The subsidy control regime - a flexible, principles-based approach for the UK

Overview

This Government is determined to seize the opportunities arising from Brexit. Now that we have left the European Union, we are no longer bound by bureaucratic and burdensome EU State aid rules, except in limited circumstances under the terms of Article 10 of the Northern Ireland Protocol, we have the freedom for the first time to develop a new, bespoke regime for subsidy control within the UK that delivers on our national priorities.

The Government has designed a subsidy control regime that strikes the right balance between enabling the benefits that can be derived from subsidies, while limiting the most harmful impacts. We have learnt from the different approaches taken internationally to move away from the EU’s expansive regime to one that is less onerous and more flexible whilst still retaining protections for UK competition and investment.

In meeting our objectives the new regime will:

- Empower local authorities, public bodies, and central and devolved administrations to design subsidies that deliver strong benefits for the UK taxpayer.
- Enable public authorities to deliver subsidies that are tailored and bespoke for local needs to support the UK’s economic recovery and deliver UK Government priorities such as levelling up, achieving net zero and increasing UK R&D investment.
- Provide certainty and confidence to businesses investing in the UK, by protecting against subsidies that risk causing distortive or harmful economic impacts to UK competition and investment and international trade.
- Contribute to meeting the UK’s international commitments on subsidy control, including its international commitments at the World Trade Organization and in Free Trade Agreements.
The new subsidy control regime will achieve its objectives through six building blocks:

1. Seven main principles; limited additional principles for energy and environmental subsidies
2. Exemptions
3. Prohibitions and conditions
4. Proportionate assessments of compliance
   - Baseline
   - Streamlined Routes
5. A transparency database
6. Reporting by the Subsidy Advice Unit and enforcement through the Competition Appeal Tribunal.

A clear, proportionate and transparent set of principles and rules that make clear which subsidies are permitted and prohibited, and under what circumstances.

Providing tools that enable public authorities to make a proportionate assessment of their proposed subsidy.

Reporting and enforcement mechanisms that incentivise compliance with the rules and hold public authorities to account when they do not comply.
Public authority wants to grant a subsidy/scheme

Does it meet the definition of a subsidy?

Y → Talk to BEIS’s Subsidy Control Team: subsidycontrol@beis.gov.uk

N → Progress via the appropriate route

Is the subsidy/scheme in scope of the NI Protocol or the Multiannual Financial Framework?

Y → Talk to BEIS’s Subsidy Control Team: subsidycontrol@beis.gov.uk

N → Progress via the appropriate route

Is it exempted under the subsidy control regime?

Y → Progress via the appropriate route

N → Is the subsidy/scheme prohibited under the subsidy control regime?

Y → Do not award

N → Is it subject to additional conditions, can these conditions be met?

Y → Awards subsidy

N → Undertake an assessment of compliance against the principles.

Subsidies of Interest: public authorities can seek advice from the Subsidy Advice Unit (SAU) on how to improve the subsidy’s design.

Subsidies of Particular Interest: public authorities must seek advice from the SAU on how to improve the subsidy’s design. The SAU may produce a report on the subsidy. If so, there will be a short “cooling off” period to allow for implementation of the SAU’s advice.

Does the subsidy/scheme meet the criteria for a streamlined route?

Y → Undertake an assessment of compliance against the principles.

N → Progress via the appropriate route

Does the subsidy/scheme meet the criteria for a Subsidy of Interest or a Subsidy of Particular Interest?

Y → Undertake an assessment of compliance against the principles.

N → Progress via the appropriate route

When seeking to grant a subsidy or a subsidy scheme, public authorities will go through the following stages.

BEIS’s Secretary of State can also ‘call in’ concerning subsidies, which are treated in the same way as Subsidies of Particular Interest.

Consideration of SAU advice

Award Subsidy

Upload required information to the transparency database

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Annex A: Flow charts outlining the process for the granting of subsidies

This annex provides more detailed flow charts to outline the step-by-step process for:
• exempted subsidies (page 5)
• subsidies that are prohibited or subject to further conditions (page 6), and
• subsidies subject to the new regime (page 7)
A number of subsidies will be either fully or partially exempt from the scheme. They will move through the following pathways.

1. **Assessment of Compliance**
   - Minimal financial assistance exemption - less than £315,000 over three years: Exempt from the regime’s prohibitions and conditions, No assessment of compliance required
   - National/ global economic emergency: Exempt from the regime’s prohibitions and conditions
   - Services of Public Economic Interest (SPEI) valued at less than £725,000 over three years: Exempt from the regime’s prohibitions and conditions
   - Safeguards defence/ national security: Exempt from the regime’s prohibitions and conditions
   - Exceptional circumstances and natural disasters: Exempt from the regime’s prohibitions and conditions

2. **Exemptions**
   - Public authority wants to grant a subsidy or a subsidy scheme

3. **Prohibitions and conditions**
   - Has to comply with WTO prohibitions for subsidies relating to goods

4. **Award**
   - Subsidy/scheme

5. **Transparency**
   - Exempt from rules

If an exemption does not apply, granting authorities should then consider whether the subsidy is prohibited under the scheme or subject to any additional conditions (see page 7).
Under the new regime, subsidies are subject to a number of prohibitions and conditions. If prohibitions apply, the subsidy cannot proceed.

If no prohibitions and conditions apply, or if any relevant conditions are met, a proportionate assessment of compliance must be undertaken. The process this follows depends on the category of the subsidy (see page 7). If prohibitions apply, the subsidy cannot proceed.

### Prohibitions and Conditions

**Yes - prohibitions apply for the following subsidies/schemes:**
1. Contingent on export performance (goods only)
2. Contingent upon the use of domestic over imported goods or services (goods only)
3. Unlimited state guarantees to enterprise
4. Granted to “ailing or insolvent” enterprises where there is no credible restructuring plan
5. Explicitly contingent upon relocation within the UK internal market

**Exemptions**

- No exemptions apply

### Assessment of Compliance

- See page 7

### Transparency

- If conditions are met, proceed as per page 7

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**Subsidy cannot be granted**

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**If no prohibitions and conditions apply, or if any relevant conditions are met, a proportionate assessment of compliance must be undertaken. The process this follows depends on the category of the subsidy (see page 7). If prohibitions apply, the subsidy cannot proceed.**
If the subsidy is not subject to an exemption or any prohibitions, or if the relevant conditions are met, a proportionate assessment of compliance must be undertaken. The process this follows depends on the category of the subsidy.

The vast majority of subsidies can be granted as long as they can demonstrate compliance via one of two self-assessment routes: either by undertaking a proportionate assessment of compliance against the principles, or through streamlined routes.

The following subsidies will need to be uploaded to the transparency database:
1. All subsidy schemes and all awards over £500,000 within a scheme;
2. All subsidies outside of a scheme (unless covered by an exemption).