</sup> Section 3(2) of the Act confirms that financial assistance, such as a state loan or investment, given on terms that might reasonably have been expected to have been available on the market to the enterprise does not meet the definition of a subsidy. See [‘What is economic activity?’](#) in Annex 1 for further guidance on the circumstances in which a public authority will be considered to be acting in a way more comparable to a rational private operator.

- Could the subsidy be made available to other competitors?
- Could firms compete to win the award of the subsidy?

### **The size of the subsidy**

- 3.89. Smaller subsidies are less likely to distort competition and investment within the UK and international trade and investment. As an initial starting point, public authorities will want to compare the size of the subsidy to the key thresholds in the subsidy control regime: a subsidy below £100,000 is very small (and need not be uploaded to the transparency database) while a subsidy above £10m is very large (and needs to be referred to the Subsidy Advice Unit).
- 3.90. Public authorities should consider the size of a subsidy in absolute terms as well as relative to the size of the recipient, the costs on the beneficiary, or the value of the market(s) of the affected products or services. For example, while a £1m grant may have a significant bearing on the decisions of a small or medium-sized enterprise, it is likely to have a smaller influence on the behaviour of a multinational enterprise. Similarly, the size of the subsidy should be considered against the investment costs it would be offsetting. Higher intervention rates (for example, more than 70% of project costs) are more likely to distort competition and investment within the UK, and international trade and investment.
- 3.91. In line with Principle B, public authorities should design subsidies to be proportionate to their specific policy objective and limited to what is necessary to achieve it. Where data is available and it is commensurate to do so, public authorities should use cost modelling to determine the appropriate, proportionate size of the subsidy. A subsidy is proportionate when it is just large enough to achieve the required change in behaviour (see assessment framework step 2). This change in behaviour will have a cost to the recipient, but there will often be a narrow benefit to the recipient in terms of decreased long-term costs, increased sales, or both.
- 3.92. To ensure that every subsidy within it is proportionate, a scheme's terms should typically include a cap on the maximum amount awardable to a single recipient. This may be an absolute value or a maximum proportion of project costs to be funded by the scheme (with the rest to be met by the beneficiary or private investors). In many cases, it will be appropriate to specify caps on both absolute value and proportion of costs.
- 3.93. Public authorities should consider other subsidies given to the same recipients for similar purposes as part of Step 3 of the principles assessment. For standalone subsidies, this will usually be straightforward: the public authority

should ask the beneficiary whether they have already received (or expect to receive) another subsidy for a similar purpose. If the public authority has determined that £1 million would be a proportionate size of subsidy in the absence of any others, then it would be, by definition, too large if the beneficiary had already received some funding from another public authority.

- 3.94. In the case of schemes, the rules of the scheme will need to be developed to take into account other possible subsidies. This includes not only subsidies that have already been given at the point the scheme is made, but also those that could be given in the time period between the scheme being made and the subsidies under it being given. These subsidies could be given to the same recipients, for similar purposes, as other standalone subsidies or through other schemes (including Streamlined Routes). As such, it is likely to be appropriate to make provision in the scheme rules to manage this: for example, by asking recipients to confirm they have not already received a similar subsidy as the one given under the scheme, or by putting a cap on the total value of similar subsidies a recipient can receive over a certain time period in order to be eligible to receive subsidies under the scheme.
- 3.95. Public authorities should consider the following question. Could the size of the subsidy be decreased?

### **The timespan over which a subsidy is given**

- 3.96. Time-limited and one-off subsidies are likely to lead to less distortion. The timespan of the subsidy and investment can provide an indication of the longevity of any effect on the market. Where appropriate, public authorities should design subsidies that are time-limited, and payment schedules should be linked to performance criteria such as the achievement of specific milestones of a project (see the performance criteria subsection below). Public authorities should consider this feature in combination with the cost being covered by the subsidy (see the nature of the costs subsection below) as funding of different costs may have different effects on the timespan of funding.
- 3.97. Providing recurring subsidies over a period of time compared to a single, limited award is likely to have a greater distortive impact, including on firms' entry and exit decisions. First, recurring and open-ended subsidies increase the risk of projects or activities continuing even after they have become uneconomic or obsolete (see the nature of the costs subsection below) and incentivise recipients to request further funding to continue a project or desired activity.

- 3.98. Second, potential entrants could be deterred from entering the market if they have to compete with incumbents that are expected to receive further subsidies. Recurring subsidies could also prevent efficient rationalisation - a firm may remain in a market when this is no longer the best option for it either because it has committed to as part of a subsidy programme or because it has reason to expect future subsidies.
- 3.99. Schemes should be established to run over a clearly defined period of time. A scheme without an end date is not likely to be proportionate and limited to what is necessary to achieve its policy objective. However, the public authority may choose to relaunch the same or a similar scheme, having carried out a new assessment.
- 3.100. Public authorities should consider the following question. Could the subsidy be made a one-off or time-limited contribution?

### **The nature of the costs being covered**

- 3.101. Consideration should be given to how the subsidy will affect the beneficiary's costs. One-off subsidies which support the funding of an initial investment or the set-up costs of a project tend to be less distortive so long as they do not create barriers to entry or give a substantial advantage to the recipient. As discussed in step 2, ongoing subsidies which cover a beneficiary's 'day-to-day' costs, particularly those which vary with output, are more likely to impact competition and investment in the UK and international trade and investment. Funding only initial investments or set-up costs also reduces the risk that a project or activity continues to be funded even if it has become obsolete or ineffective during the project's lifetime. Further detailed guidance on identifying the cost impact of the subsidy (which will mostly be relevant for SSols and SSoPIs) is provided in [Annex 3](#).

### **Public authorities should consider whether the subsidy could offset the initial investment of a project or activity as opposed to supporting the ongoing costs. Performance criteria**

- 3.102. The design of a subsidy may be improved by the inclusion of clear performance indicators in the agreement. These will help to ensure that the assistance is being best used to achieve the specified policy objective. Careful consideration will need to be given to the outcomes the beneficiary will be assessed against. Where appropriate and commensurate, it may be helpful for the subsidy agreement to set out:

- the performance criteria
- how the necessary information will be obtained

- who will conduct the performance evaluation and at which points
- dispute mechanisms, including any appropriate clawback provisions<sup>40</sup>
- the consequences for the beneficiary where it does not meet or falls short of the performance criteria – this could include conditions where later tranches of funding are only released if and when certain standards or outcomes have been exceeded, and recovery of tranches of funding where these have not been met

3.103. Public authorities should consider the following question. Could performance criteria and a payment schedule linked to achievement of specific milestones be incorporated into the subsidy agreement?

### Ringfencing

3.104. In their considerations on how to best target a subsidy, public authorities should also consider whether conditions could be imposed on beneficiaries that limit which activities or projects the subsidy can be used for. Among other things, this can help prevent funds being used to cross-subsidise other areas of the beneficiary's business. Ringfencing measures should be commensurate to the size of the subsidy. Examples of ringfencing measures include:

- Establishing separate legal entities for different activities. This ensures that financial resources and liabilities are distinct and managed independently
- Implementing distinct accounting systems for different activities. This involves maintaining separate financial records to track income, expenses, and assets for each activity.
- Creating independent operational structures, such as separate management teams and operational processes, to ensure that activities are managed independently.
- Developing and enforcing internal policies that clearly define the boundaries between different activities. This includes setting rules for resource allocation and usage.
- A contractual restriction that the funding should be used for a particular purpose.
- Regularly monitoring and auditing activities to ensure compliance with ringfencing policies. This helps identify and address any instances of cross-subsidisation.

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<sup>40</sup> See also [Chapter 13](#) for discussion of misuse of subsidies.

3.105. Public authorities should consider the following question. Is it feasible to ringfence the subsidy to ensure that funds are only spent on activities that contribute to the policy objective?

### Monitoring and evaluation

3.106. Public authorities should consider building in periodic reviews of any longer term or ongoing subsidies where it is commensurate and appropriate to do so, as well as including relevant conditions covering the use and recovery of the subsidy. This will assist with evaluating whether the subsidy is meeting the policy objective as well as identifying any distortions to competition and investment in the UK and to international trade and investment. Depending on the nature of the subsidy, these reviews could include an evaluation of:

- progress against the stated policy objective and whether interim objectives have been met
- whether any new and overlapping subsidies have since been introduced which address the same policy objective
- whether the market failure or equity issue still exists (or is sufficiently significant) and planned future subsidies are still required
- any negative outcomes stemming from the subsidy, including on competition and investment in the UK and international trade and investment
- whether the subsidy should be altered going forward, phased out, or halted

3.107. The UK government provides detailed guidance on evaluation methods which may be of interest to other public authorities.<sup>41</sup>

3.108. Public authorities should consider the following question. Could monitoring and evaluation be embedded into the conditions of the subsidy?

### Subsidy races

3.109. In addition to the above, public authorities should have regard to the risk of 'subsidy races' or bidding wars where two or more public authorities are vying for new investments. Public authorities should be cautious about subsidy races occurring, as these may lead to a displacement of investment away from locations where the public benefits are the greatest and may incentivise firms to use their leverage to secure larger subsidies than would have been possible had public authorities not been bidding against each other to secure the

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<sup>41</sup> <https://www.gov.uk/government/publications/the-magenta-book> and <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>.

investment. This would also risk the subsidy not complying with Principle B, which states that a subsidy must be proportionate and limited to what is necessary.

3.110. Public authorities should assess whether another public authority is offering a subsidy for the same or similar investment where the beneficiary cannot accept both offers. When that is the case there is a greater risk of a subsidy race occurring. In such cases, public authorities should take the following actions.

- Carry out more extensive analysis of both the positive and negative impacts of the subsidy (looking at the counterfactual of where the investment would be located in the absence of any subsidy).
- Consider whether competing offers from different parts of the UK have increased the size of the subsidy on offer from what it originally would have been, and whether the subsidy can still be justified as being proportionate.
- Consider the relative levels of disadvantage of the areas in question. Subsidies which may result in a shift in economic activity from a less disadvantaged area to a more disadvantaged one, and which could lead to an increase in economic output for the UK as a whole, will be easier to justify against Principle G (the 'balancing exercise'). If the subsidy in question is conditional on changing the location of economic activity already being carried out in the UK (as opposed to the location of new investment), the public authority should also refer to the guidance on the prohibition on relocation subsidies and the exemptions to that prohibition (see [Chapter 5](#)).
- Consider referring the subsidy to the SAU if the subsidy meets the criteria for a SSol (see [Chapter 11](#)).

### Assessment Framework Step 4: Carrying out the balancing exercise

3.111. By following the framework up to this stage, public authorities will have designed a subsidy that is consistent with Principles A, B, C, D, E and F, and will have established the likely benefits and negative impacts of the subsidy.

3.112. The final step of the framework consists, therefore, of a balancing exercise, where the public authority must establish that the benefits of the subsidy (in relation to the specific policy objective) outweigh the negative effects. To reach an informed judgement, a public authority must make a sincere effort to identify the harms that might realistically arise from the subsidy. By definition, all subsidies distort the market or are capable of doing so. As a result, the

mere existence of potential harms is not an obstacle to giving a subsidy and public authorities should not downplay those harms.

- 3.113. The balancing exercise should therefore involve the public authority listing the subsidy's expected benefits (as they relate to the specific policy objective) and negative effects, considering their expected size and their likelihood of occurring. The public authority must then come to a decision, based on the evidence available to it, as to whether the benefits outweigh the negative effects and therefore whether it is still worth proceeding with the subsidy despite the residual distortions and other negative effects.
- 3.114. The benefits considered in the balancing exercise must be only those that relate to the specific public policy objectives identified in the first step of this framework, for the purpose of Principle A. As set out, there may be more than one specific policy objective, each relating to a market failure or equity rationale. Wider benefits that do not relate to a market failure or equity rationale must not be taken into account for the purpose of the balancing exercise.
- 3.115. The harms included in the balancing exercise should include all relevant negative effects. These include, in particular, those relating to competition and investment within the UK, and to international trade and investment. However, other relevant effects must also be taken into account, including negative impacts on climate change and carbon emissions if these are relevant<sup>42</sup>. Furthermore, public authorities should examine whether the subsidy will have adverse effects for a particular group or geographical area. This is discussed in more detail in the subsection below.
- 3.116. A public authority is likely to have already estimated the impact of the subsidy on its policy objective as part of a business case. In contrast, the foreseeable harms that a public authority should consider are broader and identifying them will involve a greater degree of anticipation. As a result, it may not always be possible or proportionate to quantify these harms, and therefore the balancing exercise may need to include both quantitative and qualitative elements. In such cases, an element of judgement is necessary in deciding whether the benefits outweigh negative effects. However, the more distortive a subsidy is likely to be (especially if it is an SSoI or an SSoPI) and the more finely balanced the decision (that is, if the negative effects seem to be very close to

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<sup>42</sup> The UK government has produced guidance on valuing energy usage and greenhouse gas emissions. [www.gov.uk/government/publications/valuation-of-energy-use-and-greenhouse-gas-emissions-for-appraisal](http://www.gov.uk/government/publications/valuation-of-energy-use-and-greenhouse-gas-emissions-for-appraisal).

the benefits), the more a public authority should endeavour to quantify as many costs and benefits as is reasonably possible.

### Geographical and distributional impacts

- 3.117. Subsidies often have geographical and distributional impacts. Distributional impacts can occur as a direct consequence of pursuing the policy objective, leading to one group being advantaged over another. For example, a scheme to subsidise youth employment could make it less likely that new jobs will be offered to older unemployed workers. Subsidies also often have geographical impacts. A subsidy designed to encourage growth or attract new investment into a disadvantaged area may impact the likelihood of investment in other disadvantaged areas. Public authorities should take these kinds of impacts into account before proceeding.
- 3.118. Subsidies are commonly targeted at particular geographic areas, or sectors within particular areas, to improve regional economic development. Public authorities should consider the geographic spread or concentration of the industry within the UK even where this is outside their own geographic area of responsibility.
- 3.119. Public authorities should be aware that subsidies that require the beneficiary to relocate its activities are prohibited except where these subsidies aim to reduce social or economic disadvantage. For more information see [Chapter 5](#).

### Scheme document

- 3.120. This section provides a list of elements that public authorities should specify and record when they are developing a subsidy scheme. This will help ensure the scheme functions properly as a scheme, provide clarity about when the scheme is made and clearly define its eligibility criteria and conditions.
- 3.121. There is no single method of documenting that a scheme has been made, and no single way of setting out the eligibility criteria and conditions of the scheme. However, to ensure a formal record of the details and making of a scheme is available when required, public authorities should ensure that they create and retain – primarily for internal purposes – a ‘scheme document’ recording at least the following information.

#### **Name of the scheme**

- This should describe the purpose for which the scheme was made (for example, ‘Newtown high-street regeneration scheme’).

### **A statement by the public authority that the scheme is made under section 10(1) of the Subsidy Control Act 2022**

- This statement should be made by an appropriate person with the authority to do so, such as a minister, a local authority councillor, a senior civil servant or (in a local authority) a section 151 officer.

### **Date on which the scheme was made**

- The date that a scheme is made should be the date on which the scheme's rules were formally confirmed and put into operation by the public authority. This might be, for example, when a public authority issues a call for bids to access a particular fund, or the date any secondary legislation setting out the scheme's parameters comes into force.<sup>43</sup>

### **Purpose of the scheme**

- This should describe the policy objective or objectives of the scheme identified in step 1 of the subsidy assessment framework. (Corresponding to Principle A.)

### **Budget of the scheme**

- This should state the anticipated budget for the scheme.

### **Conditions of the scheme**

- This should include, where relevant, which groups of beneficiaries are eligible to receive subsidy under the scheme; any processes for assessing which applicants will be given subsidies, such as open competitions (although it is not necessary to detail any standard 'due diligence' checks that a public authority may apply); and what activities may be supported using subsidy given under the scheme.

### **Form and calculation of the subsidy**

- This should describe how subsidies will be given under the scheme (for example, as loans or grants); the maximum amount of any subsidy that may be given under the scheme, including any subsidy ratio; and how the amount of each subsidy given under the scheme will be calculated. The subsidy ratio is the maximum proportion of the cost of an eligible activity that may be met through subsidy. For example, if a scheme allows a subsidy ratio of 30% for investment in new machinery, and an

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<sup>43</sup> In some instances, there may be multiple dates on which a scheme could be reasonably said to have been made. The public authority may choose the most appropriate date. However, the scheme must have been made before any awards are granted under the scheme.

enterprise is investing £1 million in new machinery, then the maximum subsidy that could be given is £300,000.

- It is strongly recommended that all schemes set a maximum subsidy that can be given under the scheme, either in the form of a monetary limit, a subsidy ratio, or the lower of the two.

### **Duration of the scheme**

- This is the date that the scheme is scheduled to begin and end. It is strongly recommended that all schemes have an end date. Those that do not are unlikely to be proportionate and limited to what is necessary to achieve the policy objective.

3.122. If the scheme is modified in any way, the scheme document should then be updated to reflect any changes.

3.123. In creating a scheme document, public authorities may find it helpful to refer to the scheme documents for the 3 streamlined subsidy schemes (streamlined routes).<sup>44</sup>

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<sup>44</sup> <https://www.gov.uk/government/publications/subsidy-control-act-2022-streamlined-routes>

## Chapter 4: Energy and environment principles

### Overview of chapter

- 4.1. Subsidies and schemes in relation to energy or the environment must be assessed against the relevant further energy and environment (E&E) principles of Schedule 2 of the Act, as well as being assessed against the subsidy control principles of Schedule 1. Principles A and B of Schedule 2 are applicable to all energy and environment subsidies; all other principles in Schedule 2 apply only to specific kinds of subsidies, or subsidy schemes.
- 4.2. These limited additional principles are an important means of complying with the UK's international obligations in this area, specifically under the Trade and Cooperation Agreement with the European Union and support the UK's commitment to achieve net zero by 2050.

### Scope

- 4.3. The E&E principles apply only to those granted in relation to energy and the environment – that is, where the specific policy objective of the subsidy (or one of its objectives) relates to energy or the environment.
- 4.4. Examples of subsidies that must be considered in line with the E&E principles include subsidies to:
  - encourage innovation in renewable energy production
  - improve energy efficiency of an energy-intensive industry
  - increase plant diversity on agricultural land
  - improve recycling among small businesses
- 4.5. Subsidies may have more than one specific policy objective, and they should be considered to be in scope of the E&E principles if one or more of the objectives of the subsidy is in relation to energy and environment. For example, a scheme may have two policy objectives: to encourage the regeneration of high street shops and cafés; and to incentivise increased energy efficiency of the refurbished shops and cafes. This scheme would be in scope of the E&E principles because at least one of the policy objectives relates to energy.

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- 4.6. However, public authorities giving subsidies that have incidental benefits in relation to energy or the environment, that are not related to the policy objective of the subsidy, need not consider the principles in Schedule 2. Principle G of the subsidy control principles ([Step 4](#)) requires public authorities to assess the beneficial effects of the subsidy (in relation to the specified policy objective) and ensure they outweigh any negative effects.
- 4.7. Not all subsidies given to beneficiaries operating in the energy or environment sectors will need to take these principles into account. The scope of the E&E principles is not determined by the sector that the beneficiary is primarily based in.
- 4.8. The E&E principles do not apply to nuclear energy subsidy awards or subsidy schemes. Public authorities granting nuclear energy subsidies must consider them against the subsidy control principles.
- 4.9. Only the first two E&E principles apply to all subsidies in relation to energy and environment. The subsequent principles apply to specific types of subsidy, as set out in the principles themselves. A summary of the scope of the different principles is as follows:

<b>Principle</b>	<b>Scope</b>
A	All subsidies in relation to energy and the environment
B	All subsidies in relation to energy and the environment
C	Subsidies for electricity generation adequacy, renewable energy or cogeneration
D	Subsidies for electricity generation adequacy
E	Subsidies for renewable energy or cogeneration
F	Subsidies in the form of partial exemptions from energy-related taxes and levies
G	Subsidies that compensate electricity-intensive users for increases in electricity costs
H	Subsidies for decarbonisation of industrial emissions
I	Subsidies for improving energy efficiency of industrial activities

## Application of the subsidy control principles in Schedule 1

- 4.10. The subsidy control principles continue to apply to subsidies in relation to energy and environment. A subsidy that is not consistent with those principles must not be given, regardless of whether it is consistent with the E&E principles.
- 4.11. As set out above, the E&E principles apply to subsidies and schemes where their specific policy objective is in relation energy or the environment. This specific policy objective must be one identified in the assessment of Principle A of the subsidy control principles (through Step 1 of the assessment framework). As described in Chapter 3, subsidies and schemes may have multiple specific policy objectives – the E&E principles apply if at least one is in relation to energy or the environment.
- 4.12. The subsidy control principles also require energy and environment impacts – including potential impacts on the UK’s net zero commitment and other UK climate commitments as relevant – to be taken into account for all subsidies. Principle G in Schedule 1, the ‘balancing exercise, requires all relevant negative effects to be weighed up against the benefits of the subsidy (in relation to the specified policy objective). The existence of relevant effects regarding energy or environment costs does not necessarily mean that the E&E principles apply.
- 4.13. However, the energy or environment benefits cannot be considered in Principle G unless they have been identified in the specific policy objective in Principle A (see [Chapter 3](#)). Therefore, if a public authority is considering the energy or environment benefits as part of the ‘balancing exercise’, it follows that the E&E principles must apply.
- 4.14. For example, a subsidy to increase employment of disadvantaged workers in gardening and waste management may be explicitly targeted at both an environmental and a non-environmental objective. Environmental improvement would be an objective under Principle A of the subsidy control principles and the anticipated benefits would be taken into account under Principle G of the subsidy control principles. The E&E principles would apply.

## Carrying out an assessment

- 4.15. The Act requires public authorities to consider whether a subsidy or scheme in relation to the environment is consistent with these E&E principles. As with the subsidy control principles, this requires the public authority to carry out an assessment using an appropriate level of analysis before giving the subsidy or making the scheme. This assessment should look at the specified

requirements and goals set out in the relevant E&E principles and ensure that the subsidy is designed in such a way as to meet them.

- 4.16. As with the subsidy control principles, public authorities should carry out an assessment that is proportionate to the potential harm of the subsidy or scheme in question. In determining how extensive the assessment should be, a public authority should consider the risk of harm to energy or to environmental objectives (as relevant), such as energy security, energy affordability, environmental protection and the UK's net zero commitment and other climate commitments.
- 4.17. The appropriate level of analysis will usually be similar to that carried out for any business case or impact assessment for the subsidy or scheme. The E&E principles do not require a public authority to consider any unusual analytical techniques. Existing relevant assessment tools can be used (for example, environmental impact assessment, natural capital assessment, and strategic environmental assessment).
- 4.18. The assessment required by the Act is solely forward looking. Where the principles require a specific outcome to be achieved, the assessment should consider whether the subsidy is designed to achieve the outcome and whether that outcome is likely to take place (as with any kind of prospective business case or impact assessment). Nonetheless, in some cases, it may be appropriate to use checkpoints and contingencies for future payments in the subsidy design, to ensure the subsidy is consistent with the E&E principles. It is also best practice to evaluate whether the intended outcomes have, in fact, been achieved and to use that to inform future subsidies.

### Principle A – Aim of subsidies in relation to energy and environment

- 4.19. All subsidies in relation to energy and environment shall be aimed at and incentivise the beneficiary in:
  - delivering a secure, affordable and sustainable energy system<sup>45</sup> and a well-functioning and competitive energy market; or
  - increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy.

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<sup>45</sup> 'Energy system' encompasses interactions between transmission and distribution systems, between onshore and offshore development, between gases (covering natural gas, biomethane and hydrogen), electricity and other emerging markets, such as CCUS, and between decarbonisation of energy sectors including power, heat, transport and industry.

- 4.20. A public authority must be of the view that the subsidy is consistent with one of the two limbs, depending on whether it is in relation to energy or environment. If a subsidy is in relation to both energy and environment, it should meet both of these limbs.
- 4.21. If a subsidy is in relation to energy, public authorities will need to ensure that their objective is consistent with delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market. Public authorities should take a balanced approach to the different aims set out in this principle: a subsidy may, for example, increase the price of energy by a small amount (i.e., reducing affordability) while leading to a large increase in sustainability, or vice versa, and remain consistent with this principle.
- 4.22. If a subsidy relates to the environment, public authorities should be clear that it increases the level of environmental protection compared to what would have happened otherwise.<sup>46</sup>
- 4.23. The environment means the natural environment as defined in section 44 of the Environment Act 2021:
- plants, wild animals and other living organisms
  - their habitats
  - land (except building or other structures), air and water
  - the natural systems, cycles and processes through which they interact
- 4.24. The Act does not define 'environmental protection' and public authorities may take any reasonable approach. It is useful to consider the definition of environmental protection set out in section 45 of the Environment Act 2021, which defines it as:
- protection of the natural environment from the effects of human activity
  - protection of people from the effects of human activity on the natural environment
  - maintenance, restoration or enhancement of the natural environment, or;
  - monitoring, assessing, considering or reporting on anything in the previous paragraphs.

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<sup>46</sup> This could be true even if the level of environmental protection decreases over time, as long as it decreases by less than what would have happened in the absence of the subsidy. For more information on assessing the relevant 'baseline' to consider changes against, see [Chapter 3](#).

- 4.25. Subsidies and schemes must be assessed against all the subsidy control principles. This includes assessing whether the subsidy's beneficial effects (in terms of achieving their specific policy objective) outweigh any negative effects. As part of this weighing up of beneficial versus negative effects, public authorities that are designing subsidies and schemes in relation to the environment must evidence, as part of their assessments, that those subsidies and schemes will have a beneficial effect of increasing environmental protection as opposed to a neutral or negative effect. Existing relevant assessment tools can be used (for example, environmental impact assessment or natural capital assessment or strategic environmental assessment).
- 4.26. Public authorities may find it useful to consult the UK Government's environmental principles policy statement<sup>47</sup> that outlines how to interpret and proportionally apply five internationally recognised environmental principles.
- 4.27. The E&E principles are in line with the UK's net zero commitment. Subsidies and schemes with a specific policy objective related to promoting net zero will tend to be consistent with Principle A.
- 4.28. In addition to the subsidy control principles, all subsidies in relation to energy or the environment must be assessed against this principle.

### Principle B – Subsidies not to relieve beneficiaries from liabilities as a polluter

- 4.29 Subsidies in relation to energy and environment shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of England and Wales, Scotland, or Northern Ireland.
- 4.30 This principle is known more generally as the “polluter pays” principle. The polluter pays principle exists in other legal frameworks, such as EU law and the UK's Environment Act 2021. The latter requires the UK Government to produce an environmental principles policy statement.<sup>48</sup> This includes guidance on the application of the polluter pays principle, which public authorities may wish to consult. The polluter pays principle means that, where possible, the costs of pollution should be borne by those causing it, rather than the person who suffers the effects of the resultant environmental damage, or the wider community.
- 4.31 The polluter pays principle serves several functions and may be used through different phases of policymaking. It can be used in the design of a policy (before

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<sup>47</sup> <https://www.gov.uk/government/publications/environmental-principles-policy-statement>

<sup>48</sup> See footnote 47.

the damage has occurred) to prevent or deter environmental damage. In cases where pollution cannot be avoided or is caused due to an accident, the polluter pays principle can be used to restore or redistribute the costs of environmental damage. Applying this principle helps to incentivise individuals or groups to avoid causing environmental damage and encourage sustainable practices.

4.32 A subsidy or a subsidy scheme should be consistent with this principle, which is not further defined in the Act itself. However, public authorities should be mindful that a subsidy might “relieve the beneficiary” either directly or indirectly.

4.33 Public authorities giving subsidies in relation to energy and environment are advised to include a clear statement in the terms of the subsidy or scheme to the effect that it does not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the relevant law of England and Wales, Scotland, and Northern Ireland.

4.34 All subsidies in relation to energy and environment must be assessed against this principle

### Principles C, D, E – Subsidies for electricity generation adequacy, renewable energy, or cogeneration

4.35 Only energy and environment subsidies that are specifically designed to be granted for the purpose of electricity generation adequacy, renewable energy or cogeneration need to be assessed against principles C, D and E.

### **Principle C – Subsidies for electricity generation adequacy, renewable energy, or cogeneration**

4.36 Under this principle and Principle D, “subsidy for electricity generation adequacy” means a subsidy that provides an incentive for a capacity provider to be available in times of expected system stress.

4.37 Subsidies or subsidy schemes must not undermine the government’s ability to meet its obligations under Article 304 of the TCA. This Article requires the UK to ensure that wholesale electricity and natural gas prices reflect actual supply and demand, and that, to this end the government shall ensure that the wholesale electricity and natural gas market rules will, in general terms, be transparent, encourage free price formation, and operate in an efficient and secure manner.

4.38 Subsidies must not, have the effect of introducing significant distortions, price controls, or significantly impede the transparent operation of the wholesale electricity and natural gas markets.

- 4.39 Subsidies shall not unnecessarily affect the efficient use of electricity interconnectors provided for under Article 311 of the TCA. This Article provides for the efficient and non-discriminatory use of electricity interconnectors between the UK and the European Union, by requiring (in general terms) both parties to manage electricity interconnectors in efficient, market-based, and transparent terms. It also provides for mechanisms to manage congestion and allocate capacity in such a way as to deliver robust and efficient outcomes.
- 4.40 Public authorities should consider carefully any impacts a subsidy for electricity generation adequacy, renewable energy and cogeneration may have on the UK's electricity interconnectors, and in particular on TCA Article 311 obligations.
- 4.41 There are limited circumstances in which it is acceptable for a subsidy to affect the efficient use of electricity interconnectors, including by (for example) ensuring continuity of electricity supply.
- 4.42 Subsidies for electricity generation adequacy, renewable energy or cogeneration shall be determined in a non-discriminatory, transparent and open manner, without unnecessarily excluding companies that may compete with projects to address the same environmental or energy objective. The selection process should lead to the selection of beneficiaries that can address the environmental or energy objectives using the least amount of subsidy or in the most cost-effective way.
- 4.43 These transparency requirements do not affect the provisions of Article 304(3) of the TCA. This article requires that any capacity mechanism in electricity markets is clearly defined, transparent, proportionate and non-discriminatory.
- 4.44 A non-competitive process may be used to determine a subsidy for renewable energy or cogeneration if appropriate measures are put in place to prevent overcompensation and:
- the potential market supply is insufficient to ensure a competitive process;
  - the eligible capacity is unlikely to have a material effect on competition and investment within the UK and international trade and investment; or
  - the subsidy is given for a demonstration project.

**Principle D – Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO2 emission limits**

- 4.45 Subsidies for electricity generation adequacy may include, under their terms, a requirement on the recipient that the subsidy not be used to directly benefit installations exceeding specified CO2 emissions limits.
- 4.46 Public authorities should ensure that CO2 emissions limitations of this kind are clearly laid out, either in the terms of the subsidy or scheme, or else clearly signposted to within those terms (if published elsewhere).
- 4.47 Public authorities are not obligated to include a limitation of this sort in the design of an electricity generation adequacy subsidy or the terms of a scheme with this purpose.

**Principle E – Subsidies for renewable energy or cogeneration shall not affect beneficiaries' obligations or opportunities to participate in electricity markets**

- 4.48 Cogeneration, or combined heat and power (CHP), is defined as the simultaneous generation in one process of thermal energy and electrical or mechanical energy.
- 4.49 Public authorities designing subsidies to be assessed under this principle should avoid placing limitations on the recipient's ability to participate in electricity markets, either directly or indirectly. They should also not relieve a recipient of any obligations they may have to participate in electricity markets. Public authorities should in general be aware of existing law and practice on electricity market participation when designing their subsidy or scheme.
- 4.50 A statement in the terms of a renewable energy or cogeneration subsidy or scheme to the effect that nothing in the terms of the subsidy relieves a recipient of the obligation or ability to participate in electrical markets is sufficient to ensure compliance with this principle.
- 4.51 Only subsidies with a purpose relating to renewable energy or cogeneration must be assessed against this principle.

**Principle F – Subsidies in the form of partial exemptions from energy-related taxes and levies**

- 4.52 Subsidies in the form of partial exemptions from energy-related taxes and levies in favour of energy-intensive users shall not exceed the total amount of the tax or levy concerned.

4.53 Accordingly, a public authority may exempt an energy-intensive recipient liable for the payment of (for example) £10 million in relation to an energy levy from paying anything up to the full amount, or £10 million of the liability. The public authority may not provide funding in excess of the full amount of the total amount of the levy without undertaking a further assessment against the subsidy control principles.

4.54 Only subsidies that take the form of partial exemptions from energy-related taxes and levies need to be assessed against Principle F.

4.55 An example of an energy-related tax or levy that would fall under the terms of this principle is the Climate Change Levy.<sup>49</sup>

### Principle G - Subsidies in the form of compensation for increases in electricity costs

4.56 Subsidies in the form of compensation for electricity-intensive users given in the event of an increase in electricity costs resulting from climate policy instruments shall be restricted to sectors at significant risk of carbon leakage due to the cost increase.

4.57 Carbon leakage is the displacement of production, and associated greenhouse gas emissions, in ways that would not have happened if climate rules and policies across jurisdictions were implemented in an equivalent way.

4.58 Energy intensive industries typically refer to industrial sectors – usually manufacturing industries – that are high, or very high, users of energy. Energy costs are an unavoidably high proportion of production costs in these industries. Examples include the cement or steel industries.

4.59 Only subsidies in the form of compensation for increases in electricity costs for electricity-intensive users need to be assessed against Principle G.

### Principle H – Subsidies for the decarbonisation of emissions linked to industrial activities

4.60 Subsidies for the decarbonisation of emissions linked to industrial activities in the United Kingdom shall:

- achieve an overall reduction in greenhouse gas emissions; and
- reduce the emissions directly resulting from the industrial legacy activities.

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<sup>49</sup> More information on the Climate Change Levy is available at: <https://www.gov.uk/green-taxes-and-reliefs/climate-change-levy>.

4.61 Greenhouse gas (GHG) emissions include six GHGs that contribute to global warming, of which CO<sub>2</sub> is the most widely known. The other gases included are methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulphur hexafluoride (SF<sub>6</sub>). These last three gases are collectively referred to as Fluorinated-gases (or F-gases). The Secretary of State may also designate other greenhouse gases as targeted greenhouse gases under the Climate Change Act 2008.

4.62 Industrial activities generally include, but are not limited to, industrial processes that use inputs to produce outputs. In general, if the beneficiary of a subsidy undertakes activities in SIC<sup>50</sup> codes within Section C (Manufacturing), it is highly likely to be engaged in industrial activities, but public authorities should make their own judgements on the terms of a beneficiary's activities based on the facts at hand.<sup>51</sup>

4.63 Only subsidies for the decarbonisation of emissions linked to industrial activities in the UK need to be assessed against Principle H. Examples of emissions linked to industrial activities include:

- emissions related to the burning of fossil fuels or biomass
- emissions related to industrial production processes, such as steel

4.64 Emissions that are not related to industrial activities are not within scope of this principle, including emissions from agriculture and agricultural land management.

4.65 Public authorities giving subsidies for the decarbonisation of emissions linked to industrial activities in the UK should therefore, when assessing the subsidy or scheme for the purpose of this principle, ensure that:

- Overall reductions in GHG emissions are achieved relative to likely GHG emissions in the absence of the subsidy; and,
- The subsidy has the effect of reducing the emissions directly resulting from the industrial activities in question.

4.66 When considering whether there is an overall reduction in emissions, public authorities should look in particular at the impact on greenhouse gas emissions from enterprises, locations or sectors that are not in receipt of the subsidy. The

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<sup>50</sup> Standard Industrial Classification of economic activities (SIC) – a means of classifying a particular economic activity for statistical purposes, published by the Office for National Statistics.

<sup>51</sup> More information on SIC codes can be found at:

<https://www.gov.uk/government/publications/standard-industrial-classification-of-economic-activities-sic>.

subsidy is only consistent with this principle if there is an overall reduction in emissions, not simply displacement from one producer to another.

4.67 When considering whether there is a reduction of emissions directly resulting from the industrial activities in question, public authorities should ensure that the subsidy does not simply reduce emissions in the inputs to the industrial activities.

4.68 If a subsidy aims at decarbonising emissions, it should be designed to target the industrial activity in question and directly reduce its emissions – rather than incentivising the customers of the high-emissions product to avoid it.

### Principle I – Subsidies for improvements of the energy efficiency of industrial activities

4.69 Subsidies for improvements of the energy efficiency of industrial activities in the United Kingdom shall improve energy efficiency by reducing energy consumption, either directly (by reducing total energy use from one year to the next) or per unit of production.

4.70 Nothing in this principle prevents public authorities from giving subsidies for RD&I that supports the development of technologies leading to greater energy efficiency.

4.71 Only subsidies for the improvement of energy efficiency of industrial activities in the UK need to be assessed against Principle I. Examples of industrial activities are suggested above in paragraph 4.62.

4.72 Examples of energy efficiency improvements that would likely fall into the scope of this principle are set out below. This is not an exhaustive list – determinations of whether a particular energy efficiency subsidy falls within the scope of this principle should be made on a case-by-case basis, using the evidence at hand.

- Process optimisation improvements, including industrial process control systems (for example: discrete controllers, distributed control systems, SCADA systems and programmable logic controllers) that measure, monitor and control equipment within an industrial process to improve energy efficiency.
- Equipment upgrades, including more efficient driers, ovens, and kilns (including the use of microwave and infra-red heating where this is more efficient).
- Heat and energy recovery and heat pumps, including heat pumps that provide energy in the form of heat or cooling to an industrial process, where the heat is sourced from the natural environment.

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- Resource efficiency measures, including onsite resource efficiency measures to reduce wastage and optimise use of raw materials.

## Chapter 5: Prohibitions and other requirements

### Overview of the chapter

- 5.1 The subsidy control regime prohibits specific kinds of subsidy and places conditions on the granting of others.
- 5.2 Before giving a subsidy, a public authority must ensure that it is not prohibited, and meets any specific requirements as set out below.
- 5.3 Before making a scheme, a public authority must ensure that it is not possible to give a prohibited subsidy under the scheme. Schemes are prohibited to the extent that they provide for the giving of prohibited subsidies.
- 5.4 Public authorities are advised to consider their assessments of the subsidy or subsidy scheme against the subsidy control principles particularly carefully when giving subsidies that are subject to special requirements; this is especially true in the case of subsidies designed to rescue or restructure an ailing or insolvent enterprise, given the greater risk they are likely to pose of market distortions.

### General prohibitions and conditions

- 5.5 The Act prohibits some categories of subsidy outright. This is because of the greater risk they pose of significantly distorting competition or investment in the UK, or international trade or investment. The UK also has obligations under international agreements – including as a member of the WTO – to prohibit many of these kinds of subsidies.
- 5.6 Other categories of subsidies may be granted provided they meet certain conditions. Subsidies or schemes that meet these conditions may also be subsidies or schemes of interest (SSoI), or subsidies or schemes of particular interest (SSoPI), and the public authority should consider whether referral to the SAU is appropriate or necessary in such cases.<sup>52</sup>

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<sup>52</sup> See [Chapter 11](#) for more information on the referral processes for SSoI and SSoPI.

## Unlimited guarantees

5.7 Any subsidy that would guarantee an unlimited quantity of liabilities or debts, or which would guarantee a finite amount of liabilities or debts but over an indefinite period, is prohibited. Public authorities should ensure that subsidies in the form of a guarantee must apply to a finite amount of an enterprise's liabilities or debts and over a finite period of time.

5.8 This prohibition applies without regard to the type of unlimited guarantee provided. It is not material whether the guarantee is linked to a specific transaction or contractual obligation (such as a loan or a sale), or whether it is provided independently from any such transaction or obligation.

5.9 For the avoidance of doubt, public authorities should note that an insurance, reinsurance or compensation scheme operated by a public authority does not constitute an unlimited guarantee for the purposes of the Act.

### Example

A guarantee by a public authority in respect of all a company's debts and liabilities, however and whenever incurred, constitutes an unlimited guarantee and is prohibited, even if the guarantee is time limited.

## Export performance

5.10 A subsidy that is contingent in law or in fact, whether solely or as one of several other conditions, upon export performance relating to goods or services is prohibited. This might include, for instance, subsidies to an exporter to cover the price difference between UK market prices and international market prices.

5.11 There is an exception to this prohibition for UK Export Finance short-term export credit support.

5.12 Export performance subsidies are also prohibited for minimal financial assistance and SPEI assistance subsidies in relation to goods (although minimal financial assistance and SPEI assistance subsidies are exempt from most other subsidy control requirements) – see [Chapter 7](#).

## Use of domestic goods or services

5.13 Subsidies that are contingent on the use of domestically produced goods or services, often known as 'local content' subsidies, are prohibited under the Act.

5.14 A requirement to use domestic goods could take a variety of forms, including, for instance, a requirement to:

- use domestic goods which will be consumed in the process of manufacturing
- use domestic components which will be incorporated into a separate good
- use domestic tools in the manufacturing process

5.15 Goods should be considered to be domestic for the purposes of the Act if they originate in the United Kingdom. For further information on when goods are considered to originate in the United Kingdom, please consult government guidance on rules of origin.<sup>53</sup>

5.16 Similarly, a requirement to use domestic services should be interpreted broadly to cover any requirement to use domestic services at any stage of the commercialisation process of any goods or services supplied by the beneficiary of the subsidy.

5.17 The requirement to use domestic products or services can be an explicit requirement, flowing from the very terms of the subsidy or their necessary implications. A prohibited domestic use subsidy could also be an implicit requirement, flowing from the measure's design and structure, its practical implications, or any other relevant factual circumstances. Public authorities should therefore consider whether a condition to use domestic goods or services can be inferred from the terms of the measure providing the subsidy or from the factual context surrounding it.

5.18 However, this prohibition does not apply where recipients use UK goods and services without being compelled to do so, as a commercial decision.

### **Example**

A subsidy conditional on the use of manufacturing equipment produced by manufacturers in the United Kingdom would be prohibited.

A subsidy which is conditional on the enterprise using local customer service call centres would also be prohibited.

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<sup>53</sup> <https://www.gov.uk/guidance/check-your-goods-meet-the-rules-of-origin>

A subsidy which does not place any conditions on where the enterprise purchases goods or services would not be prohibited.

5.19 This prohibition does not prevent public authorities from conditioning an incentive to an enterprise, which is not currently established or operating in the UK, to establish itself or operate in the UK on certain requirements such as to locate production; supply a service; train or employ workers; construct or expand particular facilities; or carry out research and development, in the UK.

5.20 Local content subsidies provided to the audio-visual sector are also not covered by this prohibition. This exception is linked to the important contribution the audio-visual sector can make, for example, to the objectives of promoting and protecting UK culture. Subsidies to the audio-visual sector must nonetheless comply with the subsidy control principles and other requirements set out in the Act.

5.21 As with export performance subsidies, local content subsidies are prohibited for minimal financial assistance and SPEI assistance subsidies relating to goods (although minimal financial assistance and SPEI assistance subsidies are exempt from most other subsidy control requirements).

### Relocation of activities

5.22 Relocation subsidies are generally prohibited where, first, the subsidy contains a condition requiring the relocation and second, the relocation would not occur without the subsidy. They may be permitted where the relocation subsidy is for the purposes of reducing economic or social disadvantage (see 'Relocation subsidies for the purposes of addressing social or economic disadvantage,' below). Subsidies that require the enterprise to move within the same area are also not prohibited (see 'Moves within the same area,' below).

### What is relocation?

5.23 Relocation for this purpose means that an enterprise that has been carrying on activities in one area of the UK ceases to carry on those activities after receiving a subsidy and moves to a new area.

### What type of subsidies are prohibited?

5.24 The prohibition only applies to subsidies that are contingent on the beneficiary relocating. This does not, for instance, prohibit a subsidy where the public authority becomes aware that on receipt, the beneficiary intends to relocate and that it would not do so without the subsidy. This is provided that the beneficiary would also be able to receive the subsidy if it did not proceed with the relocation.

Nor does it prohibit subsidies that simply make an area more attractive to investment, and to which a business might relocate to take advantage of subsidy schemes in place in that area.

5.25 It also does not apply to subsidies given to attract new investment into the UK, even if there is a ‘subsidy race’ between public authorities to attract that investment. Nonetheless, public authorities should tread very carefully in these cases, because ‘subsidy races’ are likely to cause excessive distortions. For more information, please see [Chapter 3](#).

5.26 The prohibition covers any subsidy agreement that includes any stipulation that the beneficiary must relocate. Even where there is not a clear-cut requirement that the beneficiary must relocate, a public authority should reflect on whether it is only giving a subsidy because of a common understanding that the beneficiary will relocate. This is likely to be prohibited unless covered by the exemption below.

### **Moves within the same area**

5.27 The prohibition does not extend to subsidies that require the beneficiary to move economic activity within an ‘area’.

5.28 What constitutes an ‘area’ should be considered in light of the purpose of this provision: namely, to deter subsidy races between public authorities and prevent the poaching of economic activity to the detriment of the vacated area. As a result, the definition of ‘area’ is a question of both political and economic geography.

5.29 Generally, a subsidy that requires economic activity to move between two places within the area in which a local authority exercises its responsibilities would be permitted, and a relocation between local authority areas would not.<sup>54</sup> This is because a subsidy requiring economic activity to move within a single local authority area cannot be the result of a subsidy race between public authorities, or of poaching. Further, to the extent that a move over such a small distance has a negative impact on the vacated place, the same public authority will be responsible for both the place where the benefits of the move are expected, and where any harms are felt. However, in rare instances, it may be appropriate to use other definitions of ‘area’, as below:

- Generally, a local authority or other public authority may give subsidies that require the beneficiary to move economic activity from one place to another within the boundaries of a local authority area.

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<sup>54</sup> In this section, ‘local authority boundaries’ refers to the territory in which a unitary local authority exercises its responsibilities, or the territory in which an upper-tier local authority, such as a county council or London borough, exercises its responsibilities. It is expected that district councils will very rarely, if ever, give relocation subsidies.

- Where a public authority, such as a combined authority, devolved government or the UK government, exercises its responsibilities over more than one local authority area, then it may give subsidies requiring economic activity to move across local authority boundaries within the area in which the public authority exercises its responsibilities. However, the relocated activity must stay within the boundaries of the relevant travel-to-work area.<sup>55</sup> A local authority may not give subsidies that require relocations across local authority boundaries.
- In all instances, a public authority should consider whether the nature of the economic activity to be relocated, the characteristics of the workforce or the geography of the region mean that it will be impractical for staff to commute to the new location, even within the same travel-to-work or local authority area. (For example, in the most remote areas.) If so, the relocation is likely to be prohibited unless the exemption (below) applies.

### **Relocation subsidies for the purposes of addressing social or economic disadvantage**

5.30 The prohibition on relocation subsidies does not apply to subsidies that will have the effect of reducing social or economic disadvantage. To make use of this exemption, the public authority giving the subsidy must be satisfied that it meets all of the following requirements.

The first requirement is that the subsidy will reduce social or economic disadvantage in an area (the target area). This requires the public authority to establish first that there is a disadvantage by using measures or indicators such as household income or unemployment levels. These should be set against appropriate national or regional comparators. Depending on the nature of the disadvantage other measures set against appropriate comparators may be suitable.

The public authority should then articulate the reduction in disadvantage that the subsidy is expected to create in the target area. This reduction is likely to have been the rationale for giving the subsidy in the first place, and therefore there will be significant overlap with the analysis required to assess the subsidy or scheme in line with the subsidy control principles. The same measures and indicators that would be needed to evidence that type of equity rationale and to limit the value of the subsidy to what is necessary to meet that objective would also be

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<sup>55</sup> Office for National Statistics, 'Travel to Work Areas (TTWA) boundaries, 2011, <https://www.data.gov.uk/dataset/1b3604bc-8fd3-4b01-a0fd-0f3bf7fcd160/travel-to-work-areas-ttwa-boundaries>.

appropriate here, as ways of anticipating the subsidy's effect on social or economic disadvantage in the target area.

The second requirement is that the subsidy will result in an overall reduction in the social or economic disadvantages within the United Kingdom generally. This requires the public authority giving a relocation subsidy to assess the impact of the subsidy on the area from which the economic activity will move (the vacated area). As a starting point, a public authority should use the same measures and indicators needed to gauge the subsidy's likely positive impact on social or economic disadvantage in the target area and use these to assess the subsidy's likely negative impact on disadvantage in the vacated area. If there are significant foreseeable harms that would not be captured by this initial exercise, it is important that the public authority should consider additional ways of assessing the impact on social or economic disadvantage in the vacated area.

For the subsidy to result in an overall reduction of social or economic disadvantage in the UK, the positive and negative impacts should not simply cancel each other out.

This means, for example, that where a relocation subsidy aims to create jobs in an area with high unemployment, the vacated area should be one that has lower unemployment levels than the target area. The public authority giving the subsidy must be satisfied that the resulting increase in social vacated area will be less than the decrease in disadvantage in the target area. As part of this assessment, it may also be appropriate to consider factors such as the availability of alternative work for employees in the vacated area.

The final requirement is that the subsidy is designed to bring about a change in the size, scope or nature of the activities that are being relocated. Changes in nature may include an increase in workforce, the addition of new product lines or taking advantage of clustering effects to establish new collaborative projects.

5.31 In addition to these criteria, the subsidy must still satisfy the subsidy control principles. To avoid the negative effects of subsidy races it will be particularly important to establish that the subsidy is proportionate to its policy objective and that it is an appropriate policy instrument for achieving the objective.

5.32 Relocation subsidies will be treated as SSol below a value of £1m, and SSoPI above that value (see Chapter 10 for further information on subsidies and schemes of interest and of particular interest).

## Ailing or insolvent enterprises

5.33 The Act prohibits rescuing and restructuring subsidies to ailing or insolvent enterprises unless certain requirements are met.

5.34 'Ailing or insolvent' is used to define any enterprise, including a deposit taker or insurance company, that is unable to pay its debts as they fall due and would almost certainly go out of business in the short to medium term without subsidies.

5.35 There is a spectrum of enterprises in financial difficulties. This can range from expected temporary financial difficulties of a subdivision in the future to actual insolvency of the entire enterprise.

5.36 The prohibition on rescue and restructuring subsidies is most likely to be directly relevant where an enterprise is at imminent risk of failure and approaches a public authority for financial assistance specifically to avert that failure. There is no wider prohibition against giving subsidies that are not rescue or restructuring subsidies to ailing or insolvent enterprises. For example, an access to finance subsidy scheme open to small businesses generally does not constitute a rescue and restructuring subsidy even if one or more recipients (among many) may be ailing or insolvent. However, public authorities may wish to consider whether ailing and insolvent enterprises should be excluded from eligibility for subsidies and subsidy schemes with regard to value for money (in the event that the enterprise were to face increasing financial difficulties or fail).

5.37 This section is concerned with rescue and restructuring support. Each is discussed in turn below.

### Rescue support

5.38 Subsidies for rescuing ailing or insolvent enterprises, that are not deposit takers or insurance companies, are prohibited unless the public authority is satisfied that all the following conditions are met:

- the subsidy is granted during the preparation of a restructuring plan
- the subsidy contributes to an objective of public interest, by avoiding social hardship or preventing serious market failure
- the subsidy consists of temporary liquidity support in the form of a loan or loan guarantee

5.39 Rescue subsidies are subsidies of interest and accordingly may be, but are not required to be, referred to the SAU – see [Chapter 11](#). Public authorities are encouraged to refer rescue subsidies to the SAU where possible, given their higher likelihood of posing a risk of distorting the market. If, following a referral, a recipient's financial circumstances decline to the extent that it would collapse if

the subsidy were not granted immediately, a referral to the SAU may be withdrawn and the rescue subsidy granted forthwith.

### **Temporary liquidity support in the form of a loan or loan guarantee**

5.40 Generally, liquidity support is considered to be temporary if it provides the necessary support over a period which does not exceed around six months.

5.41 However, public authorities may grant liquidity support for a period exceeding six months where they are satisfied that extended access to liquidity support will enable an enterprise to complete its restructuring without the need for restructuring support.

### **Amount and duration of support**

5.42 In general, the support provided to the enterprise should not exceed the amount required to keep the enterprise operating as a business for around six months.

5.43 Where additional liquidity support is provided with a view to avoiding the need for restructuring support, the amount of liquidity support provided under the initial and subsequent measure, taken together, should not exceed the amount required to keep the enterprise operating as a business for around 18 months.

5.44 Public authorities may want to assess the amount required to cover an enterprise's liquidity support needs by basing their analysis on the enterprise's operating cash flow in its most recent complete accounting period before the date on which the rescue support is due to be provided.

### **Appropriate reimbursement**

5.45 Public authorities should, in general, ensure that they are appropriately reimbursed for the loan or loan guarantee provided to the enterprise. In particular, the financial cost of the loan and the total cost of the guaranteed loan should typically reflect the creditworthiness of the enterprise and provide incentives for the enterprise to reimburse the public authority as soon as possible.

5.46 When assessing the creditworthiness of the enterprise, the public authority should discount the temporary effects of the liquidity difficulties the enterprise has encountered as well as the temporary effects of the subsidy received from the public authority.

### **Use of the subsidy**

5.47 The public authority must be satisfied that the loan will be used to support the enterprise's liquidity needs. This will generally not include the financing of structural measures, such as the acquisition of significant businesses or assets,

unless measures such as these are strictly necessary for the continued survival of the enterprise during the period in which rescue support is provided.

### **Restructuring support**

5.48 Subsidies for restructuring ailing or insolvent enterprises, that are not deposit takers or insurance companies, are prohibited unless certain conditions are met. The public authority must be satisfied that all of the following criteria are met:

- the enterprise has prepared a restructuring plan
- the enterprise's owners, creditors or new investors have contributed to the cost of the restructuring
- the subsidy contributes to an objective of public interest by avoiding social hardship or preventing severe market failure
- at least five years have passed since the last time a subsidy was given for rescuing or restructuring the enterprise

5.49 Each of these conditions are considered below. Provided these conditions are met, the public authority is free to determine the form the restructuring support should take, so long as the instrument chosen is consistent with the subsidy control principles.

5.50 Specific guidance on the measures public authorities should adopt, in their principles assessment, to limit distortions of competition and investment in the UK, and international trade and investment, as a result of restructuring support have also been considered below.

5.51 Subsidies for restructuring ailing or insolvent enterprises are subsidies of particular interest and must be referred to the SAU before they are given (see [Chapter 10](#) for definitions of subsidies of particular interest and [Chapter 11](#) for the referral process).

### **Restructuring plan**

5.52 The public authority must be satisfied that the enterprise's restructuring plan is credible and based on realistic assumptions.

5.53 Public authorities must be satisfied that the restructuring plan describes a credible means of returning the enterprise to long-term viability. At a minimum, the restructuring plan must describe the reasons explaining why the enterprise will exit the market in the absence of the support and how the restructuring measures the enterprise proposes to undertake will address those underlying reasons.

5.54 The plan should also aim to return the enterprise to long-term viability within a reasonable time period without needing further subsidy support.

5.55 The design of the restructuring plan is linked to [Step 3](#) in the principles assessment. Public authorities should also consider whether restructuring support should be subject to any conditions (such as behavioural or structural conditions) to mitigate the negative effects of any restructuring subsidy on domestic competition or investment or international trade or investment.

### **Contribution toward costs**

5.56 The amount of support provided by the public authority should be limited to the smallest amount necessary to make the restructuring possible.

5.57 Unless the recipient of restructuring support is a small or medium-sized enterprise, public authorities should ensure that the enterprise or its owners, creditors or investors have contributed significantly to the cost of restructuring or have a contractual obligation to do so.

5.58 In considering whether a recipient is a small or medium-sized enterprise, public authorities should first identify the enterprise as defined in the Act: a person, or group of persons under common ownership or common control, which is engaged in economic activity (see [Chapter 2](#) of this guidance). They should then determine whether it qualifies as a small or medium-sized enterprise based on whether it meets two or more of the following criteria<sup>56</sup>:

(a) has a turnover of an amount less than or equal to £36 million.

(b) has a balance sheet total of not more than 18 million.

(c) has fewer than 250 employees.

5.59 The contribution by the enterprise or its owners, creditors, or investors should be as high as possible and be similar to the support provided by the public authority in terms of the type of effect it can produce on the enterprise's solvency or liquidity position.

5.60 As general rule, the contribution by the enterprise or its owners, creditors, or investors should amount to at a minimum 50% of the total cost of the restructuring for large enterprises, at a minimum 40% for medium enterprises, and 25% for small enterprises. Lesser contributions may be considered for large enterprises

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<sup>56</sup> Public authorities should have regard to the provisions in the EU–UK Trade and Cooperation Agreement and seek advice from DBT's subsidy control team if they consider there is an effect on the European Union.

where the public authority is satisfied that the contribution remains substantial and the lesser contribution is justified on account of exceptional circumstances or by particular hardship.

5.61 The public authority must also be satisfied that the restructuring support provided will not serve to cover the losses of shareholders or subordinated debt holders. Support should only be provided once these losses have been fully accounted for and attributed to the relevant debt holders.

### **Public interest**

5.62 The public authority should be satisfied that the subsidy contributes to an objective of public interest by avoiding social hardship or preventing severe market failure.

5.63 Several considerations can be relevant to assessing whether an enterprise's exit from the market would produce social hardship or lead to severe market failure. Relevant considerations can include, but are not limited to circumstances such as:

- where the rate of unemployment in the area potentially affected by the enterprise's exit has been persistently higher than the national average and where it is difficult to create new jobs in that area
- where the enterprise provides an important service which cannot easily be provided by another enterprise, making the enterprise difficult to replace
- where the enterprise's exit would have a considerable disruptive impact on a regional market or in a particular sector
- where there is a risk of interruption of a SPEI
- where the market exit of the enterprise is an otherwise avoidable consequence of a failure or adverse incentives of credit markets
- where the enterprise's exit from the market would lead to the loss of important technical knowledge or expertise

5.64 Where the public authority is considering restructuring support for a small or medium-sized enterprise it should also consider whether the small or medium-sized enterprise's exit from the market could lead to potential negative consequences due, for instance, to the fact that the small or medium-sized enterprise is highly innovative or has serious growth potential, or has extensive links to other local or regional enterprises and in particular other small or medium-sized enterprises.

5.65 Where the subsidy does not contribute to an objective of public interest by avoiding social hardship or preventing severe market failure, the authority must be satisfied that there are exceptional circumstances that justify it being given.

## **Where rescue and restructuring support has been granted in the last five years**

- 5.66 Generally, restructuring support should not be given to an enterprise if it has previously received rescue or restructuring support on a different occasion in the last five years.
- 5.67 However, restructuring support may be given if the public authority is satisfied that the circumstances that have led to the need for the subsidy were unforeseeable and not caused by the beneficiary.
- 5.68 In addition, there may be circumstances where support would be a variation of existing structuring support rather than new restructuring support for a new purpose, for example where contingent liabilities relating to the original restructuring event were subsequently found to be more extensive and require supplementary finance.

## **Calculating the five-year period**

- 5.69 The five-year period should generally be considered to start from the most recent of the following three dates: the date on which support was given, the date on which the period covered in the previous restructuring ended, or the date on which the previous support was suspended.
- 5.70 Where rescue or restructuring support was previously given to a corporate group, the five-year prohibition applies to all bodies corporate within that group. Conversely, where rescue or restructuring support was granted to a single body corporate within a corporate group, the 5-year prohibition does not apply to the bodies corporate within the corporate group which did not receive support. However, the public authority must be satisfied that any support provided will not be passed on to the body corporate which has received support in the previous five years.
- 5.71 The five-year prohibition will continue to apply to an enterprise despite the fact that it has changed ownership after receiving rescue or restructuring support. However, an enterprise will not be covered by the five-year prohibition merely on account of having purchased the assets of an enterprise which received rescue or restructuring support in the previous five years.

## **Exceptions to the five-year prohibition**

- 5.72 An enterprise may receive rescue support and then, soon thereafter, be due to receive restructuring support as part of the same rescue and restructure process. This is known as a single restructuring process. In such cases the rescue support received in the context of that process will not prevent the enterprise from

receiving restructuring support soon thereafter, so long as it forms part of the same single restructuring process.

5.73 Outside of support granted as part of a single restructuring process, an enterprise should only be exempt from the five-year prohibition in the event of exceptional circumstances which were not caused by the enterprise. This exception will only apply where the enterprise's need for restructuring support is due to circumstances which could not possibly have been foreseen by the enterprise's management at the time the previous rescue or restructuring support was granted and which is not a consequence of negligence or errors on the part of the enterprise's management or decisions of the corporate group to which it belongs.

### **Example**

An enterprise which required rescue support in 2018 may nevertheless be eligible for restructuring support in 2021 if the enterprise's need for restructuring support is due to the economic consequences of the COVID-19 pandemic.

## **Limiting distortions of domestic competition or investment, or international trade or investment**

5.74 Public authorities should, where possible, ensure that the beneficial effects of restructuring support to an enterprise should outweigh any negative effects, including, in particular, negative effects on domestic competition or and investment, on international trade or investment.

5.75 Using the assessment of the likely effects of financial assistance as a baseline, the public authority should consider whether any distortionary effects of the subsidy on domestic competition or and investment, or international trade or investment could be reduced by actions undertaken by the enterprise. These actions can relate to the enterprise's conduct on the market as well as the enterprise's own business.

## **Conduct on the market**

5.76 In all cases, public authorities should require the enterprise to agree to certain undertakings regarding its conduct on the market for the duration of the restructuring plan. These undertakings aim to ensure that restructuring support is used for its intended purpose and is not used to distort competition. Specifically, the enterprise should undertake to:

- refrain from using restructuring support to expand its market position through the acquisition of shares or assets, unless these acquisitions are strictly necessary to ensure its long-term viability; and
- refrain from using the fact that it is receiving restructuring support in its marketing activities.

5.77 Public authorities should consider whether any other conditions regarding the enterprise's conduct on the market are necessary to reduce any distortionary effects of the subsidy on domestic competition or investment, or international trade or investment.

### **Actions affecting the enterprise's business structure**

5.78 The public authority should also consider whether any actions relating to the structure of the enterprise, such as asset divestments, may be required to avert or reduce the potentially distortive effects of the subsidy.

5.79 Any actions relating to the structure of the enterprise should pertain to the market(s) on which the subsidy is likely to produce a distortive effect, should be designed to favour market entry or the expansion of smaller competitors on this market(s), and should not lead to a degradation in the structure of that market(s). These actions should also be implemented within the period covered by the restructuring plan.

### **Restructuring deposit takers or insurance companies**

5.80 'Deposit taker' refers to an organisation whose main function is to carry on the regulated activity of accepting deposits.

5.81 'Insurance company' refers to a corporate body that has permission to carry on the regulated activity of effecting or carrying out contracts of insurance.

5.82 A subsidy for restructuring an ailing or insolvent deposit taker or insurance company is prohibited unless the subsidy is granted by an authority based on a restructuring plan that is credible and likely to restore long-term viability. The public authority should also expect to be properly remunerated for the subsidy.

5.83 As with restructuring subsidies for other enterprises, the beneficiary of the subsidy, its shareholders, or the business group to which it belongs should have contributed significantly to restructuring costs from their own resources or have a contractual obligation to do so.

### **Liquidating deposit takers or insurance companies**

5.84 Subsidies to ailing or insolvent deposit takers or insurance companies that cannot credibly demonstrate that they are capable of being returned to long-term

viability are prohibited. However, public authorities can give such subsidies to a deposit taker or insurance company if it is for the purpose of ensuring their orderly liquidation and exit from the market.

5.85 The subsidy should be limited to minimise its negative effects on domestic competition or investment, or international trade or investment.<sup>57</sup> Finally, the beneficiary of the subsidy, its shareholders, or the business group to which it belongs should have contributed significantly to the liquidation costs or have a contractual obligation to do so.

### **Liquidity provision for deposit takers or insurance companies**

5.86 A subsidy to support liquidity provision for an ailing or insolvent deposit taker or insurance company is prohibited unless the subsidy is temporary and the public authority giving the subsidy reasonably expects to be paid back. Such a subsidy should not be used to absorb losses or become capital support.

5.87 For the avoidance of doubt, a subsidy which is temporary liquidity support provided to a beneficiary in the process of preparing a restructuring plan shall be considered as liquidity provision rather than a restructuring subsidy.

## **Other specific prohibitions and requirements**

### **Subsidies for insurers that provide export credit insurance**

5.88 Subsidies for insurers providing export credit insurance are permitted only when they are subject to the conditions that any export credit insurance provided by the insurer against marketable risks is on a commercial basis, and the subsidy is not used to benefit the insurer's business that consists of providing export credit insurance against marketable risks.

### **Subsidies for air carriers for the operation of routes**

5.89 This type of subsidy is prohibited unless one of the following three conditions is met:

- the operation of the route is a public service obligation imposed upon the air carrier<sup>58</sup>

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<sup>57</sup> See [Chapter 3](#) for more information on conducting an assessment against the subsidy control principles.

<sup>58</sup> The public service obligation must be imposed under either Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the United Kingdom (which is retained EU law), or Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (as it has effect in EU law).

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- the public authority is satisfied that the subsidy provides benefits for society at large
- the subsidy is a start-up subsidy for opening a new route to a regional airport, and the public authority is satisfied that it will increase the mobility of citizens and stimulate regional development

### Subsidies or schemes subject to mandatory referral

5.90 Subsidies or schemes of particular interest must not be given until they have been referred to the SAU before they are given or made, respectively, and the cooling-off period following the publication of the SAU's report has expired. Further information on SAU referrals is set out in [Chapter 11](#).

## Chapter 6: Services of public economic interest (SPEI)

### Overview of chapter

6.1 The Act contains provisions for public authorities to provide subsidies for services of public economic interest (SPEI). These are essential services provided to the public and may include postal services, social housing, and certain transport networks, particularly in rural or less populated areas of the country. Without these subsidies, these services would not be supplied in an appropriate way or may not be supplied at all by the market.

6.2 The following sections provide guidance on:

- when a service is considered to be an SPEI
- when public spending on an SPEI constitutes a subsidy
- the requirements public authorities must adhere to when providing an SPEI subsidy, including those on transparency
- exceptions to those requirements where the subsidy is given as SPEI assistance

6.3 Details on SPEI assistance (SPEIA) can be found in [Chapter 7](#).

### When is a service considered to be an SPEI?

6.4 To designate a service as an SPEI, the public authority must be satisfied that:

- the service is provided for the benefit of the public; and
- the service would not be provided, or would not be provided on the terms required, by an enterprise under normal market conditions.

6.5 It is for the public authority to decide whether a service can be classed as an SPEI, subject to the conditions set out under section 29 of the Act, as this will be dependent on the needs of the local community in question and the prevailing market conditions. For example, for a rail or bus service, market conditions may adequately provide one type of service for a community in one part of the country, but the same service would not be considered economically viable in another part of the country.

### Example

Certain households fall outside of the service area of the local bus company as it would be uneconomical for the bus company to provide a service on routes which would connect those households to the rest of the local community.

As the provision of these additional bus services would lead to a public benefit (facilitating access to employment and healthcare for persons living in isolated households for instance), and would not be available under normal market conditions, the relevant public authority could designate the provision of bus services to these households as a SPEI. As the existing bus services can be provided to the rest of the local community under normal market conditions, this service would not be considered to be a SPEI.

As another example, the public authority may decide that local bus services should be provided using a fleet of electric buses. Whilst it may be in the commercial interest of bus operators to provide public transport service to the local area on certain terms (e.g. using a conventional diesel-fuelled fleet), it would be uneconomical for any operator to provide the bus services on the terms required by the public authority, using electric bus using a fleet of electric buses).

In these circumstances, public authorities could designate the provision of public transport services in the local area using electric buses as a SPEI.

### When is public spending on an SPEI considered to be a subsidy?

6.6 Public authorities should consider whether public spending on an SPEI meets each of [the four limbs of the test](#) used to identify a subsidy.

6.7 In particular, the service provided in the public interest must entail an economic activity to be considered a SPEI. Public spending on non-economic services, that is, services which are not offered on a market, would not be considered to involve a subsidy.<sup>59</sup> For further information on when an activity will be considered to be economic in nature, please refer to [Annex 1](#).

6.8 Public authorities should also consider whether public spending on an SPEI confers an advantage on the SPEI enterprise. As set out [Chapter 2](#) and [Annex 1](#), public authorities will generally be acting in accordance with the Commercial Market Operator (CMO) principle when they engage in competitive public procurement for goods or services. Payment for the goods or services purchased

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<sup>59</sup> However, if public spending can be used to cross-subsidise economic activities, this spending may fall within the scope of the Act if all other limbs of the test set out in Chapter 2 are met.

through a competitive process will, therefore, not generally be considered to confer an economic advantage, as the public authority will be purchasing such goods or services at a market rate.

### Example

A local authority is looking to engage an external training provider to provide IT training for local residents. They are considering three options:

The first option is that they will collaborate with a non-profit organisation that provides free training sessions, by providing free use of local library facilities and advertising the sessions in the council newsletter. This is not a subsidy, because the activity is not economic.

The second option is that they will procure training services from a commercial training provider and provide them to residents for free. This is economic activity (the service is supplied from the provider to the local authority), but it is not a subsidy because the procurement complies with procurement rules and is in line with the CMO principle.

The third option is that the local authority subsidises an external training provider to provide commercial IT training to local residents. The local authority assesses that the service would not be provided on the market in the way that it wishes, and therefore it pays an additional grant to the training provider. This is an economic service, because the residents pay a fee to the training provider, and it operates for-profit. This constitutes an SPEI subsidy.

## SPEI subsidy requirements

6.9 Should a public authority wish to provide a subsidy to an enterprise for the purpose of the provision of a SPEI, the public authority must comply with certain substantive and procedural requirements in order to provide the SPEI subsidy. In particular, the public authority must:

- be satisfied that the subsidy is limited to what is necessary to deliver the service
- ensure that the SPEI subsidy is assessed against the subsidy control principles
- ensure that the subsidy is provided in a transparent manner
- ensure that the subsidy is regularly reviewed
- comply with the duty to include information in the subsidy control database

6.10 The substantive and procedural requirements applicable to SPEI subsidies are discussed in greater detail below.

### Substantive requirements

#### Compensation

6.11 A subsidy for the provision of SPEI should be limited to the net costs associated with its delivery and the making of reasonable profits whilst doing so. Public authorities have discretion to compensate only a portion of the net costs associated with the provision of the SPEI services and not to provide for any level of profit, should they wish.

6.12 Public authorities are free to use whichever basis for calculating compensation they consider appropriate in view of the specific circumstances of the SPEI. For instance, a public authority may decide to calculate compensation based on the number of service users or the number of individual services provided, or may decide to calculate compensation on a daily, weekly, or monthly basis. Whatever basis is chosen, before the SPEI provision commences or any compensation is paid to the SPEI enterprise, public authorities must ensure that a process is identified to calculate the amount of compensation that will be provided to the enterprise as compensation for the SPEI. Public authorities should also ensure that the compensation parameters used include incentives to encourage the efficient use of resources.

6.13 Public authorities should note that, for the purposes of the Act, compensation includes any kind of financial assistance given to the SPEI enterprise through public resources. This could include, for instance, rights to use certain assets owned by the public authority at sub-market prices.

6.14 Compensation must only cover costs which are directly associated with the provision of the SPEI. If a single service provided by an enterprise has both SPEI and non-SPEI components, public authorities must ensure that SPEI compensation only covers the additional costs incurred by providing the SPEI and that it is not used to cross-subsidise non-SPEI components. If an enterprise carries out distinct SPEI and non-SPEI activities, the enterprise should maintain a clear separation of accounts and the public authority must be satisfied that the methodology used to calculate compensation will not cover costs which are not directly related to the provision of the SPEI.

#### Example

A childcare provider has been tasked with a SPEI which entails the provision of childcare services to the local community at sub-market rates. The childcare

service provider will be providing these services from a building owned by the public authority, which will be leased to the enterprise at sub-market rates.

In view of the type of service provided, the costs directly associated with the provision of the SPEI are the cost of providing childcare service at sub-market rates. The public authority therefore decides to calculate SPEI compensation on the basis of the cost per child. The public authority does so by comparing the cost per child of providing childcare services at sub-market rates against the cost of providing those services under normal market conditions. The difference between the two is considered to be the cost directly associated with the provision of the SPEI.

The public authority factors in the advantage provided by the lease of its building at sub-market rates to the childcare service provider as part of the appropriate amount of SPEI compensation. The difference between the market price of a lease on identical terms and the price at which the building is due to be leased to the provider is subtracted from the amount due to the provider in as a cash transfer.

- 6.15 Compensation for the SPEI may also include reasonable profits to the SPEI provider. Reasonable profits should be assessed through a benchmarking exercise, comparing the profits achieved under similar types of public service contracts awarded under competitive conditions. A public authority should consider which profit level indicator is most appropriate for the purposes of the benchmarking exercise in view of the specific circumstances of the SPEI. In general, the rate of return on capital investments required to provide the SPEI is likely to be the most appropriate basis for comparison.
- 6.16 Public authorities should also consider the degree of risk assumed by the enterprise in providing the SPEI when assessing the reasonableness of any profits generated. In particular, the degree of risk assumed by the SPEI enterprise can be influenced by the payment process used by the public authority. If the public authority decides to make compensation payments in arrears on the basis of the net costs actually incurred by the SPEI enterprise, the enterprise will bear a lower level of risk. Conversely, lump sum payments in advance could expose the enterprise to greater risk in certain markets (especially those in which costs are prone to greater fluctuations).
- 6.17 If compensation exceeds the net costs directly associated with the provision of the SPEI and any reasonable profits, the compensation mechanism used in the contractual arrangements between the public authority and the enterprise must allow the public authority to recover any overpayment to the SPEI enterprise.

Recovery mechanisms will be particularly important where it is difficult to forecast the costs and revenues generated by an SPEI in advance.

### **Compatibility with subsidy control principles**

6.18 An assessment against the subsidy control principles needs to be undertaken by the public authority in relation to SPEI subsidies. However, the subsidy may still be given if it is inconsistent with the principles but where compliance with the principles would prevent the SPEI services from being carried out. (It is not possible to give the subsidy if it is inconsistent with the Energy & Environment Principles or the other prohibitions and requirements in the Act.) [Chapter 3](#) provides further information on the subsidy control principles.

### **Procedural requirements**

#### **Transparency of the award**

6.19 The award of a SPEI subsidy must be done in a transparent manner, which means that the subsidy is given through a written contract or other written legally enforceable arrangement. Public authorities will normally publish these contracts, and it is good practice to do so.

6.20 The terms of the subsidy must be set out in the relevant contract or arrangement. This must include the following information:

- the services for which the subsidy is being given
- the enterprise providing the service
- the period over which the services are being given
- the geographic area in which the services are being provided
- how the amount of the subsidy has been calculated
- arrangements for review and steps for recovery if this becomes necessary

6.21 Public authorities are not required to describe every task assigned to the SPEI enterprise in detail if this would be impractical. However, at a minimum, public authorities must ensure that the scope of the service to be provided by the SPEI enterprise along with any key performance requirements and conditions (for example, relating to service quality) can clearly be identified from the terms of the SPEI contract.

6.22 These measures will ensure that the delivery of SPEIs through the award of subsidies is transparent to competitors of the beneficiary and the community benefiting from the service.

6.23 The wider transparency requirements in the Act also apply to SPEI subsidies (see [Chapter 12](#)).

## Regular review

- 6.24 Throughout the period the service is being provided, the public authority must keep the subsidy under regular review to make sure the subsidy remains limited to what is necessary to deliver the service. This will require the public authority to undertake a review of the SPEI subsidy at least once every three years (beginning with the day when the delivery period begins) and at the end of the delivery period.
- 6.25 As part of this review, public authorities must assess whether the compensation paid to the SPEI enterprise continues to be limited to what is necessary to deliver the SPEI services. Where they determine this not to be the case and the compensation is found to exceed the level of costs directly related to the provision of the SPEI or allows for compensation to exceed reasonable levels, the public authority must take steps to recover the sums paid in excess.<sup>60</sup>
- 6.26 Public authorities can also use the provisions under 'misuse of subsidies' if they believe the enterprise delivering the service has used the subsidy to fund its operations not linked to the delivery of the SPEI.<sup>61</sup>

## SPEI Assistance

- 6.27 SPEI subsidies may be considered to constitute SPEI assistance (SPEIA) if the total amount of minimal financial assistance or SPEIA given to an enterprise does not exceed £725,000 over the applicable period. Further details can be found [in the following chapter](#).

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<sup>60</sup> As noted above, public authorities should ensure that contractual arrangements with SPEI enterprises make sufficient provision for the recovery of these sums.

<sup>61</sup> For further information on the provisions of the Act relating to the misuse of subsidies, please refer to [Chapter 13](#).

## Chapter 7: Minimal financial assistance and SPEI assistance

### Overview of chapter

7.1 This chapter explains when minimal financial assistance (MFA) and SPEI assistance (SPEIA) can be used, the relevant thresholds and cumulation rules. It also explains the procedures that need to be followed by a public authority when giving these forms of subsidies.

7.2 Minimal financial assistance (MFA) allows public authorities to award low-value subsidies without needing to comply with the majority of the subsidy control requirements. MFA has a financial threshold so no recipient can receive more than £315,000 over the applicable period. The applicable period is the elapsed part of the current financial year (that is, from 1 April),<sup>62</sup> and the two financial years immediately preceding the current financial year.

7.3 Subsidies given under MFA provisions are very unlikely to have any appreciable distortive impacts on domestic competition or investment or international trade or investment. Subsidies given under MFA are therefore exempt from the majority of the substantive requirements of the Act. This means that:

- no assessment against the Subsidy Control Principles or Energy & Environment Principles is required;
- most of the prohibitions and other conditions need not be considered (with some exceptions as explained at paragraph 7.5 below;
- the transparency obligations do not apply if the subsidy is £100,000 or less but they do apply if the subsidy exceeds this amount.

### When to use MFA

7.4 MFA can be used by a public authority when it is awarding a low value subsidy if the recipient has not reached the allowance threshold of £315,000 within the applicable period and will not breach this threshold on receipt of the subsidy. When providing a subsidy under MFA the public authority needs to follow certain procedural requirements and these are set out below under 'How to give a

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<sup>62</sup> The financial year means a period of 12 months ending 31 March.

subsidy under MFA'. There are also a number of factors to consider before providing an MFA subsidy.

7.5 Although subsidies given as MFA are exempt from the main substantive subsidy control requirements, there are two prohibitions that apply to all subsidies including MFA – the prohibition on giving subsidies relating to goods for export performance and the prohibition on domestic content.<sup>63</sup>

7.6 Cumulation rules apply to MFA. This is essential to ensure that the UK is complying with its international obligations. MFA subsidies cumulate with each other and with other subsidies that fall within the category of 'minimal or SPEI financial assistance'. This captures all the different low value exemptions an enterprise could receive support from UK public authorities. For example, the following should all be taken into account during the current and previous two financial years:

- MFA
- SPEIA
- aid given under the EU State aid de minimis regulations<sup>64</sup> by virtue of the Windsor Framework
- subsidies given as small amounts of financial assistance under Articles 364(4) or 365(3) of the UK-EU Trade and Cooperation Agreement between 1 January 2021 and 3 January 2023.

7.7 This prevents enterprises being able to receive many subsidies that are in isolation considered low value, but cumulatively could create distortions if their combined value exceeds the threshold.

7.8 MFA subsidies above £100,000 are subject to the transparency requirements. This is not cumulated per beneficiary but applies per subsidy award. This means that for every individual subsidy provided of more than £100,000, the public authority needs to include details of the subsidy on the subsidy control database. Further details are provided in [Chapter 12](#). These subsidies are nonetheless not subject to challenge on the basis of the subsidy control requirements as, with exception of the two prohibitions set out above, MFA subsidies are exempt from the substantive requirements of the Act.

7.9 When deciding whether to use the MFA exemption, public authorities should be aware that additional MFA cannot be given to a beneficiary that has already

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<sup>63</sup> See [general prohibitions and conditions](#) section in Chapter 5

<sup>64</sup> This includes de minimis under Commission Regulation (EU) No 1407/2013, SGEI de minimis under Commission Regulation (EU) No 360/2012, Agriculture de minimis under Commission Regulation (EU) No 1408/2013, and Fishery and Aquaculture de minimis under Commission Regulation (EU) No 717/2014.

reached their MFA threshold. Consequently, giving a particular subsidy as MFA may mean the beneficiary is limited in being able to receive further subsidies as MFA within the applicable period.

7.10 Where a public authority has a high number of small value payments and decides to make these payments under a scheme, thereby complying with the substantive requirements under Part 2 of the Act, these payments would not cumulate as MFA as they would fall outside of the exemption.

### How to give a subsidy under MFA

7.11 Public authorities awarding subsidies as MFA must comply with certain procedural requirements. The procedural requirements seek to ensure that enterprises only receive subsidies through the MFA exemption when they are entitled to do so.

7.12 Before awarding an MFA subsidy a public authority has to provide the intended recipient enterprise with an 'MFA notification'. An MFA notification means a written statement:

- explaining that the public authority is proposing to give to the enterprise a subsidy by way of MFA,
- specifying the gross value amount of the assistance, and
- requesting written confirmation from the enterprise that the MFA threshold specified in section 36(1) will not be exceeded by the enterprise receiving the proposed assistance.

7.13 The public authority can only award the subsidy when it has received this confirmation. If the enterprise confirms that they will exceed the threshold on receipt of the subsidy, it can still elect to receive part of the subsidy up to the threshold as MFA but the remaining balance will be subject to the full subsidy control requirements associated with providing a subsidy that is not MFA.

7.14 When awarding an MFA subsidy, the public authority must give the intended beneficiary an 'MFA confirmation'. This is a written statement which confirms:

- that the subsidy is given as MFA,
- the date on which it is given, and
- the gross value amount of the assistance.

7.15 The procedures should represent a straightforward way for public authorities and enterprises to clarify whether the cumulative threshold has been reached. It is expected that public authorities will be able to undertake these procedures as part of the normal communications between a public authority and an enterprise before any subsidy is given and could be included within a single document. In

seeking to keep the administrative burden to a minimum, public authorities are encouraged to use email and automated on-line processes wherever possible and by using forms including tick-boxes where appropriate.

7.16 Public authorities are encouraged to undertake their own due diligence. This should form part of the public authority's own procedures ahead of granting a subsidy and will reduce the risk of granting a subsidy that exceeds a recipient's MFA threshold. It should be remembered that the MFA threshold applies to an enterprise as defined in the Act, which can include a group of businesses operating under common control (see Annex 1) this may be particularly relevant when providing a subsidy to a national business which operates from multiple sites across the UK.

7.17 An example of text that could be used as part of a notification letter under section 37(2) of the Act is included below. It is for public authorities to consider if and how they use this text in their usual communications including when making a formal subsidy offer to an enterprise.

### **Example text for a s.37(2) notification**

"The [PA] offers [Enterprise] a Minimal Financial Assistance (MFA) subsidy under the Subsidy Control Act (2022), subject to your agreement to, and compliance with, the terms and conditions set out below [relating to MFA and any other terms of the subsidy specified by the PA].

The amount of MFA offered is [£x]. Before making the payment, we require written confirmation that receipt of the payment will not exceed [Enterprise's] MFA threshold of £315,000 cumulated over this and the previous two financial years, as specified in section 36(1) of the Subsidy Control Act (2022). This means you must confirm that you\* have not received more than [£315,000 minus the value of the subsidy] in MFA subsidies or comparable types of subsidies (see section 42(8) of the Subsidy Control Act) between 1 April [year beginning the calculation period] and this date.

We take this opportunity to remind [Enterprise] that you are required to keep a written record of the amount of MFA you have received and the date/s when it was received. The written record must be kept for at least three years beginning with the date on which the MFA was given. This will enable you to respond to future requests from public authorities on how much MFA you have received and whether you have reached the cumulative threshold.

Confirmation must be sent by someone who is authorised to do so on behalf of your organisation.

I confirm, for and on behalf of, [Enterprise] that receipt of MFA of [£x] from [PA] will not exceed [Enterprise] MFA threshold specified in section 36(1) of the Subsidy Control Act (2022).”

[\* The MFA financial threshold applies at company group level.]

7.18 As explained above enterprises in receipt of MFA from public authorities have certain obligations to fulfil including providing written confirmation that it will not exceed its MFA threshold on receipt of the assistance. To provide this confirmation, the enterprise is required to keep a written record of the amount of MFA subsidy it has received and the date/s when it was received. The written record must be kept for at least three years beginning with the date on which the MFA subsidy was given. This will enable it to respond to future requests from public authorities on how much MFA it has received and whether it has reached the cumulative threshold. Although, public authorities are not required to remind beneficiaries of this as part of the process of giving an MFA subsidy, it would be good practice to do so to ensure a greater awareness of the requirements under the Act.

7.19 The gross value amount of the assistance should be calculated as the gross cash amount or on the basis of the gross cash equivalent. Further details on how to do this calculation are included in [Annex 4](#).

7.20 Where the exact amount of the MFA subsidy is not clear, the gross value amount should be the maximum possible amount of the subsidy that may be given, or the maximum reasonable estimate. If a lower amount of subsidy is in fact given, the public authority may choose to issue a revised MFA confirmation setting out the actual amount of subsidy given, so that the enterprise may be eligible to receive more MFA from other sources during the three-year period.<sup>65</sup>

## SPEI assistance

7.21 The Act provides an exemption from the majority of the subsidy control requirements for low-value SPEI subsidies. Public spending on SPEI may be considered to constitute SPEI Assistance (SPEIA) if the total amount of minimal

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<sup>65</sup> This would not apply where the offer or commitment from the public authority itself constitutes the subsidy. For example, a loan guarantee constitutes a subsidy from the outset, even if it is never drawn upon, and therefore the value of the MFA or other subsidy would not change. Conversely, an example of when a revised confirmation letter may be appropriate is if the subsidy was to reimburse a certain proportion of a beneficiary's spending on a particular project up to a cap of £200,000, and in fact its level of spending only triggered £120,000 of reimbursement.

or SPEI financial assistance given to an enterprise does not exceed £725,000 over the applicable period.

7.22 The same rules and procedures (including cumulation) apply to SPEIA as to MFA, except that the cap over three years is the higher value of £725,000. MFA and SPEIA cumulate together and, as such, public authorities should be mindful of their respective upper limits.

### Examples

#### Scenario 1

An award of £260,000 MFA was made on 31 March 2023, and another award of £80,000 as SPEIA was made on 31 March 2024 to the same beneficiary. MFA rules will apply to the total amount of £315,000, with the remaining £25,000 being outside the MFA rules. Consequently, no further MFA can be awarded to that beneficiary, even if they are eligible for additional financial assistance under SPEIA.

If the public authority providing the £80,000 did not classify the financial assistance as SPEIA and intended to award it as MFA, they would be unable to do so. This is because the award would exceed the beneficiary's MFA threshold, necessitating an assessment against the subsidy control principles.

#### Scenario 2

A beneficiary receives £100,000 of MFA from public authority A in year 1 and £200,000 of MFA from public authority B in year 2. The beneficiary has so far received £300,000 of MFA during the applicable period. Public authority C wishes to award the beneficiary £400,000 of SPEIA in year 3. Public authority C follows the s.37(2) notification process and confirms that the beneficiary is able to receive this amount of SPEIA. Following the award of public authority C's subsidy, the total amount of minimal or SPEI financial assistance the beneficiary has received during the applicable period is £700,000.

#### Scenario 3

A beneficiary has received a combined total of £650,000 of MFA and SPEIA subsidies during the applicable period. Public authority A wishes to give the beneficiary £50,000 of MFA. As the beneficiary has already reached the MFA ceiling of £315,000 during the applicable period, public authority A cannot award the subsidy as MFA. Public authority A would instead need to complete a subsidy control principles assessment to determine whether they could give the subsidy

or consider whether they could award the subsidy under an existing subsidy scheme or a streamlined route.

## Mergers and acquisitions

- 7.23 There are certain rules governing how a subsidy given as MFA or SPEIA is to be treated following a merger or acquisition of an enterprise. This is to ensure that subsidies awarded as MFA or SPEIA are properly attributed to successor enterprises for the purposes of determining how much support an enterprise has received through the exemptions and hence compliance with the relevant financial thresholds.
- 7.24 Where all or part of an enterprise that received MFA or SPEIA (enterprise A) is transferred to another existing enterprise (enterprise B), then any minimal or SPEI financial assistance given to enterprise A prior to the transfer is to be treated, on and after the transfer, as if given to enterprise B. As such, enterprise B is to be treated by public authorities as though it was the recipient when determining whether a relevant threshold, with regards to giving MFA or SPEIA, has been exceeded.
- 7.25 If only part of enterprise A is to be transferred, then the proportionate part of the MFA or SPEIA is to be treated as given to enterprise B. This should also be applied when determining whether a relevant threshold, with regards to giving MFA or SPEIA, has been exceeded in respect of the successor enterprise.
- 7.26 A 'proportionate part' refers to the part of the assistance that can be fairly attributed to the activities carried on by the part of the undertaking that is transferred. However, if this is not reasonably practicable to apply then it should be proportionate to the value of the part of the undertaking that is transferred.
- 7.27 Any minimal or SPEI financial assistance attributed to enterprise B, or to a successor enterprise, is to be treated as lawfully given to enterprise B, or to a successor enterprise, as if it had been given in accordance with the requirements for giving MFA or SPEIA.

### Example

Scenario 1: In year 1 enterprise A receives £300,000 MFA

In year 2 enterprise B acquires enterprise A.

Post-acquisition, enterprise B is treated as if it had received £300,000 MFA and will need to keep a record for 3 years from the date the payment was made to enterprise A. In year 3 a public authority intends to make a payment of £50,000 to enterprise B, this will breach the MFA threshold and hence only £15,000 can be paid as MFA; the remaining £35,000 will fall outside the exemption and will be subject to the substantive requirements of the Act.

Scenario 2: In year 1 enterprise A receives £300,000 MFA.

In year 2 enterprise B acquires 25% of enterprise A.

An estimate of the proportionate value of MFA could be based on the total value of the transfer to enterprise B. This is equivalent to £75,000 MFA (25% of £300,000). In year 3, a public authority intends to make an MFA payment of £50,000 to Company B. This can be paid as MFA as the total MFA received by enterprise B in the three years will be £125,000 and is within the MFA threshold.

Scenario 3: In year 1 enterprise A and enterprise B each receive £300,000 MFA.

In year 2, the two enterprises merge and become enterprise C.

Enterprise C is treated as if it had received £600,000 MFA. It is not eligible to receive more MFA, but the existing MFA is still considered to have been given lawfully.

## Chapter 8: Other exemptions

### Overview of chapter

8.1 In addition to MFA and SPEIA (see [Chapter 7](#)), there are a number of other total or partial exemptions to the subsidy control requirements, in relation to subsidies and subsidy schemes given in exceptional circumstances or for reasons including safeguarding national security and financial stability.

### Emergencies

#### Natural disasters and other exceptional circumstances

8.2A subsidy given to compensate for the damage caused by natural disasters, or other exceptional circumstances, is not subject to the substantive subsidy control requirements. However, the transparency requirements will apply as normal.

8.3 Natural disasters include occurrences such as earthquakes, avalanches, landslides, floods, and wildfires of natural origin. They will have a significant economic impact or cost, or a serious or ongoing effect on local services and infrastructure, or both.

8.4 Other exceptional circumstances may include rare events and circumstances which are not straightforward to foresee, and which have a significant economic impact, such as a major pandemic. Exceptional circumstances cannot be purely economic in nature: a stock market crash would not be an exceptional circumstance for this purpose.

8.5A public authority may fully compensate a recipient for the damage caused by natural disasters or other exceptional circumstances; it should not provide additional funding over and above the costs of repairing this damage under this exemption.

8.6 An exemption under this section can only apply if the Secretary of State publishes a notice declaring that it applies in respect of a specified natural disaster or exceptional circumstance. Notices of this kind will be published on gov.uk. Public authorities seeking to use this exemption should therefore [contact the DBT Subsidy Control team](#) as early as possible.

## National or global economic emergencies

- 8.7 The prohibitions and other requirements (as set out in [Chapter 5](#) on prohibitions and other requirements and [Chapter 7](#) on SPEI) do not apply to a subsidy given to respond to a national or global economic emergency. Such subsidies must be given on a temporary basis for these exemptions to apply.
- 8.8 Subsidies given in relation to national or global economic emergencies remain subject to the requirements of assessment against the subsidy control principles and the energy and environment principles, and the transparency requirements.
- 8.9 National or global economic emergencies are rare and difficult to foresee. They are likely to entail sudden and severe disruption to global economic trading relationships, or systemic risks to critical national economic or financial infrastructure. By way of example, the threats to essential supply chains that were posed by workforce absences during the Covid-19 pandemic in 2020 are an example of a national and global economic emergency of the sort envisaged under this section.
- 8.10 In contrast, an economic recession, by itself, or a global economic recession more generally, does not constitute a national or global economic emergency. Subsidies given during economic recessions, or with the purpose of lessening the effects of an economic recession, must be assessed against the subsidy control principles as normal.
- 8.11 A subsidy for the purpose of addressing a national or global economic emergency may only be granted by a public authority if the Secretary of State has published a notice to the effect that the exemption under the Act applies in respect of a specified emergency. Notices of this kind will be published on gov.uk. Public authorities seeking to use this exemption should therefore contact the [DBT Subsidy Control](#) team as early as possible.

## Other exemptions

### National security

- 8.12 Subsidies given to safeguard national security are not subject to the subsidy control requirements. This is without prejudice to UK's international commitments.

### Bank of England monetary policy

- 8.13 Subsidies given by or on behalf of the Bank of England in pursuit of monetary policy activities are not subject to the subsidy control requirements.

## Financial stability

- 8.14 The subsidy control requirements do not apply to the giving of a subsidy, or the making of a subsidy scheme, so far as a financial stability direction, as given by the Treasury, so provides.
- 8.15 A financial stability direction can provide that specified subsidy control requirements do not apply to the giving of a specified subsidy or making of a specified subsidy scheme, or the giving of subsidies, or the making of subsidy schemes, of a specified description.
- 8.16 In both instances, the Treasury may give a financial stability direction only if it considers it appropriate for prudential reasons. This includes where it is necessary for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier or ensuring the integrity and stability of the financial system of the UK.
- 8.17 The Treasury must consult the Bank of England before giving a financial stability direction. The Treasury may only give a financial stability direction that relates only to a subsidy given, or subsidy scheme made, by the Bank of England only if the Bank of England has requested the Treasury to give the direction.
- 8.18 The Treasury must publish the financial stability direction in whatever manner it deems appropriate and lay this direction before Parliament.
- 8.19 However, if the Treasury considers that publication and laying before Parliament would have the effect of undermining the purpose for which the direction is given, the Treasury may delay the carrying out of those steps until it is satisfied that to do so would not have that effect.

## Tax measures

- 8.20 Subsidy control requirements do not apply to a tax measure which is otherwise permitted under Article 413 of the Trade and Cooperation Agreement between the UK and EU (TCA). Article 413 clarifies that the provisions of the TCA should not be construed as affecting the rights and obligations of the United Kingdom under any tax convention it has entered into. This exception covers conventions for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation. Article 413 also specifies that the subsidy control provisions do not prevent the adoption, maintenance or enforcement of any non-discriminatory measure that aims at ensuring the equitable or effective imposition or collection of direct taxes or any measure which distinguishes between taxpayers who are not in the same situation.

8.21 Therefore, to the extent that that a measure is permissible under Article 413 of the TCA it will not be subject to provisions such as the requirement to comply with the subsidy control principles, or the duty to include information in the subsidy database, or any other duties or requirements provided for under the Act.

8.22 Article 413 of the TCA also specifies that the subsidy control requirements do not to prevent the adoption, maintenance or enforcement of any non-discriminatory measure that aims at ensuring the equitable or effective imposition or collection of direct taxes or any measure which distinguishes between taxpayers who are not in the same situation.

### Large cross-border or international cooperation projects

8.23 A public authority does not need to consider the subsidy control principles when giving a subsidy if it is given in the context of a large cross-border or international cooperation project.

8.24 The public authority giving the subsidy must, however, be satisfied that the benefits of the project will have spillover effects beyond the United Kingdom, the relevant sector, and the beneficiary of the subsidy. This is also true of authorities making a subsidy scheme under which such subsidies could be given.

8.25 Large cross-border or international cooperation projects may include those for transport, energy, the environment or research and development and first development projects to incentivise the emergence and deployment of new technologies, excluding their manufacture. 'Cross border' refers to projects between the UK and another country; this does not include projects between different regions or nations of the UK. An example of such a project might be an international RD&I project in relation to climate change mitigation funded by all members of the G7, including the UK.

## Chapter 9: Legacy subsidies and permitted modifications

### Overview of the chapter

9.1 This chapter details how the regime applies to specific categories of subsidy and subsidy scheme made before the commencement of the regime. Subsidies given under these 'legacy' schemes are partially exempt from the subsidy control requirements under the conditions set out below.

9.2 The chapter also explains the category of modification that may be made to a subsidy or subsidy scheme (including a legacy scheme). These are known as 'permitted modifications' and may be made to a subsidy or subsidy scheme without consideration of the subsidy control requirements, as is set out below.

### Legacy subsidies

9.3 Legacy subsidies and schemes are exempt from the subsidy control requirements, with the exception of the transparency obligations, in most cases.<sup>66</sup>

9.4 Legacy schemes are schemes that were in existence before the Act came into force. Legacy schemes, and the award of subsidies under them (known as legacy subsidies), may continue indefinitely if provided for under the original terms of the scheme. The regime does not require these schemes be assessed against the subsidy control principles or comply with the other subsidy control requirements contained in the Act.

9.5 The rules on transparency contained in the Act, however, will still apply to subsidies given under legacy schemes where those subsidies are given after section 48 of the Act comes into force. An exception to this is where these subsidies are subject to the provisions of Part IV or Annex 2 of the WTO

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<sup>66</sup>Transparency obligations in the Act do not apply to legacy subsidies subject to the provisions of Part IV or Annex 2 of the WTO Agreement on Agriculture, or relating to trade in fish and fish products, or the audio-visual sector (see section 48(2)) or to subsidies given in accordance with Regulation 1370/2007, that Regulation as it has effect by virtue of regulation 28(2) of the Public Service Obligations in Transport Regulations 2023, or the Public Service Obligations in Transport Regulations 2023 (see section 48(1)(b)).

Agreement on Agriculture, or relating to trade in fish and fish products, or the audio-visual sector as the transparency requirements do not apply to these.

9.6 Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road<sup>59</sup> and the Public Service Obligations in Transport Regulations 2023 should be treated as legacy schemes. Subsidies given in accordance with these regulations are therefore also exempted from the subsidy control requirements. Unlike other legacy subsidies, the transparency requirements also do not apply.

9.7 In addition, the Act does not apply to subsidies given before it came into force.<sup>67</sup> Because the date a subsidy is given is considered to be the date on which a binding commitment is made (see [Chapter 2](#)), this means that the actual transfer of funds (or subsequent instalments) could take place after the Act comes into force and therefore not be subject the Act.

### Permitted modifications

9.8 Modifications made to a subsidy which has already been given, or a subsidy scheme which has been made, are generally to be treated as in the same way as a new subsidy or subsidy scheme. Public authorities are therefore required to complete a new assessment against the subsidy control principles and to ensure that all the obligations of the regime are complied with, as they would when making a new subsidy or subsidy scheme.

9.9 However, certain modifications defined as ‘permitted modifications’ may be made to a subsidy or scheme without the public authority being required to carry out a further assessment against the subsidy control principles. These will allow public authorities to make a limited range of changes to a subsidy without undue delay.

9.10 These rules apply both to subsidies given and schemes made after the Act comes into force, and to changes to legacy subsidies and schemes.

9.11 There are six types of permitted modifications that apply to subsidies in scope of the Act. These are modifications which:

- provide for an increase in budget of a subsidy or subsidy scheme of up to 25%
- provide for an extension of a subsidy scheme of up to six years
- are administrative in nature
- are made to a legacy subsidy or legacy scheme that are consistent with its terms

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<sup>67</sup> This is not an explicit provision in the Act but follows by virtue of it not applying retrospectively.

- are made to allow a subsidy or subsidy scheme to operate effectively and/ or avoid deficiencies arising from the withdrawal of the UK from the European Union
- are made under Regulation (EC) No 1370/2007 (on public transport services by rail and road), which is retained EU law in the UK

9.12 The following sections elaborate further on each of these categories of permitted modification.

### Modifications for an increase of up to 25% of the original budget of a subsidy or subsidy scheme

9.13 An increase of up to 25% of the budget of a subsidy or scheme, when compared to the original budget, will be considered a permitted modification.

9.14 Public authorities should be aware that the 25% figure represents a cumulative total compared to the original budget of the subsidy or subsidy scheme. Once a subsidy or subsidy scheme has been modified to increase its budget by 25%, subsequent increases in budget will not benefit from the exemption from the regime afforded to permitted modifications. Instead, the scheme as modified will be subject to the full obligations of the subsidy control regime.

9.15 Where the budget for a subsidy or scheme is provided as a range of potential subsidy awards (instead of or as well as a cap on total spending), the threshold is calculated from 25% of the maximum potential award.

#### Example

A subsidy scheme has been made which provides grants of up to £800,000 per beneficiary. After the first year of the scheme's operation, an increase of 20% is made to the maximum amount that can be awarded through the scheme to £960,000. After a further year, another increase in the budget provides for an increase of 5% to the maximum amount that can be awarded under the scheme, when compared to the original budget. The maximum amount that can be awarded under the scheme is now £1m.

Both changes to the budget can be made as a permitted modification as the maximum amount that can be awarded under the scheme has remained at, or below, the 25% threshold, when compared to the original budget of the scheme. Further changes which increase the maximum amount that can be awarded under the scheme will need to be made as the creation of a new subsidy scheme, with a full assessment against the subsidy control principles and following all the procedures required by the regime for that subsidy scheme.

- 9.16 The 25% increase is to be calculated by reference to the financial year in which the permitted modification of that subsidy or scheme was made. This means that where the subsidy or subsidy scheme was originally designed to incorporate a ratchet mechanism that allows the budget to increase year on year (for example, to account for inflation), the baseline figure for calculating the 25% increase is the financial year in which the permitted modification is being made.
- 9.17 Decreases in overall budget or maximum subsidy may be made. In general, these can be considered changes within the parameters of the existing subsidy or scheme and there is therefore no need to consider them as a permitted modification. Public authorities may also choose to treat any reduction in budget or subsidy size as a permitted modification.
- 9.18 The budget does not mean the maximum proportion of project costs that can be funded by subsidy (as opposed to the beneficiary or private investors); this is also known as the subsidy intensity or intervention rate. If the scheme is amended to increase the maximum proportion of costs that can be funded by subsidies under the scheme, this should be assessed as a new subsidy.

### Modifications for an extension of subsidy schemes by up to six years

- 9.19 An extension to the life of a subsidy scheme by up to six years will be considered a permitted modification. Similar to the 25% increases in the budget of a subsidy or subsidy scheme discussed above, the six-year figure represents a cumulative total from the original end date of the subsidy scheme. Extensions that move the end date of the subsidy scheme beyond six years will not be classed as a permitted modification and will need to be considered as a new subsidy scheme.
- 9.20 This is only relevant where the scheme has a specified end date. If there is no end date, a scheme can continue indefinitely – although it is strongly advised that schemes do include an end date to ensure proportionality (see Chapter 3).
- 9.21 Where legacy schemes were created under an EU State aid General Block Exemption Regulation, the end date of the scheme should be taken to be the expiry of the relevant Regulation, as it stood at the time the Act came into force.<sup>68</sup>

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<sup>68</sup> For example, where a scheme was originally made under the General Block Exemption Regulation in 2020, the extension of the Regulation's expiry date in June 2023 (to 31 December 2026) would not extend the duration of that scheme, as the June 2023 extension change post-dates the commencement of the Act.

## Administrative modifications

9.22 Administrative modifications to a subsidy or subsidy scheme are a permitted modification. Public authorities will need to determine whether a modification is administrative in nature, according to whether or not the modification introduces substantive changes to the subsidy or subsidy scheme.

9.23 A typical example of an administrative modification would be a situation in which a subsidy scheme is passed from one public authority to another without further substantive changes being made to the subsidy scheme itself.

9.24 Administrative modifications must be changes that would not have had a negative effect on the likelihood of the scheme's compliance with the substantive subsidy control requirements, including the principles assessment.

9.25 Changes to scheme rules that would unambiguously reduce the distortive impact can always be made. As with reductions to the budget, in many cases these will be possible within the existing parameters of the scheme and will therefore not need to be considered as permitted modifications at all. For example, lowering the maximum proportion of a project that can be funded through subsidy as opposed to beneficiaries or private investors. However, in some cases, it may be preferable to make these changes as an administrative modification.

## Modifications to a legacy subsidy/scheme

9.26 Public authorities may modify legacy subsidies or legacy subsidy schemes in a way that is consistent with the terms of the subsidy or scheme that were in effect before the Act came into force. A legacy subsidy is a subsidy given on or after 4 January 2023 (the date the Subsidy Control Act came into force) under a subsidy scheme made before that date. A standalone subsidy given before 4 January 2023 cannot be modified by a legacy subsidy modification (but the other forms of permitted modification listed above will still be available). For further clarity:

- where a subsidy or scheme was originally created within a legal framework (notably the EU State aid General Block Exemption Regulation), any legacy subsidy or scheme modifications must be consistent with the terms of the framework as they applied at the time the Act came into force
- where a subsidy or scheme was notified to the European Commission, any legacy subsidy or scheme modifications must be within the bounds of any modifications specified in the Commission's decision letter for the subsidy or scheme

- where a subsidy or scheme was created between 1 January 2021 and 31 January 2023, under the provisions of the Trade and Cooperation Agreement, then any legacy subsidy or scheme modifications must have been contemplated in appropriate detail as part of the original principles assessment for the subsidy or scheme

9.27 Additionally, modifications to subsidies or schemes that seek to deal with the UK's withdrawal from the EU are permitted. This might include modifications to remedy any failure of a subsidy or scheme to operate effectively or other deficiencies related to the subsidy or scheme.

9.28 This could also include amendments to replace or remove references to EU law that no longer apply or references to EU Institutes that no longer fulfil a function with respect to the subsidy or scheme.

### Making a permitted modification

9.29 As stated above, where a subsidy or scheme is subject to a permitted modification, public authorities do not need to conduct an assessment of the modified subsidy or scheme against the principles or refer it to the Subsidy Advice Unit.

9.30 A series of permitted modifications may be made on different occasions, or two or more permitted modifications may be made on a single occasion. For example, a public authority may both extend a scheme (by up to six years) and increase its budget (by up to 25%). Alternatively, a public authority could increase the duration and budget of the scheme, and then on a later occasion increase the duration and budget again, as long as these increases together are less than six years and 25%, respectively.

9.31 Where a public authority wishes to make multiple modifications at once, without a new assessment against the principles or referral to the Subsidy Advice Unit, each modification must individually be a permitted modification listed in paragraph 9.11, above. If a public authority plans to make a permitted modification in conjunction with a non-permitted modification, then the subsidy or scheme must be treated as a new subsidy or scheme.

9.32 Non-permitted modifications to a subsidy or scheme that meet the definition of a subsidy or scheme of particular interest require referral to the SAU. If a previous iteration of the subsidy or scheme has been referred in the past, the SAU will normally draw on their prior report as a starting point in conducting an efficient evaluation. To facilitate this, subsidy givers should set out what changes have been made to the subsidy or scheme and use redlining or track-changes to update their previous principles assessment document (as well as relevant

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supplementary evidence). Subsidy givers may also wish to provide an explanation to the SAU of how they responded to the previous SAU report.

9.33 Public authorities must comply with the transparency requirements and upload any relevant modifications made to a subsidy or subsidy scheme to the subsidy database as set out in Chapter 12, specifying the modifications made to the scheme.

9.34 Nothing set out in the above guidance on making a permitted modification to a subsidy or subsidy scheme is intended to override or replace the existing obligations on public authorities to manage spending responsibly and transparently, such as the Local Government Transparency Code or the 'Managing Public Money' guidance. They should abide by the requirements set out above in conjunction with fulfilling the other statutory obligations they have in that regard.

## Chapter 10: Subsidies and schemes of interest & subsidies and schemes of particular interest

### Overview of the chapter

- 10.1 The subsidy control regime empowers public authorities to give subsidies that are tailored to their needs, subject to compliance with the subsidy control requirements. A small proportion of these subsidies will have greater potential to lead to undue distortion and negative effects on competition or investment within the UK, or on international trade or investment. The subsidy control regime therefore includes two distinct categories of subsidy or subsidy scheme that have been identified as having greater potential to lead to distortive effects: subsidies or schemes of interest (SSoI), and subsidies or schemes of particular interest (SSoPI).
- 10.2 SSoI have a potential risk of leading to undue distortion and negative effects on competition or investment in the UK, or on international trade or investment. Public authorities intending to give or make SSoI may voluntarily refer their assessment of the subsidy or scheme to the Subsidy Advice Unit (SAU) for review before the subsidy or scheme is granted or made, respectively. The SAU can choose whether to accept SSoI referred to them and have published guidance on the principles they will follow when making such decisions.<sup>69</sup>
- 10.3 SSoPI have a higher potential risk of leading to undue distortion and negative effects on competition or investment in the UK, or on international trade and investment. Public authorities intending to give or make SSoPI must refer them to the SAU before they do so. The Act requires the SAU to evaluate all SSoPI referred to them by public authorities.
- 10.4 With regard to schemes of interest, or of particular interest, referral to the SAU will take place before the scheme is made. Subsidies given under a

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<sup>69</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

scheme are not subject to further referral – referral will occur once, at scheme level.

### SSoPI/SSoI definitions

- 10.5 The government has set out in regulations the criteria for identifying SSoPI and SSoI. These regulations set out the monetary thresholds and other criteria that will determine whether a subsidy is a SSoI or SSoPI:
- Subsidies given outside of sensitive sectors are SSoPI if they are over £10 million or if they are over £1 million and they cumulate to more than £10 million with other related subsidies given over the previous 3 financial years. See below for more details on cumulating subsidies.
  - Subsidies granted in sensitive sectors will be SSoPI if they are over £5 million or if they are over £1 million and they cumulate to more than £5 million with other related subsidies given over the previous 3 financial years. See below for more details on cumulating subsidies.
  - Other subsidies of between £5 million to £10 million (individually or cumulatively) that do not meet the SSoPI criteria are SSoI.
- 10.6 For subsidies given in cash, their values will be determined by reference to the gross cash amount. For subsidies that are not in cash, their amount will be determined by reference to the gross cash equivalent of the subsidy (See [Annex 4](#)).

### Subsidy schemes

- 10.7 Referral to the SAU will take place once, at scheme level, before the scheme is made. Subsidies granted under the terms of a scheme of interest or of particular interest may therefore be granted without further referral. Cumulation rules also apply to subsidy schemes.
- 10.8 If a subsidy scheme allows the giving of a subsidy which meets the definition of a subsidy of particular interest, then that scheme will be defined as a scheme of particular interest. Similarly, a subsidy scheme which allows the granting of a subsidy of interest is defined as a scheme of interest. Subsidies must not be granted under the terms of a scheme of particular interest that is currently under review by the SAU.

### Example

A public authority designs a subsidy scheme. The amount a single enterprise can receive under the scheme over 3 financial years is capped at £12 million. The scheme is a scheme of particular interest and must be referred to the SAU before it is made – regardless of whether there are any active plans to grant an enterprise the maximum amount up to the scheme cap.

### Example

A public authority establishes a subsidy scheme. The amount a single enterprise can receive under the scheme over 3 financial years is capped at £6 million. The public authority should consider whether subsidies given under the scheme could cumulate with any other related subsidies. The public authority should also check whether the scheme is in practice targeted at one or more sectors of interest (see below). If it is, it is a scheme of particular interest and must be referred to the SAU. If it is not, it is a scheme of interest as the amount falls between £5 million and £10 million and may be referred to the SAU.

## Sensitive sectors

- 10.9 Subsidies granted in certain sectors have greater potential to be distortive, even at lower monetary values – there is therefore a strong rationale for the assessment of these subsidies against the subsidy control principles to be subject to SAU review. Subsidies granted to enterprises operating in these sectors are accordingly subject to a lower monetary threshold for being considered SoPI.
- 10.10 A subsidy for economic activities within the following SIC codes is deemed as affecting sensitive sectors:<sup>70</sup>
- 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)
  - manufacture of motorcycles (SIC code 30.91)

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<sup>70</sup> Standard Industrial Classification of economic activities (SIC) – a means of classifying a particular economic activity for statistical purposes, published by the Office for National Statistics. See: <https://www.gov.uk/government/publications/standard-industrial-classification-of-economic-activities-sic>

- manufacture of air and spacecraft and related machinery (SIC code 30.30)
- production of electricity (SIC code 35.11)

- 10.11 This list will be periodically reviewed as international economic conditions change.
- 10.12 Public authorities should use Office for National Statistics resources to determine whether an activity falls into one or more of the SIC codes set out above.<sup>71</sup>
- 10.13 To determine whether the lower sensitive sectors thresholds apply, public authorities should consider whether the subsidy is given to an enterprise which is engaged in a specified economic activity or an ‘input activity’. An ‘input activity’ is defined to mean an economic activity that involves the provision of goods or services for the purpose of a specified economic activity.
- 10.14 If the enterprise is engaged in either type of activity public authorities should consider whether 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 (see also further guidance in [Annex 1](#)).
- 10.15 General schemes that are open to a broad range of enterprises, including those that would otherwise be caught by the sensitive sectors test, are exempt from the lower thresholds for sensitive sectors. To use this exemption public authorities must ensure that 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.

### Rescue subsidies

- 10.16 Rescue subsidies are those granted to ailing or insolvent enterprises which may need the subsidy urgently or go irrevocably out of business. Further details on them can be found in [Chapter 5](#).

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<sup>71</sup><https://www.ons.gov.uk/methodology/classificationsandstandards/ukstandardindustrialclassificationofeconomicactivities/uksic2007>

- 10.17 Recue subsidies will be subsidies of interest and not subsidies of particular interest, to account for the fact that their granting is more likely to be time sensitive, given that the enterprise in question may collapse in the absence of the timely provision of the subsidy. However, public authorities should, in principle, refer such subsidies to the SAU wherever feasible.

### Restructuring subsidies

- 10.18 Restructuring subsidies can be granted by public authorities to ailing or insolvent enterprises that have prepared a credible restructuring plan based on realistic assumptions that look to return the enterprise to long term viability within a reasonable period. The authority must be satisfied that the subsidy contributes to an objective of public interest, such as preventing job losses, or that the circumstances are exceptional. Such subsidies to a deposit taker or insurance company are prohibited unless specific conditions are met (see [Chapter 5](#)).
- 10.19 The enterprise should not have been granted a restructuring subsidy within the last five years unless the authority is satisfied that the circumstances that have led to the need for a subsidy were unforeseeable and not caused by the subsidy's beneficiary.
- 10.20 Such a subsidy should be granted to a small or medium-sized enterprise or an enterprise where the owners, creditors or investors have significantly contributed to the cost of restructuring or have a contractual obligation to do so.
- 10.21 Restructuring subsidies will be SSoPI and public authorities intending to grant such subsidies will be required to refer them to the SAU.

### Relocation subsidies

- 10.22 Subsidies explicitly conditional on the beneficiary relocating are prohibited except where they meet certain conditions and comply with the subsidy control principles (See 'relocation of activities' in [Chapter 5](#) for further information).
- 10.23 Relocation subsidies of over £1 million are subsidies of particular interest. All other relocation subsidies are subsidies of interest.

### Voluntary referral of SSols

- 10.24 Public authorities can choose whether to refer SSol to the SAU. To help decide whether to do so, public authorities should consider the following.

### **Evidence of a subsidy race**

- 10.25 As part of its assessment against the principles (see [Chapter 3](#)), a public authority should have assessed whether another public authority is offering a subsidy for the same or similar investment and whether the beneficiary cannot accept both offers. Where public authorities have identified this feature in an SSol, they are encouraged to refer the SSol.

### **The same, or substantially similar, subsidy has been repeatedly made to the same recipient**

- 10.26 Through the assessment against the principles and application of the [cumulation rules](#), a public authority should have considered whether the recipient has previously received any subsidies that are the same or substantially similar to the subsidy in question.
- 10.27 When public authorities are identifying whether a previous subsidy to the same recipient is substantially similar, they may wish to consider whether the objectives, projects, costs or activities supported by that subsidy are the same or substantially similar to the SSol in question. Where the public authority has identified that one or more of these features are substantially similar then the public authority may conclude that previous subsidy is substantially similar to the SSol in question.
- 10.28 If the public authority has identified any subsidies that are the same or substantially similar to the SSol in question they are encouraged to refer the SSol.

### **The nature of the cost being covered**

- 10.29 As part of the assessment against the principles, a public authority should have considered the [nature of the costs being covered](#).
- 10.30 Where the public authority has identified that the SSol in question covers 'day-to-day' costs they are encouraged to refer the SSol.

### **The breadth of beneficiaries and the selection process**

- 10.31 As part of the assessment against the principles, a public authority should have considered [whether the subsidy is available to a broad set of recipients](#) or whether it is only made available to one enterprise.
- 10.32 Where the public authority has identified that the SSol in question is only available to one enterprise they are encouraged to refer the SSol.

## Market power and concentration

- 10.33 Public authorities giving or making SSols should have assessed the market characteristics and level of concentration in the relevant markets (see Annex 3 '[Market characteristics](#)' and '[Market concentration](#)').
- 10.34 Where public authorities have identified that the recipient of the subsidy in question has a degree of market power, or the subsidy relates to a concentrated market then the public authority is encouraged to refer the SSol.

## How to apply cumulation rules

- 10.35 To ensure that all subsidies that should qualify as a subsidies of interest or subsidies of particular interest are correctly categorised as such, cumulation rules will apply.
- 10.36 Under these rules, several smaller subsidies that are granted to the same recipient will count (or 'cumulate') together towards the monetary thresholds when the subsidies are genuinely related. Two related subsidies to the same enterprise would greatly increase the second subsidy's potential to cause substantial distortion.
- 10.37 Where subsidies cumulate above the subsidies of particular interest threshold, there will be a minimum value for referral of £1 million. This means that public authorities will only have to refer a subsidy<sup>72</sup> if the subsidy in question exceeds £1 million, as well as meeting the relevant cumulated threshold. A worked example of how the minimum value for referral operates is below.

### Example

Enterprise X (in a non-sensitive sector) receives a subsidy from public authority A to a value of £9.5 million.

This subsidy is a Subsidy of Interest (between £5 million and £10 million for non-sensitive sectors). The public authority can choose to refer the subsidy to the SAU, but this is not mandatory.

Enterprise X then receives a subsidy of £700,000 from public authority B that meets the conditions for cumulation with the subsidy from public authority A. The £700,000 subsidy, as it is below the minimum value for referral of £1 million,

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<sup>72</sup> Or a subsidy scheme if the scheme allows subsidies that individually exceed £1 million.

would not be subject to mandatory referral to the SAU, though since it cumulates with a related subsidy to over £5 million it is a subsidy of interest, so referral to the SAU would be encouraged.

Enterprise X then receives a subsidy of £1.4 million from public authority C that meets the conditions for cumulation with the other two subsidies.

This subsidy is a subsidy of particular interest because the individual subsidy of £1.4 million is greater than the minimum value for referral of £1 million and cumulates to a total of £11.6 million (above the £10 million SSoPI threshold). When undertaking a review, the SAU will review only the £1.4 million subsidy, and not any of the previous subsidies.

10.38 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 they are:

- given to the same enterprise by any public authority; and
- are for the same or substantially same project, costs or activities; and
- are for the same or substantially the same specific policy objective under Principle A of Schedule 1 to the Act; and
- have been given within the last three financial years

10.39 As best practice the public authority should, before giving a subsidy:

- check with the recipient of the subsidy whether they have received a subsidy from any source in the last three financial years
- establish what project, cost or activity this subsidy funded
- determine the policy objective any previous subsidy was designed to achieve

10.40 All of these conditions must be met before the new subsidy is deemed to cumulate with the previous subsidy. Subsidies that are given by different public authorities in different geographical areas to the same enterprise will cumulate where the above conditions are met.

### Example

A public authority intends to grant a £1.5 million subsidy to an enterprise. The enterprise informs the public authority that it has received £4.5 million from another public authority for the same project and for a substantially similar policy

objective. This subsidy was received two financial years ago. The £1.5 million subsidy accordingly cumulates with the £4.5 million subsidy above the £5 million threshold. As such, the £1.5 million subsidy is a subsidy of interest and may be referred to the SAU. The public authority should check whether the activity being subsidised is in a sector of interest. If it is, the £1.5 million subsidy is a subsidy of particular interest and must be referred to the SAU.

- 10.41 When making a subsidy scheme a public authority should consider cumulation rules for the purposes of subsidies of interest and subsidies of particular interest. Any scheme that does not include limits on the maximum amount of a subsidy that may be given under the scheme to a single enterprise, or which does not account for related subsidies that the enterprise may have received in the past, is likely to be a scheme of interest or a scheme of particular interest.
- 10.42 A scheme (that is not related to a sensitive sector) in which a public authority may, for example, give the same enterprise multiple awards of £8 million to the same project for the same policy purpose is a scheme of particular interest, since the enterprise in question may receive subsidies under the scheme that total more than £10 million.
- 10.43 On the other hand, a scheme that include caps on the maximum amount of subsidy a single enterprise may receive under it (for example, of £4 million over 3 financial years), and that includes conditions that require the public authority to check with the enterprise whether they have recently received related subsidies (and in the event they have, reduces the scheme cap accordingly so that the subsidy amount is always below the subsidy of interest/subsidy of particular interest threshold), is not likely to be a scheme of interest or a scheme of particular interest.
- 10.44 The terms of a scheme should, as best practice, allow for the same checks that a public authority is advised to make before giving a standalone subsidy (see above).
- 10.45 Public authorities must estimate the maximum likely value of any award under a tax scheme. This value will be the basis for determining whether the scheme of particular interest threshold is exceeded for a particular tax scheme.
- 10.46 Only subsidies given as part of the same tax measure within the applicable period of 3 financial years will constitute a 'related subsidy' that will count towards the cumulative thresholds for SSoPI. As an example, a tax scheme

that is estimated to have a maximum likely value of £4 million per recipient in a financial year would be a SSoPI, as the value would cumulate to £12 million over the applicable period.

- 10.47 All tax schemes are 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.

### How to apply economic advantage and input activities test

- 10.48 Economic activities may span several different sectors – some of these may be subject to frequent international trade disputes, while others may not. Similarly, modern enterprises often operate across multiple sectors, while a subsidy may be targeted at only one of these sectors. Therefore, the sector that a business primarily operates in will not always neatly correspond to the activity that is being subsidised, and vice versa.
- 10.49 The input activities test captures the potential of a subsidy to create substantial distortions within a sensitive sector, even where it relates to an activity that does not sit within the scope of the specific SIC codes in question.
- 10.50 To apply the test, public authorities should consider the objectives, and potential impact of the subsidy in question alongside the activities of the recipient. The public authority should use the information obtained in the principles assessment (see [Chapter 3](#)) to identify which activities are being subsidised. As a general rule, where an activity features in the principles assessment, it is likely to be the activity that is being subsidised

### How to apply exemption for general schemes

- 10.51 Schemes that are not designed to be specific to certain enterprises or sectors, and that are open to a broader range of enterprises, including those that would otherwise be caught by the sensitive sectors test, are not subject to the lower thresholds for sensitive sectors.
- 10.52 Schemes for which eligibility is based on objective factors – such as the size of enterprise, number of employees, or geographic location – and that do not favour enterprises engaged in specified economic activities or input activities over others are not considered schemes to which the sectors of interest thresholds should apply.

### Example

A public authority has made a scheme that is designed to be open to enterprises with less than 500 employees that are also based in the public authority's area. The public authority estimates that some applicants will undertake activities in a SIC codes that place them within the sectors of interest definition. The scheme is capped at £6 million for each recipient. Because the eligibility for the scheme is designed using several objective factors (employee numbers plus geographic area) it is not considered to be specifically targeted at sectors of interest and is therefore a scheme of interest (and not of particular interest). It may be referred to the SAU but is not required to be referred.

### Other exemptions

10.53 Certain types of subsidies and schemes are exempt from referral to the SAU under the Act. These are listed below:

- any subsidy given under a subsidy scheme
- any subsidy given under a streamlined subsidy scheme (also known as a streamlined route)
- any subsidy given as minimum financial assistance under section 36 of the Act
- any subsidy given as an SPEI assistance under section 38 of the Act
- any subsidy given in respect of a natural disaster or other exceptional circumstance under section 44 of the Act
- any subsidy given to respond to a national or global economic emergency under section 44 of the Act
- any subsidy given for the purpose of safeguarding national security
- any subsidy given by or on behalf of the Bank of England in pursuit of monetary policy
- any legacy and/ or withdrawal agreement subsidy given in line with section 48 of the Act
- in accordance with section 49 of the Act, any subsidy given where the giving of that subsidy is permissible by virtue of Article 413 of the Trade and Cooperation Agreement (taxation)
- any subsidy given in the context of a large cross-border or international cooperation project, granted in line with section 50 of the Act
- a subsidy given as far as a financial stability direction provides in section 47 of the Act, or that is otherwise given by the Treasury or the Bank of England only for the reasons mentioned in section 47(3) of the Act (that is, the protection of investors, depositors, policy-holders or persons to whom a

## Subsidy Control Statutory Guidance

fiduciary duty is owed by a financial services supplier, or ensuring the integrity and stability of the financial system of the United Kingdom)

- 10.54 Additionally, the Secretary of State direct that a specified subsidy or subsidy scheme is exempt from referral.

# Chapter 11: Subsidy Advice Unit referrals

## Overview of the chapter

- 11.1 The Subsidy Advice Unit (SAU) has been established within the Competition and Markets Authority to publish independent reports on those subsidies or schemes that have a greater potential to lead to undue distortion and negative effects on competition or investment in the UK, or on international trade or investment and to monitor and report on the subsidy control regime as a whole. This chapter sets out the process for referral to the SAU and explain the SAU's monitoring role.
- 11.2 The SAU has published separate guidance regarding its functions, setting out in more detail how the SAU will give effect to its statutory obligations.<sup>73</sup> Public authorities are encouraged to refer to the SAU's guidance when making referrals or engaging with the SAU.
- 11.3 The SAU does not provide general advice to public authorities outside of its specific role in relation to referrals of SSols and SSoPIs, as set out in this chapter. For general support and guidance, please contact the contact the Department for Business and Trade subsidy control case work team [subsidycontrol@businessandtrade.gov.uk](mailto:subsidycontrol@businessandtrade.gov.uk)

## Does a subsidy or subsidy scheme require referral to the SAU?

- 11.4 When developing a subsidy or subsidy scheme, public authorities should consider if their subsidy or scheme meets the definition of a SSoPI or SSol.
- 11.5 Where a subsidy or scheme meets the definition of a SSoPI, public authorities must refer their assessments of those subsidies or schemes to the SAU for independent evaluation before the subsidy is given. In this case, the referral to the SAU will be a mandatory referral. Public authorities must wait until the

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<sup>73</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

publication of the SAU's report, and the expiry of a short cooling-off period, before the subsidy or scheme is given or made.

- 11.6 Where a subsidy or scheme meets or has the potential to meet the definition of a SSol, public authorities may make a voluntary referral to the SAU for a report, but they do not have to do so. The SAU has discretion to decide which SSols it will review but may choose to produce a report where an SSol is considered to particularly merit one in line with the SAU's published prioritisation principles.<sup>74</sup>
- 11.7 If the subsidy or scheme is neither a SSoPI nor a SSol, public authorities will not be able to request a report from the SAU regarding the subsidy or subsidy scheme.
- 11.8 The Secretary of State may also direct a public authority to refer a subsidy or scheme to the SAU, referred to as a "call-in direction". Please refer to the [section below](#) for more information on these referrals.

### Referral to the SAU

- 11.9 The following sections explain the process for making referrals to the SAU under the mandatory, voluntary, call-in, and post-award referral procedure. The subsidy control casework teams listed in [Chapter 1](#) can help public authorities to determine whether a referral might be necessary or advisable.
- 11.10 Public authorities are also encouraged to engage with the SAU ahead of any formal referral request to discuss the request and ensure the referrals process proceeds smoothly. When making a request to the SAU, public authorities should use the SAU's online Public Authority Portal and refer to the SAU's guidance.

### Responding to a mandatory referral

- 11.11 Once a public authority has sent its request for a report to the SAU, the SAU will consider the request to ensure it complies with the requirements. To make a valid request, the public authority will need to have provided the SAU with all the information specified in the '[Information to include when making a mandatory subsidy referral request](#)' section below. (See Chapter 3 regarding the referral of related or jointly funded subsidies given by two or more public authorities.)

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<sup>74</sup> For more information, please refer to the SAU's guidance: <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>.

- 11.12 Within five working days, the SAU will notify the public authority to confirm whether the request complies with the requirements for a mandatory referral.<sup>75</sup>
- 11.13 If the request does not comply with the requirements and so the SAU does not proceed to a full evaluation of the authority's assessment of the subsidy or scheme, the SAU will explain to the public authority why it has decided not to prepare a report. Where the SAU has decided not to prepare a report because it has received incomplete information, a public authority will be required to resubmit their request for a referral. The SAU will once again have five working days to inspect the request and notify the public authority as to whether it has been accepted.
- 11.14 Where the SAU accepts a request, it will have a further 30 working days to evaluate the assessment of the proposed subsidy or scheme and publish a report.<sup>76</sup> If necessary, this reporting period may be extended by agreement between the SAU and the public authority.
- 11.15 The SAU may also ask the Secretary of State to direct that the reporting period be extended unilaterally.<sup>77</sup> In this case the SAU will provide the Secretary of State with an explanation of the exceptional circumstances which justify the extension. The Secretary of State will provide a copy of the direction to the SAU and the public authority.
- 11.16 Before the end of the reporting period, and in accordance with the requirements of the Act, the SAU will publish their report which will be available to the public free of charge. They will also provide a copy of the report to the public authority and the Secretary of State as soon as reasonably practicable.

### Cooling-off period

- 11.17 Once the SAU has issued its report in respect of a subsidy or subsidy scheme, public authorities must not give that subsidy or make that subsidy scheme until the expiry of a short cooling-off period. During this time, public authorities should reflect on the SAU's findings before deciding whether to give the subsidy or make the subsidy scheme. Public authorities are recommended to

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<sup>75</sup> The time limit for the SAU to respond to a request for review begins on the day that they receive the request.

<sup>76</sup> The reporting period for the SAU to produce a report under the mandatory referral process begins with the day on which the notice that a request has been accepted is given to the public authority.

<sup>77</sup> An extension of the reporting period that is directed by the Secretary of State will not exceed 40 working days beyond the end of the original reporting period.

review the SAU's findings and to make a written record of whether and how they intend to act upon them, either with respect to the principles assessment or the underlying design of the subsidy. Ordinarily, the cooling-off period will be five working days from the publication of the SAU's report, after the end of which, the public authority may give the subsidy or make the subsidy scheme.<sup>78</sup> The cooling-off period sets out the minimum time which public authorities must wait; it is always open to public authorities to take longer if they wish to do so.

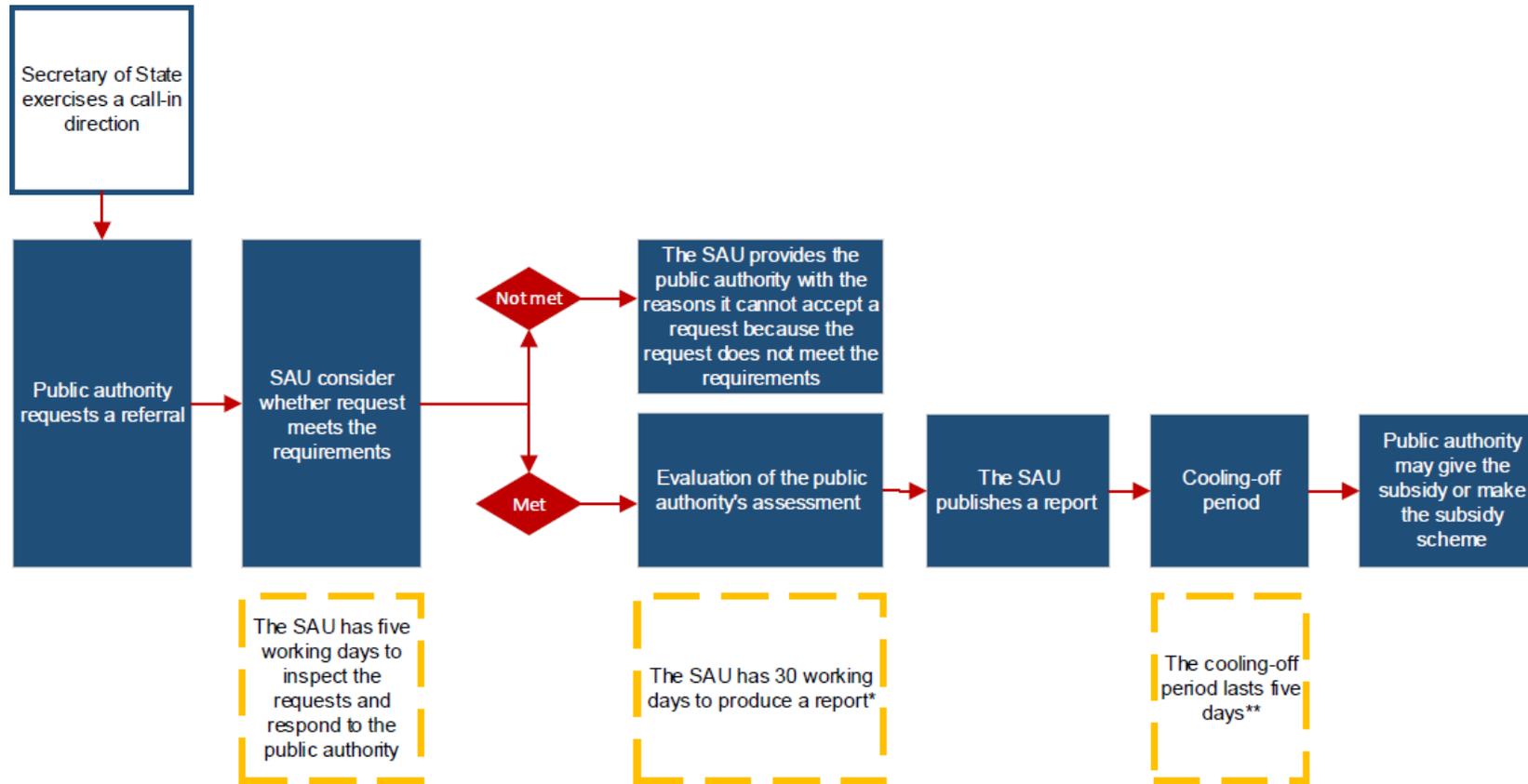
- 11.18 The Secretary of State may direct that the cooling-off period is extended where they consider that the SAU's report has identified 'serious deficiencies' in the public authority's assessment of the subsidy or subsidy scheme. In such cases the Secretary of State will publish the direction, send the direction to the SAU and notify the public authority.<sup>79</sup>

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<sup>78</sup> If the SAU has not published a report on the proposed subsidy or scheme within the reporting period, the public authority may give the subsidy or make the subsidy scheme on the day after the reporting period expires.

<sup>79</sup> Any extension to the cooling-off period will not exceed 30 working days from the day on which the cooling-off period would otherwise end.

### Mandatory referral process diagram



\*The reporting period may be extended by agreement between the SAU and the public authority or by direction of the Secretary of State

\*\*The cooling-off period may be extended by the direction of the Secretary of State

## Responding to a voluntary referral

- 11.19 To make a voluntary referral request, public authorities must provide the SAU with all the information specified in '[Information to include when making a subsidy referral request](#)', below.
- 11.20 Once a public authority has sent its request to the SAU, the SAU will decide whether to proceed to a full evaluation. The SAU has discretion as to whether to publish a report on a subsidy or scheme that has been voluntarily referred. In making its decision on whether to prepare a report, the SAU will refer to its published prioritisation principles.<sup>80</sup>
- 11.21 Before the end of five working days, the SAU will respond to the public authority to confirm whether the request has fulfilled the requirements and been accepted by the SAU for evaluation and report.<sup>81</sup>
- 11.22 If the SAU decides not to provide a report it will provide its reasons to the public authority as to why the request has not been accepted. Where the SAU accepts a request for review, it will have 30 working days to evaluate the assessment of the proposed subsidy or scheme and publish a report.<sup>82</sup> Alternatively, a different reporting period may be agreed between the SAU and the public authority, or, if necessary, the reporting period may be extended by agreement between the SAU and the public authority.
- 11.23 Public authorities retain the ability to give a subsidy or make a subsidy scheme throughout the process of voluntary referral to the SAU. Where a public authority decides to give the relevant subsidy or subsidy scheme before the publication of the SAU's report, the SAU will have discretion to decide if it wishes to publish a report.

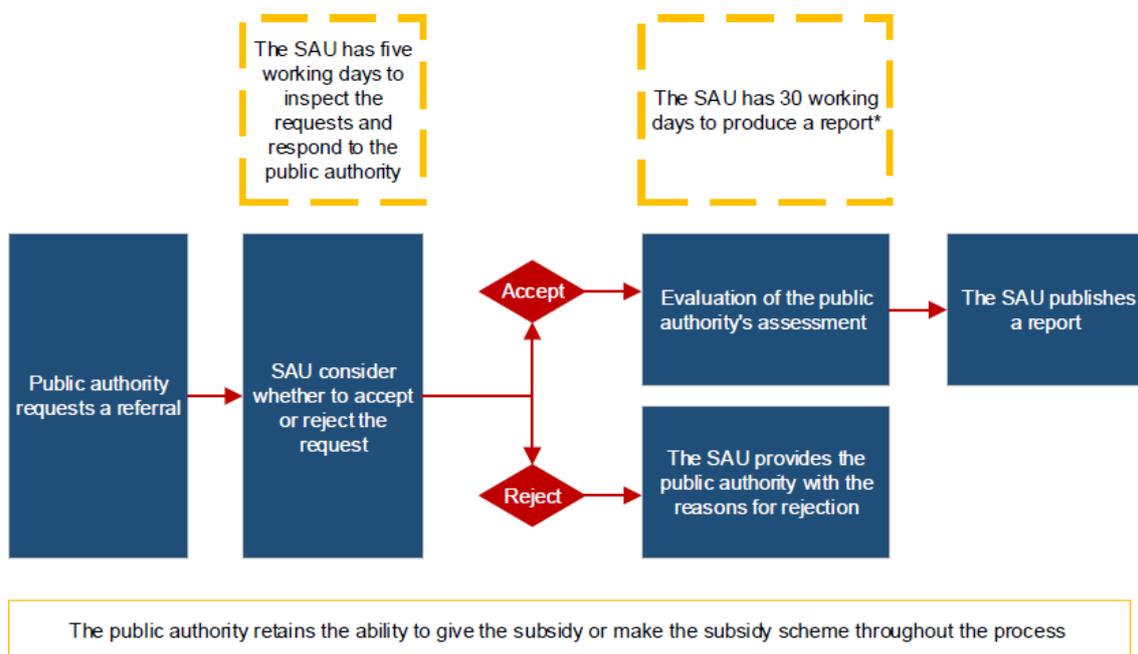
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<sup>80</sup> For more information on the SAU's prioritisation principles, see the [SAU's guidance](#).

<sup>81</sup> The time limit for responding to a request for review begins on the day that the request is received.

<sup>82</sup> The reporting period for the SAU producing a report under the voluntary referral process begins with the day on which the notice that a request has been accepted is issued.

## Voluntary referral process diagram



\*The reporting period may be extended by agreement between the SAU and the public authority or by direction of the Secretary of State

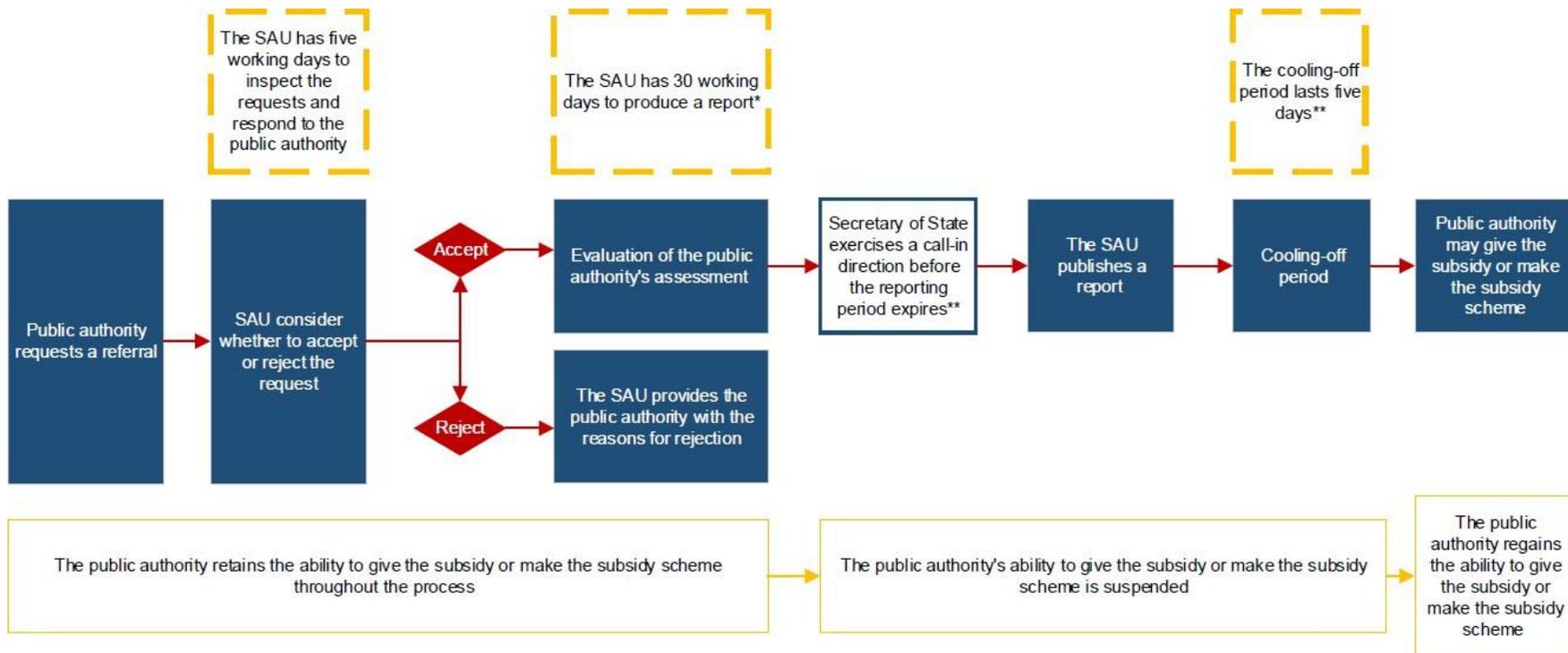
## Call-in direction

- 11.24 The Secretary of State may also direct that a public authority requests a report from the SAU in relation to a proposed subsidy or subsidy scheme. The Secretary of State has discretion to decide to call in a subsidy or scheme if they consider that there is a risk that the proposed subsidy or scheme would fail to comply with the subsidy control requirements or pose a risk of negative effects on competition or investment within the United Kingdom. The Secretary of State may also issue a call-in direction in relation to any proposed SSol.
- 11.25 Where the decision is made to call in a subsidy or a scheme, the Secretary of State will send the call-in direction to the public authority and the SAU. The subsidy will then be subject to a mandatory referral and the public authority will be required to comply with the process set out above before the subsidy is given or the scheme is made.

## Subsidy Control Statutory Guidance

- 11.26 Where a call-in direction is made following a voluntary referral to the SAU, the voluntary referral will be treated as a mandatory referral from the point the direction is made. In this case the full procedure for concluding the SAU's review will depend on the stage that the referral has reached within the SAU's reporting process already, as follows:
- 11.27 Where a report has not already been published and the reporting period has not already expired, the review will be treated according to the full mandatory referral process set out above.
- 11.28 Where a report has not already been published but the reporting period has already expired, the process will be altered such that the reporting period is 10 working days from the public authority being notified that the request for review has been accepted.
- 11.29 Where a report has already been published, but the subsidy or scheme has not already been given or made, the public authority will need to comply with the requirements specified under the '[Cooling-off period](#)' section above.

**Call-in direction following a voluntary referral process diagram**



\*The reporting period may be extended by agreement between the SAU and the public authority or by direction of the Secretary of State

\*\*The reporting period may now be extended by agreement between the SAU and the public authority or by direction from the Secretary of State

\*\*\*The cooling-off period may be extended by direction of the Secretary of State

## Post-award referral

11.30 The Secretary of State may also refer a subsidy or scheme to the SAU after the subsidy has been given or the subsidy scheme has been made. The Secretary of State may opt to make a post-award referral where they consider:

- there has, or may have been, a failure to comply with the subsidy control requirements, or
- there is a risk of negative effects on competition or investment within the United Kingdom.

11.31 Where the Secretary of State decides to make a post-award referral, the referral must be made before the end of 20 working days from the subsidy or scheme being entered on to the subsidy database.

11.32 At the same time as making the referral, the Secretary of State must direct the public authority to provide the SAU with the following material:

- any assessment carried out by the public authority before the subsidy or scheme was made as to whether the subsidy or scheme would comply with the subsidy control requirements
- any evidence relevant to that assessment
- where no such assessment can be provided, the reasons for the absence of that assessment
- any information that the public authority has failed to enter on to the subsidy database

11.33 Public authorities must provide this information to the SAU within 20 working days of the direction being received from the Secretary of State.

11.34 Within 30 working days of receiving the information from the public authority, the SAU will publish a report on the subsidy or scheme in question.<sup>83</sup> This reporting period may be extended by agreement between the SAU and the public authority. In such cases the SAU will publish a notice detailing the extension.<sup>84</sup>

11.35 Where a public authority has not undertaken an assessment of the subsidy or scheme's compliance with the subsidy control requirements, or otherwise does not provide the assessment to the SAU, the SAU's report will simply confirm that fact.

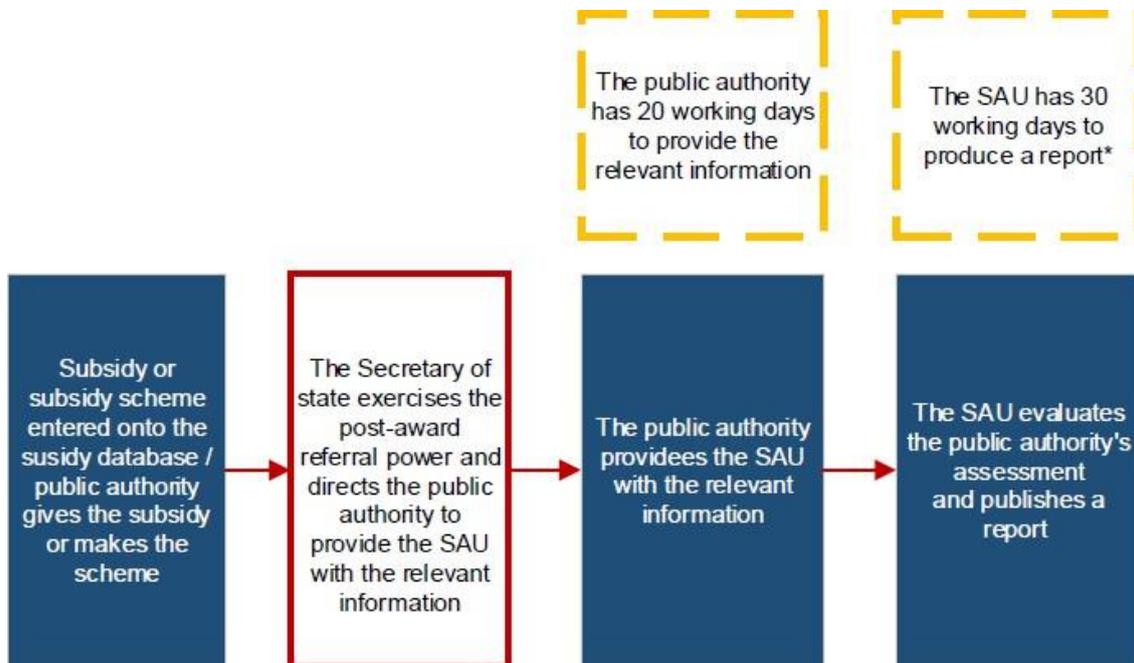
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<sup>83</sup> In the event that no information has been received from the public authority, a report will be produced by the SAU within 30 working days of the expiry of the time limit for the public authority to provide the SAU with the relevant information.

<sup>84</sup> The SAU may also ask the Secretary of State to unilaterally extend the reporting period. In this case the SAU will inform the Secretary of State of the exceptional circumstances which justify such an extension. This extension will not surpass 40 working days from the original reporting period. In such cases, days falling in between the SAU asking for an extension and the Secretary of State directing an extension will not contribute to the reporting period.

11.36 An interested party may apply for a review of the subsidy or scheme to the Competition Appeal Tribunal within one calendar month of the publication of the SAU's report. For more information on this, see [Chapter 13](#).

### Post-award referral process diagram



\*The reporting period may be extended by agreement between the SAU and the public authority or by direction of the Secretary of State

### Information to include when making a subsidy referral request

11.37 Public authorities must include all the following information when making their requests to the SAU:

- an explanation of why the public authority considers that the subsidy or subsidy scheme would meet the definition of a SSoPI or SSol<sup>85/86</sup>
- the assessment the public authority conducted on the subsidy or scheme's compliance with the subsidy control requirements
- any evidence relevant to making that assessment

<sup>85</sup> Whichever definition is relevant to the referral process under consideration.

<sup>86</sup> Where a public authority has been directed to request a referral to the SAU by the Secretary of State, but the public authority does not consider that the proposed subsidy or scheme meets the definition of a SSoPI or SSol, the public authority may opt to provide the SAU with an explanation of why the proposed subsidy or scheme would not meet those definitions.

- all the information that the public authority would be required to upload to the subsidy database<sup>87</sup>

11.38 Public authorities should also be aware that the SAU has issued its own guidance on the referral process, which provides more direction on the information the SAU would expect to see provided to them when making a referral request. Public authorities are encouraged to refer to the SAU's guidance when making a referral request.<sup>88</sup>

11.39 For more information regarding the information a public authority is required to upload to the subsidy database, please refer to [Chapter 12](#).

### Content of the SAU's report

11.40 The contents of the SAU's report will include an evaluation of the relevant public authority's assessment as to whether the proposed subsidy or scheme would comply with the subsidy control requirements. This evaluation will take into account any effects of the proposed subsidy or scheme on competition or investment within the United Kingdom.<sup>89</sup>

11.41 The SAU's report may also include advice about how the public authority's assessment might be improved, or advice about how the proposed subsidy or scheme may be modified to ensure compliance with the subsidy control requirements. This advice is non-binding.

11.42 Where the SAU identifies deficiencies in the design or assessment of a subsidy or scheme, a public authority may wish to use the non-binding advice provided by the SAU to appraise its decision to give a subsidy or make a subsidy scheme. A public authority may also choose to take any further action that it considers necessary based on the SAU's advice.

11.43 Public authorities should be aware that the SAU's reports are published, with copies provided to the Secretary of State. Should a public authority's decision regarding the giving of a subsidy or making of a scheme be challenged in the Competition Appeal Tribunal (see [Chapter 13](#)), the SAU's report will therefore be available to both the Tribunal and any interested parties to review.

### The CMA's monitoring function

11.44 In addition to its referral functions, the CMA will also undertake a review of the effectiveness of the operation of the Act and its impact on competition and investment within the United Kingdom. The CMA will prepare a report on the outcome of the review,

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<sup>87</sup> As defined under section 34 of the Subsidy Control Act 2022 and in relevant regulations.

<sup>88</sup> See <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

<sup>89</sup> Where a public authority has not provided an assessment of the SSoPI or SSol to the SAU, the SAU is only required to report this fact along with any reasons the public authority has provided for not producing the assessment.

initially three years and then six years after the commencement of the Act. Thereafter, the CMA will publish reports at five-yearly intervals. The reports will be laid before Parliament.

11.45 To carry out this function the CMA may need to gather information from public authorities, as well as from businesses and individuals. It may seek to obtain such information through informal requests, but it will also have the power to issue a notice requiring a person to provide information or documents, for the purpose of assisting it in carrying out its monitoring function. For more information on the CMA's monitoring functions and associated information-gathering powers, see the SAU's guidance.<sup>90</sup>

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<sup>90</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

## Chapter 12: Transparency

### Overview of chapter

- 12.1 Subsidy transparency is a fundamental part of the UK's subsidy control regime. Subsidy transparency enables interested parties<sup>91</sup> to view information about subsidies. An interested party may decide to challenge a subsidy before the Competition Appeal Tribunal where it believes the subsidy may not meet the subsidy control requirements. This promotes open and fair competition across the UK's internal market. In addition, transparency can promote greater accountability as it enables the public to see how public money is spent. This is expected to result in better subsidy design and improved policy decisions.
- 12.2 Public authorities have a statutory duty to upload details of both subsidy schemes and subsidy awards to the subsidy database, which is maintained by the Department for Business and Trade (DBT).
- 12.3 The details of what information must be uploaded are outlined in the Subsidy Control (Subsidy Database Information Requirements) Regulations 2022 (the Subsidy Database Regulations). Transparency obligations apply regardless of any information that a beneficiary believes is commercially sensitive. Public authorities should make this clear to potential subsidy beneficiaries. This will ensure that beneficiaries know that certain types of information which they regard as commercially sensitive may be made publicly available.
- 12.4 The sooner that a full and accurate subsidy entry is published on the database, the sooner the limitation period for a review of a subsidy decision under the Subsidy Control Act will finish. Public authorities may therefore wish to publish subsidy information well in advance of the statutory deadline.

### The subsidy database

- 12.5 DBT maintains a database which public authorities must use to meet their subsidy transparency obligations. The database is free to use and is accessible to the public. The subsidy database has two portals.

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<sup>91</sup> An interested party is anyone whose interests may be affected by the giving of the subsidy or making of the scheme. This would most typically be a competitor of the subsidy recipient.

- 12.6 First, the Search Portal is accessible to the public and can be used by anyone to view subsidy information. The website can be found on the GOV.UK website: <https://www.gov.uk/guidance/view-subsidies-awarded-by-uk-government> or directly at <https://searchforuksubsidies.beis.gov.uk/>. Anyone can access and view the Search Portal; users do not need a login.<sup>92</sup>
- 12.7 The second portal is the Manage UK Subsidies Portal which is used by public authorities to upload information on subsidy schemes and awards. The website can be found at: <https://manageuksubsidies.beis.gov.uk/>.
- 12.8 Public authorities will need to create an account to use the Manage UK Subsidies Portal. To gain access, users must email [subsidydatabase@businessandtrade.gov.uk](mailto:subsidydatabase@businessandtrade.gov.uk) with the following information:
- Name
  - Email address
  - Mobile number (for verification purposes)
  - Name of public authority awarding the subsidy
- 12.9 There are four roles available to users of the database.
- **Public authority encoder** – able to add and edit subsidy awards.
  - **Public authority approver** – able to add, edit and approve subsidy schemes and awards for publication.
  - **Public authority administrator** – able to add, edit and approve users, subsidy schemes and awards.
  - **DBT administrator** – able to add, edit and approve users, public authorities, subsidy schemes and awards.
- 12.10 Unless a specific role from the above is requested by the public authority, DBT will always add a new user of a public authority as the public authority administrator. This person can then add further users to the database themselves, choosing which role to provide.
- 12.11 DBT will maintain the database and may contact public authorities where information appears to be missing, incorrect or unclear. However, public authorities remain ultimately responsible for the accuracy of the data they upload.
- 12.12 For assistance with any practical queries about how to create an account or difficulties uploading subsidies, please contact [subsidydatabase@businessandtrade.gov.uk](mailto:subsidydatabase@businessandtrade.gov.uk).

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<sup>92</sup> The Subsidy Database Information Requirements Regulations:  
<https://www.legislation.gov.uk/uksi/2022/1153/made>

## Subsidy schemes

- 12.13 Public authorities must upload the detail of every subsidy scheme they make, unless an exemption in Part 3 of the Act applies.<sup>93</sup> Subsidy awards given under schemes only need to be uploaded if they exceed £100,000. Public authorities should note that not all groupings of subsidies will be considered subsidy schemes under the Act – notably, Minimal Financial Assistance (MFA) and Services of Public Economic Interest Assistance (SPEIA) are not given under subsidy schemes.
- 12.14 Subsidy schemes must be uploaded within three calendar months of the public authority's confirmation of its decision to make the scheme. The three-month deadline applies to all forms of subsidy schemes, including tax subsidy schemes. Schemes must be uploaded on the subsidy database before any subsidies are given under them.
- 12.15 As set out in Chapter 3, the date that a scheme is made should be the date on which the scheme's rules were formally confirmed and put into operation by the public authority. There may be multiple dates when the scheme could reasonably be said to be made, in which case the public authority will have the flexibility to choose the most appropriate.

### Example

A public authority designs a competition for which beneficiaries can apply for funding. The scheme is designed in January 2023 and funding for the scheme is approved on 1 March 2023. On 1 May 2023, the scheme opens for applications. The earliest payments of subsidy awards are made on 1 July 2023. The public authority may decide that the relevant confirmation of the decision to make the scheme is 1 May 2023, when the scheme opened for applications. The deadline for uploading the scheme to the database is therefore 1 August 2023. Alternatively, the public authority may also have a good argument for saying that the confirmation of the decision to make the scheme was at an earlier date on 1 March 2023, when the design of the scheme had been confirmed and funding was obtained, in which case they would need to upload the scheme by 1 June 2023.

- 12.16 When a subsidy scheme is uploaded to the database, it will automatically be allocated a subsidy control number (SC number). This SC number will operate as the unique reference for that subsidy scheme entry. If the subsidy scheme is later modified, it will have the same SC number. The SC number refers to subsidy schemes only. Subsidy

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<sup>93</sup> These exemptions are for: MFA and SPEIA where the subsidy is no more than £100,000 in value; subsidies given to compensate the damage caused by natural disasters or other exceptional occurrences; subsidies for the purpose of safeguarding national security; subsidies by or on behalf of the Bank of England in pursuit of monetary policy; subsidies where provided for as part of a financial stability direction; legacy subsidies that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture; legacy subsidies given in relation to trade in fish and fish products; legacy subsidies given in relation to the audio-visual sector; subsidies in accordance with Article 10 of the Windsor Framework; subsidies to which Article 138 of the EU withdrawal agreement applies; and tax measures under section 49 of the Subsidy Control Act (a taxation subsidy permissible under Article 413 of the Trade and Cooperation Agreement).

awards are assigned a unique subsidy award number and those given under a subsidy scheme will also be associated with the SC number of that scheme.

### Subsidy awards

- 12.17 Subsidy awards can be made as part of a scheme, or as standalone subsidy awards. The process for uploading subsidy awards varies between whether that subsidy award is standalone or part of a scheme.
- 12.18 Details of all standalone subsidy awards, irrespective of their value, must be uploaded to the database. The only exception is where an exemption to the transparency requirements applies, as set out in Chapters 7 and 8 (for instance MFA and SPEI awards below £100,000).<sup>94</sup>
- 12.19 Where a subsidy award is part of a scheme, the scheme must have first been uploaded to the database. Subsidy awards can then be uploaded to the database with a link to the relevant scheme.
- 12.20 Subsidy awards given under schemes must be uploaded if the subsidy value is more than £100,000. This is not cumulated per beneficiary but applies per subsidy award. Where a subsidy award given under a scheme is divided into smaller tranches of payments which each fall below the £100,000 threshold, the relevant amount to be uploaded remains the total amount of the subsidy award. This should have a value of £100,000 or more.

#### Example

A beneficiary is awarded a £240,000 subsidy award under a subsidy scheme, paid in three instalments of £80,000. A single subsidy award of £240,000 is uploaded to the database as the three £80,000 payments are drawdowns of one subsidy award which exceeds the £100,000 threshold.

- 12.21 Subsidy awards do not cumulate with regards to transparency thresholds, even if there are multiple public authorities contributing to one project or one beneficiary.

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<sup>94</sup> As previously noted, these exemptions are for: subsidies given to compensate the damage caused by natural disasters or other exceptional occurrences; subsidies for the purpose of safeguarding national security; subsidies by or on behalf of the Bank of England in pursuit of monetary policy; subsidies where provided for as part of a financial stability direction; legacy subsidies that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture; legacy subsidies given in relation to trade in fish and fish products; legacy subsidies given in relation to the audio-visual sector; subsidies in accordance with Article 10 of the Windsor Framework; subsidies to which Article 138 of the EU withdrawal agreement applies; and tax measures under section 49 of the Subsidy Control Act (a taxation subsidy permissible under Article 413 of the Trade and Cooperation Agreement).

### Example

A cultural heritage facility receives subsidy awards from multiple public authorities at the local and national level as MFA. The local authority provides £75,000. The Department for Digital, Culture, Media and Sport (DCMS) also provides a £150,000 subsidy award. Only the DCMS subsidy award must be uploaded. Even though the project or beneficiary receives £225,000, the local authority award falls under an exemption (as it is below the £100,000 threshold for MFA).

- 12.22 All subsidy awards, with the exception of subsidy awards in the form of tax measures, must be uploaded within three calendar months of the confirmation of the decision to give the subsidy award. For more information on determining this date, please see [Chapter 2](#).
- 12.23 A database entry may be made following the confirmation of the decision to give the subsidy award but before the subsidy award is paid out.

### Subsidy awards in the form of tax measures

- 12.24 Where a subsidy award is given in the form of a tax measure, the upload deadline is one year beginning with the date of the tax declaration. In most cases, a tax declaration will be the tax return. As stated above, all schemes must be uploaded within three calendar months, including tax subsidy schemes. Tax subsidy awards, if given under a scheme, will then be linked on the database to the tax subsidy scheme.

### Information to be uploaded

- 12.25 The information that must be uploaded is contained in the Subsidy Database Regulations<sup>95</sup> which outline both the information requirements which apply to schemes and to awards, including standalone awards. The Subsidy Database Regulations also state what must be uploaded in relation to Minimal Financial Assistance (MFA) and Services of Public Economic Interest Assistance (SPEIA) award uploads, which have fewer information requirements (see section on [MFA and SPEIA](#) below).
- 12.26 The UK has international subsidy reporting obligations, which are incorporated into the Subsidy Database Regulations. This guidance outlines some of the information requirements, including those international obligations.
- 12.27 Where subsidy information must be uploaded but the database does not have a dedicated text box or drop-down menu, public authorities can put this information in the 'description of a subsidy' free text field. In addition, a public authority may provide a link to a website with further information. However, all the information requirements outlined

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<sup>95</sup> <https://www.legislation.gov.uk/ukxi/2022/1153/made?view=plain>

in the Subsidy Database Regulations must be put on the subsidy database in the first instance. The provision of a link to a website is optional.<sup>96</sup>

12.28 MFA and SPEI subsidies above £100,000 must be uploaded to the database<sup>97</sup> and are subject to the requirements set out in the paragraphs below.

12.29 Subsidy awards may be uploaded to the database either individually or in bulk. The database contains a template which will allow a bulk upload of subsidies which have been given under a scheme. This template can be downloaded in an excel file. When the public authority has filled the template with multiple subsidy awards, that template can be uploaded to the database. The database contains a user guide on how to upload a bulk award template. Public authorities should regularly check the template to ensure they are using the most up to date version of the template before making a bulk upload.

### Subsidy Schemes

12.30 Subsidy scheme entries must include the following information:

- **The name of the scheme.**
- **The name of the public authority** that has made the subsidy scheme.
- Whether the scheme is **a scheme of interest or of particular interest** (SSoI or SSoPI). See [Chapter 10](#) for the relevant definitions.
- **The specific policy objective.** This should reflect the specific policy objective or objectives in principle A of the subsidy control principles.
- **A description of the subsidy scheme.** This appears on the database as a free text box. This description must cover at a minimum:
  - **The terms and conditions for eligibility** to receive a subsidy under the scheme. An explanation of what kind of eligibility criteria the scheme uses to determine whether a beneficiary may receive a subsidy under the particular scheme.
  - **Time limits or other conditions** attached to the use of the subsidy scheme.
  - **The categories of beneficiary eligible** to receive subsidies under the scheme. A public authority will need to explain what categories of beneficiaries are eligible for subsidy awards under the scheme.

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<sup>96</sup> Unlike conventional standalone subsidy awards, standalone SPEI subsidies do not have to be uploaded to the database if they do not exceed £100,000.

<sup>97</sup> This does not mean that a public authority must provide legally privileged advice it has received on the lawfulness of the subsidy.

- **The basis for calculating the subsidy.** A public authority will need to show how it has calculated the subsidy amount that can be given under the scheme, including any relevant conditions relating to the proportion of the project that can be funded by subsidy (as opposed to the beneficiary itself or private investors).
- **The form the subsidy** may take under the scheme. Schemes may allow for one or multiple forms of subsidy, for example subsidy in the form of grants, subsidised loans or equity.
- **Whether the scheme relates to goods or services**, or both.
- **Location(s)** - the geographic location(s) where the subsidised economic activity takes place such as the North East or if it is applicable the whole of the UK.
- **CMA referrals** – the description entry should state whether any of the following circumstances applies:
  - The Secretary of State has issued a **call-in direction under section 55** of the Act directing that a report is to be requested from the Competition and Market Authority (CMA).
  - The Secretary of State has issued a **direction under section 64(3)** of the Act that mandatory referral requirements to the CMA do not apply, or cease to apply, to the scheme.
  - A **report has or has not been published by the CMA** in relation to the scheme, following a mandatory or voluntary referral.
  - The Secretary of State has made a **post-award referral** in relation to the scheme under section 60(1) of the Act and whether a **report has been published by the CMA** following this and the date of publication.
- **Whether one of a number of sections of the Act apply** (see regulation section 3(x) of the Subsidy Database Regulations). If none of the following sections apply, the entry does not need to include a reference to any of these parts of the Act. The relevant sections of the Act which may be applicable are:
  - Section 13 (energy and environment principles)
  - Section 18 (relocation of activities)
  - Section 19 (rescuing)

- Section 20 (restructuring)
  - Section 21 (restructuring deposit takers or insurance companies)
  - Section 22 (liquidating deposit takers or insurance companies)
  - Section 23 (liquidating provision for deposit takers or insurance companies)
  - Section 27 (subsidies for insurers that provide export credit insurance)
  - Section 28 (subsidies for air carriers for the operation of routes)
  - Section 29 (services of public economic interest)
  - Section 36 (minimal financial assistance)
  - Section 38 (services of public economic interest assistance)
  - Section 43 (natural disasters and other exceptional circumstances)
  - Section 44 (national or global economic emergencies)
  - Section 47 (financial stability) (so far as the Treasury directs under section 47 of the Act that the requirements as to transparency in Chapter 3 of Part 2 of the Act apply to the subsidy or scheme)
  - Section 48(1)(a) (legacy subsidies)
  - Section 50 (large cross-border or international cooperation projects)
- **Legal basis** – an entry will need to include the legal basis for the subsidy scheme.<sup>98</sup> For example, some subsidy schemes have a legal basis in an Act of Parliament such as the Industrial Development Act 1982.
  - **Budget** – public authorities will need to show the overall budget for the entire scheme. Where an accurate figure for the budget is not known at the point at which the scheme is made, the public authority must give a reasonable estimate of the maximum that could possibly be awarded under the scheme.<sup>99</sup> If a public authority uses an estimate for the scheme budget, the public authority should note this in the scheme description. The

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<sup>98</sup> The maximum budget estimate should be robust as possible and on the basis of the best available information at the time of the scheme being uploaded, employing appropriate assumptions and judgement in accordance with generally accepted accounting practice.

<sup>99</sup> The estimate should be robust as possible and on the basis of the best available information at the time of the scheme being uploaded, employing appropriate assumptions and judgement in accordance with generally accepted accounting practice.

scheme budget estimate does not need to be revised upon its conclusion, however the total amount paid out under it cannot exceed this amount.

- **The maximum amount that can be given under the scheme** – the maximum individual subsidy amount that may be given under the scheme can be given as a description of the maximum costs or revenue, for instance 10% of the beneficiary's eligible project costs.
- **Date of the confirmation** of the decision to make the scheme. A public authority will need to indicate the date it confirmed the decision to make the scheme. This is separate from the subsidy scheme publication date, which is added by the database automatically.
- **Duration of the subsidy scheme**. The database enables a public authority to indicate the start and end date for a scheme. The database allows public authorities to leave the end date blank thereby indicating that the scheme does not have an end date; however, this will make it challenging to demonstrate consistency with the subsidy control principles (see Chapter 3).
- **Sectors** – the database includes a checkbox of sectors, of which multiple can be selected. Public authorities must indicate which sectors are eligible for subsidies under the scheme
- **Purpose of the subsidy scheme** – the database includes a multi-select option with different categories that can be selected.

12.31 The database includes the ability for a public authority to provide a link to a website. This website could be the landing page for the scheme in question or any other public announcements in connection to the scheme. The provision of a link to a website is optional for schemes or subsidy awards. A public authority should ensure the URL link is a permalink

### Subsidy Awards

12.32 Subsidy award entries, whether given under a scheme or standalone, must include the following information:

- Whether the subsidy is a **subsidy of interest or of particular interest (SSoI or SSoPI)**.
- **Policy objective(s)** of the subsidy award as reflected in principle A of the subsidy control principles.
- **A description of the subsidy**. This appears on the database as a free text box. This description must cover at a minimum the following information:
  - **The legal basis** of the subsidy award, for example the Industrial Development Act 1982.

- **Duration of the subsidy**, and a summary of any other time limits attached to the use of the subsidy.
- **CMA referrals** – the description should state whether any of the following circumstances applies:
  - The Secretary of State has issued a **call-in direction under section 55** of the Act directing that a report is to be requested from the Competition and Market Authority (CMA).
  - The Secretary of State has issued a **direction under section 64(3)** of the Act that mandatory referral requirements to the CMA do not apply, or cease to apply, to the subsidy.
  - **A report has or has not been published by the CMA** in relation to the subsidy, following a mandatory or voluntary referral.
  - The Secretary of State has made a **post-award referral** in relation to the subsidy under section 60(1) of the Act and whether a **report has been published by the CMA** following this and the date of publication.
- **Whether one of a number of sections of the Act apply** (see regulation section 3(x) of the Subsidy Database Regulations). If none of the following sections apply, the description entry does not need to include a reference to any of these parts of the Act. The relevant sections of the Act which may be applicable are:
  - Section 13 (energy and environment principles)
  - Section 18 (relocation of activities)
  - Section 19 (rescuing)
  - Section 20 (restructuring)
  - Section 21 (restructuring deposit takers or insurance companies)
  - Section 22 (liquidating deposit takers or insurance companies)
  - Section 23 (liquidating provision for deposit takers or insurance companies)
  - Section 27 (subsidies for insurers that provide export credit insurance)
  - Section 28 (subsidies for air carriers for the operation of routes)
  - Section 29 (services of public economic interest)
  - Section 36 (minimal financial assistance)

- Section 38 (services of public economic interest assistance)
  - Section 43 (natural disasters and other exceptional circumstances)
  - Section 44 (national or global economic emergencies)
  - Section 47 (financial stability) (so far as the Treasury directs under section 47 of the Act that the requirements as to transparency in Chapter 3 of Part 2 of the Act apply to the subsidy or scheme)
  - Section 48(1)(a) (legacy subsidies)
  - Section 50 (large cross-border or international cooperation projects)
- **Name of the scheme** the subsidy is given under (if applicable). This will have been automatically applied by the database provided that the award has been uploaded to the correct subsidy. However, a public authority should check the public side of the database to ensure that the subsidy award is showing the correct subsidy scheme information.
  - Whether the subsidy is for **Services of Public Economic Interest (SPEI)** (see [Chapter 6](#) for the relevant definition)
  - **Purpose of the subsidy**. A subsidy award entry will need to have an associated subsidy purpose which can be chosen from a dropdown menu on the database.
  - **Form of the subsidy award**. For example, whether the subsidy award is a grant, loan, use of facilities, or other form of subsidy.
  - **The amount of the subsidy award**. Where an accurate figure for a subsidy award is not known at the point at which the subsidy is awarded, the public authority should give a reasonable estimate of its maximum value.<sup>100</sup> However, unlike a subsidy scheme budget, the estimates for subsidy awards will need to be updated when the precise figure is known. If the subsidy award estimate is unknown until the end of the subsidy award period, because it is a performance related subsidy award for example, the award estimate should be updated when the final amount is calculated or paid out.<sup>101,102</sup> For

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<sup>100</sup> The estimate should be robust as possible and on the basis of the best available information at the time of the scheme being uploaded, employing appropriate assumptions and judgement in accordance with generally accepted accounting practice.

<sup>101</sup> For subsidies paid out in tranches or instalments (for instance annually), each payment is considered a drawdown of the subsidy. As such, individual payments under the subsidy uploaded to the database do not need to be logged on the database themselves. Instead, the estimate of the subsidy award amount only needs updated when the total value of the subsidy is known. The only exception to this is for tax relief, where each remission is considered to be an individual subsidy as a legally binding commitment has not been entered into in advance.

<sup>102</sup> To avoid any confusion, the value of indemnities and guarantees (or any other type of subsidy that involves a conditional trigger) is calculated - in line with the Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 and associated guidance – based on the information available at the time the indemnity or guarantee is given, not at the time if and when any payment is triggered.

subsidies given in the form of tax measures, the award amount can be provided in a range.

- **Name of the public authority** giving the subsidy. This may be different from the name of the public authority which made the scheme.
- **Date of the confirmation** of the decision to give the subsidy award. This is separate from the uploaded date of confirmation of the decision to make a scheme.
- **Name of the enterprise** receiving the subsidy. The database refers to this as “the recipient organisation”.
- **Size of the beneficiary.** The database provides an option of business size based on the number of employees.
- **A unique identifier** for the beneficiary. This could be the charity number, VAT number, or Company Registration Number (Companies House number) (where applicable).
- **Whether the subsidy award is for goods, services** or both. The database will allow the public authority to tick whichever applies.
- **Location of the economic activity** being subsidised. The database provides a dropdown list of UK regions.
- **Sector** to which the subsidy award is given. The database provides a dropdown list of 21 economic sectors.

### Minimal Financial Assistance (MFA) and SPEI Assistance (SPEIA)

12.33 Although the subsidy control principles do not apply to subsidies given as MFA and SPEIA, the £100,000 transparency threshold still applies per MFA or SPEIA award. Therefore, any awards of MFA or SPEIA which exceed £100,000 must be uploaded to the database.

12.34 As is outlined in the Subsidy Database Regulations, MFA and SPEIA awards do not face the same reporting obligations as conventional subsidy awards and schemes. Instead, MFA and SPEI Assistance transparency need only include the following:

- name of the public authority providing MFA or SPEI Assistance
- amount of the award
- name of the beneficiary of the award
- unique identifier for the beneficiary, such as charity number, VAT number or company registration number (where applicable).
- date of confirmation of decision to give the award (separate from the upload date, which is automatically generated by the database)

12.35 The database allows for the bulk uploading of MFA and SPEIA awards in the same way it does for bulk uploads of subsidy awards under a published scheme. To facilitate this bulk uploading, a public authority will be able to upload an 'MFA and SPEIA grouping' which will provide a unique reference number, like an SC number for subsidy schemes. For example, a grouping for both MFA and SPEIA could be 'MFA0001'. Although this will not be a subsidy scheme, it will act in the same way as a scheme for database functionality purposes, allowing a public authority to upload MFA and SPEIA awards in bulk under a single grouping.

### Streamlined routes and primary public authority schemes

12.36 Streamlined routes (referred to as 'streamlined subsidy schemes' in the Act) are a particular type of subsidy scheme, made by government for the benefit of public authorities. Transparency requirements apply to streamlined routes and they therefore appear on the database alongside other subsidy schemes and have associated subsidy awards.

12.37 As set out in Chapter 2, primary public authorities can also create schemes for the use of other public authorities.

12.38 Where a public authority chooses to use a streamlined route or primary public authority scheme to give multiple subsidy awards, it may choose to upload a grouping or use the bulk upload template. These awards will be associated with a given streamlined route or a primary public authority scheme and will enable a public authority to group subsidy awards together for administrative and transparency purposes. This is not a statutory requirement of the Subsidy Control Act but it will be clearer for the public and more efficient for public authorities to upload a streamlined route programme if multiple subsidy awards are given by one public authority under a streamlined route or primary public authority scheme.

12.39 A streamlined route or primary public authority scheme grouping should include the following information:

- name of the streamlined route or primary public authority scheme grouping
- name of the public authority granting subsidies under the streamlined route or primary public authority scheme grouping
- name of the streamlined route or primary public authority scheme that the grouping is under
- which category or categories of the streamlined route that the programme uses for delivering subsidies (as applicable)
- the budget of the grouping of subsidy awards using the streamlined route or primary public authority scheme

12.40 Subsidy awards given under streamlined routes or primary public authority schemes must be uploaded to the database if the award exceeds £100,000, as with all other

schemes. The existence of the groupings means that public authorities can bulk upload subsidy awards in the same way awards can be bulk uploaded to other schemes.

### Maintaining the database entry

- 12.41 Public authorities are responsible for the accuracy of the information they are required to upload. Inaccurate entries may mean the duty to upload subsidy information has not been satisfied.
- 12.42 Some changes may only be made by DBT, such as modifications or deletion of subsidy schemes. If a public authority needs to update the budget estimate for a subsidy scheme, the public authority will need to contact DBT at [subsidydatabase@businessandtrade.gov.uk](mailto:subsidydatabase@businessandtrade.gov.uk) to make the request.
- 12.43 Subsidy information must be maintained on the database for at least six years, starting with the date of upload. If the duration of the subsidy scheme is longer than six years, the duty to maintain the entry continues for as long as the duration of the subsidy scheme; this means that public authorities with long-running schemes should check the accuracy of the information on the database as the scheme comes to an end. The subsidy database will automatically generate the upload date which determines the start date of the six-year period. Public authorities are required to maintain their own subsidy records for six years.
- 12.44 Public authorities should regularly check that the information they have uploaded is accurate. This includes checking that the links provided continue to take the user to the appropriate information uploaded outside the database, where this is applicable.
- 12.45 A beneficiary of a subsidy award may also wish to check the accuracy of a database entry which relates to them. If the beneficiary believes that the database entry is inaccurate it may wish to contact the responsible public authority to correct the information. DBT monitors the database and may contact public authorities where subsidy information appears to be misleading, inaccurate or out of date.

### Modifications to subsidies

- 12.46 Schemes and standalone awards may be modified. Public authorities must ensure permitted modifications are uploaded to the database as required (see [Chapter 9](#)).<sup>103</sup> A public authority should contact the DBT subsidy control team on [subsidydatabase@businessandtrade.gov.uk](mailto:subsidydatabase@businessandtrade.gov.uk) if it wishes to make a permitted modification and explain exactly what changes it wishes to make. DBT will then make the permitted modification to the entry. If the changes made go beyond the permitted

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<sup>103</sup> Some administrative modifications may not change any of the required information on the database, in which case there is no need to amend the database.

modifications<sup>104</sup> and therefore constitute a new subsidy or scheme, the public authority must deactivate the subsidy entry and upload a new subsidy scheme or award.

- 12.47 If the permitted modification increases the value of an MFA subsidy, SPEIA or SPEI, or a subsidy given under a scheme, from below £100,000 (i.e., exempt from transparency requirements) to above £100,000, it must be uploaded to the database.
- 12.48 The deadline for uploading modifications mirrors the original upload deadlines. That is, within three calendar months of the date of modification for both schemes and tax schemes. The deadline for modifications to tax awards is 12 months from the date of modification.
- 12.49 Certain permitted modifications to schemes and standalone awards must be uploaded to the database. Please refer to the section on permitted modifications for details on when and how a modification must be uploaded to the database.
- 12.50 Modifications in relation to legacy subsidies relating to agriculture, fish and fish products, or the audio-visual sector do not need to be uploaded to the database.

### Record keeping

- 12.51 While the Act makes no specific provision about record keeping, public authorities and beneficiaries should keep their own subsidy records for a number of years, taking into account the requirement to keep the subsidy database up to date for at least six years, and the five-yearly reporting cycle for the SAU's monitoring report, for which the SAU may seek information on specific subsidies and schemes (see [Chapter 11](#)).

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<sup>104</sup> Subsidy schemes can be deactivated. This means that the subsidy scheme will remain on the database, but new subsidy can no longer be added to the subsidy scheme.

## Chapter 13: Challenges and misuse of subsidies

### Overview of the chapter

- 13.1 The Competition Appeal Tribunal (the Tribunal) has been given the jurisdiction to review subsidy control decisions.
- 13.2 This chapter explains which subsidy decisions can be reviewed, who can request the review of a subsidy decision, and when an application for review may be made. It also explains the pre-action information request process and suggests steps that public authorities may wish to take so they can respond to those requests quickly.
- 13.3 The purpose of this chapter is to provide guidance on the practical application of the relevant requirements, prohibitions and exemptions contained in the Act in terms of how these relate to enforcement.
- 13.4 This chapter also covers when a public authority may recover a subsidy from a beneficiary – to the extent that the subsidy has been used for something other than its intended purpose.

### Reviews in the Competition Appeal Tribunal

#### Reviewable subsidy decisions

- 13.5 Interested parties may apply to the Tribunal for a review of the following decisions (reviewable subsidy decisions):
- to give a subsidy (a standalone subsidy not given out under a scheme or streamlined route)
  - to make a subsidy scheme, including a streamlined route, for giving out multiple subsidies of a similar type
- 13.6 The Tribunal can review whether the public authority carried out its duties that are specific to the subsidy control regime as set out in Chapters 1 and 2 of Part 2 of the Act (the substantive subsidy control requirements): most importantly, to consider the relevant subsidy control principles, and to be of the view that the subsidy was consistent with those principles before deciding to give the subsidy. (For energy and environmental

subsidies, the principles in Schedule 2 of the Act apply in addition to those in Schedule 1 (see [Chapter 3](#) and [Chapter 4](#).)

- 13.7 The Tribunal may also determine whether the subsidy contravened any of the prohibitions set out in [Chapter 5](#) of this guidance.
- 13.8 The Tribunal can also review these subsidy decisions on general public law grounds.<sup>105</sup>
- 13.9 In addition, the Tribunal may determine if a measure was subject to EU State aid rules by virtue of Article 10 of the Windsor Framework, where this was a relevant grounds to a challenge of a subsidy decision. As such, the Tribunal could decide if such a measure was in breach of EU State aid rules if, for example, it had not been approved by the European Commission before being granted.
- 13.10 MFA, SPEIA and other types of subsidies that are not subject to the majority of the subsidy control requirements (see [Chapter 6](#) and [Chapter 7](#)) can also be reviewed by the Tribunal on general public law grounds. They cannot be reviewed by the Tribunal on grounds related to breach of the subsidy control requirements where they are not subject to these requirements.

### Modified subsidies and subsidy schemes

- 13.11 Where an existing subsidy or scheme has been changed, it should be treated in the same way as a new subsidy or scheme except where the change is a permitted modification (see [Chapter 9](#)). Where it is considered a new subsidy or scheme, it will need to apply the subsidy control requirements and as such could be subject to an application for review like any other subsidy decision.

### The review of subsidies given under subsidy schemes or streamlined routes

- 13.12 Subsidy schemes, including streamlined routes, allow public authorities to give multiple subsidies that meet specified criteria without doing an assessment against the subsidy control principles and prohibitions for each subsidy. This is because an assessment will have been carried out in relation to the scheme or streamlined route, and the eligibility criteria for the scheme or route guarantee that a subsidy that meets those criteria will comply with the subsidy control principles and prohibitions (see Chapters 3 and 8). As a result, it is only the scheme itself that can be challenged. Subsidies given under a scheme or a streamlined route are not subject to review by the Tribunal.
- 13.13 However, this protection for subsidies given through schemes, including streamlined routes, only applies where a subsidy genuinely falls within the terms of the scheme or route. If a subsidy does not really fall under the scheme or route, then the public authority should have treated it as an individual subsidy, and therefore conducted an

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<sup>105</sup> A challenge may be brought on general public law grounds on the basis that the decision was, for example, not within the public authority's powers, irrational, biased or otherwise unlawful on any other general public law ground.

assessment against the relevant principles and prohibitions. The subsidy could therefore be challenged in the Tribunal on this basis.

### Example

A subsidy given to a motorcycle manufacturer is wrongly claimed to fall under the protection of a scheme that is directed at bicycle manufacturers. An interested party could ask the Tribunal to determine whether the subsidy should have enjoyed the protection of the scheme or whether it should have been treated as an individual subsidy.

If the Tribunal decides it should have been treated as an individual subsidy, the Tribunal could then consider whether the public authority made an assessment against the principles, prohibitions and other subsidy control requirements. If the Tribunal finds that the relevant subsidy control requirements have not been met, then it will be able to order the same remedies as in the review of any individual subsidy.

- 13.14 As with all decisions of a public nature, a person who is aggrieved by the giving of a subsidy under a scheme may also be able to request a review of the decision to give such a subsidy on general public law grounds. The Act specifies that subsidies given under a scheme cannot be reviewed in the Tribunal, so such a challenge would need to be in the High Court or Court of Session.

### Nature of the review

- 13.15 When reviewing subsidy decisions, the Tribunal will apply the principles of judicial review. This means that the Tribunal will not determine whether the decision was correct, but whether it was lawful. For example, whether it was made within the authority's powers, was fair and reasonable, and to assess whether it was consistent with the relevant principles and requirements of the Act. The Tribunal will not review the merits or effectiveness of a subsidy or subsidy scheme.
- 13.16 If the Tribunal finds that a subsidy decision has not been given in compliance with the requirements in the Act, it may order remedies. In England and Wales and Northern Ireland, these are very similar to those available to the High Court on an application for judicial review, with the addition of recovery orders, which are specific to subsidy control. It is entirely at the discretion of the Tribunal whether it orders remedies and if it does, which remedies it awards. The following remedies are available in cases in England and Wales and Northern Ireland (meaning the public authority that has made the subsidy decision is located in these locations):
- Mandatory order (or 'order of mandamus' in Northern Ireland): to require the relevant public authority to perform its legal duties.

- Prohibiting order (or ‘order of prohibition’ in Northern Ireland): to prohibit a public authority from carrying out an unlawful act. This might prevent a public authority from giving a particular subsidy, or further subsidies under a scheme.
- Quashing order (or ‘order of certiorari’ in Northern Ireland): to set aside an unlawful decision and deprive it of any legal effect. This could be used to set aside an unlawful subsidy decision and may require the public authority to reconsider and re-make the decision.
- Declaration: the Tribunal could make a declaration to clarify a principle of law that was at issue in the case.
- Injunction: an order directing the public authority to do or refrain from doing a specified act and may be done on an interim basis. For example, the Tribunal may order a public authority to refrain from giving a subsidy until it has completed its review of the subsidy decision.
- Recovery: an order directing the public authority to take the subsidy back from the beneficiary. The order may specify a timeframe for the recovery and may apply to some or all of the amount of a subsidy or some or all subsidies given under a scheme. Recovery may be ordered where there has been a breach of the substantive subsidy control requirements. It is not available in relation to a challenge on general public law grounds.

13.17 In cases arising under the law of England and Wales, the Tribunal must, however, refuse to grant relief if it appears highly likely that the outcome for the interested party would not have been substantially different if the conduct complained of had not occurred. The Tribunal may disregard this requirement if it considers it is appropriate to do so for reasons of exceptional public interest.

13.18 When it is reviewing a case in Scotland, meaning the public authority is located in Scotland, the Tribunal has the same powers, and will be required to apply the same principles as the Court of Session would apply in an application to the supervisory jurisdiction of that Court. The Tribunal can grant forms of relief equivalent to those available to the Court of Session in those cases, as listed below.<sup>106</sup> In addition, the Tribunal can order the recovery of a subsidy.

- Reduction – an order that quashes a decision made by a public authority and may require the public authority to re-consider the decision.
- Declarator – a declaration by the Tribunal clarifying a principle of law that was at issue in the case.
- Suspension – an order for suspension stops an act that is being carried out;
- Interdict – an order which prevents a future act from being carried out or prevents further continuation of an act.
- Implement – an order requiring the public authority to perform a specified act, for example an order requiring the public authority to perform its legal duties.

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<sup>106</sup> See Rule 58.13(3) of the Rules of the Court of Session 1994.

- Restitution and damages – damages may be awarded for loss suffered as a result of an unlawful act or omission by a public authority.
- Recovery – an order directing the public authority to take the subsidy back from the beneficiary. The order may specify a timeframe for the recovery and may apply to some or all of the amount of a subsidy or some or all subsidies given under a scheme. As set out in 13.16, above, this is only available where there has been a breach of the substantive subsidy control requirements, not in a challenge on general public law grounds.

### Appeals

13.19 A decision of the Tribunal may be appealed on a point of law. This appeal will be heard in the Court of Appeal in England and Wales or Northern Ireland, or the Court of Session in Scotland. To seek an appeal, the appellant must get permission from either the Tribunal or the appellate court (namely, the Court of Appeal or the Court of Session).

### Who can request the review of a subsidy decision

13.20 An ‘interested party’ can ask the Tribunal to review a subsidy decision – that is, a public authority’s decision to give a subsidy or to make a subsidy scheme. An interested party is anyone whose interests may be affected by the giving of the subsidy or making of the scheme. The Tribunal has discretion to decide whose interests may be affected by a subsidy or scheme and therefore who can seek a review of the subsidy decision.

13.21 The subsidy control regime regulates the giving of money or other benefits with a financial value, and the regime is intended to avoid excessive distortions of competition. As such, interested parties will usually be those who are likely to be affected by the subsidy in a financial way, rather than those with a general interest in the subsidy.

13.22 An interested party would most typically be a competitor of the person that receives the subsidy (the beneficiary). It could also be a trade association active in the relevant sector and that represents the competitor or competitors of the beneficiary.

13.23 Local administrations and the devolved governments may also be considered interested parties in certain circumstances where the subsidy or scheme may adversely affect the interests of people in the areas in which they exercise their responsibilities. For example, where the subsidy may have a material impact on investment in the area in which they exercise their responsibility.

13.24 The Secretary of State will always be considered an interested party. This is a result of their responsibility to ensure the good operation of the subsidy control regime in the UK, and for the UK’s compliance with its international obligations on subsidy control. The Secretary of State may therefore ask the Tribunal to review a subsidy if they consider that the subsidy poses a significant threat to competition and investment within the UK,

or that it may not be consistent with the UK's commitments under the World Trade Organization agreements or free trade agreements.

- 13.25 To apply for the review of a subsidy or to intervene in a case, an interested party should set out a 'notice of appeal' (for the review of the subsidy decision), or request for permission to intervene, and send this to the Registrar of the Competition Appeal Tribunal. An application to review a subsidy decision does not have the effect of suspending that decision unless the Tribunal directs so.
- 13.26 The Competition Appeal Tribunal's 'Guide to proceedings 2015' sets out the requirements for a notice of appeal at paragraphs 4.25 onwards.<sup>107</sup>

### Time limits for requesting a review

- 13.27 As set out in Chapter 12, the public authority must upload the information required by the Subsidy Database Regulations to the database within three calendar months of the confirmation of the decision to give the subsidy or make the scheme, or for a subsidy given as a tax measure, within 12 months of the tax declaration.
- 13.28 Once a reviewable subsidy decision has been uploaded to the database, an interested party generally has one calendar month to apply to the Tribunal for a review of the subsidy or scheme. An interested party does not need to wait for the subsidy or scheme to be uploaded to the database before making an application to the Tribunal.
- 13.29 Where a database entry contains minor errors or omissions, the Tribunal may disregard these for the purposes of establishing the time limits for requesting a review. An error or omission will be considered minor if the Tribunal thinks it had no prejudicial impact on the interested party's ability to assess whether its interests may have been affected by a subsidy and therefore whether it should have made a pre-action information request.
- 13.30 A calendar month runs from the relevant date. Usually this is the date that a complete and accurate entry about the subsidy is uploaded to the database. In some other cases, described below, it may be the date the interested party first knew or ought to have known of the subsidy decision, the date the post-award report is published or the date the public authority gives notice to the interested party that it has provided the information in response to a pre-action information request. For example, if a subsidy is uploaded on 20 July, the application must be submitted by 20 August. Where the time period for submitting an application expires on a Saturday, Sunday or bank holiday, the application will be in time if submitted on the next day that is not a Saturday, Sunday or bank holiday.<sup>108</sup>

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<sup>107</sup> Competition Appeal Tribunal Guide to proceedings 2015: <https://www.catribunal.org.uk/rules-and-guidance>.

<sup>108</sup> For further detail on the procedure for making an application to the Tribunal, see the Competition Appeal Tribunal Rules 2015: <https://www.catribunal.org.uk/rules-and-guidance>.

13.31 The one-month limitation period does not apply in the following circumstances.

- **Reviewable subsidies that do not have to be uploaded to the subsidy database**  
Where a subsidy or scheme can be reviewed by the Tribunal but is not required to be uploaded to the subsidy database, then an interested party may apply for a review within one month of the date they first knew or ought to have known of the subsidy (for example, if the subsidy was publicised on GOV.UK or a local authority's website). This is only relevant to MFA, SPEIA and SPEI subsidies of £100,000 or less, to the extent these are subject to the substantive subsidy control requirements.
- **Applications about a subsidy referred by the Secretary of State**  
When a subsidy or scheme has already been awarded and the Secretary of State has referred that subsidy or scheme to the Subsidy Advice Unit for a post-award report, an interested party may apply for a review of the subsidy or scheme within one month of the publication of the Subsidy Advice Unit's report (see Chapter 10).
- **Applications after a pre-action information request**  
If an interested party has asked a public authority for further information about a subsidy or subsidy scheme under the pre-action information process (see below), that interested party may apply for a review of the subsidy or scheme within one month of the public authority giving written notice that it has provided the information in response to the request. This extension does not apply to other interested parties.
- **Multiple time limits**  
Where a subsidy has been referred to the Subsidy Advice Unit for a post-award report and has also been subject to a pre-action information request, the interested party that made the information request will be able to make an application before the end of the later of the two time limits.
- **Inaccurate, absent or incomplete uploads to the subsidy database**  
Where an upload to the transparency database is required, the one-month time limit only begins after these transparency requirements have been properly fulfilled. If the information uploaded to the database about a subsidy or scheme is inaccurate or incomplete to the extent that the duty to upload the subsidy or scheme to the database has not been fulfilled, then an interested party may be able to request a review of the subsidy or scheme at any time.

For example, this means that if a subsidy is wrongly claimed to come under the protection of a scheme or streamlined route, it may potentially remain open to review for as long as its status is incorrectly recorded on the database and until one month after its status is correctly recorded (unless an extension above applies). However, the Tribunal has discretion to refuse applications where there has been delay without a justified reason.

13.32 In exceptional circumstances, the Tribunal may change any of the time periods set out in this section.

## Pre-action information requests

- 13.33 An interested party (see 13.20, above) can ask the public authority that gave a subsidy or made a subsidy scheme for information about it. This is to help them determine whether the subsidy was given in accordance with the relevant requirements of the Act, and therefore whether to ask the Tribunal to review the subsidy decision.
- 13.34 A pre-action information request (a request) must be made in writing to the public authority, stating that it is being made only for the purpose of deciding whether to apply for a review of a subsidy decision under section 70 of the Act, on the grounds that the decision did not comply with the requirements of Chapters 1 and 2 of Part 2 of the Act.
- 13.35 An interested party can submit a request from the time that a subsidy has been given or a scheme has been made, up until one month after the information about the subsidy or scheme has been uploaded to the subsidy database. Or one month after the interested party first knew or ought to have known of the decision to give the subsidy or make the scheme, where the subsidy or scheme is not required to be uploaded to the database. (This applies to MFA, SPEIA and SPEI subsidies that are of £100,000 or less, to the extent these are subject to the substantive subsidy control requirements.)
- 13.36 For example, if a subsidy is given on 22 March and the upload to the subsidy database done on 15 May, an interested party could make a request at any time from 22 March up until 15 June, one month after the transparency upload.
- 13.37 A public authority must reply to a request in writing within 28 calendar days. The reply must provide such information as would enable or assist in, the making of a determination as to whether the subsidy was given, or the scheme made in accordance with the requirements of Chapters 1 and 2 of Part 2 of the Act. That is, in accordance with the public authority's duty to consider the principles, to only give the subsidy or make the scheme if it is of the view that this will be consistent with the principles, and to be compliant with the prohibitions and other specific requirements in Chapter 2 of Part 2. In doing so, the public authority will confirm to the interested party that it has provided the information requested.
- 13.38 If, having received this information, the interested party wants the Tribunal to review the subsidy decision, then they must apply for a review within one month of receiving notice from the public authority that it has provided information in response to the request.
- 13.39 In providing information in response to a request, a public authority may impose some proportionate restrictions on the information provided. This is to protect commercially sensitive information, confidential information, information subject to legal privilege, and information that it would be contrary to the public interest to disclose.
- 13.40 In turn, the interested party must only use the information for the purposes of understanding whether the subsidy was given, or the scheme was made, in accordance

with the requirements of the Act, and in accordance with any specific restrictions the public authority may impose.

### Responding to a pre-action information request

- 13.41 For a public authority (and for the beneficiary of a subsidy), the response to a pre-action information request (PAIR) is an important opportunity to demonstrate that a subsidy was given in compliance with the substantive subsidy control requirements.
- 13.42 It is important to put in place proportionate restrictions to protect information relating to the beneficiary that is commercially sensitive or confidential. However, a response that is excessively redacted for these purposes could be counterproductive. It will create suspicion and could lead to an interested party requesting an unnecessary review of a compliant subsidy decision.
- 13.43 The proportionality of a restriction should be assessed by balancing the risks to the beneficiary of disclosing the information to the interested party against the public authority's duty to provide sufficient information to enable or help the interested party to determine whether the subsidy was given in compliance with the requirements of the Act or not.
- 13.44 Where public authorities impose restrictions on the information that is disclosed, they should therefore try to withhold as little information as possible and explain to the interested party the nature of the information that is being withheld and the reason for withholding it. As long as it does not defeat the purpose of withholding the original information, a public authority may wish to give a summary of the information that is withheld.
- 13.45 A prompt and complete reply to a pre-action information request may help to avoid the review of a subsidy and minimise uncertainty for beneficiaries. Public authorities and beneficiaries may wish to consider – before a subsidy is given – what information they would need to disclose to give a useful response to a pre-action information request. The degree of consideration should of course depend on the size and nature of the subsidy. In some instances, public authorities may want to stipulate in any agreements relating to the subsidy that certain information can be disclosed in response to a request.

### Misuse of subsidies

- 13.46 A public authority may recover a subsidy from the beneficiary to the extent that the subsidy has been used for a purpose other than the purpose for which it was intended. A public authority's right to recover a misused subsidy is enforceable as if it were created by contract between the public authority and the beneficiary.
- 13.47 The right to recover a misused subsidy exists without prejudice to any other rights that a public authority may have to recover the subsidy. For example, claims in restitution or under a contract with the beneficiary. Indeed, it is recommended that public authorities

make the intended use of a subsidy clear in the terms of any agreement related to the subsidy, and the award of the subsidy conditional on the beneficiary using the support for that purpose. It is also recommended that any provisions in agreements relating to the subsidy that allow the public authority to seek recovery also make provision for interest to be added on a compound basis to reflect economic benefit the beneficiary received for which it was not entitled.

- 13.48 The ability to recover misused subsidies does not imply that public authorities should always devote substantial effort to monitoring the use of subsidies. It may be appropriate to put in place some monitoring process, but this should be done on the basis of the risk of negative effects and harmful distortions that might be presented by a subsidy being misused. For example, if a subsidy is particularly large or is in a sensitive sector, then the public authority may choose to put in place some type of regular monitoring arrangements. (See also [Chapter 3](#) for more detail on performance criteria and monitoring and evaluation as part of subsidy design.)
- 13.49 Where a subsidy has been misused, public authorities have discretion over whether to recover the subsidy as there may be occasions when it is not appropriate to do so. For example, if the degree of misuse is very small and the subsidy still serves the original policy intent; if the public authority considers that the subsidy is still compliant with the subsidy control principles, prohibitions and other requirements; and that recovery could cause significant harm to the beneficiary, it may well be inappropriate to recover.
- 13.50 In deciding whether to recover a misused subsidy, the public authority should primarily consider the compliance of the subsidy's new purpose with the subsidy control principles, prohibitions and other requirements. However, it may still choose to recover the subsidy even if the subsidy's new purpose does comply with the subsidy control principles, prohibitions and other requirements. A public authority should also, as usual, have regard to its other responsibilities, such as those set out in 'Managing Public Money', which may lead it to recover a subsidy even in circumstances where this would cause harm to the beneficiary.
- 13.51 In the unlikely event that a public authority becomes aware of a misuse and it is not appropriate to recover a misused subsidy, the public authority will need to treat this modification as a new subsidy and re-apply the subsidy control requirements accordingly, such as an assessment against the principles and making a new upload to the subsidy database detailing the actual use of the subsidy.<sup>109</sup> As with other new subsidies, an interested party may ask the Tribunal to review the subsidy up until one month after the upload date (with the exceptions detailed above).

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<sup>109</sup> Alternatively, if the extent of the change of use is very minor, it may be appropriate to treat the change as a permitted administrative modification – see [Chapter 9](#). In this case, there is no requirement to reconsider the substantive subsidy control requirements, although the database entry must be updated.

## Chapter 14: Subsidies in primary legislation

### Overview

- 14.1 The Subsidy Control Act also sets out rules for subsidies given and schemes made in primary legislation – that is to say, where the financial assistance is provided for directly by the UK Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. In practice, subsidies and schemes provided for by legislation tend to be tax reliefs or exemptions. These subsidies and schemes are covered by the provisions set out in Schedule 3 to the Act. In summary, subsidies given and schemes made in devolved primary legislation must comply with the subsidy control rules (with some differences) whereas those given or made in Acts of Parliament (primary legislation made by the UK Parliament) are exempt from most of the requirements in the Act (but not from our international obligations).
- 14.2 These specific rules apply only to subsidies given under a duty imposed by that legislation: it does not include subsidies given under a power in primary legislation. The UK Government or a devolved government will have no discretion over whether to give the subsidy because, the primary legislation will require it to be given (although the government may need to calculate the amount and carry out other administrative processes).

#### Example

A new Industrial Development Act is made by the UK Parliament, including a power which allows the Secretary of State to provide for financial assistance in certain circumstances. Subsidies given and schemes made by the Secretary of State using this power are not covered by the specific rules for subsidies given in primary legislation – because it gives the Secretary of State discretion to act, rather than imposing a duty.

- 14.3 Because of the nature of these subsidies, the concept of the ‘public authority’ is not relevant. Responsibilities of public authorities in the Act fall to two categories of person/body: the ‘promoter’ of the legislation in question, or the ‘appropriate authority’.
- 14.4 The promoter will be:
- in relation to a Bill introduced in Parliament, the Member of Parliament in charge of the Bill, usually the Government Minister

- for the Scottish Parliament, Scottish Ministers or members of the Scottish Parliament in charge of the Bill
  - for the Senedd Cymru, Welsh Ministers or members of the Senedd in charge of the Bill
  - in the Northern Ireland Assembly, the member of the Assembly in charge of the Bill
  - the member of any of the above who tabled or lodged the amendment, if the relevant provision which provides for the subsidy is introduced by an amendment
- 14.5 The second relevant person will be the ‘appropriate authority’, which is the relevant government minister(s) or NI department with responsibilities for administering the subsidy or scheme as provided for in the legislation.
- 14.6 As a general rule, the ‘promoter’ is responsible for the design and assessment before the subsidy is given and as it is set out in the legislation. Once the subsidy is given, the ‘appropriate authority’ is responsible for anything that must take place afterwards (most notably the transparency requirements). Of course, in many cases the promoter and appropriate authority will be one and the same, where the legislation has been proposed by a government minister, and it is then to be administered by a minister.
- 14.7 In many cases, the guidance that applies to subsidies and schemes given by or made by public authorities is directly applicable to subsidies and schemes given in primary legislation, and this chapter makes reference back to those chapters. In reading those chapters, references to subsidies given by a public authority will need to be replaced so that they apply to the promoter of the relevant legislation or the ‘appropriate authority’. Where those other chapters do not apply in full or in the same way, this chapter will make that explicit.
- 14.8 The Act differentiates between subsidies given and schemes made in Acts of Parliament (primary legislation made by the UK Parliament) and those given or made in devolved primary legislation. This chapter will therefore deal with each of those in turn.

## Subsidies given in devolved primary legislation

### Substantive subsidy control requirements

- 14.9 Subsidies given and schemes made in devolved primary legislation are subject to the subsidy control requirements in very similar ways to other subsidies. The definitions of a subsidy apply in a comparable way and the same four limbs of the test setting out the meaning of a subsidy in section 2(1) of the Act should be considered. The government minister, member of the NI Assembly or other promoter must then carry out an assessment of the subsidy or scheme in line with the subsidy control principles (see Chapter 3) and the energy and environment principles as applicable (see Chapter 9). The prohibitions and other requirements and the exemptions also apply (see Chapters 5, 6 and 8).

- 14.10 The exception to this is that the procedural requirements set out for the giving of minimal financial assistance and services of public economic interest assistance in sections 37 and 39 of the Act do not apply to subsidies given in devolved primary legislation. However, authorities are encouraged to consider these procedural requirements as a matter of good practice, in so far as they can be applied.

### Transparency requirements

- 14.11 The ‘appropriate authority’ must ensure that the transparency requirements set out in Chapter 12 are followed with respect to subsidies in primary legislation in the areas for which they are responsible.

### Referral to the Subsidy Advice Unit

- 14.12 There is no mandatory referral to the Subsidy Advice Unit (SAU) of subsidies given in devolved primary legislation. However, the relevant minister, the Northern Ireland Department or (if different) the promoter of the proposed legislation may choose to refer a subsidy or scheme of interest or particular interest to the SAU. As with other subsidies and schemes referred to the SAU on a voluntary basis, the SAU will have a discretion as to whether to accept the referral. The SAU will carry out the review on the same basis as for any other subsidy or scheme. The SAU will consider the assessment of the subsidy made by the promoter of the legislation, in line with the subsidy control requirements set out in the Act. The process followed is therefore the same as that set out in [Chapter 11](#) and the SAU guidance.<sup>110</sup>

### Challenge and enforcement

- 14.13 The challenge and enforcement provisions of the Act (see Chapters 13) apply to subsidies in devolved primary legislation with one key difference. Cases are not heard by the Tribunal, but rather by the general courts: the Court of Session in respect of subsidies given by Acts of the Scottish Parliament; the High Court in England and Wales in respect of subsidies given by an Act or a Measure of Senedd Cymru; and the High Court in Northern Ireland in respect of subsidies given by an Act of the Northern Ireland Assembly.
- 14.14 The general rule that it is the ‘appropriate authority’ (and not the promoter) that takes action after the subsidy is given also applies here. Pre-action information requests are made to the appropriate authority and any recovery orders made by the relevant court should be made to the appropriate authority.

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<sup>112</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

## Subsidies given in Acts of Parliament

### Substantive subsidy control requirements

- 14.15 The substantive subsidy control requirements do not apply to subsidies given or schemes made in Acts of Parliament. This is because of the constitutional principle that Parliament is sovereign and one Act of Parliament cannot bind another. However, the UK's international commitments (including the World Trade Organization Agreement on Subsidies and Countervailing Measures and the UK–EU Trade and Co-operation Agreement) do apply to these subsidies and government departments should have regard to the guidance on the UK's international obligations.<sup>111</sup>
- 14.16 As with subsidies given in devolved primary legislation, the procedural requirements set out for the giving of MFA and SPEIA do not apply to subsidies given in Acts of Parliament. However, authorities are encouraged to consider these procedural requirements as a matter of good practice, in so far as they can be applied.

### Transparency requirements

- 14.17 The transparency requirements in the Act apply to subsidies made in Acts of Parliament. The relevant minister must therefore ensure that the transparency requirements set out in Chapter 12 are followed for subsidies in primary legislation in the areas for which they are responsible, even if the legislation was proposed or amended by another member of Parliament.

### Referral to the SAU

- 14.18 There is no mandatory referral of subsidies given in Acts of Parliament to the SAU – and of course, the Act imposes no obligation on the minister, or the promoter of the legislation to carry out an assessment in line with the requirements of the Act. However, the relevant minister or the promoter may choose to carry out such an assessment and refer to the SAU a subsidy or scheme of interest or particular interest. The SAU will have discretion as to whether to accept the referral and will carry out the review on the same basis as for any other subsidy or scheme (that is, they will consider the government or promoter's assessment of the subsidy in line with the subsidy control requirements set out in the Act). The process followed is therefore the same as that set out in [Chapter 11](#) and the SAU guidance for voluntary referral.<sup>112</sup>

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<sup>111</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>112</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>

## Challenge and enforcement

- 14.19 Subsidies given and schemes made in Acts of Parliament are not subject to challenge in court. (They may nonetheless be subject to challenge under the WTO rules or other international agreements, according to the terms of those agreements.)

## ANNEX 1: Additional guidance for determining whether a financial measure is a subsidy

### Limb A: Financial assistance given, directly or indirectly, by a public authority from public resources

- 15.1 To constitute a subsidy, the granting of financial assistance must be given to an enterprise (whether directly or indirectly)<sup>113</sup> by a public authority from public resources.

#### What is a public authority?

- 15.2 The definition of public authority is wide and captures any person who exercises functions of a public nature,<sup>114</sup> including public authorities at any level of central, devolved, regional or local government and non-governmental bodies that are performing a public function.<sup>115</sup>
- 15.3 Some bodies will exercise a mix of functions of a public and private nature: in these cases, it is important to look at whether the financial assistance comes from public resources to determine whether it meets this limb of the test. A body will not be a public authority if its functions are entirely of a private nature unless the exercise of those functions are attributable to a public authority (see below).

#### When is financial assistance given from public resources?

- 15.4 Only financial assistance granted directly or indirectly through public resources can constitute a subsidy. The concept of public resources should be considered broadly. Resources are considered public where they have come under public control prior to being transferred to the relevant receiving enterprises. It will therefore include the resources of public authorities at any level of central, devolved, regional or local government.
- 15.5 It will also extend to bodies such as publicly or privately owned companies where a public authority has influence over the body and is able to direct the use of such

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<sup>113</sup> Section 2(1)(a) Subsidy Control Act 2022

<sup>114</sup> Section 6(1) Subsidy Control Act 2022

<sup>115</sup> The UK Parliament, the Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly are excluded from the definition of 'public authorities'

resources. In such cases the resources of the body may be considered attributable to public resources.

### Charges to government expenditure

- 15.6 The provision of public resources will not capture situations where, under regulation, money flows directly between private entities, without coming under the control of a public authority. This is because a transfer of resources will not constitute a public resource unless it results in a corresponding charge to government expenditure (or foregoes government revenue that was otherwise due, in the case of a relief/exemption from taxation or another payment). However, a transfer of public resources may exist where resources paid for by private bodies transfer through a public authority or other body that is influenced or controlled by a public authority.

#### Example

Under a regulatory framework, energy licensees are required to pay charges to renewable energy generator businesses.

In this situation, there is no transfer of public resources, as there is no burden (or risk of burden) on public financial resources, rather the burden is on the energy licensees' suppliers' own financial resources even though the charges are mandated by the regulatory system. The charges do not pass through a public body, or a private body designated by a public body to channel them to the energy generator.

- 15.7 Expenditure by a body that exercises functions of both a public and private nature will not result in a corresponding charge to government expenditure where it is privately derived resources.

### Resources given by bodies where public authorities have influence

- 15.8 In some instances, public authorities hold a level of direct or indirect influence over bodies that are not public authorities.<sup>116</sup> In such situations, it is important to determine whether the financial assistance given by such a body is attributable to a public authority.
- 15.9 Where a public authority has material influence over a body's decisions to give financial assistance, that assistance given by the body should be considered to be given by a public authority for the purposes of subsidy control.
- 15.10 The ownership structures of a body alone are not necessarily determinative of whether the financial assistance is attributable to a public authority. For example,

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<sup>116</sup> Such as publicly or privately owned companies, through ownership, financial participation, or governing rules.

even where a company is majority owned by a public authority, financial assistance it provides may not be considered to be given from public resources where the management of the company is predominantly run independently of the public authority.

15.11 There is no single test to determine whether financial assistance is attributable to a public body. However, public authorities may consider the following when determining whether sufficient influence is exerted over the body:

- What is the nature of the body's activities and how are such activities exercised in the market in normal conditions of competition with private operators?
- Is the body integrated into a role which has a public function?
- Does the decision-making of the body take account the requirements of public authorities, such as public policy guidance?
- What degree of supervision do public authorities exercise over the management of the body?
- Are there any structural and organisational factors which link the body to a public authority?
- Is the body in question subject to public law, rather than ordinary company law, and what level of autonomy does such legal status confer on the body?
- Are there any other indicators which show a public authority's involvement in adopting the financial assistance?

### **Example**

A local authority holds a 60% shareholding in a company. The company has a board of 10 directors:

4 of the directors are appointed by the local authority. 1 of these directors, "Director A", is also a senior official at the local authority. The other 3 are not employed by the local authority.

Of the remaining 6 directors, 4 are nominated by the other shareholder and 2 are employee representatives.

None of the directors hold veto powers, or any other voting power that is different to that of the other directors.

At a board meeting, the company decides to provide a capital injection to one of its wholly owned subsidiaries.

Although the company is majority owned by a public authority, this is not sufficient to demonstrate that the capital injection is given as a public resource. Although Director A is employed by the local authority, all other directors are independent from the local

authority. In addition, Director A holds no special voting powers or veto rights on board decisions, which means that they cannot by themselves impose decisions over the other directors. Therefore, although the local authority holds structural control, it does not hold influence over decisions to grant financial assistance. As a result, the granting of the capital injection is not considered to be attributed to the local authority and does not constitute the giving of public resources.

## Limb B1: Financial assistance provided to one or more enterprises

- 15.12 The second limb of the subsidy control test must be considered in two parts. Firstly, in order to constitute a subsidy, financial assistance must be given to persons or bodies that constitute an enterprise.<sup>117</sup> This means a person,<sup>118</sup> or group of persons under common control, who are engaged in an economic activity, to the extent that such a person, or group of persons, are engaged in such an activity.<sup>119</sup> Secondly, it must confer an economic advantage on that enterprise over another enterprise (or multiple enterprises).

### What is economic activity?

- 15.13 For the purposes of the subsidy control regime, economic activity entails the offering of goods or services on a market. A person's (or group of persons') status as an enterprise for the purposes of the subsidy control rules is based solely on the activities that such person or persons are engaged in. The legal form of the persons conducting the economic activity is not relevant.
- 15.14 It is therefore not relevant whether the persons are governed by public, or ordinary company law. It is also not relevant whether the persons in question are privately or publicly financed, nor whether it could be considered a public body or affiliated to a public body.
- 15.15 The activity in question does not have to generate profits in order to constitute an economic activity. Therefore, public, or private bodies that operate on a voluntary or non-profit basis, such as charities, can also constitute enterprises, where they offer goods and services on a market.
- 15.16 Nevertheless, the charging of fees (such as usage fees or entrance fees) does not necessarily mean an organisation should be considered to be engaged in economic

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<sup>117</sup> Section 2(1) Subsidy Control Act 2022.

<sup>118</sup> 'Person' in this context means a natural or legal person – that is, a human being, a company, or another kind of entity recognised by the law.

<sup>119</sup> Section 7(1) Subsidy Control Act 2022. A person under common ownership can be considered to be under common control for the purposes of this guidance.

activity, especially where these fees are nominal or represent only a small portion of the funding for the activities.

- 15.17 Where a person engages in both economic and non-economic activities, it will be considered to be an enterprise only in relation to those activities which are economic in nature. Therefore, public authorities should not ask the recipients of financial assistance to confirm that they are not an enterprise but should instead seek to understand the nature of the activities they undertake.
- 15.18 Where public authorities provide financial assistance in support of a person or body's non-economic activities, such financial assistance will not be considered to constitute a subsidy where it is ensured that the financial assistance cannot be used to cross-subsidise the person or body's economic activities. This can be ensured using a clear separation of accounts or other methods of ringfencing.
- 15.19 In some instances, bodies may perform economic activities that are ancillary to a primary non-economic activity. Where it is shown that economic activities are intrinsically linked or are directly related and necessary for the performance of the non-economic activity, and where such economic activities are limited in scope, such activities will not be caught by the subsidy control regime.
- 15.20 Some public authorities may act as both 'public authorities' and 'enterprises' in respect of different functions. In such a case, and where a public authority gives financial assistance and has the same legal personality as the entity receiving it (that is, there is no separate body carrying out the economic activity, such as a limited company that is owned or controlled by the public authority), a subsidy may not be present on the basis that the economic benefit simply circulates within one entity.<sup>120</sup>
- 15.21 However, local authorities in England and Wales carrying out economic activity should have regard to section 95 of the Local Government Act 2003, which generally requires that where a local authority is authorised (by the Secretary of State or the Senedd) to carry on a part of their ordinary functions for a commercial purpose, any commercial activities should be exercised through a company within the meaning of Part 5 of the Local Government and Housing Act 1989.

### Sectors and activities

- 15.22 The definition of a subsidy set out in the Subsidy Control Act applies to all sectors without differentiation. However, public authorities should pay particular care in relation to certain sectors and types of activities, as set out below. These are fields in which much activity is not economic, and therefore public authorities should pay

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<sup>120</sup> The Competition Appeal Tribunal found to this effect in *The Durham Company Limited v Durham County Council* [2023] CAT 50.

particular attention before concluding that the financial assistance they are giving is a subsidy.

### Public responsibilities

- 15.23 The fact that a certain activity has been closed to competition and is provided by a public authority does not necessarily mean that the activity should not be considered economic in nature. In general, if other operators would be willing and are able to provide goods and services in the market concerned, the activity in question will generally be considered an economic activity.<sup>121</sup>
- 15.24 However, certain activities form part of a public authority's responsibilities and, by consequence, the exercise of activities which are intrinsically related to those public powers are not considered to be economic activities. As such, when a person is engaged in activities which are core to the exercise of public powers that person is not considered to be acting as an enterprise in relation to those activities.<sup>122</sup>
- 15.25 Examples of these activities include:
- maritime and air traffic control;
  - the detection and prevention of crimes by the police;
  - defence activity by the UK armed forces;
  - the collection of data (for example, measuring of pollution levels) for statutory reasons; and
  - the preparation of land to make it ready to build on (where that serves the general infrastructure needs of the area, rather than being intended to benefit a specific future buyer).

### Healthcare

- 15.26 Healthcare services funded through public resources provided for free at the point of access will not be considered commercial activities for the purposes of the subsidy control regime.

#### Example

Healthcare services provided by an NHS provider will not be considered to constitute an economic activity for the purposes of the Act.

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<sup>121</sup> However, where an activity has been closed to competition it is possible to further consider whether the financial assistance would, in fact, distort competition, trade, or investment. See [Limb D below](#) for further information in this regard.

<sup>122</sup> However, as noted above, that person may be considered to be an enterprise in relation to economic activities which are not intrinsically related to the exercise of public powers.

Conversely, where non-NHS healthcare services are provided by medical professionals or healthcare providers, and are paid for by the patients, these activities are considered to be economic in nature.

### Education

- 15.27 Education services organised within the national education system, which are both funded through public funds and supervised by the UK government, are not considered to be economic activities for the purposes of the Act.
- 15.28 Equally, where the costs of education services are principally funded, whether directly or indirectly, through public resources, those services will not be considered an economic activity despite the fact that students, or their families, pay fees toward the provision of those services.
- 15.29 However, where education services are principally funded through private resources, for example the resources of students and parents, or through the operator's own commercial revenues, the operators providing these services will be considered to be enterprises for the purposes of the Act.

### Infrastructure

- 15.30 As a rule, public funding for infrastructure that delivers a general public benefit, and which is not intended to be used primarily to carry out an economic activity will not fall within the scope of the Act. However, where the infrastructure is used to provide an economic activity – either because the operator of the infrastructure is carrying out an economic activity, or because the infrastructure provides a specific benefit to one or more identified third parties – then public funding for that infrastructure could be considered to be a subsidy within the meaning of the Act.
- 15.31 In certain circumstances infrastructure may be owned or operated on the basis of a monopoly (e.g., railway infrastructure management) and the nature of that monopoly excludes competition for that market. Where this occurs, there may be no developed market in the UK or internationally for operating, managing or developing that infrastructure, and consequently financial assistance to that network operator may not constitute a subsidy as long as it is not cross-subsidising its operations in other markets where there is competition.
- 15.32 Where infrastructure in the form of roads, bridges, tunnels and inland waterways is not intended to be commercially exploited and is made available to the public to use for free, the provision of access to this infrastructure will not be considered to constitute an economic activity and public funding for this infrastructure will not fall within the scope of the Act.

- 15.33 Conversely, if the management and operation of this infrastructure is assigned to an operator (whether a public or private body) which charges a fee for the use of the infrastructure, public funding for this infrastructure may be considered to constitute a subsidy. Even where the operator does not charge a fee, public funding may still be considered a subsidy where the management and operation of the infrastructure has a specific benefit.

### Example

A public authority provides financial assistance to support the improvement or building of three roads.

The first project is funding for an improvement to a road that connects two towns, and it will be provided to a local highways authority. The local highways authority charges a nominal toll fee, to manage demand for use of that road. The local highways authority is acting in its public capacity. This is not an economic activity, and, as such, the funding does not fall within the definition of a subsidy.

The second project is funding for an improvement to a road that connects two towns, and it will be provided to a private operator that charges a toll fee, that generates most of the upkeep costs for that road. This is an economic activity, and the funding provides a specific benefit to the operator. As such, the funding will likely fall within the definition of a subsidy.

The third project is funding that will be provided to support the building of a road which will connect a new manufacturing facility to the public highway, with no toll fee. This will provide a direct, identifiable benefit to the business operating the manufacturing facility. Since the manufacturing facility is an economic activity and there is a specific economic benefit to the manufacturing business, the funding is likely to fall within the definition of a subsidy.

- 15.34 See the section below on [cultural activities](#) for more information on cultural infrastructure.

### Research, development & innovation

- 15.35 Scientific research carried out by a non-profit research organisation will often be carried out as a non-economic activity and therefore may receive financial assistance without it constituting a subsidy. Non-economic scientific research may be carried out in collaboration with commercial organisations, as long as the commercial organisation does not receive a specific benefit from the financial assistance given to the research organisation. This would be the case, for example, where the commercial organisation pays the full cost of the project; or where results that do not

give rise to intellectual property rights may be widely disseminated and where any intellectual property rights arising from the project are allocated to the organisations involved in a manner which reflects their contributions (i.e. intellectual property rights resulting from the activities of the research organisation are fully allocated to it). The commercial organisation is also unlikely to benefit if the research organisation receives compensation equivalent to the market price for the intellectual property rights which result from their activities.<sup>123</sup>

- 15.36 Similarly, knowledge transfer activities by research organisations are generally non-economic activities where any profits from these activities are reinvested in the research organisation.

### **Example**

A non-profit research organisation mainly carries out scientific research as a non-economic activity. This includes:

- collaborative research and development projects
- education and open access teaching
- publishing data and research.

It also provides commercial research services to life sciences companies. This is a small portion of its overall activities and turnover.

The non-profit organisation is an enterprise only in relation to its commercial research services. A grant to support its non-economic activities would not be considered a subsidy.

- 15.37 Some research organisations carry out a limited amount of commercial activity in a way that would be very challenging to ringfence from their general non-economic activities. The Subsidy Control Act does not make any direct provision as to when an organisation may undertake economic activity whilst not being considered an enterprise. Where the amount of economic activity represents a small proportion of the use of the organisation's overall capacity (for example, less than 20%), the research organisation may not be considered an enterprise for the purpose of subsidy control.

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<sup>123</sup> If the commercial organisation does receive a benefit then the non-profit research organisation may be an intermediary of a subsidy.

### Example

A medical research charity, that has a separate retail arm, is granted financial assistance by a public authority to support its independent research operations. These research operations are heavily reliant on a state-of-the-art computer owned by the charity.

Financial assistance that is granted in relation to the charity's independent research operations, and which has been ringfenced for that purpose, would not constitute a subsidy since the charity does not act as an enterprise in relation to these activities; any profit generated from these operations is re-invested into the charity's independent research activities.

However, the charity also rents out up to 20% of the capacity of its computer to local businesses. As the computer is necessary for its research activities and the rental is limited, it would not change the fact that the charity is not considered to be an enterprise in relation to the ringfenced financial assistance.

If financial assistance were granted in relation to or otherwise benefits the charity's commercial exploitation of that research, these activities would be considered economic in nature and, as a result, the charity would be considered to be an enterprise in relation to them for the purposes of subsidy control rules.

## Cultural activities

- 15.38 This is a broad category which includes, among others, museums, libraries, galleries, theatres, historical sites, archives as well as cultural and artistic education activities. Similar considerations apply to grassroots sporting activities, including members' clubs.
- 15.39 Cultural activities which can be accessed by the general public free of charge will not be considered to constitute an economic activity for the purposes of the Act. Financing of the construction, development, maintenance and operation of infrastructure and sites used for activities related to culture, heritage and nature conservation (cultural and heritage infrastructure) will generally not fall within the scope of the Act if it is not intended to be commercially exploited.

### Example

A national museum or gallery that provides access to the public free of charge and is primarily funded through public resources is not carrying out an economic activity and will not be considered an enterprise for the purposes of the Act.

- 15.40 The public authority should consider whether the cultural activities are principally financed through public resources (and other non-commercial sources) or through commercial payments paid by visitors, such as entrance fees. Where a cultural activity is primarily funded through commercial payments paid by visitors, that activity will be considered economic in nature. Similarly, a members' sports club that does not operate on the market may set reasonable membership fees without being considered an enterprise.
- 15.41 Financial assistance for amenities for traditional non-economic cultural infrastructure sites (such as a café, gift shop or parking at a national museum) are also unlikely to be caught under the subsidy control regime since those customary amenities are unlikely, in themselves, to attract customers from other parts of the UK or internationally unless they are visiting the facility to which the amenities are attached.

### Persons under common control

- 15.42 Public authorities must consider persons under common control carrying out an economic activity as a single enterprise for the purpose of the subsidy control regime. This question will be relevant to public authorities in a number of scenarios as they apply the subsidy control requirements, such as when considering the minimal financial assistance exemption (see [Chapter 7](#) for more information on minimal financial assistance subsidies).
- 15.43 Persons under common control but carrying out entirely and completely separate economic activities (or where only one person is carrying out an economic activity) are not considered a single enterprise for the purpose of the Act. This may be the case where one individual (natural person) owns two companies carrying out unrelated activities; or where a business owns a charitable fund unrelated to its economic activity. The activities and the accounts of the entities must be entirely separate, and ring-fencing of the financial assistance must be used as appropriate.
- 15.44 The question of common control will also be relevant to the question of whether the beneficiary of the financial assistance should be classed as an enterprise (and therefore whether the assistance meets the definition of a subsidy). In some cases, the immediate beneficiary of financial assistance may not carry out an economic activity itself but may be linked to bodies corporate which do. For instance, the immediate beneficiary of financial assistance may be a holding company which does not directly carry out an economic activity itself but owns a stake in companies which do. In this case, the public authority should consider whether the bodies corporate which carry out an economic activity are under common control with the immediate beneficiary. If so, the immediate beneficiary will also be considered an enterprise for the purposes of the Act, unless ringfencing measures are put in place to prevent any cross-subsidisation.

## When are a group of persons considered to be under common control?

- 15.45 The fact that a person is under common control is most clearly established where a corporate body is a subsidiary of another corporate body, or where two or more corporate bodies are subsidiaries of the same corporate body.<sup>124</sup> Common control can also exist where two or more corporate bodies are under the control of a natural person (or more than one natural person), or where a group of natural persons are acting jointly.
- 15.46 Common control can also be established as a result of rights which provide a corporate body or group of corporate bodies with the ability to directly or indirectly control or materially influence the economic policy of another corporate body.<sup>125</sup> In practice, a person will be considered to control another corporate body if it has the ability to materially influence the commercial strategy of that corporate body.

### Example

Company A owns 70% of the shares in a Company B and has the ability to appoint a majority of the directors on the board of Company B. As a result of its shareholding and its board appointments, Company A is able to involve itself in the management of Company B and has the power to set Company B's annual business plan. As a consequence, Company A is considered to have control over Company B.

- 15.47 However, the fact that a body corporate merely owns a majority of another body corporate's shares does not necessarily entail that the two bodies corporate form part of the same enterprise. This may be the case where, despite owning a majority of shares, and having certain rights associated with its shareholding such as receiving dividends, Company A is not able to exercise material influence over Company B in terms of its management and decision-making.
- 15.48 Conversely, a body corporate may be considered to control another body corporate despite the fact that it does not own the majority of the shares in the latter. This will be the case if the first body corporate is nevertheless able to exercise material influence over the latter. Whether there is control depends on all of the circumstances and not simply the proportion of shares owned by a shareholder.

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<sup>124</sup> Section 8(4) Subsidies Control Act 2022. The term "subsidiary" has the meaning given by section 1159 of the Companies Act 2006.

<sup>125</sup> Section 8(2) Subsidies Control Act 2022.

## Limb B2: Financial assistance which confers an economic advantage

- 15.49 In order to be considered a subsidy, financial assistance, given by public authorities from public resources, must confer an economic advantage on one or more enterprises.
- 15.50 Financial assistance will be considered to confer an economic advantage where the benefit that an enterprise receives is provided on terms that are more favourable to the enterprise than terms that might reasonably have been expected to have been made available to the enterprise on the market. It is not necessary for such financial assistance to, in fact, be currently available on the market – only that it could be provided by a private operator.
- 15.51 For some types of financial assistance this will be a straightforward determination, since they are generally not provided on market terms – for example, a grant or a tax relief. For others – such as a loan, an equity investment, or the purchase of goods or services – this will be for the public authority to consider.

### Indirect advantages

- 15.52 In certain circumstances, an economic advantage may be conferred indirectly upon enterprises that are not the direct recipients of the public resources that are transferred. Where the financial assistance has been designed in order that the recipient passes an economic advantage on to an identifiable third party that is an enterprise, the third party should be regarded as the beneficiary enterprise for the purposes of the subsidy control rules, in addition to or instead of the initial recipient.
- 15.53 Where there is an intermediary involved – that is, the public authority initially transfers the financial assistance to an entity which automatically passes on the benefit (apart from reasonable administration costs) and does not receive any selective advantage itself – the intermediary should not be considered the beneficiary of a subsidy.

#### Example

An umbrella organisation that is involved in innovation projects receives capital investment as part of a government fund, to support technology focused research and development projects. On receipt of the fund, the umbrella organisation is required to transfer the majority of the funding to a specialist research body (keeping back the umbrella organisation's reasonable and market-oriented costs for administering the fund). The specialist research body provides commercial research services.

The umbrella organisation will be treated as only an intermediary for the financial assistance, provided that it receives no other economic advantage.

The research body is an enterprise and should be considered the beneficiary, as it receives an economic advantage through receipt of the funding.

- 15.54 A single subsidy may also confer benefits on multiple beneficiaries. Examples of this include:
- Where the direct beneficiary not only receives an economic advantage from the subsidy but is also required, as a condition of receiving the subsidy, to pass on an economic advantage to one or more other enterprises
  - Where the subsidy is given in the form of a voucher to one group of enterprises, entitling them to goods or services from a second group of enterprises, and the second group can exchange the vouchers for money from the public authority
  - Where an existing relationship between the direct beneficiary and another identifiable enterprise(s) means the subsidy given to the direct beneficiary will automatically have the effect of creating an economic advantage for the other enterprise. This could include a contractual obligation between the direct beneficiary and another enterprise to pass on any cost changes.
- 15.55 A distinction can be drawn, however, between an indirect advantage that is part of the design of the financial assistance, and economic effects that are simply an inherent consequence of the effect of the financial assistance on the market. For example, a subsidy to a large manufacturer will have a positive impact on its contractors, suppliers and customers. The enterprises in the supply chain would generally not be considered recipients of the subsidy unless it was a foreseeable effect of the measure that its secondary effects would be channelled towards certain enterprises.

### Example

A local authority provides financial assistance in the form of an equity investment to a company that is set up as a developer, to construct and own a sports facility. The developer is negotiating an agreement with a separate operator who is responsible for the operation of services to a range of end-users of the sports facility, which include the organisers of community sports events as well as for-profit events.

The equity investment is provided on more generous terms to the developer than they would have been able to secure on the market, and the contract between the local authority and the developer requires the developer to offer below-market rent of the sports facility to the operator. There is no mention of the end-users in the contract; prospective end-users are able to access the services provided by the operator on market terms, and in a non-discriminatory way.

This financial assistance is designed in such a way as to provide an economic advantage to both the developer and the operator, even though only the developer is the direct recipient of the financial assistance. The end-users of the facility are not considered beneficiaries of the subsidy: any positive impacts on them are general economic effects rather than advantages as a result of the design of the financial assistance.

- 15.56 Where a subsidy is given to more than one enterprise, it should continue to be treated as a single subsidy for the purposes of the Act.<sup>126</sup>

### How will an economic advantage be assessed?

- 15.57 If there is any doubt as to whether financial assistance confers an economic advantage, public authorities should carry out a detailed analysis, with regard to the market in question.
- 15.58 Terms of financial assistance will be considered in line with market terms (meaning it will not be considered more favourable than those that might be reasonably available on the market) where the financial assistance provided is on terms that could be considered to be made available on the market by a private operator that is driven by commercial objectives.
- 15.59 Throughout this guidance, this condition is referred to as the ‘commercial market operator (CMO) principle’.
- 15.60 For the purposes of the CMO principle, it is only a public authority’s commercial objectives that are relevant for the assessment. Any public policy objectives should not be included when assessing whether the financial assistance in question confers an economic advantage, on the basis that such objectives would not be applicable to private operators in the relevant market.
- 15.61 A private operator can include vendors, investors, and creditors. The relevant operator will depend upon on the type of financial assistance that the public authority is providing, which may include loans, direct funds or purchases of goods and

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<sup>126</sup> For example, it should have one entry in the database (see [Chapter 12](#) on Transparency). The public authority should be clear that all elements of the subsidy are compatible with the subsidy control requirements, including the principles (see Chapters 3-9) – in the example above, it should consider both the element benefiting the developer and the element benefiting the operator.

When calculating the value of a subsidy with multiple recipients, the public authority should first determine the overall value of the subsidy according to the Gross Cash Equivalent rules (for example, this might be the value of the grant to the direct beneficiary or the face value of a voucher).

The public authority should then determine the values of the parts of the subsidy received by the different beneficiaries by establishing what proportion of the total value should be ascribed to the different beneficiaries (this will be relevant for the purpose of any cumulation, e.g., if the subsidy is given as Minimal Financial Assistance). These values should be communicated to the beneficiaries, and it is good practice to publish them on the database or a linked website as relevant information.

services. For example, a loan provided by a public authority will not be considered to confer an economic advantage to an enterprise, if the loan might be provided by a private sector bank or private sector shareholders on the same terms.

### **How is the CMO principle applied?**

- 15.62 In terms of scope, the CMO principle will consider the market at the time at which the financial assistance is given.

### **How can public authorities show compliance with the CMO principle?**

- 15.63 Where seeking to rely on the CMO principle, it is important that public authorities obtain sufficient evidence to show that the financial assistance provided could be made available in the market by a private operator with commercial objectives and is provided on terms that would be acceptable to such a private operator. In certain instances, public authorities can establish compliance with the CMO principle directly by using evidence that is specific to the financial assistance in question, for example where financial assistance is given at the same time and on the same terms as a significant investment by a private operator (also known as ‘pari passu’). However, other evidence-based assessments may be undertaken, including the use of benchmarking and profitability analysis.
- 15.64 Any evaluation of compliance with the CMO should be undertaken with input from experts with appropriate skills and experience. In cases where the commercial assessment is not straightforward, it is recommended that public authorities commission a reputable third party to conduct a report as evidence that the actions proposed to be taken are in accordance with the CMO principle (as it would be in the case, for example, of co-investment with private operators on the same terms or the procurement of goods and services in accordance with public procurement rules). Where public authorities are operating schemes, the CMO assessment can be made at scheme level.

### **Tendered sale and purchase of goods and services**

- 15.65 Where financial assistance concerns the sale or purchase of goods or services (including Services of Public Economic Interest – see [Chapter 6](#)), public authorities can show compliance with the CMO principle where the financial assistance is carried out through a procurement process which is tendered at the market price and is open and competitive.<sup>127</sup> To rely on this method, public authorities should ensure that the procurement process:
- gives equal and non-discriminative treatment to all bidders;
  - is open and transparent; and
  - is carried out in a proportionate manner.

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<sup>127</sup> Public authorities may also use competitive processes to give subsidies.

- 15.66 Where public authorities are subject to public procurement rules, evidence of compliance with these rules will assist in demonstrating compliance with the CMO principle.
- 15.67 In some instances, public authorities may receive only one bid in a tendered process. Where this is the case, it is key that public authorities are able to demonstrate that the process made it possible for more than one tenderer to submit a bid, and that there were adequate safeguards in place to ensure genuine and effective competition in the procurement process. Public authorities may also seek to verify that the outcome corresponds to the market price using additional analysis, such as benchmarking analysis.
- 15.68 Regardless public authorities may seek to undertake further analysis, such as benchmarking or profitability analysis, in order to determine further whether the price of the awarded tender is on market terms. These methodologies are discussed below.

### **Subsidy competitions**

- 15.69 However, the presence simply of some kind of competitive process is not sufficient to demonstrate that the financial assistance is not a subsidy.
- 15.70 Where conditions for a subsidy are met, a competition will not eliminate the presence of a subsidy. However, a competition that applies objective and appropriate assessment criteria can assist public authorities to demonstrate that the subsidy is the minimum that is necessary to achieve the objective of the subsidy, as required by the subsidy control principles (see [Chapter 3](#)).

### **Where public authorities and private operators provide financial assistance on the same terms**

- 15.71 If the financial assistance is provided on the same terms as a significant intervention by private operators that are driven by commercial objectives in the same market, this can demonstrate compliance with the CMO principle without any need to carry out further analysis or benchmarking. In order to demonstrate that the financial assistance is carried out on the same terms by private operators, public authorities should have evidence that:
- the financial assistance is provided by both the public authority and private operators at the same time;
  - the private operator's financial contribution is significant;
  - the public authority and private operators provide the financial assistance on identical or equivalent terms (or the private operator is providing assistance on more generous commercial terms), including those terms which relate to risk and reward; and

- the private operators participate in the financial assistance to a significant or comparable level to that of the public authority, for example, by matching the financial assistance of the public authority;
- the private operators hold a similar 'starting position' in the giving of financial assistance, e.g., if the public authority is a new investor, it cannot rely solely on evidence that existing investors are investing on the same terms.

15.72 When carrying out financial assistance alongside a private operator, the preparation of a detailed business plan can assist in ensuring that there is detailed evidence to show that the financial assistance is provided on the same terms as the private operators involved.

### **Temporary liquidity support**

15.73 Temporary liquidity support provided by the Bank of England to an individual firm by the Bank of England outside of its published Sterling Monetary Framework facilities is not considered to confer an economic advantage on the recipient, provided the loan is fully collateralised, with appropriate haircuts applied, and with a price charged that is at least as high as that of comparable published facilities available to the market.

### **Indirect assessment**

15.74 Public authorities may also adopt other methods of economic analysis, that are based on objective and reliable data in order to assess compliance with the CMO principle. Such methodologies may be used where direct evidence relating to the financial assistance is insufficient in demonstrating compliance. Indirect assessment methods assess whether the financial assistance could be made available in the market on terms that are acceptable to a private operator, in line with the CMO principle. Two of the most common methods are described below.

### **Benchmarking analysis**

15.75 Where financial assistance is not provided on the same terms by private operators, nor under a competitive tender at market price, public authorities may undertake benchmarking analysis, in order to obtain sufficient evidence that the financial assistance is given in compliance with the CMO principle. Benchmarking analysis may also be undertaken alongside direct assessment methods.

15.76 Benchmarking assesses the terms of the financial assistance against any comparable financial assistance, such as investments or loans, that has been carried out by private operators in comparable situations. Benchmarking analysis will usually result in a range of values, within which the financial assistance in question should fall, in order to demonstrate compliance with the CMO principle.

### Example

A local authority, which is providing a loan of £5 million to a start-up company for the development of an innovative medical science technology, uses benchmarking analysis to assess whether the financial assistance results in an economic advantage. Appropriate benchmarking analysis may include benchmarking of the interest rates of the loan arrangement against the interest rates of comparable loans offered by private banks, which have a similar credit rating.

### Profitability analysis

- 15.77 Public authorities may also use profitability analysis to assess compliance with the CMO principle. Profitability analysis assesses the expected rate of return to the public authority compared with the rate of return that a private operator under comparable circumstances would likely require to invest.
- 15.78 Where the expected return is higher, or equal to the return of a private operator would require when investing in projects that have a comparable level of risk, it will be considered that the financial assistance complies with the CMO principle and does not create an economic advantage. Profitability analysis should involve the following:
- **a clearly defined scope of the financial assistance:** analysis of the scope should include factors described above;
  - **the public authority's expected return on investment:** acceptable calculation methods include an estimate of the internal rate of return (IRR) or net present value (NPV). NPV considers the difference between cash inflow and outflow across the period of the financial assistance in question, such as the lifetime of an investment. IRR is the discount rate that makes the NPV equal to zero;
  - **a comparison of the public authority's expected return of investment against the market expected return:** the market expected return will be the average expected return that the market requires to invest, on the basis of factors which include the investment risk, the enterprise's financial position and any other features that are relevant to the market in question.

### Assessment of loan guarantees

- 15.79 When granting financial assistance via guarantees,<sup>128</sup> public authorities should consider the level of risk and complexity of the guarantee offered in order to determine the compliance with the CMO principle. If the guarantee in question would

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<sup>128</sup> In most instances, the borrower will be regarded as the beneficiary of the financial assistance in the form of a guarantee. However, in some cases, the lender may also be regarded as a beneficiary. For example, this can be the case where a guarantee is given ex post in respect of the loan or other financial obligation that has already been entered into and has not been amended.

carry a level of risk or complexity that a private operator, driven by commercial objectives, would not provide, it is likely that the CMO principle will not be met.

15.80 In addition, there are certain factors that public authorities should consider, when assessing whether the loan guarantee complies with the CMO principle. A guarantee is unlikely to confer an economic advantage where:

- The guarantee is based on a realistic assessment of the ability of the borrower to repay the loan;
- The guarantee is linked to a specific transaction, which has a fixed maximum amount and limited time period;
- Excluding debt securities, the guarantee does not cover more than 80% proportionately of the loan or other financial obligation in question. A guarantee in excess of 80% of the loan may also be justified in some circumstances e.g. if it is given to an enterprise that only performs a Service of Public Economic Interest (see Chapter 7) or the public authority can otherwise establish that it complies with the CMO principle; and
- The public authority is paid a price for the guarantee premium on market terms. This can be determined through benchmarking against a corresponding guarantee premium on the market, or, where no such premium is available, the financial cost of the guaranteed loan or other financial assistance should be compared against the price of a comparable non-guaranteed loan in the market.

15.81 Where public authorities make guarantee schemes, compliance with conditions the first three above should be considered, in addition to the following conditions:

- The terms of the scheme are based on a realistic assessment of the risk so that the premiums paid by the borrowing enterprises make it, in all probability, self-financing;
- The scheme provides for the terms on which future guarantees are given;
- the overall financing of the scheme will be reviewed regularly (at least annually) to assess the scheme's self-financing; and
- The premiums cover both the normal risks associated with the giving of the guarantee and the administrative costs of the guarantee scheme, and an adequate remuneration of an adequate capital. The premiums should be paid to the public authority on the adequate amount of capital.

## Limb C: Specificity

### When is financial assistance considered to be specific?

15.82 In order to constitute a subsidy, financial assistance provided by a public authority must be specific – that is, it must benefit one or more enterprises over one or more

other enterprises with respect to the production of goods or provision of services.<sup>129</sup> This definition therefore covers financial assistance which is provided to a particular enterprise or type of enterprise, or enterprises in a particular sector, industry, or area.

15.83 However, measures which make financial assistance available to a large number of enterprises, from a wide range of sectors and industries can also be considered to be specific. This may be the case in the following circumstances:

- where financial assistance is only available to certain enterprises on account of characteristics which are specific to them;
- where administrative authorities have discretion in deciding which enterprises can benefit from financial assistance; and
- where financial assistance is only available to enterprises operating in a certain area (unless the public authority in question is responsible only for that area).

### Specificity linked to enterprise characteristics

15.84 A measure which makes financial assistance available to a large number or broad range of enterprises may in some cases be considered to be specific for purposes of the four-limbed test if it exclusively, or almost exclusively, benefits certain enterprises over others on account of characteristics which are specific to them.

15.85 For instance, a measure may make financial assistance available on the basis of certain characteristics of the enterprise such as:

- their legal form (e.g., reserving financial assistance to private companies limited by shares or excluding publicly limited companies);
- their size (e.g., reserving financial assistance to enterprises with annual turnover below a certain level or employing less than a certain number of employees); or
- the industry in which they are active (e.g., reserving financial assistance to enterprises active in steel manufacture or the retail sector).

15.86 Public authorities should bear in mind that it does not matter whether the measure expressly reserves the financial assistance available under the measure to certain enterprises or whether it does so implicitly. For instance, a measure which is ostensibly available to all enterprises may, in practice, almost exclusively benefit certain enterprises on account of characteristics which are specific to them.<sup>130</sup>

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<sup>129</sup> Section 2(1)(c) Subsidy Control Act 2022.

<sup>130</sup> It is important to note that a measure may be considered to provide specific financial assistance even if a very small number of enterprises, which do not share the same characteristics as the enterprises which primarily benefit under the measure, also benefit from the financial assistance provided.

- 15.87 However, a measure which provides financial assistance to certain enterprises on account of characteristics which are specific to them is not automatically considered to be specific.
- 15.88 In order to determine whether a measure which makes financial assistance available to a large number or broad range of enterprises may be considered to be specific, public authorities must establish whether the measure creates a distinction in the treatment of enterprises which are otherwise in a comparable situation. If so, the measure will be considered to provide specific financial assistance, unless the distinction in the treatment of enterprises is justified by principles inherent to the design of the arrangements of which that financial assistance is part.

### How can it be determined whether enterprises are in a comparable position?

- 15.89 In order to determine whether a measure under which a public authority envisages providing financial assistance is specific, public authorities should:
- identify the policy objectives of the measure used to provide financial assistance;
  - identify which enterprises are in a comparable position with respect to that internal policy objective; and
  - determine whether certain enterprises are treated more advantageously than one or more other enterprises in a comparable position with respect to those internal policy objectives.
- 15.90 If the measure treats certain enterprises more advantageously than one or more other enterprises which are in a comparable position, the measure will be considered specific. Conversely, if the measure does not treat certain enterprises more advantageously than one or more other enterprises which are in a comparable position, the measure will not be considered specific.
- 15.91 Financial assistance should not be considered specific if the distinction in the treatment of enterprises is justified by principles inherent to the design of the arrangements of which that financial assistance is part.

### Specificity if the financial assistance is in the form of a tax measure

- 15.92 Financial assistance given in the form of a tax measure will not be regarded as specific unless one or more enterprises obtain a reduction in their tax liability that they would have borne under the normal taxation regime, and they are treated more advantageously than other enterprises in a comparable position under the normal taxation regime. This means a tax measure can only be considered specific if it is targeted (and not a general measure) and confers an advantage on certain enterprises. Unless certain enterprises obtain a reduction in tax liability that they would not receive under the normal taxation regime, and they are treated more

favourably than others in a comparable position within that regime, the measure will not be specific.

- 15.93 The normal taxation regime is identified from the internal objective and features of the regime (such as the tax base, the taxable person, the taxable event, and the tax rate) and by the ability, competence and autonomy of the public authority to create and design its own taxation regime.
- 15.94 Tax measures do not always provide specific financial assistance if they treat enterprises in a comparable position differently, as long as that difference is justified by principles inherent to the design of the normal taxation regime and how the tax measure fits into that regime. The following non-exhaustive list sets out principles that may be relevant in a particular case:
- fight fraud, tax evasion or avoidance
  - administrative manageability of the tax regime
  - the avoidance of double taxation
  - the principles of tax neutrality
  - the progressive nature of income tax and its redistributive purpose
  - taxpayers' ability to pay.
- 15.95 Where a special purpose levy is designed for a non-economic public policy objective and those objectives are not discriminatory, the special purpose levy will not be regarded as specific. These objectives could include the need to protect the environment or public health.

### Specificity resulting from administrative discretion

- 15.96 A measure which makes financial assistance available to a large number or broad range of enterprises may also be considered to be specific if the measure provides the public authority applying the measure with broad administrative discretion.
- 15.97 In particular, a measure will generally be considered to be specific if it provides the relevant authority with broad discretion in deciding which of a number of enterprises meeting the eligibility criteria for financial assistance can benefit from financial assistance or how much each of those enterprises can receive.

#### Example

A public authority introduces a measure aiming to incentivise certain categories of investment by offering to provide a one-off loan at below market rates covering 50% of the value of an eligible investment.

If this measure does not specify which investment it applies to in the event that an enterprise makes a number of eligible investments of differing values, this measure could be considered to be specific. This is because the public authority has a discretion to choose which investment the financial assistance should apply to. As the amount of financial assistance is tied to the value of the investment, the public authority would be able to grant greater or lesser amounts of financial assistance to enterprises depending on which eligible investment it selects. The public authority would therefore have a discretion to treat two enterprises in a comparable position (that is, two enterprises that had made eligible investments) with regard to the measure, e.g., by applying the financial assistance to the investment of the highest value for one enterprise and to the investment of the lowest value for the other enterprise.

15.98 However, this does not mean that any measure which provides the authority with any degree of discretion will be considered to be specific. If the margin of discretion afforded to a public authority is exercised according to objective principles, which are transparent and which are capable of ensuring that discretion is exercised in a non-discriminatory manner.<sup>131</sup> The mere exercise of discretion does not entail that a measure is specific.

### Specificity based on the geographical area in which the financial assistance is provided

15.99 To determine whether a measure providing regional or local financial assistance should be considered to be specific, public authorities will need to consider what constitutes the relevant reference area.

15.100 Where a measure providing financial assistance is adopted using a power which is UK-wide, the reference area is the UK as a whole. Therefore, financial assistance provided exclusively in a specific geographical area within the UK may be considered to be specific. For example, this would be the case where financial assistance is provided by the UK Government one particular part, region or local area in the UK when exercising its UK-wide functions.

15.101 Equally, when an administration covers a discrete area – such as a devolved government, or where the UK government is acting in relation to powers that are restricted to England – the reference area will be Scotland, Wales, Northern Ireland or England, respectively. Where financial assistance is made available by a public authority, acting autonomously with regard to process and funding, to all enterprises

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<sup>131</sup> I.e., it does not treat certain enterprises more favourably as compared to one or more other enterprises which are in a comparable position.

located within the reference area for that financial assistance, that financial assistance will not be considered to have been given on a territorially specific basis, and would therefore not be a subsidy.<sup>132</sup>

- 15.102 Conversely, measures adopted by the Scottish Government, the Welsh Government, or the Northern Ireland Executive providing assistance to one particular region or local area within Scotland, Wales or Northern Ireland respectively (or the UK government to a particular region of England when exercising functions that are limited to England) would constitute clear examples of specifically granted financial assistance, as would support provided by a regional authority only to one town within the region.

### Example

A wage subsidy scheme by the Welsh Government that is equally available to all enterprises in Wales (but is not available in England, Scotland, or Northern Ireland) will in most cases not be specific. However, a wage subsidy by the Welsh Government limited to enterprises in the area of a single local authority, or which was otherwise limited in availability, would be a specific subsidy because it favoured enterprises in that local authority over other enterprises in Wales.

## Limb D: Financial assistance which has, or is capable of having, an effect on competition or investment in the UK, or international trade or investment

### What kind of effects are relevant?

- 15.103 A subsidy is defined as financial assistance which has, or is capable of having, an effect on:<sup>133</sup>
- competition or investment within the United Kingdom; or
  - international trade or investment.

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<sup>132</sup> It is important to note that similar considerations would apply if a devolved government were to use the powers available to it to modify the rates applicable under a tax measure which is applicable across the UK within the territory that government is responsible for.

<sup>133</sup> Section 2(1)(d) Subsidy Control Act 2022. Please note that modified rules apply to financial assistance provided to air carriers providing air transport services. See Section 5 Subsidy Control Act 2022 in this regard.

- 15.104 Financial assistance must be capable of having a genuine adverse effect that is more than incidental on competition or investment in the UK, or international trade or investment, to constitute a subsidy for the purposes of the Subsidy Control Act (hereinafter a “relevant effect”). Financial assistance will not be considered to produce, or be capable of producing, a relevant effect for the purposes of the Act merely because it improves the financial situation of its beneficiaries.
- 15.105 The most important part of this limb of the test is the market or markets in which the beneficiary or beneficiaries operate. That includes the nature of competition in those markets in the UK, any international trade flows, and any investment flows (from the UK or internationally). Generally, this will be the market for the goods or services produced by the beneficiary. Where the subsidy has a substantive effect on the market for the inputs used by the beneficiary, that should also be taken into account.
- 15.106 It must be foreseeable that the measure will, or is capable of producing, relevant effects. If there is no evidence of a currently operating competitive UK market, of international trade flows, or of prospective investment to enter the market in the UK or internationally, then there are unlikely to be relevant effects.
- 15.107 In many cases, it will be straightforward to determine that the measure would have a relevant effect on a competitive market in the UK, and it will not be necessary to determine whether it also has a relevant effect on international trade or investment. If this is in question, more detail on how to identify and assess the market is set out in [Chapter 3](#).
- 15.108 It is worth noting that a measure could have a relevant effect on competition and investment in the UK even where the market covers a very small geographical area or where the amount of financial assistance is very low.<sup>134</sup> However there is no presumption that a measure meeting the first three limbs of the test will have a relevant effect and any interested party claiming a relevant effect will need to be able to demonstrate it on the basis of the evidence.
- 15.109 As the assessment is forward-looking, it is important for public authorities to take foreseeable market developments into account when considering the effects of a measure on competition or investment in the UK or international trade or investment.

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<sup>134</sup> Public authorities should be aware of the Minimal Financial Assistance provisions (as set out in [Chapter 7](#)) which exempt low value subsidies from most of the subsidy control requirements. It is important to note that Minimal Financial Assistance subsidies are still subsidies: they must meet the four limbs of the test outlined in this chapter. Exceptionally, however, there may be circumstances where the amount of a financial assistance is so low (for example a £250 grant to a SME to attend a trade fair) that the possibility of a distortive effect is entirely hypothetical.

### **Example 1**

The UK-wide market for manufacturing a specific widget consists of only two firms who happen to operate from the same business park. The UK Government gives financial assistance to one of the two firms. This may constitute a subsidy, as it would meet the test of having an effect on competition and investment, by giving the firm receiving assistance a competitive advantage.

### **Example 2**

Two newsagent shops operate in the same remote rural village. The local council gives financial assistance to one of those businesses. Similarly, this may also constitute a subsidy.

### **Example 3**

A remote rural village has one barber shop. There is no evidence that others have sought or would seek to open another barber shop or hairdresser in the village or at any reasonable travelling distance. A decision is made to allow the shop to rent local authority land at sub-market rates to use as a parking area. Although there is a theoretical possibility that another barber shop could be set up in the village, this is only a hypothetical effect and is not sufficient to meet the test of having a relevant effect on competition or investment in the UK. The financial assistance is not likely to be considered a subsidy.

- 15.110 In certain circumstances goods, services or infrastructure may be owned or operated on the basis of a monopoly and the nature of that monopoly may exclude competition for that market. Where a good or service provided by an enterprise cannot be substituted by another service financial assistance to that network operator may not constitute a subsidy as long as it is not cross subsidising its operations in other markets where there is competition.
- 15.111 Many cultural and heritage activities are also not substitutable even where they are economic activities (for example, keeping unique public collections for which a significant entrance fee is charged) and therefore exclude the existence of competition.
- 15.112 This limb of the test is met if the financial assistance has an effect on competition or investment in the UK or international trade or investment; that is, it is sufficient that just one of these four effects is present for the financial assistance in question to be considered a subsidy (if the other limbs are also met).
- 15.113 In general, it is more likely that a measure will have an effect on competition or investment in the UK than on international trade or investment. In most cases, it will

therefore be sensible for public authorities to establish that there is an effect on competition or investment in the UK to confirm that this limb of the test is met. However, in some cases, there may be an effect on international trade or investment even where there is no competitive market in the UK.

### **Example**

Three testing centres for an advanced technology exist in the world – one in the UK, and two in other countries and all three provide similar services to businesses based all over the world. The UK Government wants to provide significant financial assistance to improve the facilities and quality of testing at the UK centre. Although there may be no effect on competition and investment in the UK, the public authority will still need to consider whether the subsidy has or is capable of having an effect on international trade or investment.

## ANNEX 2: The design and assessment of small subsidies

- 16.1 This annex is for all public authorities that are designing small subsidies or schemes. For these purposes, small subsidies and schemes are generally considered to be subsidies with a gross cash equivalent of £1 million or less, or schemes that can offer individual awards with a cash equivalent of £1 million or less.
- 16.2 Not all subsidies of this size are low risk and this annex will not be relevant for all subsidies or schemes of that size, particularly those given in the sensitive sectors (for example, the automotive or aerospace sectors) and those that engage the qualified prohibitions on subsidies for the rescue and restructuring of enterprises, or for the relocation of economic activity. (For guidance on considering the principles for subsidies not covered by this annex, see Chapter 3.)

### Minimal financial assistance subsidies

- 16.3 Public authorities may choose to give the smallest subsidies as minimal financial assistance (MFA) subsidy. Public authorities do not have to consider the subsidy control principles before giving MFA subsidies and only some of the prohibitions apply. See Chapter 7 for more information on how to give MFA subsidies.

### How to use this annex

- 16.4 The Subsidy Control Act 2022 places three core responsibilities on public authorities.
- you must not give prohibited subsidies (see [Chapter 5](#))
  - You must consider the subsidy control principles and be of the view that a subsidy or scheme is consistent with the principles before giving the subsidy or making the scheme (see [Chapter 3](#))
  - You must make an accurate and complete entry on the transparency database within 3 months of giving the subsidy or making the scheme (see [Chapter 12](#))
- 16.5 Additional requirements apply to the largest subsidies and certain other subsidies, such as those for the relocation of economic activity.
- 16.6 This annex relates to the second core responsibility and is to help public authorities consider the subsidy control principles when designing small subsidies or schemes. It can be used instead of Chapter 3.

16.7 It uses the same four-step framework that public authorities are encouraged to use when considering the subsidy control principles for subsidies of any size:

- **Step 1:** Identify the policy objective, ensuring it addresses a market failure or equity concern, and determine whether subsidy is the right tool to use (principles A, E);
- **Step 2:** Ensure the subsidy is designed to create the right incentives for the beneficiary and bring about a change in behaviour (principles C, D);
- **Step 3:** Consider the distortive impacts that the subsidy may have and keep them as low as possible (principles B, F);
- **Step 4:** Carry out a balancing exercise (weighing the likely harms of the subsidy against its expected benefits) (principle G).

16.8 Each step below includes the following:

- A description of what is required;
- An explanation of how to approach that step when designing a small subsidy or scheme;
- An extract from a case study of an assessment for a small subsidy scheme. This is an illustrative example only and does not represent a fixed standard that public authorities must meet. Depending on the risks of distortion posed by a subsidy, it may be commensurate in some circumstances to do a more in-depth assessment, and in others to do a less in-depth assessment.

## The process of designing a subsidy and considering the principles

16.9 Assessing a subsidy against the subsidy control principles is a mandatory policy development tool, and it relies on a public authority exercising its own judgement about whether the subsidy is consistent with those principles. An assessment will not always require specialist input, particularly when public authorities are designing smaller subsidies and schemes. If you have any questions about how to design subsidies or you are concerned that a subsidy may engage one of the prohibitions or qualified prohibitions, please contact the subsidy control team in the Department for Business and Trade or in the devolved governments.<sup>135</sup>

16.10 Wherever possible, you should begin considering the principles as soon as you start to develop a policy proposal. Ideally at the same time as you are developing your business case.

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<sup>135</sup> UK Subsidy Control Team: [subsidycontrol@businessandtrade.gov.uk](mailto:subsidycontrol@businessandtrade.gov.uk); Subsidy Control Division (Scotland): [subsidycontrol@gov.scot](mailto:subsidycontrol@gov.scot); Subsidy Control Team (Wales): [subsidycontrolunit@gov.wales](mailto:subsidycontrolunit@gov.wales); DfE Subsidy Control Team (Northern Ireland): [subsidycontrol@economy-ni.gov.uk](mailto:subsidycontrol@economy-ni.gov.uk)

- 16.11 Public authorities are encouraged to use the principles assessment guide as they consider the principles, and those giving small subsidies should refer to this annex for guidance on how to complete it. Public authorities should continue to refer to Chapter 5 and Chapter 12 for information on the prohibitions and transparency requirements.

### Step 1

#### Policy objective (Principle A)

##### Requirements

- Identify and describe the existence and significance of the market failure or the inequality (or both) that is causing a problem.
- Identify and explain what you are trying to achieve in relation to that market failure or inequality (the policy objective).

#### Identifying market failures

- 16.12 If the policy objective involves remedying a market failure, say which type of failure or failures apply and describe how it exists in the area where you may be making the subsidy or scheme available.
- 16.13 A market failure occurs where the market alone does not produce the best or most efficient outcome. This can mean that businesses act in a way that is in their own interests, but harmful to wider society (or less beneficial than it could be). It can be helpful to think about three common types: externalities, public goods and information asymmetries .
- 16.14 **Externalities** are when a cost (or benefit) caused by a producer is not incurred (or received) by that producer. In other words, there are spillover effects on others – either negatively or positively. Without government intervention, this can result in greater harms than would otherwise exist, or that society misses out on some benefit. This is because the producer is not fully paying for the consequences of its actions (or getting all the benefits from them). So, for example, a business will get some benefit from investing in training for its staff, but in the longer-term a better trained workforce would be beneficial for wider society as well. The total benefit exceeds the benefit to the business alone. Businesses will therefore tend to invest less in training than would be ideal from the point of view of society as a whole.
- 16.15 **Public goods** exist where you have something that a person can consume without reducing its availability and where another person also cannot be prevented from consuming it. So, for example, if one person eats an ice cream, another person cannot eat the same ice cream. And the second person could be prevented from eating the ice

cream. But if one person is using a streetlight, the second person can still benefit from the same streetlight. And they cannot realistically be prevented from using it. This second case is known as a public good (despite the name, it can relate to a good or a service). In these circumstances, no market can exist, so government will typically provide public goods directly.

- 16.16 **Information asymmetries** arise where one party to a potential transaction has more information than the other party. That creates an imbalance in power that means the market operates inefficiently. One party may be hesitant and no transaction occurs. Both parties then miss out on the benefits. For example, a creditworthy small business might be unable to get a loan because the bank is not able to gather sufficient information about its viability.

### Identifying inequalities

- 16.17 Even when working efficiently, markets can give rise to unfair outcomes or inequalities. Subsidies might then be used to address these. For example, to promote the employment of disadvantaged or disabled workers, or to extend access to education.

### Evidencing market failures or inequalities

- 16.18 It is likely that you are only considering giving a subsidy in response to a problem that your organisation has identified and recorded, or in response to evidence provided by stakeholders. Explain what the evidence shows. For example, that n% of SMEs in your area have tried and failed to obtain loans from commercial providers in the preceding year; or that a certain proportion of commercial properties on a high street are vacant; or that n% of young people in your area are not in education, employment or training within a year of leaving school.
- 16.19 If you do not already have data to hand, it may be useful to point to appropriate and recent local or national statistics demonstrating the market failure or inequality. For example, Office for National Statistics data on unemployment or household income.
- 16.20 Alternatively, if there is no appropriate data readily available from other sources, you could consider doing a light-touch information gathering exercise yourself, such as contacting several relevant businesses in your area. For small subsidies it is rarely proportionate to commission or conduct dedicated economic research.

### Describing your policy objective in relation to a market failure or inequality

- 16.21 What is the specific thing that you want to achieve using a subsidy? What effect are you trying to have on the market failure or inequality?
- 16.22 This does not need to explain the strategic context or why you have chosen this policy objective (for example, by references to white papers, government priorities or net zero). It is better to be precise about your objectives so that you can meaningfully balance the benefits of achieving that objective against the likely harms of the subsidy (Step 4).

## **Case study (Extract 1)**

### *Background to case study*

Sport England's Active Lives survey shows that Townsborough has levels of participation in sports or other physical activity that rank in the bottom third for the UK. ONS income data shows that Townsborough is also a low-income area, which is associated with lower rates of activity in the Active Lives survey.

Townsborough Council wants to improve the wellbeing of the population and indirectly reduce demand on council services by promoting greater physical activity through the means of increased availability of affordable gym membership. The Council has allocated £5 million to achieve this, along with other related policy initiatives.

### *Market failure and equity rationale*

The provision of gym facilities in Townsborough involves a market failure and equity concern. There are positive externalities arising from the provision of affordable gym services because the benefits to the physical and mental wellbeing of gym users reduce the burden on local health services. These societal benefits do not directly benefit the gym operator, rather they benefit the council taxpayers and users of local health services. This contributes to under-provision of gym services.

Townsborough's population is 20,000 and it is served by a small gym, predominantly used by a powerlifting club, and with a capacity for 20 users at a time.

The inability to afford gym membership is likely to contribute to unequal health outcomes across different social groups. The average income in Townsborough is in the bottom third of UK local authority areas [ONS, Income Estimates for Small Areas]. Sport England data shows that the lowest-income groups are 10 percentage points less likely to be 'active' (doing more than 150 minutes of activity a week) than middle-income groups (and 20 percentage points less than high-income groups). Average membership fees in the region for chain gyms (found using desk research) are £50 a month or £10 a visit.

### *Policy objective*

The Council's specific policy objective is to mitigate the under-provision of affordable gym services that results from the market failure described above, and to mitigate the results of the inequality (unequal health outcomes) with private affordable gym services with capacity for up to 2,000 members. This is to be achieved within 3 years. The Council has defined affordable gym services as those costing no more than £3 each visit or £20 for a month's membership.

The Council therefore aims to incentivise the establishment of 5 new gyms, each with a membership capacity of 400, that will offer affordable entry fees and membership for at least 6 years.

### NOTES

- The Council has specified which market failure it believes applies (positive externalities) and has explained how the market failure manifests itself.
- As the Council has identified a market failure and an equity rationale for a subsidy, they have listed both. However, either could suffice on its own.
- The Council has drawn reasonable inferences from existing, widely available data. For small subsidies it is rarely proportionate to commission or conduct dedicated research to establish a market failure or equity rationale.
- The policy objective is the specific thing that the Council wants to achieve with the subsidy. It is distinct from the general aim to improve the wellbeing of the town's population and reduce demand on public services.

## Appropriateness

### Requirements

- Consider the various ways of achieving the policy objective other than subsidy.
- List the viable alternatives that you have considered, along with an explanation of why you have not taken each option.
- Record why you have concluded that a subsidy is the most appropriate or effective way of achieving your policy objective.

## Considering alternatives to subsidy

16.23 The most common alternatives to subsidy are:

- Regulation (compelling economic actors or others to take action to remedy the market failure or inequality)
- Direct provision of the good or service by the public authority (you)
- The public authority (you) offering a loan or equity investment on commercial terms

16.24 Each option should be considered individually. Consider its likely effect on the policy objective (for example, when compared with subsidy, would loans at commercial rates make enterprises invest as much in the activity you are trying to encourage?), or the wider impacts of that option (for example, you may decide that regulation is too blunt an instrument for a market failure that only affects a subset of a particular market, or that direct provision of a good or service would tend to have a more distortive effect than a short-term subsidy to an existing enterprise) or your organisation's ability to deliver the alternative option (you may not think it likely that you will get time for regulation on a crowded legislative programme, or you may not have the necessary financial expertise to properly manage equity investments).

16.25 Record briefly why you have set aside each option.

### **Explaining why you have chosen to use a subsidy**

16.26 You will already have largely explained this by eliminating the alternatives. Briefly record why you have opted to pursue your policy objective through subsidy.

16.27 However, if the judgement between subsidy and the nearest alternative is finely balanced (and especially if you are giving subsidies towards the upper end of those covered by this annex), you will want to record a more detailed explanation of your reasoning for why subsidy would be the most practicable or effective option.

#### **Case study (Extract 2)**

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##### *Appropriateness of subsidy*

The Council has considered the following ways of achieving the policy objective that do not involve subsidy.

- Regulation: It is not judged appropriate (or within the Council's powers) for it to mandate by regulation that any enterprise should increase its capacity or charge below-market rates.
- Direct provision of affordable gym services by the Council: The Council has not previously set up or operated health and fitness facilities and does not have the expertise to do so. In the longer term, Townsborough Council does not anticipate that it could run a gym as cost efficiently as a private operator.
- Offering a loan (on commercial terms) to private operators to meet the costs of building and equipping new gyms offering affordable entry fees and membership: The total costs of constructing and equipping each gym are expected to be between £500,000 and £800,000. The requirement to offer affordable entry fees means

operators are unlikely to make sufficient profit to repay a loan covering any significant portion of those set-up costs. The fact there is currently only one gym in Townsborough indicates that the normal operation of the market – which by definition includes the availability of loans on commercial terms – has not succeeded in providing any additional gyms.

In view of this, the Council does not consider that a loan on commercial terms would give sufficient incentive to private operators to set up other gyms.

The Council has concluded that there are no appropriate alternatives to subsidy that would allow the Council to meet its policy objective.

**NOTE:** The Council has considered the third option in more detail as this was the alternative to subsidy that was considered most viable.

## Step 2

### Baseline no-subsidy scenario (Principles C and D)

#### Requirements

Describe how the situation you are trying to remedy (the market failure or inequality) is likely to evolve if you do not intervene, both over the short and longer term.

#### Describing the no-subsidy scenario

- 16.28 Have you identified any data that shows trends in the evolution of the market failure or inequality? Record what that trend indicates is likely happen without subsidy, or if no data is available, what you expect to happen. Will the situation stay the same, get worse or improve?
- 16.29 You should also think about any contextual factors that might mean the situation will change even without subsidy (such as commercial developments or the adoption of any recent regulatory reforms).
- 16.30 Note that you can give subsidies to prevent harms from happening, but you should be careful that you are not giving subsidy to an enterprise that would – but for the subsidy – fail. There are special rules covering these situations and they also require a more careful assessment against the principles.<sup>136</sup>

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<sup>136</sup> See [Chapter 5](#) ('Ailing or insolvent enterprises').

### Case study (Extract 3)

#### *No-subsidy scenario*

The existing gym in Townsborough opened in 2005, and the Council is not aware of any new market entrants since then.

There are no foreseeable changes to the economic dynamic or national policy context indicating that, in the absence of subsidy, the market failure described in Step 1 (positive externalities from providing affordable gym membership leading to under-provision) will diminish over time. Or that the equity concern (unequal health outcomes in Townsborough) will improve.

As a result, the Council considers that without subsidy, the most likely scenario is that there will be no new market entrants, there will continue to be under-provision of affordable gym services and that its policy objective will not be met.

**NOTE:** Having concluded that the most likely outcome in the absence of subsidy is that there will continue to be no new market entrants, the Council can have a relatively high degree of confidence that any new entrants after the payment of subsidy will have been incentivised to do so by the subsidy, and that the subsidy will be additional.

### Additionality – Creating a change that would not have happened without the subsidy (Principles C and D)

#### Requirements

- With reference to the market failure or inequality described in Step 1, what change in behaviour do you want to create with a subsidy? Describe how this change in behaviour will help achieve the policy objective.
- What design features can you include to make sure the subsidy will provide a beneficiary with the incentive to do something they would not otherwise have done? For schemes, what can you do to establish a reasonable degree of confidence that subsidies will mostly go to people who would not otherwise have done that thing?

#### Describing a change in behaviour

- 16.31 What do you expect the enterprise or enterprises to do as a result of receiving the subsidy? Why will that change in behaviour lead to your policy outcome?

- 16.32 You can only predict what effect the subsidy is expected to have, so the important thing is to think logically about how your subsidy can be expected to lead to the desired change in behaviour. And then how it will work to meet your policy objective. Record that logic.
- 16.33 To help understand whether a subsidy will lead to the desired changes, you should, if possible, see if there have been similar interventions by your organisation in the past. How successful were they? You may also want to see whether other public authorities have made similar interventions and published evaluation reports into the effectiveness of those interventions. It could be useful to cite any such reports in this part of the assessment, but it is not necessary to do so.
- 16.34 If any evaluation reports or previous organisational experience indicate the type of subsidy you are considering has not been fully effective at creating changes in behaviour in the past, you should consider whether that type of subsidy is an appropriate tool. If you decide to go ahead, you will want to explain why you think it would be more effective in your case, or what you propose to do differently.

### **Designing subsidies and schemes that create real incentives**

- 16.35 The aim of a subsidy must be to create an ‘additional’ behaviour by the beneficiary. That is, to incentivise them to do something they would not otherwise have done.
- 16.36 Performance criteria can be a useful way to help ensure this. You can require a beneficiary to do an activity by a certain date, or to have completed elements of a complex project by a date. Payment structures can also help; you can provide staged payments on completion of certain elements of a project.
- 16.37 As a minimum, you will want to be confident that you are not going to give subsidy to enterprises that are already doing the thing you want them to do. You might do this simply by asking potential beneficiaries to sign a declaration that they were not doing or planning to do an activity in the absence of subsidy.
- 16.38 In some instances, you might consider that the strength of the evidence about the market failure or inequality makes you confident that, without subsidy, enterprises will not do the thing you want them to do, and that it is not necessary to ask for proof from individual enterprises. For example, if your policy objective is to reduce the number of vacant shopfronts on your high street and none of the shops on the high street are rented by SMEs, then it might be reasonable to conclude that subsidised rent to SMEs would be additional.
- 16.39 When you are designing a scheme giving out small awards, it will rarely be possible to guarantee in advance that every subsidy will lead beneficiaries to do things they would not otherwise have done. However, in the interests of achieving your policy objective most efficiently, and to avoid giving money to beneficiaries that don’t need it, you should reduce the chances of subsidies being given to persons who would have done the

desired activity anyway. What eligibility restrictions can you add to achieve this? For example, you could restrict the scheme to SMEs or start-ups, or to businesses in a certain area, or to businesses that have never done a certain activity in the past. You may also consider excluding businesses that have not fulfilled the performance criteria for subsidies you have given in the past.

### **Case study (Extract 4)**

#### ***Creating a change that would not have happened without subsidy***

The Council aims to incentivise 5 private gym operators to convert (or build) premises, equip them appropriately and offer gym membership and entry fees at an affordable rate (initially at £3 a visit or £20 for a month's membership) and renegotiated at appropriate intervals).

To do this, the Council will establish a subsidy scheme providing enough of the set-up costs to make entry profitable for new market entrants. Providing a proportion of the set-up costs should allow the operator to charge smaller membership and entry fees than they otherwise would have, because the operator will not have to repay the subsidy.

The extent of the market failure, lack of change in the local market over the last 18 years and low income levels in Townsborough lead the Council to conclude that any new gym development is likely to be additional.

To ensure the change described above happens, the Council will impose performance criteria on subsidies given through the scheme (through subsidy agreements with the beneficiaries). These will require beneficiaries to have constructed and opened a new gym within 2 years of receiving subsidy, and to maintain entry and membership at the agreed affordable rates for a further 6 years (renegotiated at appropriate intervals).

The Council will limit eligibility to enterprises with experience operating in the gym sector, and to SMEs (this will help to further ensure additionality, as it is assumed that large enterprises would be able to fund the set-up costs themselves, if they were motivated to open gyms in Townsborough).

## Step 3

### Proportionality and minimising distortion (Principles B and F)

#### Requirements

- Consider and record how you will give the beneficiary (or each beneficiary of a scheme) the right amount of subsidy to achieve your policy objective and to minimise the risks of excessive distortions of competition.
- Use eligibility criteria or design features to help achieve this.

#### Ensuring proportionality and minimising distortion

- 16.40 This is where you develop the remaining design features of the subsidy or scheme. Go through the list of design features provided below (some of which may overlap with those you have already used to help ensure additionality in a scheme).
- 16.41 For each design feature, consider whether and how you can use it to ensure the smallest amount of subsidy necessary is given to each beneficiary, and record those design features.
- 16.42 All these design features will tend to help subsidies be proportionate and to minimise their distortive effects. You may want to incorporate as many as possible and only exclude those that could make it harder for the subsidy to help achieve your policy objective.
- **The nature of the instrument** – Usually, it is less distortive to offer loans at below-market rates (or to take an equity share in a business) than to offer grants.
  - **Breadth of beneficiary** – Could the subsidy be made available to more beneficiaries? Could you require enterprises to compete for the subsidy? A competition can help demonstrate that the beneficiary or beneficiaries will carry out the desired activity in the desired way for the smallest amount of subsidy.
  - **Size of the subsidy** – A subsidy should be just large enough to achieve the required change in behaviour. Consider the size of subsidy in relation to the size of the beneficiary; how much is enough to influence the behaviour of an enterprise of that size? You are likely to be able to affect a small enterprise's behaviour with a relatively small subsidy. A scheme should always include a limit on how much subsidy a single beneficiary can receive. This can be expressed either as an absolute figure or as a proportion of eligible costs, or the lower of the two. As a final check, think about whether you could give a smaller subsidy and still achieve your policy objective.

- **Timespan over which the subsidy is given** – Favour time-limited schemes and one-off subsidies as these are likely to lead to less distortion. Ongoing subsidies should be avoided as they are likely to compensate for operating costs that the beneficiary would have to incur without the subsidy, may keep uncompetitive enterprises in the market, and may put other market operators or new entrants at a permanent disadvantage.

Schemes should be established to run for a clearly defined time. Open-ended schemes are unlikely to be proportionate or limited to what is necessary to achieve the policy objective.

- **Nature of the costs covered** – Specify what you want beneficiaries to do with the subsidy, and therefore what costs the subsidy can be used to cover. Consider how the subsidy will affect the beneficiary's costs. One-off subsidies that support the funding of an initial investment or the set-up costs of a project tend to be less distortive as long as they do not create barriers to entry. In contrast (as set out above), subsidies that cover a beneficiary's day-to-day costs are more likely to be distortive.
- **Performance criteria** – The design of a subsidy is likely to be improved by the inclusion of performance criteria in the subsidy agreement. This will help ensure the assistance is being used to achieve your policy objective.

Depending on the size of the subsidy, you may also want to include provisions in the agreement specifying how information about the beneficiary's performance is to be obtained; who will do the evaluation and when; any dispute or recovery mechanisms; and any penalties for failing to meet performance criteria. (Note that the Act provides a general right to recover subsidies that have been misused, whether or not there is a provision in the subsidy agreement to that effect. See Chapter 13)

- **Monitoring and evaluation** – For longer term or ongoing subsidies, you should consider providing for periodic reviews of the subsidy. This will help establish whether the market failure or inequality still exists, whether the policy objective has been reached, whether new and overlapping subsidies have begun to be provided by other public authorities for similar purposes, and whether your subsidy is still necessary.

### Case study (Extract 5)

#### *The nature of the instrument*

The revenue of each new gym is expected to be relatively low. At the membership rate the Council considers affordable (initially, £20 a month, or £3 a visit) and with an optimistic assumption that each will operate at its membership capacity (of 400 members or regular users), each gym might be expected to have a monthly revenue of £8,000. To

provide a welcoming, safe and functional gym, the operator will always need one or two staff members on duty during relatively long opening hours, and to pay for cleaning, energy and the maintenance of equipment. This means an operator will not be able to generate a reasonable profit and cover repayment of loan, even at a low or zero interest rate.

The Council therefore intends to give each operator a grant.

### *The beneficiary*

The Council aims to incentivise the establishment of 5 additional gyms. The Council will select a different operator for each to increase diversity in the market. The operators must be SMEs with experience operating in the gym sector. The Council will select those operators that are able to offer an appropriate service with the smallest amount of subsidy.

### *Size of the subsidy*

Using its experience of building costs in the area, the Council estimates the land and construction costs for a gym with suitable capacity to be no less than £500,000 and no more than £800,000. In view of the limited profit that operators are expected to make, the Council considers that to provide sufficient incentive for new entrants, it will need to offer 70% of the set-up costs to each operator, up to a limit of £560,000.

This will be in the form of an initial subsidy of £250,000 payable as soon as the subsidy agreement is concluded. A second instalment will be paid once construction is  $\frac{3}{4}$  complete and will be calculated on the basis of an up-to-date estimate of construction and set-up costs.

The Council will require each beneficiary to confirm that it has not received any other subsidy for the same purpose.

### *The timespan over which a subsidy is given*

Each subsidy given under the scheme will be a one-off, paid in 2 instalments, as detailed above. All operators (the beneficiaries) will be selected within one year, and each must commit to complete construction and open the gym within 2 years of the subsidy agreement being concluded. The scheme will therefore run for 3 years.

### *Nature of the costs covered (and ringfencing)*

Subsidies given under the scheme may only be used only for set-up costs, which the Council has specified as the costs needed to purchase land, construct the gym and purchase equipment.

### *Performance criteria*

The subsidy agreement will require beneficiaries to deliver to the timetable set out above, and to maintain entry and membership fees at the rate the Council considers affordable for 6 years after opening.

Failure to begin construction work within 18 months of the subsidy agreement will result in the first instalment of subsidy being recovered. The second instalment will be withheld if a beneficiary has not reached the  $\frac{3}{4}$  construction point after 2 years.

The second instalment of the subsidy will also be recovered if the beneficiary fails to keep access and membership prices at the level.

## Step 4

### Balancing test (Principle G)

#### Requirements

- Consider and record the anticipated negative effects of the subsidy, including in particular any negative effects on competition and investment within the UK, and international trade and investment.
- Compare these anticipated harms against the expected benefits of the subsidy (as they relate to the specified public policy objective). Do the anticipated benefits of the subsidy outweigh the negative effects?

### Conducting a balancing test

16.43 The aim of this step is to understand the likely harms that may arise from the subsidy – focusing on competition and investment within the UK and international trade and investment - and to weigh these against the expected benefits of the subsidy to your policy objective.

16.44 All subsidies have, or are capable of having, a negative impact on competition and investment or trade and investment that is more than hypothetical. Therefore by definition, the subsidy will have foreseeable harms. As with other parts of this process, you should think about and record what these are likely to be. If any harms appear particularly likely or significant, then it may be appropriate to do further work to understand those harms or to add new design features (such as extra eligibility restrictions and performance criteria, changes to the structure of payments or the form of subsidy) to mitigate the harms.

16.45 The following are some examples of the distortive impacts that subsidies can have and that, where relevant, should be considered as part of this step:

- allowing less efficient recipients to remain in the market, when they would otherwise have gone out of business;

- failing to reward competitors to the subsidy recipient that are more innovative or more efficient (and would have produced better or cheaper goods and services for their customers);
- reducing beneficiaries' and their competitors' incentives to innovate and to invest;
- shifting the location of economic activity from one place to another, affecting the local economy and employment rates, and wasting resources on the process of relocating (subsidies that are explicitly contingent on relocation are inherently highly distortive and, where permitted, should be assessed by reference to [Chapter 5](#), [Chapter 3](#) and [Annex 3](#), not this annex);
- creating or strengthening the market power of the beneficiary and allowing it to command higher prices without increasing the quality of goods or services it provides;
- creating knock-on effects on the beneficiary's customers and suppliers in their own markets.

16.46 In addition to the potential harms to competition and investment, might the subsidy tend to encourage any behaviours with negative impacts (both on your policy objective and more widely)?

16.47 The requirement to focus on the subsidy's harms to competition, trade and investment means that when you are weighing those harms against the positive impact of the subsidy on your policy objective (which may not relate to competition, trade or investment), you are unlikely to be comparing like for like. As a result, trying to quantify the benefits and harms to demonstrate that one outweighs the other will often be an artificial exercise and is not necessary, particularly for these smaller awards.

16.48 Instead, the objective of the balancing exercise is to try to foresee and record the harms that might realistically arise from the subsidy, so that you are able to make an informed qualitative judgement about whether the benefits to the policy objective justify those harms.

### Case study (Extract 6)

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#### *Balancing test*

Gym membership is a local market where the clientele typically live within a short distance of the gym so they can visit frequently. As a result, the subsidy will not have any foreseeable effect on the wider UK market or on competition and investment between the UK and another country.

The Council has therefore focused on the anticipated effects of the subsidy on the market for gym provision in Townsborough.

The subsidy scheme is expected to mitigate the effects of the market failure and inequality set out in Step 1 by incentivising the establishment of 5 new gyms in Townsborough, each with a membership capacity of 400. This will take the town to a total gym membership capacity of something over 2,000 (including the existing gym). The 5 new gyms will offer affordable entry fees and membership for at least 6 years.

The most likely and immediate impact on competition is that by funding the set-up of new gyms that charge lower membership fees, the existing gym will lose members and revenue to new competitors that – by virtue of the subsidy covering their set-up costs – are able to charge significantly lower prices than they otherwise would.

The Council anticipates that the existing gym will have built up customer loyalty and in the immediate term, many users of the existing gym may therefore continue to use it. However, over the longer term, it is likely to need to reduce its prices or specialise, otherwise it can be expected to lose new customers to the other gyms offering affordable entry.

The Council therefore notes the possibility that the creation of this scheme may eventually prejudice the viability of the existing gym, if it does not change its offering. If that gym were to leave the market, it would harm the policy objective of increasing gym provision and creating more equal health outcomes in Townsborough (albeit to a small extent as the gym's capacity is small). Conversely, the change in behaviour that is likely to be needed to keep the gym in the market would help achieve the Council's policy objective.

The owners of the existing gym will also be able to bid to operate another gym under the scheme.

Further, encouraging new market entrants, even providing services at an affordable rate, will stimulate competition and is less distortive than an alternative approach of only giving subsidy to the incumbent, which would then be likely to achieve a dominant position in the local market. (Nor is it likely that the existing gym could expand to the size necessary to meet the council's policy objectives.)

In the longer term, the existence of 5 (or 6) established gyms may squeeze out potential new entrants that do have to pay their own set-up costs.

It is also likely that once the price-capping agreement between the Council and the beneficiary ends (after 6 years), the operators will raise prices.

However, competition between the 5 gyms (and the one existing gym) is likely to prevent prices rising excessively. The local prevalence of low-income customers also means that the equilibrium price set by the market may be somewhat higher than the Council's affordable rate, but not so high that the operators deter too many of their customers.

The Council will keep this under review but consider that it is preferable to the counterfactual no-subsidy scenario set out in Step 2.

Having considered these potential harms that may arise from the subsidy, the Council is of the view that the benefits of achieving the policy objectives identified in Step 1 justify the award of the subsidy, and that the design of the subsidy has led those harms to be as small as possible without harming the policy objective.

### **NOTES**

- The Council has not done a detailed economic analysis but has attempted to understand what market or markets may be affected by the scheme and therefore need to be included in this analysis.
- Although the Council has not tried to quantify the harms that might be caused by the scheme, it has attempted to reason out what they might be and has not attempted to downplay them.

## ANNEX 3: Additional guidance for assessing subsidies and schemes of interest and subsidies and schemes of particular interest

### Overview

- 17.1 Subsidies or schemes of interest (SSoI) and subsidies or schemes of particular interest (SSoPI) have a greater potential for substantial negative impacts on UK competition or investment or international trade or investment. This Annex sets out additional and more in-depth assessments that public authorities should undertake when they are giving or making SSoI or SSoPI. This Annex should be read in conjunction with [Chapter 3](#) once the public authority has determined that the subsidy or scheme is or may be a SSoI or SSoPI (see [Chapter 10](#)).
- 17.2 Public authorities should consider the subsidy control assessment framework set out in Chapter 3 when considering compliance against the principles for SSoI or SSoPI. This Annex builds on step 3 and step 4 of the assessment framework in Chapter 3 by setting out additional elements in relation to the characteristics of the subsidy and the market which should be considered when assessing the distortive impacts on competition or investment within the UK, or on international trade or investment. This deeper understanding of distortive effects should then be applied with steps 3 and 4 of the assessment framework to ensure that the subsidy or scheme is consistent with Principle B, Principle F, and G.
- 17.3 Please note that this guidance is not intended to be exhaustive. Subsidies will differ in their aims and design and there may be specific assessment techniques that are not covered in this guidance that are relevant for certain subsidies. Public authorities should therefore apply the assessment methods set out in this guidance and elsewhere that are most appropriate for the subsidy or scheme in question.
- 17.4 Public authorities should apply this guidance in a commensurate manner, considering the size of the subsidy in question, the likelihood of potential negative effects and the level of evidence available. Public authorities should consider the same factors when choosing which techniques to apply, and the level of detail to include within their assessments.
- 17.5 To ensure robustness of the assessment of SSoI and SSoPI, public authorities will often have to gather the information and data discussed in the sections below from various sources. As noted in Chapter 3, public authorities should take into account possible incentives of those who provide information or data to let the subsidy appear more or

less favourable. Where public authorities obtain contradictory information or data, it may be necessary to gather additional evidence.

## The characteristics of the subsidy

- 17.6 This section sets out in more detail on some of the notable features and characteristics of subsidies and how they can be carefully designed to minimise negative effects on domestic competition and investment and international trade and investment.

## The size of the subsidy

- 17.7 Having determined the size of the subsidy (i.e., the total subsidy amount) as outlined in Chapter 3, public authorities should then compare that size with the size of the affected market(s), project costs and the operating cost of the recipient as outlined in the sections below. It is important to note that there is no bright-line threshold for when the value of a subsidy is too large relative to the size of any of these so that impacts on domestic competition, investment, and trade could be disproportionate. Furthermore, expert advice, e.g., from accountants, will only be necessary for particularly complex subsidies.

### **Subsidy size relative to the size of the affected market(s)**

- 17.8 Generally (all other things being equal), a subsidy that represents only a small proportion of total market size is less likely to have a significant impact on competition and investment in the UK, and international trade and investment.
- 17.9 The size of a market heavily depends on how this market is defined (see the later sections of this Annex). The market size should comprise the sales volume or value of the relevant products or services supplied by the recipient and all of the most important competitive alternatives as identified. Public authorities should also ensure that comparisons between the size of the subsidy and market(s) are made on the same basis (e.g., including or excluding VAT; figures should be based on the same time period, on either volume or value, etc.).
- 17.10 Public authorities should consider sensitivities around their market size estimates when there are gaps in the available information or when (some of the) products or services are provided free of charge.
- 17.11 Each market identified (see [‘Market Characteristics’](#) section below) should be considered in turn with the (share of the) total subsidy that is attributable to it. Different markets can be assessed in combination whenever (parts of) the subsidy are not attributable to individual markets.
- 17.12 Sources of information on market size can be data or estimates from subsidy beneficiaries, other market participants (including competitors, customers, and suppliers) or industry associations. Note that market research reports often consider wider sets of competitors and national (or wider) geographic markets and their suitability as a source of market size data should therefore be assessed prior to being used.

## Subsidy size relative to total project costs

- 17.13 A subsidy that meets step 2 of the assessment framework is unlikely to represent a large share of the recipient's total project costs (see [Chapter 3](#)). This is because a well-designed subsidy will only fund the minimal proportionate amount that is necessary to incentivise the beneficiary to realise the project.
- 17.14 Generally (all other things being equal), a subsidy that represents only a small proportion of total project costs is less likely to have significant effects on competition and investment in the UK, and international trade and investment. Though the appropriate percentage will likely depend on the circumstances of the market, the broader subsidy design, and the market failure or equity rationale being targeted.
- 17.15 Information on project costs will have been gathered for the preparation of the business case and in the assessment of step 2 of the assessment framework.
- 17.16 A subsidy should only fund an amount of money slightly above the level to make the beneficiary indifferent whether to undertake the project or desired activity. As simplified examples:
- A project with a negative present value to the beneficiary (i.e., it would not be undertaken in the absence of the subsidy) should only be subsidised up to the level at which its present value is just above zero and the beneficiary breaks even.<sup>137</sup>
  - Similarly, if a public authority wants a recipient to adopt a desirable activity over another (with a higher present value to the recipient, i.e., it would be the beneficiary's preferred option), it should only subsidise it slightly more than the amount necessary to make the beneficiary indifferent between the two activities.
- 17.17 The same logic applies even when enterprises use different measures to calculate the costs of a project or activity depending on the circumstances (e.g., total cost of ownership (TCO) instead of net present value): the public authority should only make recipients indifferent between either (i) undertaking a desired activity and doing nothing; or (ii) between the desired activity and the recipient's preferred alternative option.

## Subsidy size relative to the operating costs of the recipient

- 17.18 Generally, a subsidy that represents only a small proportion of the normal operating costs of the beneficiary is less likely to have a significant impact on competition and investment in the UK, and international trade and investment. The beneficiary's normal operating costs serve as a benchmark for the size of the subsidy to give public authorities an indication of the importance of the subsidy in the day-to-day business of the beneficiary and hence of its ability to significantly alter its incentives. As these costs exclude expenses not directly related to core business activities, they represent a more

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<sup>137</sup> Public authorities should consider, and factor in where appropriate a level of reasonable returns that the recipient may require from the project in order to undertake the investment.

reliable benchmark which is also less prone to be influenced by one-off financial transactions and other irregular operations of the business.

- 17.19 Public authorities should only take into consideration the beneficiary's operating costs for the markets for the relevant products and services as identified above. This is because a subsidy may represent only a very small proportion of the overall cost of a large enterprise supplying many products and services, but it may represent a substantial proportion of the costs attributable to a subset of these products and services. This assessment may be more complicated when beneficiaries operate in multiple markets or overseas as allocation of cost items to the activities affected by the subsidy may not be straightforward. However, this assessment does not need to arrive at a precise estimate; rather, it is intended to provide an indication of the importance of the subsidy for the day-to-day business of the recipient as mentioned above.
- 17.20 Information on normal costs of the beneficiary for the supply of the relevant products or services can be obtained from the beneficiary themselves. In particular, management accounts for the division(s) responsible for the supply of the relevant products or services will enable the public authority to estimate normal operating costs.

### The nature of the costs being covered

- 17.21 As set out in Chapter 3, one-off subsidies which support the funding of an initial investment, or the set-up costs of a project tend to be less distortive so long as they do not create barriers to entry or give a substantial advantage to the recipient. When funding only initial investment or set-up costs is not possible, public authorities should give particular consideration to how the subsidy will affect the beneficiary's costs.
- 17.22 Public authorities should generally avoid using subsidies to cover normal day-to-day costs of running the project, activity, or (one of) the beneficiary's facilities as these are more likely to impact competition and investment in the UK, and international trade and investment.
- 17.23 Funding only initial investments or set-up costs also reduces the risk that a project or activity continues to be funded even though it may become obsolete or ineffective during the project's lifetime. This is because public authorities may fall victim to the 'sunk cost fallacy'. This occurs where assistance should cease from a rational economic perspective but instead is continued due to an aversion to appear wasteful by forfeiting past investment and to publicly admit failure of a project or activity.
- 17.24 Information on which of the recipient's cost items can be considered as fixed or as variable costs can be obtained from an assessment of the beneficiary's current run rate and estimates of its run rate in the future. This will also allow public authorities to estimate what cost items are fixed or variable over the duration of the subsidy at specific output levels. This information can be requested directly from the beneficiary and obtained from its annual and management accounts.

17.25 As SSoI and SSoPI are likely more complex and have a greater potential of causing distortions than other subsidies, public authorities should ensure that contractual obligations on the beneficiary:

- restrict the use of the subsidy to the intended purpose and the defined type(s) of cost;
- restrict the use of unused funds; and
- are considered together and are consistent with the other subsidy characteristics, in particular the timespan, ringfencing and monitoring and evaluation.

### The timespan over which a subsidy is given

17.26 Public authorities should assess whether the subsidy is sufficiently time-limited as outlined in Chapter 3. This is because time-limited and one-off subsidies are less likely to distort competition and investment in the UK, and international trade and investment. The timespan of the subsidy or investment can provide an indication of the longevity of any effect on the market.

17.27 Public authorities should make use of subsidies that provide one-off lump-sum payments. Whenever that is not appropriate, public authorities should design subsidies that are time-limited and payment schedules should be linked to the achievement of specific milestones of a project. Public authorities should consider this feature in combination with the cost impact of the subsidy. Providing recurring subsidies over a period of time compared to a one-off lump sum is likely to have a greater impact on competition and investment in the UK, and international trade and investment, including on enterprises' entry and exit decisions.

17.28 First, recurring and open-ended subsidies incentivise recipients to ask for continued funding of a project or desired activity. Second, potential entrants could be deterred from entering the market if they have to compete with incumbents that are expected to receive further subsidies. Third, recurring and open-ended subsidies increase the risk of projects or activities continuing even after they have become uneconomic, obsolete, or ineffective. Recurring subsidies could also prevent efficient rationalisation – an enterprise may remain in a market when this is no longer the best option for it either because it has committed to it as part of a subsidy programme or because it has reason to expect future subsidies.

### Market characteristics

17.29 Subsidies in markets where enterprises compete vigorously and where the beneficiaries are not major players are less likely to distort competition and investment in the UK, and international trade and investment. Public authorities should assess what effect a subsidy can have on the competitiveness of enterprises in a market by considering the characteristics of markets set out in this section. If designing a scheme that covers a wide range of markets with different dynamics, public authorities should prioritise analysing those markets where the effects are likely to be largest. The following section

sets out how to identify the relevant market(s) with the most important competitive alternatives in each. It then outlines the most important market characteristics and their potential to alleviate or exacerbate the subsidy's impacts on domestic competition or investment or international trade or investment. Public authorities should step through and review each of the relevant market characteristics. In doing so, public authorities should gain an understanding of which third parties may be particularly affected by the subsidy and show evidence of having considered each of the following factors:

- The extent of market concentration;
- Barriers to entry, expansion and exit; and
- The growth (or decline) of each market.

### Identifying the market(s)

17.30 This section sets out how public authorities should identify the market(s) that a subsidy may affect. Public authorities should undertake this exercise for the beneficiary's products and services that are affected by the subsidy. In addition, this exercise may be required for any input or related products (see the relevant section below). Public authorities should apply this guidance in a commensurate way – it may not be necessary to fully identify each and every market that the recipient may operate in, only the key markets that the subsidy may affect.

17.31 A carefully delineated market should comprise the most important competitive alternatives to each of the recipient's products and services that are affected by the subsidy. Public authority should consider two main dimensions in this exercise:

- the product or service dimension; and
- the geographic dimension of the product or service.
- Each will be discussed below as well as some additional aspects which may be relevant for the assessment in certain cases.

### Product or service dimension

17.32 First, public authorities will need to identify the products or services (if any) that are important competitive alternatives to the beneficiary's products and services affected by the subsidy. These are not necessarily the products and services which fulfil the exact same purpose, have similar characteristics, or are most comparable in terms of price. Public authorities should be guided by the actual preferences and behaviour of customers, rely on evidence from a number of various sources, and consider this evidence in the round. The following sources of evidence are often likely to be important:

- the views of customers and competitors;
- recipients' perceptions and information on which rivals they monitor and competitively interact with; and
- information on rival products and services.

- 17.33 In many cases, this exercise will be straightforward. However, some cases will require additional evidence gathering on actual customer behaviour to assess whether certain products or services are important competitive alternatives. For example, it will depend on the local circumstances and behaviour of customers as to whether certain modes of transport (such as a bus route or rail connection) are important competitive alternatives to each other. Public authorities can obtain information on actual preferences from consumers, e.g., through a survey. In some sectors, intermediaries or other market participants<sup>138</sup> may also be able to provide information on customer behaviour and preference. This may be preferable in markets with a large number of customers.
- 17.34 A further complicating factor in identifying the most important competitive alternatives occurs when products or services are differentiated. A subsidy is likely to have greater effects on the suppliers of competitive alternatives that are less differentiated from the products and services of the beneficiary.
- 17.35 As mentioned above, important competitive alternatives do not need to be similar or fulfil the exact same purpose. Competitive alternatives can differ along dimensions such as quality or service levels. For instance, a luxury car is unlikely to be an important competitive alternative to a compact car. There are also markets where other dimensions are relevant. For instance, in broadcasting and publishing markets, a classical music radio station is unlikely to be an important competitive alternative to a contemporary music radio station. Similarly, a weekly tabloid is less likely to be an important competitive alternative to a daily newspaper.
- 17.36 Most products and services are differentiated even if some of them may appear to be similar. For instance, the otherwise homogenous service of providing electricity is differentiated by the different tariffs under which it is provided. Similarly, even though mineral water can be considered as homogenous, branding and other differentiators render this product somewhat differentiated.
- 17.37 As a result, products and services which are less differentiated from each other (e.g., two variable rate electricity tariffs, or two branded 'high-quality' mineral water bottles) are more important competitive alternatives to each other than to more differentiated ones (e.g., a variable and a fixed rate electricity tariff, or an own-label and a branded mineral water bottle).
- 17.38 There is then often no 'bright line' that can or should be drawn to distinguish which competitive alternatives are important and which are not. Products and services are commonly not either 'differentiated' or 'undifferentiated' (homogeneous); rather, differentiation is a sliding scale. Two strongly differentiated products or services will be less similar from the customers' point of view, and so the intensity competition between

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<sup>138</sup> For instance, wholesalers, brokers, operators of marketplaces, purchasing organisations or administrators of framework agreements.

this pair will be lower than between a pair of less differentiated products.<sup>139</sup> Gathering this information will provide public authorities with an indication of which products and services will more likely and more strongly be affected by a subsidy.

17.39 The following sources of information to identify the most important competitive alternatives and differentiation between products and services may often be relevant: customer views; market research reports; bidding data from the recipient and competitors (for some products and services, such data can easily be obtained from intermediaries, operators of marketplaces or administrators of framework agreements); or evidence of customers switching between enterprises in response to price changes or changes in the availability of the products or services in question. Public authorities may also borrow from decisions in the field of antitrust and merger control that have considered the products or services in question.<sup>140</sup>

### Geographic dimension

17.40 Having considered the product or service dimension, public authorities will need to consider whether products or services supplied from different geographic areas or over different distances are important competitive alternatives to the recipients' products and services affected by the subsidy.

17.41 Whenever the most important competitive alternatives are sufficiently similar across geographic areas, public authorities may consider these in combination. In some cases, however, it will be necessary to consider different geographic areas separately because of different competitive alternatives available to customers in each area.

17.42 In many cases, this assessment is straightforward; for instance, when the products or services of the beneficiaries and the important competitive alternatives are supplied locally and there are no significant competitive constraints from outside of a geographic area; when products or services are supplied nationally with no significant imports; or when the products or services concern transport connections between specific geographic locations. However, in some cases it will require additional evidence gathering to delineate the geographic area(s) relevant for the products or services in question.

17.43 To assess such differences, public authorities may consider information on, for instance:

- customers' views on the competitive performance of enterprises supplying different geographic areas or customer groups;
- differences in pricing, sales, advertising and marketing strategies, delivery costs or barriers to entry when supplying into an area or to a customer group;

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<sup>139</sup> In technical terms, the enterprises that represent the most important competitive alternatives will be those that recapture the most significant shares of sales in response to a price increase by the recipient.

<sup>140</sup> See for instance: <https://www.gov.uk/cma-cases>.

- customer preferences, for instance how far customers are willing to travel to reach a supplier; and
- product characteristics such as perishability, i.e., how far a perishable product can be transported. In addition, information on the geographic scope of competition may be obtained from, for instance: information on enterprises' websites on the location of their outlets; information on enterprises' websites on their delivery areas; or transport network maps.

17.44 Examples of markets where the geographic scope of competition may require an area-by-area assessment of the most important competitive alternatives are:

- retail markets where enterprises have bricks-and-mortar outlets which customers commonly visit to shop, or consume products or services. As a result, the set of competitive alternatives may differ depending on the location of a particular customer.
- markets in which a good or service is delivered to the customer over certain a certain distance or within a certain geographic area. As a result, the set of competitive alternatives may also differ depending on the location of a particular customer;
- markets in which the provision of products or services is determined by physical infrastructure (e.g., telecommunications and broadcasting; water supply and sewerage; electricity, gas, or steam supply); and
- transport markets in which customers make 'point-to-point' journeys, and as such demand is for transportation between two geographic locations. As a result, competitive alternatives may differ for each 'point-to-point' journey.

### **Input and related markets**

17.45 Public authorities should also identify whether a subsidy may have an impact on competition and investment in the UK, and international trade and investment, in input markets (e.g., raw materials, land, or labour) and products or services related to the recipient's activities affected by the subsidy. They should also consider the impacts of a subsidy in any markets not directly targeted by a subsidy but in which it wants to correct a market failure or pursue an equity rationale. This may be the case for instance where a subsidy funds an activity in the supply of an upstream (or downstream ) product or service with the intention of bringing about a change in a downstream (or upstream) market. Public authorities should follow the steps of the assessment set out in the sections above to identify the impact of the subsidy on each of these markets

17.46 In relation to inputs, a subsidy can have effects on the markets for these inputs in two ways. First, it can directly be targeted at the procurement by the recipient of a particular type of input, for example an environmentally friendly alternative to a traditional input. Second, it can indirectly affect the procurement of specific inputs by targeting certain products and services supplied by the recipient. Public authorities therefore require a

reasonable understanding of the production process of the beneficiary. This information can readily be obtained from recipients.

- 17.47 Many enterprises will buy more than a single input for the supply of a specific product or service and consequently inputs may come from different sets of suppliers. Public authorities should exercise their judgement to identify input products or services that may particularly be affected by the subsidy to apply the assessment in a commensurate manner and limit it to those markets where impacts on competition and investment in the UK, and international trade and investment are most likely to occur. Indicators of such effects are (i) a high degree of dependency between customers or suppliers and the recipient of the subsidy, (ii) where there is prima facie evidence (i.e., before having systematically identified the most important competitive alternatives) that the recipient may be the only or only one of very few suppliers or buyers of a particular good or service.
- 17.48 For these input products and services, the public authority should identify the most important competitive alternatives and the geographic scope of competition and then assess whether the subsidy may have an impact on competition and investment in the UK, and international trade and investment, in each of these input markets.
- 17.49 In relation to other related markets, it may in some cases also be necessary for public authorities to consider whether a subsidy affects those who distribute, wholesale, or retail the products or services of the recipient(s) and those that supply complementary products or services. As mentioned above, public authorities should exercise their judgement to identify related products or services that may be particularly affected by the subsidy to apply the assessment in a commensurate manner and limit it to those markets where impacts on competition and investment in the UK, and international trade and investment, are most likely to occur. Indicators of such effects are also (i) a high degree of dependency between the recipient of the subsidy and its customers or suppliers of complementary products or services, (ii) where there is prima facie evidence (i.e., without having systematically identified the most important competitive alternatives) that the recipient may be the only or only one of very few suppliers of a particular good or service.
- 17.50 In each of these cases, the assessment set out in the sections above will enable the public authority to identify impacts on competition and investment in the UK, and international trade and investment, in any of these related markets.

### Market concentration

- 17.51 Having identified the most important competitive alternatives to the subsidy beneficiary and the market size, the public authority will be able to calculate the extent of market concentration. Market concentration measures how much market share is controlled by a small number of enterprises and therefore can be a useful proxy for the intensity of

competition. In general, the fewer the enterprises in a market, the larger their share of the market, and the less competition one would expect to observe.

Concentration measures can be based on:

- the number of enterprises active in the market;
- volume (e.g., the number of products or services sold or the number of customers who use the products or services); or
- value (e.g., turnover).

17.52 The public authority may consider several measures of concentration in its assessment. Since many measures such as sales volumes and values of the most important competitive alternatives in the geographic area(s) of interest may often be commercially sensitive, the public authority may consider incorporating an obligation on all applicants for the subsidy to provide such information in its subsidy design.

17.53 If the affected market is concentrated, and the subsidy beneficiary is a major player, then it is more likely that competitors will alter their business in response to the subsidy. Conversely, a subsidy to a small or fringe enterprise with many competitors is less likely to have a significant impact on competition and investment in the UK, and international trade and investment.

### Barriers to entry, expansion, and exit

17.54 Actual or potential competitors may encounter barriers which reduce or even severely hamper their ability to enter, expand into, or exit a market. Barriers to entry and expansion are specific features of a market that give incumbent enterprises advantages over potential competitors. Barriers to entry and expansion hinder the ability of potential entrants or enterprises looking to expand to constrain the exercise of market power by incumbents. Subsidies may also act as barriers to exit, leading to less efficient enterprises remaining in the market. This may in turn prevent more efficient or innovative competitors from growing or expanding into other areas of the market.

17.55 Public authorities should consider in their assessment of market characteristics that subsidies in markets with high barriers to entry, expansion, and exit are more likely to lead to negative effects on competition and investment in the UK, and international trade and investment. In addition, public authorities should design a subsidy in a way that limits barriers to entry, expansion or exit, therefore reducing the risk of impacts on domestic competition or investment or international trade or investment.

17.56 Barriers to entry and expansion can be caused for a range of reasons such as:

- high initial set-up costs where a significant proportion of them are sunk and irrecoverable upon exit from the market;
- customers value reputation, track record or brand of a supplier;

- economies of scale are significant (i.e., large suppliers have lower average costs than smaller ones);
- network effects are significant (i.e., small suppliers are less attractive to customers);
- technological or regulatory barriers are significant (i.e., intellectual property rights, trade barriers or regulations may hinder new entrants);
- early movers may have significant advantages over new entrants.

17.57 Barriers to entry and expansion might be particularly high if some of these factors are present in combination.

17.58 Depending on their design, subsidies can raise or lower barriers to entry, expansion, and exit. For example, a subsidy that is targeted to provide risk finance to small or new businesses may help newer enterprises compete with existing enterprises with a longer credit history. In contrast, a subsidy that is specifically limited to existing enterprises may inadvertently prevent the efficient entry and exit into the market.

17.59 The public authority should assess whether the subsidy has the potential to raise barriers to entry, expansion, or exit, including by creating or worsening any of the features listed above. All other things equal, a subsidy that raises barriers to entry, expansion, or exit is more likely to have a significant impact on competition and investment in the UK, and international trade and investment.

### Market growth

17.60 Subsidies given in markets which are experiencing marked levels of growth are less likely to cause significant distortions to competition and investment in the UK, and international trade and investment. This is because a subsidy to one enterprise in such a market is less likely to harm a competitor's growth prospects, given the general growth opportunities in the sector.

17.61 Subsidies can cause significant distortions to markets which, for several years, have experienced no growth or decline, or are at overcapacity. A subsidy to an enterprise in such an industry can enable the beneficiary to increase its market share directly at the expense of competitors, as there is a fixed or reducing amount of business available. In these circumstances, public authorities should pay particular attention to any negative impacts of a subsidy on competitors.

17.62 As an example, a well-designed subsidy in an emerging and growing market such as the manufacture of fuel cell technology, is less likely to cause market distortions or create overcapacity. Similarly, a well-designed subsidy that creates a new market that does not yet exist or that focusses on untapped demand is less likely to create distortions.

## ANNEX 4: Additional guidance for calculating the gross cash equivalent and the gross cash amount

### Overview

- 18.1 Subsidies can be given in a variety of ways, ranging from grants given in a single lump sum payment, to loans, guarantees, and equity investments given on favourable terms. Subsidies may also be given on a staggered basis, over several years.
- 18.2 For the sake of consistency, and so that subsidies given in the UK can be compared on a like-for-like basis, the government has established simple approaches for calculating the pound sterling value of subsidies not given as a simple cash award.
- 18.3 The Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 (“the Gross Cash Regulations”) set out how public authorities should value subsidies, including each of the types mentioned above. These regulations enable public authorities to value subsidies of entirely different types at a single £ value.
- 18.4 The Subsidy Control Act 2022 (“the Act”) or regulations or schemes made under the Act contain provisions which apply to thresholds based on the amount of a subsidy. These are to be determined by reference to its gross cash amount (GCA) or its gross cash equivalent (GCE). The provisions are:
- section 33(8) - the relevant information to be uploaded is set out in the Subsidy Control (Subsidy Database Information Requirements) Regulations 2022<sup>141</sup>;
  - section 36(5) - minimal financial assistance (“MFA”);
  - section 38(5) – determining the amount of assistance that can be given for services of public economic interest);
  - section 41(2) - determining the exemption for certain subsidies given to SPEI enterprises; and
  - regulations made under the Act including the regulations that have been made under section 11 of the Act, namely, the Subsidy Control Act (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022<sup>142</sup>.

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<sup>141</sup> These regulations can be found here: <https://www.legislation.gov.uk/uksi/2022/1153/made>

<sup>142</sup> These regulations can be found here: <https://www.legislation.gov.uk/ukdsi/2022/9780348240023>

- 18.5 This guidance describes principles, methodologies and data sources that can be used to value subsidies of different types for the purposes of compliance with the Act and related regulations. Although this guidance sets out specific recommended methodologies, other methodologies are acceptable if the public authority is satisfied that they comply with the terms of the Gross Cash Regulations.
- 18.6 Part 1 of this annex sets out guidance that public authorities should consult when awarding any type of subsidy. This includes guidance on:
- the application of discount rates;
  - calculating the maximum value of awards within a scheme for the purposes of SSoPI and transparency; and
  - indirect subsidies.
- 18.7 As recommended methodologies for valuing subsidies vary for different types of subsidies, Part 2 of this annex is organised by type of subsidy:
- grants
  - measures that are also offered by the market
  - loans
  - guarantees
  - equity investment
  - purchase of goods and services
  - provision of goods and services
  - tax measures
- 18.8 A broad range of valuation approaches may be important for public authorities to consider in order to comply with the wider duties of the Act such as conducting principles assessments or considering whether a measure meets the 4-limbed test for being a subsidy (see [Chapter 3](#) and [Annex 1](#) for more information). For instance, it may be appropriate to use several different measures of value when determining whether a subsidy is proportionate.

## Part 1: Guidance for all types of subsidies

- 18.9 There are some methodologies that are likely to be relevant for all types of subsidies. Public authorities should consider the following sections, though not all techniques will be relevant for all subsidies.

### Application of discount rates

- 18.10 In general, the market value of payments or other financial assistance by a public authority to an enterprise is greater when they are made earlier, rather than later. Similarly, payments, or other financial assistance, transferred from an enterprise to a public authority to repay a loan are worth more to the enterprise the later they are received. For example, a loan that involved paying the whole principal amount in one go, soon after the loan is given, is generally worth less to the recipient than a loan that allowed the recipient to spread payments over a longer period of time in instalments. This is on the basis of the time value of money, with enterprises preferring to receive funding earlier and delay repayments as far as possible.
- 18.11 To account for this, it is recommended that public authorities discount future values when calculating the gross cash equivalent or the gross cash amount of a subsidy. It is best practice to only discount where:
- the subsidy in question contains explicit conditions that specify when transfers of financial assistance are to be made; or
  - when there is a schedule of payments agreed between parties. However, in some instances (e.g., where it is clear in general terms when payment will be, but impracticable to add an explicit time condition) then the public authority can discount based on best estimates of when transfers of financial assistance will be made.
- 18.12 Once the public authority has determined the cash value of any transfers of goods, services or other non-cash assistance, the public authority can apply discounting to any transfers between the public authority and the enterprise as if these are payments.
- 18.13 Public authorities should take care, where appropriate, to apply discounting evenly across payments or transfers of financial assistance to and from the public authority and the enterprise. For example, if the public authority has discounted transfers of financial assistance from the public authority to the enterprise, it is best practice to also discount any relevant transfers of financial assistance from the enterprise to the public authority, using the same principles.

- 18.14 When discounting, public authorities must do so on a yearly basis, using 12-month periods from the date the subsidy was given. For this reason, public authorities may wish to assign transfers of financial assistance into 12-month periods<sup>143</sup>. It is best practice for the 12-month period to start from the date that the subsidy is given (see [Chapter 2](#) for more information on the point at which it is considered to have been given), but if this is not possible or appropriate public authorities may wish to use calendar, financial years or any other period lasting 12-months. Public authorities should not discount payments or transfers of financial assistance in the 12-month period after the subsidy is given. Where it is appropriate to apply a discount rate public authorities must use the discount rate of 5.3% to discount transfers of financial assistance in future periods<sup>144</sup>.
- 18.15 This discount rate is intended to capture the average risk-free rate that a business may borrow at. It is derived from the average monthly forward rate on sterling overnight index swaps published by the Bank of England for the calendar year 2023<sup>145</sup>. This rate is forward looking and so is robust to expected changes in interest rates over the 2023 calendar year.
- 18.16 Once the public authority has assigned transfers of financial value to 12-month periods, the public authority should apply the discount rate. To apply the discount rate, public authorities should follow the following steps:
1. Payments or transfers of financial assistance made in the current 12-month period should not be discounted<sup>146</sup>.
  2. Payments or transfers of financial assistance made in the first 12-month period after the current 12-month period should be discounted using the discount rate of 5.3%. This is equivalent to multiplying these values by a factor of 94.7% (i.e. 100 – the discount rate).
  3. Payments made in the second 12-month period should be multiplied by this discount factor twice (i.e. multiplied by a factor of 89.7%).
  4. And so on for future 12-month periods.

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<sup>143</sup> In practice, public authorities may already have assigned payments to monthly or semi-annual periods, in these instances public authorities should map these to 12-month periods ahead of discounting.

<sup>144</sup> This 5.3% is based on an estimate of the time value of money for *enterprises* rather than for society generally or the public authority. For this reason, it differs from other discount rates used in the public sector, such as the Green Book social discount rate. Public authorities should take care to use the appropriate discount rate in the appropriate circumstances.

<sup>145</sup> <https://www.bankofengland.co.uk/statistics/yield-curves> accessed 10 November 2022. 1 percentage point is added to this rate to account for additional underlying risk and administrative cost associated with new business lending, compared to overnight swaps between financial institutions.

<sup>146</sup> Mathematically, they are multiplied by a discount factor of 1.

Mathematically, the public authority should follow the following formula or any formula that is mathematically equivalent:

$$\text{Present Value} = \sum_{t=0}^n \frac{x_t}{(1+0.053)^t}$$

Where:

**Present Value** is the present value of the stream of payments or transfers of financial assistance being discounted.

**t** is the number of 12-month periods since the subsidy is given that the payment falls into. With  $t = 0$  in the 12-month period following when the subsidy is given,  $t=1$  in the first 12-month period after this and so on until  $n$  which is the final 12-month period where payments are made.

$x_t$  is the sum of all payments made in the 12-month period  $t$  or, in the case of tax measures, the net cash impact of the subsidy in each 12-month period.

18.17 When discounting, public authorities should discount ahead of making further calculations. For example, where public authorities are comparing the terms of a subsidy compared to the terms of an equivalent measure at market rate, they should first discount the transfers of financial assistance for the subsidy and the market rate equivalent separately, before taking the difference to calculate the gross cash equivalent or the gross cash amount.

### Example

A public authority is giving a cash grant of £3m to an enterprise. The subsidy is to be paid in 3 equal instalments over a 36-month period, with 1 instalment every 12 months. Discounting should be applied, as set out above, to account for the subsidy being given over multiple financial periods. The total discounted value in the second financial period would be £947,000. For the final financial period it would be £896,000. As such, the gross cash amount of the subsidy is £2,843,000.

## Calculating the maximum value of a subsidy within a scheme

18.18 When making a scheme, for the purposes of ensuring that the entry on the transparency database (see [Chapter 12](#)) is accurate and to calculate whether a SSoPI (see [Chapter 10](#)) referral may need to be made, public authorities must calculate the maximum award given under the scheme.

- 18.19 Where public authorities have introduced a cap on the value of any individual subsidy given underneath the scheme, the public authority may choose to use the value of the cap to determine the maximum gross cash amount or equivalent of any subsidy given under the scheme. Where there is little or no administrative burden in setting a cap, and the public authority has some control over the final amounts of individual subsidies given under the scheme, then it is best practice to incorporate a cap into the scheme design. To operate a cap, it is best practice to incorporate and indicate a specific financial limit explicitly within the principles assessment and/or within any legal documentation used when making the scheme.
- 18.20 In some instances, it may not be appropriate or possible for a public authority to operate a cap for a subsidy scheme. This may be the case if, for example, the individual awards depend on the outcome of a legally binding auction or if the value of the awards are set relative to an external data source that may be subject to change (for example, if the subsidy rate is set relative to the future wholesale price of a product or commodity). When this is the case, the public authority should use reasonable estimates to establish the maximum subsidy that will be awarded underneath a scheme. To do so, the public authority may either estimate all the likely subsidies that may be awarded through the scheme and then determine the gross cash equivalent or amount of the largest of these subsidies to establish the maximum subsidy, or the public authority can estimate the gross cash equivalent or amount of the maximum subsidy that may be awarded under the scheme directly. The public authority should be clear with regards to the approach it has taken to reach the estimate and keep a record of this as part of the wider documentation that the public authority has produced to comply with the Subsidy Control Act.
- 18.21 The public authority may wish to use existing reasonable estimates included in the business case or within the principles assessment to estimate the maximum award. Where there is uncertainty, or the public authority has to make analytical choices to calculate estimates, the public authority should be conservative in their estimate and err on over-estimating the maximum subsidy.

### Indirect Subsidies

- 18.22 In some instances, the direct recipient of the subsidy may not be the enterprise that ultimately receives financial assistance from the subsidy. For example, a grant in the form of vouchers from a public authority to consumers to purchase green household improvements would not be a subsidy to the consumer but may be a subsidy to the retailers of these household improvements if they receive financial assistance compared to their competitors. In other instances, there may be more than one enterprise who is the recipient of the subsidy or there may be one enterprise directly receiving the subsidy as well as further indirect recipients of the subsidy.

- 18.23 When a public authority has established that the measure in question is an indirect subsidy (see [Annex 1](#) for more information), the public authority may then have to determine the gross cash equivalent or amount to establish which parts of the regime apply.
- 18.24 To determine the gross cash equivalent or amount of an indirect subsidy, the public authority should establish the cash value of assistance to each enterprise, compared to the value that would have been available to the enterprise under normal market conditions.
- 18.25 To establish the cash value of the assistance to each enterprise, the public authority should consider both the overall value of the assistance to the direct recipient, and the proportion of the assistance that is 'passed on' to each enterprise. To do this, the public authority should use the information in the principles assessment (see [Chapter 3](#)) and business case to establish the change in behaviour that the subsidy is designed to induce in the direct recipient. Once established, the public authority should determine how this change in behaviour results in financial assistance to each enterprise and use other sections of this annex to establish the gross cash equivalent or amount of this assistance.
- 18.26 Where the public authority has established that more than one enterprise is either in direct or indirect receipt of the subsidy, the public authority should attribute a proportion of value to each enterprise such that the total value of the financial assistance across all enterprises equals the total amount of financial assistance given by the public authority. Where one or more of the direct or indirect recipients are not enterprises, the public authority should attribute a proportion of value to each enterprise such that the total value of the financial assistance across all enterprises does not exceed the total amount of financial assistance given by the public authority.
- 18.27 Where appropriate, the public authority should also adjust the cash value of this assistance based on what would have been available to the enterprise under normal market conditions. In practice, once the public authority has established the type of assistance that the subsidy gives to the enterprise the public authority can use other sections of this annex to establish and determine how to account for the amount that would have been available to the enterprise under normal market conditions.
- 18.28 There should also be no further adjustments for tax or any other expense that the enterprise may incur, or has already incurred, to fulfil the conditions of the subsidy beyond any adjustments that the public authority has made to attribute the value of the financial assistance between the direct recipient and indirect recipients.

### Example

Public authority A has given a £5m equity investment to a company that is set up as a developer to construct a sports facility. The developer is negotiating an agreement with a separate operator who is responsible for the operation of a range of end-users of the sports facility, which include the organisers of community sports events as well as for-profit events.

The public authority has used [Annex 1](#) of this guidance to identify that even though the developer is the direct recipient of the subsidy, the agreement between the local authority and the developer means that the operator will also receive an indirect advantage.

To determine the gross cash equivalent of the subsidy, the public authority should use the [equity investment section](#) of this guidance. Following this guidance, the public authority has identified that the developer would have received £3m for the same equity stake had they sold the equity under normal market conditions. As the public authority has paid £5m for this stake, the gross cash equivalent is £2m (£5m less £3m).

In certain instances, for example, when calculating how this subsidy should cumulate towards the Subsidies and Schemes of Interest and Particular Interest monetary thresholds, the public authority should 'attribute' a proportion of the value to each recipient. The public authority has identified that 100% of the profit-making activity of the developer are gained from rents from the operator, and the agreement between the public authority and the developer requires that the developer gives a 25% discount to the operator on these rents.

Accordingly, the public authority attributes 25% of the £2m gross cash equivalent (£500,000) to the operator and the remaining 75% (£1.5m) to the developer. The public authority should inform each of the enterprises of the value of the gross cash equivalent attributed to them, and it is good practice to publish them on the database or a linked website as relevant information alongside the database upload for the subsidy as a whole.

## Part 2: Approaches to valuing different types of subsidies

- 18.29 In most cases, public authorities should arrive at an understanding with regards to the type of subsidy, and the length of time over which they intend to give it, during the process of designing the subsidy. Public authorities should first consult [Chapter 2](#) of this guidance to determine whether the assistance they are awarding meets the definition of a subsidy.
- 18.30 Should the assistance meet the definition of a subsidy, the specific ‘type’ of subsidy that is being given may be set out in the legally binding agreement between the public authority and the enterprise. Examples of different types of subsidies are set out in para 17.7.
- 18.31 Public authorities should use the relevant section of this annex to determine the value of the subsidy using the appropriate methodology for the type of subsidy in question. Where it is unclear, public authorities should use the principles set out in the [‘measures that are also offered on the market’](#) section of this annex to value their subsidies.
- 18.32 A subsidy may be of several different types. For example, a single subsidy could have a loan element and an upfront cash grant element. Where this is the case, public authorities may choose to calculate the total value of the subsidy as a sum of its constituent parts.

### Example

To illustrate this further, public authority A is granting a subsidy to enterprise X.

Part of the subsidy consists of a cash grant, which the enterprise will not have to repay. This grant will be paid in two parts: one in the current financial year, and the remainder in the following financial year.

The gross cash amount of this element of the subsidy is equal to the cash made available in the legally binding agreement between the public authority and the enterprise. The enterprise is only able to draw down 50% of the entire value of the subsidy within the relevant period, the 12 months following the binding agreement. The rest of the subsidy is made available to the enterprise in the following financial year. Accordingly, the public authority should discount the value of the grant at a rate of 5.3% in accordance with this guidance. The public authority determines that the gross cash amount of the grant element is £2m.

The second element of the subsidy is a loan which the enterprise will repay below market rates within a 12-month period. To calculate the gross cash equivalent of this type of subsidy the public authority should determine the difference between what the enterprise would have repaid, had it borrowed this sum over the same period at market rates, and the amount it will repay under the terms of its agreement. The public authority determines the gross cash equivalent of the loan element is £1.4m (see the [section below on loans](#)).

The total value of the subsidy that public authority A gave to enterprise X is £3.4m: the sum of the gross cash amount of the cash grant (£2m) and the gross cash equivalent of the loan (£1.4m).

## Grants paid in cash

- 18.33 For grants paid in cash, the gross cash amount is equal to the cash made available to the enterprise under the grant, as specified in the legally binding agreement between the public authority and the enterprise. In instances where the grant offer letter (or equivalent) sets out a maximum amount that can be drawn down by the enterprise then this maximum figure is the gross cash amount. Public authorities should not make any adjustments based on an estimate of how much will be drawn down or how much actually is drawn down. There should also be no adjustments for tax or any other expense that the enterprise may incur, or have incurred, to fulfil the grant conditions.
- 18.34 When granting non-MFA subsidies (i.e., in excess of £315,000) it is best practice for public authorities to discount the value of grants (or portion of the grant) when they can only be drawn down over multiple financial years.
- 18.35 A grant (or portion of the grant) is considered to fall in a later financial period if there are conditions in the contract letter that the grant (or portions of the grant) cannot be drawn upon until a date in a later financial period. For example, where there is a condition that a grant instalment cannot be made before a date that is in a future year. This is true regardless of when in the later financial period they can be drawn upon (e.g., if they can only be drawn on at a date towards the end of the next financial year, then this is still considered in the next financial year) and whether or not the grant is limited to that financial period or can also be drawn upon in future periods.
- 18.36 Similarly, grants (or portions of grants) that can be drawn upon in the relevant period are considered to be in the relevant period for the purposes of discounting. This is true regardless of when in the year they can be drawn upon (e.g., if they can only be drawn upon in a certain month of the relevant period) or whether or not the grant is limited to the relevant period or can also be drawn upon in future periods.
- 18.37 When discounting public authorities should use the discounting rate set out [above](#).

## Measures that are also offered on the market

- 18.38 When a subsidy is not given as a grant or as a tax award, then the subsidy is effectively a financial product that theoretically may be offered on the market. In such cases, public authorities should determine the gross cash equivalent of these subsidies in comparison to terms that would have been available to the enterprise had it received a similar financial product on market terms.
- 18.39 In these instances, public authorities should first identify whether there is an appropriate market equivalent, and if not whether the public authority can reasonably use estimates to identify an equivalent market instrument. In some cases, the public authority may identify that there is no equivalent market instrument to compare to, or they may use market instruments to benchmark against an earlier step in the determination of the gross cash equivalent.
- 18.40 In general, when an appropriate market instrument is identified, it is easier to compare the net payments between the enterprise and the public authority for the subsidy in question and the net payments had they used the market instrument on market terms.
- 18.41 There should be no adjustments for tax or any other expense that the enterprise may incur or have incurred to fulfil the subsidy conditions.
- 18.42 When determining the gross cash equivalent public authorities should use generally accepted accounting practices. This does not mean that public authorities should use any particular accounting standard, but it does mean that public authorities should apply the basic practice that they may ordinarily have followed when conducting their business case and internal programme management. In most circumstances, public authorities should not use information directly from accounts, or require accountants to sign off the gross cash equivalent determination, unless the public authority deems it appropriate in a particular case.
- 18.43 When identifying the appropriate terms that are available on the market, public authorities may wish to use information in the business case, or any 'fair value' comparisons used for accounting purposes. The public authority may use these methodologies as long as it has determined that they are compliant with the Gross Cash Regulations. In particular, the public authority should ensure that there have been no adjustments for tax or any other expenses and that the discount rate set out [above](#) is used for gross cash equivalent purposes.

18.44 Public authorities may use reasonable estimates when they are determining the maximum foreseeable gross cash equivalent of the subsidy or the amount of a subsidy to be paid under a scheme. Reasonable estimates are particularly useful when there is uncertainty over the final payments or transfers made through the subsidy or where no market comparator is available. For example, public authorities may have undertaken reasonable estimates for the expected return from a loan or guarantee products that they may then use to estimate the terms that would have been offered on an equivalent loan or guarantee had it been offered on the market.

### Loans

18.45 Subsidies given in the form of loans covers any situation where public authorities lend money to an enterprise that is then repaid to the public authority at a rate below what would have been available to that enterprise on the market. Such loans may be given via an intermediary, or directly from the public authority.

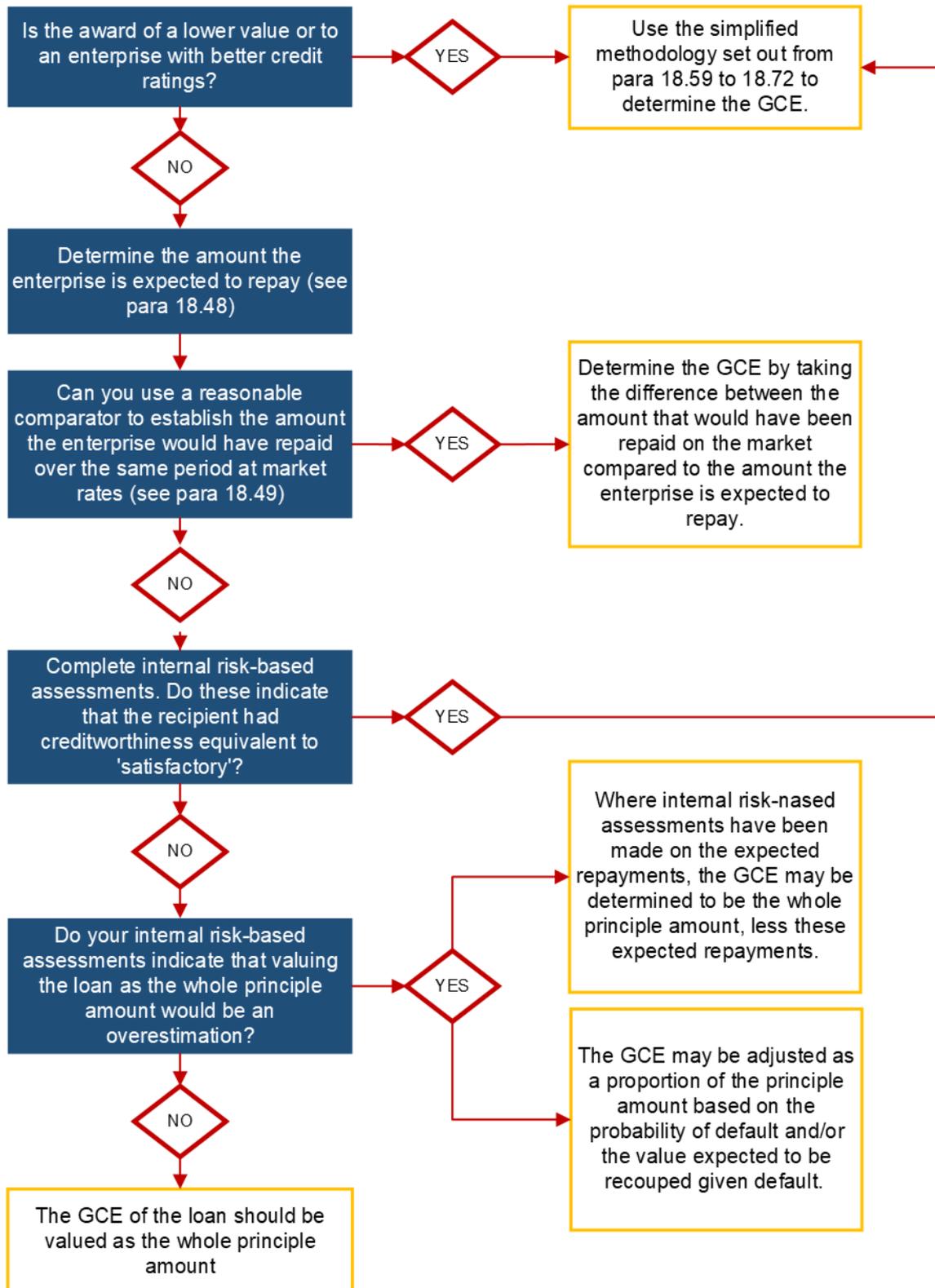
18.46 In principle, to calculate the gross cash equivalent of subsidies given as a loan, public authorities should determine the difference between what the enterprise would have repaid borrowing the same sum over the same period at rates available on the market<sup>147</sup> and the amount that the enterprise is expected to repay to the public authority for the loan in question.

18.47 This guidance has several sections on loans which provide general and specific methodologies to be applied at the public authorities' discretion, based on the circumstances of the loan in question. To navigate the sections of this guidance that apply to loans, the public authority may wish to follow the flow diagram below:

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<sup>147</sup> i.e., the 'fair value' in accounting terms.

**Determining the GCE of subsidies given as loans**



Please note: discounting may need to be applied at various steps when calculating values. Please refer to the section on discounting.

- 18.48 As a first step, public authorities should therefore establish the amount the enterprise is expected to pay back to the public authority over the lifetime of the loan. It is good practice to split the total amount repaid by 12-month periods following the point that the subsidy is given, as the public authority may wish to discount these payments (see the [section on discounting](#) above).
- 18.49 Public authorities should then establish the amount the enterprise would have repaid over the same period, based on a loan available on the market. To do so they should use one or more of the following sources:
- Evidence provided by the enterprise of commercial loans offered to the enterprise in question by a bank or financial institution.
  - Evidence, such as published average business loans rates to similar businesses<sup>148</sup>. This may include information from price comparison websites, information from financial institutions (such as banks), information from analysts or internal analysis based on standard valuation models.
  - Academic evidence, on the relationship between business characteristics and the interest rates offered by a bank or financial institution<sup>149</sup>.
- 18.50 When using these evidence sources the public authority should consider whether the rates are applicable to the loan in question. For example, public authorities should consider the timeliness of evidence sources, and how similar the enterprise is to the businesses that the information relates to. It is likely that the public authority will not be able to identify information about loans for the exact same purpose to similar enterprises. When this is the case, the public authority should consider information for any type of loan to the same or similar enterprises.
- 18.51 Public authorities should use multiple evidence sources where available and evaluate which of these is most applicable to the loan in question.
- 18.52 Using these information sources, it is likely that the public authority will more readily identify comparator interest rates, rather than information on the total amount that the enterprise should repay. Once a comparator interest rate is identified, the public authority may choose to calculate the total amount that would have been repaid using this interest rate and the schedule of payments identified for the subsidy in question. The public authority may wish to discount these repayments (see the [section on discounting](#), above).
- 18.53 The public authority should then determine the gross cash equivalent by taking the difference between the amount that the public authority determined would have been

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<sup>148</sup> Such as <https://www.experian.com/blogs/ask-experian/what-is-the-average-interest-rate-on-a-business-loan/>

<sup>149</sup> Such as <https://www.bis.org/publ/work747.pdf>, or <https://www.sciencedirect.com/science/article/abs/pii/S1042443121000500>

repaid had the enterprise borrowed the same sum on the market, and the amount expected to be repaid in the subsidy in question.

- 18.54 For public authorities awarding loans of lower value or to enterprises with better credit ratings (or where public authority believes they have better credit rating) they can consider simplified methodologies set out in more detail below (see sections on a [‘method for estimating the GCE of loans to lower risk enterprises’](#) and a [‘simplified method for small value loans’](#)).
- 18.55 Where a public authority cannot find a reasonable comparator (for example if the enterprise has a very high risk of default, or the terms of the loan offered by the public authority are very unusual), then the public authority should value the loan as the whole principal amount. In instances where the public authority cannot find a reasonable comparator but has made a risk-based assessment on the expected repayments then they may determine the gross cash equivalent to be the whole principal amount, less these expected repayments. When doing so, public authorities should discount future repayments and take caution, erring on the side of underestimating the amount that is expected to be repaid.
- 18.56 In some instance, the public authority may have not been able to identify any information on a comparator loan, but the public authorities’ internal risk assessments may indicate that valuing the loan as the full principal amount may overestimate the value of the loan. Where the public authority has conducted an internal risk assessment, they may use this to adjust the gross cash equivalent of the loan based on the probability of default and/or the expected value of the principle that the public authority is expected to recoup given default. The public authority can assign a risk of default and use this to reduce the principal amount.
- 18.57 Specifically, the public authority may estimate the gross cash equivalent of the loan by first determining the total principal amount and then adjusting this proportionally based on their own internal assessment of the percentage likelihood of default. Where the public authority has also identified the total sum that they would be able to recoup based on the terms of the loan, the public authority may reduce the gross cash equivalent by this sum to account for this. The public authority should then increase the gross cash equivalent based on the base rates set out in the section below on a [‘method for estimating the GCE of loans to lower risk enterprises’](#) to account for the interest that the bank or financial institution would expect to receive on the principal for offering an equivalent loan. When following this method, the public authority should discount the expected recuperation of the principal amount given default (see the [section on discounting](#)). The public authority should take caution and err on the side of overestimating the gross cash equivalent when it is making assumptions to estimate probability of default, or the expected loss given default.
- 18.58 Where the public authority is operating a scheme that gives multiple loan subsidies to multiple recipients it should take a proportionate approach. It is always best practice to

estimate the value of the subsidy based on information about each specific recipient, but it may not be proportionate or possible to do so. In these instances, the public authority should use general features about the loan and the expected recipients when following the valuation methodologies described above. The public authority may wish to use this information to determine the gross cash equivalent of each individual award. The public authority should take caution and err on the side of overestimating the gross cash equivalent when estimating the value of loans in this way.

### Example

A public authority is trying to determine the gross cash equivalent of a 1-year £1.5m loan to an enterprise to conduct primary research on an innovative product and it does not have a credit rating.

The enterprise has not approached a bank, and the public authority does not find information on similar enterprises to base a comparator loan on. The public authority conducts an internal risk assessment and determines that the enterprise does not have an equivalent credit worthiness of 'satisfactory' or better and uses this internal risk assessment to estimate the probability of default as 20%. The public authority further estimates that based on the terms of the loan and collateral offered that on average it would be able to recoup £100k from the enterprise should it default on the loan. The public authority uses the base rates in the section on a [method for estimating the GCE of loans to lower risk enterprises](#) to determine that the expected base rate level of interest for a 1-year loan is 4.3%

The public authority therefore estimates that the expected loss on the loan is £200k (£300k based on the probability of default, less £100k that can be recouped). The public authority then adds on to this the 4.3% base rate of interest on the £1.5m principal amount which is £64,500 to get to a gross cash equivalent of £264,500.

### Method for estimating the GCE of loans to lower risk enterprises

- 18.59 Where a subsidy is to a lower risk enterprise then public authorities may use a simplified methodology to estimate the loan that would have been available in the market instead of finding a comparator.

18.60 To determine whether the enterprise is lower risk, and therefore in scope of this method, the public authority should consider the credit rating of the enterprise in question. Public authorities should use the public records database, or any privately obtained ratings to determine the credit rating of the enterprise in question. After doing so, public authorities can use the following table, set out at Schedule 1 of the Gross Cash Regulations, to determine how the provisions in the Gross Cash Regulations should apply:

Level of creditworthiness	Credit rating
Strong	Aaa - A3 (issued by Moody's)
	AAA - A- (issued by Fitch)
	AAA - A- (issued by Standard and Poor's)
	or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.
Good	Baa 1 - Baa 3 (issued by Moody's)
	BBB+ - BBB- (issued by Fitch)
	BBB+ - BBB- (issued by Standard and Poor's)
	or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.
Satisfactory	Ba 1 - Ba3 (issued by Moody's)
	BB+ - BB- (issued by Fitch)
	BB+ - BB- (issued by Standard and Poor's)
	or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.

- 18.61 Where an enterprise does not have a credit rating (for example, start-ups), public authorities can use their own internal assessments. When making internal assessments the public authority may wish to use the credit rating of parent companies, assess the existing asset and debt position of the enterprise, or use any other reasonable approach to assess the credit worthiness of an enterprise. This approach should not be used where the public authority believes that the enterprise has a high risk of default. In these instances, public authorities should apply the comparator loan method as set out in the previous section. Where a public authority has established that there is not a high risk of default but the internal assessment that has been carried out does not give the public authority the enterprise's risk likelihood (for example, where the loan is to a small or a new company), then the public authority may treat the enterprise as if it has a 'satisfactory' rating.
- 18.62 When using this method public authorities should first establish the amount the enterprise is expected to pay back to the public authority over the lifetime of the loan. It is good practice to split the total amount repaid by 12-month periods following the point that the subsidy is given, as the public authority may wish to discount these payments (see the [section on discounting](#)).
- 18.63 The public authority should then use the tables below, as provided for in Schedule 2 of the Gross Cash Regulations, to calculate the rate that can be used based on the length (or maturity) of the loan offered by the subsidy in question<sup>150</sup> and the creditworthiness of the company<sup>151</sup>. The public authority should calculate the interest rate that would have been available on the market by adding together the base rate determined by the length of the loan and the mark up rate determined by the creditworthiness of the company.

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<sup>150</sup> These are based on the average of Bank of England forward overnight index swap rates, accessed on 10 November 2023, over the relevant lengths of time from January 2023 that correspond to each maturity.

<sup>151</sup> Based on survey data on interest rate setting practices of banks and other financial institutions undertaken by Deloitte.

### Determining the base rate for loans

Length of loan	Base rate per annum
One month	4.3%
Three months	4.3%
Six months	4.3%
One year	4.3%
Two years	4.3%
Five years	3.8%
Ten years	3.4%
25 years	3.1%

### Determining the mark up rate for loans

Level of creditworthiness	Loss in the event of default	Mark up rate per annum
Strong	Between 0 or 100% (or not known)	1%
Good	Between 0 or 100% (or not known)	1%
Satisfactory	Not more than 30%	1%
Satisfactory	More than 30% and not more than 60%	2.2%
Satisfactory	More than 60% (or not known)	3.4%

18.64 Where a loan is in between maturity lengths (e.g., 4 years) then the public authority can calculate the proportional difference between the two and take this as the appropriate rate for this maturity rate. Where a loan is for more than 25 years, the public authority may use the 25-year rate.

- 18.65 The public authority should then use the interest rate calculated to estimate the amount that would be repaid in a market loan. The public authority can do this by applying the interest rate calculated to each of the scheduled payments of the loan in question. The public authority may wish to discount these payments (see the [section on discounting](#)).
- 18.66 The public authority can then determine the gross cash equivalent of the loan by taking the differences in the total (net present) value between the estimated loan and the total (net present value) amount actually paid in the loan in question.

### Example

Public authority X is giving an £800,000 loan, to be repaid in equal monthly instalments of the principal and interest due over a 24-month period, to enterprise Y which has a credit rating of 'good'. The loan will be paid back with an interest rate of 2% per annum calculated on a monthly basis.

The public authority must first determine the total that the enterprise is expected to repay over the lifetime of the loan.

The total amount to be paid back in the first 12-month period is £412,333. The total to be repaid in the final 12 months is £404,333. As this is in a later 12-month period, this total is discounted at a rate of 5.3% so the total discounted value of the amount repaid in the final 12-month period is £382,904. As such, the total discounted value of the repayment by the enterprise is £795,237.

The public authority must then determine the total that the enterprise may have been expected to repay if the loan was obtained at market rates.

As the enterprise is considered to be lower risk, due to its 'good' credit rating, the public authority can use a simplified methodology to estimate the loan that would have been available on the market instead of finding a comparator. It can refer to the table in the section above to determine the relevant interest rate. On the terms above, the interest rate per annum available on the market would have been 5.3% (using the 4.3% base rate for loans of a maturity of 2 years, and the 1%-point mark up (or risk premium) for a loan to an enterprise with a 'good' credit rating).

The public authority can then carry out the same calculation as it did for the subsidised loan, including discounting, to determine the total amount that the enterprise would have been expected to repay if it had obtained the loan at market rates. This is £822,358.

To determine the gross cash equivalent of the loan the public authority must take the difference in value between the estimated loan and the amount expected to be repaid. In this example the difference, and therefore the gross cash equivalent, is £27,121.

## Simplified method for small value loans

- 18.67 Where a public authority is valuing a small loan, it may use the simplified methodologies provided below instead of the more in-depth approaches to valuing loans described in this guidance. Public authorities can use the methodologies for all purposes for which subsidies need to be valued under the Act and associated regulations including transparency and MFA requirements.
- 18.68 Public authorities can use a simplified method to determine the gross cash equivalent of the loan is less than £315,000. In particular, there are two simplified methods set out below that public authorities can use to value small loans.
- 18.69 A public authority may determine that a loan has a gross cash equivalent of less than £315,000:
1. if the amount lent is less than £785,000; and
  2. the loan is for a length shorter than 10 years.
- 18.70 The public authority can alternatively determine the gross cash equivalent of the loan is less than £315,000 if it can demonstrate all of the following:
1. the amount lent is less than £1,575,000; and
  2. the loan is secured by collateral or equivalent of a value of at least 50% of the amount of the loan; and
  3. the loan is for a length shorter than 5 years.
- 18.71 Where the subsidy in question is for less than the above amounts, or for shorter periods, public authorities can determine the exact gross cash equivalent in proportion to the methods described above. For example, a public authority may determine that a loan of £785,000 over 5 years (rather than 10) has the gross cash equivalent of £157,500 (half of £315,000).
- 18.72 When adjusting the gross cash equivalent proportionately, public authorities may adjust for both the amount lent and loan length but never for the amount of collateral. For example, a public authority may determine that a loan for £787,500 (rather than £1,575,000) over 2 and a half years (rather than 5 years), with a collateral of at least 50% of £787,500 has the gross cash equivalent of £78,750 (a quarter of £315,000).

## Guarantees

- 18.73 Guarantees are made or given when a public authority provides financial support to an enterprise and that support is paid out only when specific circumstances are met. A common type of guarantee is when the public authority enters into an agreement to cover any payments on a loan should an enterprise default. In theory, guarantees can cover any liability or debt.
- 18.74 Generally, guarantees should apply over a limited time period and cover a specific liability. Unlimited guarantees – in which, for instance, a guarantee has no limit as to the amount of the debt or liabilities that are guaranteed, or there is no time limit as to the duration of the guarantee – are prohibited in all cases (see [Chapter 5](#) for further information on ‘unlimited guarantees’).
- 18.75 In principle, the gross cash equivalent of the guarantee is the difference between what the enterprise is expected to pay (i.e., the fee or premium) to the public authority for the guarantee compared to what they would have paid to a bank or other financial institution had they taken out a similar guarantee on market terms.
- 18.76 The first step is therefore for the public authority to establish the terms of the guarantee in question, including any fees paid by the enterprise to the public authority and the total amount that is being guaranteed. For some guarantees, the amount guaranteed will be explicitly set out in the guarantee agreement (for example, for a loan guarantee it may be the principal of the loan). For other guarantees, the public authority may need to use estimates to establish the value of the liabilities being guaranteed. In doing so the public authority should be conservative and they may choose to use Green Book guidance<sup>152</sup> on valuing market goods (i.e., to use market prices where available).
- 18.77 It is good practice to split expected payments by 12-month periods following the point that the subsidy is given. The public authority may wish to discount these payments (see the [section on discounting](#)).

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<sup>152</sup> <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

- 18.78 The public authority should then establish the fees that would likely have been offered on the market for a similar guarantee. To do so they should use one or more of the following sources:
1. Evidence provided by the enterprise of commercial guarantees offered to the actual enterprise by a bank.
  2. Evidence, such as published average business guarantee fees to similar business. This may include information from price comparison websites, information from financial institutions (such as banks), information from analysts or internal analysis based on standard valuation models.
  3. In the instance of loan guarantees, the public authority can use the methodologies in the loan valuation section (cross-refer) to value the market loan. The public authority should then use risk assessments to adjust the value of this loan based on the terms of the guarantee.
- 18.79 When using these evidence sources public authorities should consider whether the premiums are applicable to the guarantee in question. For example, public authorities should consider the timeliness of evidence sources, how similar the guarantee is to the guarantees that the information pertains to, and how similar the enterprise is to the businesses that the information pertains to. Public authorities should use multiple evidence sources where available and critically evaluate which of these is most appropriate to use.
- 18.80 For public authorities awarding guarantees of lower value or to enterprises with better credit ratings (or where public authority believes they have better credit rating) they can consider simplified methodologies set out in more detail below (see the sections on a [‘method for estimating the GCE of guarantees to lower risk enterprises’](#) and a [‘simplified method for small value guarantees’](#)).
- 18.81 Where a public authority cannot find a reasonable comparator (for example if the enterprise has a high risk of default, or the terms of the guarantee offered by the public authority are very unusual), then the public authority should value the guarantee as the whole amount being guaranteed.
- 18.82 Where the public authority is operating a scheme that gives multiple guarantee subsidies to multiple recipients it should take a proportionate approach. It is always best practice to estimate the value of the subsidy based on information about each specific recipient, but it may not be proportionate or possible to do so. In these instances, the public authority should use general features about the guarantee and the expected recipients when following the valuation methodologies described above. The public authority may wish to use this information to determine the gross cash equivalent of each individual award. The public authority should take caution and err on the side of overestimating the gross cash equivalent when estimating the value of loans in this way.

### **Example**

Public authority A offers a guarantee to an enterprise on the total value of a £10m loan being used to purchase new equipment which it will repay over a 12-month period. The public authority charges a subsidised fee of 7% of the amount of the loan for the guarantee.

The public authority then determines the fee that would have been offered on the market for a similar guarantee by another financial institution to be 12% of the value of the loan.

The gross cash equivalent of the guarantee is the difference between what the enterprise is expected to pay the public authority for the guarantee, which in this case is £700,000, compared to what they would have paid to a bank or other financial institution had they taken out a similar guarantee on market terms, which in this case is £1.2m. The gross cash equivalent of this guarantee is £500,000.

## Method for estimating the GCE of guarantees to lower risk enterprises

- 18.83 Where a subsidy is to a lower risk enterprise then public authorities have a choice to use the comparator method (above) or estimates.
- 18.84 To determine whether the enterprise is lower risk, and therefore in scope of this method, the public authority should consider the credit rating of the enterprise in question (see the [section on loans](#) for more information).
- 18.85 To use this method the public authority should first establish the terms of guarantee in question and then the fees paid by the enterprise to the public authority (see above). They may wish to discount using the methodology set out in the [section on discounting](#).
- 18.86 To calculate the fees that the market would have offered the public authority should first calculate the expected loss to the guarantor for offering the guarantee. The public authority should do this by first establishing the probability that the public authority will have to pay out on the guarantee in full, and then multiplying this by the total amount that is being guaranteed to arrive at an expected loss. Public authorities should use the following table, as provided in Schedule 3 of the Gross Cash Regulations, to estimate the probability that the public authority will have to pay out the full guaranteed amount:

### Determining the risk that a claim will be made

Level of creditworthiness	Risk that a claim will be made
Strong	0.1%
Good	1.0%
Satisfactory	7.5%

- 18.87 The public authority should then use this expected loss to estimate the expected fee that would have been available on the market to that enterprise. To do so, the public authority should determine the number of 12-month periods after the subsidy is given that the guarantee applies. The public authority should then divide the expected loss estimated over the number of periods to determine the total fee that would be charged.
- 18.88 The public authority should add an administrative fee to this, to cover the costs the market would have to recoup for operating the guarantee. Typically, this would be 1% though the public authority can use a higher administrative fee where they have evidence to believe this would be the fee for a bank to operate the guarantee (this may be higher or lower than the administrative cost to the public authority of running the guarantee).

- 18.89 Once the public authority has determined the schedule of fees, they may wish to apply discounting (see the [section on discounting](#) for more information).
- 18.90 The public authority can then determine the gross cash equivalent by calculating the difference between the discounted payments made by the enterprise to the public authority and the discounted estimated payments the enterprise would otherwise have paid on the market.

### Example

To illustrate this further, a public authority is guaranteeing a loan up to the value of £4,000,000 for enterprise X, which has a strong credit rating. The public authority charges a fee of 0.05% of the total guaranteed amount per year over 2 years.

The total fees paid to public authority are accordingly £20,000 in the first year. In the second year the fees paid are £20,000, but it is appropriate here for the public authority to discount these to a value of £18,920. The total discounted value of fees paid to the public authority for the guarantee is therefore £38,920.

The public authority can use the table above, to identify the probability that they would have to pay out the full amount of the guarantee is 0.1%. The expected loss over the lifetime of the guarantee is therefore £4,000. Over two years a bank or similar financial institution would therefore charge a fee of £2,000 per year to cover the expected loss and an additional fee of £40,000 to cover a 1% per year administrative cost. In total, the public authority may estimate that the market fee would have been £42,000 per year or, after applying discounting, a value worth £81,732 over the lifetime of the guarantee.

The public authority can calculate the gross cash equivalent by taking £38,920 away from £81,732 to arrive at a value of £42,812.

### Simplified method for small value guarantees

- 18.91 When determining the gross cash equivalent of small loan guarantees – those with a gross cash equivalent of no more than £315,000 – public authorities can use simplified methodologies instead of the methodologies described above. Public authorities can use these methodologies for any purpose within the Act, such as when making calculations against the transparency and MFA thresholds.
- 18.92 Public authorities may use either of the following methodologies to determine that the loan guarantee in question is no more than £315,000. A loan guarantee is no more than £315,000 when all of the following conditions are met:
1. it guarantees no more than 80% of the loan; and
  2. the amount guaranteed is no more than £2,350,000; and

3. the duration of the guarantee is no more than 5 years.

18.93 Alternatively, a public authority could use the following conditions to determine that the gross cash equivalent of a loan is no more than £315,000:

1. it guarantees no more than 80% of the loan; and
2. the amount guaranteed is no more than £1,175,000; and
3. the duration of the guarantee is no more than 10 years.

18.94 Where the subsidy in question is for less than the above amounts, or for shorter periods, public authorities can determine the exact gross cash equivalent in proportion to the methods described above. Please see the methodology set out in the section on a [‘simplified method for small value loans’](#) which applies the same principles.

18.95 When adjusting the gross cash equivalent proportionately, public authorities may adjust for both the amount guaranteed and guarantee duration but never for the proportion of the loan guaranteed.

### Equity Investments

18.96 Subsidies given in the form of equity investments include any subsidy where the public authority takes a financial stake in an enterprise at a price higher than what would have been available on the market. This may be done via an intermediary, or directly by the public authority. This includes the purchase of shares, stocks, or any investment where the financial assistance is given in return for a stake in an enterprise.

18.97 To calculate the gross cash equivalent of subsidies given as equity investments, public authorities should determine the difference between what the public authority paid for this equity versus what the market would have likely paid.

18.98 Public authorities should first establish the total amount that it has paid for the investment – in other words, the amount that is paid for the whole stake that is purchased, rather than the price per share. Where the public authority has paid for this investment in instalments over multiple financial years, they may wish to discount these payments (see the [section on discounting](#)).

18.99 Then public authorities should establish the total amount that the enterprise would have received for the same stake on the market. Where the public authority has received a valuation of the market price of the investment from an independent, qualified, expert they may use this. In other instances, the public authority can use the following guidance to calculate the amount that the enterprise would have received for the same stake on the market.

18.100 Where the enterprise is publicly listed, the public authority should use stock price information, widely available on websites that list stock prices, to establish the price available to the enterprise on the market. The public authority may use this price to

establish the total amount that the enterprise would have received for the same stake on the market. However, the public authority should take care when the equity investment in question is for a larger stake in the company, or when other parties are aware that the public authority may be investing in the specific enterprise. The public authority should use the latest available price, where appropriate, and should take care when there are significant changes to this price over a short time period. The public authority should consider whether the terms that are offered on the subsidy in question are equivalent to the terms of the investments that are considered as comparators. In these instances, the public authority should adjust the value of the equity investment accordingly using its own internal assessments, or external assessments, of the value of the investment stake on market terms.

18.101 Where the enterprise in question is not publicly listed, the public authority should establish the total amount that the enterprise would have received for the same stake using internal or external assessments or any information about the expected value of the enterprise's equity value. Public authorities may use multiple assessments or information sources, and they should critically assess which is more likely to be accurate. The public authority should consider whether the terms that are offered on the subsidy in question are equivalent to the terms of the investments that are considered as comparators. The public authority may have to adjust the valuation based on an estimate of the market value of these terms.

18.102 Where there is uncertainty over the true amount that the enterprise would have received for the same stake, public authorities should exercise caution and err on the side of overestimating the subsidy value.

18.103 Where the public authority is coinvesting with another independent market operator (other than the enterprise in question) then they may wish to use the price that is offered by this market operator to estimate the market price. The public authority should consider whether the terms on that the market operator is co-investing are the same as those that the public authority is investing, and it should take care when the equity investment in question is for a larger stake in the company. In these instances, the public authority should adjust the value of the equity investment accordingly using its own internal assessments, or external assessments, of the value of the investment stake on market terms.

18.104 The public authority should then calculate the gross cash equivalent as the difference between the amount that the enterprise would have received on the market for the same stake and the actual amount paid by public authority.

18.105 In instances where the public authority believes that there would be no suitable market price for the enterprises' equity, for instance, where the enterprise has poor credit worthiness, then the public authority may take the market price to be zero. In these instances, the public authority should calculate the gross cash equivalent as the full amount of the equity investment. In these instances, public authorities should consider

and follow Managing Public Money principles and consider whether or not the enterprise can achieve the behavioural change identified before awarding these subsidies.

18.106 Where the public authority is operating a scheme that gives multiple equity subsidies to multiple recipients it should take a proportionate approach. It is always best practice to estimate the value of the subsidy based on information about each specific recipient, but it may not be proportionate or possible to do so. In these instances, the public authority should use general features about the equity investment in question and the expected recipients when following the valuation methodologies described above. The public authority may wish to use this information to determine the gross cash equivalent of each individual award. The public authority should take caution and err on the side of overestimating the gross cash equivalent when estimating the value of loans in this way.

### Example

Public authority X is purchasing a 1% stake in a publicly listed enterprise at a value of £10m.

This is paid in two instalments, £5m in the first 12-month period and £5m in the final 12-month period. The public authority applies discounting for the second instalment, so the total discounted value of the amount paid by the enterprise is £9,730,000.

The public authority uses the publicly available stock price information to establish that the price available to the enterprise on the market for the same amount of equity was £7m. If this was to be paid on the same terms as above, including discounting, then the total amount expected to be paid by the enterprise would be £6,811,000.

The gross cash equivalent is the difference between the amount the enterprise would have received on the market for the same stake and the actual amount paid by the public authority. In this case, the gross cash equivalent is £2,919,000.

## Purchase of goods and services

18.107 Subsidies given in the form of purchases of goods and/or services covers any instance when a public authority buys a good and/or service from an enterprise at a price above market rates.

18.108 To calculate the gross cash equivalent of subsidies given as a purchase of goods and/or services, public authorities should determine the difference between what the public authority paid for the goods and services versus what would have been available on the market for the goods and services.

18.109 A public authority should first establish the total amount that it has paid for the goods and services. Where the public authority has paid for this investment in instalments over

multiple financial years, they are advised to discount these payments (see the [section on discounting](#)).

- 18.110 Public authorities should then establish the total amount that the enterprise would have received for the goods and services on the market. In doing so the public authority should use information on the prices offered on the market where available<sup>153</sup>. For example, the public authority may use information on the price of the goods and services provided by the enterprise or its competitors, or publicly available data on the average price offered for those goods and services. Where data is only available for previous financial years, the public authorities may uprate prices based on an appropriate inflation metric, such as the Consumer Price Index<sup>154</sup>.
- 18.111 Where it is not possible or appropriate to use these information sources the public authority may estimate the prices. To do so it may use information set out in their business case, project accounting documents or information on comparator goods and services.
- 18.112 Public authorities may use multiple estimates or information sources, and they should critically evaluate which is more accurate. Where a public authority has used estimates or there is uncertainty over the true amount that the enterprise would have received for the goods and services, the public authority should exercise caution and err on the side of overestimating this value.
- 18.113 Where the goods and services are received in instalments over multiple financial years, the public authority may wish to discount the value of these services. To do so, the public authority should follow methodology set out in the [section on discounting](#).
- 18.114 The gross cash equivalent is the difference between what the public authority paid the enterprise for the goods or services compared to the amount the enterprise would have received for the same goods or services had it sold them on market terms.
- 18.115 In instances where the public authority believes that there would be no suitable market price for the goods and services in question, then a public authority may take the market price to be zero. In these instances, a public authority should calculate the gross cash equivalent as the full amount paid for the goods and services.

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<sup>153</sup> See The Green Book for further information: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

<sup>154</sup> Find further information on the Consumer Price Index here: <https://www.ons.gov.uk/economy/inflationandpriceindices>

18.116 Where the public authority is operating a scheme that gives multiple subsidies to multiple recipients it should take a proportionate approach. It is always best practice to estimate the value of the subsidy based on information about each specific recipient, but it may not be proportionate or possible to do so. In these instances, the public authority should use general features about the subsidy and the expected recipients when following the valuation methodologies described above. The public authority may wish to use this information to determine the gross cash equivalent of each individual award. The public authority should take caution and err on the side of overestimating the gross cash equivalent when estimating the value of loans in this way.

### Example

Public authority X pays a subsidised fee to a local teacher training provider enterprise, which employs disadvantaged workers, of £500,000 to provide training courses to teachers in local schools. The amount will be paid in monthly instalments over a 24-month period.

The total payable in the first 12 months is £250,000. The total payable in the second 12 months, after discounting, is £236,500. As such, the total discounted value of the amount paid by the public authority is £486,500.

The public authority establishes that national teacher training providers would have provided these services for £300,000. On the same terms as above, the total discounted value of the amount paid to the enterprise would have been £291,900.

The gross cash equivalent is the difference between the amount paid on the market and the actual amount paid by the public authority, which in this case is £194,600.

## Provision of goods and services

18.117 Subsidies given as a provision of goods and/or services covers any instance when a public authority gives goods or services to an enterprise at a price below market rates.

18.118 To calculate the gross cash equivalent of subsidies given as a provision of goods and services, public authorities should determine the difference between the price that would have been available on the market for the goods and services and the price that the enterprise will pay the public authority.

18.119 Public authorities should first establish the total amount that the enterprise has paid for the goods and services. Where the enterprise has paid for this investment in instalments over multiple financial years, they may wish to discount these payments (see the [section on discounting](#)).

- 18.120 Public authorities should then establish the total amount that the enterprise would have paid for the goods and services on the market. In doing so the public authority should use information on prices offered on the market where available<sup>155</sup>. For example, the public authority may use information on the price of the goods and services provided by enterprises, or publicly available data on the average price offered for those goods and services. Where data is only available for previous financial years, the public authorities may uprate prices based on an appropriate inflation metric, such as the Consumer Price Index<sup>156</sup>.
- 18.121 Where it is not possible or appropriate to use these information sources, public authorities may estimate the prices. To do so public authorities may use information set out in their business case, project accounting documents, or information on comparator goods and services.
- 18.122 Public authorities may use multiple estimates or information sources, and they should critically evaluate which is more accurate. Where the public authority has used estimates or there is uncertainty over the true amount that the enterprise would have paid for the goods and services, public authorities should exercise caution and err on the side of underestimating this value.
- 18.123 Where the goods and services are given to the enterprise in instalments over multiple financial years, the public authority may wish to apply discounting (see the [section on discounting](#)).
- 18.124 The gross cash equivalent is the difference between the amount paid by the enterprise to the public authority for the goods and services compared to what the enterprise would have paid if they had received the same goods and services on market terms.
- 18.125 Where the public authority is operating a scheme that gives multiple subsidies to multiple recipients it should take a proportionate approach. It is always best practice to estimate the value of the subsidy based on information about each specific recipient, but it may not be proportionate or possible to do so. In these instances, the public authority should use general features about the subsidy and the expected recipients when following the valuation methodologies described above. The public authority may wish to use this information to determine the gross cash equivalent of each individual award. The public authority should take caution and err on the side of overestimating the gross cash equivalent when estimating values in this way.

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<sup>155</sup> See The Green Book for further information: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

<sup>156</sup> Find further information on the Consumer Price Index here: <https://www.ons.gov.uk/economy/inflationandpriceindices>

## Tax measures

- 18.126 The gross cash equivalent of tax measures is the difference between the tax liability of the enterprise as a result of the measure and what the tax liability of the enterprise would have been under the normal taxation regime.
- 18.127 Public authorities should use reasonable estimates to determine what the tax liability of the enterprise would have been under the normal taxation regime without the benefit of the tax measure. Reasonable estimates will be needed where the subsidy award can reduce the tax liability over several tax declarations, such as the future tax rate under the normal taxation regime.
- 18.128 Reasonable estimates may in particular be needed for tax measures where the scheme has no cap on the size of the subsidy which can be awarded. The public authority will be required to take reasonable steps to estimate the value of subsidies where there is no cap for the purposes of the maximum value of a subsidy and to conclude whether a subsidy scheme allows for a Subsidy of Interest or a Subsidy of Particular Interest to be given under it. A reasonable estimate is likely to need to include a consideration of the enterprises likely to be eligible for the subsidy award and the likely size of the awards those enterprises will be eligible for. Public authorities should use relevant data available to them to assess these points, such as historical information on enterprises eligible to claim the relief.
- 18.129 Where a tax subsidy is given in the form of a payable tax credit, the gross cash equivalent of the subsidy award is the tax credit. If the measure results in both a payable tax credit and a reduction in the enterprises tax liability, the value of the subsidy award is the sum of both amounts.

## ANNEX 5: Glossary

Term	Definition
<b>A</b>	
Act, the	The Subsidy Control Act 2022
Agreement on Subsidies and Countervailing Measures (ASCM)	The WTO Agreement on Subsidies and Countervailing Measures establishes rules for WTO member states on the use of subsidies, as well as providing mechanisms for challenging government measures that contravene these rules
Ailing or insolvent enterprise	An enterprise that (a) would almost certainly go out of business in the short to medium term without subsidies, (b) is unable to pay its debts as they fall due, or (c) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities
<b>B</b>	
Bank of England	The central bank of the United Kingdom
Beneficiary	Persons receiving a benefit or advantage (i.e., from a subsidy)
<b>C</b>	
Competition and Markets Authority (CMA)	The United Kingdom's competition and consumer law regulator
Competition Appeal Tribunal (the Tribunal)	A specialist judicial body with jurisdiction to hear and decide cases involving competition or economic regulatory issues within the United Kingdom
Commercial Market Operator (CMO) Principle	Principle by which financial assistance is provided on terms that could be offered in the market by a private operator, meaning it will not

	confer an economic advantage and therefore not meet the definition of a subsidy
<b>D</b>	
DBT	Department for Business and Trade
DCMS	Department for Digital, Culture, Media and Sport
DEFRA	Department for Environment, Food and Rural Affairs
Devolved governments	The governments of Scotland, Wales and Northern Ireland
<b>E</b>	
Economic Activities	The offering of goods or services on a market
Energy and Environment Principles (E&E)	An additional set of principles that subsidies or schemes in relation to energy or environment must be assessed against.
Enterprise	Any person, or groups of persons under common control engaged in offering goods or services on a market
Equity Objective/Rationale	These objectives aim to redistribute the benefits of economic activity between different groups in society or geographic areas
EU State Aid	Subsidy control regime with the European Union
Exemptions	Subsidies or schemes that are not subject to all or part of the Subsidy Control Requirements.
<b>F</b>	
Financial Assistance	A broad concept including any kind of support or market transaction that is considered to have a financial value for the recipient.
Financial Year	A period of 12 months ending 31 March
<b>H</b>	
HMRC	His Majesty's Revenue and Customs

HMT	His Majesty's Treasury
<b>L</b>	
Legacy Subsidy or Scheme	A subsidy that was given, or a scheme that was made before the Subsidy Control Act 2022 came into force; or a subsidy given in accordance with regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road or the Public Service Obligations in Transport Regulations 2023.
Local Authority	An administrative body in local government
<b>M</b>	
Minimal Financial Assistance	Subsidies given under section 36 of the Subsidy Control Act. Allows public authorities to award subsidies to recipients without the need to comply with the majority of the subsidy control requirements provided the subsidy does not exceed the financial threshold of £315,000 over the applicable period.
<b>N</b>	
Net Zero	The UK's commitment to be carbon neutral by 2050.
<b>P</b>	
Pari passu	Financial assistance given at the same time and on the same terms as a significant investment by a private investor
Primary public authority	Any of the following: a minister of the Crown; the Scottish ministers; the Welsh ministers; a Northern Ireland department Any other public authority that exercises its responsibilities over an area that includes other

	public authorities (for example, a mayoral combined authority)
Public Authority	Any person who exercises functions of a public nature.
Public Authority Portal (PAP)	The online portal which public authorities can use to refer their assessment of subsidy or scheme to the Subsidy Advice Unit for a report
<b>R</b>	
RD&I	Research, development and innovation
<b>S</b>	
Services of Public Economic Interest (SPEI)	Essential services provided by a public authority to the public which would not be provided under normal market conditions
SIC Codes	Standard Industrial Classification of economic activities (SIC) – a means of classifying a particular economic activity for statistical purposes, published by the Office for National Statistics
SPEI Assistance (SPEIA)	Subsidies given under section 38 of the Subsidy Control Act. Allows public authorities to award subsidies to SPEI recipients for SPEI services without the need to comply with the majority of the subsidy control requirements provided the subsidy does not exceed the financial threshold of £725,000 over the applicable period.
Streamlined route	A type of subsidy scheme made by the UK Government for the use of any public authority in the UK
Subsidies or Schemes of Interest (SSoI) and of Particular Interest (SSoPI)	Subsidies or schemes that have greater potential to lead to undue distortion and negative effects on competition or investment within the United Kingdom or on international trade or investment.

Subsidy Advice Unit (SAU)	Unit within the Competition and Markets Authority with responsibility for conferring advice on certain subsidies
Subsidy Control Requirements	The requirements stipulated by the Subsidy Control Act 2022
Subsidy Database	The database public authorities are required to upload certain information regarding their subsidies and schemes for transparency purposes
Subsidy Scheme	A scheme made by a public authority providing for the giving of subsidies under the scheme
<b>T</b>	
Trade and Cooperation Agreement (TCA)	The United Kingdom's free trade agreement with the European Union
TCO	Total cost of ownership
<b>W</b>	
Windsor Framework	The Windsor Framework to the EU–UK Withdrawal Agreement, regarding Northern Ireland (formerly the Northern Ireland Protocol), which determines among other things, the application of State aid rules to some types of subsidy in Northern Ireland and, in particular circumstances, Great Britain.
Withdrawal Agreement	The United Kingdom's agreement with the European Union setting out the terms of the UK's exit from the EU
World Trade Organization	International body dealing with the rules of trade between nations.

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