



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 3

#### EXEMPTIONS

### CHAPTER 2

#### MINIMAL OR SPEI FINANCIAL ASSISTANCE

##### *General*

#### **40 Mergers and acquisitions**

- (1) Subsection (2) applies where—
- (a) all or part of the undertaking, property and liabilities of an enterprise (enterprise A) are transferred to another existing enterprise (enterprise B), and
  - (b) minimal or SPEI financial assistance was given to enterprise A before the transfer.
- (2) In determining whether a relevant threshold is exceeded in respect of enterprise B—
- (a) in a case where all of the undertaking, property and liabilities of enterprise A is transferred, any minimal or SPEI financial assistance given to enterprise A before the transfer is to be treated, on and after the transfer, as if given to enterprise B;
  - (b) in a case where only part of the undertaking, property and liabilities of enterprise A is transferred, the proportionate part of the minimal or SPEI financial assistance given to enterprise A before the transfer is to be treated, on and after the transfer, as given to enterprise B.
- (3) Subsection (4) applies where—

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- (a) all or part of the undertaking, property and liabilities of two or more enterprises (the predecessor enterprises) are transferred to a new enterprise (the successor enterprise), and
  - (b) minimal or SPEI financial assistance was given to one or more of the predecessor enterprises before the transfer.
- (4) In determining whether a relevant threshold is exceeded in respect of the successor enterprise—
  - (a) in a case where all of the undertaking, property and liabilities of the predecessor enterprises is transferred, any minimal or SPEI financial assistance given to the predecessor enterprises before the transfer is to be treated, on and after the transfer, as if given to the successor enterprise;
  - (b) in a case where only part of the undertaking, property and liabilities of the predecessor enterprises is transferred, the proportionate part of the minimal or SPEI financial assistance given to the predecessor enterprises before the transfer is to be treated, on and after the transfer, as if given to the successor enterprise.
- (5) The “proportionate part” of minimal or SPEI financial assistance is—
  - (a) such part of the assistance as is fairly attributable to the activities carried on by the part of the undertaking that is transferred, or
  - (b) if it is not reasonably practicable to apply paragraph (a), such part of the assistance that is proportionate to the value of the part of the undertaking that is transferred.
- (6) Any minimal or SPEI financial assistance that is attributed to enterprise B, or to a successor enterprise, by virtue of this section is to be treated as such assistance lawfully given to enterprise B, or the successor enterprise, in accordance with this Chapter.
- (7) In this section “relevant threshold” means the total amount specified in section 36(1) or (as the case may be) section 38(1).

#### **Commencement Information**

- I1** S. 40 not in force at Royal Assent, see [s. 91\(2\)](#)
- I2** [S. 40](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

## **41 Exemption for certain subsidies given to SPEI enterprises**

- (1) The requirements as to transparency in Chapter 3 of Part 2 do not apply to a subsidy given to a SPEI enterprise for the purpose of the provision of SPEI services, where the subsidy is no more than £100,000.
- (2) For the purposes of subsection (1)—
  - (a) if assistance is provided in cash, the gross cash amount given is to be used in determining the amount of the assistance;
  - (b) if assistance is provided otherwise than in cash, the amount of assistance given is to be determined by reference to the gross cash equivalent of the assistance.

#### **Commencement Information**

- I3** S. 41 not in force at Royal Assent, see [s. 91\(2\)](#)

**14** [S. 41](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

## **42 Chapter 2: supplementary and interpretative provision**

- (1) The Secretary of State may by regulations—
  - (a) amend section 36(1), 38(1) or 41(1) so as to substitute a different amount for the amount specified;
  - (b) provide for a lower amount to apply, instead of an amount specified in section 36(1), 38(1) or 41(1), in the case of particular descriptions of subsidy;
  - (c) amend section 36(4) or 38(4) so as to substitute a different amount for the amount specified;
  - (d) provide for a different amount to apply, instead of an amount specified in section 36(4) or 38(4), in the case of particular descriptions of subsidy.
- (2) The power to make regulations under subsection (1)(a) may be exercised so as to substitute a higher amount for the purpose of securing that the amount specified in sterling is up to an equivalent of—
  - (a) 325,000 special drawing rights, in the case of the amount specified in section 36(1);
  - (b) 750,000 special drawing rights, in the case of the amount specified in section 38(1);
  - (c) 15,000,000 special drawing rights, in the case of the amount specified in section 41(1).

The amount determined as a result of the currency conversion carried out for this purpose may be rounded up or down to such convenient number as the Secretary of State thinks appropriate.
- (3) For the purpose of determining the equivalent in sterling on a particular day of a sum expressed in special drawing rights, one special drawing right is to be treated as such sum in sterling as the International Monetary Fund have fixed as being equivalent to one special drawing right—
  - (a) for that day, or
  - (b) if no sum has been fixed for that day, the last day before that day for which a sum has been so fixed.
- (4) An amount specified in regulations under subsection (1)(c) or (d) which amend section 36(4) may not exceed the amount specified in section 36(1).
- (5) An amount specified in regulations under subsection (1)(c) or (d) which amend section 38(4) may not exceed the amount specified in section 38(1).
- (6) Regulations under subsection (1) are subject to the affirmative procedure.
- (7) The following definitions apply for the purposes of this Chapter.
- (8) “Minimal or SPEI financial assistance” means a subsidy given—
  - (a) as minimal financial assistance,
  - (b) as SPEI assistance,
  - (c) before IP completion day under—
    - (i) [Commission Regulation \(EU\) No 360/2012](#) of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning

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- of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest,
- (ii) [Commission Regulation \(EU\) No 1407/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid,
  - (iii) [Commission Regulation \(EU\) No 1408/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, or
  - (iv) [Commission Regulation \(EU\) No 717/2014](#) of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector,
- (d) after IP completion day under any of the Regulations mentioned in paragraph (c) by virtue of the Northern Ireland Protocol, or
  - (e) after IP completion day and before the coming into force of this section under Article 364(4) or 365(3) of the Trade and Cooperation Agreement.
- (9) “Financial year” means a period of 12 months ending with 31 March.
- (10) “Minimal financial assistance” has the meaning given by section 36(3).
- (11) “SPEI assistance” has the meaning given by section 38(3).

#### Commencement Information

- I5** S. 42 in force at Royal Assent for specified purposes, see [s. 91\(1\)\(b\)](#)
- I6** [S. 42](#) in force at 4.1.2023 in so far as not already in force by [S.I. 2022/1359](#), [reg. 2](#)

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