



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 3

#### EXEMPTIONS

### CHAPTER 2

#### MINIMAL OR SPEI FINANCIAL ASSISTANCE

##### *Minimal financial assistance*

#### **36 Minimal financial assistance**

- (1) The subsidy control requirements do not apply to minimal financial assistance given to an enterprise if the total amount of minimal or SPEI financial assistance given to the enterprise within the applicable period does not exceed £315,000.
- (2) The applicable period is the period comprising—
  - (a) the elapsed part of the current financial year, and
  - (b) the two financial years immediately preceding the current financial year.
- (3) “Minimal financial assistance” means a subsidy given under this section, and for this purpose a subsidy is given under this section if the authority that is giving the subsidy provides to the enterprise that receives it a minimal financial assistance confirmation (see section 37(5)).
- (4) In subsection (1), the reference to the subsidy control requirements does not include the requirements as to transparency in Chapter 3 of Part 2 except in relation to the giving of a subsidy as minimal financial assistance if the amount of the subsidy is no more than £100,000.
- (5) For the purposes of this section—

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*Changes to legislation: There are currently no known outstanding effects for the Subsidy Control Act 2022, CHAPTER 2. (See end of Document for details)*

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- (a) if minimal financial assistance is provided in cash, the gross cash amount given is to be used in determining the amount of assistance;
  - (b) if minimal financial 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.
- (6) This section does not authorise the giving of a subsidy relating to goods that is in contravention of section 16 (export performance) or 17 (use of domestic goods or services).
- (7) In subsection (2)—
- (a) the “current financial year” is the financial year in which the minimal financial assistance is given, and
  - (b) the “elapsed part” of that year is so much of it as has passed at the time when it is given.

#### **Commencement Information**

- I1** S. 36 not in force at Royal Assent, see [s. 91\(2\)](#)  
**I2** [S. 36](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

### **37 Section 36: procedural requirements**

- (1) Before giving minimal financial assistance, a public authority must give to the enterprise a minimal financial assistance notification.
- (2) A “minimal financial assistance notification” means a written statement—
  - (a) explaining that the authority is proposing to give to the enterprise a subsidy by way of minimal financial assistance,
  - (b) specifying the gross value amount of the assistance, and
  - (c) requesting written confirmation from the enterprise that the total amount specified in section 36(1) will not be exceeded by the enterprise receiving the proposed assistance.
- (3) The public authority may proceed to give the assistance only after it has received the confirmation referred to in subsection (2)(c).
- (4) On giving the assistance, the public authority must provide to the enterprise a minimal financial assistance confirmation.
- (5) A “minimal financial assistance confirmation” means a written statement confirming—
  - (a) that the subsidy is given as minimal financial assistance,
  - (b) the date on which it is given, and
  - (c) the gross value amount of the assistance.
- (6) The enterprise must keep a written record detailing—
  - (a) that it has received a subsidy by way of minimal financial assistance,
  - (b) the date on which it was given, and
  - (c) the gross value amount of the assistance.

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- (7) The record required by subsection (6) must be kept for at least three years beginning with the date mentioned in paragraph (b) of that subsection.
- (8) In this section—
- “the enterprise” means the enterprise that receives, or would receive, minimal financial assistance;
  - “gross value amount” of minimal financial assistance means the gross cash amount (see subsection (5)(a) of section 36) or the gross cash equivalent (see subsection (5)(b) of that section).

#### Commencement Information

- I3** S. 37 not in force at Royal Assent, see [s. 91\(2\)](#)
- I4** [S. 37](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

### *Services of public economic interest assistance*

## **38 Services of public economic interest assistance**

- (1) The subsidy control requirements do not apply to SPEI assistance given to an enterprise if the total amount of minimal or SPEI financial assistance given to the enterprise within the applicable period does not exceed £725,000.
- (2) The applicable period is the period comprising—
- (a) the elapsed part of the current financial year, and
  - (b) the two financial years immediately preceding the current financial year.
- (3) “SPEI assistance” means a subsidy given under this section, and for this purpose a subsidy is given under this section if—
- (a) it is given to a SPEI enterprise for the purposes of the provision of SPEI services, and
  - (b) the authority giving the subsidy provides to the enterprise a SPEI assistance confirmation (see section 39(5)).
- (4) In subsection (1), the reference to the subsidy control requirements does not include the requirements as to transparency in Chapter 3 of Part 2 except in relation to the giving of a subsidy as SPEI assistance if the amount of the subsidy is no more than £100,000.
- (5) For the purposes of this section—
- (a) if SPEI assistance is provided in cash, the gross cash amount given is to be used in determining the amount of assistance;
  - (b) if SPEI 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.
- (6) This section does not authorise the giving of a subsidy relating to goods that is in contravention of section 16 (export performance) or 17 (use of domestic goods or services).
- (7) In subsection (2)—

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- (a) the “current financial year” is the financial year in which the SPEI assistance is given, and
- (b) the “elapsed part” of that year is so much of it as has passed at the time when it is given.

#### **Commencement Information**

- I5** S. 38 not in force at Royal Assent, see [s. 91\(2\)](#)  
**I6** [S. 38](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

### **39 Section 38: procedural requirements**

- (1) Before giving SPEI assistance, a public authority must give to the enterprise a SPEI assistance notification.
- (2) A “SPEI assistance notification” means a written statement—
  - (a) explaining that the authority is proposing to give to the enterprise a subsidy by way of SPEI assistance,
  - (b) specifying the gross value amount of the assistance, and
  - (c) requesting written confirmation from the enterprise that the total amount specified in section 38(1) will not be exceeded by the enterprise receiving the proposed assistance.
- (3) The public authority may proceed to give the assistance only after it has received the confirmation referred to in subsection (2)(c).
- (4) On giving the assistance, the public authority must provide to the enterprise a SPEI assistance confirmation.
- (5) A “SPEI assistance confirmation” means a written statement confirming—
  - (a) that the subsidy is given as SPEI assistance,
  - (b) the date on which it is given, and
  - (c) the gross value amount of the assistance.
- (6) The enterprise must keep a written record detailing—
  - (a) that it has received a subsidy by way of SPEI assistance,
  - (b) the date on which it was given, and
  - (c) the gross value amount of the assistance.
- (7) The record required by subsection (6) must be kept for at least three years beginning with the date mentioned in paragraph (b) of that subsection.
- (8) In this section—
  - “the enterprise” means the enterprise that receives, or that would receive, SPEI assistance;
  - “gross value amount” of SPEI assistance means the gross cash amount (see subsection (5)(a) of section 38) or the gross cash equivalent (see subsection (5)(b) of that section).

#### **Commencement Information**

- I7** S. 39 not in force at Royal Assent, see [s. 91\(2\)](#)

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**18**    [S. 39](#) in force at 4.1.2023 by [S.I. 2022/1359](#), [reg. 2](#)

## 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—
- (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.

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- (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**

- I9** S. 40 not in force at Royal Assent, see [s. 91\(2\)](#)  
**I10** 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**

- I11** S. 41 not in force at Royal Assent, see [s. 91\(2\)](#)  
**I12** 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.

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- (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 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).

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#### Commencement Information

**I13** S. 42 in force at Royal Assent for specified purposes, see [s. 91\(1\)\(b\)](#)

**I14** [S. 42](#) in force at 4.1.2023 in so far as not already in force by [S.I. 2022/1359](#), [reg. 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Subsidy Control Act 2022, CHAPTER 2.