Subsidy Advice Unit Report on the Development Bank of Wales Rescue and Restructuring Scheme

Referred by the Development Bank of Wales

05 March 2024

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 Development Bank of Wales' (DBW's) assessment of compliance of the proposed Rescue and Restructuring scheme (the 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 DBW in its Assessment and evidence submitted relevant to that Assessment.

1.4 This report is provided as non-binding advice to DBW. 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. DBW 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 scheme[2]

1.6 The Scheme will provide support to ailing and insolvent small and medium sized enterprises (SMEs) in Wales. Support will be provided in the form of interest-bearing loans, which would not otherwise be commercially available, repayable over the shortest term possible, to a maximum of six months for rescue subsidies and five years for restructuring subsidies. Applications to the Scheme will be individually assessed.

1.7 The Scheme size is £40.5 million and the maximum loan size to an individual enterprise will be £2.5 million. The value of the subsidy will be calculated using the Gross Cash Equivalent calculation.[3] For rescue subsidies the enterprise must have commenced the production of a restructuring plan and for restructuring subsidies, the enterprise must be able to demonstrate a return to viability via the implementation of a restructuring plan.

1.8 DBW stated that the Scheme will be operated in line with the Subsidy Control Act 2022, and it will allow for continuation of the support currently provided by the

[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 from the Development Bank of Wales for its Rescue and Restructuring Scheme - GOV.UK (www.gov.uk)
[3] See Annex 4 of the Statutory Guidance

Development Bank of Wales under a European Commission approved scheme (the European Scheme).

SAU referral process

1.9 On 18 January 2024, the Welsh Government, who own DBW, requested a report from the SAU in relation to the Scheme.

1.10 DBW explained[4] that the Scheme is a Subsidy Scheme of Particular Interest because it allows for the provision of one or more Subsidies of Particular Interest to be given.[5] In particular, DBW noted that 'pursuant to section 10.21 of the Subsidy Control Statutory Guidance, restructuring subsidies will be subsidies of particular interest (SoPI) and public authorities intending to grant such subsidies will be required to refer them to the SAU. This Scheme includes Rescue and Restructuring subsidies and therefore the SoPI requirements regarding the referral process have been adopted'.

1.11 The SAU notified DBW on 24 January 2024 that it would prepare and publish a report within 30 working days (ie on or before 5 March 2024).[6] The SAU published details of the referral on 24 January 2024.[7]

1.12 During the referral period, the SAU sought clarification from DBW on a number of points related to the design of the Scheme, including its valuation, the maximum amount of the subsidy that could be granted under it, the potential for interaction with other legacy subsidy schemes and elements of its detailed features including how the Scheme might interact with Minimal Financial Assistance (MFA).

1.13 In its response DBW indicated that the related European scheme under which it offered rescue and restructuring subsidies, which was originally due to expire on 31 December 2023, had been extended and would now expire on 31 December 2024. The two schemes may therefore run in parallel.

1.14 However, DBW explained that it is currently considering enquiries under the European Scheme, and MFA if applicable, but that there would be no cross-over between new awards under the referred Scheme and those provided under the European Scheme.

1.15 DBW also explained that the total value of the Scheme referred to the SAU (£40.5 million) was made up of further funding which was expected to be granted to DBW

[4] In the information provided under section 52(2) of the Act.
[5] 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.
[6] Sections 53(1) and 53(2) of the Act.
[7] Referral from the Development Bank of Wales for its Rescue and Restructuring Scheme - GOV.UK (www.gov.uk)

as well as monies available to the European Scheme at the time of writing to the SAU.

1.16 DBW clarified that going forward both MFA and the Scheme would be possible routes to providing support and indicated that the same investment decision process would be followed for both routes. DBW put forward some further observations on the relationship between MFA and the Scheme[8] and explained that the Scheme valuation (£40.5 million) included all amounts to be awarded under the Scheme and as MFA.

[8] Some of these observations were in tension with each other. Whereas the submission indicated that MFA would fall outside the Scheme, DBW's response to the SAU's request for clarification suggested otherwise.

2. General observations and summary of the SAU's evaluation

2.1 The Assessment uses the four-step structure described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the Statutory Guidance) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the SAU Guidance).

2.2 We have found that, in particular, the Assessment reflects the following positive features:

(a) In relation to Principle A, the specific policy and equity objectives of the Scheme are well explained and supported with appropriate evidence.

(b) In relation to Principle E, the Assessment sets out the alternatives to the Scheme and explains, supported with relevant evidence, why it is an appropriate means of addressing the policy objective and associated equity objective.

2.3 However, we consider that, given the potential for rescue and restructuring subsidies to be particularly distortive, that the Assessment could be strengthened in relation to Principle F, by further consideration of the potential effects of the Scheme on both UK and international competition and investment in line with the Statutory Guidance.

2.4 Having the benefit of the Assessment and the subsequent clarifications from DBW as set out in paragraphs 1.12 to 1.16, we also make the following observations:

(a) First, DBW's approach to valuation of the Scheme could have been more fully explained, for example why it has counted funds currently allocated to the European Scheme within its valuation of the Scheme. Similarly, DBW could better explain why awards which it intends to be awarded as MFA have been included within the Scheme valuation.

(b) Second, DBW could have better explained whether the Scheme will run in parallel with the European Scheme and, if so, its reasoning behind this. In doing so, it could more clearly distinguish between awards to be made under the referred Scheme and the European Scheme.

(c) Third, we consider that the Assessment could be strengthened by further explanation of how MFA and the Scheme will interact as these are distinct concepts within the subsidy control regime.[9] There are different procedural requirements of the Act in relation to MFA.

2.5 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 DBW. 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]

[9] See paragraph 12.18 of the Statutory Guidance which states that 'Public authorities should note that not all groupings of subsidies will be considered subsidy schemes under the Act – notably, MFA and SPEIA are not given under subsidy schemes'.
[10] Section 59(3)(b) of the Act.

3. The SAU's evaluation

3.1 This section sets out our evaluation of the Assessment, following the four-step structure used by DBW.

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

3.2 The first step involves an evaluation of the Assessment against:

(a) 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); and

(b) 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.[11]

Policy objectives

3.3 The Assessment states that the specific policy objective of the Scheme is to provide emergency support to ailing and insolvent SMEs to prevent their failure and therefore limit social hardship. It goes on to explain how it will contribute towards Welsh Government policy objectives as set out in the Programme for Government 2021-2026.[12] This includes:

(a) progressing economic resilience and reconstruction for Wales, supporting enterprises to become more economically resilient, actively addressing reasons for distress and reducing the likelihood of enterprise failure;

(b) helping businesses to work co-operatively to support local supply chains, including local delivery and logistics;

(c) strengthening regional skills partnerships;

(d) making cities, towns and villages even better places to live and work by supporting viable businesses; and

(e) ensuring that there is no contraction in DBW's support for Welsh enterprises.

[11] Further information about the Principles A and E can be found in the Statutory Guidance (paragraphs 3.32 to 3.56) and the SAU Guidance (paragraphs 4.7 to 4.11).
[12] Programme for government | GOV.WALES

3.4 In our view, the specific policy objective of the subsidy is well explained and supported with appropriate evidence. The Assessment demonstrates how, by supporting potentially viable businesses, the wider objectives may be achieved.

Market failure

3.5 The Statutory Guidance sets out that market failure occurs where market forces alone do not produce an efficient outcome.[13]

3.6 The Assessment outlines two market failures which may be addressed by the Scheme.

(a) First, it explains that when DBW is considering whether to provide support for an enterprise, it will assess the existence of potential positive and negative externalities including whether the enterprise has positive effects on the wider economy and/or whether its exit from the market could lead to potential negative consequences.

(b) Second, the Assessment states that the Scheme will address a market failure in relation to the existence of asymmetric/imperfect information effects. It explains that banks generally do not lend to ailing or insolvent businesses due to the complex nature of their finances and their higher risk profiles. The effect is that these otherwise viable businesses which benefit the economy, and in some circumstances have the potential for growth, cannot obtain finance from traditional lenders to help them with short term cash flows. The Assessment argues that the Scheme overcomes this failure by allowing DBW to make a more in-depth assessment of the business' feasibility, as well as enhanced information requirements, such as a restructuring plan, before making the decision to lend.

3.7 In our view the existence of an asymmetric information market failure is well reasoned. However, the Assessment would be strengthened if the description of how the design of the Scheme will address externalities was developed, as opposed to the approach for individual subsides which may be made under it (if externalities happen to arise).

Equity objective

3.8 The Statutory Guidance sets out that equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.[14]

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[13] Statutory Guidance, paragraphs 3.35 to 3.48.
[14] Statutory Guidance, paragraphs 3.49 to 3.53.

3.9 The Assessment states that the Scheme will contribute to an equity objective in Wales through the prevention of increased social hardship that would otherwise result from instances of business failure.

3.10 It explains that the economic environment in Wales is disadvantaged when compared to the majority of UK regions and countries. It provides extensive evidence of relevant economic indicators including higher unemployment and business failure rates, lower Gross Domestic Product per capita and lower growth rates.

3.11 The Assessment goes on to explain that businesses in Wales are experiencing considerable uncertainty in the current economic climate, and that these challenges have contributed to increases in business failure rates, demonstrating a need for the Scheme.

3.12 The Assessment explains that DBW will consider several factors when assessing whether an enterprise's exit from the market would result in social hardship or lead to severe market failure.[15] These include where;

(a) 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;

(b) the enterprise provides an important service which cannot easily be replaced;

(c) the enterprise's exit would have a considerable disruptive impact on a regional market or in a particular sector;

(d) the market exit of the enterprise is an otherwise avoidable consequence of a failure or adverse incentives of credit markets; and

(e) the enterprise's exit from the market would lead to the loss of important technical knowledge or expertise.

3.13 In our view the Assessment explains the equity objective associated with the policy objective well.

Consideration of alternative policy options and why the Scheme is the most appropriate and least distortive instrument

3.14 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

[15] Statutory Guidance, paragraph 5.63.

identified policy objective, and why other means are not appropriate for achieving the identified policy objective.[16]

3.15 The Assessment sets out alternative forms of subsidy to the Scheme which were considered by DBW. These included the provision of direct grants and the potential for equity investment. It states that commercial loans are not considered viable given the nature of the beneficiaries as ailing and insolvent enterprises.

3.16 Direct grants are dismissed as it considers that these would be more distortive than a loan and would not incentivise an enterprise to bring about changes to improve resilience.

3.17 The Assessment considers equity investment in some depth but concludes that these too would be considered distortive as, similar to grants, there is no obligation for the enterprise to repay the amount provided and is less likely to incentivise the changes required to restore viability. However, DBW notes that under the Scheme it may, in exceptional circumstances, consider the conversion of an existing loan to equity.

3.18 The Assessment concludes that the use of repayable loan funding is the most appropriate and least distortive means for DBW to provide support and achieve the policy objective. We also note that the Act provides that loans and loan guarantees are the only permissible form of a rescue subsidy.[17]

3.19 In our view the Assessment describes a range of alternatives to the proposed form of subsidy and explains, supported with relevant evidence, why the Scheme is an appropriate means of addressing the policy objective and associated equity objective.

3.20 At various points throughout the Assessment DBW helpfully indicate alternative forms of non-financial support that it may provide to enterprises. DBW may wish to consider reflecting this further as part of its consideration of Principle E.

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

3.21 The second step involves an evaluation of the assessment against:

(a) Principle C: First, subsidies should be designed to bring about a change of economic behaviour of the beneficiary. 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; and

[16] Statutory Guidance, paragraphs 3.54 to 3.56.
[17] Section 19(3) of the Act.

(b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.[18]

Counterfactual assessment

3.22 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.

3.23 The Assessment sets out that DBW will consider the counterfactual in relation to individual subsidies that could be awarded under the Scheme as well as in the counterfactual in the absence of the Scheme.

3.24 In relation to subsides awarded under the Scheme DBW explain that when an application for assistance from the Scheme is received, it will undertake an analysis of the baseline scenario to assess the likely outcome absent any subsidy. In doing so, DBW will seek information on the applicant's financial situation, future plans and stakeholder input. As part of this process, applicants will be required to show evidence that they have sought funding from the market, that this has been exhausted, and that without the subsidy, the businesses will likely fail.

3.25 The Assessment also provides evidence of jobs saved under the European Scheme between 2019 and 2023, illustrating the Scheme's potential positive impact on jobs, skills and its contribution to the overall policy objective.

3.26 When defining the counterfactual in the absence of the Scheme however, the Assessment describes primarily the administrative challenges of providing individual subsidy through various means other than the Scheme.

3.27 In our view, whilst this describes the process that businesses may face in the absence of the Scheme, it is not setting out the likely future situation absent any subsidy and therefore is unnecessary. Nor is it related to the identified counterfactual of the Scheme, which we understand to mean the comparison to the sum of the effects of individual subsidies made under it as opposed to no such support.

3.28 The Assessment could be strengthened by a more explicit statement of the counterfactual in this regard, supported by forecasts of the likely aggregated impacts expected similar to those referred to in paragraph 3.25. For example, it

[18] Further information about the Principles C and D can be found in the Statutory Guidance (paragraphs 3.57 to 3.71) and the SAU Guidance (paragraphs 4.12 to 4.14).
[19] Statutory Guidance, paragraphs 3.60 to 3.62.

could consider the rate of business failure in the local economy and potential job losses that could flow from this.

Changes in economic behaviour of the beneficiary

3.29 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.

3.30 The Assessment explains that, in line with statutory requirements, beneficiaries of the Scheme will be required to prepare (rescue subsidies) or have prepared (restructuring subsidies) a restructuring plan. It states that the development and implementation of the restructuring plan is unlikely to occur in the absence of a subsidy. It also describes how this plan, in the case of restructuring subsidies, requires owners, creditors or investors to contribute to the costs of restructuring.

3.31 The Assessment goes on to describe how the preparation of the plan supports the policy objectives of the Scheme to keep the business trading, thereby mitigating social hardship.

3.32 In our view the Assessment adequately describes the change of behaviour of beneficiaries as a result of the Scheme.

Additionality assessment

3.33 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.[21] For schemes, public authorities should, 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 a subsidy.[22]

3.34 The Assessment explains that the following features of the Scheme will ensure additionality:

(a) First, it notes that whilst the provision of a subsidy for general liquidity purposes is not usually permitted, the Statutory Guidance does allow for this, provided certain conditions are met, including if it allows a business to continue trading, which is the key objective of the Scheme.

[20] Statutory Guidance, paragraph 3.64.
[21] Statutory Guidance, paragraphs 3.63 to 3.67.
[22] Statutory Guidance, paragraph 3.69

(b) Second, it describes that DBW will combine the restructuring plan with analysis of cash levels and management forecasts to ensure the minimum subsidy possible.

(c) Third, it sets out that the Scheme will require that applicants exhaust all other funding sources before they may receive support.

(d) Finally, it emphasises the important role of owner, creditor or investor contributions in restructuring subsidies and describes the various covenants that will limit the use of funds to the firm's short-term liquidity needs.

3.35 We consider that the Assessment adequately describes how it will ensure the additionality requirements are met. It could, however, be improved by setting out clearly under Step 2 the processes and procedures that will be adopted when carrying out due diligence at the individual business application level. The relevant information, whilst contained elsewhere in the Assessment and Annexes, was not clearly set out for our review.

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

3.36 The third step involves an evaluation of the assessment against:

(a) Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and

(b) Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.[23]

Proportionality

3.37 The Assessment explains that the overall Scheme size has been derived from historic demand and the levels of subsidy awarded under the European Scheme. It goes on to state that the Scheme valuation would have been sufficient to meet the demand of eligible enterprises under the European Scheme and represents a very small portion of funding provided to Welsh businesses by both DBW and the Welsh Government.

3.38 It further explains that the design of the Scheme will ensure that each subsidy is the minimum necessary to restore viability. For individual subsidies, due to the relatively low number of applicants, each application will be assessed on its merits

[23] Further information about the Principles B and F can be found in the Statutory Guidance (paragraphs 3.72 to 3.108) and the SAU Guidance (paragraphs 4.15 to 4.19).

including undertaking a thorough review of the enterprise's financial forecasts and assumptions, tested against historical performance, which will allow for the minimum necessary funding to be provided.

3.39 The Assessment further describes elements of subsidy design which will contribute to ensuring its proportionality. These include that awards will be made as repayable (interest-bearing) loans which the beneficiary will need to demonstrate are affordable, a maximum loan award to a single recipient of £2.5 million, as well as strict repayment requirements.

3.40 It also explains that in the case of a restructuring subsidy, the enterprise or its owners, creditors or investors will contribute a minimum of 40% of the total restructuring costs for medium sized enterprises and 25% for small enterprises. DBW also explains that it will restrict the use of the subsidy to the intended purpose and the defined types of costs and will also restrict the use of unused funds.

3.41 In our view, the Assessment describes well how DBW will ensure that its approach to the award of individual subsidies made under the Scheme is proportionate.

Design of subsidy to minimise negative effects on competition and investment

3.42 The Assessment states that 'due to the small number of beneficiaries and relative low-level value of subsidies, the level of distortion on the economy is considered to be minimal'. It then describes the specific characteristics of the Scheme that may limit the negative effects on competition and investment, drawing on the Statutory Guidance. These include that:

(a) all subsidies will be repayable (interest-bearing) loans which, as the Statutory Guidance states, are typically less likely to lead to distortion than a grant;

(b) awards made under the Scheme are short-term and will not recur, and the scheme itself will run for 6 years, thus limiting the negative effects on competition and investment;

(c) the Scheme will be available only to SMEs and, once the size of the subsidy has been determined, DBW will compare this with the size of the affected markets and the operating costs of the recipient;

(d) DBW's detailed analysis of each subsidy shall include measures mitigating potential distortions to competition and investment within the UK as well as distortions to international trade or investment; and

(e) each subsidy will be monitored and evaluated to ensure that it is meeting the policy objectives as well as identifying any distortions to competition and investment in the UK and to international trade and development.

3.43 The Assessment also closely follows the requirements in the Statutory Guidance relevant to rescue and restructuring support for ailing and insolvent businesses.[24] This includes that rescue subsidies must provide temporary liquidity support in the form of loan or loan guarantees and must be awarded in conjunction with the preparation of a restructuring plan. For restructuring support the enterprise's owners, creditors or new investors must contribute to the cost of the restructuring as discussed in paragraph 3.40.

3.44 In our view, the Assessment demonstrates that the design of the Scheme and its size minimise the potential for negative effects on UK competition and investment.

Assessment of effects on competition or investment

3.45 There is limited consideration of the possible effects of the Scheme on both UK competition and investment and on international trade and investment within Step 3 of the Assessment, which is largely limited to stating that the negative outcomes resulting from each individual subsidy will be considered during monitoring and evaluation.

3.46 However, within Step 4 and elsewhere, the Assessment explores the potential for negative effects on UK competition or investment, which we discuss here. The Assessment concludes that overall, negative effects are unlikely to be large due to the design and delivery of subsidies under the Scheme (see paragraph 3.42). It further notes other factors that would limit these effects including:

(a) the Scheme is not limited to a particular area or region in Wales and financial support is not provided for growth, expansion or relocation; and

(b) the Scheme is not limited to any particular sector or to businesses with particular characteristics.

3.47 The Assessment, whilst acknowledging the potential negative effect of oversupply in a market due to enterprises being encouraged to continue non-viable operations, explains that this is addressed by the requirement to develop and/or implement a restructuring plan and to demonstrate a return to viability within a defined timeframe.

3.48 The Assessment also explains that DBW will consider whether the beneficiary operates in markets where there are 'substantial other operators or substitutes', before making an award. However, it is unclear how 'substantial' is defined.

3.49 It goes on to describes that DBW will consider whether any potential distortionary effects of the subsidy on domestic competition or investment, or international trade or investment could be reduced by actions undertaken by the enterprise. The

[24] Statutory Guidance, paragraphs 5.38 to 5.87.

Assessment states that 'in all cases, DBW will require the enterprise to agree certain undertakings regarding its conduct on the market for the duration of the restructuring plan' and that 'any actions relating to the structure of the enterprise… 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)'.

3.50 With regard to effects on international trade or investment, the Assessment explains that the Scheme is not expected to have an impact due to the design elements already discussed (paragraph 3.42), specifically the small number of subsidies expected to be provided, the nature of the recipients (SMEs) and the relatively low value of each individual subsidy award.

3.51 In our view, the Assessment describes a range of appropriate design features that, in conjunction with the size of the Scheme, have the potential to reduce negative impacts on UK competition and investment and international trade and investment.

3.52 However, the Assessment would be strengthened by further assessment of the potential effects of the Scheme on both UK and international competition and investment in line with the Statutory Guidance.

3.53 In particular, it could consider whether the Scheme would result in less efficient firms remaining in the market or result in a failure to 'reward competitors to the subsidy recipient that are more innovative or efficient'.[25] This analysis could have been added to each of the case studies from the European Scheme provided by DBW which would have given a sense of possible distortions over a range of previous cases.

Step 4: Carrying out the balancing exercise

3.54 The fourth step involves an evaluation of the assessment against subsidy control Principle G: 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.[26]

3.55 The Assessment sets out that the benefits of the Scheme include a direct contribution to Welsh Government policy objectives by providing loans to ailing or insolvent enterprises to address the economic and social hardship in Wales that would result from their failure. It reasons that by restoring viability to enterprises, the Scheme will support local supply chains, and that the prevention of enterprise failure will also ensure technical skills and knowledge are retained in Wales, which

[25] Statutory Guidance, paragraph 3.73
[26] See Statutory Guidance (paragraphs 3.109 to 3.117) and SAU Guidance (paragraphs 4.20 to 4.22) for further detail.

is considered economically disadvantaged in comparison to most UK regions and will help to maintain the competitiveness of the sector in which the entity operates.

3.56 The Assessment then considers potential negative effects of the Scheme, including those set out under Step 3, and compares the benefits and potential negative consequences, setting out that these will be considered on a case-by-case basis. The Assessment concludes that whilst there are some prospects of negative consequences from the intervention, they are considered to be minimal when compared to the wide-ranging benefits the subsidies will bring.

3.57 In our view, the Assessment considers an appropriate range of benefits and negative effects. However, an evaluation of the potential for effects on competition, investment and international trade as discussed under Step 3 and consideration of these effects in Step 4 would improve the Assessment,[27] taking into account the size of likely subsidies under the Scheme.[28]

3.58 The Statutory Guidance also sets out that public authorities should consider geographical and distributional effects as part of the balancing test and should examine whether the subsidy will have adverse effects for a particular group or geographical area including within the UK as a whole.[29] The Assessment could therefore specifically address this point.

Other Requirements of the Act

3.59 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.[30]

Rescuing & Restructuring

3.60 The Assessment explains that the aim of the Scheme is to provide for the award of both rescue and restructuring subsidies.

3.61 Sections 19 and 20 of the Act set out the conditions which must be met in order for a rescue or restructuring subsidy, respectively, to be provided to an ailing or insolvent enterprise.

[27] The Statutory Guidance (paragraph 3.113) sets out that the harms included in the balancing exercise should include all relevant negative effects, in particular, those relating to competition and investment within the UK, and to international trade and investment.

[28] The Statutory Guidance Annex 3 (paragraph 17.8) sets out that, 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.

[29] Statutory Guidance, paragraphs 3.113 and 3.115 to 3.117.

[30] Statutory Guidance, chapter 5.

Section 19: Rescuing

3.62 Section 19 of the Act states that a subsidy for rescuing an ailing or insolvent enterprise is prohibited under Section 19(1) unless the conditions in sections 19(2)-(4) are met. These are discussed in turn below.

Section 19(2) The subsidy is given during the preparation of a restructuring plan[31]

3.63 DBW has confirmed that a rescue subsidy given under the Scheme will be conditional on the recipient preparing a restructuring plan.

3.64 In our view, the Assessment explains clearly that DBW will ensure that a beneficiary of a rescue subsidy is in the process of preparing a restructuring plan.

Section 19(3) The subsidy consists of temporary liquidity support in the form of a loan or loan guarantee[32]

3.65 The Assessment states that all subsidies will consist of temporary liquidity support in the form of a loan and the term is a maximum of six months (with the ability to extend to 18 months).

3.66 In our view, the Assessment explains clearly that DBW will award rescue subsidies in the form of a loan.

Section 19(4) The public authority is satisfied that it contributes to an objective of public interest by avoiding social hardship or preventing severe market failure[33]

3.67 The Assessment states that DBW will ensure that a rescue subsidy awarded under the Scheme will contribute to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate.

3.68 In our view, the Assessment explains clearly that DBW will ensure that the provision of a rescue subsidy contributes to the objective of avoiding social hardship or preventing severe market failure.

Section 20: Restructuring

3.69 Section 20 of the Act states that subsidies for restructuring ailing or insolvent enterprises are prohibited under section 20(1) of the Act unless certain conditions, set out in sections 20(2)-(6) are met. These are discussed in turn below.

[31] Section 19(2) of the Act.
[32] Section 19(3) of the Act.
[33] Section 19(4) of the Act.

Sections 20(2)-(3) The public authority is satisfied that there is a credible restructuring plan[34]

3.70 The Assessment states that DBW will ensure, prior to the award of a restructuring subsidy under the Scheme, that the enterprise has prepared a restructuring plan which DBW consider to be credible, based on realistic assumptions and is prepared with a view to ensuring the return to long-term viability of the enterprise within a reasonable time.

3.71 In our view, the Assessment explains clearly that DBW will ensure that a beneficiary of a restructuring subsidy has prepared a credible restructuring plan.

Section 20(4) The public authority is satisfied that the enterprise is a small or medium-sized enterprise or has contributed significantly to the cost of restructuring[35]

3.72 The Assessment states that, in the case of a restructuring subsidy, DBW will ensure that the enterprise is a small or medium-sized enterprise. In addition to this, the Assessment indicates that DBW will seek, as a general rule, a contribution by the enterprise or its owners, creditors, or investors which should amount to a minimum of 40% of the total cost of the restructuring for medium sized enterprises and 25% for small enterprises, which is in accordance with the Statutory Guidance.[36]

3.73 In our view, the Assessment explains clearly that DBW will ensure that beneficiaries of restructuring subsidies are small or medium-sized and in addition, that the relevant enterprise will have contributed to the cost of restructuring.

Section 20(5) The public authority is satisfied that the subsidy contributes to an objective of public interest by avoiding social hardship or preventing severe market failure[37]

3.74 The Assessment states that DBW will ensure that a restructuring subsidy awarded under the Scheme will contribute to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate.

3.75 In our view, the Assessment explains clearly that DBW will ensure that the provision of a restructuring subsidy contributes to the objective of avoiding social hardship or preventing severe market failure.

Section 20(6) The public authority is satisfied that a subsidy has not previously been given for restructuring the enterprise, or five years have passed since the last time[38]

[34] Sections 20(2) and 20(3) of the Act.
[35] Section 20(4) of the Act.
[36] Statutory Guidance, paragraph 5.60.
[37] Section 20(5) of the Act.
[38] Section 20(6) of the Act.

3.76 The Assessment states that DBW will ensure, before awarding any restructuring subsidy under the Scheme, that a subsidy has not previously been given for restructuring the enterprise within the last five years, or DBW is satisfied that the circumstances that have given rise to the need for the subsidy were unforeseeable and not caused by the beneficiary of the subsidy.

3.77 In our view, the Assessment explains clearly that DBW will ensure that a restructuring subsidy has not previously been given in the last five years or that circumstances were unforeseeable and not caused by the beneficiary, in accordance with the Act.[39]

[39] Section 20(7) of the Act.