

Subsidy Advice Unit Report on West Midlands Bus Recovery Grant Scheme

Referred by West Midlands Combined Authority –
Transport for West Midlands

22 November 2023

Subsidy Advice Unit

Part of the Competition and Markets Authority

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1. Introduction

- 1.1 This report is an evaluation prepared by the Subsidy Advice Unit (SAU), part of the Competition and Markets Authority, under section 59 of the Subsidy Control Act 2022 (the Act).
- 1.2 The SAU has evaluated the West Midlands Combined Authority – Transport for West Midlands' (TfWM) Assessment of Compliance of its proposed West Midlands Bus Recovery Grant Scheme, with the requirements of Chapters 1 and 2 of Part 2 of the Act (the Assessment).¹
- 1.3 This report is based on the information provided to the SAU by TfWM in its Assessment and evidence submitted relevant to that Assessment.
- 1.4 This report is provided as non-binding advice to TfWM. The purpose of the SAU's report is not to make a recommendation on whether the scheme should be implemented, or directly assess whether it complies with the subsidy control requirements. TfWM is ultimately responsible for making the Scheme, based on its own assessment, having the benefit of the SAU's evaluation.
- 1.5 A summary of our observations is set out at section 2 of this report.

The referred scheme²

- 1.6 TfWM is seeking to provide £74.44 million to local bus operators to enable the continued provision of most of the existing West Midlands bus network until December 2024, referred to as the 'West Midlands Bus Recovery Grant' (the Scheme).
- 1.7 The Scheme aims to respond to the impact of the Covid pandemic and subsequent cost of living crisis on the West Midlands bus market. TfWM told us that a combination of reduced patronage and increased costs has resulted in only around 50% of the pre-Covid bus network being deemed commercially sustainable. As a result, without support, the bus network in the West Midlands would be further reduced. The Scheme will provide this support to eligible bus operators by funding the viability gap arising from reduced revenues and increased costs.

¹ Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

² [Referral of the proposed West Midlands Bus Recovery Grant by the West Midlands Combined Authority - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/referral-of-the-proposed-west-midlands-bus-recovery-grant-by-the-west-midlands-combined-authority)

- 1.8 The Scheme will operate until 31 December 2024. This will provide TfWM with time to develop other strategies to address these challenges with less reliance on public funding beyond that date.
- 1.9 The sources of funding accessible by TfWM for the Scheme are:
- (a) £19m from the Bus Services Operators Grant Plus³ provided by the Department for Transport, which is devolved to TfWM;
 - (b) £36.44m which the Department for Transport has approved to be repurposed from the Bus Service Improvement Plan⁴ fund for use by TfWM for the Scheme; and
 - (c) Up to £19m of local funding from TfWM reserves.
- 1.10 All bus operators who operate commercial routes in the region are eligible, provided they continue to operate no less than 98% of current commercial mileage (the Scheme allows for up to 2% of further route cuts, which must be agreed with TfWM). New entrants are also eligible. In return for the funding, bus operators will need to commit to revenue targets and cost reductions.
- 1.11 Given it provides over 90% of services in the area, National Express West Midlands (NXWM), will be the largest beneficiary.
- 1.12 TfWM has identified that a subsidy given under the Scheme would involve the delivery of a Service of Public Economic Interest (SPEI).⁵

SAU referral process

- 1.13 On 6 October 2023, TfWM requested a report from the SAU in relation to the West Midlands Bus Recovery Grant.
- 1.14 TfWM explained⁶ that the Scheme is a Scheme of Particular Interest because it allows for the provision of one or more Subsidies of Particular Interest to be given.⁷ In particular, NXWM is expected to receive a subsidy of around £66 million.

³ Bus Services Operators Grant Plus is a grant from the Department for Transport for eligible commercial bus services designed to support the reform and consolidations of bus funding and develop long term sustainability in bus funding. The scheme started on 1 July 2023 and will run until 31 March 2025. See [Bus Service Operators Grant Plus - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/bus-services-operators-grant-plus)

⁴ Bus Service Improvement Plan- funding from the Department for Transport to support local authority plans to improve bus services. See [Bus service improvement plans: local transport authority allocations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/bus-service-improvement-plans-local-transport-authority-allocations)

⁵ SPEIs are essential services provided to the public where, without subsidy, these services would not be supplied in an appropriate way or may not be supplied at all by the market. See [Statutory Guidance](#), chapter 6 and section 29 of the Act.

⁶ In the information provided under section 52(2) of the Act.

⁷ Within the meaning of regulation 3 of [The Subsidy Control \(Subsidies and Schemes of Interest or Particular Interest\) Regulations 2022](#) which sets out the conditions under which a subsidy or scheme is considered to be of particular interest.

1.15 The SAU notified TfWM on 12 October 2023 that it would prepare and publish a report within 30 working days (i.e., on or before 22 November).⁸ The SAU published details of the referral on 12 October.⁹

⁸ Sections 53(1) and 53(2) of the Act.

⁹ [Referral of the proposed West Midlands Bus Recovery Grant by the West Midlands Combined Authority - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/referral-of-the-proposed-west-midlands-bus-recovery-grant-by-the-west-midlands-combined-authority)

2. Summary of the SAU's observations

- 2.1 We find that TfWM has generally followed the Statutory Guidance for the UK Subsidy Control Regime (the Statutory Guidance) appropriately. In particular, TfWM has articulated a clear equity objective, explicitly considered the proportionality of the Scheme against the policy objective, and clearly identified the relevant market, a pre-requisite to assess the Scheme's impact on competition.
- 2.2 Nonetheless, we find that TfWM could strengthen parts of its Assessment:
- (a) Principle B: The Assessment could provide some value of the Scheme's expected benefits when assessing proportionality (which would then feed into Principle G). Additionally, the Assessment could be strengthened by considering the risks to delivery of the long-term plan for maintaining the network, and what would happen should there be a delay (including the potential for extending Scheme).
 - (b) Principle F: The Assessment could benefit from considering whether there have been any changes to market circumstances since the reports on which the analysis is based were published. It could also be strengthened with more detailed consideration of the impact on different modes of transport in the area, along with a more explicit evaluation against the market characteristics set out in Annex 2 of the Statutory Guidance.
 - (c) Principle G: The Assessment could be strengthened by quantifying and weighing the benefits of the Scheme against its negative impacts.
 - (d) SPEI Assessment: The Assessment could be strengthened by providing the more specific detail in relation to each of the requirements set out in Section 29 of the Act. The details were in the Scheme's draft Terms and Conditions but could have been directly referenced in the Assessment.
- 2.3 In addition, to ensure that assessments are well evidenced, public authorities should set out the information relating to each principle under that principle, even if it results in some duplication. This would assist public authorities in ensuring their conceptual framework for the assessment fully matches the Act's requirements.
- 2.4 Our report is advisory only and does not directly assess whether the Scheme complies with the subsidy control requirements. The report does not constitute a recommendation on whether the Scheme should be implemented by TfWM. We have not considered it necessary to provide any advice about how the proposed Scheme may be modified to ensure compliance with the subsidy control requirements.¹⁰

¹⁰ Section 59(3)(b) of the Act.

3. The SAU's Evaluation

3.1 This section sets out our evaluation of the Assessment. TfWM structured its Assessment to address each principle in turn, and our evaluation follows that structure.

Principle A

3.2 Under Principle A, subsidies should pursue a specific policy objective in order to:

- (a) remedy an identified market failure; or
- (b) address an equity rationale (such as local or regional disadvantage, social difficulties, or distributional concerns).¹¹

Policy objectives

3.3 The Assessment identifies the policy objective of the Scheme as maintaining an efficient bus network for the region, which is crucial to delivering the West Midlands Combined Authority's purpose to build a better connected, more prosperous, fairer, greener, and healthier West Midlands. It provides evidence in relation to reduced patronage since the Covid pandemic and recent increased costs to demonstrate that the current network, already reduced since the pandemic, is commercially unsustainable. The Scheme is designed as a temporary measure, providing TfWM with an opportunity to pursue several actions that intend to reduce the requirement for further public funding and to generate increased competition within the West Midlands bus market.

3.4 The Assessment also states that a reduced bus network would impact TfWM's ability to grow bus use and grow integration between transport modes, a policy objective of the West Midlands' Vision for Bus which supports the West Midlands Local Transport Plan and the National Bus Strategy.

3.5 We consider that the Assessment sets out the policy objective appropriately.

¹¹ Further information about Principle A can be found in the [Statutory Guidance](#) (paragraphs 3.18 to 3.39) and the [SAU Guidance](#) (paragraphs 4.7 to 4.11).

Market failure and equity objective

- 3.6 The Statutory Guidance sets out that:
- (a) Market failure occurs where market forces alone do not produce an efficient outcome.¹²
 - (b) Equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.¹³

Equity objective

- 3.7 The Assessment sets out an equity objective of preventing the social difficulties that would result from reducing the bus network and a loss of connectivity between different transport modes. These include economic isolation, increased pollution through increased car use, and poorer health outcomes, all of which may have a greater impact on more vulnerable demographics. TfWM cites statistics demonstrating that certain demographics (those aged 65 or above, women, and those who are economically inactive) are reliant on the bus network.
- 3.8 We find that the Assessment offers plausible descriptions of the social and economic disruption the network reduction would cause which is supported by appropriate evidence, although the source and period covered by the data used is not always clear.
- 3.9 In particular, the Assessment cites consumer behaviour during the NXWM bus driver strike in March 2023 to demonstrate the impact that this had on connectivity loss, increased car use, and reduced educational attendance.

Market failure

- 3.10 The Assessment states that 'the West Midlands bus market is at risk of losing an additional 39% of its mileage which would have a hugely damaging social and economic impact. The market, without subsidy, is unable to rectify this and as such there is clear market failure.'
- 3.11 The presence of undesirable market outcomes (in this case a reduced level of bus network) does not in itself constitute a market failure. However, in line with the Statutory Guidance,¹⁴ the prevention of congestion, pollution, and poorer health outcomes (from decreased access to medical and social care and the impacts of greater levels of pollution) discussed in the Assessment are all positive externalities which could lead to an identified market failure. That is, the providers

¹² [Statutory Guidance](#), paragraphs 3.21 to 3.32.

¹³ [Statutory Guidance](#), paragraphs 3.35 to 3.39.

¹⁴ [Statutory Guidance](#), paragraphs 3.22 to 3.26.

of bus services may not fully take account of the benefits of addressing these when considering the costs of running commercial services.

- 3.12 In our view, given the equity objective outlined, it was not necessary to describe the market failure in detail. However, given there is discussion of market failure, the Assessment could be strengthened if it explained the market failure by considering how the identified externalities would lead to an under-provision of bus services compared with the socially optimal level in the West Midlands (with evidence from the NXWM drivers' strike being particularly useful in underpinning any conclusions).

Principle B

- 3.13 Principle B requires that subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.¹⁵
- 3.14 The Assessment considers proportionality with reference to the policy objective and compared to the estimated cost of another approach to achieve the policy objective (tendering¹⁶), concluding that the Scheme is a cheaper approach to delivering the objective.
- 3.15 The Assessment sets out how TfWM will have access to beneficiaries' accounts to allow it to determine the minimum amount needed to achieve the policy objective, with the overall funding envelope of the Scheme based on NXWM's evidenced funding gap, factored up to incorporate the commercial mileage operated by all other operators in the West Midlands. Further, beneficiaries will be required to commit to stretching revenue and cost-cutting targets, covering shortfalls themselves should they not be met. This helps limit the amount of subsidy needed via the Scheme.
- 3.16 We consider that the approach to Principle B is broadly appropriate, in particular the explicit consideration against the policy objective. We find that the Assessment could, however, be improved by providing some sort of valuation of the expected benefits (such as in the form of a cost-benefit analysis). It could also consider proportionality and whether the Scheme is the minimum necessary relative to the metrics referenced in Annex 2 of the Statutory Guidance.¹⁷
- 3.17 Further, the date provided for the end of the Scheme is when TfWM expects to have in place a new plan for the sustainability of the network in the long-term,

¹⁵ Further information about Principle B can be found in the [Statutory Guidance](#) (paragraphs 3.58 to 3.93) and the [SAU Guidance](#) (paragraphs 4.15 to 4.19).

¹⁶ Where public authorities enter into service agreements with bus operators, through a tendering process, to support them to provide certain services which would not be provided commercially (which may cover all or part of a route and its operating hours).

¹⁷ Such as subsidy size relative to market size, operating costs of the recipient, etc, see [Statutory Guidance](#) Annex 2 for further detail.

which reduces the need for additional public funds. In considering the proportionality of the Scheme, the Assessment could take account of the potential risks to delivery of this plan which might therefore necessitate an extension to the Scheme.

- 3.18 Finally, while NXWM's accounting information was provided, an explanation and evidence of NXWM's estimated cost of tendered services would have enhanced the case made.

Principle C

- 3.19 Principle C requires that:

- (a) First, subsidies should be required to bring about a change of economic behaviour of the beneficiary; and
- (b) Second, 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.¹⁸

Counterfactual assessment

- 3.20 In assessing the counterfactual, the Statutory Guidance explains that public authorities should assess any change against a baseline of what would happen in the absence of the subsidy (the 'do nothing' scenario').¹⁹ This baseline would not necessarily be the current 'as is' situation (the 'status quo') but what would likely happen in the future – over both the long and short term – if no subsidy were awarded.
- 3.21 The Assessment sets out that, without the Scheme, local bus operators will have no choice but to follow a significant downsizing strategy. It calculates a reduction absent the Scheme of 39% of current bus mileage. There would also be fare increases above inflation. This would potentially drive consumers to switch to other modes of transport, leading to further cost pressures and a downward spiral of cuts and price increases.
- 3.22 However, the Assessment also states elsewhere that the network would not automatically be cut by 39% in the event of no subsidy, but that NXWM would take a staged approach, assessing the impact of cuts at each stage. The Assessment could therefore be strengthened by acknowledging this phased approach when considering the counterfactual.

¹⁸ Further information about Principle C be found in the [Statutory Guidance](#) (paragraphs 3.43 to 3.57) and the [SAU Guidance](#), (paragraphs 4.12 to 4.14).

¹⁹ [Statutory Guidance](#), paragraphs 3.46 to 3.47.

- 3.23 We consider that the counterfactual assessment is reasonably evidenced, relying on quantitative evidence (an extract of management accounts from NXWM) and some qualitative evidence (from a stakeholder engagement exercise with other operators, although only selective extracts were provided to us). The accounts are used to show that NXWM's current network provision is unprofitable and demonstrate the reduction necessary to return to profitability, therefore the counterfactual scenario presented is the most likely outcome in the absence of the subsidy. The Assessment states that comments from the other operators indicate that they are in a similar position.
- 3.24 The Assessment could be improved by ensuring that it clearly links its conclusions to the evidence provided (for example why cutting costs by 39% means cutting services by around 39%).

Changes in economic behaviour of the beneficiary

- 3.25 The Statutory Guidance sets out that subsidies must bring about something that would not have occurred without the subsidy.²⁰ In demonstrating this, public authorities should consider the likely change or additional net benefit.
- 3.26 The Assessment sets out that the Scheme will require recipients to continue to provide their current route network until December 2024, when it would otherwise be curtailed. This relies on similar evidence as set out in paragraph 3.23 and the comments in paragraph 3.24 therefore also apply.

Principle D

- 3.27 Principle D sets out that subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.²¹
- 3.28 According to the Statutory Guidance, 'additionality' means that 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.²² For schemes, public authorities should also, where possible and reasonable, ensure the scheme's design can identify in advance and exclude those beneficiaries for which it can be reasonably determined would likely proceed without subsidy.²³
- 3.29 The Assessment explains that the Scheme will allow NXWM and other beneficiaries to continue to provide services that they would otherwise need to cut due to the identified drop in passenger numbers (and associated revenues) and

²⁰ [Statutory Guidance](#), paragraph 3.50.

²¹ Further information about Principle D can be found in the [Statutory Guidance](#) (paragraphs 3.43 to 3.57) and the [SAU Guidance](#) (paragraphs 4.12 to 4.14).

²² [Statutory Guidance](#), paragraphs 3.49 to 3.53.

²³ [Statutory Guidance](#), paragraph 3.55.

increase in costs (in particular labour and fuel costs). Further, under the terms of the Scheme, beneficiaries will also undertake certain activities that they might not have otherwise, including providing funding to cover any shortfall and additional stretch targets and cost cutting while maintaining those services.

- 3.30 TfWM submitted accounting information on variable and fixed costs as evidence that NXWM would have to cut 39% of services for its operations in the area to remain profitable. We consider this evidence is reasonable and commensurate in terms of the type of evidence to rely on but could be more clearly linked to conclusions made in the Assessment. Further, the Assessment could provide more assurance that funding would only be provided to cover costs that would otherwise not be funded in the absence of the Scheme and set out how the design of the Scheme will ensure that it is not funding activities that would occur anyway (some information on how the Scheme might do this is found in the draft Terms and Conditions and could be referenced or included in the Assessment itself).
- 3.31 TfWM has not at this stage similarly utilised corresponding information from the other operators in the area and is extrapolating the costs from NXWM (also noting comments from the second largest operator in the area that most of its services were loss making). While having access to other operators' costs would be beneficial, NXWM's share of the market (94% of all bus passengers) means that we consider that relying on its costs is a commensurate approach for preparation of the Assessment.²⁴

Principle E

- 3.32 Under 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.²⁵
- 3.33 In order to comply with Principle E, public authorities should consider why the decision to give a subsidy is the most appropriate instrument for addressing the identified policy objective, and why other means are not appropriate for achieving the identified policy objective.²⁶

²⁴ As noted in paragraph 3.16, TfWM will ultimately have open book access to all beneficiaries' accounts to ensure that the amount given is appropriate and the relevant route mileage is being delivered in practice, which we consider is important to understand specific operator costs.

²⁵ Further information about Principle E can be found in the [Statutory Guidance](#) (paragraphs 3.18 to 3.42) and the [SAU Guidance](#) (paragraphs 4.7 to 4.11).

²⁶ [Statutory Guidance](#), paragraphs 3.40 to 3.41.

- 3.34 The Assessment sets out that TfWM considered three options:
- (a) providing a loan to NXWM (and others) to continue the provision of the routes;
 - (b) tendered contracts to replace any cancelled routes; and
 - (c) the proposed Scheme.
- 3.35 The Assessment sets out at a high level why the first two options were rejected, drawing on conclusions from elsewhere in the Assessment (in the case of the tendered contracts options in particular).
- 3.36 We find the approach taken is appropriate, and the reasoning is clear and logical as to why the alternative options were not suitable. While appropriate evidence is provided, in common with the Assessment overall, our view is that it could be clearer (for example, it is difficult to understand the calculations made to support the conclusions that tendering would not offer value for money compared to the proposed Scheme).

Principle F

- 3.37 Principle F requires that subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.²⁷

Design of subsidy to minimise negative effects on competition and investment

- 3.38 The Assessment sets out the aspects of the Scheme design which safeguard against negative effects (time-limited, capped at £74.44m, open to all operators including new entrants, shortfalls underwritten by beneficiaries, and monthly progress meetings).
- 3.39 Our view is that the Assessment provides a good overview of how the design of the Scheme will help minimise negative impacts on competition and investment, but could be strengthened by:
- (a) providing detail on any clawback mechanism, and how performance will be assessed in practice (there is additional detail in the draft Terms and Conditions which could be referred to in the Assessment itself);

²⁷ Further information about Principle F can be found in the [Statutory Guidance](#) (paragraphs 3.58 to 3.93) and the [SAU Guidance](#) (paragraphs 4.15 to 4.19).

- (b) considering the likelihood of any new entrants, given statements elsewhere in the Assessment suggesting entry is unlikely;
- (c) a more formal assessment of subsidy size relative to the metrics included in Annex 2 of the Statutory Guidance;²⁸ and
- (d) providing a more detailed explanation of whether and how costs change in response to mileage reductions.

Assessment of effects on competition or investment

Market definition

- 3.40 The Assessment clearly identifies the relevant market for the competition assessment, in this case the local bus market in the West Midlands. Defining the relevant market allows the Assessment to properly consider the impact on competition. Nonetheless, the Assessment bases its conclusion on the findings of the Competition Commission's Local Bus Services market investigation from 2011. While an appropriate source of evidence, given the time that has elapsed since that report, the Assessment could benefit from considering whether there have been any changes to how competition works in the market (for example in terms of competition with other transport modes and the impact of any changes in commuter behaviour).

Impact on competition

- 3.41 The Assessment considers the impact on competition with respect to the impact on NXWM's market share, and the impact on neighbouring and (some) adjacent markets.
- 3.42 The Assessment acknowledges that the Scheme will allow NXWM to maintain its market share. However, it argues that, while NXWM would reduce services absent the subsidy, there are no other providers that could then operate them, including via a tender process. The Assessment notes that other operators are downsizing and those routes that would be cut would be unlikely to be profitable without NXWM's scale.
- 3.43 We find that the Assessment would be strengthened with more evidence on why other existing operators or new entrants would not be able to bid successfully for at least some services, were they tendered. The Assessment relies on statements from other operators obtained during an engagement exercise, but the full results of that exercise were not provided.

²⁸ Such as the size of the market, total project costs, and the operating costs of beneficiaries.

- 3.44 The Assessment considers that significant competitive effects are unlikely in neighbouring geographic markets or on certain adjacent markets including taxis, trams and trains, and other forms of public transport. In our view, particularly given the extent of local train and tram provision in parts of the West Midlands, the Assessment might have been strengthened by considering potential competitive impacts in adjacent markets in more detail (including a broader range of transport modes). We note that TfWM did consider using modelling approaches to inform this but considered that the costs involved meant that this was not proportionate to this assessment. However, the Assessment could have been improved with a proportionate analytical approach to considering these potential competitive impacts rather than none at all.
- 3.45 Additionally, in considering the impact of the Scheme on competition, we find that the Assessment could have included:
- (a) a more explicit evaluation of the subsidy and market characteristics, following Annex 2 of the Statutory Guidance (it is possible to infer some of these aspects in the Assessment, such as through the discussion around the scarcity of depots, and TfWM's work to make these more accessible to NXWM's competitors);²⁹ and
 - (b) more explicit consideration of the scale of the Scheme relative to the overall size of the market (generally, a subsidy that only represents a small portion of the market is less likely to have a significant impact on competition and investment).
- 3.46 Finally, we note that assessing the impact of the Scheme on competition could include considering the impact of the up to 2% further reduction in the bus network coordinated jointly between operators and TfWM. The Assessment states that such reductions could be where two competing operators are providing a higher than optimal level of service on a route. The Assessment could be improved by considering whether any on-route competition which would exist under the counterfactual could be impacted as a result.

Principle G

- 3.47 Principle G requires that subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on: (a) competition or investment within the United Kingdom; (b) international trade or investment.³⁰

²⁹ Such as input and related markets, and market concentration.

³⁰ See [Statutory Guidance](#) (paragraphs 3.96 to 3.98) and [SAU Guidance](#) (paragraphs 4.20 to 4.22) for further detail.

- 3.48 The Assessment sets out the benefits of the Scheme compared to the negative outcomes which would arise in the ‘do-nothing’ scenario and refers to its conclusion under Principle F that the Scheme will have minimal effects on competition.
- 3.49 We find that the Assessment could be strengthened by fully weighing the benefits of the Scheme against its identified negative impacts, not just the negative impacts of the do-nothing scenario. This would be assisted by quantifying the relevant benefits of the Scheme (see paragraph 3.16) to balance them against identified negative impacts. The Assessment would then be able to detail how positives and negatives were weighed against each other and explain more clearly how it reached its conclusions.

Other Requirements of the Act

- 3.50 This step in the evaluation relates to the requirements and prohibitions set out in Chapter 2 of Part 2 of the Act, where these are applicable.³¹
- 3.51 TfWM has identified that a subsidy given under the Scheme would involve the delivery of a SPEI. To designate a service as a SPEI, the public authority must be satisfied that the service is provided for the benefit of the public, and that the service would not be provided, or would not be provided on the terms required, by an enterprise under normal market conditions.³²
- 3.52 Section 29 of the Act sets out additional requirements which apply when giving subsidies for SPEI.³³ These requirements and the relevant parts of the Assessment are set out below.

The subsidy is limited to what is necessary to deliver the SPEI services having regard to costs of delivery and reasonable profits³⁴

- 3.53 The SPEI Assessment refers to Principle B and explains that the Scheme’s contract allows operators to make reasonable profits, subject to meeting revenue and cost targets (with beneficiaries responsible for any shortfalls). TfWM subsequently clarified that the subsidy scheme was limited to the minimum necessary through establishing the gap between the costs of supplying the relevant routes and the revenue generated, coupled with stretch revenue and cost targets to minimise that gap. In doing so, beneficiaries would be able to achieve a profit margin specified by TfWM which it considers reasonable.

³¹ [Statutory Guidance](#), chapter 5.

³² [Statutory Guidance](#), paragraph 6.4.

³³ Section 29 of the Act.

³⁴ Section 29(2) of the Act.

3.54 The SPEI Assessment could be improved if these points were clearer in the SPEI Assessment itself and with more detail on the basis for considering that the specified profit margin is reasonable.

The subsidy is given in a transparent manner, meaning that the subsidy is given in accordance with a contract (or other legally enforceable arrangement), which sets out the terms on which the subsidy is given and contains certain other prescribed information³⁵

3.55 The SPEI Assessment sets out that Scheme details will be published, and the Scheme Terms and Conditions will include the necessary prescribed information. TfWM subsequently clarified which parts of the draft Terms and Conditions set out this information.

3.56 The SPEI Assessment could be improved by including this detail, along with more detail in relation to the description of the SPEI services in respect of which the Scheme is given.

Arrangements are in place to regularly review the subsidy to ensure it remains limited to the minimum amount necessary and that any excess funds can be recovered³⁶

3.57 In relation to the third requirement, the SPEI Assessment confirmed that the Scheme will be reviewed at the end of the delivery period. TfWM subsequently clarified which parts of the draft Terms and Conditions describe how excess funds can be recovered. The SPEI Assessment could be improved by including this detail.

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³⁵ Section 29(3) to (5) of the Act.

³⁶ Section 29(6) of the Act.