



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 3

#### EXEMPTIONS

#### CHAPTER 1

##### INTRODUCTORY

### 35 **Introductory**

- (1) This Part provides for cases in which the subsidy control requirements do not apply to the giving of a subsidy.
- (2) Where the subsidy control requirements do not apply to the giving of a subsidy, those requirements are to be taken as not applying to the making of a subsidy scheme so far as it provides for the giving of such a subsidy.
- (3) Subsection (2) is subject to express provision in this Part about the application of the subsidy control requirements to subsidy schemes.

#### 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.

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- (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—
  - (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.

### **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,

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- (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.
- (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).

#### *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).

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- (7) In subsection (2)—
- (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.

### **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).

### *General*

### **40 Mergers and acquisitions**

- (1) Subsection (2) applies where—

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- (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.
- (7) In this section “relevant threshold” means the total amount specified in section 36(1) or (as the case may be) section 38(1).

#### **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.

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- (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.

## **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,

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- (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).

## CHAPTER 3

### EMERGENCIES ETC.

#### **43 Natural disasters and other exceptional circumstances**

- (1) The subsidy control requirements do not apply to a subsidy given to compensate the damage caused by—
  - (a) natural disasters, or
  - (b) other exceptional occurrences.
- (2) The reference in subsection (1)(b) to other exceptional occurrences does not include occurrences having only an economic effect.
- (3) A subsidy may be given in respect of a natural disaster, or another exceptional occurrence, in reliance on the exemption under this section only if—
  - (a) a notice is published by the Secretary of State for the purposes of this section declaring that the exemption applies in respect of that natural disaster or occurrence, and
  - (b) that notice has not been withdrawn by the publication of a further notice.
- (4) A copy of a notice under this section must be laid before Parliament.

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- (5) In this section, the reference to the subsidy control requirements does not include the requirements as to transparency in Chapter 3 of Part 2.

**44 National or global economic emergencies**

- (1) The prohibitions and restrictions imposed by sections 15 to 29 do not apply to a subsidy given to respond to a national or global economic emergency.
- (2) Subsection (1) applies only if the subsidy is given on a temporary basis.
- (3) A subsidy may be given in respect of a national or global economic emergency in reliance on the exemption under this section only if—
- (a) a notice is published by the Secretary of State for the purposes of this section declaring that the exemption applies in respect of that emergency, and
  - (b) that notice has not been withdrawn by the publication of a further notice.
- (4) A copy of a notice under this section must be laid before Parliament.

**CHAPTER 4**

OTHER MISCELLANEOUS EXEMPTIONS

**45 National security**

The subsidy control requirements do not apply to the giving of a subsidy for the purpose of safeguarding national security.

**46 Bank of England monetary policy**

The subsidy control requirements do not apply to the giving of a subsidy by or on behalf of the Bank of England in pursuit of monetary policy.

**47 Financial stability**

- (1) The subsidy control requirements do not apply to the giving of a subsidy, or the making of a subsidy scheme, so far as a financial stability direction so provides.
- (2) “Financial stability direction” means a direction given by the Treasury providing for specified subsidy control requirements not to apply to—
- (a) the giving of a specified subsidy or making of a specified subsidy scheme, or
  - (b) the giving of subsidies, or the making of subsidy schemes, of a specified description.
- (3) The Treasury may give a financial stability direction only if it considers it appropriate for prudential reasons, for example—
- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, or
  - (b) ensuring the integrity and stability of the financial system of the United Kingdom.



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- (4) The Treasury must consult the Bank of England before giving a financial stability direction.
- (5) The Treasury may give a financial stability direction that relates only to a subsidy given, or subsidy scheme made, by the Bank of England only if the Bank of England has requested the Treasury to give the direction.
- (6) Subject to subsection (7), a financial stability direction must—
  - (a) be published in whatever manner the Treasury considers appropriate, and
  - (b) be laid before Parliament.
- (7) If the Treasury considers that the steps required by subsection (6) would have the effect of undermining the purpose for which the direction is given, the Treasury may delay the carrying out of those steps until such time as it is satisfied that to do so would not have that effect.
- (8) In this section—
  - “financial service supplier” has the meaning given by Article 183 of the Trade and Cooperation Agreement;
  - “specified” means specified in a financial stability direction.

#### **48 Legacy and withdrawal agreement subsidies**

- (1) The subsidy control requirements do not apply to the following legacy subsidies and schemes—
  - (a) a subsidy given on or after the day on which this section comes into force, under a subsidy scheme made before that day;
  - (b) a subsidy given in accordance with Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road (and any such subsidy is to be treated for the purposes of this Act as if it were given in accordance with a subsidy scheme).
- (2) In subsection (1), the reference to the subsidy control requirements, so far as it relates to subsection (1)(a), does not include the requirements as to transparency in Chapter 3 of Part 2, except in relation to—
  - (a) subsidies given that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture;
  - (b) subsidies given in relation to trade in fish and fish products;
  - (c) subsidies given in relation to the audiovisual sector.
- (3) The subsidy control requirements do not apply to the following withdrawal agreement subsidies and schemes—
  - (a) a subsidy given, or a subsidy scheme made, in accordance with Article 10 of the Northern Ireland Protocol;
  - (b) a subsidy or subsidy scheme to which Article 138 of the EU withdrawal agreement applies.
- (4) In Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road, omit Article 9 (transport sector provisions).
- (5) In this section “the Agreement on Agriculture” means the Agreement on Agriculture, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade

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Organization, done at Marrakesh on 15 April 1994 (read with any adjustments necessary for context).

#### **49 Tax measures**

The subsidy control requirements do not apply to the giving of a subsidy where the giving of the subsidy is permissible by virtue of Article 413 of the Trade and Cooperation Agreement (taxation).

#### **50 Large cross-border or international cooperation projects**

- (1) Section 12(1) does not apply to a subsidy if—
  - (a) it is given in the context of a large cross-border or international cooperation project, and
  - (b) the public authority giving the subsidy is satisfied that the project meets the condition in subsection (3).
- (2) Section 12(3) does not apply to a subsidy scheme if—
  - (a) the subsidies provided for by the scheme are to be given in the context of a large cross-border or international cooperation project, and
  - (b) the public authority making the scheme is satisfied that the project meets the condition in subsection (3).
- (3) A project meets the condition in this subsection if—
  - (a) the benefits of the project are not limited to the enterprise or to the sector or the States participating, and
  - (b) the project has wider benefits and relevance through spillover effects that do not exclusively accrue to—
    - (i) the United Kingdom,
    - (ii) the relevant sector, and
    - (iii) the beneficiary of the subsidy or subsidies concerned.
- (4) The projects that may be regarded as large cross-border or international cooperation projects include—
  - (a) those for transport, energy, the environment or research and development, and
  - (b) first development projects to incentivise the emergence and deployment of new technologies (excluding manufacturing technologies).

#### **51 Nuclear energy**

- (1) Section 13(1) does not apply to a subsidy in relation to nuclear energy.
- (2) Section 13(3) does not apply to a subsidy scheme that provides for subsidies in relation to nuclear energy.