

# **Subsidy Advice Unit Report on the proposed subsidy to Kishorn Port Limited**

**Referred by Highlands and Islands Enterprise**

**09 May 2025**

**Subsidy Advice Unit**

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Part of the Competition and Markets Authority



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# 1. The Referral

- 1.1 On 20 March 2025, Highlands and Islands Enterprise (HIE) requested a report from the Subsidy Advice Unit (the SAU)<sup>1</sup> in relation to its proposed subsidy to Kishorn Port Limited (KPL) (the Subsidy) under section 52 of the Subsidy Control Act 2022 (the Act).<sup>2</sup>
- 1.2 This report evaluates HIE's assessment of compliance (the Assessment) of the Subsidy with the requirements of Chapters 1 and 2 of Part 2 of the Act.<sup>3</sup> It is based on the information and evidence included in the Assessment.
- 1.3 This report is provided as non-binding advice to HIE. It does not consider whether the Subsidy should be given, or directly assess whether it complies with the subsidy control requirements.

## Summary

- 1.4 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](#)).
- 1.5 In our view, HIE has considered at a broad level the compliance of Subsidy with the subsidy control and energy and environment principles. In particular the Assessment:
  - (a) clearly describes and evidences the equity objective of the Subsidy; and
  - (b) clearly describes and evidences what would be likely to happen in the absence of the Subsidy and how it will change the beneficiary's economic behaviour and bring about changes that would not have occurred in its absence.
- 1.6 However, we have identified the following areas for improvement. The Assessment should:
  - (a) better explain and evidence how the Subsidy contributes to achieving its first and second policy objectives, ensuring that they are consistently reflected

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<sup>1</sup> The SAU is part of the Competition and Markets Authority.

<sup>2</sup> [Referral of the proposed subsidy to Kishorn Port Limited by Highlands and Islands Enterprise - GOV.UK](#).

<sup>3</sup> 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.

throughout the Assessment when considering how the Subsidy complies with the principles;

- (b) better explain how the Subsidy is limited to the minimum necessary to achieve the policy objectives; and
- (c) consider the potential competitive impacts in other relevant markets recognising that the final use of the dock is not ringfenced for the offshore wind sector.

1.7 We discuss these areas below, along with other issues, for consideration by HIE in finalising its Assessment.

## **The referred subsidy**

- 1.8 HIE, the development agency of the Highlands and Islands of Scotland,<sup>4</sup> is proposing to grant KPL a subsidy in the form of a direct grant which is limited to £23,807,000 or 57% of eligible costs (whichever is lesser) for a development at Kishorn Port. HIE proposes to make the subsidy award using its powers under section 8 of the Enterprise and New Towns (Scotland) Act 1990.
- 1.9 Kishorn Port (the Port), one of Europe's largest dry docks, is situated in a remote area in the north-west of Scotland. KPL is a joint venture between two Scottish firms that acquired the site in 2008 and brought it back into productive use.
- 1.10 The Subsidy will support Phase 1A of a port expansion which will act as enabling infrastructure for a wider masterplan. Phase 1A will entail a 100m x 60m extension of the dry dock and reclaim 9 hectares of additional laydown assembly space.<sup>5</sup> It will lead to the creation of 62 Full time equivalent (FTE) jobs and will enable further development generating employment of 998 FTEs and further private sector investment at the Port.
- 1.11 The works for Phase 1A are anticipated to take 15 months to complete. The enhanced facilities will position KPL to supply the offshore wind renewable energy market.
- 1.12 HIE explained that the Subsidy is a Subsidy of Particular Interest because it exceeds £10 million in value.

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<sup>4</sup> [Referral of the proposed subsidy to Kishorn Port Limited by Highlands and Islands Enterprise - GOV.UK](#).

<sup>5</sup> A laydown area is a designated location on a construction site where tools, materials, equipment, and vehicles are stored temporarily.

## 2. The SAU's Evaluation

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

### **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**

- 2.2 Under Step 1, public authorities should consider compliance of a subsidy with:
- (a) Principle A: Subsidies should pursue a specific policy objective in order to remedy an identified market failure or 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.<sup>6</sup>

### **Policy objectives**

- 2.3 The Assessment states that the primary (first) policy objective of the Subsidy is to regenerate the economy of Wester Ross through enhancement of infrastructure to attract investment opportunities. It explains that this will create high-quality employment and thereby tackle the socio-economic disparities which arise from its remoteness, declining working age population and lack of economic diversity.
- 2.4 The Assessment also sets out that an additional (second) policy objective of the Subsidy is to support the floating offshore wind sector by enhancing foundation manufacturing and marshalling capacity at the Port.
- 2.5 The Assessment explains that HIE has assessed the project's strategic fit and contribution to relevant policy across Scotland and the UK including the Scottish Government's Population Strategy,<sup>7</sup> the UK Government's Clean Power 2030 Action plan<sup>8</sup> and HIE's 2023-28 Strategy.<sup>9</sup> It explains that supporting Phase 1A aligns with these policies because the Subsidy will deliver key economic opportunities, prosperity and reduce regional inequality in the Wester Ross area.
- 2.6 In our view, whilst the Assessment clearly describes and evidences the first policy objective of the Subsidy it should better explain how the Subsidy

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<sup>6</sup> See [Statutory Guidance](#), paragraphs 3.33–3.58 and the [SAU Guidance](#), paragraphs 4.7–4.11 for further detail.

<sup>7</sup> [A Scotland for The Future: The opportunities and challenges of Scotland's changing population](#).

<sup>8</sup> [Clean Power 2030: Action Plan: A new era of clean electricity](#).

<sup>9</sup> [hie-strategy-2023-28-final-031023.pdf](#).

contributes to directly achieving its second objective of supporting the floating offshore wind sector (see paragraph 1.6(a)).

## **Equity Objective**

- 2.7 Equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.<sup>10</sup>
- 2.8 The Assessment states that the equity objective of the Subsidy is to address regional economic inequality in the Wester Ross area. Wester Ross is a remote, sparsely populated mountainous area, with the nearest population centre a 1 hour and 45-minute drive away. The Assessment explains that its distance to populated areas impacts significantly on the cost of doing business, limiting the types of enterprises that are attracted to the area.
- 2.9 The Assessment explains that the largest sectors of employment in the area include accommodation and food services, agriculture, forestry and fishing. The over-representation of these sectors and a lack of diversification of the business base has led to pay levels and Gross Value Added per capita being lower than across the UK. The Assessment states that the demographic of the area is closely intertwined with the lack of economic opportunities in Wester Ross, especially for younger people.
- 2.10 The Assessment states that the Subsidy will address these issues directly by diversifying the economy and employment through the creation of jobs in manufacturing and port services. Phase 1A of the project will create 62 jobs (and a total of 998 jobs by the end of the project) and is expected to double the current pay levels in the area.
- 2.11 In our view, the Assessment clearly describes and evidences the equity objective that the Subsidy seeks to address, demonstrating the existence of the inequalities and how each phase of the project will address these.

## **Market failure**

- 2.12 Market failures arise where market forces alone do not produce an efficient outcome. When this arises, businesses may make investments that are financially rational for themselves, but not socially desirable.<sup>11</sup>
- 2.13 The Assessment states that the Subsidy will address market failures in the energy sector in the form of imperfect information which is leading to a coordination failure.

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<sup>10</sup> [Statutory Guidance](#), paragraphs 3.51–3.55.

<sup>11</sup> [Statutory Guidance](#), paragraphs 3.36–3.50.

- 2.14 The Assessment states that these market failures arise because port operators, despite being aware of the demand and the need to expand to satisfy it, are unable to secure private finance to make the necessary infrastructural investment without firm offshore wind construction contracts in place.
- 2.15 The Assessment explains that offshore wind developers are reluctant to make firm commitments to provide investment without the appropriate infrastructure being in place, forcing the sector into what it describes as an investment ‘catch-22 situation’.
- 2.16 The Assessment states that the Subsidy will remedy the market failures in three ways by: (a) bridging the investment gap in the market, without which the project would not proceed; (b) remedying the coordination failures providing confidence to the market by ensuring the necessary facilities are available by 2026, thereby converting developer enquiries and letters of support into confirmed contracts; and (c) delivering essential port and industrial infrastructure for offshore wind.
- 2.17 In our view, the Assessment could more fully explain and evidence how the market failures associated with investment in the offshore wind market will be addressed by the Subsidy.

## **Appropriateness**

- 2.18 Public authorities must determine whether a subsidy is the most appropriate instrument for achieving the policy objective. As part of this, they should consider other ways of addressing the market failure or equity issue.<sup>12</sup>
- 2.19 The Assessment explains that HIE has considered the following non-subsidy options to achieve the identified policy objectives:
- (a) Regulation: this option was discounted because Kishorn did not meet all the required criteria to become a freeport or green freeport and was thus not selected by the UK Government or Scottish Government to benefit from these regulations;
  - (b) Direct provision of the services: this option was discounted because the Assessment explains that HIE does not have the expertise to run a port and industrial production facility;
  - (c) Equity or commercial Loan: this option was considered but ultimately discounted when negotiations with potential investors fell through because the level of lending would carry a high commercial risk. This is explored further in Step 3 below;

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<sup>12</sup> [Statutory Guidance](#), paragraphs 3.56–3.58.

- (d) Information brokerage: although attempts have been made by HIE and by the Scottish Development International to inform potential investors and UK developers about opportunities across Highlands and Island ports, this has not resulted in any contractual commitments.
- 2.20 The Assessment concludes that the Subsidy is the most appropriate means of achieving the identified policy objectives.
- 2.21 In our view, whilst the Assessment demonstrates that HIE has considered other ways of achieving its policy objective, it could more clearly explain why an equity investment was discounted. Furthermore, the Assessment could make better use of the supporting information (such as the financial appraisal) to better evidence its reasoning.

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

- 2.22 Under Step 2, public authorities should consider compliance of a subsidy with:
  - (a) Principle C: Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change should be something that would not happen without the subsidy and be conducive to achieving its specific policy objective; and
  - (b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.<sup>13</sup>

### **Counterfactual**

- 2.23 In assessing the counterfactual, public authorities should consider what would likely happen in the future – over both the long and short term – if no subsidy were awarded (the ‘do nothing’ scenario).<sup>14</sup>
- 2.24 The Assessment sets out a counterfactual scenario where in the absence of the Subsidy, Phase 1A of the project would not proceed, as KPL does not have the financial capacity and cannot attract external support to overcome this limitation.
- 2.25 The Assessment states that HIE is in regular contact with the business base and largest companies in the Lochaber, Skye and Wester Ross area, as well as being abreast of any inward investment enquiries and that there are no other planned projects with the potential to bring significant quality jobs to the area, or that would have a similar transformational impact as the expansion of the Port.

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<sup>13</sup> See [Statutory Guidance](#), paragraphs 3.59–3.73 and the [SAU Guidance](#), paragraphs 4.12–4.14 for further detail.

<sup>14</sup> [Statutory Guidance](#), paragraphs 3.62–3.64.

- 2.26 The Assessment relies on supporting information which further evidences the counterfactual scenario including relevant statistics, financial information, appraisals and market forecasts. For example, the Assessment showed the projected population decline for the area and argued that in the absence of the Subsidy it is unlikely new housing would be built, and that services for a declining and ageing population would become more expensive and less sustainable.
- 2.27 The Assessment also states that if the expansion of the Port is not undertaken, commercial opportunities would be lost, particularly in the oil and gas decommissioning market that is forecast to grow over the next decade.
- 2.28 In our view, the Assessment clearly describes and evidences what would be likely to happen in the absence of the Subsidy. However, as set out in paragraph 1.6(a) the Assessment should consider the counterfactual with respect to both policy objectives.

### **Changes in economic behaviour of the beneficiary and additionality**

- 2.29 Subsidies must bring about something that would not have occurred without the subsidy.<sup>15</sup> They 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 ('additionality').<sup>16</sup>
- 2.30 The Assessment explains that due diligence by HIE has identified that without the Subsidy KPL lacks the balance sheet<sup>17</sup> strength to undertake Phase 1A of the Port expansion. It further explains that the Subsidy overcomes a funding shortfall for the Port expansion which has failed to secure commercial finance.
- 2.31 The Assessment is supported by evidence including an independent Economic Impact Assessment (EIA), a financial appraisal by HIE, and an evaluation by a commercial bank regarding the funding options and risks. The EIA projects increases in full-time employment and gross value added (goods and services produced) for the area if Phase 1A of the Port expansion is undertaken. However, the Assessment states that the scale of the investment is beyond the financial capacity of KPL and involves significant financial and execution risks, making the project unattractive to investors or lenders.
- 2.32 The Assessment further states that the expanded capability of the Port opens it to new market opportunities, with strong expressions of interest received to utilise the enlarged dry dock and additional laydown space that the Port expansion will deliver, that would otherwise be lost to other ports in the UK or overseas.

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<sup>15</sup> [Statutory Guidance](#), paragraph 3.66.

<sup>16</sup> [Statutory Guidance](#), paragraphs 3.65–3.69.

<sup>17</sup> A balance sheet is a financial statement that summarises an organisation's assets, liabilities, and shareholders' equity.

- 2.33 The Assessment notes that the Subsidy is restricted to the capital costs associated with Phase 1A and will not be used to meet business-as-usual expenditure or allow KPL to fulfil its existing contracts.
- 2.34 In our view, the Assessment clearly explains and evidences how the Subsidy will change the beneficiary's economic behaviour and that it brings about changes that would not have occurred in its absence. However, as set out in paragraph 1.6(a) the Assessment should consider the change of behaviour and additionality of the Subsidy with respect to both policy objectives.

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

- 2.35 Under Step 3, public authorities should consider compliance of a subsidy with:
- (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.<sup>18</sup>

### **Proportionality**

- 2.36 The Assessment states that the size of the Subsidy (£23,807,000) constitutes approximately 57% of the eligible costs of the project (ie the intervention level). It explains that whilst this rate is higher than HIE would usually grant, it is justified by the need and anticipated economic outcomes, as discussed in Step 1.
- 2.37 The Assessment explains that HIE would normally expect much higher levels of private sector leverage (ie a lower rate of intervention) however that KPL's own resources and free cash flow is limited. It also explains that benchmarking the size of the Subsidy against KPL's normal operating costs would not give a full picture given the step change and exponential increase in the business the project will unlock, and that they consider this indicator to be less significant than the size of the Subsidy in relation to the overall market potential.
- 2.38 The Assessment sets out a number of subsidy design elements which ensure proportionality including, (i) the nature of the Subsidy, in particular explaining why a grant was chosen as opposed to a commercial loan or equity investment (due to a lack of firm orders, potential unaffordability of the loan, and the dock not having an easily realisable form of security for loan finance); (ii) the timespan of

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<sup>18</sup> See [Statutory Guidance](#) paragraphs 3.74–3.110 and the [SAU Guidance](#), paragraphs 4.15–4.19 for further detail.

the construction period; (iii) the nature of costs covered (i.e. capital expenditure for the investment); and (iv) exclusion of any business-as-usual cost.

- 2.39 The Assessment also provides details on the performance criteria including: (i) restricting the Subsidy to a well-defined 'purpose' i.e. to expand the dry dock; (ii) specifying the maximum percentage intervention rate or amount (whichever is less); (iii) releasing payments at agreed intervention rate; (iv) payments in arrears based on evidence and quality of work undertaken; (v) reporting on key milestones, project status and potential issues; (vi) a performance bond in place in the event that the contractor fails to complete the work; and (vii) clawback provisions allowing full recovery of the Subsidy should there be a breach to the legal agreement.
- 2.40 The Assessment also sets out the monitoring and evaluation plan that will be in place both during and after construction. This includes; (i) monthly site visits during the construction phase; (ii) ongoing monitoring to check for warning signs of divergence from the agreed project plan; (iii) a final review after construction has been completed to assess the compliance of the work; (iv) monthly management accounts to be submitted to HIE; (v) reporting of direct jobs created from the project, jobs generated by contractors, and the nature and value of all contracts.
- 2.41 The Assessment discusses how the Subsidy does not impose ringfencing conditions on the use of the subsidised asset, as it would be counterproductive to its first policy objective of regeneration to restrict the use to certain product or services markets. It argues given the Ports' versatility across industries, it should be free to exploit every opportunity open to it.
- 2.42 In our view, the Assessment clearly sets out a number of subsidy design elements that contribute to proportionality (paragraphs 2.38-2.40 above). However, it should better explain how the Subsidy is limited to the minimum necessary to achieve the policy objectives. For example, the Assessment could explain how costs were minimised during KPL's selection process of the contractor, and how eligible costs were defined and scrutinised given that KPL received only one bid.
- 2.43 In addition, having recognised the amount of the Subsidy is large compared with the current operating costs of KPL, the Assessment could have assessed proportionality with regard to this context, and set out what, if any, further measures HIE intend to take to ensure the proportionality. For example, it could explain in greater detail what steps were being taken to manage financial and delivery risks and why other forms of subsidy (such as equity investment or interest free government loan) were not explored further.

- 2.44 We also note that the Assessment considers proportionality only in relation to its first policy objective. However, as set out in paragraph 1.6(a) the Assessment should consider the proportionality of the Subsidy with respect to both policy objectives.

### **Design of subsidy to minimise negative effects on competition and investment**

- 2.45 The Assessment states that the Subsidy will result in minimal product market displacement as the size of the Scottish offshore wind market is of a significant scale (comprising one of the largest in the world). It also states there would be minimal distortion on investment as Scotland's floating wind market is one of most advanced in the world, which makes it highly attractive to investors looking to establish themselves in the floating offshore wind market.
- 2.46 The Assessment explains that due to the emerging nature and scale of the floating offshore wind market, the Subsidy will have minimal distortive impacts on the very limited competition already in the market. It also describes the very limited number of deep-water port locations capable of manufacturing concrete-based platforms for offshore wind, which minimises product market displacement.
- 2.47 The Assessment explains that while the final asset use is not ringfenced to offshore wind, the Subsidy has a condition in place for the life of the asset that the infrastructure must be made available to interested users at transparent market rates to avoid the Subsidy enabling the Port to undercut competitors on price.
- 2.48 In our view, while the Assessment describes the current market structure of the offshore wind sector as an external factor mitigating potential negative effects on competition or investment, it could also explain in greater detail how the design features of the Subsidy contribute to minimising any negative effects on competition or investment within the United Kingdom.

### **Assessment of effects on competition or investment**

- 2.49 The Assessment identifies three industries that the Port already serves: (i) gas and oil; (ii) decommissioning; and (iii) aquaculture. In the supporting evidence included there is an acknowledgement that there could potentially be impacts across these three markets. In addition, the potential to impact other enterprises already in operation at the Port is also considered.
- 2.50 The Assessment focuses on potential impacts in the offshore wind market, stating this market is most likely to be impacted by the Subsidy. It states that the likelihood of distortions will be low given the unique capabilities of the site in relation to the proposed activity, including geographically and "cost and engineering efficiencies."

- 2.51 The Assessment identifies potential competitor ports in the UK, Ireland, and Northern Europe. It considers how close a competitor these ports are given their dry dock capacity, capability, exclusivity arrangements, and the intended use of the docks. It also considers the geographic constraints of these ports, and how their distance to certain markets may disadvantage them.
- 2.52 The Assessment identifies a port on the east coast of Scotland as the most developed UK competitor in the offshore wind market. However, it considers any impact on it would be limited due to the ports potentially competing in different markets (east of England and Northern Europe vs Ireland and west coast of UK) and the excess capacity to be filled in the market.
- 2.53 The Assessment also considers that there could be impacts in the labour market as a result of the Subsidy. Labour for the project will mostly be met through migration to the area, therefore there will be some displacement from other areas, likely other ports in the Highlands and Islands, as well as further afield. This is expected to be moderate displacement in the short term, with low levels in the long term.
- 2.54 In our view, the Assessment considers the effect of the Subsidy on competition or investment (in line with Annex 3 of the Statutory Guidance) in relation to the offshore wind market. However, given that the Assessment states that the final use of the dock is not ringfenced for these purposes, it should consider potential impacts in other relevant markets such as those identified in paragraph 2.49.
- 2.55 Further, while the Assessment does identify other potential competitors, it could also consider the impact of the Subsidy on planned investments, related impacts on competition, and potential new entrants to the market. This could include taking into account the market position of the Port and how subsidising a market participant in this position and securing a first mover advantage may impact competitors.

#### **Step 4: Carrying out the balancing exercise**

- 2.56 Under step 4 (Principle G), public authorities should establish that the benefits of the subsidy (in relation to the specific policy objective) outweigh its negative effects, in particular negative effects on competition or investment within the United Kingdom and on international trade or investment.<sup>19</sup>
- 2.57 The Assessment sets out the potential negative impacts of the Subsidy including:

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<sup>19</sup> See [Statutory Guidance](#), paragraphs 3.111–3.119 and the [SAU Guidance](#), paragraphs 4.20–4.22 for further detail.

- (a) Product and geographic market displacement on the floating offshore wind sector, as the enhanced port facilities will position KPL to supply this market;
- (b) Impacts on related markets and displacement of other existing sector activity, for example in the fabrication of fish farm cages and offshore wind activity at other ports in Scotland; and
- (c) Labour market substitution and physical displacement which may arise as a consequence of expansion of jobs and activity at Kishorn.

2.58 The Assessment then sets out the benefits of the Subsidy including:

- (a) Significant economic growth in a disadvantaged area where geography has previously been a barrier to development – supported by the expected net additional operations impacts per annum at peak operation, and expected Cost Benefit Ratios both locally and for Scotland and the United Kingdom;
- (b) Retain and build upon the local population of working-age people in the Wester Ross sub-area and helping to prevent continued population decline;
- (c) Broadening the Port's decommissioning capabilities to include larger ship/vessel decommissioning, expanding its market reach; and
- (d) Increased Port capacity potentially leading to enhanced capabilities of the North West Scotland offshore wind cluster, strengthened trade and investment opportunities, increased research and innovation for floating concrete sub-structures, and broader support for the transition to net zero by reducing transportation distances and supporting the development for low-emission concrete alternatives.

2.59 The Assessment then carries out a balancing exercise where it concludes that the benefits of expanding the Port's infrastructure capacity significantly outweighs the identified negative impacts given its importance in supporting the deployment of the UK's offshore wind ambition. It further considers that the identified negative impacts are expected to be limited due to the size of the market opportunity and lack of competitors due to the market's early development stage and the geographic dimension.

2.60 The Assessment also concludes that the potential transformational impact on the local area of the high-quality jobs delivered by the Subsidy and the benefits of immigration outweigh the potential negative impacts on labour market distribution. In doing so, the Assessment notes that this negative impact is also expected to decrease over time as workers become permanent residents and less young people move away due to the jobs on offer at the Port.

- 2.61 In our view, the Assessment sets out the positive effects of the Subsidy in relation to the policy objectives, its geographic impacts, as well as potential negative impacts, and conducts a balancing exercise between them in line with the Statutory Guidance.
- 2.62 However, whilst in the balancing exercise the Assessment states that the likelihood of any distortion on domestic and international markets, trade or investment is low given the unique capabilities of the site in relation to the proposed activities, it does not explain how this identified distortion has been considered. Furthermore, in our view the Assessment should more fully consider the potential for effects on international trade or investment.

## **Energy and Environment Principles**

- 2.63 This section sets out our evaluation of the Assessment against the energy and environment principles.<sup>20</sup>
- 2.64 HIE has conducted an assessment of the Subsidy against Principles A and B.

### **Principle A: Aim of subsidies in relation to energy and environment**

- 2.65 Subsidies in relation to energy or the environment should be aimed at (1) delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or (2) increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy. If a subsidy is in relation to both energy and environment, it should meet both limbs.<sup>21</sup>
- 2.66 The Assessment states that the Subsidy is compliant with the first limb of Principle A in that the works for Phase 1A will support the Scottish Government's ambition of achieving net zero emissions of all greenhouse gases by 2045, and the UK Government's commitment to reaching net zero by 2050.
- 2.67 It explains that it is recognised both at a UK and Scottish level that offshore wind will have a defining role in renewable energy development, the energy system transition away from oil and gas reliance and delivering greater energy security.
- 2.68 The Assessment describes the ways in which the Port expansion is deemed to be consistent with the contribution to a secure, affordable and sustainable energy system by creating new capacity for: (a) offshore wind deployment and manufacturing; (b) marshalling;<sup>22</sup> and (c) oil and gas vessel decommissioning and repair thereby contributing to the growth of the UK's renewable energy

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<sup>20</sup> See Schedule 2 to the Act, and [Statutory Guidance](#), Chapter 4.

<sup>21</sup> [Statutory Guidance](#), paragraphs 4.19–4.28.

<sup>22</sup> Marshalling is the process of organising the movement and activities of vehicles/cargo etc.

market, creating cheaper and greener energy for consumers as well as ensuring sufficient infrastructure capacity for offshore wind developers and enabling the creation of high-quality green industry jobs, increasing market's capacity for skilled labour through training.

- 2.69 In our view, to the extent that the Subsidy will support the development of offshore wind (see paragraph 2.4) the Assessment explains and evidences how this complies with Principle A of the Energy and Environment Principles. However, the Assessment could further explain and provide evidence to support its reasoning as to how the use of the Port for purposes other than those relating to offshore wind infrastructure development is consistent with Principle A.

### **Principle B: Beneficiary's liabilities as a polluter**

- 2.70 Subsidies in relation to energy or the environment should not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of England and Wales, Scotland, or Northern Ireland.<sup>23</sup>
- 2.71 The Assessment states that the award of the Subsidy will not relieve the beneficiary from any liabilities arising from its responsibilities as a polluter.
- 2.72 The Assessment sets out that the beneficiary will be required to comply with the provisions of the Environmental Protection Act 1990 and the Environmental Liability (Scotland) Regulations 2009. It sets out that the beneficiary has a comprehensive Environmental Management Plan which details specific mitigation plans and protocols for the project. In addition, an Environmental Clerk will be appointed to ensure all potential environmental impacts are accounted for and any mitigating actions are undertaken.
- 2.73 In our view, the Assessment clearly explains how the Subsidy complies with Principle B of the Energy and Environment Principles.

### **Other Requirements of the Act**

- 2.74 HIE confirmed that no other requirements or prohibitions set out in Chapter 2 of Part 2 of the Act apply to the subsidy.

**9 May 2025**

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<sup>23</sup> [Statutory Guidance](#), paragraphs 4.29–4.34.