

# Appendix B: Responses to our Call for Information

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## **Response from Argyll and Bute Council**

**Note: Personal details have been removed from this published version**

**From:** [✂]

**Sent on:** Tuesday, June 17, 2025

**To:** SAU-MonitoringReport2026 <sau-monitoringreport2026@cma.gov.uk>

**Subject:** RE: The UK's subsidy control regime: Have your say [OFFICIAL]

Dear Subsidy Advice Unit,

Thank you for inviting us to contribute to the Call for Inputs on the subsidy control regime. So far, our local authority has not had much engagement with the CMA as the new processes are just bedding in. Therefore we have a limited response. However, hopefully you still find it useful, I have copied and pasted the questions for which we have a response below.

We look forward to hearing more as the process progresses.

Yours,

[✂]

2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.

The new regime puts a significant burden of work on local authorities, particularly smaller ones. This is compounded by a lack of guidance on how public authorities should organize work on subsidy control issues and where responsibilities should lie. This results in delays to projects.

6) Does the self-assessment process work effectively?

The self-assessment process works effectively as it enables public authorities to have an element of certainty in assessing whether or not a measure is a subsidy or not. Without this assessment framework, it could be difficult to reach a conclusion with the risk that it could result in less assistance to support local initiatives.

7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?

We are pleased by the recent announcement that thresholds are likely to be raised and that new streamlined routes will be delivered – these are likely to be of use to us, although we are likely to need to register schemes in the meantime in order to allow projects to process.

9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?

There are a significant number of subsidies on the scheme with incomplete or out-of-date information.

15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime

Clearer guidance on where responsibilities lie within public authorities and when the legislation is relevant. Anecdotally, a concern is under-reporting of subsidy in areas of work where people are largely unaware of the legislation.

[✂]



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## **Response from Browne Jacobson LLP**

**Note: Personal details have been removed from this published version**

**Browne Jacobson response to CMA Review of the effectiveness and impact of the UK's Subsidy Control Act**

24 June 2025

We have the following observations in response to the CMA's Review of the effectiveness and impact of the UK's Subsidy Control Act. These are provided by Alex Kynoch on behalf of Browne Jacobson.

- 1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.**

At a central government level – yes. At a local / sub-central government level, no. Despite the updated statutory guidance many local authorities and combined authorities are struggling to comply with the requirements of the Act due to a variety of factors:

**Capacity and resource:** many sub-central authorities do not yet have the resources or expertise to undertake detailed subsidy principle assessments. Even where subsidies have been previously provided by an authority, a new subsidy in a different sector will be managed by a different team without a significant transfer of knowledge. Even where knowledge transfer has taken place, the different nature of the objectives and markets means that little of the experience gained can be re-used. Sub-central authorities do not have access to the same level of economist expertise to identify markets and assess market impacts and regularly provide subsidies exceeding the SSOI threshold without having funding to appoint appropriate experts.

**Awareness:** compliance with the requirement to log subsidies on the transparency database is still very patchy. This indicates that many authorities are unaware that they are giving subsidies or are unaware of requirements to log them. With limited resources available many local authorities have focussed their efforts on the new public procurement regime rather than the subsidy control regime. Many sub-central authorities have not updated their processes and policies to reflect the new subsidy control regime and most have no policy for granting subsidies. While they may have policies for grants they do not have policies for dealing with (for example) who should 'sign off' assessments of compliance, who should log subsidies on the transparency database or when subsidies should be referred to their internal legal teams for support.

**Risk perception:** the lack of awareness and very small number of challenges means subsidy compliance is often not perceived as a high-risk area and so compliance is low on some authorities' agendas. The role of the SAU as adviser rather than regulator, the significant hurdles to challenging (including an impractical subsidy database making it difficult for challengers to identify subsidies, the difficulty of identifying 'no subsidy' decisions and the broad margin of discretion for principle assessments) and limited oversight by the CAT mean there is little incentive for authorities to invest time and resources into ensuring compliant approaches. A more effective regulation

function (see for example the Public Procurement Review Service) and/or more robust rights to challenge would assist greatly in encouraging compliance.

**Timing of subsidy 'design':** most sub-central authority subsidies are designed with a specific project in mind and then subsidy compliance considered once the project has been identified, rather than considering at the level of the policy objective and then identifying a project/approach afterwards. The recommended approach to assessment of the subsidy principles does not naturally align with this approach, so these assessments are often reverse-engineered. This is less of an issue for subsidy schemes, where subsidy compliance is usually considered at an early stage without specific projects in mind, so there is more of a 'blank canvas' to design the scheme to align with the principles.

### **5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?**

I am not convinced that the SAU's current role as an advisory body (useful as it is) combined with the judicial review approach taken by the Competition Appeals Tribunal provides sufficient oversight on whether assessments of compliance with the subsidy principles. The high threshold for intervention in an assessment by the CAT (i.e. on judicial review grounds) leaves a significant margin within which an authority could fall well short of the approach recommended by the SAU but still be safe from challenge in the CAT. A more compliance-focussed, or binding, review process by the SAU would better incentivise compliance with the Act and Statutory Guidance, as the very low numbers of legal challenges to date appear to provide little incentive to comply with the regime.

Better awareness at a sub-central level and a different process for voluntary referrals (see below) would support compliance and encourage better subsidy design.

Similarly, improved streamlined routes and more streamlined routes for common subsidies would alleviate the burden for poorly-resourced sub-central authorities.

A more easily searchable transparency database would also add transparency, encouraging greater compliance. Access for third parties to upload subsidies on behalf of authorities may also encourage compliance if this enabled more efficient processes.

### **6) Does the self-assessment process work effectively?**

See Q1 above, at a central level largely yes but at a sub-central level no.

In addition we are aware that large numbers of sub-central authorities are seeking to 'outsource' their assessments of compliance to subsidy recipients. Funding recipients (particularly in the property development sector) are being asked to provide assessments of compliance which are then adopted with very little (if any) review or verification by the public authority. This approach carries significant compliance risks but authorities lacking resources see this as an acceptable alternative to undertaking their own assessments, particularly if they perceive the risk of legal challenge as low.

### **7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?**

The streamlined routes are drafted too narrowly to be of practical use in most cases so we are seeing very little use of streamlined routes. The new streamlined routes are welcome but wider and more flexible routes would see more use.

The recent increase in referral thresholds is useful for freeing up SAU capacity but most sub-central subsidies will no longer be caught and these are the subsidies which authorities are struggling with, given sub-central authorities' lack of resources or repeated assessments in the same markets. So in that respect the increase in threshold for SSOPI is not supportive because support is being diverted away from the authorities that need it most. As far as we are aware no voluntary SSOI referrals have been made or accepted as authorities wish to avoid the scrutiny of having recommendations in respect of their subsidy publicly reported. Making reports on voluntary SSOI referrals confidential (possibly with trends/guidance being published separately) would encourage better use of the voluntary referral system for those authorities struggling with assessments.

**8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**

See above

**11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**

In order to provide certainty to PAs making "no subsidy" decisions, consideration could be given to a voluntary notice being introduced to the regime which allows a PA to confirm that it has made a "no subsidy" decision together with the reasons why it arrived at that conclusion. The issuing of that notice should then trigger the time limits for bringing a challenge under the SCA like publishing a subsidy on the database does. In essence the notice would be somewhat similar to issuing a Transparency Notice under the Procurement Act, so public authorities are already familiar with the concept. The benefits of this type of notice are twofold. Firstly, many PAs often assess that there is no subsidy being given, and those decisions are then not publicised anywhere, meaning many potential subsidies never come to light due to the fact an incorrect judgment is made at the outset. Secondly, it would provide a PA with certainty. Currently, a PA who makes a "no subsidy" decision is open to an unclear period by which that measure could be challenged under the Act.

**13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?**

SAU reports in relation to SSOIs could be exempt from being publicly disclosed. That may increase uptake from public authorities to voluntarily refer assessments for comments and guidance from the SAU. Currently, there seems to be no incentive for PAs to do this because a) it is voluntary; and b) the publication of a report highlighting flaws in an assessment is perceived as only likely to lead to negative consequences for that PA (through reputational impact or a formal challenge being brought by an interested party)

In addition, if the SAU / CMA took on a more regulatory role rather than advisory role this would encourage greater compliance with the regime for the reasons set out above.

As SAU reports only show the commentary rather than the underlying assessment they are sometimes of limited value in determining how detailed an assessment should be. Without seeing the underlying assessment, a comment that further assessment could be undertaken is only of use to the referring authority, undermining the purpose of publishing the report. The level of detail which

the SAU is commenting on could be set out more clearly in the SAU report (or the underlying assessment published with redactions) or a periodic report setting out trends with examples would potentially be more useful than seeing the subsidy-specific reports without the underlying assessments.

**16) Are there any barriers to bringing a challenge to the Tribunal and if so, what are they?**

One barrier is uncertainty as to how the subsidy control regime sits with traditional judicial review (JR) principles and how the CAT will look to decide such cases. The correct application of the subsidy control regime requires a blend of administrative law (i.e. judicial review), competition law, policy and economic considerations unlike other existing legal frameworks. The threshold to challenge an assessment of the subsidy principles on a JR basis is very high.

It is also very difficult for challengers to identify subsidies from the database and even more difficult to identify 'no-subsidy' decisions given the lack of any notification/transparency obligation.

[X]

**Browne  
Jacobson**

[X]

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## **Response from Clifford Chance LLP**

**RESPONSE OF CLIFFORD CHANCE LLP TO THE COMPETITION AND  
MARKETS AUTHORITY ON THE EFFECTIVENESS AND IMPACT OF  
THE UK'S SUBSIDY CONTROL ACT**

Clifford Chance welcomes the opportunity to respond to the consultation of the Competition and Markets Authority (CMA) on the effectiveness and impact of the UK's Subsidy Control Act (SCA).

Our observations below are based on the substantial experience of our antitrust lawyers of advising on State aid proceedings in the EU, proceedings before the CMA (and other equivalent authorities) and mandates on subsidies granted by UK public authorities (PA). However, the comments in this response do not necessarily represent the views of every Clifford Chance lawyer, nor do they purport to represent the views of our clients.

**1. GENERAL OBSERVATIONS**

1.1 The SCA having now been in force for just over two years, it is important to consider how effectively it is achieving its aims. Of particular concern for us is the extent to which it is providing certainty and confidence to businesses investing in the UK, and how proportionate the requirements and obligations which it imposes are to the protection of UK markets and consumers from potentially distortive subsidies. We note that these are encompassed within the objectives of the SCA which the CMA has set out in its call for evidence, and that the scope of that call reiterates the need for the CMA to review "all aspects" of the regime.

**2. PROPORTIONALITY**

2.1 Only three subsidies have been brought for challenge in the Competition Appeal Tribunal (CAT) under the SCA since it came into force whilst, at the time of writing, there have been 93 referrals to the Subsidy Advice Unit (SAU).<sup>1</sup> The relatively low likelihood of a legal challenge to a subsidy under the SCA must, to an extent, call into question the proportionality of a relatively burdensome reporting regime.

2.2 Indeed, it is even more striking that none of these three challenged subsidies was referred to the SAU, meaning none of the 93 referrals has related to a subsidy then subject to legal challenge. The challenged subsidy which has come to judgment so far has resulted in a finding that there was no subsidy,<sup>2</sup> and the two subsidies challenged under the Trade and Cooperation Agreement were found to be lawful.<sup>3</sup>

2.3 Whilst there is undoubtedly an extent to which the advice given by the SAU and the rigour of the reporting process allows businesses to adapt proposed subsidies so that they

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<sup>1</sup> Competition and Markets Authority cases and projects, SAU referrals, available at: [https://www.gov.uk/cma-cases?case\\_type%5B%5D=sau-referral](https://www.gov.uk/cma-cases?case_type%5B%5D=sau-referral) (last accessed 24 June 2025).

<sup>2</sup> *The Durham Company Limited v Durham County Council* [2023] CAT 50.

<sup>3</sup> *R (British Sugar Plc) v Secretary of State for International Trade* [2022] EWHC 393 (Admin); *R (British Gase Trading and E.ON) v Secretary of State for Energy Security and Net Zero* [2025] EWCA Civ 209.

are more robust and less susceptible to legal challenge, it is reasonable to assume that a relatively high proportion of the 93 referrals involved entirely unproblematic subsidies which would never have been subject to legal challenge, and yet were still required to comply with the extensive disclosure and reporting requirements mandated by the SCA.<sup>4</sup> We are aware of at least one subsidy which was abandoned after the publication of the SAU referral report, likely because the report contained criticisms similar to those we have seen in other reports on subsidies which, again, have not been challenged.

- 2.4 We are conscious of the relative infancy of the SCA regime, and in particular that potential challengers to proposed subsidies may be awaiting a successful challenge in the courts to use as a blueprint, meaning that the currently low challenge numbers may have a less than perfect predictive value. Nonetheless, what the statistics so far do suggest is that there is not a widespread issue of illegal subsidies being granted by PAs. In respect of those subsidies that may be challenged and found unlawful, we note that the CAT has emphasised that challenges under the SCA should be handled in a manner which is "fast, cheap, and simple".<sup>5</sup> Not only should the burden imposed by the SCA be proportionate, but the role of the SAU should also contribute meaningfully to the evaluation process and perform a function that could not simply be carried out by the CAT.
- 2.5 Various avenues could be considered in an effort to enhance the proportionality of the regime. This could include a 'fast-track' process for the evaluation of subsidies meeting certain criteria, with fewer reporting requirements and, crucially, a shorter timetable. We have advised parties in a number of cases in which the burden of a detailed and lengthy review process has been a significant consideration. A simpler process would be of particular benefit for subsidies which are obviously in compliance with the provisions of the SCA (e.g., where a subsidy has been designed based on feedback received from the SAU for similar schemes in the past). Such subsidies should not go through the same lengthy process.
- 2.6 One key benefit of the rigorous SCA regime and the disclosure requirements placed on parties is that it has clearly, to date, resulted in thoughtful, detailed and clear reports. Our desire to alleviate the burden of the subsidy control regime on parties should not be read as an attempt to compromise or detract from the SAU's work in this regard, which we believe can be maintained to a high standard with a more proportionate burden on parties.

### **3. INFORMAL GUIDANCE**

- 3.1 We note that it is not possible for PAs to receive informal comfort on whether proposed measures are subsidies, nor on the compliance of those subsidies with the SCA. This has at least three adverse impacts.
  - 3.1.1 First, out of an abundance of caution, some PAs may adopt the view to treat certain measures as a subsidy and request a report from the SAU, even if it is possible that such measures are not properly classed as subsidies (e.g., due to

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<sup>4</sup> See for example SCA, Section 33.

<sup>5</sup> *The Durham Company Limited v Durham County Council* [2023] CAT 50, paragraph 3(3).

compliance with the commercial market operator principle). This represents an inefficient use of the SAU's resources, and has the potential to skew statistics which purport to report on the number of "subsidies" referred to the SAU. It also means that there is a greater number of "subsidies" which may later be subject to legal challenge, with receiving parties ultimately bearing the brunt of additional litigation expenses.

- 3.1.2 Secondly, the lack of an effective informal guidance policy also risks creating friction in the subsidy process by effectively inviting PAs to spend time and resources going through the SAU's process.
  - 3.1.3 Finally, the fact that PAs can only engage with the SAU via a lengthy and burdensome process makes it more likely that some PAs will not engage with the SAU at all. Whilst it is their decision whether or not to do so, it is once again the receiving party that bears the risk of challenge. Recipients may therefore be expected under the current system to take greater risks, and the need to consider recoupment becomes more pressing as a result, all leading to the possible chilling of certain pro-growth investments.
- 3.2 That said, we understand that the SAU is willing to engage in informal discussions during its review of subsidies. Expanding the scope of such quick and informal discussions could only be of benefit.

#### **4. NORTHERN IRELAND**

- 4.1 A key tenet of the UK's new subsidy control regime is the provision of certainty to businesses considering investing into the UK. One area we have found where the regime decidedly lacks such certainty is in relation to Northern Ireland where, per Article 10 of the Windsor Framework, subsidies must comply with EU State aid rules where the subsidy in question affects trade in goods and electricity between Northern Ireland and the EU. In our experience, the application of the "effect on trade" test is uncertain, and leads to parties and government bodies complying with both EU State aid rules and the provisions of the SCA on a cautious basis, making the design and process for award of such subsidies a more burdensome process.

#### **5. ACCESS TO ASSESSMENT**

- 5.1 PAs are not required under the SCA to share their SAU compliance assessment with the receiving parties. This is unfortunate since, once the subsidy has been granted, it is the receiving party which takes the risk of any challenge brought by third parties. Given that, in our experience, PAs are generally not willing to share their submissions to the SAU in the absence of a legal obligation, receiving parties' abilities to defend themselves if a legal challenge were brought are inherently compromised. We have moreover found granting bodies to be apprehensive about sharing even redacted versions of compliance assessments, even with external counsel on a confidential basis.
- 5.2 We understand that there are good reasons not to require a full disclosure of compliance assessments to receiving parties, and moreover we are aware that a PA's ability to speak

freely in an assessment, for example about the advantages and disadvantages of potential receiving parties, is an important part of a robust referral process. However, not being able to receive even a non-confidential version of the compliance assessment leaves receiving parties unable to properly calibrate the risk of a successful challenge being made against a subsidy they will receive, and may ultimately deter potential recipients from taking a subsidy. We are additionally of the view that the quality of compliance assessments may well be improved through the involvement of recipients in the process.

- 5.3 We therefore strongly recommend that further best practice guidance should suggest the disclosure of appropriately redacted compliance assessments to receiving parties (or their counsel), where doing so will not materially prejudice the PAs position or affect the SAU's assessment.

**Clifford Chance LLP**

**24 June 2025**

**Response from the Department for  
Environment, Food and Rural Affairs**

**Note: The SAU has excluded from this published version information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure).**

## **Competition and Markets Authority - Review of the Effectiveness and Impact of the UK's Subsidy Control Act 2022: Call for Inputs**

### **Department for Environment, Food & Rural Affairs (Defra) Response**

## **Assessment of the Act's Operation**

**1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth, and deliver policy priorities? Are there any factors which get in the way of achieving these objectives? Please provide examples of relevant subsidies.**

- As a Department we have, to date, been able to design compliant subsidies (both subsidy providing schemes and ad-hoc awards) which are key to our policy aims (36 since January 2023, totalling £7.3bn) with several more in pipeline.
- There have been some issues to consider/ address with regard meeting the transparency requirements of the SC Act 22, this is primarily due to the nature of our schemes, often with very large budgets but with very many smaller grant awards made under them (crucially still exceeding >£100k). Consequently there's considerable resource requirements for timely uploading and these arrangements don't dovetail with existing reporting timings & formats (ie they are completely additional). *[PLEASE SEE SECTION BELOW ON TRANSPARENCY FOR FURTHER DETAIL ON THIS MATTER]*

**2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements?**

**Please include the nature of any such concerns.**

- To date no.

**3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition? Are there any factors which get in the way of achieving this objective?**

- Difficult for us to comment on this, but there's possibly questions around interested parties'/ competitors' understanding of and the ability to locate & use DBT's Transparency Database (with a view to challenging a subsidy within the one-month limitation period after upload).

# Subsidy Control Requirements

## 6) Does the self-assessment process work effectively?

- Yes we believe so.

However we do feel that there's scope for some external scrutiny of subsidies which aren't of interest/particular interest to the SAU. For example some sampling and 'auditing' of subsidies awarded could occur each year (undertaken by the SAU).

(Noting that a similar exercise is used for compliance with the Grant Functional Standards (called Government Grants Continuous Improvement Assessment Framework). An assessment per the above would allow Departments to effectively be scored on their compliance with the SC Act 22 and of course then learn from suggested improvements/ areas of weakness identified.

We recognise that it will be more difficult for say the SAU to identify and scrutinise samples of where a Public Authority has deemed its funding/ intervention to not constitute a subsidy (and thus this area will remain the domain of a challenge from interested parties (recognising that there's no limitation period in this regard, as details of non-subsidies are not uploaded to DBT's database)).

## 7) How well do the thresholds, exemptions, and streamlined routes support the effective operation of the regime?

### STREAMLINED ROUTES:

- We have considered using the R,D&I route on a couple of occasions, but it was too restrictive for our purposes (intervention rate-wise, when accounting for the size of the recipient enterprises) and so instead we assessed our proposals against the requisite principles of the SC Act.
- We believe a streamlined route for measures relating to Animal Health & Welfare and similarly Crops, Plant & Tree Health would be beneficial to the UK – we clear many such schemes per annum (as will colleagues in the Devolved Administrations and some UK Granting Authorities) and whilst we have no difficulty in ensuring these schemes are compliant, there is definite scope for such a route/s to increase efficiency for these low risk and frequent measures. (It is worth noting that under EU State AiLaw there were several such measures block exempted and used regularly by UK granting authorities (ie they were a key tool in this regard) and currently there are no streamlined route equivalents available under the UK regime).

### THRESHOLDS:

- *[PLEASE SEE TRANSPARENCY SECTION BELOW]*

# Transparency

## 9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?

- Largely yes (noting we are frequent users of the database and familiar with its functions), however we feel the search functionality of the database could be improved (noting that often, in order to find certain schemes/ awards, there's a need to download the full Excel file and then sort/ search accordingly).

## 11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?

- We believe that the transparency threshold is currently too low at £100k per individual subsidy (and we note that even a decade ago the European Commission were only publishing individual recipient details in the event they'd received >€500k in state aid, which we felt was adequate for transparency purposes at that time).

We do not feel that the additional value of publishing all awards at the current threshold outweighs the considerable administrative burden this task entails for our department (when accounting for our higher budget scheme designs that typically distribute very high number of grants/ subsidies over £100k).

To illustrate; if for example the transparency threshold was increased to £500k per individual subsidy, then, for just one of our larger budget schemes, it would mean that in a nine month period the number of awards we upload to the transparency database would reduce from 3248 to 111.

Crucially we also note that the statutory guidance itself states that *Subsidies given under MFA provisions are very unlikely to have any appreciable distortive impacts on domestic competition or investment or international trade or investment. Subsidies given under MFA are therefore exempt from the majority of the substantive requirements of the Act.* The MFA ceiling is £315k (which is more than three times the amount of the transparency threshold) and so this to us would raise the question of why there is a need for the transparency threshold to presently be set so low?

- We feel that there is some overlap and duplication (again with resource implications) with the requirements of the Government Grants Information System (GGIS) which obliges departments to upload details on every grant scheme and associated awards (albeit we acknowledge that this only covers grants, plus the timings for publishing and the details required aren't exactly the same as those necessary under the SC Act 22).
- Whilst we understand the need for transparency under the SC Act (although believe the threshold is currently set too low for individual subsidies), we feel that the current balance between transparency needs and commercial sensitivities isn't correct;

[3<]

- We're not sure how feasible this suggestion is, but we wondered whether the database could have an 'alert' service, so that potential interested parties are made aware of any subsidies awarded in their particular market (say 'mining' for example), which may help address the one-month limitation period matter we've covered under Question 21.

## Referrals to the SAU

### 12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?

- Yes in our experiences to date.

### 13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?

- We would benefit from more detailed advice and examples (inc. in-depth case studies/ tutorials) on the economic analysis & evidence requirements of CMA referrals (ie the competition economics, including market analysis/ definitions and determining the impacts (positive & negative) that the subsidy may

have on these markets). We have previously suggested this to DBT Subsidy Control colleagues (crucially stating that, in our opinion, training & guidance provided directly by the SAU in this regard would provide most value).

Moreover we understand that DBT has had such a session with the SAU on competition assessments (Principle F) and we feel these sorts of SAU led sessions are very important for Defra too, noting our own advisory/ support role to other English granting authorities and ALBs with regard agricultural & fisheries subsidies.

Possibly an occasional forum with the SAU for subsidy control practitioners to discuss matters in relation to the above (this being about practical application of the SC Act 22 around the individual experiences of these Granting Authorities).

## Guidance Assessment

**14) How effective and helpful is the assistance, guidance, and other materials published by DBT and SAU?**

- *[PLEASE SEE ABOVE RESPONSE TO QUESTION 13]*

**15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?**

- *[PLEASE SEE ABOVE RESPONSE TO QUESTION 13]*

## Impact of the Subsidy Control Act on Competition and Investment

**18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:**

- **A material negative impact**
- **No or limited negative impact**
- **A positive impact**

- *Yes - a proposal with the potential for a material negative impact.*

**21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?**

- *An increase in **the limitation period in which an application for review may be sought**, after details of the subsidy/ subsidy scheme is published on DBT's Transparency database. Presently this stands at one calendar month. We consider this to be too small (for comparison under EU State Aid Law it was 10 years) and feel that it's quite feasible that interested parties (competitors) would not become aware of*

state subsidies (which they consider harmful and wish to challenge) until long after this one-month period has elapsed.

**Response from Policy Team (A) in the  
Department for Energy Security and Net  
Zero**

## Review of the effectiveness and impact of the UK's Subsidy Control Act

### The effectiveness of the Subsidy Control Act

Your responses to the following questions will help us assess how well the operation of the Act is meeting its policy intentions.

- 1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.
  - DESNZ has developed a series of subsidy control compliant business models and grants to incentivise the deployment of Carbon Capture Usage and Storage (CCUS) technology in a range of sectors.
- 2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.
  - No
- 3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?
  - We view that Step 3 of the SAU referral process, the relevant Principles under the Act, and the publicly available comments within the SAU report, should provide businesses significant confidence that the PA has considered and minimised any distortive impacts of the subsidy.
- 4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?
  - The Act was clearly developed to support compliance with international obligations and agreements such as the Windsor Framework and WTO requirements.
  - It has improved upon the EU State Aid process by allowing a more dynamic, proportional approach and quicker process.
- 5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?
  - Limited scope of permitted modifications could be expanded to allow changes that do not intrinsically change the nature of the subsidy.
  - A streamlined route for repeat submissions that update a previously submitted scheme which focuses on only where the scheme or subsidy has changed rather than detailing all the subsidy.

## Subsidy control requirements

Your responses to the following questions will help us assess how well the design of the subsidy control requirements supports the policy intentions of the regime.

- 6) Does the self-assessment process work effectively?
  - As SSOPs the process was clearly set out in the statutory guidance.
  - The Public Authority Portal was easy to register for and straightforward to use.
  - Having a dedicated SAU contact point was beneficial.
  
- 7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?
  - N/A
  
- 8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?
  - Providing clearer and more detailed guidance on how to apply the subsidy control principles, particularly for complex schemes. For example, guidance on demonstrating compliance with the principles and documenting the assessment process. This includes the Energy & Environment principles and their intention and scope.

## Transparency

Your responses to the following questions will help us assess how well the transparency arrangements are serving different users of the regime.

- 8) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?
  - N/A
  
- 9) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?
  - N/A
  
- 10) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?
  - N/A

## Referrals to the SAU

Your responses to the following questions will help us assess how well the role of the SAU supports the policy intentions of the regime.

12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?

- The review of a draft referral is beneficial and allows significant improvements to be made ahead of final submission.
- Yes, noting that it is a relatively new organisation that has grown quite quickly and is implementing a new policy process.

13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?

- Dedicated resource within the SAU that focuses on specific subsidy areas i.e., energy, environment, SSOPs.
- It would be helpful to have guidance from the SAU about the extent to which it will, in its report on a public body's assessment against each Principle, provide advice about beneficial / negative effects that *it* considers should have been considered by the public body in that public body's own assessment, and on the way in which it will incorporate third party submissions more broadly into its advice.
- In addition, the SAU may need to be consider the risk of establishing unintended precedents in its reporting approach to the decision of the public authority to assess against applicable energy and environmental principles.

## Guidance

Your responses to the following questions will help us assess how well the guidance provided by DBT, SAU and others are serving different users of the regime.

14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?

- Statutory Guidance is useful, shows referral process and timings.

15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?

- **Statutory Guidance:**
  - Increased alignment with subsidy control submission template and 4 steps.
  - More guidance, including examples, on what is covered under each heading of permitted modification.
  - More clarity on when a subsidy scheme is considered 'made'.
- **Subsidy Referral:** Template to include E&E principles to respond to / delete as necessary.

## Enforcement

Your responses to the following questions will help us assess how well the role of the Tribunal supports the policy intentions of the regime.

16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?

17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?

## The impact of the operation of the Subsidy Control Act on competition and investment within the UK

Your responses to the following questions will help us assess the economic impact of the UK subsidy regime.

18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:

- A material negative impact
- No/limited negative impact
- A positive impact

- N/A

19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?

- Without subsidy, the current market for CCUS is not investable for most industrial sectors as the cost of deploying CCUS is higher than can be supported by the current carbon price. Additionally, businesses may face challenges raising capital finance to invest in CCUS until it has been more widely deployed in the UK.

20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?

- N/A

21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?

- N/A

**Response from Policy Team (B) in the  
Department for Energy Security and Net  
Zero**

**Note: Personal details have been removed from this published version**

Thanks for the opportunity to provide input. I am sharing a few personal thoughts from my own experience of the regime to date:

- **Q6: Does the self-assessment process work effectively?**
  - The self-assessment process focuses policy-makers on the implications of subsidies and its clearly-defined, time-limited nature helps policy-makers to plan effectively without providing uncertainty to industry (there was uncertainty under the EU State aid regime about whether and when approval might be received, making timings of CfD allocation rounds uncertain with knock-on effects for project developers seeking to apply).
  
- **Q8: Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**
  - The requirement to assess policies against subsidy principles and to receive a public report is helpful in ensuring and creating accountability for compliance of policy with those principles. This accordingly shapes the consideration of, development of and advice on policies, as policy-makers are aware that proposals must comply. Subsidy control considerations regularly feature in advice to ministers on CfD policy from an early stage.
  - However, the actual practice of filling in an assessment and evidencing it for referral can be a resource-intensive exercise, which can result in too great a focus on what we think the SAU wants, as opposed to evidencing policy-development in the way we normally would in advising ministers. As a result, given our consideration of subsidy principles at all stages of policy development, the process of assessment (as opposed to the fact of needing to do an assessment) does not seem to improve subsidy design much.
  - But given the fact of having to do an assessment (which can stimulate better policy-making) isn't separable from the process of doing the assessment, the advisory nature of SAU reports is particularly helpful, to allow the public nature of those reports to act as a stimulus to good policy-making, without technical omissions in assessments becoming an undue obstacle.
  
- **Q11: In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**
  - The statutory timings of the transparency requirements have affected our ability to be transparent about budgets and have needed us to think differently about when a scheme is 'made' to address this. A CfD allocation round takes about 6 months, so initial assumption of the scheme being made at the opening of the round to applications required publication of details that were still highly uncertain (due to changes to the budget being possible after that date). To aid transparency, we now have to rely on being able to set a much later 'made' date, which is later in the process and corresponds to the latest point at which the budget can be changed. Continued flexibility to do this will be necessary to support the Act's transparency requirements.

- **Q13: In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?**
  - Whilst the operation of the SAU in reviewing subsidy assessments is consistent in approach, it could benefit from more pragmatism. The assumption that a scheme is a new scheme when non-permitted changes are made reflects the perspective of the Act, but in practice existing schemes can be amended in non-permitted ways that are not altogether that significant for the overall functioning of the enduring scheme.
  - As such, a more pragmatic approach would be helpful to avoid re-evaluating a scheme from first principles on every occasion, particularly where regular changes are made to a scheme, as this creates a heavy administrative burden that is often disproportionate to the changes being made and appears to require evidence which normal good policy-making practice would not. This administrative burden means it is often challenging to resource the kind of assessment that addressing all recommendations in SAU reports would require.
  - The latest change to statutory guidance is helpful in this regard in carrying the working assumption that the SAU will work off the position of their last report for repeatedly referred schemes, with assessments focusing on changes to the underlying original assessment of a scheme in light of amendments being made to the scheme. In that context, it will be particularly helpful if the SAU will allow a pragmatic focus on the supporting evidence that is relevant to current changes to the scheme, rather than to the compliance of every element of the scheme that has ever been considered.
  
- **Q14: How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?**
  - The statutory guidance is particularly helpful in understanding the regime's requirements and providing practical advice. It is difficult to provide practical advice for the many different types of subsidies and schemes that exist and that is often reflected in the fact that advice needs a little creative interpretation to apply to individual circumstances. However, it has been particularly helpful that guidance has been successively updated and increasingly reflects a growing awareness of the particular, practical issues faced by public authorities.
  - The SAU guidance is also very useful in helping to understand the SAU's expectations. It is, however, highly prescriptive about detailed administrative details, which, whilst helpful in clarity, can be fairly burdensome to get to grips with for the first time.



Department for  
Energy Security  
& Net Zero

[X]

## **Response from Dumfries and Galloway Council**

## Appendix A – List of Questions

### The effectiveness of the Subsidy Control Act

**1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.**

DGC carry out subsidy assessments and where an award is a subsidy they have been able to design subsidies to meet the controls.

**2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.**

It is early days in the regime, but to date DGC have not experienced this.

**3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?**

Not Applicable Answer to DGC

**4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?**

DGC do not have views on this

**5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?**

We were surprised to see the removal of the wording “to the extent organisations provide goods and services for free, they are not engaged in economic activity and should not be considered enterprises for the purposes of the subsidy control regime” contained within Statutory Guidance. In conducting the limb assessment, we often relied on this wording to provide assistance to organisations that were offering free goods or services. This change has meant that we are no longer confident that we can do so. It does not always mean that the financial assistance will be a subsidy, but the effect of this change has been to cause uncertainty on whether the intention of subsidy control is to capture this type of funding.

More consideration should be given to organisations that are primarily publicly funded and are seeking grants often from public authorities. A number of organisations will

seek funding for a range of activities that they carry out but will maximise their MFA allowance easily. These organisations will primarily be carrying out activities for the benefit of the public, meaning that they are affordable or beneficial to the region. It can be very time consuming to conduct in depth subsidy assessments or principle assessments for funding these organisations where they are seeking a low value subsidy but cannot use their MFA allowance.

A clearer articulation of the policy intent behind the regime particularly in relation to community benefit and non-commercial activity would help ensure that the regime supports rather than hinders local development.

Consideration should also be given to introducing a simplified exemption or streamlined route for low-value, low-risk subsidies that support public benefit outcomes.

## **6) Does the self-assessment process work effectively?**

The self-assessment process is generally effective for low value subsidies, the Council is confident in applying the statutory guidance where there is a low risk of market distortion.

However, its effectiveness diminishes when assessing higher-value subsidies. These cases require more thorough analysis and interpretation of guidance

due to their potential market impacts and associated risks associated with incorrect assessments. This process is often resource-intensive, leading the Council to engage external advisors, which can place a significant strain on staffing and financial resources. Please see below answers to the Council's views on the points raised at 3.6 of the Call for Input:

a) whether public authorities have sufficient capacity and resources to carry out assessments of compliance effectively; Self-assessment is a time-consuming process that requires significant input from Council officers. It involves interpreting legislation and guidance, gathering information from potential subsidy recipients, and assessing associated risks. As noted above, the Council often incurs substantial costs when engaging external advisors to support these assessments.

(b) the extent to which assessments of compliance are being carried out for smaller subsidies, such as those beneath the SSOI or SSOPi referral thresholds; Services within the Council are urged to conduct a subsidy assessment for each situation where they provide an organisation with financial assistance regardless of the value.

(c) the extent to which outside parties, including recipients, are brought in to support public authorities in the self-assessment process; and Recipients are asked to provide information to the Council to enable it to conduct a subsidy assessment and determine whether the funding can be provided as a standalone subsidy or whether exemptions

such as MFA are available to the organisation. The organisation are not asked to assist with the self-assessment process. Council services are requested to conduct the assessments themselves as they are required to conduct the assessment in accordance with the legislation and guidance, not the recipient.

(d) whether the self-assessment process helps improve the design of subsidies. The Council's position is that the self-assessment process does not improve the design of subsidies. It forces the funder to consider what routes are available to them when providing a subsidy, however there is little room to design subsidies.

In practice, the process is more focused on compliance than innovation. Officers are primarily concerned with ensuring that subsidies meet legal requirements, rather than exploring how funding mechanisms could be structured to better support policy objectives or deliver improved outcomes. This approach can limit opportunities to align subsidy design with strategic goals such as economic development, social inclusion, or environmental sustainability. To improve this, clearer and more practical guidance, particularly with worked examples or case studies, could help public authorities better understand how to design subsidies that are both compliant and impactful.

The key issue with self-assessment is the amount of time that it takes to conduct the assessments and consider principle assessments, applicable streamlined routes or exemptions available. This can lead to delays for the recipients and their projects.

The self-assessment process would be more efficient with updated statutory guidance.

### **7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?**

Exemptions and streamlined routes could be significantly more effective in supporting the regime.

Often the streamlined routes are too narrow and/or do not provide clear criteria for what would be acceptable/unacceptable as part of the scheme.

A beneficial improvement would be to include more streamlined routes to accompany and dovetail with specific funding provided by UK and Devolved Governments for example Place Based Investment Grants. The routes could match the eligibility criteria and requirements for the grant funding that the application has already been assessed against.

### **8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**

Further guidance on exemptions and streamlined routes, as well as the Limb tests. Particularly Limb D.

Exemptions with regards to local authority's statutory functions and other key functions of the local authority such as town centre regeneration and how activities such as funding the exterior of buildings applies to subsidy control.

Provide clearer case studies and templates for small-scale schemes to help authorities self-assess with confidence.

The regime would benefit from a clearer articulation of how it supports levelling up and place-based investment, particularly in rural or economically disadvantaged areas.

**9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?**

The interface could be improved to allow filtering by public authority that awarded the subsidy, subsidy type (exemption, standalone, streamline) and value range.

**10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?**

Yes

**11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**

As above (9)

**12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?**

It is early days and DGC have not yet had to interact with the SAU.

**13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?**

Not Applicable Answer to DGC

**14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?**

The UK Statutory guidance is generally informative, however there is scope for improvement, particularly in relation to: principle assessments, Limb assessments, in particular Limb D, and Streamlined routes

To improve accessibility and usability, the introduction of a searchable online knowledge base or an expanded FAQ section would be highly valuable. This would support quicker resolution of common queries and promote best practices.

For the purpose of managing and awarding small value grants, the current terminology in the guidance, can be ambiguous and occasionally misleading. There is particular

uncertainty around how to conduct limb and principle assessments for small subsidies, especially in scenarios where recipients operate in rural or low-competition areas, but where similar organisations exist elsewhere in the region or UK. Clearer guidance on how to evaluate such cases under the principles, especially regarding market impact and competition, would provide more confidence and consistency in decision-making.

**15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?**

DGC suggest sector specific guidance should be developed (e.g. local authority, education, health)

**16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?**

DGC have no experience of bringing a challenge to Tribunal so cannot answer.

**17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?**

See answer 16

**18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:**

- A material negative impact
- No/limited negative impact
- A positive impact

No

**19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?**

It is early days in the regime and DGC are not aware of this.

**20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?**

No

**21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?**

Further thresholds to represent a true impact on trade and competition, such as £20k, or £100k. Values below this are unlikely to have a significant impact on trade but from a strict application of the legislation and guidance could sometimes be considered a subsidy.

Redefine effect on competition 'across the UK'. Local projects should not be considered as a competitive threat on trade, particularly those that are not offered elsewhere in the region. It was easier to assess this during state aid where it was an impact on trade between member states.

## **Response from a lawyer**

**Note: The SAU has excluded from this published version information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure).**

**From:** [✂]

**Sent on:** Wednesday, June 18, 2025 2:21:53 PM

**To:** SAU-MonitoringReport2026 <sau-monitoringreport2026@cma.gov.uk>

**Subject:** Confidential: Subsidy Control - Call for Input

**Follow up:** Follow up

**Start date:** Thursday, June 19, 2025 12:00:00 AM

**Due date:** Thursday, June 19, 2025 12:00:00 AM

Dear Sir

Thank you for your call for inputs request on the UK Subsidy Control regime.

I advise providers and recipients on incidence of subsidy, prohibitions, restrictions and exemptions, and managing the subsidy to ensure it is legally provided.

I have the following observations on the regime's operation so far:

- Self-assessments of the Subsidy Control Principles by subsidy providers are often poor, incomplete and incorrect.
- In many cases there is no attempt to identify indirect beneficiaries or base observations on evidence.
- There is no audit of the assessment of the Principles by CMA / Central Government body meaning that the exercise is regarded as low risk and often handled cursorily.
- The National Transparency Database is confusing, difficult to search through and often filled with irrelevant information.
- There should be an appointed supervisor ensuring that only necessary information is uploaded and that the search fields are more varied.

- The provisions relating to design of subsidy schemes is unclear and needs more definition.
- The CMA should be given more authority to set aside a self-assessment or block a subsidy if it considers it to be unreasonably provided.
- Currently it is unclear what authority or use a CMA finding is within the award process as it only provides recommendations, and these may or may not be implemented on award.
- There are insufficient Streamlined Subsidy Schemes and the Schemes in operation could be expanded particularly in terms of research infrastructures, innovation clusters and research collaborations.
- The overall objective of Subsidy Control is to encourage a re-shoring of the supply chain using State support and incentives. Streamlined Subsidy Schemes should address this, particularly in innovation, skills and investment.
- The authority of the Statutory Guidance should be clarified as it is currently being largely ignored by the CAT (e.g. the Durham Waste judgment on State resources takes a formal rather than functional approach, which is contrary to the Statutory Guidance, and incorrect).

It follows that the Subsidy Control regime is not operating as well as can and hence the opportunity to highlight and improve on this is welcome.

I would be delighted to discuss any of the above points in more detail if needed (and possibly offer suggestions on how to address them), but in the meantime, thank you again for running this process.

Best

[✂]

**Response from the Joint Working Party of the  
UK Bars and Law Societies on Competition Law**

## Review of the effectiveness and impact of the UK's Subsidy Control Act – Call for inputs

### Response of the Joint Working Party of the UK Bars and Law Societies on Competition Law<sup>1</sup>

- 1) **Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives?**

**Please give examples of relevant subsidies.**

Generally yes, public authorities are able to design measures that align with the requirements of the Subsidy Control Act 2022 (the "**Act**") and that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities. We do not consider that the Act, of itself, inhibits this. From our experience some authorities do require more careful "hand holding" to appreciate and understand that public authorities retain primary discretion for how they wish to intervene in markets, and subsidy control management should fit around that, and not the other way around.

There are four main issues which affect the effectiveness of the regime. These are:

- *consistency* - there are over 500 public authorities within the United Kingdom and whilst some are diligent in applying the rules, others are not (NB. we have no reason to infer this is ever bad faith and rather reflects differing levels of attention to detail and legal risk). The Department for Business and Trade ("**DBT**") has sought to address this issue by publishing detailed Statutory Guidance (which now runs to 264 pages) and delivering online training. Whilst this appears to have had a positive impact, it may be time to consider external scrutiny as a route to achieve greater consistency. This could be in the form of spot checks such as audits or strengthening the '*call in*' powers at Section 55 of the Act;
- *jeopardy* – as yet there have been limited instances of court challenges having been brought and yet fewer examples of a failure to respect the rules thoroughly being penalised, and the previously ever-present concern of a potential complaint to a regulator (the European Commission) for a ten year limitation period has gone. While it undoubtedly remains "early days" the experience of other regimes (eg. public procurement) has been that once there are a few more public cases of sanction then this has a major effect in terms of greater attention to respecting the rules in the market (because the perception of potential jeopardy increases). This is not to suggest that greater sanctions are necessarily required (it probably remains too early to say) but a more effective enforcement environment could be achieved by greater use by government of contractual audit and clawback in the event of inadequate subsidy management would surely deliver a more attentive compliance culture;
- *administrative burden* – whilst c. 95% of EU State aid measures proceed under the cover of block exemptions, only c. 2.15%<sup>2</sup> of subsidies proceed under the Streamlined Routes. It is of course true that Streamlined Routes do not play the same role in the UK regime as block exemptions do in the EU regime (a new State aid falling outside the block exemption has to be notified to the Commission, whereas a subsidy falling outside a streamlined route, but not so

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<sup>1</sup> The members of the Joint Working Party of the Bars and Law Societies of the United Kingdom on Competition Law comprise barristers, advocates and solicitors from all three UK jurisdictions; the membership includes both those in private practice and in-house. The JWP is grateful to the CMA for allowing a short extension for submission of this reply.

<sup>2</sup> Based on 2024 data in 'The UK's Subsidy Control regime can be improved through more, better targeted Streamlined Routes' which can be found [here](#).

large as to be notifiable to the CMA, merely has to be assessed by the granting authority under section 12 or 13). However, it nonetheless remains the case that, particularly for small granting authorities with no or very limited in-house expertise in subsidy control, the burden of properly assessing a subsidy under section 12 or 13 can be considerable, and even disproportionate in the case of small subsidies with (at most) only a local effect. The government announced in April 2025, that it "*will proceed with 2 new Streamlined Routes – focusing on arts and culture, and community regeneration*" but these have yet to be published. We welcome that announcement, as those are areas where the public interest in a subsidy generally tends to be strong and any distortive effect weak: but we also believe that consideration should be given to exempting a wider range of measures in order to reduce the administration involved in awarding smaller and more routine subsidies; and

- *transparency* – despite the [Statutory Guidance](#) stating that "*Subsidy transparency is a fundamental part of the UK's subsidy control regime*"<sup>3</sup> (as the regime relies upon challenges brought by interested parties) issues relating to the functionality of the [transparency database](#) means that it is very difficult for competitors to easily find or keep track of information on awards of subsidy and therefore decide whether to seek a review within the short challenge window. Problems include the entries not appearing on search engines such as google, it not being possible to set up an email alert and it not being possible to undertake a single search as to whether a subsidy has been awarded<sup>4</sup>. Moreover, the database does not require any explanation of the basis on which the granting authority has assessed the subsidy as compliant. Further, even where a subsidy is notified to the CMA for advice, the SAU's published advice is hard to understand without sight of the analysis that it is advising upon (the point has been made that it is like reading a peer review of an academic paper without being able to read the paper itself): that severely reduces the extent to which the SAU's advice is useful as guidance to authorities in other cases.

A further issue is the absence of any requirement after the subsidy decision for there to be any review of whether the subsidy has been effective or whether it has distorted competition. While we would not support imposing a rigid duty on granting authorities to carry out such an assessment, we believe that it is a matter that needs to be addressed, perhaps in the context of wider audit processes for granting authorities.

## **2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.**

Yes, we are aware of several measures where the public authority has chosen not to proceed with a particular intervention due to Subsidy Control requirements. This includes comparatively low value interventions which aim to restructure an organisation in light of a rescue loan but also several other types of intervention where once a full appreciation of the subsidy control issues concerned and the risks implied (including the transparency database) has been reached, this has led the relevant authorities to consider alternative strategies and/or significantly alter their proposals.

Fundamentally we consider this does not mean that there is a failing within the design of the Subsidy Control regime. On the contrary, this should probably be considered a success. Parliament, in designing the regime, wanted to encourage public authorities to give greater thought as to whether interventions could be justified. If the regime has made certain authorities think better of some ideas then that is more likely to be because they were bad ideas than because the regime is at fault.

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<sup>3</sup> Paragraph 12.1

<sup>4</sup> Instead the search function is split into four (standalone subsidies, subsidy schemes, subsidies awarded under subsidy schemes and MFA / SPEI Assistance awards). It would benefit the effectiveness of the regime to have a single search function for all subsidies.

Also, the more flexible nature of the current regime leads authorities away from the more straitjacketed approach delivered by the EU State aid regime and into more case-by-case assessment on the merits each time. If having done this properly, this process results in a view that a specific proposed intervention does not sit well with the new regime then we consider that will tend to suggest it is because the specific intervention is not well-founded to begin with.

### **3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?**

We have no reason to think that businesses are discouraged from investing in the UK because of a fear of unregulated subsidies to their competitors operating in the UK.

From our experience, businesses that are seeking to secure subsidies, whether already operating within the UK or entering the UK market, appear to prefer the UK Subsidy Control regime to the EU State aid law regime. This is because it can be quicker to award the largest subsidies, the UK regime is subject to a much shorter challenge period and there is no independent authority that can investigate and recover subsidies on its own initiative. All of these features combine to provide greater legal certainty, which is attractive to investors. Furthermore, from our experience inward investors from overseas do not fear that they would in any way be prejudiced against receipt of subsidy as against a UK-owned competitor, ie. there is no fear that there is any sort of "closed shop" in which domestic businesses receive subsidies when newcomers cannot.

On the other hand, some existing or newly-entering operators in the UK can be concerned by subsidies to competitors that may not be clearly justified and that may pay insufficient regard to the effects on existing or incoming competition. Our experience is that competitors are concerned that the current Subsidy Control regime may not adequately protect their interests in three main ways:

- the functionality problems affecting the transparency database means it is difficult for competitors to become aware of subsidies to rival organisations and in time to do anything about it within the short challenge window;
- bringing a challenge is a complicated process and comes with a cost and a heightened risk to costs (almost certainly to the defendant authority if the challenge fails, and potentially to the recipient if it intervenes). Naturally competitors compare that position to the EU State aid regime, which has an independent authority that can investigate and recover subsidies on its own initiative and with less up-front cost exposure in so doing; and
- subsidy schemes are open to challenge when established and thereafter the ability to challenge awards made under a scheme is less clear. There has yet to be a challenge against the creation of a scheme. We believe this is because such a challenge would involve spending money on bringing a case without knowing whether an award would subsequently be made to a competitor using the scheme anyway. Stronger safeguards could be introduced at the point schemes are established, to help businesses can work out whether their competitors are likely to be beneficiaries of the scheme, or the basis on which to challenge awards made under schemes (eg. that the scheme was fundamentally flawed or was being wrongly invoked in some way) could be made clearer.

Finally, there is an international concern which relates to how the EU Foreign Subsidies Regulation ("FSR") will apply to an award which is compliant with Act (and therefore it is assumed will align with the conditions of the EU-UK Trade and Cooperation Agreement). At this time, European Commission guidance does not provide comfort that a measure that aligns with the Act is safe from FSR challenge. We have yet to see a situation where a would-be recipient of subsidy in the UK has declined to take it based on a fear of adverse consequence in future via the FSR, but that possibility is taken into account.

#### **4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?**

The Act is designed to satisfy the TCA commitments, as well as assisting compliance with less specific commitments that the UK government has made in other free trade agreements, as well as its compliance with WTO subsidy rules.

One question which has been raised is to what extent does the Act align with Article 371(1) of the TCA which requires that "*each Party shall establish or maintain an operationally independent authority or body with an appropriate role in its subsidy control regime*".

Clearly what constitutes "*an appropriate role*" involves a degree of subjectivity but at the moment the Competition and Markets Authority ("**CMA**") is only entitled to give advice about subsidies that are referred to it. This means it cannot proactively investigate details of the subsidies referred to it (and is reliant on what it is told by the granting authority and, to a limited extent, third party comments), but also that there is no oversight of measures that are considered to be outside the definition of subsidy (perhaps for example on the basis of less than solid applications of the commercial market operator principle) or indeed legacy subsidies.

The Windsor Framework continues to cause difficulties. Having a separate set of rules based on different principles causes uncertainty, a degree of inconsistency, and some relatively arbitrary splits in how State interventions are handled in Northern Ireland. We are aware of situations in which this has led to inconsistent approaches to State intervention in some situations as between Northern Ireland and other parts of the UK, albeit that that was perhaps always inevitable given the terms of Article 10 of the Windsor Framework.

#### **5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?**

The original policy objective of the government in establishing the Act was articulated in the [consultation document](#) "*Subsidy control - Designing a new approach for the UK*" which was published in 2021 and stated that:

*"The UK needs a subsidy control system which minimises distortions to the normal operation of a dynamic and thriving market economy, and which facilitates strategic interventions to deliver Government priorities such as levelling up and achieving net zero".*

This is a sensible rationale, albeit there is a balance to be struck between protecting the market from State funded distortions and giving public authorities the freedom to support justified policy goals.

In particular we would recommend considering:

- stronger rules around schemes: (i) to be clearer on what are the minimum requirements to have a valid scheme on which reliance can be placed; (ii) to ensure competitors are better able to establish whether their rivals are likely to receive subsidies under a particular scheme announced on the database and if so, decide whether to bring a challenge to a scheme; and (iii) to be clearer on what basis challenges to awards under schemes can be brought, and in particular whether it is possible to do so on the basis of legal flaws in the decision to make the original scheme (NB. establishing a scheme must not provide carte blanche to pay little heed to subsidy control compliance thereafter).;
- improvements to the functionality of the transparency database, in particular the ability to search all entries from one point and the sharing of information about subsidies on online search engines;

- in limited circumstances, whether the CMA should be able to initiate an investigation (and therefore publish a report on a measure) on its own initiative. This might be the case if concerns are flagged by auditors or if it considers that there are reasonable grounds to conclude that the measure ought to have been treated as a Subsidy / Scheme of Particular Interest at the time of the award, and there is a clear public interest based on a genuine perception of a risk to distortion of competition (ie. not purely based on technicalities);
- whether the SAU should be clearer if it has serious concerns about a measure that has been referred to it does not meet the appropriate legal standard; and
- whether, at least for the largest awards, more detailed information as to how each principle has been satisfied should be included within the transparency database entry: in particular, some of us consider that, in the case of subsidies of interest/particular interest, as to whether the draft subsidy control assessment referred to the SAU for advice, and the final assessment relied on, should be made publicly available (in redacted or summary form) – we note that, since any potential challenger has, in effect, a right to see that assessment under section 76, such assessments are in any event prudently drafted on the basis that they may well have to be disclosed.

## **6) Does the self-assessment process work effectively?**

The Act is based upon the principle that public authorities will generally self-assess.

Whilst the process does work in most cases, with public authorities behaving responsibly at all times, there is inevitably a risk of confirmation bias – and in some cases political pressure – so that officials conducting the analysis may be (at least unconsciously) have a tendency to find or emphasise evidence in favour of a subsidy, and play down evidence that points against it. Further, in many cases the granting authority can be reasonably confident that no challenge is likely to be brought, which reduces the incentive to ensure that a robust analysis is conducted (particularly in the case of subsidies that do not have to be referred to the SAU).

## **7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?**

The SAU referral threshold will be amended on 4 August 2025 so it is too soon to make any assessment as to whether this change will benefit the regime.

As set out above, the Streamlined Routes have only been used for c.2.5% of measures so it appears that the government could make much better use of this route. The relative lack of use of this route leads to: (i) greater use of schemes which as noted above requires its own attention; and/or (ii) leads to much greater use of individual assessments against the Subsidy Control Principles, even for relatively routine cases where this is probably not an efficient use of time and public resources.

The existing three Streamlined Routes are ineffective in our experience primarily because the maximum subsidy amounts they allow are so low, hence they rarely afford cover for situations encountered (NB. especially when set against GBER counterparts). We recommend that future Streamlined Routes are formulated with input from other public authorities and practitioners.

## **8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**

At this time there is no sanction upon a public authority that does not satisfy the three month transparency requirement, other than that the window remains open.

Our view is that the challenge window should be open for a second month should a transparency notice be made outside of the statutory timescales.

As noted above we believe the requirements around subsidy schemes need tightening (see answer to question 5 above).

**9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?**

No. The database is far from user friendly. There are four different search boxes, none of which upload to search engines such as google or bing. Even when information about a subsidy is known it can be hard to find information on the of the [transparency database](#).

Indeed, we are not aware of any litigation that has begun because the competitor has identified a measure via the transparency database. This suggests that a key component of the regime is not working as it might.

**10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?**

Measures that are referred to the SAU are subject to a short description which can help encourage interested parties to come forward and provide representations. Yes they are probably sufficiently descriptive for interested parties to understand where they may be affected. This is less obvious however for schemes. Firstly as noted above, interested parties are much less likely to wish to comment about proposed schemes. Secondly, the information made public about the proposed schemes provides very little information from which to understand any detail as to the scheme proposed.

For example, with the [Referral for the Rapid Charging Fund Pilot Scheme by the Office of Zero Emission Vehicles](#), there was no indication of the value of the subsidies (other than that these would be Subsidies of Particular Interest). Instead the focus was upon the purpose for the fund having been established. Our recommendation would be, in light of the increased SAU thresholds, to require more granular information (especially for schemes) including a summary of the main arguments made in the principles assessment.

**11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**

As set out above, we would support changes to improve the functionality of the transparency database, but it is probably too early to say whether anything more fundamental needs to change.

We have considered whether sanctions for late publication would be appropriate but broadly think that would probably be undesirable as it would act as a disincentive for late publication, and we tend to the view that late publication is better than never. Given that the challenge period only reliably passes once publication has been made then that is probably sufficient incentive, at least for the time being.

**12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?**

Yes, the SAU does deliver its limited role diligently and effectively to the extent that the role appears to allow.

**13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?**

The SAU performs an important role in the regime, reviewing the public authority's documentation for large and sensitive awards.

Our view is that the scope of the SAU reports could be changed to deliver greater value to the public authorities making the submission and interested parties considering a challenge. In particular:

- more information could be provided on the contents of the assessment, including a summary of the main arguments being made<sup>5</sup>;

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<sup>5</sup> As noted above, some practitioners would like the Subsidy Control principles assessment to be published, whereas others believe that such information should only be released in the event of a challenge or a Section 76 request.

- where the SAU has grounds to believe the assessment is deficient or incomplete, the SAU report should state this in the introduction. Clearly there would need to be a high bar for this to be the case, but it would seem reasonable that using the recently published [attorney general risk matrix](#) that where the likelihood of a legal challenge being success was amber (i.e. the counterarguments are stronger) that such a conclusion could be reached. Of course, this would not bind the Competition Appeal Tribunal, which could reach a different conclusion, but the benefit would be that the public authority would then be clearly warned of the need to take action to improve its assessment; and
- where a scheme is proposed, the terms of the scheme should be linked to the acceptance of the referral.

More broadly, the main consideration for the statutory role is whether the SAU would have enforcement and investigation powers following complaints from third parties or own initiatives. It was emphasised at the inception of the new regime that the SAU should not become *a UK equivalent of the European Commission*, which we understand to be a principal reason why it is not empowered further. Ultimately the UK must consider what balance it wishes to achieve between enabling public authorities to intervene in the market for good reasons and where merited, with the protection of competition. We would argue it is too early to say whether the balance is correct, but the new regime does appear to be achieving what we believe it set out to do.

We also note that any agreement on UK participation in the EU internal energy market, as outlined in the 19 May 2025 UK/EU Common Understanding, may, in the area of energy, require closer alignment with the EU State aid rules (State aid being expressly mentioned as an area to be covered in any such UK/EU agreement), which may well require some institutional reform, at least in that area.

#### **14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?**

We generally find the DBT guidance useful, though it is in some respects possible to reach a different view on its legal analysis (inevitable in a new regime without case-law exploring the meaning of key terms). It will doubtless be amended as and when the case-law develops.

The SAU guidance is more concise and useful to those working through the referral process.

#### **15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?**

The Statutory Guidance is stronger where it focusses upon principles, rather than listing examples of compliant interventions.

We would like to see greater focus upon directing public authorities to methodically work through their obligations under the regime. However, realistically, what will make public authorities take closer heed of the requirements is a greater sense of jeopardy or sanction for not doing so, as discussed above. We consider that increased use of audits (beyond court challenges) would have a significant effect in this direction whilst not being too draconian in nature.

#### **16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?**

Yes, there are several barriers, including cost, time and awareness.

There is now an obvious external cost to an organisation enforcing its rights in the shape of the costs of engaging specialist lawyers (and, frequently, other relevant experts) and the appeal must be brought within a very short window. The secondary risk of a court challenge is the risk of liability for the respondent's, and possibly recipient's, costs too: a costs risk that did not arise in complaining to the European Commission.

The other obvious barrier to bringing court challenges is timing and the fact that a challenge is normally premised upon information having been posted onto the transparency database, and a need to act very quickly thereafter (though the possibility of making a section 76 request, with a consequent one month

extension from the date of the response, in practice extends the timetable to a period comparable with the position in ordinary judicial review). Given the issues articulated above, it can be difficult for interested parties to become aware of subsidies to their rivals in sufficient time to act: it is obviously not possible to know how many potential challenges may not have been brought for that reason..

**17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?**

So far, the Competition Appeal Tribunal has quickly heard cases. This is to be commended.

**18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:**

- A material negative impact
- No/limited negative impact
- A positive impact

As set out in the response at question 2 we are aware of situations where the regime (in particular CMA referral for restructuring) has led to changes to the public authority's proposed intervention, but it is difficult to conclude too much from the impact of this. On the whole, where the Act leads to reconsideration of a proposal we tend to think that will be a positive.

**19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?**

Yes we are aware of many situations where the provision of subsidies has had positive effects for investment in the UK (indeed this is almost always the effect), in addition to many other economic and social benefits across the UK. Examples include heritage, the arts, community sport as well as environmental protection, social housing and remediation of brownfield land.

We are not aware of any measurable instance of the UK having lost investment or competition on account of positive decisions to award subsidies, whereas we are aware of decisions where investments are lost to other countries because there is greater subsidy on offer elsewhere.

**20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?**

From our experience at least six areas that would struggle to continue in the absence of subsidies to varying degrees are: (i) renewable energy; (ii) automotive manufacturing in the transition to EVs; (iii) housebuilding in urban brownfield locations; (iv) social housing; (v) transport to remote regions; and (vi) arts, heritage and culture. These are positively affected by subsidies for the benefit of the UK.

**21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?**

As per the first response.

## **Response from the London Borough of Barnet Council**

**Note: Personal details have been removed from this published version**

## The Subsidy Control Regime - Call for Evidence

Questionnaire response from LB Barnet

Question	LBB Response
<p>1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.</p>	<p>Yes - In Barnet we have issued one subsidy and propose to issue a second subsidy as follows:</p> <ul style="list-style-type: none"> <li>- Brent Cross Town - Regeneration Scheme, New Office building, with Sheffield Hallam University as an anchor tenant. Developed in 2023/24.</li> <li>- Proposed issuing of a second subsidy in relation to the Open Door Homes (ODH) 300 Home Acquisition Programme (forthcoming).</li> </ul> <p>We have tested out two models of delivery in relation to these subsidies:</p> <p><u>Brent Cross = outsourced model of delivery, specific subsidy related to the viability of a specific project.</u></p> <p><i>Assessment report was prepared by team of consultants, lawyers and project manager. External costs totalled around £75,000 in addition to internal officer and project staff time. All of these costs were able to be funded through the developer.</i></p> <p><u>ODH Acquisitions = in-house preparation and delivery.</u></p> <p><i>Two combined subsidies, and redefined business case to secure better alignment with statutory guidance. No ability for third party to fund costs (project is about cost avoidance from future temporary accommodation).</i></p>
<p>2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.</p>	<p>Rather than particular needs for subsidies not progressing, it is more common that potential schemes are redesigned to fall within applicable thresholds.</p> <p>Avoiding the requirement for a subsidy assessment that requires mandatory review will save substantial time and cost, and is often judged to be advantageous, potentially even if this results in a less economically efficient approach to project or programme design.</p>
<p>3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any</p>	<p>Unknown</p>

Question	LBB Response
factors which get in the way of achieving this objective?	
4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?	None
5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?	Far greater clarity of 'non-economic' activities and especially 'economic activities' that are for the benefit of delivering 'non-economic activities'. I.e. when a subsidy can be ruled out in the first place, by design (e.g. the choice of beneficiary).
6) Does the self-assessment process work effectively?	<p>It is appropriate for public bodies to self-assess, but the structures in place to support this are too 'hands-off'.</p> <p>The design of the subsidy control infrastructure and volume of guidance, material and case law creates a system that fosters a culture of outsourcing of all subsidy assessment activities to consultancies and legal firms. In turn this creates added costs and dependence on such expertise, while they in turn focus on minimising risk and liability to themselves (i.e. where there is uncertainty, then caution is advised for liability/insurance).</p> <p>The system is therefore designed and operating in a way that discourages public bodies from dealing with subsidy assessment issues themselves. As a result public bodies are less likely to develop a baseline level of knowledge around subsidy assessment activity, and will continue to depend on buying-in external expertise.</p> <p>Specific tools to help public bodies that are missing are:</p> <ol style="list-style-type: none"> <li>1) A lack of published examples or templates of best practice submissions (for different scales of assessment) giving the actual submitted reports to show what an assessment should look like. Just being able to review the reports from the SAU is not helpful.</li> <li>2) A lack of straightforward checklists / self-assessment tools that would allow an authority to check its plans for a subsidy (i.e. the 4-limb test, and also the alignment with the subsidy principles), means it is harder for an officer within a public body to focus on what activities need to be done / questions need answering as a matter of priority.</li> </ol>
7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?	<p>The Streamlined routes and limited range of exemptions seem to be more technically driven, rather than focused on ruling out all the areas of activity that pose least risk of being an inappropriate or poorly-designed approach to subsidies.</p> <p>There is an urgent need for an effective exemption for (affordable) housing-related grant funding where this is clearly to organisations that are not seeking a commercial competitive advantage (i.e. housing associations).</p>

Question	LBB Response
	<p>It is necessary to allow public bodies to work more flexibly in finding ways to deliver affordable housing. Flexibility arises in response to matters of land ownership, grant funding from a range of sources, security / backing for affordable lending, and other matters relating the ability to raise capital. Ultimately public bodies need the sector to focus on public priority outcomes - such as social housing - over the more commercially viable alternatives that minimise the need for subsidies. Such activities all need ruling out as ‘non-economic’ activity or to be accepted as exempt)</p> <p><b>Please see separate letter for full details and suggestions (appended below).</b></p>
<p>8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?</p>	<p>The level of assessment required across all the principles feels excessive, and therefore an assessment process that allows an authority to home in on the most important factors and focus its time and resources on demonstrating compliance there would be more useful.</p> <p>Ultimately there is no effective ‘screening’ method that would allow subsidy schemes to focus review processes on just the most important factors requiring assessment. This would need to be supported by an effective screening submission where the SAU could just confirm all aspects of the approach that are likely to be acceptable by design, and communicate the specific principle or aspect where a more detailed submission is required in order to demonstrate compliance.</p>
<p>9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?</p>	<p>It is just another thing that has to be prepared by the public body, requiring time and effort that is not spent on delivering projects and outcomes.</p> <p>The requirements for the database submission could be integrated with the proposed ‘screening’ approach above.</p>
<p>10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?</p>	<p>N/A</p>
<p>11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?</p>	<p>Minimise the dependence on expertise for routine and low risk types of schemes, by reducing the mystery of the process.</p>
<p>12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?</p>	<p>To a limited extent. It is helpful to have a review in advance of submission, but the hard edge of a single pre-submission review and then a single shot submission doesn’t really align with the way other regulatory processes operate (e.g. planning applications, licensing submissions).</p>
<p>13) In what ways could the statutory role and/or</p>	<p>It was surprising that in the review meeting there were 6 different members of staff from the SAU attending a call with just two officers</p>

Question	LBB Response
practical operation of the SAU be improved to better meet the policy intentions of the regime?	<p>(one from the public body and one from the beneficiary) and two managers (likewise either party) from the perspective of the proposed scheme.</p> <p>This is highlighted as it indicates how ‘high stakes’ the process appears to be at present, as it is missing the necessary low stakes methods for earlier stages of reviewing, testing and screening ideas/proposals at an earlier stage (i.e. helping a public body to design a scheme to be compliant in the first place by a more collaborative process of co-creation).</p>
14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?	There is lots of material, but this takes substantial time to familiarise oneself with. The helpful summary on the government website, that ultimately is telling people to read the statutory guidance, is useful; but doesn’t provide short-cut ways for a public body to test how far it needs to understand all the nuances of the act in relation to how it applies to a project.
15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?	The team behind the SAU would do well to learn from other areas of the public sector in designing a system that would recognise the scale of risk better, not just in terms of value, but in terms of the nature of schemes and beneficiaries, and therefore to create an application and assessment approach that took away the significant amount of uncertainty and risk that surrounds the current approach and drives up cost within the public sector (creating an industry in itself).
18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had the following impact on competition and investment: - A material negative impact - No/limited negative impact - A positive impact	<p>None</p> <p>But the Act causes delay that results in slower delivery of projects and programmes that impacts on public sector cost savings or results in higher scheme delivery costs.</p>
19) Are you aware of any examples of subsidies given by PAs which you consider had an impact – either positive and/or negative – on competition and investment in the UK? Please explain where possible the specific impact of the operation of the Act and what the relevant factors were (e.g. subsidy design).	None
20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors)	None

Question	LBB Response
arising from the operation of the subsidy control regime?	
21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?	<p data-bbox="571 304 1361 461">Revision of the approach to operating/managing the scheme in a way that would focus on reducing low-risk activities, not just through thresholds in terms of the value of subsidies, but also in terms of the beneficiaries and activities that can/should be deemed as ‘non-economic’ or simply exempted.</p> <p data-bbox="571 499 1385 752">Revision of the approach to support provided to public bodies for the design and testing of proposed schemes. Crucially to reduce the stakes (and therefore cost) of engaging in the assessment process and developing a scheme where the subsidy control act may not be one’s area of professional expertise. Ultimately there is a need to help public bodies and the SAU to focus better on tackling genuine areas of risk, rather than the need to hire expertise all the time to mitigate against the bureaucracy of demonstrating compliance.</p> <p data-bbox="571 790 1023 853"><b>Please see separate letter submitted. (appended below).</b></p>

## **Appendix:**

# **Accompanying information for Officers submitted to the Minister for Housing and Planning (Letter dated 2<sup>nd</sup> September 2025)**

### **1. Subsidy assessment – Issues with current requirements / the case for change.**

#### **Why is Barnet Council so dependent on Housing Acquisitions to meet TA pressures?**

Even with current interventions to kickstart construction activity; the recent slowdown in construction has meant councils cannot rely upon new build delivering enough new affordable homes in the upcoming period to meet needs. As a result, even after accounting for extensive homelessness prevention measures (that currently have reduced a 50% increase in TA approaches to just a 20% growth in TA placements), Barnet Council is crucially dependent on securing additional sources of affordable homes supply, with a significant contribution required through direct housing acquisitions to address short-medium term need and forecast pressures. The council must be able to minimise exposure to market price volatility, due to the elevated competition for block-booked and nightly-purchased TA that persists and is worsening.

#### **What is the role of Open Door Homes (ODH) in delivering affordable housing for Barnet Council?**

The Council set up ODH as a charitable benefit society and registered provider of social housing, within the Council's own Arm's Length Management Organisation (ALMO), 'Barnet Homes'. As a separate entity, ODH can unlock greater levels of affordable housing delivery, including through mixed-use developments. With greater flexibility over tenure and other tools only available to registered providers, ODH has enabled more overall affordable housing units to be delivered by unlocking viability, most significantly in relation to acquisitions through schemes combining LHA affordable rents alongside social rent homes.

Rules in relation to Housing Revenue Accounts and the operation of a council's General Fund mean that direct acquisitions by the council end up more expensive and/or unviable. In 2019 the council agreed to help ODH begin acquiring homes from the residential sales market, to deliver additional local affordable homes in a borough with the 6<sup>th</sup> smallest baseline social housing stock in London. Since then, ODH's acquisition programmes have focused on achieving both a scale and pace beyond that which the council alone could otherwise have achieved. Through a combination of new build developments and housing acquisitions, ODH has built up a portfolio of over a thousand affordable homes, helping Barnet Council avoid significantly more households being placed within temporary accommodation in recent years.

#### **How is ODH as a vehicle for maximising affordable housing outcomes?**

Delivery through ODH is the preferred method for acquisitions for three key reasons:

- (1) The council's Housing Revenue Account does not have further borrowing capacity for acquisitions, and the General Fund cannot hold the required number of properties, nor deliver as effectively.

- (2) The rate of formula rent permitted to be charged by a local authority makes most housing acquisitions from market sales unviable at available grant rates. Through ODH, acquisitions activity can be viable for a range of housing sizes set at an appropriate mix of affordable and social rents.
- (3) As a registered provider, ODH benefits from stamp duty exemption; this helps to ensure that required lease extensions, refurbishment costs and project costs can all be funded, in addition to the purchase price, while still ensuring the property can be let at an affordable or social rent.

Taking these factors into consideration, together with right-to-buy related restrictions for tenants that would otherwise add risk into the business plan; ODH provides a more cost effective and secure vehicle for delivering additional affordable homes and is a critical tool for managing council TA pressures.

### **What is the challenge of delivering acquisitions through ODH (a partner housing association)?**

In February 2024, Barnet Council approved the creation of a replacement housing acquisitions programme with revised terms and conditions. The previous programme, based only on market lending conditions and with limited direct external grant, became unviable due to rising Public Works Lending Board (PWLB) interest rates. The agreed programme sought to acquire 300 street properties, mostly ex right to buy, over three years with a mix of affordable rent and social rent properties (linked to available grant funding and portfolio cross-subsidy). The introduction of improved MHCLG grant and new freedoms associated with Right to Buy receipts has unlocked a more sustainable business case that has enabled ODH to actively consider the acquisition of more 3- and 4-bed properties to better meet Barnet's priority housing needs, alongside the ability to look more broadly at street properties to increase the pace of delivery.

The Council has engaged in a subsidy assessment process to ensure compliance for the new 300 home scheme, as the properties are a portfolio. Even with financial advantages of delivering through ODH, grant funding has been necessary, including £18.5m from the GLA (~15% of total costs for 150 homes) and £31.5 million as grants from the council (~25% of total costs for the remaining 150 homes). But to secure viability of the programme, especially for GLA-funded social rent homes, in addition to the grant funding, a further indirect contribution was required by passing-through the council's PWLB lending rate to save a further £7 million in interest costs over 50 years (reflecting a further ~5% of the total programme costs). The overall combination of subsidies involved is essential for the viability of 300 new affordable homes with 100% of nominations to Barnet Council; but must first be fully accounted for and secure approval to proceed through a compliant subsidy assessment process with the CMA, which adds time and cost.

### **Helpful recent announcements**

#### RtB and Grant Flexibilities

In a letter from MHCLG on 2nd July 2025, it was helpfully confirmed that changes in relation to Right to Buy (RtB) receipts would be made permanent, including both the ability to not restrict the use on acquisitions and the allowance to spend them on up to 100% of the cost of replacement homes. Together with permission to combine RtB receipts with grant funding these changes have brought much greater flexibility into schemes and enabled the ODH 300 acquisitions scheme to get off the ground, but going forwards they will be of huge benefit to future new build and acquisitions scheme design.

The introduction of the ability to allocate receipts to a connected ALMO was also a sensible change that compliments the existing position allowing RtB receipts to be granted to Registered Providers. However, the current legislative position does not then appear to create an exemption for such grants from falling

within the requirements of the Subsidy Control Act, and therefore the requirement to ensure any such grants (or other forms of subsidy) fully comply with every requirement of the subsidy regulations.

#### RtB and Grant Flexibilities: Updated regulations for the Subsidy Control Act

In a recent announcement by the Department for Business and Trade on 10<sup>th</sup> July 2025, [The Subsidy Control \(Subsidies and Schemes of Interest or Particular Interest\) \(Amendment\) Regulations 2025](#) were laid before Parliament [alongside this accompanying explanatory note](#). They have brought into effect a change in the threshold for referrals in relation to Subsidies or Schemes of Particular Interest (SSoPI), from £10 million to £25 million. Again, while this is a welcome change, we consider this threshold to still be too low in relation to the scale of subsidies relevant to affordable housing schemes. Ultimately affordable housing subsidies quickly exceed the threshold once aggregated up across all homes within a scheme.

By way of example, the average 3-bedroom home acquired by ODH as a social rent would need about £400,000 of subsidy (depends on the area/condition and accessibility needs) given a capex contribution of income from social rents of around £75,000. At these levels only a portfolio of 62 properties or less would fall below the SSoPI threshold for mandatory CMA assessment. Even considering only the current LAHF grant rate of £267,000; only a proposed scheme of 93 homes or less would fall below the new SSoPI threshold (and until a few weeks ago it was just 37 homes). So given that Barnet Council must deliver 200+ acquisitions a year just to tackle the forecast additional growth in TA pressures, it is not realistic to consider that many affordable housing schemes will include a total subsidy value below the threshold.

#### **Subsidy Control Act provisions, and its impact on programme delivery within Barnet**

At [Barnet Council's Overview and Scrutiny Committee on 12<sup>th</sup> June 2025](#), it was highlighted that the requirement for Subsidy Control Act compliance has created a technical legal barrier. This is significantly increasing uncertainty and risk in relation to our programme with ODH to acquire 300 new affordable homes from the residential sales market that will help to manage growing TA cost pressures. Presently, any allocation of grant funding or below 'market' lending to an affordable housing scheme requires a public authority to engage funds/resources in undertaking full assessment under the Subsidy Control Act before being allowed to proceed with a scheme. It will certainly continue to act as a substantial barrier for future affordable housing schemes delivered in any form of partnership arrangement.

A market-based approach to affordable housing delivery is only possible in localities where market rents are equivalent to or less than the local housing allowance rate. So, in London the subsidy regime causes additional administration, or drives inefficient project design with partners to work around rules or fall below the SSoPI threshold; perhaps discouraging outcomes like 'social rents' that require more subsidy.

For Barnet Council, the current requirements have proved a substantial barrier to implementation, as delay arises while assessments are drafted, submitted, corrected and assessed. In the case of the current ODH 300 acquisitions scheme there has been a 12-month delay to full implementation of the scheme that would have cost the council upwards of £1.25 million in additional TA related costs alone, had workaround steps not been taken. Specifically, ODH have helped Barnet Council to partially mitigate delay impacts by working with external grant providers to front load grants in ways that temporarily offset the restriction against subsidised borrowing, as well as the inability to pass across right to buy receipts from the council. Even with such mitigations, the level of uncertainty/risk that subsidy rules introduced has resulted in a 10% reduction in unit delivery in 2024/25; and will add up to a year delay to future programmes.

As previously noted, just passing through the council's equivalent PWLB lending rate for borrowing on a scheme of 300 homes, instead of a 'market uplift' of 0.8% over PWLB rates, results in a 'Subsidy of Interest'

valued at over £5 million due to the required loan repayment period. But the overall value of any subsidy scheme rises significantly when a realistic assumption for grant is included.

Currently the options for the Council are to set up entirely separate programmes (separate governance/decisions, independent legal arrangements, and monitoring arrangements, in relation to approximately every 75 homes, to benefit from the new SSoPI threshold (resulting in a confusing mix of projects and extra setup and running costs). Or, alternatively, to complete mandatory subsidy assessment with review by the CMA, (resulting in delays and extra staffing/consultancy costs); whatever the approach, is this really good value for UK citizens? Whether or not RtB funds (or grants given to a local authority) are used by an ALMO, a subsidiary registered provider, or a separate Registered Provider entirely that still guarantees nomination rights, the £25 million threshold for full assessment under the Subsidy Control Act is likely to be still result in many housing-related grant programmes being captured by subsidy rules.

### **Avoiding repetitious bureaucratic activity in relation to subsidy assessments**

In addition to administrative delays, either through external consultancy or internal staff time, the preparation of each subsidy assessment can cost around £25,000-£50,000. Is it efficient and a best value outcome using stretched local authority resources for proposed affordable housing schemes to have to undertake a full subsidy assessment process? We ask this especially given that delivery arrangements can often be similar, such as with the same strategic 'registered provider' and/or given under similar terms.

Noting that ODH does not give dividends, and all stock must sustain affordable status with nominations to the council in perpetuity; although ODH is technically an independent organisation, at its core it is focused on addressing priority housing needs in Barnet. It seems odd to have a subsidy compliance system that treats such entities that are primarily or fully focused on 'social needs' in equivalent ways to a private company with shareholders. This is especially odd given that the council's current acquisition plans are sufficiently limited in scale, reflecting just 10-15% of current local residential sales, to ensure they will not unfairly impact on wider residential housing resales market activity.

Perhaps, if the definition of a subsidy could consider the suitability of partners that might not themselves be a public authority; then it would be unnecessary to assess the impact of individual grants or subsidies between a local authority and such an organisation. It is understandable that certain protections might be required to limit matter to the delivery of directly beneficial outcomes for or on behalf of a public authority (e.g. genuinely affordable homes to meet statutory housing needs). It might also only be acceptable where projects are of an appropriate scale to avoid unduly influencing wider market activity, but somehow it should be possible to provide clarity and certainty that would exempt such projects from being considered a subsidy in the first place, or at least providing a simple and straightforward way of demonstrating compliance.

## 2. Subsidy assessment - Proposed ways to consider implementing changes

### Potential amendments to Subsidy Control Act provisions or their understanding in law.

#### 1) Does delivery of affordable rent / social rent homes fall within the definition of a subsidy?

A subsidy is defined as applying where it recognises that financial assistance is being given through public resources by a public authority in a way that confers a specific economic advantage on one or more enterprises, and has the ability to affect competition or investment; in accordance with Section 2, Paragraph (1) of the Subsidy Control Act 2022; and therefore, requires an appropriate assessment.

The definition of a 'Public Authority' in Section 6 Paragraph (1) means "a person who exercises functions of a public nature"; while the definition of an 'Enterprise' in Section 7 (2) references "an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic", as follows:

#### **"Enterprise"**

(1) In this Act, "enterprise" means (subject to subsections (2) and (3))—

(a) a person who is engaged in an economic activity that entails offering goods or services on a market, to the extent that the person is engaged in such an activity, or

(b) a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity.

(2) For the purposes of this section, an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic.

(3) For the purposes of this section, a person or group of persons is not to be regarded as an enterprise by virtue only of being a shareholder or shareholders in a body corporate which is to any extent an enterprise.

(4) In this section, "person" includes a body corporate, a partnership and an unincorporated association.

(5) For further provision relevant to the interpretation of this section, see section 8 (persons under common control).

There is a fundamental question as to whether the delivery of affordable rent homes (and certainly social rent homes) constitutes 'an economic purpose' or not. It might be argued that any entity focusing entirely on delivering either affordable rent or social rents (that enable rental to tenants at less than LHA rates), is only seeking to deliver a social purpose that will sustainably meet the needs of vulnerable households for whom the state has a statutory housing duty to assist. Intermediate housing products on the other hand might be argued to have both a social purpose and an economic purpose and therefore organisations delivering these types of projects might then fall within the definition of an 'Enterprise'.

If this perspective holds true, then all schemes to deliver affordable housing through a not-for-profit social housing provider (i.e. where all financial benefit will inevitably be channelled back into the delivery of further social housing outcomes), should be considered as falling outside of the definition of an enterprise and therefore outside the scope of the Subsidy Control Act 2022. If this line of thinking holds true, then we would welcome explicit clarification of this through the Statutory Guidance (a footnote?) combined with a

suitable statement from the relevant Minister of State. Present legal advice received by the Council did not recognise such a distinction in relation to the types of affordable housing, but if this approach is acceptable, then it might prove a simple and effective solution to aid future affordable housing delivery by exempting it from being considered as reflecting a subsidy in the first place.

2) Could an exemption from referral for review by the CMA be introduced for those subsidies to registered providers delivering housing outcomes that address statutory housing needs?

Currently there isn't a specified exemption related to the delivery of affordable homes in the Act, Regulations or Statutory Guidance. However, depending on the way 'Specified Subsidy or Subsidy Scheme' is understood, such activities could be recognised as constituting a subsidy, but saved from additional bureaucratic processes by exemption from referral for review by the CMA Subsidy Advice Unit.

The requirement to complete a mandatory referral to the CMA can be removed by the issuing of a direction under Section 64 (3) of the Subsidy Control Act 2022. It allows for a Secretary of State to give directions for specific schemes or subsidies of interest to be exempted from mandatory referral requirements and in paragraphs (4) to (6) sets out how such a direction must be made:

*(3) The Secretary of State may direct that sections 52, 53, 54 and 55 (mandatory referral requirements) do not apply, or cease to apply, in relation to a specified subsidy or subsidy scheme.*

*(4) A direction under subsection (3) may only be given where the Secretary of State is satisfied that there are urgent and exceptional circumstances that justify the direction being given in the public interest.*

*(5) A direction given under subsection (3) must be laid before Parliament.*

*(6) The Secretary of State—*

*(a) must send a direction given under this section to the public authority giving the subsidy or making the subsidy scheme, and*

*(b) must publish the direction in such manner as the Secretary of State considers appropriate.*

Our suggestion is for the need for assessment to be removed where a public body (e.g. a local authority) is using its capital resources such as RtB receipts, or passing-on allocated grant funding from an external third party, or passing through equivalent rates for borrowing as are available to the authority, where this enables an ALMO or not for profit Registered Provider of Social Housing to deliver affordable housing outcomes on behalf of that public authority. To acknowledge that it is directly helping to meet statutory housing duties (i.e. so it could only apply to affordable rent / social rent homes rented at LHA rates or lower, but not intermediate housing products where both economic and a social activity applies).

Removing the requirement for consideration as a scheme or subsidy of interest or particular interest under the Act would deal with the fact that the new £25 million threshold is insufficient to account for required levels of grant for many affordable housing schemes. An exemption for transactions or relationships where such schemes are solely for the purpose of delivering affordable housing could be justified on the basis that ALMOs and not-for-profit Registered Providers (especially ALMO subsidiary RPs) are closer to being a 'public body' than an 'enterprise' and therefore should be treated as an 'acting public body' in relation to the specified scheme or subsidy.

Potentially Government might take a view that delivery through such organisations, as full nomination rights are being given to the granting public authority (or another public authority) is akin to the public

authority itself delivering the same outcome. Such activity would have no different impact on competition compared with direct delivery of the outcome by a public authority, while potentially securing wider beneficial outcomes such as not increasing financial gearing for a local authority or allowing for more efficient programme design that can unlock greater overall volume or pace of affordable housing delivery.

3) Could a new streamlined route provide an effective mechanism for affordable housing delivery?

If the above exemption route also proves technically impossible to implement, then it is noted that: further to the consultation on the Subsidy Control Act that ended in January 2025, the Government has published an intention to create two new 'streamlined subsidy schemes' for 'Arts and Culture', and 'Community Regeneration'; as permitted under Section 10, Paragraph (4) to (6) of the Act:

*Section 10*

*(4) In this Act, "streamlined subsidy scheme" means a subsidy scheme which—*

*(a) is made by a Minister of the Crown, and*

*(b) specifies it is made for the purposes of this Act as a streamlined subsidy scheme.*

*(5) A streamlined subsidy scheme must be laid before Parliament after it is made.*

*(6) If a streamlined subsidy scheme is modified after it is laid, the scheme as modified must also be laid before Parliament.*

The relevant minister might consider making representations for the Community Regeneration route to be quite broadly designed, to provide a clear and straightforward solution for taking bureaucracy out of schemes that deliver priority outcomes like affordable housing. From a financial perspective, it might introduce more suitable thresholds before formal CMA review (to account for the value of affordable homes grants within schemes), or perhaps exclude the requirement to account for external grant funding allocations when considering the value of subsidies for such schemes; either way this would allow many more schemes to fall below the 'Scheme or Subsidy of Particular Interest' threshold.

Alternatively, a new streamlined route might provide a far more simplified process for assessing compliance. Perhaps with a simplified assessment involving a simpler checkbox process to confirm 'compliance by design' through a series of standardised rules; this would enable a scheme to be agreed as compliant through its business case, and perhaps confirmed with the CMA through a simple online form to formally ensure unacceptable approaches to subsidy are ruled out. Enabling Local Authorities to demonstrate 'compliance by design' could also be done by providing a simple and consistent mechanism for calculating the value of affordable housing subsidy per dwelling relative to an average purchase / build price and considering the tenure. Whatever the approach to the simple checklist or form, the additional benefit would be the creation of a method for government to collect national data on the issuing of and benefits from affordable housing subsidies and related policies introduced to increase supply.

The current [Local Growth Streamlined Subsidy Scheme](#) is not an appropriate parallel, as it is still far too complicated as a method, because it focuses on the design of employment and skills subsidy schemes that can involve the provision of subsidies to private companies; so it does not provide a useful template for subsidies relating to affordable housing under a new 'Community Regeneration' streamlined scheme. We would welcome the opportunity to work with government colleagues to understand emerging thinking

and design for the new Community Regeneration streamlined subsidy scheme, if this is deemed the most appropriate way for taking forward a resolution to our stated concerns.

4) Could regulations be laid to introduce a straightforward exemption or exclusion into the Act?

Should all else fail, or be deemed too clunky a method for fixing the issues, then we would welcome the Secretary of State for Housing and Planning making representations to the Department for Business and Trade for the consideration of relevant explicit changes to the Subsidy Control Act 2022 itself utilising Section 86, Paragraph (2) of the Act that allows for regulations to be made to amend, repeal, revoke or otherwise modify the any provision of the primary legislation, assumed direct legislation or subordinate legislation. In this regard we note the recent publication of amendment regulations that provided a template for such changes to be laid before parliament, and we would suggest that exemption for subsidies related to the delivery of affordable housing, or to organisations such as ALMOs and Registered Providers of Social Housing, could be introduced to Part 3 of the Act where exemptions are discussed, or into Part 4 of the Act where CMA referrals are discussed.

### **Working together to secure a solution**

A present the system will stifle creativity and reduce delivery outcomes. Even the limited use/access to grant funding (e.g. LAHF programme is not possible without a subsidy compliance process as the grant funding is issued to councils, but our method of delivery is through Open Door Homes). The red tape of the Subsidy Control process will unfortunately only encourage poor behavioural outcomes and generally will just increase programme development and implementation costs, especially through the demand for specialist technical and legal advice to navigate what is a complicated area for local authorities and holds key financial risks that often must be mitigated through specialist advice.

Worst of all would be if the complexity of securing Subsidy Control Act compliance ends up limiting the creativity of public bodies to find solutions that will increase the delivery of affordable homes, and/or overall increase new build activity to address the housing crisis. Councils are encouraged to find creative ways to stretch limited grant funding and local resources, and therefore subsidy control is one area of legislation that does not appear to have had sufficient attention so far. Hopefully we can work together to unlock better outcomes; but we need the assistance of government to ensure that the right conditions are being set to enable more rapid business case activities and implementation of schemes.

There is a particular opportunity at this time to work with the CMA as they have recently begun a review of the Subsidy Control Regime. Further details on the review process, including consultation activities, are available here: [UK subsidy control regime: Have your say – Competition and Markets Authority](#). The associated public consultation process ran until 26<sup>th</sup> June 2025 and therefore it is likely that the CMA are currently working to collate and consider responses provided. We therefore hope that you might help us to more effectively work with the CMA and ensure our suggestions are fully considered and changes are introduced that will smooth the path for future affordable housing schemes and delivery.

We welcome further conversation on these suggestions. Please feel free to reach out to [~~✗~~], (Email: [~~✗~~]) with regards to any of the matters raised within this letter.

## **Response from the National Trust**

**Note: Personal details have been removed from this published version**



# NT - Review of the Effectiveness and Impact of the UK's Subsidy Control Act: Call for Inputs Response

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**May 2025**

## **About the National Trust**

The National Trust is Europe's largest conservation organisation. Through our ownership we look after more than 250,000ha of land and around 25,000 buildings throughout England, Wales and Northern Ireland for ever, for everyone in the nation. 95% of the National Trust's land is held 'inalienably' meaning that the National Trust can never voluntarily part with it. This designation is not conferred lightly. The decision to declare land inalienable is only taken where the land is of great beauty, or the buildings on it are of significant historical importance, or it is of outstanding importance for nature conservation, the preservation of archaeology or the wider landscape.

The Trust is a registered charity. Any surplus from our activities is reinvested in our charitable activities. This however is far from enough to meet the essential conservation needs of the assets and sites the Trust owns on behalf of the nation. The Trust therefore engages in fundraising activities to lower this shortfall. One important source of external funding is capital and operational grants from public sector sources. This typically amounts to between £25m and £30m p.a. and is the principal reason the Trust encounters the Subsidy Control regime.

## **Overview**

The Subsidy Advice Unit (SAU) is reviewing the effectiveness of the operation of the Subsidy Control Act 2022, and its impact on competition and investment within the UK.

The Call for Inputs is part of the evidence gathering exercise to inform the SAU's report. This is to generate insights about whether:

- a the Act is working as intended.
- b the practical arrangements in place to support the delivery of the Act are working effectively and are sufficient; and
- c the Act has impacted on competition and investment within the UK.

## **Why is this important to the National Trust?**

A high percentage of subsidies we receive are either outside the scope of Subsidy Control, are 'Permitted' and/or fall within the scope of an approved subsidy scheme or streamlined route. However, we consistently have to evidence and debate with public funders that this is the case resulting in delays and where external legal advice is required, irrecoverable costs. The subsidies we receive from public subsidies are an important income source to enable us to restore nature, to end unequal access to heritage and culture, and to inspire millions of people and other organisations to take action to help tackle the nature and climate crises where they are.

### **The Call for Inputs Questions and Our Response**

- 1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.

Response: The updated Subsidy Control Statutory Guidance (DBT, 2025) does in our view offer greater assurance that public authorities are able to design subsidies and deliver strong benefits for the UK taxpayer and support growth. More examples - especially for Principle F - and links to case studies would further enhance this.

- 2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.

Response: We have not progressed several small grant applications where the public authority has insisted on declaring the subsidy as Minimum Financial Assistance and our proposals either will not give us an economic benefit or fall outside the scope of the Act. Usually this is where our proposals are within the scope of paragraph 15.39 of the Statutory Guidance ("Cultural activities which can be accessed by the general public free of charge...") and/or paragraph 15.41 ("Financial assistance for amenities for traditional non-economic cultural infrastructure sites (such as a café, gift shop or parking at a national museum) are also unlikely to be caught under the subsidy control regime...").

- 3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?

Response: The transparency requirements of the Subsidy Control regime enable businesses operating or investing in the UK to understand the reasoning behind the award of subsidies to potential competitors. The publication of the

public authority's full Principles Assessment linked to the summary on the Subsidy Control database entry would further enhance this, especially for standalone awards.

- 4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?

Response: The Act and Statutory Guidance both state compliance with the UK's international commitments on subsidy control. For clarity and assurance, it would be useful to include a table in an appendix to the Statutory Guidance cross referencing key Articles of the Act with corresponding Articles from UK–EU Trade and Cooperation Agreement (TCA) and the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

Whilst references and hyperlinks in the Statutory Guidance signpost to the Windsor Framework, it would be useful to include a summary and case studies/scenarios as an appendix to the Statutory Guidance.

- 5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?

Response: The subsidy control policy intentions are considered to be appropriate and sound. The overall intention to prevent excessive distortions of competition is laudable but lacks clarity: what is meant by 'excessive'? How is this assessed? Subjective and 'on the balance of probability/evidence' assessments of the degree of distortion can create uncertainty, inconsistency and could be open to challenge. Uploading the public authority's full assessment of the subsidy against the Principles alongside the summary on the subsidy control database would help provide context and explanation especially for standalone subsidies.

### **Subsidy control requirements**

Your responses to the following questions will help us assess how well the design of the subsidy control requirements supports the policy intentions of the regime.

- 6) Does the self-assessment process work effectively?

Response: As a regular beneficiary of grants, we use the self-assessment tool as assess whether the subsidy we are applying for is likely to comply with the Principles where relevant. We also use it as evidence for the public authority awarding the subsidy. Often, using the tool we are able to successfully show that our lower value grant requests are not MFA and/or to evidence that the subsidy will not give us an economic benefit nor distort trade excessively.

- 7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?

Response: The thresholds, exemptions and streamlined routes are clearly defined and support the effective operation of the regime. The recent announcement to create additional streamlined routes for culture and heritage, and for community regeneration are welcomed. This is with the caveat that natural heritage is included in the remit of the former. This will help support the delivery of the Government's nature recovery and climate change mitigation targets. It also recognises the multitude of public benefits of nature recovery whilst addressing an important market failure.

- 8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?

Response: One aspect mentioned above that could be improved would be guidance on what constitutes 'excessive distortions of competition'. This would give clarity as to what is meant by 'excessive' and remove uncertainty and inconsistency in its interpretation.

### **Transparency**

Your responses to the following questions will help us assess how well the transparency arrangements are serving different users of the regime.

- 9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?

Response: The Subsidy Database has become more user-friendly with the ability to now look up public authorities in alphabetical order. However, there are still some duplications on the list such as 'DEFRA' and 'Department for the Environment, Food & Rural Affairs' which should be amalgamated.

Given that there are over 500 public authorities, adding a keyword search facility to the public authority drop-down list would make it more user-friendly as would adding a field noting the current name(s) of the public authority where this and/or its remit has changed significantly, for example, BEIS and Department for Business and Trade/DSIT. This will enable users to see if a time-limited subsidy awarded in the past has been renewed or a new similar subsidy awarded. This would also be useful given that more two-tier local authorities are set to be replaced by new unitary authorities.

Uploading the public authority's subsidy control assessment against the Principles with the summary on the subsidy database would substantially improve the information available about awarded subsidies/subsidy schemes.

- 10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?

Response: We do not have sufficient experience of this to comment.

- 11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?  
Response: As mentioned above, requiring public authorities to upload their full subsidy control assessment against the Principles would, combined with the summary information already required, substantially improve transparency in line with the policy intentions of the regime.

### **Referrals to the SAU**

Your responses to the following questions will help us assess how well the role of the SAU supports the policy intentions of the regime.

- 12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?  
Response: We do not have sufficient experience of this to comment.
- 13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?  
Response: The lack of voluntary subsidies and schemes of interest (SSoIs) referrals to the SAU seems to infer that when not obligatory, public authorities are unwilling to expend time and resources seeking the SAU's advice. Consideration should be given to making SSOI referrals mandatory and the subsequent advice public. In light of the proposed increase in SSOI and SSOPI minimum thresholds, this should not be seen to be too onerous for public authorities. It would also help build up a case study resource to inform future decisions.

### **Guidance**

Your responses to the following questions will help us assess how well the guidance provided by DBT, SAU and others are serving different users of the regime.

- 14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?  
Response: The guidance and other materials published by DBT and SAU are comprehensive and helpful. More case studies, scenarios and case law examples as they emerge would be helpful.
- 15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?  
Response: We understand that for sub-£315,000 subsidies it is easier for public authorities to treat these as Minimum Financial Assistance (MFA). However, for small subsidies our experience has been for public authorities to insist on the completion and submission of MFA declaration forms even where our proposals are outside the scope of the subsidy control regime. Usually this is where our proposals are within the scope of paragraph 15.39 of the Statutory Guidance ("Cultural activities which can be accessed by the general public free

of charge...”) and/or paragraph 15.41 (“Financial assistance for amenities for traditional non-economic cultural infrastructure sites (such as a café, gift shop or parking at a national museum) are also unlikely to be caught under the subsidy control regime...”). This means that we have to expend a disproportionate amount of charity resources explaining why we believe our proposals do not constitute MFA. Improved training on this aspect for public authorities is therefore recommended.

## **Enforcement**

Your responses to the following questions will help us assess how well the role of the Tribunal supports the policy intentions of the regime.

- 16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?

Response: We do not have sufficient experience of this to comment.

- 17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?

Response: We do not have sufficient experience of this to comment.

## **The impact of the operation of the Subsidy Control Act on competition and investment within the UK**

Your responses to the following questions will help us assess the economic impact of the UK subsidy regime.

- 18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:
- A material negative impact
  - No/limited negative impact
  - A positive impact

Response: We have not progressed several small grant applications where the public authority has insisted on declaring the subsidy as Minimum Financial Assistance and our proposals either will not give us an economic benefit or fall outside the scope of the Act. Usually this is where our proposals are within the scope of paragraph 15.39 of the Statutory Guidance (“Cultural activities which can be accessed by the general public free of charge...”) and/or paragraph 15.41 (“Financial assistance for amenities for traditional non-economic cultural infrastructure sites (such as a café, gift shop or parking at a national museum) are also unlikely to be caught under the subsidy control regime...”). In all cases, these proposals would have had either a positive impact or a no/limited negative impact.

- 19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?

Response: From our experience, the subsidy schemes for Farming in Protected Landscapes (SC11301), the Landscape Recovery Scheme (SC11126) and Water Restoration Fund (SC1132), have enabled us to progress with proposals that have had a positive effect on competition by reducing market failures and improving business investment confidence by mitigating the effects of climate change on environments.

- 20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?

Response: From our experience, subsidies to mitigate climate change and to restore nature & biodiversity have a positive impact across the economy and multiple sectors through reducing, flood risk, flash flooding, temperature spikes that otherwise would negatively impact on investment decisions, profitability and workforce health and wellbeing.

- 21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?

Response: The UK subsidy control regime could be improved by accelerating approval of subsidies/subsidy schemes that seek to remove/remediate undesirable market failures universal to all economic sectors such as subsidies to restore nature, heritage, culture and to mitigate the negative impacts of climate change, to reduce unequal access to nature and heritage to boost the mental and physical wellbeing of the workforce and their families.

[✂]

12/05/25

## **Response from a Local Authority**

**Note: The SAU has excluded from this published version information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure).**

Review of the effectiveness and impact of the UK's subsidy control act

Reply from [redacted] Council

2025.04.28

I work for [redacted] Council and am the go-to person for Subsidy Advice across the Council.

My response is below. You may get a further response from others

Q1.

Most of the subsidies we have given out since the start of the Act have been under MFA. We understand how it works; the paperwork is simple and straightforward and easy to explain to staff and partners working with final recipients.

I do not know of a subsidy we have given to an organisation that has exceeded £100,000 and needing putting on the register. I cannot see this changing in the near future. We procure as much as we can on the open market or make use of Frameworks, DPS, etc and therefore do not need to move beyond the four limbed tests.

Designing subsidies is easy and straight forward providing

- You follow the steps outlined in the guidance
- You remember that actions can be seen as reasonable
- When you have a question you can always talk with the SAU (they are really helpful)

It is a matter of confidence in your and your teams skills.

Q2.

I do not know of any that have not progressed but do know where the concerns come from

We are an authority that issued a S114 notice and was therefore bankrupt. Everything we do is risk averse. This is particularly felt by the legal team who believe that as Subsidy is controlled by an Act that any advice must come from a solicitor. They also, as a team feel that none of them are sufficiently skilled to comment, always saying we must seek external advice. This goes against the SAU advice which is you do not need to “lawyer up”. I have seen advice in public workshops from Subsidy expert solicitors which is designed to sell services and therefore paints as catastrophic picture of getting it wrong as you can get. This is even for straightforward MFA processes.

Q6

Yes, with the caveat that you work with legal teams to understand that the process is meant to be run by professional staff not necessarily legal staff.

Q7 & 8

Thresholds.

The MFA works well. The SPEI and other less so as it is not clear how they work and link in with MFA and other limits. Are they a separate limit or do they override it

Exemptions

These work well. You just need confidence that you are using them correctly and your legal team need to understand what you are doing, as they do with other legal applications (GDPR, EDI, etc). People are surprised when the advice is “there is no subsidy because it is exempt under section XXX of the Act and guidance”. I have people not think it is that simple when it is.

Streamlined routes

We do not use these. They have been reviewed and the administration of them is more complex than MFA yet can do a similar role. As such we have not used them

**NB** we became aware of a further issue with them last week in the definition of a MSME. The Act uses the Companies Act 2006 definition of a MSME (although it is not clear in the guidance that this applies). The streamlined routes use the same *but* backdated to the date the act came in. Whilst very few MSMEs exceed the limits ( and we have had no SME declare getting anywhere near either the old State Aid limit or the MFA limit) why is this not consistent?

In addition there is cross government issue in that the UK now runs two definitions of an SME. The procurement act uses higher levels that are linked to the levels found in Europe and are a direct lift. This will lead to some LAs reading one and thinking it is the UK definition and probably including a procurement defined MSME in something like the streamlined route and getting it wrong.

#### **Q14**

Excellent advice and support. Approachable, friendly, swift, understanding and helpful.

Changes

- Make SPEI easier to understand
- Simplify Streamlined routes admin
- Resolve the cross-government issue of defining a MSME

[✂]

28 April 2025

## **Response from Pinsent Masons LLP**

**Note: Personal details have been removed from this published version**



## **COMPETITION AND MARKETS AUTHORITY**

### **REVIEW OF THE EFFECTIVENESS AND IMPACT OF THE UK'S SUBSIDY CONTROL ACT**

#### **CALL FOR INPUTS**

#### **PINSENT MASONS RESPONSE**

##### **1. THE EFFECTIVENESS OF THE SUBSIDY CONTROL ACT**

*1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.*

In our experience the current position is rather mixed. Some authorities are indeed, able to design subsidies in a manner which comply with the Subsidy Control Act 2022 (the "Act"), but many others struggle to do so. This seems to us to be the result of a combination of factors, including lack of resource to carry out the necessary legal, economic and technical analyses involved in determining compliance with the Subsidy Control Principles. In certain cases, non-compliance might also stem from a view that the Act does not provide for sufficient compliance incentives, given that amongst other things, transparency obligations are limited and, to the extent that there is a Subsidy Advice Unit (SAU) report, that report is merely advisory and does not *require* authorities to reconsider their approach before confirming a decision to grant a subsidy.

Failure to comply fully with the Act, including by not carrying out an adequate Subsidy Control Principles analysis, can mean that the objective which the subsidy pursues could, in principle, have been obtained by less distortive means, whether without a subsidy or with lesser subsidy or with the addition of conditions which limit further the subsidy's competition distortive effects.

In this regard we also consider relevant that whilst under EU State aid rules, amendments to the parameters of an initial State aid measure (for example, by limiting its scope, or including certain conditions such as ring-fencing commitments) before the measure may be approved by the European Commission occur regularly, there is little information as to the extent to which UK authorities consider it necessary to refine their proposed subsidy measures, following discussions with the SAU in the context of preparing a mandatory referral or following the publication of a SAU report.

*2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.*

We are aware of at least a few examples where public authorities chose not to proceed to grant a subsidy due to the real threat of litigation by interested parties.

All the cases that we have in mind related to situations where the public authority in question was either asserting that its financial assistance to an enterprise did not constitute a subsidy or if it did, that it fell within the scope of a particular subsidy scheme (which was disputed by the interested party in question).

This suggests that at least certain public authorities are prepared to proceed with subsidies that might not be compliant (on the basis of an unjustified view that the financial assistance does not constitute

a subsidy or that it falls within the scope of a subsidy scheme) and only refrain from doing so if they consider that there is a real risk of the details of the arrangement becoming public knowledge and there is a real threat of a legal challenge.

Relevant in this regard is also the fact that, since the introduction of the Act, there have only been three challenges in the CAT, a fact which in our view does not necessarily reflect good practices by public authorities but is perhaps a consequence of the lack of adequate transparency obligations and limited provisions for scrutiny of subsidy and subsidy related decisions under the current domestic regime.

*3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?*

In line with earlier comments, we do not consider that *all* the subsidies currently being granted are necessarily fully compliant with the Act's requirements. For example, we are aware of situations where subsidies have been granted where seemingly other non-subsidy options were also available or indeed, where it appeared that the subsidy's objective could have been pursued by means of a lesser subsidy.

Again, we consider that the nature of our domestic regime - with SAU reports being advisory only and with no obligations for public authorities to provide transparency in relation to financial assistance which they consider that it does not amount to a subsidy, as well as the fact that the CMA has no investigative powers, means that on balance, the system does not provide sufficient incentives that would ensure much more rigorous compliance with the requirements of the Act.

*4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?*

Whilst our domestic subsidy control system provides for a lot more flexibility than the EU's State aid regime, current experience would suggest that this has been achieved at the expense of effective regulation of domestic subsidies. In this regard we note that the UK-EU Trade and Cooperation Agreement commits each party to having in place and maintaining "an effective system of subsidy control". Based on our experience, it seems to us questionable as to whether our current domestic regime adequately complies with this obligation.

*5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?*

It seems to us that one obvious way of facilitating better compliance would be to provide for greater transparency, including as regards the grant of financial assistance to an enterprise where a public authority asserts that this does not involve a subsidy. Separately, in addition to the current rules that provide for the possibility or obligation for a public authority to seek an SAU report, there could be a third category of subsidies over a higher value threshold (that could be comparatively lower in relation to certain sensitive sectors) in relation to which SAU recommendations should be binding.

The question of how the system may be improved is discussed further in the paper annexed to this submission.

## **2. SUBSIDY CONTROL REQUIREMENTS**

*6) Does the self-assessment process work effectively?*

It is true that self-assessment allows for greater flexibility and often provides for a more proportionate means for granting subsidies, especially lower value subsidies. At the same time, as commented earlier, it seems to us that not all public authorities have the necessary resource to carry out compliant subsidy control analyses. This means that, at least in certain cases, subsidies are not kept to the minimum or are not designed in a way which keeps distortions of competition to the minimum

necessary. Indeed, anecdotal evidence suggests that even where a SAU report provides for recommendations which go to the heart of the question of whether or not the subsidy has been designed with these obligations in mind, many public authorities do not necessarily proceed to reconsider their original approach.

Separately, we are aware that, the lack of resource has led to at least certain public authorities requiring would be beneficiaries to carry out the relevant subsidy control analysis demonstrating compliance, which again, suggests to us that the self-assessment route is not capable of full implementation by all public authorities.

Ultimately, it could be argued that more thorough subsidy control compliance analyses are not proportionate when it comes to lower value subsidies (irrespective of their potential distortive effects on *domestic* competition). However, where more substantial subsidies are involved (for instance subsidies of £100m or more), or where more substantial subsidies are involved in relation to particular sensitive sectors, the negative effects on both domestic *as well as* international trade and investment are likely to be much greater and should merit a more robust analysis and review to ensure compliance with our international law obligations but also so as to ensure that distortions of competition in the UK market are kept to the minimum. In such cases, it is submitted that the self-assessment route, and by implication the advisory nature of the SAU reports, would not seem to provide for an adequate means of ensuring the effectiveness of the subsidy control system.

*7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?*

We do not consider that the thresholds themselves are a key issue in terms of the effective operation of the regime. Instead, it seems to us that the lack of adequate transparency, non-binding nature of SAU reports and the limitations of the remedies regime impact adversely the effectiveness of the regime. In line with earlier comments, we consider that in seeking to address some of these issues, the Government should consider introducing a third higher subsidy value threshold (that could be lower in relation to more sensitive sectors) which *requires* public authorities to address concerns that the SAU identifies in its reports and re-submit their updated analyses, having first modified a proposed subsidy where necessary, for SAU *approval*.

As to the question of exemptions, again in line with earlier comments, the concern is that the lack of express transparency obligations in relation to decisions by public authorities to consider that financial assistance to an enterprise does not constitute a subsidy, renders such decisions harder to scrutinise. The lack of express obligations in this regard is also arguably inconsistent with Article 369(5)(a)(ii) of the UK-EU Trade and Cooperation Agreement (TCA).

As regards streamline routes, we consider that it would be beneficial to the overall effectiveness of the system for many more additional streamline routes to be put in place by the Government, thereby obviating the need for public authorities to carry out individual subsidy control compliance analyses for subsidies that fall within their scope.

*8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?*

Please refer to our comments in response to questions 5, 6 and 7 as well as the attached paper.

**3. TRANSPARENCY**

*9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?*

We consider that the information provided in the Subsidy Database is basic which is unhelpful in light of the fact that s.76(2) of the Act requires an interested party seeking further information about the compliance of a subsidy to assert that it is seeking that information for the purpose of deciding whether to apply for a review of a subsidy decision. It is not clear how such assertion can be made

in good faith when the Subsidy Database does not provide *any* information as to the reasons why the public authority considered that the subsidy in question was compliant, including *despite* any recommendations or criticism made in a SAU report.

Separately, it would be useful for the Subsidy Database to enable searches by reference to the name of a particular public authority, allowing interested parties to determine, for example, the amount, type and beneficiaries of subsidies granted by that authority over a period of time.

*10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?*

While SAU reports provide additional transparency when compared against the basic information that is made available on the Subsidy Database, it must be recognised that ultimately in its reports, SAU provides comments on a compliance analysis that is not made public. We are aware of arguments that references in SAU reports to the underlying compliance analysis might give rise to confidentiality concerns. However, we do not consider such concerns to be valid. In this regard we note that, for example, as a matter of course the European Commission publishes its State aid decisions setting out its substantive analysis with only light redactions to account for commercially sensitive information. A similar system, whereby the SAU reports are more specific as to the analysis that the public authority has carried out, including what data and counterfactual scenarios it has considered, would greatly promote the transparency of the system and render it more effective in terms of allowing interested parties to take an informed view as to whether or not they should seek to make further inquiries about the subsidy's compliance.

*11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?*

In the absence of regulator powers to issue directions to public authorities, the burden of policing the subsidy control regime falls on interested parties who, having identified a potentially problematic subsidy, may seek to obtain further information about its compliance in order to determine the appropriateness of challenging it by means of a judicial review.

In principle, this requires businesses to monitor regularly the Subsidy Database, per chance they might identify a subsidy that might affect their commercial interests so that they may seek to obtain further information about that subsidy's compliance by asserting that they require such information for the purposes of deciding whether to challenge the subsidy decision.

Given the lack of more effective tools to monitor and regulate subsidy control compliance, it would be helpful if interested parties could at least register their interests in relation to certain subsidies (e.g. type and minimum value of subsidy, sector and area to which the subsidy relates) so that they are notified automatically by means of an email each time a subsidy or scheme is entered into the database that matches these. Equally, it would be helpful if public authorities were required to provide a summary of reasons as to why they considered that the decision to grant a subsidy was compliant, including by explaining the extent to which they have addressed any SAU report criticisms or recommendations before doing so.

Similarly, in line with earlier comments, it would render the system more effective if the legislation was amended so that it created an obligation on public authorities to publicise on the Subsidy Database the basis on which they considered that the grant of financial assistance to an enterprise did not constitute a subsidy.

#### 4. REFERRALS TO THE SAU

*12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?*

It is our clear view that the SAU could and indeed, should, seek to take a stronger stance when it comes to exercising its review powers. For example, in a number of SAU reports it is effectively noted that the underlying compliance analysis was insufficient or incomplete in one or more respects. It would be reasonable to expect that at least on occasions, this would invite a SAU response that it is not in a position to express a view as to the appropriateness of the conclusions reached by the public authority in light of the omissions and shortcomings that the SAU has identified.

Similarly, it seems to us that the SAU could legitimately notify the public authority that its referral request does not comply with the requirements of s.52 of the Act on the basis that the evidence relevant to the assessment, including evidence which supports the conclusions that the public authority has reached (such as analysis of the subsidy's negative effects on trade and investment or data demonstrating why the subsidy's objective could not be achieved by other means or with a lesser subsidy), is incomplete. It seems to us that, the mere risk of the SAU acting in this way would be conducive to encouraging greater compliance.

*13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?*

Please refer to our response to Q8 above, where we set out the reasons why we consider that the SAU recommendations should be mandatory in relation to certain subsidies, and indeed, should not be granted without SAU approval.

#### 5. GUIDANCE

*14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?*

The statutory guidance is generally comprehensive and helpful.

*15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?*

It seems to us that compliance would improve if statutory and SAU guidance were to be reviewed in light of issues that the SAU has identified in its review of subsidy control compliance assessments so far. It would also help render the system more effective if statutory guidance were to explain that absent cogent reasons, public authorities are expected (or strongly encouraged) to act on the recommendations in SAU reports and re-consider their original approach where additional analysis indicates that this is necessary to comply with the requirements of the Act.

#### 6. ENFORCEMENT

*16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?*

Please refer to our earlier comments about the lack of adequate transparency that would allow enterprises to monitor and scrutinise effectively the grant of subsidies as well as public authority decisions to consider that the grant of financial assistance to an enterprise does not constitute a subsidy.

*17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?*

It seems to us that the question of the Tribunal's intensity of review requires further judicial consideration. Whilst it is true that the Court of Appeal has concluded recently that the TCA does

not *require* the UK to make changes to the standard of review which is applicable under normal judicial review rules, there is an argument that the light touch review that this generally provides is inappropriate in the context of decisions, which are not those of an expert regulator but those of public authorities which often lack the necessary resource to carry out the complex technical, legal and economic analyses that subsidy control compliance often requires. This issue is particularly important in the context of a regime where the only possible means of challenging the legality of a subsidy decision lies in seeking a judicial review.

**7. THE IMPACT OF THE OPERATION OF THE SUBSIDY CONTROL ACT ON COMPETITION AND INVESTMENT WITHIN THE UK**

*18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:*

- *A material negative impact*
- *No/limited negative impact*
- *A positive impact*

Yes, we are in the sense that the serious threat of court action has on certain occasions led to public authorities refraining from granting a proposed subsidy. We are not in a position to provide any further details for confidentiality reasons.

*19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?*

We are aware of examples of subsidies which have been helpful in providing positive incentives for investment in the UK (or certain parts of the UK). At the same time, it is not evident to us that such examples were necessarily compliant with the requirement to ensure that the subsidy is kept to the minimum necessary to bring about a change in the beneficiary's economic behaviour or that the subsidy was made available on the basis of conditions which limited distortions of competition also to the minimum necessary to achieve the subsidy's objectives.

Again, we are not in a position to provide details of specific examples for confidentiality reasons.

*20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?*

We do not wish to comment on this issue for confidentiality reasons.

*21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?*

Please refer to our responses above as well as to the paper annexed to this submission. Although the latter was not prepared specifically for the purposes of this consultation, we consider that it might still be useful in the current context, in that it sets out in more detail some of our views on the effectiveness of the domestic subsidy control regime..

**Pinsent Masons LLP**

**June 2025**

## COMPETITION AND MARKETS AUTHORITY

### REVIEW OF THE EFFECTIVENESS AND IMPACT OF THE UK'S SUBSIDY CONTROL ACT

#### ANNEX TO THE PINSENT MASONS LLP SUBMISSION

### The UK subsidy control regime – comments and recommendations

[Redacted], Pinsent Masons LLP

#### Introduction

1. The Subsidy Control Act 2022 achieves a good balance between flexibility and legal certainty in most respects. At the same time, certain of its aspects merit further consideration, so as to ensure that the legislation does not give rise to unintended consequences in the form of unjustified distortions of competition which, unless challenged within a narrow limitation period, would persist. This would seem problematic in two key respects: first, in the longer term, such distortions are likely to affect the structure of the UK internal market, rendering it less competitive and reducing incentives for businesses to be more efficient and innovative. Separately, a regulatory system which by its permissive nature facilitates State interventions but which at the same time does not provide for sufficiently robust compliance incentives, might be at risk of being imbalanced and at odds with the public policy objectives of protecting fair competition in the domestic market and ensuring the prudent use of taxpayers' money.
2. This paper identifies which aspects of the Act appear problematic in this regard and puts forward possible solutions to address these concerns. It is acknowledged that these recommendations go beyond the UK's international treaty obligations, including the obligations which arise under the UK-EU Trade and Cooperation Agreement (TCA). However, this should be uncontroversial as ultimately, the determining factor in framing domestic subsidy control legislation must be the desire to render it capable of addressing effectively domestic concerns. These must include ensuring that there are sufficiently robust checks and balances built into the new subsidy control regulatory system so that the greater flexibility for which it provides is not permitted to undermine other important public policy objectives.

#### Striking the right balance

3. For comparative purposes, it is relevant to recall that under EU State aid rules, other than where an exemption applies, State aid cannot be granted unless it has been authorised by the European Commission. Crucially, the European Commission has the power to investigate and ultimately require the recovery of unlawful State aid within a 10-year period from its grant. This limitation period might be criticised as excessive and detrimental to legal certainty. However, it has the benefit of creating an important incentive for public authorities and would-be beneficiaries to comply with EU State aid law. It also means that, other than in exceptional circumstances, where the grant of unlawful State aid is established, the beneficiary has to repay the taxpayers' money (with interest) and the distortion of competition is thereby removed from the EU internal market.

4. The Act moves drastically away from the EU approach in a number of key respects. First, subsidy control compliance ultimately becomes a matter of self-certification in that, there is no obligation on a public authority to notify a subsidy or scheme to a regulator *for clearance* before implementation. It is true that the Act provides for the right (voluntary referrals), and in certain circumstances, obligation (call-in, mandatory and post-award referrals), for a public authority to request a report from the CMA on a subsidy's or scheme's compliance with subsidy control requirements. However, there is no *obligation* on the public authority to implement any of the recommendations that the CMA might make in its report. The ultimate responsibility for subsidy control compliance resides with the public authority itself, so that the only recourse against non-compliance is that of court action by an interested party.
5. This approach has the benefit of facilitating the speedier grant of a subsidy or the setting up of a scheme where that is needed, and providing for legal certainty (despite the risk of non-compliance). At the same time, for this type of regulatory system to function effectively, public authorities must be relied upon to carry out a Subsidy Control Principles analysis correctly or, where a CMA report has been published, not to disregard CMA recommendations. Failure to do so, is likely to mean the unjustifiable distortion of competition in the UK internal market and wasteful use of taxpayer's money, unless the conduct of the public authority is challenged by an interested party in time.
6. Ultimately, the key concern here is that the Act relies perhaps too heavily on the ability of public authorities to "get it right" whilst, at the same time, it seems to shy away from introducing sufficiently robust incentives, that would help ensure that public authorities actually do so. This concern is rendered more serious when one considers that the proper functioning of the UK subsidy control system depends substantially on the ability of businesses to monitor actively and effectively the grant of subsidies by UK public authorities, and then take timely action, whether to request additional information about a particular subsidy or scheme or, ultimately, pursue costly legal proceedings. Absent such action, the opportunity to remedy a subsidy control non-compliance is lost. This means that, potentially problematic subsidies and schemes may remain in place without anyone, including the State and the competition regulator, having the power to *require* the public authority to take effective action to remedy the non-compliance so as to remove unlawful distortions of competition from the UK internal market.
7. A number of factors would seem to contribute to this potentially problematic state of affairs. These are discussed below, together with a number of other subsidiary issues.

### **The limitation period**

8. The Act provides for the ability of interested parties to challenge the grant of a subsidy by means of judicial review within the narrow window of one month from the "relevant date". The relevant date is effectively defined by reference to the publication of certain information (including the subsequent disclosure of additional information) about the subsidy by the public authority granting the subsidy or, in post-award referral cases, the CMA.
9. Whilst the decision to provide for a short limitation period would have been motivated by a desire to increase legal certainty, it is questionable as to whether the current provisions strike the right balance between the need for legal certainty and the public interest in a robust remedies system

capable of dealing effectively with unlawful conduct.<sup>1</sup> In line with earlier comments, the concern with this approach is that, absent action being taken within this short period, unlawful distortions of competition will persist in the UK internal market and cumulate over the longer period. The absence of a sufficiently long limitation period could also mean that the remedies system fails in its key task of acting as a deterrent to non-compliance.

## 10. Recommendations

- (a) Whilst the UK was a member of the EU, UK public authorities and State aid beneficiaries operated within a system which provided for the possibility of unlawful UK State aid being challenged within a 10-year period. Given the public interest risks described above, it would not seem disproportionate or unreasonable that domestic subsidy control legislation should be amended so that it provides for a limitation period which is substantially longer than one month whilst also substantially shorter than 10 years.

Arguably, that period should be as long as a year. If other factors at play render this unachievable, the limitation period should at least be brought into line with the standard three-month limitation period for judicial review, with the courts having the right to extend that period with “good reason”.

- (b) In this regard, it is noted that the Act departs from this standard judicial review rule and instead, limits the CAT’s ability<sup>2</sup> to extend the brief one-month limitation period only in where it is satisfied that “the circumstances are exceptional” (Section 71).

Although this is consistent with Rule 9(2) of the CAT Rules 2015, arguably that in itself does not render this approach appropriate in the context of subsidy control. Indeed, there does not seem to be any obvious reason as to why this stricter test should be deemed preferable to the standard judicial review rule which permits a court to take a view as to the appropriateness and fairness of a decision to extend the limitation period in view of the specific circumstances of a particular case. Instead, it would seem appropriate that CAT should have the flexibility to extend the limitation period whenever it considers it just to do so in light of all the relevant circumstances of a case, and without the need for this discretion to be exercised only in exceptional circumstances.

- (c) Separately, for the limitation period to function effectively as part of a robust remedies system, time should start to run from actual or constructive knowledge of the breach. In this regard, the publication of an entry which omits key information that otherwise should have been provided should not be deemed to have commenced the limitation period. This is broadly the approach which the Act adopts already (Section 71). However, in the interest of this acting as a compliance incentive, that this is the case, should be made unambiguously clear in the legislation.

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<sup>1</sup> This paper does not discuss the possibility of an interested party seeking damages for breach of statutory duty. Even if, in principle, this remains a possibility, it is assumed that a successful damages claim would be generally difficult and, in any event, would not involve the recovery of the subsidy, so that unlawful distortions of competition would remain.

<sup>2</sup> For the sake of simplification, the note does not discuss actions against subsidies granted by means of devolved administration legislation where the CAT is not the appropriate forum to consider such actions.

Commencing the limitation period (whether for a judicial review application or for a request for the provision of additional information) by reference to a database entry would only seem fair and appropriate if there is an obligation on public authorities, when making an entry, to disclose key information that demonstrates why it was deemed compliant with the legislation to grant a subsidy or make a scheme. This issue is considered further in the next section.

- (d) Section 71 makes specific provisions as to how the limitation period would run in relation to subsidies or schemes for which the duty to make an entry on the subsidy database “does not apply”. In such cases, time starts running from the date on which the interested party first knew or ought to have known of the making of the subsidy decision.

What Section 71 does not do, is to clarify how the limitation period would operate in relation to subsidies or schemes for which there is a duty to make a database entry within six months/a year but the public authority fails to do so. Would time also start to run from the point of actual or constructive knowledge of the making of the subsidy decision?

If so, this is not currently captured in Section 71, where the actual or constructive knowledge approach only applies to situations where there is no duty to make a database entry and not in relation to subsidies where there is such obligation but the public authority disregards it.

An alternative approach would be that, in these cases, failure to make an entry should mean that the limitation period cannot be exhausted for as long as the public authority continues to disregard its obligation to make a database entry. The only way to exhaust the limitation period would be for the public authority to comply with its transparency obligation, in which case the “normal” limitation period rules provided elsewhere in Section 71 would apply.

Given the potential for confusion over this issue, it would be advisable for the legislation or, at the very least guidance, to be amended so as to clarify how the limitation would run in relation to such cases.

- (e) Similarly, Section 71 does not explain how the limitation period would run in situations where the public authority asserts that the measure in question does not constitute a subsidy (because, for example, it considers that public money was made available to an enterprise on commercial terms) and, therefore, no duty to make a database entry applied, but its assertion is disputed.

Presumably, normal judicial review principles would apply so that an interested party would have to challenge the public authority’s decision to conclude that the measure did not constitute a subsidy.

It would be useful for the legislation to be amended so as to clarify that in relation to cases where the dispute relates to the status of a measure, time starts to run from actual or constructive knowledge of the relevant decision (here the decision to treat the measure as not constituting a subsidy).

- (f) An alternative approach would be to make provisions in the legislation so that public authorities have an obligation to make an entry in the database giving notice to the market that they have made available public money to an enterprise (above a minimum value

threshold), and providing a brief explanation as to the reasons why they considered that this measure did not constitute the grant of a subsidy. The limitation period would then start to run, in line with the existing Section 71 provisions, by reference to the time of the database entry and the question of whether additional information was requested within a month of that entry.

- (g) Separately, it would seem unjust that the CAT should have the right to refuse relief where it considers that there has been “undue delay” (Section 72(8)(a)) in making the application for judicial review. Whilst this is a standard judicial review rule, it would seem particularly problematic in a subsidy control context where it gives rise to the risk that, otherwise meritorious applications can be denied relief on the basis of the court’s view that the applicant should have acted with greater haste within the applicable limitation period so that the inconvenience which the “delay” might cause to the public authority or beneficiary should somehow be balanced against the right of an interested party to pursue a meritorious claim against, what might ultimately constitute, an inappropriate use of taxpayers’ money.

This approach might also be criticised for not being conducive to legal certainty. For completeness, it is also noted that Section 72(8)(a) is at risk of breaching TCA obligations which require that a full one-month period is afforded to interested parties wishing to challenge the grant of a subsidy and to seek its recovery.

- (h) There might be an argument that the short duration of the limitation period is particularly problematic in relation to schemes. This is on the basis that if the opportunity to challenge them is lost, potentially unlawful distortions of competition will continue to arise for as long as the scheme remains in place and individual subsidy awards are made under it, without the right to challenge these.

Accordingly, consideration could be given to the possibility of providing different limitation periods for the grant of subsidies and the setting up of schemes, with the limitation period for schemes being longer. The justification for this approach lies in acknowledging the risk that, if a problematic scheme remains in place, the cumulatively distortive effects of subsidies that are granted under it, will often be more serious than the grant of an individual subsidy.

### **The content of an “entry” on the subsidy database and related issues**

11. Chapter 3 of Part 2 of the Act sets out certain transparency obligations that relate to the grant of subsidy schemes and most subsidies. For current purposes, it is noted that the Act creates an obligation on public authorities to make an “entry”, within a certain period from the confirmation of the decision to grant the subsidy or make the subsidy scheme, on an (online) publicly accessible subsidy database (Section 33(3)).
12. Section 34 grants the Secretary of State the right to issue regulations that specify the information that a public authority’s entry must contain. Crucially, the Subsidy Control (Subsidy Database Information Requirements) Regulations 2022 that are currently in place do not require public authorities to provide at least a summary as to the reasons why they consider that a particular subsidy or scheme complied with the Subsidy Control Principles.

13. This would seem problematic, in that absent the disclosure of this information, it is difficult for businesses to take an informed view as to whether there is a real need to seek further information about a particular subsidy or scheme. Accordingly, the absence of such requirement, increases the burden on businesses, rendering it necessary for them to be monitoring proactively the subsidy database and to be making potentially unnecessary requests, simply so as to gain access to relevant information that can demonstrate a subsidy's or scheme's legal compliance. Unfortunately, current practice provides ample support for the need to introduce clear provisions (including by means of future regulations) as to the type of substantive information which public authorities should be required to disclose when making an entry on the database, with numerous examples of entries which cannot be described as transparent.

#### 14. Recommendations

- (a) It would seem fairer and more proportionate to require public authorities to publicise on the subsidy database at least a summary of the reasons which have led them to conclude that the grant of a subsidy or making of a scheme was consistent with each of the Subsidy Control Principles.

This would create a more transparent system which would have the benefit of limiting unnecessary requests from businesses for further information, simply so as to reach an initial view as to the compliance of a particular subsidy or scheme. That is of itself an important enough reason. However, arguably even more significant is the compliance incentive that this transparency obligation would create. In light of the need to be transparent about the reasons which have led them to conclude that the use of public money was justified under subsidy control legislation, public authorities are likely to be more mindful of the need to ensure that they consider carefully legal compliance before they grant a subsidy or make a scheme.

- (b) In line with earlier comments, it would be appropriate to clarify by way of amendment to the legislation that time does not start running (whether for a challenge or for the making of a request for the provision of additional information within one month of the “transparency date”) unless the entry includes all the information which a public authority would be required to disclose under the regulations. This would have the benefit of rendering the remedies system fairer and strengthening compliance incentives.
- (c) Also increasing transparency and creating compliance incentives would be the introduction of an obligation for a public authority to make an entry on the database in relation to a transaction (above certain value thresholds) in which it enters with an enterprise - for example, so as to invest in it or provide it with a loan - which would have, otherwise, been subject to subsidy control but for the fact that the public authority has concluded that it is acting in a manner which is consistent with that of a market economy operator in similar circumstances, including the reasons why it reached such a conclusion.
- (d) Another measure that would help make the database operate more transparently and effectively, would be the ability for interested parties to register their interests (e.g. type and minimum value of subsidy, sector and area to which the subsidy relates) so that they are notified automatically by means of an email each time a subsidy or scheme is entered into the database that matches their interests. At the moment, absent regular monitoring,

businesses would have no way of knowing that a new entry which is relevant to their business has been made.

### **Ministerial referrals and CMA reports**

15. The Secretary of State is given a number of powers under the Act, including the power to require a public authority to request a report from the CMA in relation to a proposed subsidy or scheme (Section 55) and separately, the power to make a post-award referral to the CMA in relation to a particular subsidy or scheme (Section 60). In both cases, this right arises where the Secretary of State considers that, among other things, there is a risk of non-compliance in relation to the grant of a subsidy or making of a scheme or there is a risk of negative effects on competition or investment within the UK.
16. These powers are of course most useful and indeed, necessary, in that there should be no doubt that the harmful effects of a potentially unlawful subsidy or scheme would be of immediate interest to the Secretary of State. At the same time, these powers are arguably more limited than they should be. For example, the Secretary of State's right to make a post-award referral is limited in time in that, such referral must be made within 20 working days from the day on which information about the subsidy or scheme was published on the database or where there is no such transparency obligation, the date on which the subsidy was given or scheme made. It is helpful that the Act gives the Secretary of State the power to issue regulations that amend, among other things, this period (Section 60(8)), and there is no obvious reason as to why this power should not be exercised to amend the legislation should not to provide for a longer period within which such referrals may be made.
17. In line with earlier comments, the right for the Secretary of State to make such CMA referrals over a longer period would seem necessary for three reasons. First, subsidies and schemes which are ultimately not consistent with subsidy control requirements, amount to the inappropriate use of taxpayers' money. Second, if as a result of the narrow window within which the Secretary of State may seek a referral is lost, potentially unjustified distortions of competition will remain and over time render the UK internal market less efficient and less competitive. Third, a wider power for the State to intervene, is even more crucial in the context of a system which only allows interested parties the ability to challenge a subsidy or scheme within a relatively short period.
18. Providing for a longer period within which the Secretary of State may require a post-award referral, would also give rise to the additional benefit of creating an incentive for subsidy control compliance. Again, it is important to recall that during the UK's membership of the EU, public authorities and beneficiaries had to accept a substantive long period of risk of 10 years, so that a period of "risk" which is significantly longer than 20 working days but significantly shorter than 10 years would seem proportionate and reasonable, in addition to being necessary for the reasons set out above.
19. Separately, the Act does not deal with the question of how public authorities might be in a position to take action to address the issues identified in the CMA report in relation to a grant that has already been made. For example, compliance with the CMA report might involve amending certain aspects of the grant agreement, such as its term, or might even involve terminating that agreement and seeking partial or full recovery of the subsidy. Absent specific provisions in each and every grant agreement to amend or even terminate it, for the purposes of

rectifying a non-compliance, it might not be possible to act on the recommendations of the CMA. The Act should be amended seek to address this issue (as explained further below).

20. Finally, it is important to note that the Act lacks a mechanism which would allow the Secretary of State to take action in circumstances where a public authority might have erroneously taken the view that it has not granted a “subsidy” and, therefore, a particular transaction is not subject to subsidy control obligations.

21. Recommendations

(a) In light of the above, it is recommended that the Act is amended so that the period within which the Secretary of State may refer a subsidy or scheme to the CMA post award, is extended to at least 12 months, from the day on which information about the subsidy or scheme was published on the database or where there is no such transparency obligation, the date on which the subsidy was given or scheme made. The power for the Secretary of State to amend this period further should remain.

(b) The Act should be amended so as to introduce a provision along the following lines:

“to the extent that a public authority decides to implement a recommendation made in a CAT post-award report and this necessitates the amendment or termination of a contract, to the extent that that contract does not contain provisions enabling the public authority to do so, a power for the public authority to do so on giving reasonable notice to the other contracting party or parties shall be an implied term of that contract.”

The wording would need further development but the relevant provision should also clarify that this power includes the right for the public authority to require the partial or full recovery of the subsidy.

(c) The general assumption, of course, is that public authorities would be minded to implement any recommendations in a CMA report (irrespective of whether the report is the outcome of a voluntary, mandatory, call-in or post-ward referral).

However, it would be desirable for the legislation to be amended so that it provides reserve powers for the Secretary of State to issue directions to a public authority requiring it to implement all or some of the CMA recommendations.

It would be for the Secretary of State to decide if and when to use such power and it might be that s/he does so only in extremis. For example, that might be appropriate in circumstances where the limitation period for a court challenge to the decision of the public authority not to follow fully or at all the CMA recommendations has expired but the Secretary of State has serious concerns that the failure to implement these creates significant and unjustified distortions of competition in the UK internal market.

(d) Finally, in line with earlier comments, the Act should also be amended so that:

(i) it creates the power for the Secretary of State to require a public authority to provide certain information to the CMA so as to enable the CMA to prepare a report on the

question of whether a particular public authority transaction (for example, an investment or the grant of a loan) involves the grant of a subsidy which should have complied with subsidy control requirements;

- (ii) the Secretary of State should have the power to make such referrals over a period of at least one year from the date on which the transaction was entered into. This longer period reflects the potentially greater difficulty in identifying that a transaction which a public authority does not treat as involving a subsidy, might in fact give rise to subsidy control issues. This period should be capable of being amended further by the Secretary of State by regulations.
- (iii) the CMA should be given the power to prepare a report on the question of whether a public authority transaction involves the grant of a subsidy, where it is directed to do so by the Secretary of State.

[✂]

Pinsent Masons  
LLP  
June 2025

**Response from an academic from the London  
School of Economics and Political Science**

**Note: Personal details have been removed from this published version.**

## **Review of the effectiveness and impact of the UK's Subsidy Control Act**

[X]

*June 2025*

### **5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?**

- Subsidies are currently awarded more often via schemes than as standalone grants. A scheme is a set of rules that describes the eligibility, terms, and conditions for any number of possible subsidies to be given under the scheme for a similar purpose.
- The average value of subsidies provided via schemes is nearly double that of subsidies provided through standalone grants. From the implementation of the Subsidy Control Act until January 2025, the mean value of a subsidy provided via schemes was £5.5 million (5,524,742), while the mean value of a standalone subsidy award was £2.8 million (2,817,571). (Any zero values are replaced with the maximum estimated subsidy value from the provided range.)
- Why are more subsidies, and more valuable subsidies, awarded via schemes rather than as standalone grants? The question warrants investigation to ensure effective subsidy governance. One concern may be that this practice increases the risk of market distortions and reduces rigorous self-assessment of individual subsidies within schemes.

### **7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?**

#### **Thresholds**

- A handful of standalone subsidies fall just below the previous £10 million threshold for mandatory referral, including two worth £9,800,000 and another worth £9,715,027. Similarly, a few subsidies awarded via subsidy schemes fall just below the £10 mandatory referral threshold at £9,944,773 and £9,999,999. This pattern suggests that a handful of awarding bodies may be deliberately structuring their subsidies with the earlier mandatory £10 million referral threshold in mind.
- Some evidence suggests that awarding bodies may also try to avoid crossing the voluntary referral threshold of £5 million. Four standalone subsidies fall just below the £5 million threshold, including one worth £4,998,968. Twenty-eight standalone subsidies, or 2.6 percent, fall between 4 and 5 million pounds. Approximately 1% of subsidies awarded via schemes fall between £4 and £5 million. Nine subsidies fall between £4.9 million and £5 million with one reported to be worth £4,990,000 and another equal to £4,995,075.

This pattern suggests that some awarding bodies may be deliberately structuring their subsidies with the voluntary referral threshold in mind.

- No subsidies of interest have yet been voluntarily referred to the CMA. It is important to understand why public authorities are not voluntarily referring their relevant subsidies to the CMA. It seems unlikely that this reluctance is due to the threshold values.

### **Sensitive sector criteria**

- Few, if any, subsidies provided since the Subsidy Control Act went into force qualify for mandatory referral via the sensitive sector criteria. The current criteria are narrowly defined. A broader criterion may warrant consideration. For example, how should subsidies for EV batteries be treated? While such subsidies support automobile manufacturing indirectly, they do not fall under the classification of subsidies for the "manufacture of motor vehicles (SIC code 29.10)."
- Consider the £7.5 million subsidy provided by DBT to LeMond Carbon UK Limited to support Johnson Matthey's gigafactory investment in Royston, aimed at scaling up the manufacture of hydrogen fuel cell components. This subsidy aligns with the goals of the Automotive Transformation Fund (ATF) to secure a globally competitive EV supply chain in the UK. However, it also indirectly benefits the automotive sector and motor vehicle manufacturing.
- Expanding the scope of the sensitive sector criteria could ensure more comprehensive oversight of subsidies that, while not directly targeted, have significant implications for sensitive sectors.

### **9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?**

- The Subsidy Database is a valuable resource. Transparency about public subsidies is vital for the functioning of the subsidy control regime. It helps to guarantee subsidies' alignment with the UK's subsidy control principles, value for money, and compliance with international agreements. Transparency is also necessary for ex-post assessments of the functioning of the regime and individual subsidy programs.
- In general, the Subsidy Database provides a good amount of information about subsidies in a relatively user-friendly format. However, there is room for improvement:
  - More information is needed about precisely where the subsidy money is being spent. Currently, the database reports "spending regions" (e.g. South West). This information is too aggregate to permit analysis of the local economic impacts of subsidy spending. More granular geographic data is needed to identify how subsidies affect local communities and economics. Useful information would include the town, city, and/or local administrative unit (LAU) where the subsidy money is being spent.

- Key information about subsidies is sometimes provided via hyperlinks in the Database. This practice poses a risk to transparency. Hyperlinks break and webpages move, and as a result information about a subsidy program could be lost. Disallowing this practice would enhance transparency.
- Combining standalone subsidies and subsidy schemes into a single database could benefit end users and improve searchability. Currently these different types of subsidies are reported in three separate databases, which makes searches tedious and potentially incomplete. In a single database, the type of subsidy (i.e. standalone or scheme) could be denoted using an indicator variable.
- The following features of the Subsidy Database are outstanding and should be maintained:
  - Continue to allow downloads of the entire database via the web without restrictions or access requirements.
  - Ensure the subsidy control number is unique, stable and consistent.
  - Continue to maintain all subsidies in the database, regardless of date added or ended.
- The audience for subsidy information goes beyond those who may wish to challenge an award. Researchers investigating the economic effects of subsidies need this information as well. Transparent, high-quality subsidy data can help to address a range of public policy questions, such as where do subsidies go in the country and what impacts do they have on local communities.
- Making subsidy information transparent and easily accessible for analysis benefits DBT and public authorities, as well as UK taxpayers. Such analyses can help to identify best practices and subsidies that provide the best value for money. I would encourage DBT to keep the potential range of uses, such as researchers, in mind when revising the database.

## **Response from Slaughter and May LLP**

**Slaughter and May's response to the CMA/SAU's call for inputs on its  
review of the effectiveness and impact of the UK's Subsidy Control Act**

**24 June 2025**

**Executive summary**

*We welcome the opportunity to respond to the CMA/SAU's call for inputs on its review of the effectiveness and impact of the UK's Subsidy Control Act.*

*Overall, we believe that the regime allows public authorities to design subsidies and deliver strategic interventions in compliance with the Act to meet policy intentions. However, there is scope to:*

- *Improve the understanding of authorities on the approach to self-assessment and the evidence base that is required;*
- *Improve the visibility of the self-assessment process for the aid recipient;*
- *Clarify the nature and purpose of the CMA opinion and the action that authorities are required to take on receipt of the opinion;*
- *Make the Subsidy Database more transparent and easier to navigate; and*
- *Address barriers to effective challenge by aligning the time limits for a challenge against a subsidy under the Act with mainstream judicial review cases (recognising that this would require legislation).*

**Responses to help assess how well the operation of the Act is meeting its policy intentions.**

***1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.***

***2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns?***

In general, our experience is that public authorities are able to design subsidies and deliver strategic interventions in compliance with the Act to meet policy intentions. The main issues that can impede this are:

- uncertainty surrounding the approach to self-assessment and the evidence base that is required. The Subsidy Control Act works on the basis of a highly delegated model that relies on individual funders to carry out their own compliance assessment. There can be uncertainty at this level as to what level of assessment is required (and how this might flex depending on the circumstances of the case).
  - This can in some cases also translate to a reluctance to take advantages of the flexibility that the regime offers. For example, we understand that there has been some experience of public authorities, when communicating with potential recipients of support, implying that if a proposed measure meets the definition of “subsidy”, it automatically amounts to an unlawful subsidy. This suggests that

some public authorities may be reluctant to conduct the assessment required under the Act and may unduly rely on e.g. interventions qualifying under the MEO criteria.

- We also understand that, although the guidance explicitly says that authorities should not ask recipients to confirm that the proposed subsidy is compliant with the Act, public authorities deviate from the guidance on this point and may (in effect) ask the potential subsidy recipient to conduct the initial compatibility assessment. In our view this likely also reflects an underlying lack of confidence with the operation of the self-assessment regime; and
- uncertainty on the interaction of the domestic subsidy regime with WTO and other international obligations and the extent to which a further assessment is required to address these issues in addition to the main Subsidy Control Act process.

**3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?**

We consider that it would be unusual for a *general* concern about subsidisation of competitors to be a factor discouraging investment or the set up of operations in the UK.

Where a business that is looking to invest or set up operations in the UK is the proposed recipient of a *specific* grant or other subsidy then, particularly if the subsidy is large enough to qualify for SAU review, there can be issues linked to the lack of transparency for the subsidy recipient on the subsidy control analysis and process.

In particular, where public support is proposed in the context of structural changes to a business, or where the value of the subsidy is large relative to the size of the business involved, the proposed recipient may be unwilling to implement measures if there is a perceived risk of a subsequent challenge to the measures. This is the case even if the ultimate risk of revocation of the subsidy is assessed as low, as businesses will also be concerned about the costs and publicity implications of being part of an aid scheme that is challenged.

Our experience is that practice can vary on the extent to which a proposed subsidy recipient will have insight into, or the ability to participate in, the SAU process.

**4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?**

In our view, the Act does contribute to meeting the UK's international subsidy control commitments because it:

- satisfies specific obligations on the UK under the terms of the EU-UK Trade and Co-operation Agreement;
- provides aid granters with a process guide on how to implement measures so that they will comply with these commitments; and
- provides comfort to the counterparties to the UK's international commitments that the UK is committed to compliance with the principles of subsidy control.

It arguably also serves a further purpose in demonstrating to third party investors the commitment of the UK Government to ensuring a level playing field for businesses to compete and invest in the country.

However, the Subsidy Control Act also serves a policy objective independently of the UK's international obligations as it operates as a check and balance, at the point that a decision is being made, to ensure that policy is implemented on an even-handed basis and that UK public funds are being deployed to maximum effect.

**5) *In what ways could the UK subsidy control regime be improved to better meet its policy intentions?***

For the reasons set out above and in response to Q6 below areas to consider are:

- giving the recipient, or potential recipient of a subsidy, more certainty and visibility in relation to the self-assessment process, which would help increase confidence in the effectiveness of the regime; and
- more guidance and training to public authorities to ensure they know what is required of them and therefore are confident to conduct the self-assessment and, where relevant, to engage with the SAU.

We would also suggest that a priority going forward should be for the regime to support the Government's growth/industrial strategy, particularly in relation to 'high-growth sectors', such as advanced manufacturing (i.e. aerospace, advanced materials, agri-tech, automotive, batteries and space), clean energy industries and defence.<sup>1</sup> For example, this could take the form of more detailed guidance on the approach to subsidies in these sectors, or a review of thresholds for SAU referral in these sectors, or in appropriate cases, greater use of streamlined schemes. If businesses consider that they cannot receive the support they need, this is a barrier to growth and investment.

**Responses to help assess how well the design of the subsidy control requirements supports the policy intentions of the regime.**

**6) *Does the self-assessment process work effectively?***

In our experience subsidy (or potential subsidy) granters typically take the self-assessment process seriously and want to design measures that are compatible with the legislation, but the level of confidence and experience with the process of those involved varies (see our response above).

We would therefore recommend continued investment in skills building and tailored assistance/guidance for the authorities. As with any self-assessment process, it is necessary to ensure that all those involved can spot issues and know what is required of them.

**7) *How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?***

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<sup>1</sup> See Government Policy Paper - The UK's modern industrial strategy (published on 23 June 2025), which identifies the following eight 'high-growth sectors': Advanced Manufacturing, Clean Energy Industries, Creative Industries, Defence, Digital and Technologies, Financial Services, Life Sciences, and Professional and Business Services.

**8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**

In our experience the mandatory referral thresholds have been triggered relatively frequently. We therefore welcome the Government's intention – in response to its consultation on refining the UK subsidy control regime - to:

- increase the mandatory referral threshold for Subsidies or Schemes of Particular Interest (SSoPI) (in non-sensitive sectors) from £10 million to £25 million; and
- create two new streamlined subsidy schemes for: (a) Arts and Culture; and (b) Community Regeneration.<sup>2</sup>

We also consider that there could be more use made of streamlined subsidy schemes, which to date have been a relatively limited part of the landscape. The potential advantage of streamlined schemes is that they provide a simplified route map that can make it easier for more common types of measures to be implemented.

We also find that there can be some confusion over the nature of the SAU opinion and the action that authorities are required to take on receipt of the report. In the absence of any specific further role for the CMA it is not always clear to public authorities how they should respond to the feedback that the CMA has provided in its report in relation to the proposed subsidies. In particular, the fact that the reports do not directly assess whether a proposed measure complies with the subsidy control requirements can sometimes create uncertainty for both the authorities and the aid recipients. Whilst, under the regime as currently designed, it may not be appropriate for the CMA to express more direct views on the substantive analysis, it may be helpful if the CMA's report could be more directional on the steps that need to be taken by an authority following receipt of the report.

**Responses to help assess how well the transparency arrangements are serving different users of the regime.**

**9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?**

No. The issue is not so much the level of information that is provided but that the Subsidy Database is hard to search and navigate to find information even when that information is known to exist on the database. We welcome the Government's intention to take on board suggestions made by respondents to its recent consultation on refining the regime to improve the functionality' and searchability of the database.<sup>3</sup>

A particular issue, bearing in mind the significance of the database for the calculation of time limits on any challenge, is that it can be hard to track when new notifications are made to the system. Some form of alert or daily update keeping track of notifications would therefore be of assistance and would be compatible with the intended purpose of this database.

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<sup>2</sup> See the Government's response to the consultation, available here: <https://www.gov.uk/government/consultations/refining-the-uk-subsidy-control-regime/public-feedback/consultation-response-refining-the-uk-subsidy-control-regime>

<sup>3</sup> See the Government's response to the consultation, available here: <https://www.gov.uk/government/consultations/refining-the-uk-subsidy-control-regime/public-feedback/consultation-response-refining-the-uk-subsidy-control-regime>

In our experience there can also be uncertainty as to the level of information that needs to be provided for the purposes of the database.

**10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?**

The additional transparency arrangements for subsidies referred to the SAU, including the publication of a non-confidential summary of the subsidy, prior to its being awarded, and the SAU's report of its evaluation of the public authority's assessment, are helpful in providing additional information about these subsidies but note our comments regarding the content of the reports in our response to Q8.

**11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**

Better search functionality is key. The Government or CMA/SAU should consider setting up an alert system in relation to subsidies, which would provide stakeholders with an additional tool to check when the time for challenge starts to run.

More standardisation of the content of entries on the database may also be helpful, although we recognise that there can be challenges with this given the wide variety of measures that may be involved.

**Responses to help us assess how well the role of the SAU supports the policy intentions of the regime.**

**12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?**

**13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime**

The SAU carries out its statutory role effectively to help achieve the subsidy control regime objectives. As mentioned above in response to Q8, it might be helpful to the operation of the regime as a whole if the SAU was able to give slightly more directional advice in its feedback on what a potential granting authority needs to do next following receipt of the report (e.g. review the self-assessment in light of feedback; decide whether to proceed, with or without amendments; include information on the database).

**Responses to help us assess how well the guidance and advice provided by DBT, SAU and others are serving different users of the regime.**

**14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?**

**15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?**

The assistance, guidance and other materials published by DBT and SAU are effective and helpful. Against the background of what is largely a self-assessment regime, we see this guidance as extremely important both in terms of standardising the approach to evaluation and in providing information to third parties on how the subsidy control assessment process is conducted.

If DBT was able to expand the range of materials offered then we would suggest that more guidance on the appropriate role of the aid recipient in the process would be helpful. As discussed above, our experience is that there can be an inconsistent approach among aid granters in terms of the level of transparency that is given to an aid recipient and the extent to which they are encouraged to participate in the process. Outside of schemes, the guidance should encourage aid granters to give the aid recipients a meaningful and effective role, including when conducting the assessment, as a matter of best practice.

The guidance could also be updated to assist authorities when conducting a self-assessment in relation to one of the high-growth sectors included in the Government's Industrial Strategy (see our response to Q2) to ensure that the assessment is conducted in an efficient and timely matter.

**Responses to help assess how well the role of the Tribunal supports the policy intentions of the regime.**

***16) Are there any barriers to bringing a challenge to the Tribunal and if so, what are they?***

***17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime***

There are two key challenges for anyone looking to bring a challenge under the Subsidy Control Act:

- first, the time limit for bringing a challenge is extremely short. This has implications both for the ability of claimants to access the courts and for their ability to present fully developed arguments to the court; and
- second, it is not always straightforward for those who want to bring a challenge under the Subsidy Control Act to establish clearly when this time limit starts to run.

In our view the ability to use the database to publicise subsidy proposals and thus secure legal certainty for public authorities is a helpful part of the process, but we would suggest that greater alignment with the timing and protocols that are used in general judicial review applications would be helpful to all parties. We recognise that this would require amendments to the legislation and so is not within the control of the SAU.

**Responses to help assess the economic impact of the UK subsidy regime.**

***18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had the following impact on competition and investment:***

***- A material negative impact***

***- No/limited negative impact***

***- A positive impact***

Generally, the self-assessment regime gives authorities the flexibility to design, assess and grant subsidies independently and should therefore work well to ensure that publicly funded interventions are appropriately designed and targeted. The design and application of the UK subsidy regime could be further fine-tuned, however, to:

- increase legal certainty and visibility for aid recipients giving them a meaningful and effective role and allowing them to feel confident that they can accept/have access to the subsidies they need; and
- strengthen the enforcement of the rules by increasing transparency about subsidies and the time limit for challenge. Weak enforcement of the rules has a negative impact on the level playing field and therefore on competition and investment.

**19) Are you aware of any examples of subsidies given by PAs which you consider had an impact – either positive and/or negative – on competition and investment in the UK? Please explain where possible the specific impact of the operation of the Act and what the relevant factors were (e.g. subsidy design).**

**20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?**

**21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?**

See our responses above.

## **Response from TLT LLP**

# BRIEFING NOTE: REVIEW OF THE EFFECTIVENESS AND IMPACT OF THE UK'S SUBSIDY CONTROL ACT

## PURPOSE

The Subsidy Advice Unit (SAU) of the Competition and Markets Authority (CMA) is conducting a review of the Subsidy Control Act 2022 to assess its effectiveness and impact. The findings will inform a report to be published by summer 2026.

## KEY AREAS OF FOCUS

### 1. EFFECTIVENESS OF THE ACT

The review will evaluate whether the Act enables public authorities to design effective subsidies that support growth and policy priorities without causing adverse economic impacts. This includes assessing the clarity and adequacy of the guidelines provided under the Act, as well as the ability of public authorities to implement these guidelines effectively.

### 2. IMPACT ON COMPETITION AND INVESTMENT

The review will analyse the Act's influence on competition and investment within the UK. This involves identifying any distortive effects that subsidies may have on market competition, as well as any benefits that subsidies may provide in terms of attracting investment and fostering innovation. The review will also consider the long-term implications of subsidies on market dynamics.

### 3. PRACTICAL ARRANGEMENTS

The review will assess the capacity and resources of public authorities to comply with the Act. This includes evaluating whether public authorities have sufficient expertise, funding, and administrative support to implement the Act effectively. Additionally, the review will examine the transparency and scrutiny mechanisms in place for subsidies, ensuring that these mechanisms are robust and effective in preventing misuse or abuse of subsidies.

## CALL FOR INPUTS

The SAU is seeking feedback from stakeholders, including businesses, investors, and public authorities, on the Act's effectiveness and impact. *Stakeholders are encouraged to provide evidence and examples to support their views.* The feedback will be used to inform the review process and ensure that a comprehensive understanding of the Act's impact is obtained.

## NEXT STEPS

Responses to the Call for Inputs are due by 24 June 2025. The SAU will analyse the feedback received and incorporate it into their review process. Based on the gathered evidence, a report will be published by summer 2026, outlining the findings of the review and providing recommendations for any necessary amendments or improvements to the Subsidy Control Act.

In order to think about the way in which we provide responses to these questions, and which of our clients will be impacted, we should note the following signposting helps direct you to relevant questions for those circumstances:

(a) If you are a public authority: Q1-15; Q18-22

(b) If you are a beneficiary of subsidy: Q1-3; Q5; Q6-8; Q14-15Q18-22.

(c) If you are a third party or have been affected by the award of subsidy in your sector: Q1-11; Q14-22.

(d) For any party who has been to the Competition Appeal Tribunal or has considered making an appeal: Q16-17

## APPENDICES

### APPENDIX A: LIST OF QUESTIONS FOR STAKEHOLDERS

1. Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.

**TLT response:** In general we have found that our clients have been able to work with us to design and deliver subsidies which help achieve their policy objectives. Due to the nature of our position as legal advisers, we are unable to identify specific subsidies which we have advised on.

2. Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.

**TLT response:** No, we are unaware of any subsidies which have failed to progress entirely due to concerns in relation to compliance.

3. Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?

**TLT response:** Based on our work to date, we do not have specific observations in relation to this point. We are aware that minimising distortion of competition domestically and internationally is a key objective of the UK's subsidy control framework.

4. Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?

**TLT response:** Based on our work to date, we do not have any specific observations or concerns in relation to this point. We understand that for public authorities awarding subsidies, following the requirements of the Act should contribute to meeting the UK's international commitments.

5. In what ways could the UK subsidy control regime be improved to better meet its policy intentions?<sup>1</sup>

**TLT response:** We note that the Act is currently unclear as to the extent to which it captures international or transnational subsidies. While overseas aid and projects to promote international development are not expressly carved out of the scope of the Act, it is not clear that legislators intended to capture that type of spending.

Relatedly, we understand that the large-cross border or international cooperation project exemption (Section 50 SCA), removes the requirement for a public body to carry out a subsidy control assessment under Schedule 1 SCA. Section 50, however, does not appear to exempt a public body from having to assess a large-cross border or international cooperation project under the Energy and Environment Principles (Schedule 2 SCA). In some respects, the Energy and Environment Principles appear to be drafted with UK subsidies in mind. For example, Principle B states that: *Subsidies in relation to energy and environment shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of England and Wales, Scotland or Northern Ireland.* Most projects that satisfy the Section 50 exemption are likely to have beneficiaries outside the UK. The SCA could be clearer on whether the Section 50 exemption carves out the requirement to assess the subsidy against the Energy and Environment Principles. If the Section 50 does not carve out the Energy and Environment Principles, guidance should be provided on its applicability to subsidies granted to beneficiaries outside the territory of the UK.

6. Does the self-assessment process work effectively?

**TLT response:** Where we have been asked to assist in relation to this, we have found that the Principles assessment is an area where clients have required particularly intensive guidance and support on how to ensure compliance in relation to evidencing, to enable them to progress with the subsidy. This has been an area where clients have on occasion expressed concern at the internal resource implications of gathering evidence to ensure compliance. The SAU may wish to give consideration to expanding guidance in relation to evidencing requirements in this regard, for example by way of giving more detailed examples of the types of evidencing which public authorities could rely upon, and guidance as to where such evidence might be obtained externally.

7. How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?

**TLT response:** We are of the view that the regime may benefit from exemptions and streamlined routes being expanded further, where this is appropriate and in line with competition policy, as this provides clients with a greater degree of certainty in relation to the provision and receipt of subsidies. The thresholds should be set at a level where subsidies that carry the highest risk of distorting the market are captured, but without imposing an administrative burden on public authorities in relation to less distortive subsidies. In our experience, the increased level of compliance and reporting required for SSoPIs is significant, so we assume the SAU will be considering the balance between scrutiny, compliance burden and the relevant thresholds are correct.

8. Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?<sup>2</sup>

We do not have specific observations in relation to this point.

## TRANSPARENCY

*“Your responses to the following questions will help us assess how well the transparency arrangements are serving different users of the regime”*

9. Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?

**TLT response:** In our view the Database provides sufficient information in a user-friendly format.

10. Do the additional transparency arrangements for those subsidies referred to by the SAU provide sufficient information about these subsidies?

**TLT response:** We do not have any specific concerns in relation to this point. In our view the SAU provides sufficient information in this regard.

11. In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?

**TLT response:** We do not have specific observations in relation to this point.

12. Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?

**TLT response:** We have worked with the SAU in relation to referred subsidies. In our experience the SAU has been effective in its role in this regard.

13. In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?<sup>3</sup>

**TLT response:** We do not have any comments in relation to how the statutory role and/or practical operation of the SAU could be improved to better meet the policy intentions of the regime.

14. How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?

**TLT response:** The Statutory Guidance and the assistance provided by the SAU to clients have been helpful. The Statutory Guidance in particular provides clear assistance on how to apply the cumulative four limb test in order to determine whether the proposed funding amounts to a subsidy. However, please refer to our comments at Question 5 regarding guidance on the the large-cross border or international cooperation project exemption under section 50 of the SCA.

15. In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?<sup>4</sup>

**TLT response:** As noted above, the section 50 exemption for large-cross border or international cooperation projects could contain further detail or illustrative examples to help provide further assistance as to whether the subsidy or scheme satisfies the exemption.

16. Are there barriers to bringing a challenge to the Tribunal and if so, what are they?

**TLT response:** Based on our work to date, we do not have any specific observations in relation to this point.

17. In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?

**TLT response:** Based on our work to date, we do not have any specific observations in relation to this point.

## **THE IMPACT OF THE OPERATION OF THE SUBSIDY CONTROL ACT ON COMPETITION AND INVESTMENT WITHIN THE UK**

*“Your responses to the following questions will help us assess the economic impact of the UK subsidy regime”*

18. Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment:

- A material negative impact

- No/limited negative impact

- A positive impact

**TLT response:** We have not had any instances whereby the Act has prevented the outright giving of a subsidy by one of our clients, or the receipt of a subsidy by a client.

19. Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?

**TLT response:** We have advised a number of public authorities on subsidies that could potentially have had a positive impact on local areas such as attracting business investment and/or job creation. Due to the nature of our role, we are unable to provide details on the matters which we have provided legal advice on.

20. Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?

**TLT response:** We do not have particular examples on this point.

21. In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?

**TLT response:** As noted in our response to Question 6, we have found that the Principles assessment is an area where clients have required particularly intensive guidance and support on how to ensure compliance in relation to evidencing, to enable them to progress with the subsidy. This has been an area where clients have on occasion expressed concern at the significant resource implications of gathering evidence to ensure compliance, including the financial burden of doing so whether utilising either internal or external resource. We wonder therefore if consideration should be given to introducing more streamlined routes and/or pre-approved types of subsidy to reduce the financial and administrative burden on public bodies. In our experience advising under old EU State aid rules, public bodies had greater certainty that they were providing aid lawfully where they relied upon the General Block Exemption Regulation, which set out permitted types of subsidy along with conditions for compliance. This was because public bodies were able to easily follow the requirements set out therein to provide subsidies within defined remits. While the use of a Principles assessment provides flexibility for public bodies who wish to give subsidies, this can come at the expense of greater certainty as to whether the subsidy is compliant, particularly where public bodies feel unable to meet the resource implications of adequately evidencing compliance. While we do not suggest that the UK should mirror the requirements of the General Block Exemption Regulation, we do consider that a more developed set of streamlined routes/exemptions in relation to types of subsidy would reduce the administrative burden on authorities and provide greater legal certainty for both grant recipients and providers, thereby driving forward better competition and innovation.

## **Response from a civil servant**

**Note: Personal details have been removed from this published version.**

**From:** [✂]  
**Sent on:** Thursday, April 17, 2025 8:27:08 AM  
**To:** SAU-MonitoringReport2026 <sau-monitoringreport2026@cma.gov.uk>  
**Subject:** Input

**Follow up:** Follow up  
**Follow up status:** Completed  
**Completed on:** Wednesday, May 7, 2025 1:35:00 PM

Good morning,

[✂]

I have three primary thoughts on the regime that I thought it was worth sharing:

- The role of the CMA is frustrating for those referring to it, and I'm sure frustrating for those working in the CMA. In a time where efficiency is in focus, it does not add sufficient value. Fundamentally the biggest risk for clients is that their subsidy is found not to comply with the principles, not that their assessment has not dotted every I and crossed every T. Having spent the time and effort engaging with the SAU, clients want to know if their subsidy is lawful and the role of the CMA does not allow for that (except on a voluntary basis and I can understand why the CMA usually chooses not to exercise that power). I understand the role of the SAU is a function of difficult Brexit negotiations and don't believe the CMA is at fault. But I think the review scrutinising how to make the most of the expertise of those in the SAU to support those less expert in public authorities would be really valuable.
- The assessment is generally too complex for those with no background in competition and markets. I have heard a lot from DBT saying that they think authorities are overdoing the assessments and could be lighter touch, don't need external advisers to complete it etc, but the truth is for many civil servants completing subsidy control assessments as a small part of their role, and indeed for many of the public lawyers reviewing those assessments it is really challenging to know where to start in completing an assessment. That is particularly the case for principles F and G – even the starting point of identifying the affected market(s) is really challenging.
- There is a specific circumstance common in government which is challenging. It is common for government to use 'delivery partners' for subsidies. They grant money to a body, which is then responsible for awarding grants to others. They are not doing so as a contractor, but as a 'partner', awarding subsidies according to broad principles set in their own grant agreement but setting the criteria themselves. Some are public bodies themselves, others are not. It would be helpful for any future guidance to deal with this scenario which is a model for very large sums of money distributed through government.

Finally two thank yous – clients have found the CMA accessible and helpful, and the DBT subsidy control team are always extremely helpful and knowledgeable.

[✂]

## **Response from Womble Bond Dickinson LLP**

# Womble Bond Dickinson LLP's response to the CMA's Review of the Effectiveness and Impact of the UK Subsidy Control Act: Call for Inputs

24 June 2025

# Womble Bond Dickinson LLP's response to the Review of the Effectiveness and Impact of the UK Subsidy Control Act: Call for Inputs

As a law firm advising public authorities and subsidy recipients in relation to the Subsidy Control Act 2022 (Act), we have reviewed the Call for Inputs document and have set out our responses to the questions raised below.

## The effectiveness of the Subsidy Control Act

**1) Are public authorities able to design subsidies and deliver strategic interventions in compliance with the Act that deliver strong benefits for the UK taxpayer, support growth and deliver policy priorities or are there any factors which get in the way of achieving these objectives? Please give examples of relevant subsidies.**

It is possible for public authorities to design and award subsidies with the above-mentioned aims: it is clear from the Subsidy Database that subsidies are being awarded, and we know from our experience advising public authorities and suppliers that public authorities are engaging with the requirements of the Act, in terms of identifying potential subsidies, and undertaking Principles assessments and/or referrals to the SAU where relevant.

What is more difficult to assess is whether those subsidies comply with the Act, and whether they will achieve the intended aims.

Compliance is hard to assess because very limited information is publicly available about the assessment undertaken which resulted in the subsidy being awarded. See comments below on the limited information required to be included in the Transparency Database and the functionality issues which make that limited information hard to find. This (and other factors, such as the short limitation period to bring a legal claim) makes legal challenge of subsidy (which is really the only way to fully assess compliance with the Act) very rare. Even the more enhanced transparency requirements in relation to subsidies required to be referred to the SAU do not provide sufficiently detailed information for a third party to assess the degree of compliance with the Act.

We have experienced public authorities continuing to require subsidy recipients to produce the Principles assessment. The public authority will then endorse the assessment produced by the recipient. We consider this to be a high-risk approach and unlikely to constitute the proper discharge of the public authority's duty under the Act. It is illustrative of the lack of confidence and/or resources in some public authorities in relation to compliance with the Act.

In terms of assessing the effectiveness of subsidies awarded against the objectives of the Act, this is a difficult thing for us to comment on, and it is likely to take a number of years after any subsidy is awarded to assess the impact it had against its aims.

Factors that get in the way of achieving the Act's objectives:

- Complexity of the Principles analysis for most public authorities, particularly in terms of a detailed economic assessment as expected by the Statutory Guidance

- Resources and time required to undertake a detailed Principles analysis
- Complexity of navigating the Statutory Guidance and following the specific approach advised by DBT, whilst noting that the Statutory Guidance does not always provide sufficiently specific guidance on how to apply aspects of the Act and approach particular scenarios regarding Principles assessment. For instance, the guidance on the application of limb (d) of the definition of subsidy (effect on trade, investment, competition) is contradictory and provides unrealistic examples such as a rural hairdressers.

It would help if the Statutory Guidance could be updated to reflect the insight obtained by SAU via its referral review process to date, to provide guidance on specific common issues / themes seen in its work to date.

**2) Do you know of any subsidies that have not progressed because of public authority concerns over compliance with the subsidy control requirements, including the nature of any such concerns.**

We have some experience of projects being restructured to ensure no subsidy is given. This can involve scaling back projects leading to less positive outcomes.

**3) Do businesses operating or investing in the UK have sufficient certainty and confidence that subsidies will not result in materially harmful distortions of competition or are there any factors which get in the way of achieving this objective?**

The largely self-assessment nature of the regime means that competitor businesses can only have sufficient confidence that subsidies will not result in harmful distortions of competition if there are other strong controls in place that operate well. In our experience, from a competitor's perspective there is probably a feeling that sufficiently strong controls are not in place because:

- the fact that few legal challenges have so far been brought means there has been limited judicial review of the regime, and in turn there is relatively low risk to public authorities of facing a legal challenge to an unlawful subsidy assessment or decision.
- it is difficult for a competitor to decide to expend the resources to bring a claim, as it will have very limited information on which to do so (linked to the limited information required to be added to the Transparency Database, and the functionality issues with finding information in the Transparency Database) and a short limitation period to decide to issue a claim.
- we have seen cases where third party competitors are very concerned about the potential for distortive effects of a subsidy, based on the limited information made available to it in a SAU referral notification. The fact that the publicly-available information is so limited (whether at pre-SAU report stage, or following the SAU report publication) means that competitors cannot undertake an informed analysis of the potential distortion to competition. In some cases, their concerns may be justified, but in other cases it may simply be that if they had had access to some of the more detailed justifications and analysis contained in the public authority's assessment, their concerns would have been minimised or eliminated. They have only seen one side of the conversation.
- When the SAU referral report is published, competitors are then required to simply take the SAU's subsequent assessment at face value, because the report does not contain much more detail about the specifics of a public authority's Principles assessment, which might have allowed the competitor to better understand the basis for the authority's decision (or the SAU's comments).
- The SAU referral report publishes no conclusion as to compliance, despite the SAU being the only neutral third party to have seen all

of the detailed assessment information, and having the skills and knowledge to take an informed view.

- the Transparency Database has its limitations - it is not easy to search and find subsidies, it relies on very regular manual checks/searches (it doesn't allow automatic notifications to be set up to immediately notify of any updates) it doesn't require much information to be published about an award and relies on a competitor regularly monitoring it to become aware of an award.

**4) Do you have any views on how the Act contributes to meeting the UK's international commitments on subsidy control?**

Under the TCA the UK has requirements as to the independent regulator which we are not convinced the SAU's role currently meets.

**5) In what ways could the UK subsidy control regime be improved to better meet its policy intentions?**

The DBT Statutory Guidance could be improved to help public authorities undertake their assessment as to whether subsidy exists, and how to undertake Principles assessments. For instance, it could be updated to include specific insights gained by the SAU, now that the SAU has reviewed dozens of referrals since the Act came into force, and has presumably identified common themes or issues which merit a clearer explanation in the guidance, with supporting examples. This would help to flesh out the Guidance on how to apply the Principles, and use specific (anonymised where necessary) examples from real cases.

Many more additional streamlined routes could be introduced (without the need for secondary legislation), to make it easier for public authorities to award lower value subsidies in a wider range of sectors, without the need for a subsidy Principles assessment each and every time. The SAU could undertake a review of the subsidies commonly appearing in the Transparency Database to identify commonly-awarded lower value subsidies. The SAU could also look to the nature of 'Light Touch' contracts under Public Procurement legislation to identify the types/nature of sectors where subsidy awards have inherently a lower risk of distorting competition.

Improving the functionality of the Transparency Database- see below.

## **Subsidy control requirements**

**6) Does the self-assessment process work effectively?**

In our experience, public authorities are diligently attempting to engage with the self-assessment process, and it can allow for a quicker subsidy award than was the case under EU State aid, if a Commission approval was required. However, compared to State aid awards which were covered by one of the Block Exemptions, the self-assessment process under the Subsidy Control Act places a heavier burden on public authorities.

Most public authorities we advise are not sufficiently resourced to undertake the detailed Principles assessments required. The regime is still relatively new, and the Statutory Guidance is not sufficiently detailed, so it is usually necessary for most public authorities (except perhaps Central Government authorities) to pay for external specialist legal, financial and technical advisors to help them carry out a sufficiently detailed assessment. That is obviously more so the case where the subsidy is a SSOPI requiring referral to the SAU, where complex financial analysis is necessary, together with detailed analysis of the relevant sector by technical experts so that a detailed competition analysis can be done. However, even where an SAU referral is not necessary (eg because it is

below the relevant financial threshold), it is still necessary for public authorities to grapple with really complex issues to undertake a sufficiently diligent Principles assessment. In our experience, public authorities still feel the need to pay for expert advice to get such assessments right, due to a lack of specialist training and resource.

As per earlier comments, it is difficult for us (or, we think, anyone) to comment on the extent to which the self-assessment process works in terms of ensuring subsidy awards are compliant with the Act, since there is such limited scrutiny of the assessments undertaken.

**7) How well do the thresholds, exemptions and streamlined routes support the effective operation of the regime?**

The increase to the thresholds coming into force in mid-2025 is welcomed.

As is the introduction of additional streamlined routes, and we would welcome additional streamlined routes in future, to make the award of lower-risk subsidies less of a burden to public authorities.

**8) Are there any aspects of the design of the subsidy control requirements that could be improved to better meet the policy intentions of the regime?**

A change to the law regarding the subsidy control Principles would not be widely welcomed – public authorities are still getting to grips with the regime as it is now.

Clearer guidance on how to undertake a Principles assessment would be an improvement, perhaps with 'good' examples of a Principles assessment for a range of subsidy values and types, to illustrate the level of detail and types of considerations required (and those not required).

## Transparency

**9) Does the Subsidy Database provide you with sufficient information about subsidies in a user-friendly format?**

No. The information provided is so limited, it neither allows the public authority to justify its decision to award a subsidy in accordance with the Act, nor does it allow a supplier/competitor to make an informed decision whether to issue a legal challenge within the short timescales.

The format is not user-friendly – it is not searchable by public authority, nor is it immediately clear when the subsidy was actually awarded, or even the headline Principles assessment was. Information doesn't appear to have been inputted consistently by public authorities, and this questions whether it is being monitored at all.

**10) Do the additional transparency arrangements for those subsidies referred to the SAU provide sufficient information about these subsidies?**

No. SAU referral reports provide some indication of the SAU's assessment of compliance against the Principles, but it is very difficult for anyone (perhaps except those dealing with referrals within the SAU and seeing the more detailed assessment and evidence provided) to assess how well those authorities are complying with the Act when developing potential subsidies. Even those working in the SAU do not see any revised versions of the Principles Assessment which may be undertaken to address points raised in the SAU report.

**11) In what ways could the transparency of the subsidy control process be improved to better meet the policy intentions of the regime?**

- The Transparency Database could be fully searchable, for instance introducing a function to filter by public authority
- Alerts should be able to be set to inform anyone who requests it a notification about a new entry by a particular authority or sector
- Transparency Database should be monitored, to ensure that correct information is being included

- The SAU reports could include annexes with a redacted version of the public authority's Principles assessment included, so that those reading can see the detail behind the SAU's comments.

## Referrals to the SAU

**12) Does the SAU carry out its statutory role effectively to help achieve the objectives of the subsidy control regime?**

No comments to add.

**13) In what ways could the statutory role and/or practical operation of the SAU be improved to better meet the policy intentions of the regime?**

No comments to add.

## Guidance

**14) How effective and helpful is the assistance, guidance and other materials published by DBT and SAU?**

The four-step process suggested in the DBT guidance is a helpful way to approach the Principles assessment, but it requires a detailed understanding of the Act and the Guidance itself to really understand which issues need to be addressed under each step. That is in part due to the rather overlapping nature of the Principles, but also because the Statutory Guidance is not particularly easy to navigate, to ensure that all guidance relevant to a particular issue has been considered (for instance the additional information contained in Annexes could easily be missed).

The Principles assessment template document which has now been replaced was useful – it is not clear why this has been removed in favour of the less specific guidance note.

**15) In what ways could the guidance provided to public authorities or other stakeholders be improved to better increase understanding and meet the policy intentions of the regime?**

See earlier comments above at questions 1, 5, 8 and 14.

## Enforcement

**16) Are there barriers to bringing a challenge to the Tribunal and if so, what are they?**

Yes – see above comments on the limited information made available publicly via the Transparency Database and the limitations in the functionality of the database which make it a difficult initial threshold for a potential competitor to decide to issue a legal claim. Even where an enhanced degree of transparency has been provided via a SAU referral process, the information contained in the initial referral notification or the SAU reports still does not provide sufficient detail to undertake an informed assessment of compliance with the Act. Even those working in the SAU do not see any revised versions of the Principles Assessment which may be undertaken to address points raised in the SAU report.

The standard of review being judicial review means a successful challenge is very difficult.

The fact that only a very small number of legal challenges have been brought for non-compliance with the Act to date compounds the barriers as we have such limited guidance so far as to how a Court is likely to view such a claim.

17) In what ways could the statutory role and/or practical operation of the Tribunal and the ability to challenge subsidies be improved to better meet the policy intentions of the subsidy control regime?

No comments to add.

The impact of the operation of the Subsidy Control Act on competition and investment within the UK

18) Are you aware of any examples where the operation of the Act has prevented the giving of subsidies which would have had on competition and investment: - A material negative impact

No comments to add.

- No/limited negative impact

- A positive impact

19) Are there subsidies given by PAs which you consider may have had an impact – either positive or negative – on competition and investment in the UK this could include for example decisions on business location or decisions to invest/not invest in a particular business or sector?

No comments to add.

20) Can you identify any other examples of effects on competition and investment either across the economy or in particular industries (including sensitive sectors) arising from the operation of the subsidy control regime?

No comments to add.

21) In what ways could the UK subsidy control regime be improved to achieve a more beneficial impact on competition and innovation?

No comments to add.

**Womble Bond Dickinson**

**24 June 2025**

**womblebonddickinson.com**

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## **Letter from the Scottish Government: Views on the Regime**

*Separately, we received a letter from the Minister for Business and Employment setting out the Scottish Government's views on the regime. We note that this letter was sent under the previous administration, and does not necessarily reflect the views of the current Scottish Government.*

*4 July 2025*

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Sarah Cardell  
Chief Executive  
Competition and Markets Authority

[Sau-monitoringreport2026@cma.gov.uk](mailto:Sau-monitoringreport2026@cma.gov.uk)

4 July 2025

Dear Ms Cardell,

I am writing following the call for input on the effectiveness and impact of the UK Subsidy Control regime. As Minister for Business and Employment, with portfolio responsibility for Subsidy Control, I welcome the opportunity to provide input to ensuring the UK Subsidy Control regime meets the needs of all devolved nations.

Our officials are in regular contact and will be discussing in more detail, views and issues impacting the successful operation of the UK Subsidy regime. I have outlined some specific points officials have raised below:

- Scottish Government recognise the limited scope the CMA Subsidy Advice Unit (SAU) has and that it is constrained by the powers conferred on it by the Act. However, Scottish Government have consistently made representation that, in order for the UK Subsidy regime to be effective, a strong enforcement body is needed to actively ensure Public Authorities awarding subsidies abide by regulations. For example, the current regime lacks a post SAU-referral follow up to ensure that recommendations have been taken forward.
- Scottish Government have a long-standing concern over the lack of challenge and redress for non-compliant subsidies. These concerns remain over two years into the new regime and have been regularly raised with UK Government at official level.
- Scottish Government have concerns that the financial cost of raising and pursuing a challenge will discourage complainants from bringing proceedings. This could result in a growing culture of ambivalence towards the rules due to a lack of real consequences for failure to adhere to them correctly, and ultimately a risk of an increase in unlawful subsidies. The absence of case law also means there is little authoritative scrutiny of how well Public Authorities are discharging their obligations.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

- The amount of time and resources required to carry out a principles assessment is unreasonable and burdensome to Public Authorities. This goes against the initial intention of the regime, which was meant to be 'light touch'. This risks increasing the occurrence of non-compliance, especially if there is little risk of challenge or redress. Although the recent UKG commitment to review existing and create two new streamlined routes is a positive step forward, it doesn't go far enough to provide easily accessible, compliant processes for Public Authorities.
- Due to the administrative burden placed on Public Authorities the process of assessing subsidies can be confusing and daunting. This could cause non-compliance as a result of misunderstanding what is required or a reluctance to take the time to understand and follow the rules.

My officials look forward to continuing positive and constructive engagement with CMA SAU in the development of the Subsidy Control regime. Scottish Government will endeavour to ensure this strong relationship continues throughout monitoring and development of the regime.

I am copying this letter to Cabinet Secretary for Finance and Welsh Language, Rt Hon. Mark Drakeford MS and Economy Minister Dr Caoimhe Archibald MLA.

Sincerely



**RICHARD LOCHHEAD**

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## **Letter from the Welsh Government: Views on the Regime**

*Separately, we received a letter from the Cabinet Secretary for Finance and Welsh Language setting out the Welsh Government's views on the regime. We note that this letter was sent under the previous administration, and does not necessarily reflect the views of the current Welsh Government.*

*23 June 2025*



Ein cyf/Our ref MA/MDFWL/1185/25

Sarah Cardell  
Chief Executive  
Competition and Markets Authority  
[sarah.cardell@cma.gov.uk](mailto:sarah.cardell@cma.gov.uk)

23 June 2025

Dear Sarah,

I write following the publication of the "Call for Inputs" consultation, which seeks evidence on the effectiveness and impact of the UK's subsidy control regime and how it is being operated.

The Welsh Government is an equal partner in the ongoing evolution of the UK subsidy regime. As such, we will not make a formal submission to the consultation. However, I am aware that our officials are in regular contact with yours to discuss the issues raised in the consultation document in more detail and I felt it would be helpful to set out my views and concerns on the most important issues the consultation raises.

### **Changing the thresholds for referral of subsidies to the Competition and Markets Authority (CMA)**

The CMA's role in publicly quality-assuring subsidies and subsidy schemes, particularly those of higher value or with greater potential for market distortion, has proven to be valuable. However, the high number of referrals made to the CMA since the commencement of the Subsidy Control Act in January 2023, suggests that the current thresholds for both voluntary (Subsidies/Schemes of Interest (SSoI)) and mandatory (Subsidies/Schemes of Particular Interest (SSoPI)) referral are set far too low.

The current distinction between 'sensitive' and 'non-sensitive' sectors is too unsophisticated a tool to effectively filter out smaller, less distortive subsidy awards and schemes that do not warrant the additional scrutiny, whilst reliably capturing those that pose greater risks of distortion.

Additionally, the continued use of legacy subsidy schemes that pre-date the introduction of the referrals process is likely to be suppressing a greater demand for the services of the Subsidy Advice Unit. As these schemes are phased out, and inflation decreasing these thresholds year-on-year in real terms, it is likely that demand for referrals will only increase.

Although I welcome the UK Government's recent decision to revise subsidy thresholds,<sup>1</sup> they remain an unnecessarily blunt tool for determining eligibility. At a minimum, I recommend introducing a third, significantly higher threshold for Services of Public Economic Interest

<sup>1</sup> [Consultation response: refining the UK subsidy control regime - GOV.UK](#)

(SPEI). These subsidies for activities that are expected by society, such as social housing or banking services for the financially excluded, pose a lower risk of distorting competition. Enabling higher-value SPEI awards and schemes to be made without requiring CMA referral would enable public authorities to engage more rapidly to address legitimate social concerns, such as the lack of access to affordable housing. Additionally, this higher-threshold category could include sectors that are a high priority for all governments in the UK, such as extreme weather recovery and remediation subsidies in relation to health and safety.

To reduce the frequency and improve the value of the CMA referral process, there is merit in considering a model similar to the EU's State aid 'Notification' process. Under this system, larger and more distortive State Aid awards and schemes are considered by the European Commission. Following initial engagement, less contentious cases can take advantage of a 'simplified procedure' that reduces the time and evidence burdens on both the notifying authority and the Commission.

Following engagement through the informal pre-referral process, the CMA could determine a proposal is sufficiently low-risk or low value to warrant a more light-touch scrutiny process. For instance, a flammable cladding remediation scheme for high-rise social housing may not require the same level of oversight as more distortive subsidies. Introducing such a tier would reduce the CMA's workload while increasing the credibility of the full referral process, which would then be reserved for only the most distortive subsidies and schemes. The rigid rules of the current regime, which do not account for context or the risk of distortion, would benefit from this more flexible, risk-based approach.

Given that no SSols have been referred to the CMA since the subsidy regime's commencement two years ago, this could be the ideal opportunity to re-evaluate the need for this category or reinvent it as a light-touch procedure. Allowing the CMA to offer referring authorities such a mechanism in lower-risk situations would allow them to test their understanding in novel matters irrespective of threshold. As the subsidy control regime matures, the need for SSols should naturally diminish.

Finally, the introduction of a requirement for public authorities to respond to a report from the Subsidy Advice Unit would improve the transparency of policymaking and reduce the risk of unnecessary legal challenge. A public authority could demonstrate how they have implemented the SAU's comments through an updated principles assessment. The SAU's follow up response, potentially far less detailed than a full re-referral, would improve understanding of the referral process and lead to better quality of submissions in the future.

## **Streamlined Routes**

Whilst I welcome the UK Government's recent decision to introduce two new streamlined routes, I believe there is scope for far greater ambition in the use of this mechanism. Having a greater number of streamlined routes across a wide range of policy areas would allow public authorities to act rapidly in areas of common interest. Allowing certain types of subsidies to be awarded without the need to carry out a full subsidy principles assessment (SPA), appears to be a sensible approach that has not yet been sufficiently explored.

Judging by the low number of entries recorded on the UK subsidy transparency database, only around 2% of UK subsidies awarded have taken advantage of the existing streamlined routes. In contrast, within the EU more than 96% of new measures fall within their GBER pre-determined schemes.<sup>2</sup> This seems like a missed opportunity to provide greater certainty and assurance to public authorities seeking to provide targeted support to enterprises in the priority areas of UK policy with the lowest possible risk.

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<sup>2</sup> [General Block Exemption Regulation | EUR-Lex](#)

Expanding the use of streamlined routes to cover areas such as training aid, social and affordable housing, ICT infrastructure, green technology, disaster recovery and regeneration of low-Gross Value Added areas, particularly those aligned with the “Invest 2035” priorities, would enable faster and more coordinated public support for key sectors. This would also enhance resilience to climate impacts and stimulate inclusive economic growth across the UK.

### **Clarification Around the Definition of an “Enterprise”**

Too often policy officials are having to interpret the statutory guidance on whether an organisation is an enterprise rather than being able to apply a simple and clear definition. I would welcome greater clarity, particularly by defining when a grant recipient is seen to be undertaking ‘economic’ or ‘non-economic’ activity, which determines whether they are subject to the UK subsidy regime.

A formal threshold or agreed definition of the “20% rule” would be helpful. This would outline the maximum proportion of a beneficiary’s overall activity that can be ‘economic’ in nature before they are considered to be an enterprise. Such a definition would help consolidate or disambiguate the different references across legislation and guidance. Ambiguities of this nature could be addressed effectively through secondary legislation, imposing a clear and unequivocal set of criteria and reduce the risk of misinterpretation.

### **Enforcement**

I believe the CMA should be empowered to take on a more active role in the enforcement of the subsidy control regime. The current approach, with subsidy decisions only being challengeable by interested parties at the Competition Appeal Tribunal, means that only those with substantial financial resources can challenge a decision. There have been 37,000 subsidy awards and 11,000 subsidy schemes registered in the first two years of the regime’s operation, yet there have only been four legal challenges. This low number of challenges does not indicate a robustly enforced subsidy regime, nor one that is accessible to the majority of businesses. Rather, it highlights a potential gap in oversight and accountability. Allowing the CMA to take on an active policing role, akin to that of the European Commission within the EU State aid rules, would help ensure a more equitable and transparent subsidy regime.

I am copying this letter to Minister for Business Richard Lochhead MSP and Economy Minister Dr Caoimhe Archibald MLA.

Yours sincerely,



### **Mark Drakeford AS/MS**

Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg  
Cabinet Secretary for Finance and Welsh Language