

UK SUBSIDY CONTROL ACT 2022 - GUIDANCE

As of the 4th January 2023, the UK domestic Subsidy Control Act has come into force. This allows the UK Government to award Subsidies under its own legislation. This new legislation introduces several changes to the way that UKSA will award Subsidies.

When awarding financial assistance (i.e. through Grants) the Agency needs to undertake several steps to comply with the current legislation.

What is the legislation?

As of the 4th January 2023, the UK Subsidy Control Act came into force. This largely replaces the previous arrangements of the Trade & Co-operation Agreement (TCA) and, prior to that, EU State Aid. With the withdrawal from the EU, the EU State Aid regulations no longer apply to the UK (except for some limited exceptions with regard to the Northern Ireland Protocol & Structural Funds).

Between 1st January 2021 and 4th January 2023, the UK followed the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM) and the EU-UK Trade & Co-operation Agreement (TCA). As of the 4th January 2023, the UK has implemented its own Subsidy Control legislation under the [Subsidy Control Act 2022](#). The key elements of the legislation are summarised below:

- Introduction of streamlined subsidies - allowing funding authorities to award low risk subsidies, in scope of the scheme, quickly without additional approval.
- This doesn't apply to companies applying under Minimum Financial Assistance - where they have not received over £315,000 from the UK Government in the last 3 years.
- There is a requirement to log all subsidies over £100,000 on the BEIS transparency database.
- A Subsidy Advice Unit (SAU) has been set up within the Competition and Market Authority (CMA) to assess more complex / high value requirements.
- Subsidy decisions can be challenged in the Competition Appeal Tribunal (CAT) for Judicial Review.
- The Act covers both goods and services.
- There are some prohibited subsidies that cannot be awarded under the Act.

Prior to issuing calls or awarding a subsidy, Grant Managers will need to ascertain two main tests, prior to identifying a way forward, both tests are contained within the 7 Principles Proforma.

1. Test 1: Is the financial assistance a subsidy?

This test assesses whether the award you are seeking to make is in scope of the Subsidy Control Act by considering the four overriding principles of the Act:

#	Principle	Guidance
1	Is it financial assistance being given by a public resource?	As UKSA will be awarding the funding the answer to this will mostly likely be "Yes"

2	Does the financial assistance confer an economic advantage on one or more economic enterprises ?	<p>Section 7 of the Subsidy Control Act identifies an enterprise as:</p> <p>(a) a person who is engaged in an economic activity that entails offering goods or services on a market, to the extent that the person is engaged in such an activity, or</p> <p>(b) a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity.</p> <p>In some circumstances, such as academia or educational outreach, the award of the funding may be via a Grant, but it may not be a subsidy on the basis that the recipient is not an economic enterprise, as per the definition above.</p> <p>If they are not an enterprise in accordance with the Subsidy Control Act, then a subsidy is not being awarded and the Agency is free to continue awarding the funding.</p>
3	Is the financial assistance specific, such that it benefits one or more specific enterprises over another.	Does the funding benefit one or more enterprises over another with respect of the production of goods or services?
4	Does the financial assistance have or capable of having an effect on competition or investment within the UK or internationally?	This needs to consider how other nations would look at the investment, and if it will directly impact international trade.

If the answer to any of the above questions is “No” then the award is not in scope of the Subsidy Control Act 2022. In the event you believe this to be the case, Project and Programme Teams should complete the first test of the 7 principles proforma and seek confirmation from the UKSA commercial team. Upon confirmation by the UKSA Commercial team, awards can be given. There is no requirement to capture awards under this category on the BEIS transparency database.

2. Test 2: is it in accordance with the 7 principles?

[The 7-principle document](#) must be completed to demonstrate how the award aligns to each of the principles. This is key to ensure that UKSA are adhering to the principles set out in the Act. Awarding a subsidy without going through this process can expose the Agency to risk. All 7 principle assessments require commercial approval before a call can be launched or an individual subsidy awarded.

Sufficient detail must be provided to answer each of the questions as part of the assessment. Failure to adequately complete the 7 principles may result in withholding approval by the commercial team.

For those schemes that do not fall within a streamlined scheme, this will be a key document in identifying how the scheme that you design aligns to the principles of the SCA 2022.

3. Does it align to a streamlined scheme?

[Streamlined routes](#) are subsidies that have been pre-determined to be acceptable under the Subsidy Control Act. Public authorities can use this to award subsidies without the need to reassess against the subsidy control principles.

Currently, the following Streamlined schemes have been agreed:

- **Research Development & Innovation**
- **Energy Usage**
- **Local Growth**

Research Development & Innovation

This scheme covers the following types of activity:

1. Feasibility Studies
means the evaluation and analysis of the potential of a Project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success.
2. Industrial Research and Experimental Developments Projects
“Industrial research” means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services.

“Experimental development” means acquiring, combining, shaping, and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services.

3. Small and Medium Sized Enterprise (SME) Research, Development, and Innovation Support

Provides support to SMEs that will result in the company’s ability to innovate and grow. This streamlined scheme has 3 sub-categories:

- a) Innovation services: Identifies support for specific innovation support, including innovation advisory services; innovation support services.
- b) Process and Organisational Innovation; covers Organisational innovation; Process innovation.
- c) Equipment and Instruments: Subsidy may be given to equipment and instruments to be used for research, development, and innovation activities. This may only be used for primary research development and innovation activities - not commercial purposes.

Energy Usage

The streamlined energy usage scheme contains two categories:

- 1) Subsidies for energy demand reduction (focussed at reducing energy use in buildings) – generally not applicable to UKSA.
- 2) Subsidies for green heat networks means a heat network that delivers thermal energy (heat or cooling) with an average annual carbon intensity of no more than 100 grams of carbon dioxide and equivalent emissions (CO₂e) emitted per kWh of thermal energy delivered to customers.- In certain circumstances, this scheme could be used by UKSA. In the event you think this is scheme is suitable for your project, please engage with UKSA commercial at the earliest opportunity.

Local Growth

This scheme includes awards to **a business development project in the UK undertaken by a small or medium sized enterprise, including a start-up**. Under a Grant, a maximum of £400,000 can be awarded under this scheme, over a 3 year rolling period.

Streamlined Scheme	Category	Total Funding	Large Enterprise	Medium Enterprise	Small Enterprise	Start Ups
Research Development & Innovation	Feasibility Study	£3,000,000	50%	60%	70%	N/A
Research Development & Innovation	Industrial Research ¹	£3,000,000	50%	60%	70%	N/A
Research Development & Innovation	Experimental Development Projects	£3,000,000	25%	35%	45%	N/A
Research Development & Innovation	Equipment and Instruments	£500,000	N/A	50%	50%	N/A
Local growth	Support to SMEs for Business Development Projects	£400,000	N/A	15%	25%	95%

4. Does it require referral to the Subsidy Advice Unit?

The SAU is an independent body set up within the Competition Market Authority (CMA) to provide non-binding advice to public Authorities in awarding subsidies. Some subsidies will require a mandatory referral to the SAU. Ministers can also refer subsidy awards to the SAU. The two types of subsidies in scope of SAU scrutiny are:

Subsidies & Schemes of Interest (SSoI)

¹ An uplift of 15% to eligible costs may be authorised for effective collaborations:

- 1- Between Enterprises, where at least one of the Enterprises is a SME, or.
- 2- Between an Enterprise and one of more research and knowledge dissemination organisation, which must have the right to publish its one research results.

Applicable to industrial research & Experimental Development Projects.

Have the option to refer to the SAU, but not mandated to do so. These are for Subsidies of a value of £5m - £10m and cover a certain range of categories identified within the table below.

Subsidies & Schemes of Particular Interest (SSoPI)

Requires a mandatory referral to the SAU.

Subsidy	Value	Categories	SAU Mandatory Referral
Streamlined Scheme	Up to £3m	R&D Energy	No
Subsidy of Interest	£5m- £10m	<ul style="list-style-type: none"> • Rescue Subsidies • Tax Subsidies • Relocation Subsidies below £1m 	No/ Voluntary
Subsidy of Particular Interest	£10m+	<ul style="list-style-type: none"> • Restructuring Subsidies • Relocation Subsidies above £1m. 	Yes

The SAU works to the following timescales:

Activity	Timescales	Comments
Pre referral discussions	N/A	Pre discussion can take place before submission and do not have an agreed SLA. These should be used to provide context to the SAU.
Submission on the portal	5 Working Days	Initial assessment by SAU, who will then accept or reject referral.
SAU review	30 Working Days	Potential for an extension to be agreed if SAU requires additional resources from the Authority. Report published on CMA website at the end of the review and available for public view.
Cooling off Period	5 Working Days	From receipt of the SAU report to awarding the subsidy. Competitive calls can go out at this point as award not taking place within this window.

The SAU will compile a report on the subsidy / scheme submitted for referral, which will be available publicly on the CMA website. The report will evaluate the Agency's assessment of compliance against the Act. Reports are non-binding and will not direct a decision. They will

be publicly available however and failure to rectify deficiencies identified by the report may expose the Agency to additional risk.

Any subsidy or scheme in scope of the SAU referral will need to be undertaken ahead of the scheme or subsidy call being issued. This is to ensure SAU advice is included within the call. Please engage with the commercial team at the earliest opportunity to ensure pipeline activity can be captured for future SAU referrals.

5. Exemptions

The Act identifies two exemptions from the Act:

Minimal Financial Assistance (MFA)

As with previous legislation, small amounts of funding can be awarded that do not require compliance to the Subsidy Control Act. Under Section 36 of the Subsidy Control Act 2022, Minimal Financial Assistance can be awarded up to value of £315,000 over the last 3 years. Projects that exceed £315,000 cannot be awarded under the MFA route.

Awards under this process will need to demonstrate that recipients have not received Government funding under MFA over a rolling 3 year fiscal period.²

Potential Suppliers or Grant Recipients wishing to apply under this exemption from the Act will need to demonstrate by filling out the MFA form within the grant call that they are eligible. Grant Managers should carry out internal due diligence checks to confirm that UKSA / UK Government have not provided funding under MFA within the last 3 years.

Upon an award of MFA, the Authority is required to submit a written notification, confirming the award under the exemption. A template for this can be found [here](#).

Services of Public Economic Interest Assistance (SPEI)

Under Section 38 of the Subsidy Control Act 2022, SPEI awards can be issued to enterprises that qualify up to £725,000 over the three year rolling period. SPEI services are essential services to the public which, without subsidy support, would not be supplied in an appropriate manner, or at all e.g. social housing. It is unlikely that the Agency would award grants on this basis.

² Calculated based on time of award; time elapsed under current financial year and the two directly preceding financial years.

Subsidy Control Guidance for Grant Applicants (to be included within Grant Call documentation)

- 1) The UK Space Agency (UKSA) supports organisations to invest in research, development and innovation. The support we provide is consistent with the UK's international obligations and commitments to Subsidy Control (see further information at Annex A).
- 2) Before awarding subsidies, the UK Space Agency must ensure that the subsidy scheme meets the terms of the principles as determined in the Subsidy Control Act 2022:

The principles are that:

- subsidies should pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as local or regional disadvantage, social difficulties, or distributional concerns (“the objective”)
- subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve the objective
- subsidies should be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
- subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy
- subsidies should be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means
- subsidies' positive contributions to achieving the objective should outweigh any negative effects, in particular the negative effects on trade or investment between the Parties
- Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.

3. To ensure this competition provides funding in line with the UK's obligations and commitments to Subsidy Control:

The intervention rates detailed in Annex A shall apply unless:

- a) the bidder seeks to claim exemption from having to make a contribution under the Minimal Financial Assistance Allowance (previously known as de-minimis under State Aid & Small Amounts of Financial Assistance under Trade & Co-operation Agreement) rules.
- b) the bidder is a research or public sector organisation or charity:

When referring to research organisations, UKSA uses the definition from the Framework for state aid for research and development and innovation which states:

“‘research and knowledge dissemination organisation’ or ‘research organisation’ means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities, the financing, the costs, and the revenues of those economic activities must be accounted for

separately. Undertakings that can exert a decisive influence upon such an entity, for example in the quality of shareholders or members, may not enjoy a preferential access to the results generated by it.”

Within UKSA, this means:

- universities – higher education institutions
- non-profit research and technology organisations (RTOs), including “catapults”.
- public sector organisations (PSOs)
- public sector research establishments (PSREs)
- research council institutes
- research organisations (ROs)
- charities.

This list is not comprehensive and is subject to change and exceptions.

Research organisations undertaking non-economic activity will be funded as follows:

- universities: 80% of full economic costs
- all other research organisations: 100% of eligible costs.

Research organisations should be non-profit distributing to qualify. They should explain how they will disseminate the output of their project research as outlined in the application. Research organisations which are engaged in economic activity as part of the project will be treated as business enterprises for the purposes of funding

Public sector organisation or charity

Public sector organisations and charities can work with businesses to achieve innovation through knowledge, skills and resources. These organisations must not take part in any economic activity or gain economic benefit from a project. They can apply for 100% of funding for their eligible costs under the following conditions:

- they are undertaking research (this may be experimental, theoretical or critical investigation work to gain knowledge, skills or understanding vital to the project)
- they meet requirements for dissemination of their project results and they state in the application how they will do this
- they include their eligible costs for research purposes in the total research organisation involvement
- they make sure they are not applying for funding towards costs which are already being paid by the public purse such as labour and overheads.

Third sector

Third sector organisations are primarily voluntary and community, such as associations, self-help groups, mutuals and cooperatives. Third sector organisations can be non-funding partners in a project.

Bidders must identify the work proposed, and this must be consistent with the work programme described in the technical case. Note that the company size defines the maximum ‘Intervention’ rate (and hence the minimum required PV level) that is permitted (see Annex A). Bidders will be expected to justify the category of work selected.

1. Bidders must ensure that they supply the correct information that allows UK Space Agency to award grants within the scheme. It is the responsibility of the grant funder to ensure compliance with the relevant Subsidy Controls rules and the bidder to assist the funder in doing this by acting within the terms and conditions of the scheme. Further guidance about subsidy control is available on the gov.uk website:

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

ANNEX A – Subsidy Control

Subsidy Control (and State aid where relevant)

UKSA supports UK based businesses to invest in research, development, and innovation. The support we provide is consistent with the UK's international obligations and commitments to Subsidy Control. These include:

- [WTO rules](#)
- the EU-UK Trade and Cooperation Agreement (TCA), (see EU-UK TCA summary and [BEIS \(Dept. for Business, Energy & Industrial Strategy\) guidance](#))
- in certain circumstances (e.g. under the [Northern Ireland Protocol](#)) EU State aid regulations may also be applied
- other bilateral [UK FTAs](#) (Free Trade Agreements) where relevant
- Subsidy Control Act 2022.

What is a subsidy?

For the purposes of UK international commitments, a subsidy is a measure which:

1. Is given by a public authority. This can be at any level; central, devolved, regional or local government or a public body.
2. Makes a contribution (this could be a financial or an in-kind contribution) to an enterprise, conferring an economic advantage that is not available on market terms. Examples of a contribution are grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free. An enterprise is anyone who puts goods or services on a market. An enterprise could be a government department or a charity if they are acting commercially.
3. Affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a [Free Trade Agreement](#). For example, if the subsidy is going towards a good which is traded between the UK and the EU this could affect trade between the EU and the UK. It is not necessary to consider whether the subsidy could harm trade, just whether there could be some sort of effect. Subsidies to very local companies or a small tourist attraction are unlikely to be a problem as this is unlikely to affect international trade.

The BEIS Subsidy Control regime (or where relevant EU State aid regulations) are designed to prevent unfair advantages and distortion of trade: [Complying with the UK's international obligations on subsidy control](#)

More information on the principles of awarding subsidies can be found in the [BEIS guidance](#).

Subsidy Control Categories and Intervention Thresholds

GUIDANCE NOTE- SELECT ONE OF THE FOLLOWING INTERVENTION RATES WHEN ISSUING GRANTS AND REMOVE ALL OTHERS

GUIDANCE NOTE OPTION 1- TO BE USED WHEN APPLYING UNDER A STREAMLINED SCHEME

This award is being given under the streamlined scheme **XXXXXXX**.

The following table summarises the maximum funding levels for projects and the maximum intervention thresholds allowable under UKSA grant calls. The categories provided align to the Streamlined Routes.

Streamlined Scheme	Category	Total Funding	Large Enterprise	Medium Enterprise	Small Enterprise	Start Ups
Research Development & Innovation	Feasibility Study	£3,000,000	50%	60%	70%	N/A
Research Development & Innovation	Industrial Research*	£3,000,000	50%	60%	70%	N/A
Research Development & Innovation	Experimental Development Projects*	£3,000,000	25%	35%	45%	N/A
Research Development & Innovation	Equipment and Instruments	£500,000	N/A	50%	50%	N/A
Local growth	Support to SMEs for Business Development Projects	£400,000	N/A	15%	25%	95%

* An uplift of 15% to the intervention rate on eligible costs may be authorised for effective collaborations:

- Between Enterprises, where at least one of the Enterprises is a SME, or.
- Between an Enterprise and one of more research and knowledge dissemination organisation, which must have the right to publish its one research results.

GUIDANCE NOTE OPTION 2- SAFE HARBOUR INTERVENTION RATES- TO BE USED WHEN NOT USING A STREAMLINED ROUTE AND LOOKING TO ALIGN TO PREVIOUS REGULATION LIMIT (LOWER RISK OF CHALLENGE) ****

The following table summarises the maximum intervention thresholds allowable level of support under UKSA grant calls. The subsidy categories provided match the definitions used by the European Commission state aid regime paras 83 to 98:

Subsidy category	Level of support available		
	Micro/SE	ME	LE
Fundamental research	100%	100%	100%
Feasibility study	70%	60%	50%
Industrial research	70%	60%	50%
Industrial research projects involving collaboration/ dissemination*	80%	75%	65%
Experimental development	45%	35%	25%
Experimental development projects involving collaboration/dissemination*	60%	50%	40%

*Collaborations between businesses and research organisations where the research organisation bears at least 10% of the costs and have the right to publish their own research. Procurement/supplier relationships do not qualify.

The following table summarises the UK definition of what constitutes an SME:

Company category	Staff headcount	Turnover	or	Balance sheet total
Medium sized	< 250	≤ £36m		≤ £18m
Small	< 50	≤ £10.2m		≤ £5.1m
Micro	< 10	≤ £632,000		≤ £316,000

To qualify for any category, the company must meet at least two of the above conditions (staff headcount, Turnover or Balance sheet total) within both the current financial year and the year previous.

Anything above the limits for a medium sized company is designated as a large company.

For more information on company sizes, please refer to the [company accounts guidance](#).

This is a change from the [EU definition](#) unless you are applying under State aid.

Other sources of public funding are not eligible as a Private Venture (PV) / match funding contribution.

Academic partners will be funded in all cases at 80% of Full Economic Cost (FEC).

GUIDANCE NOTES- OPTION 3- BESPOKE INTERVENTION RATES- CAN BE USED IF NOT AWARDING A STREAMLINED SCHEME OR AN EXEMPTION UNDER MFA. PLEASE CONSULT WITH THE COMMERCIAL TEAM IF LOOKING TO UTILISE THIS OPTION

GUIDANCE NOTE- OPTION 4- No subsidy * (Only to be included on Projects where the Project and UKSA Commercial have determined there is no subsidy)*****

This competition provides funding that is not classed by UKSA as a subsidy by not being deemed a subsidy in accordance with Section 2 of the Subsidy Control Act 2022. You should still seek independent legal advice on what this means for you, before applying.

Further information about the UK Subsidy Control requirements can be found within the Subsidy Control Act 2022 and the subsequent [BEIS guidance](#).

'No subsidy' status is only granted to organisations which declare that they will not use the funding:

- in any way which gives them selective economic or commercial advantage
- in any way which would determine the funding as a subsidy as defined by the Subsidy Control Act 2022 or the EU-UK Trade Cooperation Agreement

It is the responsibility of the lead organisation to make sure all collaborators in the project remain compliant with these requirements.

It is important to note that it is the activity that an organisation is engaged in as part of the project and not its intentions, that define whether any support provided could be considered a subsidy.

Applicants can apply for funding for up to 100% of eligible project costs.

Minimum Financial Assistance and EU de minimis awards

The Subsidy Control Act 2022 has provision relating to **Minimal Financial Assistance (MFA)**

For organisations applying under MFA, the total subsidy which can be given to each organisation is up to a maximum of £315,000 over a rolling 3 fiscal year period. This threshold is subject to change and grant recipients should consult the [subsidy control guidance](#) for regular updates.

When calculating eligibility for the application of the MFA provision bidders must include cumulation of EU State aid de minimis grants under the EC's de minimis regulation and Small Amounts of Financial Assistance (SAFA) under the EU Trade and Co-operation Agreement (TCA) for the same 3 fiscal year period. The maximum total under the EC regulation is €200,000, the maximum total under SAFA is £340,000 or 325,000 Special Drawing Rights. This is for all project types and for most purposes, including operating aid. You must complete and provide UKSA with a declaration as part of your response.

The declaration asks you to tell us about any awards, including those made under de minimis and SDR, (from any source of public funding) over a rolling 3 fiscal year period. If you have received an award under de minimis or SDR for the same period, this will be added to your total allowance under MFA. This means that the total award must not exceed £315,000) for any one organisation. You must declare this allowance to any other funding body who requests it.

Disclaimer

This guidance is not a substitute for taking independent legal advice on your eligibility status, before applying for funding. Every applicant is responsible for securing their own independent legal advice to ensure they are lawfully eligible.

Please note the UKSA is unable to award organisations that are considered to be ailing and insolvent companies. We will conduct financial viability and eligibility tests to confirm this is not the case following the application stage.

If you see an error in this guidance

Email: Commercial@ukspaceagency.gov.uk