



Department for
Business & Trade

Subsidy control

A guide for beneficiaries

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Background

Subsidy control is a legal framework that governs the giving of subsidies. It must be followed by all UK public authorities, including the UK government, arm's-length bodies, the devolved governments, local authorities, and other organisations exercising functions of a public nature. The framework allows public authorities to use subsidies as a tool to meet their policy objectives, while at the same time avoiding unnecessary harm to fair competition between businesses in the UK, and between the UK and other countries.

Who should use this guide

This guide is for those who are receiving subsidies (beneficiaries) and provides the information you need to know about the subsidy control regime and what to expect before and after you receive a subsidy.

If you have any questions about a specific subsidy you are expecting to receive, you should talk to the public authority that is giving the subsidy. If you have been told that you may receive a minimal financial assistance subsidy, read the 'Minimal financial assistance subsidies' section for more information as there are specific requirements that beneficiaries must comply with in relation to this type of subsidy.

You can [read more detailed guidance on the subsidy control regime](#), aimed at public authorities that will be giving subsidies and making schemes.¹

What is a subsidy?

A subsidy is where a public authority provides support with a financial value to an enterprise (which is any legal person² who engages in economic activity by putting goods or services on the market), and this support gives the enterprise an economic advantage, meaning that equivalent support could not have been obtained on commercial terms. This could include, for example, a cash payment, a loan at below the market rate of interest or the free use of equipment or office space. Subsidies are given by all levels of government in the UK, including central government, devolved governments, and local authorities, as well as other types of public authority.

Note that a not-for-profit organisation or registered charity can be deemed an enterprise in this context if it has commercial activities. For example, if a charity charges for training courses, then financial assistance from a public authority to the commercial part of the charity's operations could be a subsidy.

¹ <https://www.gov.uk/government/collections/subsidy-control-regime>

² 'Person' in this context means a natural or legal person – that is, a human being, a company, or another kind of entity recognised by the law.

It is a public authority's responsibility to determine whether financial assistance is a subsidy or not, and therefore whether the requirements of the Act apply.

What are the subsidy control requirements?

The great majority of subsidy control requirements fall on public authorities. Before a public authority makes a binding commitment to give an individual subsidy, or before they set up a scheme for giving out multiple subsidies for a similar purpose, they must consider 7 principles.

These subsidy control principles are intended to improve the design of subsidies. Together, they ensure that subsidies:

- have defined policy objectives and create a change in the behaviour of beneficiaries
- are as small as possible while still achieving the policy objective
- avoid unnecessary harm to fair competition and trade
- do not create harms that outweigh the likely benefits of the subsidy

There are 3 types of subsidies that public authorities are not allowed to offer:

- unlimited guarantees
- subsidies that you can only get if you buy local or UK goods or services
- subsidies that you can only get if you export a particular amount of goods or services

Some subsidies are only allowed under certain conditions, such as subsidies to businesses in poor financial health, or subsidies to relocate a business from one part of the country to another.

You should never be asked to confirm that a subsidy is consistent with the subsidy control principles, or to confirm that it does not contravene the prohibitions in the Act. This is not a matter for a beneficiary, but for the public authority giving the subsidy or making a subsidy scheme.

Before you receive a subsidy

Provision of information

A public authority is likely to ask you questions so they can reassure themselves that a subsidy will be consistent with the principles. They may ask, for example, how much subsidy you have received from other sources for a particular project, or your

anticipated costs for carrying out a project. You must answer any questions honestly.

Extra processes for the largest subsidies

Before making a binding commitment to give a very large subsidy (generally of £25 million or more) and in some other circumstances,³ a public authority must ask the Subsidy Advice Unit (SAU) in the Competition and Markets Authority to review its assessment of the subsidy control principles. Once the referral is accepted, the SAU will produce a report on the assessment within 30 working days. This report will be published on the SAU page on GOV.UK.⁴ A public authority must then consider the SAU's report for a minimum of 5 working days and may make some changes to the design of the proposed subsidy at this stage.

A public authority is required by law to provide the SAU with any evidence that is relevant to their assessment against the 7 subsidy control principles. This may include information that you consider confidential or commercially sensitive. If so, you should discuss this with the public authority and the information should be identified as confidential when it is provided to the SAU. For further information on the SAU's treatment of confidential information, see the 'SAU's 'procedural arrangements' guidance.⁵

Subsidy agreements and performance criteria

Once a public authority has decided to give you a subsidy of any size, they will usually ask you to sign a grant or subsidy agreement. This is a contract between you and the public authority governing the payment and use of the subsidy. It will usually state when and how the subsidy will be paid and what you can use the subsidy for.

A subsidy agreement may also contain performance criteria. These are at the discretion of the public authority giving the subsidy and, for example, might require you to have reached certain milestones before payments are made, or to deliver specified outputs to a particular deadline or standard.

³ Generally, subsidies must be referred to the SAU if they are over £25 million, or if they are over £1 million and they cumulate to more than £25 million with other related subsidies to the same beneficiary within the last 3 financial years. Subsidies granted in certain 'sensitive' sectors (including the manufacture of steel, motor vehicles, ships, air and spacecraft and electricity generation) must be referred to the SAU if they are over £5 million or if they are over £1 million and they cumulate to more than £5 million with other related subsidies given to the same beneficiary within the last 3 financial years. Public authorities may also make voluntary referrals of certain other subsidies.

⁴ <https://www.gov.uk/government/organisations/subsidy-advice-unit>

⁵ <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit/operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit#procedural-arrangements>

Subsidy agreements often include reporting requirements, under which you may need to give the public authority periodic updates on things like project costs, outputs, or outcomes.

After you receive a subsidy

Transparency

Within 3 months of making a binding commitment to give the subsidy (usually the date you both sign the grant agreement), a public authority must upload information about the subsidy to a public transparency database that lists subsidies given by all UK public authorities.⁶ This promotes accountability and allows the public to see how money is spent.

The only subsidies that do not have to be uploaded to the database are those that are both:

- given out through a subsidy scheme or as minimal financial assistance, or as 'service of public economic interest assistance',⁷
- valued at £100,000 or less

Among other things, transparency uploads will include the following information:

- the legal basis of the subsidy
- the policy objective and purpose of the subsidy
- the name of the beneficiary
- the Companies House number, VAT number or charity number of the beneficiary
- the size of the beneficiary (small, medium-sized, or large enterprise)
- the amount, date, and form of the subsidy

It is the public authority's responsibility to make a complete upload in a timely manner and to ensure that all the relevant information is uploaded correctly. To achieve this, the public authority may ask your help in putting together this information.

⁶ <https://searchforuksubsidies.beis.gov.uk>. For tax awards, information must be uploaded within 12 months.

⁷ Service of public economic interest assistance is a similar arrangement to MFA, but for subsidies directed at providing a service of public economic interest, such as rural bus routes.

Note that the public authority must upload all information required by the Subsidy Database Regulations,⁸ even if you consider it to be confidential or commercially sensitive.

Misuse of a subsidy that you have received

You must only use a subsidy for the purpose for which it is given. If you use a subsidy for any other purpose, the public authority has the right to recover the subsidy from you. This right is enforceable as if created by contract and exists whether there is a subsidy agreement or not.

Judicial challenge and recovery

Like all decisions of a public nature, subsidy decisions can be subject to review in the courts. The Competition Appeal Tribunal (the Tribunal) has been given jurisdiction to review decisions to give a subsidy, or to create a subsidy scheme, on an application by an interested party.⁹

A public authority's decision to give a subsidy through a subsidy scheme cannot be reviewed by the Tribunal,¹⁰ except on the grounds that the subsidy was not eligible to have been given through the scheme.

If someone wants to ask the Tribunal to review a subsidy decision, they must begin the process within one month of a complete upload being made to the subsidy database.¹¹

⁸ Subsidy Control (Subsidy Database Information Requirements) Regulations 2022.
<https://www.legislation.gov.uk/uksi/2022/1153/made>

⁹ An interested party is a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme. The Secretary of State is always an interested party for the purposes of all subsidies.

¹⁰ The Tribunal can also review subsidy decisions on general public law grounds, including subsidies given through schemes or as minimal financial assistance subsidy.

¹¹ An interested party may apply directly to the Tribunal for a subsidy decision to be reviewed. An interested party can also make a 'pre-action information request' to the public authority, asking for information relating to its decision to give the subsidy or make the scheme. This will usually be the assessment against the subsidy control principles. As a result, the information could include information that is commercially sensitive or legally privileged and you may wish to discuss with the public authority whether any of it should be redacted before it is sent to the interested party. The public authority will decide what information will be withheld, as they must balance any concerns about confidentiality with their duty to give sufficient information to the interested party to help them determine whether the subsidy was given in compliance with the requirements of the Act. A public authority may stipulate in the subsidy agreement that certain information can be disclosed in response to a request.

Bear in mind, however, that the person receiving the information is required by law to only use it for the purposes of determining whether to ask the Tribunal to review the subsidy decision. A pre-action information request is also an important opportunity for the public authority to demonstrate that a subsidy was given in compliance with the requirements of the Act and so avoid a full legal challenge to the subsidy decision (during which any confidential information may be made public). As a result, any redactions should be kept to the minimum necessary.

The Tribunal can review whether a public authority carried out its duty to consider the subsidy control principles and came to the view that a subsidy was consistent with those principles before deciding to give the subsidy. The Tribunal can also determine whether a subsidy contravened any of the prohibitions in the Subsidy Control Act. If it is found that a public authority acted unlawfully in giving a subsidy, the Tribunal can order the same remedies as are available in judicial reviews (in England and Wales) or applications to the supervisory jurisdiction of the Court of Session (in Scotland).

In addition, the Tribunal may order the recovery of some or all of a subsidy. However, the Tribunal has considerable discretion in whether and how to use this remedy.

Minimal financial assistance subsidies

A public authority may choose to give a subsidy of less than £315,000 as 'minimal financial assistance' (MFA) subsidy. This allows public authorities to award subsidies without the need to comply with some of the subsidy control requirements. The prohibitions on subsidies that are conditional on the use of local produce, or on export performance still apply. The transparency requirements also apply, but only for MFA subsidies of more than £100,000.

No enterprise or group of enterprises under common control can receive more than £315,000 of MFA subsidy from any source or for any purpose within a three-year period. This includes the elapsed part of the current financial year and the two preceding financial years. Before giving you an MFA subsidy, the public authority is required to ask how much MFA subsidy you have received in the previous 3 years. You must therefore provide the public authority with that information and confirm that on receipt of the proposed additional MFA subsidy, you will not have exceeded the £315,000 limit. The public authority cannot give you the MFA subsidy until you have provided this confirmation.

In return, the public authority will give you a 'minimal financial assistance confirmation' document. This will confirm that you will receive or have received MFA subsidy and will specify the amount. You must keep a record of this notification for at least 3 years beginning on the date the MFA is given. This will allow you to tell other public authorities exactly how much MFA you have received in the relevant three-year period.

Scope and application of the Windsor Framework

In Northern Ireland, public authorities giving subsidies must consider the application of Article 10 of the Windsor Framework (an agreement between the UK and EU

regarding Northern Ireland).¹² In very limited circumstances, public authorities giving subsidies in Great Britain will need to consider the application of Article 10 of the Windsor Framework. Where the Framework applies, EU State aid rules apply instead of the Subsidy Control Act. It is the responsibility of the public authority to consider whether the Framework may apply to proposed financial assistance and the public authority may require additional information from you to better understand the position of your company.

¹² <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework>

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