

Subsidy Control Bill: designing a new approach for the UK

Lead department	Department for Business, Energy and Industrial Strategy
Summary of proposal	To introduce a subsidy control system that will support businesses to grow and thrive in a way that suits UK interests and is consistent with a dynamic and competitive economy.
Submission type	Impact assessment (IA) – 23 June 2021
Legislation type	Primary legislation
Implementation date	2022
Policy stage	Final
RPC reference	RPC-BEIS-5049(2)
Opinion type	Formal
Date of issue	25 June 2021

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA includes an EANDCB of £0.2 million (as costs to business are expected to be low) and a sufficient SaMBA. The IA discusses thoroughly the wider impacts of the proposals and commits to reviewing the policy.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying provision	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£0.2 million	£0.2 million
Business impact target (BIT) score	£0.9 million	£1.0 million
Business net present value	£0.0 million	
Overall net present value	-£11.0 million	

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality	RPC comments
EANDCB	Green	The IA provides an indication of the likely scale of impacts. The IA uses the term ‘indirect’ when referring to future business impacts of applying for subsidies. The RPC agrees that the impacts should be excluded from the EANDCB but the correct reason for this is that they fall under a statutory exclusion of the Better Regulation Framework (and not because the impacts are indirect as defined by the RPC’s guidance). This is because the legislation to which this IA relates is a qualifying provision but the subsidies themselves are not considered regulatory provisions.
Small and micro business assessment (SaMBA)	Green	The SaMBA sets out reasons why the costs to small and micro businesses (SMBs) are expected to be negligible. These reasons include the majority of the costs fall on public authorities and SMBs familiarising themselves with guidance produced by granting authorities (rather than at the point at which the legislation is implemented). The IA would benefit from a more explicit explanation that this will result in no <i>additional</i> impacts.
Rationale and options	Good	The IA sets out clearly the rationale for the subsidy control mechanisms. The IA also sets out the options considered for each of the ‘building blocks’. The options appraisal for each ‘building block’ includes an explanation for why the ‘do minimum’ option is or is not appropriate.
Cost-benefit analysis	Satisfactory	The IA monetises familiarisation and administrative costs to granting authorities, and public sector resource costs. The RPC commends the Department for the detailed assessment of these costs. While the RPC recognises that many of the benefits are difficult to monetise, the IA should explain clearly the expected benefits of each of the proposals and why it has not been possible to monetise them.
Wider impacts	Good	The IA includes a detailed discussion of wider impacts, including equalities, regional, environmental, competition and trade impacts.
Monitoring and evaluation plan	Good	The IA commits to evaluating the policy and provides a good level of detail on how it will monitor the measures.

Summary of proposal

The IA states that the proposals would introduce a modern system to support businesses to grow and thrive in a way that suits UK interests and is consistent with a dynamic and competitive economy. Also, that the preferred option is a model for the UK's future domestic regime, which is consistent with the UK's international agreements. The counterfactual used for the analysis is a 'do minimum' option which is determined by the UK's international commitments in the UK-EU Trade and Co-operation Agreement (TCA).

The IA states that the foundation of the regime is a clear set of principles, underpinned by guidance, that will enable public authorities to understand their legal obligations and take subsidy decisions that support the UK's economic recovery and deliver government priorities such as levelling up and achieving *Net Zero*. It will also give them the freedom to act swiftly to deliver support to where it is most needed. Subsidies below a low financial assistance threshold, subsidies for services of public economic interest under a certain threshold and certain subsidies in response to economic emergencies or natural disasters will be exempt from some or all requirements. Certain categories of subsidies that are always damaging, such as unlimited subsidies to shore up failing companies where there is no plan for their restructure, will be prohibited.

The IA sets out its overall monetised impacts followed by analysis or a narrative on each of the 'building blocks' (set out in the annex to this opinion), some of which are in line with the 'do minimum' counterfactual and some go further).

EANDCB

The RPC considers the EANDCB to be fit for purpose. The RPC recognises that the direct impacts to business are low and the main impacts of the legislation are on the public sector. The IA does however monetise familiarisation costs to subsidy recipients and legal and monitoring costs to businesses associated with the "*Subsidies of (Particular) Interest*" process. The IA uses the term 'indirect' when referring to future business impacts of applying for subsidies. The RPC agrees that the impacts should be excluded from the EANDCB calculation but the correct reason for this is that they fall under a statutory exclusion of the Better Regulation Framework (and not because the impacts are indirect as defined by the RPC's guidance). This is because the legislation to which this IA relates is a qualifying provision but the subsidies themselves are not considered to be regulatory provisions. The IA would be improved by including an explanation that even if the impacts were direct they would fall under the statutory exclusion and could not, therefore, be scored against the business impact target.

SaMBA

The RPC considers the SaMBA to be fit for purpose. The SaMBA sets out reasons why the costs to SMBs are expected to be negligible. These reasons include the majority of the costs falling on public authorities, and SMBs familiarising themselves with guidance produced by granting authorities (rather than at the point at which this legislation is implemented). The RPC accepts that this will impose minimal additional costs as SMBs would have to read guidance on a particular subsidy scheme anyway. However, more evidence should be provided to support this assertion.

The IA usefully sets out the proportion of subsidies granted to SMEs, but states that the impact on SMBs is “*difficult to fully assess before further policy details are decided*”. The RPC therefore expects to see a further IA supporting the secondary legislation, to confirm or adjust this assumption once these policy details are decided. The IA would also benefit from providing evidence to support the assumption that familiarisation costs and legal fees are “*somewhat proportional to the size of the subsidy*”, besides simply referring to anecdotal evidence.

Rationale and options

The RPC considers the rationale and options section of the IA to be good. It sets out the rationale for the subsidy control mechanisms to help facilitate public authorities to award subsidies as strategic interventions, while limiting the harmful, sometimes unintended, consequences of poorly-designed subsidies. This is to allow effective subsidies that will meet economic and wider objectives.

The IA also sets out the options considered for each of the ‘building blocks’. The options appraisal for each ‘building block’ includes an explanation for why the ‘do minimum’ option is not appropriate.

Cost-benefit analysis

The RPC considers the cost-benefit analysis to be satisfactory. The IA monetises familiarisation and administrative costs to granting authorities. Because of the nature of granting subsidies, the IA assumes that the familiarisation costs are ongoing as opposed to a one-off cost. Administrative costs associated with the ‘transparency’ building block are incurred by granting authorities recording the award of a subsidy on the database. The RPC commends the Department for the detailed assessment of these costs. The IA also includes resource costs to central government and public authorities associated with the independent body, the “Subsidies of (Particular) Interest” route, and the Competition Appeals Tribunal. While the RPC recognises that many of the benefits are difficult to monetise, the IA should explain clearly the expected benefits of each of the proposals and why it has not been possible to monetise them.

Wider impacts

The RPC considers the analysis of wider impacts to be good. The IA includes a detailed discussion of wider impacts, including equalities, regional, environmental, competition and trade impacts.

Monitoring and evaluation plan

The RPC considers the monitoring and evaluation plan to be good. The IA commits the Department to monitoring and evaluating the policy and provides a good level of detail on how it will do so. The IA states that the new transparency database will allow for early monitoring and eventual evaluation. With the database being specifically designed to allow for future evaluation, the IA states that it will allow a richer ability to evaluate both individual subsidies and the regime as a whole.

Other comments

The Department refers to secondary legislation throughout the IA but does not commit to producing further IAs. The Department must submit for RPC scrutiny IAs for any qualifying regulatory provisions that are subsequently introduced through related secondary legislation. The IA states that the familiarisation and administrative costs of the regime will depend partly on the design of the guidance and templates and that “*the exact design of these has not been determined, as they will be set out later in statutory guidance*”. The RPC expects to see revised analysis to support this statutory guidance.

Regulatory Policy Committee

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Annex – preferred option for each ‘building block’

Building block	Preferred option
Definition	‘Do minimum’
Scope	‘Do minimum’
Subsidy control principles	‘Do minimum’
Exemptions	<p>To introduce exemptions in the following areas:</p> <ul style="list-style-type: none"> • Small Amounts of Funding Exemption (SAFE). The preferred option is to exempt SAFE subsidies from all obligations under the domestic regime except the WTO prohibitions. This threshold will be set at the value of around £340,000 over a three-year period for most sectors. • Low value Services of Public Economic Interest (SPEI) subsidies. The preferred option is to replicate the relevant thresholds in the UK-EU TCA at around £774,000 over a three-year period. Transparency exemptions will also apply to SPEI subsidies below £15.5 million per task. • Subsidy awards to compensate from exceptional circumstances, such as compensation for floods, severe storms or compensating businesses for the immediate economic impact of a pandemic. • Subsidies granted temporarily to address a national or global economic emergency. • Subsidies where they are required for the purpose of defence or safe-guarding national security. • Activities conducted by the Bank of England in pursuit of its statutory monetary policy objectives.
Prohibitions and conditions	‘Do minimum’ apart from the prohibitions of a limited category of subsidies relating to the relocation of economic activity, covered under the ‘protecting the UK internal market’ building block below.
Measures to protect UK competition and investment	To introduce additional measures that would be applied to granting authorities in order to protect UK competition and investment.
Streamlined routes	To create streamlined subsidy scheme routes to demonstrating compliance for categories of subsidies at especially low risk of causing market distortions.
Specific obligations for energy and environmental subsidies	‘Do minimum’

Transparency	The Department has developed a new database and the proposal places a legal obligation on public authorities to submit information on any subsidies awarded above set values.
Independent body	Establish a body with a role in monitoring and overseeing how the regime is working as a whole including the ability to recommend and be consulted on changes to government guidance. This independent body will provide advice to granting authorities for Subsidies of Interest and Subsidies of Particular Interest and will also provide advice where it has been requested by the Secretary of State either before, or after, a subsidy has been granted.
Judicial review	Enable the Competition Appeal Tribunal (CAT) to hear challenges to subsidy decisions and make the necessary procedural amendments and remedies available to the CAT to be compliant with the TCA.