



Subsidy Control Act 2022

2022 CHAPTER 23

PART 2

SUBSIDY CONTROL REQUIREMENTS

CHAPTER 2

PROHIBITIONS AND OTHER REQUIREMENTS

Ailing or insolvent enterprises

19 Rescuing

- (1) A subsidy for rescuing an ailing or insolvent enterprise is prohibited by this section unless the conditions in subsections (2) to (4) are met.
- (2) The condition in this subsection is that the subsidy is given during the preparation by the enterprise of a restructuring plan for the purposes of section 20(2).
- (3) The condition in this subsection is that the subsidy consists of temporary liquidity support in the form of a loan or loan guarantee.
- (4) The condition in this subsection is that the public authority giving the subsidy is satisfied that—
 - (a) the subsidy contributes to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate, or
 - (b) there are exceptional circumstances that justify the subsidy being given despite its not contributing as mentioned in paragraph (a).
- (5) This section does not apply to a subsidy for rescuing an ailing or insolvent enterprise that is a deposit taker or insurance company.

Status: This is the original version (as it was originally enacted).

20 Restructuring

- (1) A subsidy for restructuring an ailing or insolvent enterprise is prohibited by this section unless the conditions in subsections (2) to (6) are met.
- (2) The condition in this subsection is that the enterprise has prepared a restructuring plan.
- (3) The condition in this subsection is that the public authority giving the subsidy is satisfied that the restructuring plan—
 - (a) is credible,
 - (b) is based on realistic assumptions, and
 - (c) is prepared with a view to ensuring the return to long-term viability of the enterprise within a reasonable time period.
- (4) The condition in this subsection is that—
 - (a) the enterprise is a small or medium-sized enterprise, or
 - (b) the enterprise or its owners, creditors or new investors—
 - (i) have contributed significant funds or assets to the cost of the restructuring, or
 - (ii) have a contractual obligation to do so.
- (5) The condition in this subsection is that the public authority giving the subsidy is satisfied that—
 - (a) the subsidy contributes to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate, or
 - (b) there are exceptional circumstances that justify the subsidy being given despite its not contributing as mentioned in paragraph (a).
- (6) The condition in this subsection is that—
 - (a) a subsidy has not previously been given for restructuring the enterprise, or
 - (b) five years have passed since the last time a subsidy was given for restructuring the enterprise.
- (7) But a subsidy is not prohibited by reason only of the condition in subsection (6) not being met if the public authority giving the subsidy is satisfied that the circumstances that have given rise to the need for the subsidy were—
 - (a) unforeseeable, and
 - (b) not caused by the beneficiary of the subsidy.
- (8) This section does not apply to a subsidy for restructuring an ailing or insolvent enterprise that is a deposit taker or insurance company.

21 Restructuring deposit takers or insurance companies

- (1) A subsidy for restructuring an ailing or insolvent deposit taker or insurance company is prohibited by this section unless the conditions in subsections (2) to (4) are met.
- (2) The condition in this subsection is that—
 - (a) the subsidy is given on the basis of a restructuring plan, and
 - (b) the public authority giving the subsidy is satisfied that the restructuring plan—
 - (i) is credible, and
 - (ii) is likely to restore long-term viability.

Status: This is the original version (as it was originally enacted).

- (3) The condition in this subsection is that the beneficiary of the subsidy, its shareholders, its creditors or the business group to which the beneficiary belongs—
 - (a) have contributed significantly to the restructuring costs from their own resources, or
 - (b) have a contractual obligation to do so.
- (4) The condition in this subsection is that the public authority giving the subsidy has been or reasonably expects to be properly remunerated for the subsidy.

22 Liquidating deposit takers or insurance companies

- (1) A subsidy to an ailing or insolvent deposit taker or insurance company within subsection (2) is prohibited by this section unless the conditions in subsections (3) to (5) are met.
- (2) A deposit taker or insurance company is within this subsection if it cannot be credibly demonstrated that it is capable of being returned to long-term viability.
- (3) The condition in this subsection is that the subsidy is given to the deposit taker or insurance company for the purpose of ensuring its orderly liquidation and exit from the market.
- (4) The condition in this subsection is that the public authority giving the subsidy is satisfied that—
 - (a) the subsidy is limited to what is needed for the purpose mentioned in subsection (3), and
 - (b) the subsidy is limited so as to minimise its negative effect on—
 - (i) competition or investment within the United Kingdom,
 - (ii) trade between the United Kingdom and countries and territories outside the United Kingdom, and
 - (iii) investment as between the United Kingdom and countries and territories outside the United Kingdom.
- (5) The condition in this subsection is that the beneficiary of the subsidy, its shareholders, its creditors or the business group to which the beneficiary belongs—
 - (a) have contributed significantly to the liquidation costs from their own resources, or
 - (b) have a contractual obligation to do so.

23 Liquidity provision for deposit takers or insurance companies

- (1) A subsidy to support liquidity provision for an ailing or insolvent deposit taker or insurance company is prohibited by this section unless the conditions in subsections (2) to (4) are met.
- (2) The condition in this subsection is that the subsidy is temporary.
- (3) The condition in this subsection is that it is a condition of the giving of the subsidy that it is not used to absorb losses and does not become capital support.
- (4) The condition in this subsection is that the public authority giving the subsidy has been or reasonably expects to be properly remunerated for the subsidy.

Status: This is the original version (as it was originally enacted).

24 Meaning of “ailing or insolvent”

- (1) For the purposes of sections 19 to 23, a deposit taker, insurance company or other enterprise is “ailing or insolvent” if—
 - (a) it would almost certainly go out of business in the short to medium term without subsidies,
 - (b) it is unable to pay its debts as they fall due, or
 - (c) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
- (2) The Secretary of State may by regulations make provision as to when a deposit taker, insurance company or other enterprise is, or is not, to be regarded as meeting the condition in paragraph (a) of subsection (1).
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

25 Meaning of “deposit taker”

- (1) In sections 19 to 24, “deposit taker” means a person who has permission to carry on the regulated activity of accepting deposits under—
 - (a) Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activities), or
 - (b) paragraph 15 of Schedule 3 to that Act (EEA passport rights), as it has effect as a result of section 409 of that Act (Gibraltar).
- (2) But “deposit taker” does not include a person who has permission to carry on the regulated activity of accepting deposits only for the purposes of, or in the course of, carrying on another regulated activity.
- (3) In this section “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

26 Meaning of “insurance company”

- (1) In sections 19 to 24, “insurance company” means a body corporate that has permission to carry on the regulated activity of effecting or carrying out contracts of insurance under—
 - (a) Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activities), or
 - (b) paragraph 15 of Schedule 3 to that Act (EEA passport rights), as it has effect as a result of section 409 of that Act (Gibraltar).
- (2) But “insurance company” does not include—
 - (a) a registered society within the meaning of the [Co-operative and Community Benefit Societies Act \(Northern Ireland\) 1969 \(c. 24 \(N.I.\)\)](#),
 - (b) a friendly society within the meaning of the Friendly Societies Act 1992,
 - (c) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, or
 - (d) a member of Lloyd’s that is not a company within the meaning of the Companies Acts (see sections 1(1) and 2(1) of the Companies Act 2006).

Status: *This is the original version (as it was originally enacted).*

- (3) In this section “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.