

Subsidy Advice Unit Report on the proposed subsidy for 2024 to 2026 to English National Opera

Referred by Arts Council of England

19 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 Arts Council of England (ACE)'s assessment of compliance of the proposed subsidy to English National Opera (ENO), 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 ACE in its Assessment and evidence submitted relevant to that Assessment.
- 1.4 This report is provided as non-binding advice to ACE. The purpose of the SAU's report is not to make a recommendation on whether the subsidy should be given, or directly assess whether it complies with the subsidy control requirements. ACE is ultimately responsible for granting the subsidy, 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 subsidy²

- 1.6 ACE is England's development agency for creativity and culture. It is a non-departmental public body whose sponsor department is the Department for Culture, Media and Sport (DCMS). In February 2022, the Secretary of State for DCMS issued instructions to ACE to significantly increase investment outside of London and rebalance funding between regions to achieve a more even distribution (the DCMS Instruction).
- 1.7 ACE is proposing to give a £24 million subsidy to ENO. ENO is principally engaged in the production of opera, as well as learning and participation work with young people and educational institutions, training and development of opera practitioners, and the implementation of a social prescribing programme for those recovering from coronavirus (COVID-19). It also operates the London Coliseum, which it offers for rent when not required by ENO. ENO announced in December 2023 that it will be transitioning to a new operating model where

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 subsidy for 2024 to 2026 to the English National Opera by the Arts Council of England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/referral-of-the-proposed-subsidy-for-2024-to-2026-to-the-english-national-opera-by-the-arts-council-of-england)

activities and operations will take place in both London and Greater Manchester by 2029 with ENO being primarily based in Greater Manchester.³

- 1.8 The proposed subsidy is partly a continuation of operational funding that ENO has received from ACE since 1994, and follows a £11.46 million subsidy to support ENO's activities for the financial year 2023/24. The SAU published a report evaluating ACE's Assessment of Compliance related to this subsidy on 11 May 2023 (the 2023 SAU Report).⁴
- 1.9 This proposed subsidy is intended to address an expected funding gap between ENO's costs and revenue in the period from 1 April 2024 to 31 March 2026. Most of the funding will support ENO's public-facing arts activity in line with ACE's 10-year strategy 'Let's Create'.⁵ It will also support some of the initial costs of transitioning to the new operating model linked with the move to Greater Manchester.

SAU referral process

- 1.10 On 31 January 2024, ACE requested a report from the SAU in relation to its proposed £24 million subsidy to ENO.
- 1.11 ACE explained⁶ in its assessment why, because of its value, the ENO subsidy is considered to be a Subsidy of Particular Interest.
- 1.12 The SAU notified ACE on 6 February 2024 that it would prepare and publish a report within 30 working days (ie on or before 19 March 2024).⁷ The SAU published details of the referral on 7 February 2024.⁸

³ [ENO & Greater Manchester announce plans for ENO home | News.](#)

⁴ [Final report \(publishing.service.gov.uk\).](#)

⁵ [Let's Create | Arts Council England.](#)

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

⁷ Sections 53(1) and 53(2) of the Act.

⁸ [Referral of the proposed subsidy to the English National Opera Subsidy by the Arts Council of England - GOV.UK \(www.gov.uk\).](#)

2. Summary of the SAU's observations

- 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 The Assessment addresses some of the observations from the 2023 SAU Report:
- (a) In Step 1, the Assessment considers a range of alternative options to subsidy and explains why they are not appropriate instruments to achieve the policy objective.
 - (b) In Step 3, the Assessment addresses individual subsidy characteristics well, in line with the Statutory Guidance. These include the size of the subsidy, the nature of the costs being covered, the timespan over which the subsidy is given and how the subsidy will be monitored.
- 2.3 However, we consider that ACE could strengthen its Assessment, in particular:
- (a) by making better use of the information contained in the evidence provided, to better explain how ACE reached its conclusions. This would have strengthened the Assessment overall, including, for example, in Step 2 by demonstrating how ACE had considered evidence to determine what was ENO's most likely behaviour absent the subsidy.
 - (b) In Step 1, by clearly identifying the inequalities that the subsidy seeks to address and setting out more specifically how the subsidy will remedy these.
 - (c) In Step 3, by better articulating why the subsidy is proportionate to achieving the policy objective and represents the minimum amount necessary to achieve it. Additionally, by identifying the relevant market(s) and reviewing their characteristics in line with the Statutory Guidance, which would have facilitated a fuller assessment of the impact on UK competition and investment.
 - (d) The Assessment would have benefited from a more detailed explanation of ACE's conclusion that the proposed subsidy is not a relocation subsidy within the meaning of section 18(1) of the Act.
- 2.4 Our report is advisory only and does not directly assess whether the proposed subsidy to ENO complies with the subsidy control requirements. The report does not constitute a recommendation on whether the subsidy should be implemented by ACE. We have not considered it necessary to provide any advice about how

the proposed subsidy may be modified to ensure compliance with the subsidy control requirements.⁹

⁹ 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 ACE.

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.¹⁰

Policy objectives

3.3 The Assessment explains that the policy objective of the subsidy is: 'To support ENO in continuing to deliver and to support additional public facing activity in line with the Arts Council's 10-year Strategy 'Let's Create'. In addition, supporting ENO with the planning and delivery associated with establishing a new primary base in Greater Manchester, thereby assisting ENO's transition to a new operating model'.

3.4 ACE considers that this will 'facilitate the delivery of high-quality art (ie opera) in England as well as making these events more accessible to more people within society' (including but not limited to those within deprived communities who might be unable to afford or otherwise not engage with opera).

3.5 The Assessment states that ACE has considered:

- (a) that the subsidy is consistent with its overarching objective to help promote a wider range and higher quality of arts and culture in England than would otherwise exist;

¹⁰ 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).

- (b) how ENO's activity will contribute to the priority outcomes¹¹ of ACE's 10-year Strategy 'Let's Create';¹² and
- (c) how all four of the investment principles¹³ of this strategy will be embedded in ENO's work over the subsidy period.

- 3.6 The Assessment states that supporting ENO to transition to its new operating model with its primary base in Greater Manchester will enable ACE to achieve its objectives and contribute towards achieving the DCMS Instruction.¹⁴
- 3.7 We consider that the Assessment has identified the policy objective of the subsidy and has considered how the subsidy relates to the overarching objective pursued by ACE, contributes to its strategy 'Lets Create', and responds to the DCMS Instruction. However, the Assessment could have more clearly articulated the link between the policy objective of the subsidy and the equity objective that it seeks to address.

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.¹⁵
- 3.9 The Assessment explains that many of the art forms supported by ACE are unlikely to be provided by the market in the quantity or to the quality that society enjoys, or at prices to make it generally accessible, without the support of public funding. It states that this is particularly the case for opera, a highly specialised art form with significant production costs.
- 3.10 The Assessment states that the subsidy supports an equity objective 'to facilitate the broader provision of high-quality opera to the general public at affordable prices that would not otherwise be possible'. The Assessment explains that ENO broadens provision by offering discounted tickets and free events, undertaking community engagement, providing talent development programmes, and supporting arts education.
- 3.11 The Assessment also explains that, by supporting the delivery of ENO's plans to establish a new primary base in Greater Manchester, this subsidy will support an

¹¹ The priority outcomes are creative people (everyone can develop and express their creativity throughout their life), cultural communities (villages, towns and cities thrive through a collaborative approach to culture) and a creative and cultural country (England's cultural sector is innovative, collaborative and international).

¹² [Let's Create | Arts Council England](#).

¹³ The four investment principles are ambition and quality (cultural organisations are ambitious and committed to improving the quality of their work), dynamism (cultural organisations are dynamic and able to respond to the challenges of the next decade), environmental responsibility (cultural organisations lead the way in their approach to environmental responsibility) and inclusivity and relevance (England's diversity is fully reflected in the organisations and individuals ACE support and in the culture they produce).

¹⁴ See also paragraph 1.6 above.

¹⁵ [Statutory Guidance](#), paragraphs 3.49-3.53.

equity objective of rebalancing England's arts funding budget between England's regions, ensuring that more funding will be available to arts and cultural organisations outside of London as set out in the DCMS Instruction.

- 3.12 The Assessment explains that ACE considers subsidies to extend engagement with the arts as an appropriate route to address an equity objective, based on the findings of a DCMS report.¹⁶ The DCMS report concluded that there is a strong body of evidence demonstrating that the arts can improve several health and wellbeing outcomes. Three findings of the report are discussed in the Assessment. These include the ability of the arts to:
- (a) improve social cohesion;
 - (b) increase wellbeing in adults; and
 - (c) reduce physical decline in older age.
- 3.13 In our view, while an equity objective of facilitating a broader provision of opera to the general public by supporting the activities of ENO would be consistent with the policy objective and the strategic priorities of ACE, the Assessment should provide a clearer and more explicit articulation of the equity objective in line with the Statutory Guidance.
- 3.14 In order to so, the Assessment should notably clarify whether the subsidy is targeted towards addressing geographic, age, and/or income inequalities.¹⁷ The Assessment does not explicitly identify which group(s) of people are the target for redistribution.
- 3.15 The Assessment would then be strengthened by using supporting evidence (such as statistics regarding the demographics that engage with ENO's activities) to demonstrate unequal opportunities or outcomes between different the groups and areas within the UK.¹⁸
- 3.16 The Assessment could also better explain how the subsidy will remedy the inequalities targeted by the subsidy by improving opera access and participation. It could notably consider how past interventions enabled by subsidies provided to ENO by ACE, such as free event and discounted tickets, have delivered greater engagement from targeted cohorts.

¹⁶ [DCMS Report: The role of arts in improving health & wellbeing.](#)

¹⁷ See also the conclusion in paragraph 3.12 of the SAU's evaluation in the 2023 SAU [Report](#).

¹⁸ See [Statutory Guidance](#), paragraph 3.50.

Consideration of alternative policy options and why the proposed subsidy to ENO is the most appropriate and least distortive instrument

- 3.17 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.¹⁹
- 3.18 The Assessment discusses a range of alternative options to the subsidy, including regulation, direct provision and a number of alternative funding instruments for ENO, such as equity investment, a tax rebate, a loan, or a guarantee. The Assessment concludes that none of these alternatives would achieve the policy objective, and therefore that the proposed subsidy is appropriate.
- 3.19 In our view, the Assessment demonstrates that ACE has considered a range of policy options and explains why they are not appropriate to achieve the policy objective. It could however be strengthened by better using the supporting evidence to explain how ACE reached its conclusions.

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

- 3.20 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
 - (b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.²⁰

Counterfactual assessment

- 3.21 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).²¹ 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.

¹⁹ [Statutory Guidance](#), paragraphs 3.54-3.56.

²⁰ 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).

²¹ [Statutory Guidance](#), paragraphs 3.60-3.62.

- 3.22 The Assessment sets out that, in the absence of the subsidy, ENO would most likely have to significantly reduce its programme of activities, staffing, and quality, and raise prices. ACE anticipates that early cuts would be to discounted tickets and free events and that most of the public outreach programming would be suspended. The Assessment states that this would have a significant detrimental effect on new talent and education for the next generation of performers and technical staff, and the public's ability to access, engage with, and benefit from quality opera. This would in turn affect ACE's ability to successfully deliver its 'Let's Create' strategy.
- 3.23 The Assessment also explains that proposed spending on moving to Greater Manchester and transitioning to a new operating model would most likely be cut. This might involve ENO not taking particular expert advice or choosing a new location solely on the basis of costs. ACE considers that this might have a longer-term impact upon the success and credibility of ENO's move.
- 3.24 We consider that the Assessment describes the counterfactual at a high level. However, it does not refer to evidence of ENO's likely behaviour absent the subsidy. It would notably benefit from including a summary analysis of the funding gap, using the information from the supporting evidence, to illustrate how ENO's activities or ability to transition to a new operating model would be impacted and why the counterfactual in the Assessment is considered to be the most likely. Further, the Assessment does not consider or analyse whether, in the absence of the subsidy, ENO's decision on whether to move to a new base outside of London would be impacted.

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.²² In demonstrating this, public authorities should consider the likely change or additional net benefit.
- 3.26 The Assessment states that with the subsidy ENO will:
- (a) organise the planning and delivery associated with establishing a new primary base in Greater Manchester;
 - (b) transition to a new operating model;
 - (c) deliver mutually agreed public facing activity; and
 - (d) carry out essential capital expenditure.

²² [Statutory Guidance](#), paragraph 3.64.

3.27 We consider that the Assessment describes at a high level the change in economic behaviour that the subsidy is expected to bring. The Assessment could have better explained, with the use of information in the supporting evidence, how the subsidy will be used on public facing activities, such as different forms of opera and community engagements, by the end of the subsidy award period. Similarly, while the subsidy is not specifically targeted at essential capital expenditure the Assessment could have better explained, how the subsidy enables ENO to use its reserves to carry out essential capital expenditure on the London Coliseum.

Additionality assessment

3.32 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.²³

3.33 The Assessment states that with the subsidy, ACE anticipates that ENO will:

- (a) ‘invest properly in establishing a new primary base in Greater Manchester;
- (b) transition to a new operating model; and
- (c) continue to deliver additional public facing activity.’

3.34 The Assessment notes that the amount of the subsidy targeted towards establishing a new primary base and transition to a new operating model are one-off and not business as usual costs. To continue delivering additional public facing activity, the Assessment argues that due to the funding gap without the subsidy, public facing activities would not be undertaken at the same level and it would not be affordable for ENO to offer discounted tickets and free events. In using the subsidy to absorb these costs, it encourages wider participation and makes the arts more accessible.

3.35 We consider that the Assessment explains at a high level ACE’s conclusion that the subsidy meets the additionality criteria. The Assessment could be improved and articulated more clearly by better referencing and leveraging the supporting evidence. The Assessment refers to several documents each containing detailed information without specifically explaining how ACE assessed this evidence to reach its conclusions. Summaries of relevant evidence from these documents could have been used to support the points asserted in the Assessment, to demonstrate how the subsidy achieves ‘additionality’.

²³ [Statutory Guidance](#), paragraphs 3.63-3.67.

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.²⁴

Proportionality

3.37 The Assessment explains that the funding is limited to what is needed. It notes that the proposed award does not cover the whole funding gap: there will therefore be some depletion of reserves. The Assessment also explains that ENO income will cover a substantial proportion of ENO's costs annually.

3.38 The Assessment describes that ACE has conducted a thorough assessment of ENO's funding application to consider whether activities are appropriate.

3.39 In our view, the Assessment could be improved by better explaining how the funding gap was calculated, in particular how it relates to key cost and revenue parameters such as ticket prices, number of productions, or the extent of educational outreach. The Statutory Guidance states that 'where data is available and it is commensurate to do so, public authorities should use cost modelling to determine the appropriate, proportionate size of the subsidy'.²⁵

3.40 In our view, the Assessment could have been strengthened by linking proportionality more closely to the stated policy objectives. Though the Assessment describes various 'no subsidy' options, these do not address whether the subsidy amount is the minimum necessary to achieve the stated policy objective.

Design of subsidy to minimise negative effects on competition and investment

3.41 The Assessment describes and evaluates individual subsidy characteristics in turn as set out in the Statutory Guidance, including the breadth of beneficiaries, the

²⁴ 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).

²⁵ [Statutory Guidance](#), paragraph 3.89.

size of the subsidy, the timespan over which the subsidy is given, the nature of the costs covered, and monitoring.²⁶

- 3.42 In our view, the Assessment follows the Statutory Guidance in describing a range of appropriate subsidy characteristics and explains how each has been designed to minimise negative effects on UK competition and investment.

Assessment of effects on competition or investment

- 3.43 The Assessment lists sectors such as ‘opera production’, ‘learning and participation work’, and ‘theatre rentals’, where there might be an impact on competition and investment and describes why the effects on competition are likely to be small. The Assessment describes that ACE is satisfied that the subsidy is unlikely to materially disadvantage other competing opera and music theatre producers, arts and culture events, and organisations locally or nationally.
- 3.44 However, the Assessment notes that ENO is not expected to have a permanent performance space in Greater Manchester and therefore that this subsidy may have an effect on the competitive theatre rental market in and around Greater Manchester in the future. The Assessment explains that ENO would work in collaboration with venues and institutions in the area on hires and programming.
- 3.45 The Assessment refers to a 2016 report by The Audience Agency²⁷ which describes ‘audience agglomeration’ where the opening of a prestigious new venue generates larger audiences not just for the venue itself but for similar offerings in the area. This effect may grow over time as an area becomes better known as a destination for culture.
- 3.46 The Assessment states that ‘the Arts Council has reached a view that this opera production is highly unlikely to distort international trade or give rise to changes in how investment is handled... and as such international effects would be incidental at most’.
- 3.47 Overall, although ACE considers that the subsidy will have no, or only negligible, effects on other forms of entertainment and theatre rental, its reasoning in this regard could be better developed. The Assessment would have benefited from identifying the relevant market(s) and reviewing their characteristics according to the Statutory Guidance.²⁸ This would have facilitated a fuller assessment of the impact on UK competition and investment as well as international trade and investment.²⁹ For example, although there may be ‘audience agglomeration’ (see paragraph 3.45 above), a new entrant into a region may potentially reduce

²⁶ [Statutory Guidance](#), paragraphs 3.76-3.106.

²⁷ [Final report Understanding the potential impact of The Factory on public engagement.pdf \(artscouncil.org.uk\)](#)

²⁸ [Statutory Guidance](#), paragraphs 17.29-17.32.

²⁹ See also paragraphs 3.47-3.49 of the SAU’s evaluation in the 2023 SAU [Report](#).

demand for other types of art and culture. The Assessment may also have benefited from further exploration of the impact of ENO's presence in Manchester on similar arts organisations' access to input markets, such as the market for studio and theatre rental.

Step 4: Carrying out the balancing exercise

- 3.48 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.³⁰
- 3.49 The Assessment lists three headline benefits of the subsidy:
- (a) enabling the continuation of ENO's community outreach and education activities, thereby helping more people who would otherwise be unable to afford tickets to enjoy opera. This will help mitigate social difficulties;
 - (b) recognising the funding gap ENO faces, supporting ENO to properly prepare for its move to and successfully establish itself in Greater Manchester, in a manner which does not reduce the quality of the opera on offer; and
 - (c) enabling ACE to meet its objectives, whilst squaring this with the DCMS Instruction.
- 3.50 The Assessment sets out that the potential harm is that the subsidy could distort the opera market by reducing the cost base of ENO.
- 3.51 The Assessment concludes that any negative effects are easily outweighed by the positive effects of this subsidy, noting that:
- (a) the funding is unlikely to significantly change the pre-existing state of the market (which in the UK and internationally has long been funded in a similar fashion); and
 - (b) the subsidy is limited to the identified funding gap.³¹
- 3.52 In our view, the Assessment sets out the main benefits and relevant negative effects of the subsidy and draws a clear and consistent conclusion. However, it would be improved by a more detailed assessment of the potential negative effects and it lacked an attempt to estimate the likely magnitude of the expected

³⁰ See [Statutory Guidance](#) (paragraphs 3.109 to 3.117) and [SAU Guidance](#) (paragraphs 4.20 to 4.22) for further detail.

³¹ See paragraph 3.37 above, where we note that the Assessment states that the subsidy is less than the identified funding gap.

beneficial and negative effects (or an explanation of why doing so was not possible).³²

- 3.53 The balancing exercise is also affected by the lack of clarity in some areas of the assessment, in particular:
- (a) which particular groups would benefit (in line with the stated equity objective);
 - (b) the likely scale of benefit that would be achieved through the subsidy (such as the magnitude of positive distributional impacts of discounted tickets); and
 - (c) evidence-based analysis of the impact of maintenance of the status quo on local, national and international markets.³³
- 3.54 We also consider that the Assessment should consider the geographic and distributional impact of the scheme, in line with the Statutory Guidance.³⁴

Other Requirements of the Act

- 3.55 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.³⁵ ACE stated that none of the prohibitions or other requirements in relation to the giving of subsidies apply.
- 3.56 Under section 18(1) of the Act, a subsidy is prohibited if (a) it is given to an enterprise subject to a condition that the enterprise relocates all or part of its existing economic activities, and (b) the relocation of those activities would not occur but for the giving of the subsidy. Section 18(4) provides that the prohibition under section 18(1) does not apply if the public authority giving the subsidy is satisfied that the following three conditions set out in sections 18(5) to 18(7) are met:
- (a) the effect of the subsidy is to reduce the social or economic disadvantages of the area that would benefit from the giving of the subsidy;
 - (b) the giving of the subsidy results in an overall reduction in the social or economic disadvantages within the UK generally; and
 - (c) the subsidy is designed to bring about a change in the size, scope or nature of the relocated economic activities.
- 3.57 The Assessment concludes that the proposed subsidy is not a relocation subsidy under section 18 of the Act on the basis that ENO has made the decision to

³² See also paragraph 3.55 of the SAU's evaluation in the 2023 SAU [Report](#).

³³ See also paragraph 3.55 of the SAU's evaluation in the 2023 SAU [Report](#).

³⁴ See also paragraph 3.54 of the SAU's evaluation in the 2023 SAU [Report](#).

³⁵ [Statutory Guidance](#), chapter 5.

establish a primary base and provision of operatic work in Greater Manchester separately from and prior to the award of this subsidy. The Assessment also states that the proposed subsidy will support ENO in further developing its plans, including building stakeholder engagement within the new city base. However, relocation will not occur within the funding period of this subsidy, nor is the funding to be used against any physical relocation costs and nor is the funding conditional upon relocation taking place.

- 3.58 The Assessment would have benefited from a more detailed explanation against the definition of a relocation subsidy under section 18(1) of the Act read in conjunction with the Statutory Guidance.³⁶ In particular, the Assessment could have more closely followed the two limbs of the definition by setting out clearly whether (a) the proposed subsidy is conditional on ENO relocating all or part of its existing economic activities, noting the Statutory Guidance states that the public authority should reflect on whether it is only giving a subsidy because of a common understanding that the beneficiary will relocate³⁷ and (b) the relocation of those activities would not occur but for the giving of the proposed subsidy.
- 3.59 Should ACE conclude that the proposed subsidy does constitute a relocation subsidy pursuant to section 18(1) of the Act, it would need to consider whether it is satisfied that the conditions in sections 18(5) to 18(7) are met, taking account of the Statutory Guidance,³⁸ and therefore that the prohibition under section 18(1) does not apply. If appropriate, the Assessment could consider how the equity objective of the proposed subsidy impacts the assessment of its effect on social or economic disadvantage for the purposes of the conditions in sections 18(5) to 18(7).

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³⁶ [Statutory Guidance](#), paragraphs 5.22 to 5.29.

³⁷ [Statutory Guidance](#), paragraph 5.26.

³⁸ [Statutory Guidance](#), paragraph 5.30.