



Subsidy Control Act 2022

2022 CHAPTER 23

PART 2

SUBSIDY CONTROL REQUIREMENTS

CHAPTER 1

PRINCIPLES

12 Application of the subsidy control principles

- (1) A public authority—
 - (a) must consider the subsidy control principles before deciding to give a subsidy, and
 - (b) must not give the subsidy unless it is of the view that the subsidy is consistent with those principles.
- (2) In subsection (1) “subsidy” does not include a subsidy given under a subsidy scheme.
- (3) A public authority—
 - (a) must consider the subsidy control principles before making a subsidy scheme, and
 - (b) must not make the scheme unless it is of the view that the subsidies provided for by the scheme will be consistent with those principles.

13 Application of the energy and environment principles

- (1) A public authority—
 - (a) must consider the energy and environment principles before deciding to give a subsidy in relation to energy and environment, and
 - (b) must not give the subsidy unless it is of the view that the subsidy is consistent with those principles.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1) “subsidy” does not include a subsidy given under a subsidy scheme.
- (3) A public authority—
 - (a) must consider the energy and environment principles before making a subsidy scheme that provides for the giving of subsidies in relation to energy and environment, and
 - (b) must not make the scheme unless it is of the view that the subsidies provided for by the scheme will be consistent with those principles.
- (4) A duty under this section applies in addition to the corresponding duty under section 12.

CHAPTER 2

PROHIBITIONS AND OTHER REQUIREMENTS

Introductory

14 Introductory

This Chapter—

- (a) prohibits the giving of certain subsidies, and
- (b) imposes other requirements in relation to the giving of certain other subsidies.

General prohibitions

15 Unlimited guarantees

A subsidy in the form of a guarantee of the debts or liabilities of an enterprise is prohibited by this section if—

- (a) there is no limit as to the amount of the debts or liabilities that are guaranteed, or
- (b) there is no limit as to the duration of the guarantee.

16 Export performance

- (1) A subsidy that is contingent in law or in fact, whether solely or as one of several other conditions, upon export performance relating to goods or services is prohibited by this section.
- (2) But this section does not prohibit a subsidy in the form of—
 - (a) short-term export credit insurance against risks that are not marketable risks, or
 - (b) an export credit, export credit guarantee or insurance programme that is permissible in accordance with the SCM Agreement.
- (3) In this section—

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“export credit insurance” means insurance against commercial or political risks relating to the payment obligations of public or non-public customers in export transactions;

“marketable risks” means risks relating to the payment obligations of public or non-public customers in marketable risk countries;

“marketable risk country” means (subject to subsection (4))—

- (a) the United Kingdom,
- (b) a member State of the European Union,
- (c) Australia,
- (d) Canada,
- (e) Iceland,
- (f) Japan,
- (g) New Zealand,
- (h) Norway,
- (i) Switzerland, and
- (j) the United States of America;

“short-term export credit insurance” means export credit insurance with a risk period of less than two years;

“the SCM Agreement” means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (read with any adjustments necessary for context).

- (4) A marketable risk country is to be treated for the purposes of this section as not being a marketable risk country if regulations made by the Secretary of State provide for the marketable risk country to be so treated.
- (5) The Secretary of State may make regulations under subsection (4) in respect of a marketable risk country only if satisfied that there is a lack of sufficient private market capacity because of—
 - (a) a significant contraction of private credit insurance capacity,
 - (b) a significant deterioration of sovereign sector rating, or
 - (c) a significant deterioration of corporate sector performance.
- (6) The Secretary of State must by further regulations under subsection (4) revoke regulations under that subsection in respect of a marketable risk country if the Secretary of State ceases to be satisfied as mentioned in subsection (5).
- (7) Regulations under subsection (4) are subject to the negative procedure.
- (8) For the purposes of this section, a subsidy is contingent in fact upon export performance if the giving of the subsidy (without having been made legally contingent upon export performance) is in fact tied to actual or anticipated exportation or export earnings.
- (9) For the avoidance of doubt, a subsidy is not prohibited by this section by reason only of the fact that it is given to an enterprise that is engaged in an economic activity that entails exporting goods or services.

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17 Use of domestic goods or services

- (1) A subsidy that is contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services is prohibited by this section.
- (2) The prohibition in subsection (1) does not apply so far as relating to subsidies given in relation to the audiovisual sector.
- (3) This section is without prejudice to—
 - (a) Article 132 of the Trade and Cooperation Agreement (investment liberalisation: performance requirements), or
 - (b) Article 133 of that Agreement (investment liberalisation: non-conforming measures and exceptions).

18 Relocation of activities

- (1) A subsidy is prohibited by this section if—
 - (a) it is given to an enterprise subject to a condition that the enterprise relocates all or part of its existing economic activities, and
 - (b) the relocation of those activities would not occur but for the giving of the subsidy.
- (2) For the purpose of subsection (1), an enterprise relocates existing activities if—
 - (a) it is carrying on activities in an area of the United Kingdom before the subsidy is given, and
 - (b) it ceases to carry on those activities in that area after the subsidy is given and instead carries them on in another area of the United Kingdom.
- (3) The reference in subsection (1) to economic activities is a reference to any economic activity that entails offering goods or services on a market.
- (4) The prohibition in subsection (1) does not apply if the public authority giving the subsidy is satisfied that the conditions in subsections (5) to (7) are met.
- (5) The condition in this subsection is that the effect of the subsidy is to reduce the social or economic disadvantages of the area that would benefit from the giving of the subsidy.
- (6) The condition in this subsection is that the giving of the subsidy results in an overall reduction in the social or economic disadvantages within the United Kingdom generally.
- (7) The condition in this subsection is that the subsidy is designed to bring about a change in the size, scope or nature of the existing economic activities referred to in subsection (1)(a).

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).

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- (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.

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

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(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.

(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.

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.

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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).
- (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.

Other specific prohibitions and requirements

27 Subsidies for insurers that provide export credit insurance

- (1) A subsidy to an insurer that provides export credit insurance is prohibited by this section unless the subsidy is given subject to a condition that—
- (a) any export credit insurance provided by the insurer against marketable risks is provided on a commercial basis, and
 - (b) the subsidy is not used to directly or indirectly benefit so much of the insurer’s business as consists of providing export credit insurance against marketable risks.
- (2) In this section—
- “export credit insurance” has the same meaning as in section 16;
- “insurer” means a person who 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);
- “marketable risks” has the same meaning as in section 16;
- “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.

28 Subsidies for air carriers for the operation of routes

- (1) A subsidy to an air carrier for the operation of a route is prohibited by this section unless the condition in subsection (2), (3) or (4) is met.
- (2) The condition in this subsection is that operating the route is a public service obligation of the air carrier imposed under—
 - (a) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the United Kingdom, or
 - (b) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (as it has effect in EU law).
- (3) The condition in this subsection is that the public authority giving the subsidy is satisfied that the subsidy will provide benefits for society at large.
- (4) The condition in this subsection is that—
 - (a) the subsidy is a start-up subsidy for opening a new route to a regional airport, and
 - (b) the public authority giving the subsidy is satisfied that the new route will increase the mobility of citizens and stimulate regional development.

29 Services of public economic interest

- (1) The requirements in subsections (2) and (3) apply in relation to the giving of a subsidy to a SPEI enterprise for the purpose of the provision of SPEI services.
- (2) The public authority giving the subsidy must be satisfied that the amount of the subsidy is limited to what is necessary to deliver the SPEI services, having regard to—
 - (a) costs in delivering the SPEI services, and
 - (b) reasonable profits to be made in doing so.
- (3) The subsidy must be given in a transparent manner.
- (4) For the purposes of subsection (3), a subsidy is given in a “transparent manner” only if—
 - (a) the subsidy is given in accordance with a written contract or other legally enforceable arrangement in writing,
 - (b) the terms on which the subsidy is given are set out in the contract or arrangement, and
 - (c) the contract or arrangement includes the information in subsection (5).
- (5) The information is—
 - (a) the SPEI services in respect of which the subsidy is given;
 - (b) the SPEI enterprise that is tasked with providing the SPEI services;
 - (c) the period for which the SPEI services are to be provided (“the delivery period”);
 - (d) the geographic area in which the SPEI services are to be provided;
 - (e) how the amount of subsidy given in respect of the SPEI services is determined;
 - (f) arrangements for the purposes of subsection (6) in respect of reviews and steps that may be taken for recovery.

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- (6) Where a subsidy is given to a SPEI enterprise, the public authority giving the subsidy—
- (a) must, during the delivery period, keep under regular review the use of the subsidy to ensure that the condition in subsection (2) continues to be met, and
 - (b) must take steps, in accordance with its rights under the contract or arrangement mentioned in subsection (4), to recover a subsidy to the extent that the condition in subsection (2) ceases to be met.
- (7) For the purposes of the duty in subsection (6)(a), checks must be carried out as to the use of a subsidy—
- (a) at least once every 3 years beginning with the day when the delivery period begins, and
 - (b) at the end of the delivery period.
- (8) The duties under section 12(1) apply to the giving of a subsidy in accordance with this section to a SPEI enterprise for the provision of SPEI services only so far as the carrying out of that duty does not obstruct the carrying out of those services.
- (9) In this Act—
- “SPEI enterprise” means an enterprise that is assigned with particular tasks in the public interest (including public service obligations);
- “SPEI services” means services provided in the carrying out of those tasks.

Subsidy schemes

30 Effect of prohibitions etc in relation to subsidy schemes

- (1) The preceding provisions of this Chapter relating to subsidies do not apply to a subsidy given under a subsidy scheme.
- (2) A subsidy scheme is prohibited by this section to the extent that it provides for the giving of a subsidy that would, but for subsection (1), be prohibited by, or in contravention of, a requirement imposed by any preceding provision of this Chapter.

Subsidies or schemes subject to mandatory referral

31 Subsidies or schemes subject to mandatory referral

- (1) A subsidy, or subsidy scheme, in respect of which a public authority must request a report from the CMA under section 52(1), is prohibited if—
 - (a) a mandatory referral request has not been submitted in relation to it,
 - (b) a mandatory referral request has been submitted, but the CMA has given a notice under section 53(1)(b) that the request does not comply with the requirements under section 52,
 - (c) a mandatory referral request has been submitted, the CMA report has not been published but the reporting period has not expired, or
 - (d) a mandatory referral request has been submitted, the CMA report has been published but the cooling off period has not expired.

- (2) References in subsection (1) to publication of the CMA report are references to the report required under section 53 to be published by the CMA in response to a mandatory referral request.
- (3) In subsection (1)—
- “cooling off period” has the meaning given by section 54(2);
 - “mandatory referral request” means a request made under section 52;
 - “reporting period” has the meaning given by section 53(3).

CHAPTER 3

TRANSPARENCY

32 Subsidy database

- (1) The Secretary of State must make arrangements for the provision of a database of subsidies and subsidy schemes for the purposes of this Part (“the subsidy database”).
- (2) The Secretary of State must ensure that—
- (a) the subsidy database is accessible to the public free of charge,
 - (b) public authorities are able to edit the subsidy database for the purpose of carrying out their duties under section 33, and
 - (c) the subsidy database is kept under review in such manner and at such intervals as the Secretary of State considers appropriate.
- (3) The Secretary of State may direct the CMA to perform on behalf of the Secretary of State the duties under this section.

33 Duty to include information in the subsidy database

- (1) A public authority must ensure that an entry in the subsidy database is made in respect of—
- (a) a subsidy given by the authority (subject to subsection (2)), and
 - (b) a subsidy scheme made by the authority.
- (2) Subsection (1)(a) does not apply to a subsidy if—
- (a) it is given under a subsidy scheme,
 - (b) an entry is made in the subsidy database in respect of the scheme, and
 - (c) the amount of the subsidy is no more than £100,000.
- (3) An entry in the subsidy database must be made in respect of a subsidy or scheme—
- (a) if given as a subsidy in the form of a tax measure, within one year beginning with the date of the tax declaration,
 - (b) if made as a subsidy scheme in the form of a tax measure, within three months of the confirmation of the decision to make the scheme, or
 - (c) if given or made in any other form, within three months of confirmation of the decision to give the subsidy or make the subsidy scheme.

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- (4) A public authority must ensure that an entry it makes under this section is maintained on the subsidy database for six years beginning with the date on which the entry is made, or for the duration of the subsidy or scheme if longer.
- (5) Where a subsidy or subsidy scheme is modified, the public authority must ensure that the modification is entered in the subsidy database—
 - (a) within one year of the date of the modification, in respect of a subsidy given in the form of a tax measure,
 - (b) within three months of the date of the modification, in respect of a subsidy scheme made in the form of a tax measure, or
 - (c) within three months of the date of the modification, in respect of a subsidy given, or subsidy scheme made, in any other form.
- (6) Subsection (5) does not apply to the modification of a subsidy if—
 - (a) the subsidy is one to which subsection (2) applied, and
 - (b) the amount of the subsidy as modified is no more than the applicable amount.
- (7) For the purpose of subsection (6)(b) “the applicable amount” is—
 - (a) the amount specified in subsection (2)(c), or
 - (b) if regulations under subsection (9)(b) provide for a different amount in relation to the subsidy, that amount.
- (8) For the purpose of subsection (2)(c)—
 - (a) if the subsidy is provided in cash, the gross cash amount given is to be used in determining the amount of the subsidy;
 - (b) if the subsidy is provided otherwise than in cash, the amount of the subsidy given is to be determined by reference to the gross cash equivalent of the subsidy.
- (9) The Secretary of State may by regulations—
 - (a) substitute a different amount for the amount specified in subsection (2)(c);
 - (b) provide for a different amount to apply, instead of an amount specified in subsection (2)(c), in the case of particular descriptions of subsidy.
- (10) An amount specified in regulations under subsection (9) may not exceed £500,000.
- (11) The Secretary of State may by regulations—
 - (a) amend subsection (3) or (5) so as to substitute a different period of time for the period of time specified;
 - (b) provide for a different period of time to apply, instead of a period of time specified in subsection (3) or (5) in the case of particular descriptions of subsidy or subsidy scheme.
- (12) A period of time specified in regulations under subsection (11) may not exceed—
 - (a) one year in respect of a subsidy given in the form of a tax measure;
 - (b) one year in respect of a subsidy scheme made in the form of a tax measure;
 - (c) six months in respect of a subsidy given or scheme made in any other form.
- (13) Regulations under subsection (9) or (11) are subject to the affirmative procedure.

34 Information to be included in the subsidy database

- (1) The Secretary of State may by regulations make provision about the information that must be included in a public authority's entry in the subsidy database in relation to a subsidy or subsidy scheme.
- (2) The regulations may, in particular, require a public authority's entry to include—
 - (a) the power under which the subsidy is given;
 - (b) the policy objective of the subsidy or scheme;
 - (c) the name of the beneficiary to which the subsidy is given;
 - (d) the date the public authority confirms the decision to give the subsidy or make the scheme;
 - (e) the duration of the subsidy or scheme;
 - (f) any time limits or other conditions attached to the use of the subsidy or scheme;
 - (g) the amount of the subsidy or scheme or the amount budgeted for the subsidy or scheme;
 - (h) the location of any of the information mentioned in paragraphs (a) to (g) and subsection (3);
 - (i) the location of any other publicly available information relating to the subsidy or scheme.
- (3) In relation to subsidy schemes, the regulations may require a public authority's entry to include—
 - (a) the categories of beneficiary eligible to receive subsidies under the scheme;
 - (b) the terms and conditions for subsidy eligibility;
 - (c) the basis for the calculation of the subsidy including any relevant conditions relating to subsidy ratios.
- (4) Regulations under this section are subject to the negative procedure.