



EXPLANATORY NOTES

Subsidy Control Act 2022

Chapter 23

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SUBSIDY CONTROL ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Subsidy Control Act 2022 which received Royal Assent on 28 April 2022 (c. 23).

- These Explanatory Notes have been produced by the Department for Business, Energy and Industrial Strategy to assist the reader. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The purpose of the Subsidy Control Act 2022 is to implement a domestic subsidy control regime in the United Kingdom that reflects the UK's strategic interests and particular national circumstances, providing a legal framework within which public authorities make subsidy decisions.

Policy background

- 2 A subsidy is where a public authority – for example central, regional or local government – provides support to a business, or other organisation, that gives them an advantage over competitors.
- 3 This can take the form of a grant, a tax break, a loan or guarantee on favourable terms, or the use of facilities below market price.
- 4 Having left the European Union, the UK is no longer subject to EU State aid rules (the EU's particular approach to subsidy control). In September 2020, the Government announced its intent to design a new domestic subsidy control regime that best suited the needs of the UK, representing value for money to the UK taxpayer, and complying with international obligations.
- 5 The Government ran a consultation between 3 February and 31 March 2021, inviting views from a wide range of stakeholders on how best to design a domestic approach to subsidy control. The Government launched a second consultation on 25 March 2022, inviting views on proposed regulations under the Subsidy Control Bill that define criteria for potentially distortive categories of subsidies, and views more generally on the categories. The consultation will close on 6 May 2022.
- 6 The Government aims to deliver a regime that:
 - a. Empowers local authorities, public bodies, the UK Government and the devolved administrations to design subsidies that deliver strong benefits for the UK taxpayer.
 - b. Enables public authorities to deliver strategic interventions to support the UK's economic recovery and deliver priorities such as levelling up and achieving net zero.
 - c. Provides certainty and confidence to businesses investing in the UK, by protecting against subsidies that risk causing distortive or harmful economic impacts, including to the UK internal market.
 - d. Contributes to meeting the UK's international commitments on subsidy control, including its international commitments under the World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM), the Trade and Co-operation Agreement with the EU (TCA) and other free trade agreements.
- 7 The key provisions of the Act involve:
 - a. Setting out the subsidy control requirements that public authorities are subject to when giving subsidies or making subsidy schemes:
 - i. The Act sets out seven principles that public authorities must assess their proposed subsidies or schemes against. The Act defines these as the subsidy control principles. Additional principles apply to subsidies in relation to energy and the environment.
 - ii. The Act prohibits certain subsidies and requires that certain subsidies can only be granted where specified requirements are met.

- iii. The Act requires subsidies to be published on a database.
 - b. Exempting certain subsidies from some or all of these requirements.
 - c. The establishment of a new Subsidy Advice Unit in the Competition and Markets Authority (CMA), which will monitor and report on the regime and report on certain subsidies and schemes before and after they are given or made.
 - d. Making provision for the Competition Appeal Tribunal (CAT) to hear applications to review subsidy decisions and to impose relevant remedies, including recovery of the subsidy as appropriate; imposing a duty on public authorities to provide pre-action information at the request of an interested party; and conferring a right on public authorities to recover subsidies which are misused.
- 8 The Act provides for measures which will support the UK to remain compliant with its international obligations under the ASCM, the TCA, and other free trade agreements.
- 9 On 21 July 2021, the Government published a White Paper titled “Northern Ireland Protocol: the way forward”, establishing its intent to renegotiate Article 10 of the Northern Ireland Protocol. The White Paper noted that the “UK’s Subsidy Control Bill ... provide(s) a more than sufficient basis to guarantee that there will be no significant distortion to goods trade between the UK and EU, whether from Great Britain or Northern Ireland, thus making the existing provisions in Article 10 redundant in their current form.”¹

Subsidy control definitions and requirements

- 10 Part 1 of the Act sets out the key definitions that are used in the rest of the Act (section 89 also provides an interpretation of defined terms within the Act).
- 11 Part 2 of the Act sets out requirements that are defined as the subsidy control requirements Chapter 1 of Part 2 sets out the principles that underpin the subsidy control regime, including seven main subsidy control principles and nine additional energy and environment principles. It also places a duty on a public authority to consider the subsidy control principles, when taking a decision whether to give a subsidy, or make a subsidy scheme. Public authorities have a duty to consider the energy and environment principles in addition to the subsidy control principles if they are making a scheme or giving a subsidy in relation to energy and environment. The public authority must not give the subsidy, or make the subsidy scheme, unless the public authority considers that doing so is consistent with the principles.
- 12 The Act also provides powers for the Secretary of State to issue guidance on, amongst other things, how public authorities should comply with their duty to consider the principles.
- 13 Chapter 2 of Part 2 sets out the prohibitions and other requirements public authorities must comply with when giving certain subsidies.
- 14 Chapter 3 of Part 2 sets out the transparency duties in relation to subsidies and schemes.

¹ Northern Ireland Protocol: the way forward, published July 2020, CP 502, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008451/CCS207_CCS0721914902-005_Northern_Ireland_Protocol_Web_Accessible_1.pdf

Exemptions

- 15 Part 3 of the Act sets out certain types of subsidies that are exempt from the subsidy control requirements in Part 2. Chapter 2 of Part 3 sets out that subsidies given as minimal financial assistance (subsidies of less than £315,000 over three years, per recipient) and as services of public economic interest assistance (subsidies of less than £725,000 over three years, per recipient and meeting other specific conditions) are exempt from the subsidy control requirements, except transparency requirements apply where a subsidy award given under this exemption exceeds £100,000. This Part also contains procedural requirements related to the award of these subsidies.
- 16 Chapter 3 of Part 3 contains exemptions from the subsidy control requirements for subsidies given to address different emergencies. Subsidies given to compensate for natural disasters or other exceptional occurrences are exempt from all the subsidy control requirements apart from the transparency obligations. Subsidies given in response to a national or global economic emergency are exempt from complying with prohibitions and requirements imposed by sections 15 to 29 in Chapter 2 of Part 2.
- 17 Chapter 4 of Part 3 sets out further exemptions from the subsidy control requirements for subsidies given for the purpose of national security, those given as part of the Bank of England's monetary policy activity, financial stability directions, large cross-border or international projects, legacy and withdrawal agreement subsidies and certain tax measures.

CMA: Referrals and functions

- 18 Part 4 of the Act provides for the functions of the CMA under this Act. Chapter 3 of Part 4 requires the CMA to establish a body called the Subsidy Advice Unit for the purposes of carrying out those functions.
- 19 Chapter 1 of Part 4 requires that certain subsidies and schemes must be referred by public authorities to the CMA before they may be given or made (a 'mandatory pre-award referral'). Public authorities must wait for the CMA to publish its report, and for a cooling-off period to elapse following the publication of that report, before giving or making those subsidies or schemes. Public authorities may also voluntarily refer certain other subsidies or schemes to the CMA before they are given or made (a 'voluntary pre-award referral'). The CMA's report further to a mandatory or voluntary pre-award referral will include an evaluation of the public authority's assessment as to whether the subsidy or scheme would be consistent with the subsidy control requirements in Chapters 1 and 2 of Part 2.
- 20 The Secretary of State may also refer a subsidy or scheme to the CMA after it has been given or made (a 'post-award referral'). The CMA is required to publish a post-award report on the subsidy or scheme, which must include an evaluation of any assessment that was carried out by the public authority as to why the subsidy or scheme would be consistent with the subsidy control principles, prohibitions and requirements (or stating that no such assessment was provided).
- 21 Chapter 2 of Part 4 makes provision for the CMA to produce a report on the effectiveness of the operation of this Act and its impacts on competition and investment in the UK; this report will be produced after three years, six years, and every five subsequent years from the date the Act comes into force. The CMA will also need to include in its annual report the number and types of subsidies or schemes in respect of which it has prepared a report under Chapter 1 of Part 4.

Enforcement

- 22 Part 5 of the Act contains provisions relating to the enforcement of the subsidy control requirements. Interested parties will be able to apply to the CAT to review a decision to give a subsidy or make a subsidy scheme (a 'subsidy decision'). The CAT will apply the same principles when hearing an application for review as would be applied by the High Court on application for judicial review and will be able to grant the same types of relief as are available in such proceedings. In addition, the CAT will be able to make a recovery order if a subsidy control decision is found to have breached the subsidy control requirements in Chapters 1 and 2 of Part 2. The Act also amends the Tribunal Procedure Rules to make provision as to the time limits within which a claim needs to be made and the forum for appealing points of law arising from a decision of the CAT.
- 23 Part 5 also imposes a duty on public authorities to provide certain information to interested parties about a subsidy or subsidy scheme. An interested party may request the information for the purpose of deciding whether to apply to the CAT for a review of a subsidy or scheme on the grounds that it failed to comply with the relevant subsidy control requirements. Part 5 also gives public authorities a right to recover subsidies that are misused by a beneficiary of the subsidy.

Legal background

- 24 The relevant legal background is explained in the policy background of these notes.

Territorial extent and application

- 25 Section 90 in Part 6 of the Act sets out the territorial extent of the Act, that is the legal jurisdictions of which the provisions in the Act are intended to form part of the law.
- 26 The provisions in the Act extend to the whole of the UK (apart from section 48(4), which does not extend to Northern Ireland).
- 27 The regulation of the provision of subsidies that are or may be distortive or harmful by a public authority to persons supplying goods or services in the course of a business is a reserved matter in the Scotland Act 1998 and Government of Wales Act 2006, and an excepted matter in the Northern Ireland Act 1998 (as inserted by section 52 of the United Kingdom Internal Market Act 2020).

Commentary on provisions of the Act

Part 1: Overview and key interpretation

Section 1: Overview and application of Act

- 28 This section sets out what the different Parts of the Act cover.
 - a. This Part (Part 1) sets out definitions of key terms used in the Act.
 - b. Part 2 sets out the subsidy control requirements: the principles, prohibitions and requirements, and transparency requirements that apply to the giving of subsidies.
 - c. Part 3 sets out subsidies that are exempt from some or all of the subsidy control requirements.

- d. Part 4 sets out the CMA's functions in relation to subsidy control.
 - e. Part 5 sets out the enforcement provisions.
 - f. Part 6 includes miscellaneous and final provisions.
- 29 Subsections (6) and (7) specify that if a subsidy is given (or scheme created) under powers in primary or secondary legislation then the subsidy control requirements will apply unless an Act of Parliament specifies otherwise.

Section 2: "Subsidy"

- 30 This section defines a subsidy for the purposes of the Act. It is a four-limbed test, which has been designed in such a way to allow the UK to meet national policy objectives and international obligations. Where each limb is met the financial assistance given by a public authority to an enterprise will be a subsidy. This definition applies to both the production of goods and the provision of services.
- 31 Subsection (1) sets out the four limbs.
- 32 Subsection (2) provides examples of the way in which financial assistance may be given.
- 33 Subsection (3) and (4) explain that financial assistance that is given by a person who is not a public authority will still constitute a subsidy where certain conditions are met. These conditions relate to the origin of the funds used to pay the financial assistance, and the control exercised by a public authority over the decision to give financial assistance.
- 34 Subsection (5) explains the point in time at which a subsidy is considered to have been given to the enterprise.
- 35 Subsection (6) highlights other interpretive provisions relevant to this section.

Section 3: Financial assistance which confers an economic advantage

- 36 This section confirms that financial assistance is not considered to confer an economic advantage if it could reasonably be considered to have been provided on the same terms on the market. For example, a loan would not be considered to confer an economic advantage to an enterprise if that loan might have been provided by a bank on the same terms.

Section 4: Financial assistance which is specific

- 37 This section elaborates on where financial assistance is not considered to be specific.
- 38 Subsection (2) confirms that financial assistance is not considered specific if different enterprises are treated differently in a way that can be justified by reasons that are inherent to the assistance arrangements. For example, in the case of a special levy for environmental purposes, a differentiated treatment for certain goods or services can be justified by the objective pursued by the levy.
- 39 Subsections (3) to (7) set out further considerations relevant to whether a taxation measure or levy should be considered specific. Subsection (4) sets out examples of the reasons for which tax measures may treat enterprises differently without being considered specific by reference to the normal taxation regime. For example, a tax relief measure by a local authority that advantages one or more enterprises over another in its area is likely to be specific but it will not be specific if all enterprises in its area benefit and the local authority is acting autonomously in relation to that measure. Subsection (5) makes provision for identifying the normal taxation regime by reference to the internal objective and features of the regime and the level of autonomy of the public authority in the design of the regime. Subsections (6) and

(7) confirm that a levy with a non-economic public policy objective would not be specific if any difference in treatment of enterprises could be justified by objective criteria; and nor would any carve-out ('forgoing of an amount') from that levy if the same conditions applied.

Section 5: Section 2: modification for air carriers

40 This section specifies that the second limb of the test to define a subsidy to air carriers is that the measure could have an effect on competition between UK air carriers and air carriers in other countries, in the provision of air transport services. This replaces the test for other subsidies that consider effect on international trade, international investment and UK competition and investment that is found in section 2.

Section 6: "Public authority"

41 This section contains a broad definition of public authority by reference to a person who exercises functions of a public nature. This definition does not include either House of Parliament or the three devolved legislatures (Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly). Provisions relating to the devolved legislatures are covered separately under section 78 and Schedule 3.

Section 7: "Enterprise"

42 This section sets out the definition of enterprise as a person, or group of persons under common control (see below), engaged in an economic activity.

43 This section also explains the circumstances when an activity is not to be considered to be economic activity, or when a person or group of persons is not to be considered an enterprise.

Section 8: Persons under common control

44 This section elaborates on what it means for a group of persons to be under common control. This includes circumstances in which a person or group of persons can control or materially influence, directly or indirectly, the group, even if they do not have a controlling interest.

Section 9: The subsidy control principles and the energy and environment principles

45 Section 9 points to Schedule 1 as the location of the subsidy control principles, and to Schedule 2 as the location of specific principles relating to energy and the environment (the energy and environment principles).

Section 10: Subsidy schemes and streamlined subsidy schemes

46 Subsections (1) to (3) define what a 'subsidy scheme' is.

47 Public authorities may carry out a single assessment of the subsidy control requirements for a subsidy scheme with defined parameters and conditions, and thereby award a number of subsidies to different enterprises. This is as opposed to standalone subsidies, where the assessment of the subsidy control requirements must be made on a case-by-case basis.

48 The eligibility and delivery of subsidies under schemes will differ. For example, a scheme may invite bids for grants from interested parties that will be assessed on the basis of the strength of their application against set criteria, or it may grant tax incentives to all businesses who meet set eligibility criteria. Examples of schemes include the Covid Financing Scheme or the Retail Grant Scheme. Sections 12 and 13 set out the duties on public authorities to consider the subsidy control principles and the energy and environment principles when establishing a scheme. Schemes may be made for the public authority to grant subsidies itself, or for a primary public authority to facilitate the granting of subsidies by other public authorities. A 'primary public authority' is defined as the UK Government, a devolved administration, or any other public authority that makes schemes for the giving of subsidies by other public authorities.

- 49 Subsections (4) to (10) define what a ‘streamlined subsidy scheme’ is (referred to as a ‘streamlined route’ in policy documents). This is a particular kind of subsidy scheme which can be used by any public authority that complies with its parameters. A streamlined subsidy scheme can only be made by the UK Government and must be laid before Parliament after it has been made (or modified). The policy is that streamlined subsidy schemes are intended to allow the UK Government to make provisions to allow lower-risk subsidies to be given by public authorities more quickly and easily, without their needing to assess compliance with the principles or other subsidy control requirements.
- 50 Streamlined subsidy schemes are subject to the negative resolution procedure for a period of 40 days after a new or modified scheme is laid in Parliament. This means that a streamlined subsidy scheme can be annulled by either House of Parliament which resolves not to approve it. In such a case, the scheme no longer has effect from the end of the day on which the resolution is passed.
- 51 Public authorities making subsidy schemes and streamlined subsidy schemes will be able to define the value of subsidies awarded under them by reference to their gross cash amount or gross cash equivalent, as defined in regulations made under section 82
- 52 The difference in effect between an ‘ordinary’ scheme and a streamlined subsidy scheme is that under section 63, a streamlined subsidy scheme cannot be the subject of a voluntary or a mandatory pre-award referral to the CMA.

Section 11: Subsidies and schemes of interest or particular interest

- 53 This section makes provision as to the meaning of a Subsidy or Scheme of Interest, and a Subsidy or Scheme of Particular Interest. Both will be defined in regulations made by the Secretary of State. It is envisaged that regulations made under this section will capture a relatively small number of subsidies and schemes that are more likely to be inconsistent with the subsidy control requirements, or have distortive effects on competition and investment within the UK. The list in subsection (2) of what may be referred to in regulations made under subsection 11(1) is intended to be non-exhaustive.
- 54 Regulations made under subsection 11(1) to define subsidies and schemes of interest or subsidies and schemes of particular interest can make reference to their gross cash amount or the gross cash equivalent, as determined in accordance with regulations made under section 82.
- 55 Chapter 1 of Part 4 makes provision as to the referral of these subsidies or schemes to the CMA. Subsidies or Schemes of Particular Interest must be referred to the CMA before they may be given or made. A failure to refer these subsidies or schemes, or to follow the mandatory referral process through to its conclusion once a referral has been made, will result in the subsidy or scheme being treated as a prohibited subsidy or scheme (see section 31). Public authorities may also voluntarily refer Subsidies or Schemes of Interest to the CMA but there is no requirement to do so (see section 56).

Part 2: Subsidy control requirements

Chapter 1: Principles

Section 12: Application of the subsidy control principles

- 56 Subsection (1) of this section establishes a duty for public authorities to consider the subsidy control principles set out in Schedule 1 before deciding whether to grant a standalone subsidy (i.e. a subsidy not granted under a subsidy scheme). It also requires the public authority not to grant the subsidy unless they are of the view that it is consistent with the principles contained in Schedule 1.

- 57 Subsection (2) of this section explains that a public authority giving a subsidy under a subsidy scheme is not subject to the subsection (1) duty.
- 58 Similarly, subsection (3) of this section places an obligation on public authorities, before making a subsidy scheme, to consider the principles in Schedule 1. It also requires public authorities not to make the scheme unless they are of the view that the subsidies provided for by the scheme will be consistent with the principles contained in Schedule 1.

Schedule 1: The subsidy control principles

- 59 Schedule 1 describes the seven main subsidy control principles. Six of these are derived from the TCA. The UK competition and investment principle (Principle F) is an additional domestic principle that was proposed in the consultation document.
- 60 The effect of each principle is:
- a. Principle A: Public authorities will need to consider, explain and assess the policy objective behind the subsidy to ensure there is a benefit to wider society in providing the subsidy. To illustrate what addressing an equity rationale means in practice, three examples are provided.
 - b. Principle B: Subsidies should be both proportionate and limited to what is necessary to achieve the policy objective.
 - c. Principle C: Subsidies must incentivise and lead to a change in the behaviour of the beneficiary. They must help to address the public policy objective being pursued.
 - d. Principle D: Subsidies should be targeted to bring about an effect that is additional to any that would occur in the absence of the subsidy. They should not normally cover everyday business expenses.
 - e. Principle E: Alternative policy levers, that are likely to cause less distortion to competition and investment in the UK, or trade and investment internationally, should be considered before turning to subsidies.
 - f. Principle F: Public authorities should design the subsidy in a way that minimises the impact on competition and investment within the UK's internal market. This will require them to assess the effects which are likely to arise from providing the subsidy. This is a domestic test to ensure that a subsidy does not unduly favour one firm to the detriment of a competitor or new entrants to the UK market, or unduly reduce competition within the UK market.
 - g. Principle G: Public authorities should assess the material effects on competition and investment in the UK, and international trade and investment, and decide whether the benefits of the subsidy are greater than the harmful impacts of providing the subsidy.

Section 13: Application of energy and environment principles

- 61 This section is similar to section 12, setting out that when deciding whether to grant subsidies in relation to energy and environment, and make schemes that provide for giving these subsidies, public authorities must consider the energy and environment principles in Schedule 2 and should not give the subsidy or make the scheme unless they are of the view that it is consistent with the principles.

Schedule 2: The energy and environment principles

- 62 This schedule sets out the additional principles that must, where relevant, be considered for subsidies in relation to energy and the environment. These are derived from the UK's international obligations, specifically under Annex 27 of the TCA.

63 The effect of each principle is:

- a. Principle A: energy and environment subsidies shall be aimed at and shall incentivise the beneficiary in either delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy.
- b. Principle B: energy and environment subsidies shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of any of the nations of the UK.
- c. Principle C: Subsidies for electricity generation adequacy, renewable energy or cogeneration shall not undermine the ability of the UK to meet the specified obligations under the TCA, and shall be determined by means of a transparent, non-discriminatory and effective competitive process. A non-competitive process may, however, be used to determine a subsidy for renewable energy or cogeneration if appropriate measures are put in place to prevent overcompensation and the market supply (i.e. the number of potential subsidy beneficiaries) is insufficient to ensure a competitive process, the eligible capacity is unlikely to have a material effect on any competition or investment within the UK, trade between the UK and any country or territory outside the UK, and investment as between the UK and any country or territory outside the UK, or if the subsidy is given for a demonstration project.
- d. Principle D: Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO₂ emission limits.
- e. Principle E: Subsidies for renewable energy or cogeneration shall not affect beneficiaries' obligations or opportunities to participate in electricity markets.
- f. Principle F: Subsidies in the form of partial exemptions from energy-related taxes and levies in favour of energy-intensive users shall not exceed the total amount of the tax or levy concerned.
- g. Principle G: Subsidies in the form of compensation for electricity-intensive users given in the event of an increase in electricity costs resulting from climate policy instruments shall be restricted to sectors at significant risk of carbon leakage due to the cost increase.
- h. Principle H: Subsidies for the decarbonisation of emissions linked to industrial activities in the UK shall achieve an overall reduction in greenhouse gas emissions, and reduce the emissions directly resulting from the industrial activities.
- i. Principle I: Subsidies for improvements of the energy efficiency of industrial activities in the UK shall improve energy efficiency by reducing energy consumption, either directly or per unit of production.

Chapter 2: Prohibitions and other requirements

Section 14: Introductory

- 64 This section sets out the purpose of this chapter in general terms. All but one of these provisions (the relocation condition) are derived from and implement the UK's international obligations, including the TCA and the ASCM.

Section 15: Unlimited guarantees

- 65 This section prohibits any subsidy that would guarantee an unlimited amount of liabilities or debts, or which would guarantee a finite amount of liabilities or debts but over an indefinite period.
- 66 This section gives effect to the UK's international obligations, including under the TCA (Article 3.5).

Section 16: Export performance

- 67 This section establishes rules around subsidies for goods and services designed to be contingent, whether in law or in fact, on export performance. These may include, for instance, subsidies to cover the price difference between domestic market prices and international market prices. Subsidies of this kind are prohibited unless specific conditions or terms are met, in line with the UK's international obligations under the WTO's ASCM and the TCA.
- 68 The section establishes that short-term export credit support, where this support is not in the form of support for marketable risk for buyers in marketable risk countries, or in export support that is permissible under the terms of the ASCM, is not prohibited. Marketable risk countries (such as, for instance, the United States, or Member States of the EU) have higher levels of private insurance market capacity such that Government short-term export credit support is not appropriate.
- 69 Subsection (3) provides relevant definitions of terms used in this section.
- 70 Subsections (4) to (6) establishes that the Secretary of State can make regulations, subject to the negative resolution procedure, to the effect that a marketable risk country is no longer to be treated as such, provided the Secretary of State considers that specific conditions regarding the capacity of the private market in the relevant country are met. Any regulations must be revoked via instrument, subject to the negative resolution procedure.

Section 17: Use of domestic goods or services

- 71 This section prohibits subsidies that are contingent on preferences for domestically produced goods or services, often known as 'local-content' subsidies.
- 72 Local content subsidies for goods are a key prohibition of the WTO ASCM; as noted in the explanation for section 15, the ASCM is a core part of the UK's obligations as a WTO member. Local content subsidies for many services sectors are prohibited under many FTAs, including the TCA with the EU.
- 73 Subsection (2) provides that the prohibition does not apply to subsidies related to the audiovisual sector.
- 74 Subsection (3) provides that this section is without prejudice to Article 132 and Article 133 of the TCA. These articles allow for the provision of local-content subsidies in the certain circumstances, e.g., to incentivise the location of production or service supply, or the hiring of workers in a territory without being non-compliant with the prohibition on local-content subsidies.

Section 18: Relocation of activities

- 75 This section prohibits subsidies that explicitly require enterprises to relocate economic activities from one part of the UK to another, where this relocation would not have occurred in the absence of the subsidy.
- 76 Subsection (1) states that a subsidy may not be given on condition of an enterprise relocating any aspect of economic activities and may not be given if that relocation would not occur without said subsidy.

- 77 Subsection (2) clarifies, for the purpose of subsection (1), that an enterprise relocates its existing economic activities where it is conducting activities in an area of the UK before the subsidy is given, halts those activities after the subsidy is given, and continues them in another area of the UK.
- 78 Subsection (3) defines economic activities.
- 79 Subsection (4) specifies an exemption to the relocation prohibition by reference to three conditions in subsection (5), (6) and (7). The three conditions ensure that a public authority can only give a relocation subsidy that has the effect of reducing social or economic disadvantage in both the area to which the relocation takes place and within the UK generally, while also changing the economic behaviour of the beneficiary

Section 19: Rescuing

- 80 This section establishes rules around subsidies designed to rescue ailing or insolvent enterprises. Subsidies of this kind are prohibited unless specific requirements are met. A rescue subsidy is one that is given temporarily to allow an enterprise to stay in business so that a restructuring plan can be prepared. An ailing or insolvent enterprise is one that would almost certainly go out of business in the short to medium term without subsidy.
- 81 Subsection (2)(a) establishes that these subsidies are permitted only where the subsidy would prevent social hardship or a severe market failure. Subsection (2)(b) establishes that, the conditions in Subsection (2)(a) notwithstanding, rescue subsidies for ailing or insolvent enterprises should only be granted in exceptional circumstances.
- 82 Subsection (3) establishes that rescue subsidies should only be given as temporary liquidity support, as a loan or loan guarantee, to provide time for the enterprise to prepare a restructuring plan.
- 83 This section does not apply to subsidies for rescuing ailing or insolvent banks, other deposit takers, or insurance companies; see sections 21 to 23 for provisions for subsidies to ailing and insolvent banks, other deposit takers, or insurance companies.

Section 20: Restructuring

- 84 This section establishes rules around subsidies for the purpose of restructuring ailing or insolvent enterprises. A restructuring subsidy is one given to support the restructuring of an enterprise, subsidies of this kind are prohibited unless specific requirements are met. An ailing or insolvent enterprise is one that would almost certainly go out of business in the short to medium term without subsidies.
- 85 Subsections (2) to (5) set out the relevant conditions, including that:
- a. The recipient enterprise should have a credible restructuring plan in place.
 - b. The public authority giving the subsidy is satisfied that this plan is based on realistic assumptions, with a view to restoring the enterprise to long-term viability within a reasonable time period.
 - c. Where the recipient is not a small or medium-sized enterprise, the enterprise, or its owners, creditors, or new investors, have made a considerable contribution to the cost of restructuring or have a contractual obligation to do so.
 - d. The public authority giving the subsidy is satisfied that the subsidy contributes to an objective of public interest, including by preventing social hardship or a severe market failure.

- 86 Subsection (6) establishes that in principle restructuring subsidies should not be granted to the same beneficiary more than once every five years. This does not apply in genuinely unforeseeable circumstances.
- 87 Subsection (7) establishes that temporary liquidity support may be extended to enterprises preparing a restructuring plan under subsection (2).
- 88 Different rules apply for subsidies to restructure ailing or insolvent banks, other deposit takers, or insurance companies; see section 20.

Section 21: Restructuring deposit takers or insurance companies

- 89 This section establishes rules around subsidies for the purpose of restructuring ailing or insolvent banks, other deposit takers or insurance companies. Subsidies of this kind are prohibited unless specific requirements are met.
- 90 These conditions are set out in subsections (2) to (4), and require:
- a. that the recipient enterprise should have a restructuring plan in place which the public authority giving the subsidy is satisfied is credible and likely to restore long term viability;
 - b. that the enterprise, its shareholders, creditors, or investors, should have made a considerable contribution to the cost of restructuring from their own resources, or have a contractual requirement to do so; and
 - c. that the public authority should expect to be remunerated for the cost of the subsidy.

Section 22: Liquidating deposit takers or insurance companies

- 91 This section establishes rules around subsidies for the purpose of liquidating ailing or insolvent banks, other deposit takers or insurance companies. Subsidies to a bank, other deposit taker or insurance company unable to credibly demonstrate that it can be restored to long-term viability are prohibited unless specific conditions or terms are met.
- 92 These conditions are set out in subsections (3) to (5), and require:
- a. that the purpose of the subsidy is to ensure the orderly liquidation and exit from the market of the beneficiary of the subsidy;
 - b. that the public authority giving the subsidy is satisfied that the subsidy is limited to what is strictly necessary to ensure an orderly liquidation and exit from the market, and is limited to minimise any negative effects on competition or investment within the UK or trade or investment between the United Kingdom and countries and territories outside the United Kingdom; and
 - c. that the beneficiary of the subsidy, its shareholders, its creditors (or the business group it belongs to) should make a significant contribution to the cost of its own liquidation, or else have a contractual obligation to do so.

Section 23: Liquidity provision for deposit takers or insurance companies

- 93 This section establishes rules around subsidies for the purpose of supporting liquidity provision to ailing or insolvent banks, other deposit takers or insurance companies.
- 94 Subsidies of this kind are prohibited unless specific requirements are met.
- 95 These conditions are set out in subsections (2) to (4), and require:
- a. that the subsidy should be temporary;

- b. that the subsidy should not be used by the recipient to cover losses or become capital support; and
- c. that the public authority giving the subsidy should have been, or reasonably expect to be, remunerated for the cost of the subsidy.

Section 24: Meaning of “ailing or insolvent”

- 96 This section defines ailing or insolvent enterprises, specifically in relation to sections 19 to 23.
- 97 Ailing or insolvent businesses are those that would almost certainly go out of business in the short to medium term in the absence of subsidies, or are unable to pay debts as they fall due, or where the value of the enterprise’s assets is less than its liabilities.
- 98 The Secretary of State may make regulations on the specific meaning and terms of ‘almost certainly go out of business’.

Section 25: Meaning of “deposit taker”

- 99 A deposit taker, for the purpose of sections 19 to 24, is defined in this section.
- 100 A deposit taker is a person who has permission to carry on the regulated activity of accepting deposits, listed under the relevant provisions of the Financial Services and Markets Act 2000. This does not include a person who accepts deposits solely in connection with another regulated activity in the Financial Service and Markets Act 2000.

Section 26: Meaning of “insurance company”

- 101 This section defines insurance companies, for the purpose of sections 19 to 24.
- 102 An insurance company is a body corporate that has permission to carry on the regulated activity of effecting or carrying out insurance contracts under the relevant provisions of the Financial Services and Markets Act 2000. Insurance companies do not include certain persons: e.g. friendly societies (under the Friendly Societies Act 1992), a registered society under the Co-operative and Community Benefit Societies Act 2014, or a member of Lloyd’s that is not a company under the Companies Acts.

Section 27: Subsidies for insurers that provide export credit insurance

- 103 This section prohibits subsidies to insurers providing export credit insurance unless this insurance for marketable risk is either provided on commercial terms or does not directly or indirectly benefit the insurer’s export credit insurance business.
- 104 Definitions in this section are the same as those made in section 15 (export credits) and section 24 (meaning of insurer).

Section 28: Subsidies for air carriers for the operation of routes

- 105 This section establishes that subsidies for air carriers for the operation of routes are prohibited unless they meet one of the conditions set out in subsections (2) to (4), which are:
- a. that the air carrier is undertaking a public obligation as a consequence of the regulation for common rules for the operation of air services between the EU and the UK;
 - b. that the public authority giving the subsidy is satisfied that the subsidy will provide wider societal benefits; or
 - c. that the subsidy is a start-up subsidy that will establish a new route to a regional airport, and that the public authority giving the subsidy is satisfied that the new route will increase travellers and facilitate regional development.

Section 29: Services of public economic interest

- 106 Services of Public Economic Interest (SPEI) are public services that would not be supplied (or would not be supplied under the required conditions) without public intervention, and which are of particular importance to society. Examples of an SPEI could include social housing or rural public transport services.
- 107 A public authority can only award a subsidy for the delivery of a SPEI if it does so in a transparent manner and it is satisfied that the value of the subsidy is restricted to what is necessary to deliver that service. Public authorities should take into consideration the cost of delivering the service and what would be a reasonable profit for the enterprise delivering the task when deciding the value of the subsidy.
- 108 Subsections (4) and (5) set out the steps a public authority has to take to award a SPEI subsidy in a transparent manner.
- 109 Public authorities must review a SPEI subsidy to ensure it remains what is necessary to deliver the service and, if the compensation is above what is necessary, then the public authority must recover the excess. Public authorities must conduct such a review at least every three years and upon final delivery of the service of public economic interest.
- 110 The subsidy control principles in Schedule 1 only apply to the award of a subsidy for the delivery of an SPEI insofar as applying them does not obstruct the delivery of the service.

Section 30: Effect of prohibitions etc in relation to subsidy schemes

- 111 This section prohibits subsidy schemes to the extent that the scheme in question provides for a prohibited subsidy (for example, a subsidy that is explicitly conditional on relocation within the UK as prohibited by section 18) or otherwise does not meet the relevant requirements provided for in this Act. If the scheme also allows for subsidies that do meet the subsidy control requirements, then those subsidies may still be awarded under that scheme.

Section 31: Subsidies or schemes subject to mandatory referral

- 112 Chapter 1 of Part 4 deals with mandatory referrals to the CMA. This section prohibits a subsidy or scheme which is given or made in circumstances where:
- a. a mandatory referral request should have been made to the CMA but none was submitted by the public authority in accordance with the requirements that apply to such requests; or
 - b. a mandatory referral request was submitted but the public authority did not wait for the mandatory referral process to conclude before giving the subsidy or making the scheme.

Chapter 3: Transparency

Section 32: Subsidy database

- 113 This section provides that the Secretary of State must make arrangements for a database of subsidies and subsidy schemes for the purposes of transparency.
- 114 The Secretary of State must ensure that the database is accessible to the public and free of charge, and that public authorities who have to upload details of a subsidy or subsidy scheme to the database are able to do so.
- 115 The Secretary of State must also keep the database under review in such manner and at such intervals as the Secretary of State considers appropriate.

- 116 The Secretary of State may direct the CMA to take on responsibility for maintaining the database in future. Part 4 sets out the CMA's functions in relation to subsidy control. Were responsibility for the subsidy database to be taken on by the CMA in future, it would be responsible for maintaining the database, rather than the Secretary of State, as set out in subsections (1) and (2).
- 117 The Secretary of State may amend or revoke any direction to the CMA to maintain the database under a power in section 88. This means that the Secretary of State could, if considered appropriate, choose to take back the responsibility for the database from the CMA in future.

Section 33: Duty to include information in the subsidy database

- 118 This section details the specific obligations that a public authority has with regard to uploading subsidies and subsidy schemes onto the subsidy database. A public authority must ensure that an entry is made in the database in respect of any subsidy scheme that the public authority has made. There is no financial threshold that triggers the uploading of a subsidy scheme: all schemes must be uploaded, unless a relevant exemption in Part 3 applies.
- 119 A public authority must also make an entry in the database in respect of any subsidy it provides. However, there are a number of key exemptions from the requirement to upload a subsidy award where the amount of the subsidy is no more than £100,000. First, subsection (2) exempts a subsidy from the requirement to be uploaded if it has been given under an uploaded scheme and the individual award is no more than £100,000. Secondly, Part 3 of the Act contains further exemptions from the transparency requirements. In particular, section 36 provides that minimal financial assistance, which must not exceed £315,000 over three years per recipient, is exempted from the subsidy control requirements. This includes an exemption from the transparency requirements where the amount of the subsidy given as minimal financial assistance is no more than £100,000. Minimal financial assistance exceeding this threshold is subject to transparency requirements. Section 38 and 41(1) outline further provisions relating to transparency, where the subsidy is for SPEI assistance or other types of SPEI subsidy: such subsidies are also exempt from transparency requirements where the amount of subsidy is no more than £100,000.
- 120 The threshold from which awards given under schemes must be added to the database is amendable via regulations subject to the affirmative resolution procedure. The regulations may not increase this threshold above £500,000.
- 121 Subsection (3) states that if a subsidy or scheme needs to be uploaded, it must be uploaded within three months of the confirmation of the decision to grant the subsidy or to make the subsidy scheme; this includes subsidy schemes made in the form of a tax measure. Subsidies provided in the form of a tax measure must be uploaded within one year of the date of the tax declaration.
- 122 Public authorities must ensure that the subsidy or scheme is maintained on the database for at least six years or the duration of the subsidy or scheme if longer.
- 123 The same deadlines apply for uploading a modification to a subsidy or scheme. This means a modification should be uploaded within one year of the modification where it is made to a subsidy given in the form of a tax measure. Where the modification is for any other type of subsidy or scheme, the entry to the database should be made within three months of the modification.
- 124 Subsidy awards given under schemes of no more than £100,000 do not need to be uploaded and under subsection (6) any modifications to such subsidies do not need to be uploaded provided the subsidy remains below this threshold as modified.

125 The deadlines for uploading subsidies and schemes and modifications may also be amended via the affirmative resolution procedure, up to one year in respect of tax measures, and up to six months for any other form.

Section 34: Information to be included in the subsidy database

126 Section 34 provides the Secretary of State with a power to make regulations which specify what information should be included in the database when a public authority uploads a subsidy or a subsidy scheme.

127 Subsections (2) and (3) provide an illustrative list of the sort of information that may be specified in the regulations. Some of these categories reflect information which the UK is under an obligation to provide under international agreements, such as the TCA. In the case of subsidy schemes, the regulations may also require a public authority to demonstrate how it calculates the subsidy amount.

128 Subsection (2)(h) specifies that the regulations may require public authorities to indicate where the information described in subsections (2)(a) to (g) and (3) can be found. This could be on a linked website for example. This is to ensure that those viewing a public authority's entry in the database can find all the required information if it is not directly hosted within the database itself.

Part 3: Exemptions

Chapter 1: Introductory

Section 35: Introductory

129 This section explains that this part of the Act sets out where certain subsidies and schemes are exempt from the requirements of the regime.

Chapter 2: Minimal and SPEI financial assistance

Section 36: Minimal financial assistance

130 Subsection (1) sets out the 'minimal financial assistance' exemption. Subsidies given through the exemption do not have to apply the subsidy control requirements if the total amount of 'minimal or SPEI financial assistance' received by the intended beneficiary does not exceed £315,000 over a three financial year period.

131 However, under subsection (4) the transparency requirements do apply to subsidies given as minimal financial assistance where the amount of subsidy is more than £100,000.

132 The definition of 'minimal or SPEI financial assistance' is set out at section 42(8). The three-year period is calculated as the two previous financial years and the elapsed part of the current financial year.

133 Public authorities giving a subsidy within this exemption must confirm they are doing so to the recipient of the subsidy.

134 For subsidies given as cash, it is the gross cash amount that determines the value of the subsidy. Where a subsidy is given within this exemption through another means, such as a loan, the value of the subsidy must be expressed as a gross cash equivalent. The methodology for determining the gross cash equivalence of a subsidy may be set out in regulations, as provided for in section 82.

135 Subsidies relating to goods awarded through this exemption are not exempt from the prohibitions on subsidies contingent on export performance (section 16) and on use of domestic goods or services (section 17).

Section 37: Section 36 procedural requirements

136 Section 37 sets out the procedural requirements attached to subsidies given as minimal financial assistance under section 36.

137 Subsection (1) and (2) set out the requirements for a public authority before they award a subsidy under this exemption. Subsection (1) states that they must provide the intended recipient with a notification and subsection (2) sets out what should be contained in that notification, including obtaining written confirmation from the recipient that the amount it is receiving will not lead to it breaching the threshold set out in section 36(1). A public authority cannot award a subsidy until it has received such confirmation from the intended recipient of the subsidy (subsection (3)).

138 Subsection (4) and (5) sets out the details of the confirmation a public authority is required to give an enterprise receiving a subsidy. Subsection (6) and (7) requires the recipient of the subsidy to keep a written record about subsidies they have received through this exemption for at least three years from the date the subsidy was given.

Section 38: Services of public economic interest assistance

139 Subsection (1) sets out the exemption for SPEI assistance. Subsidies given through the exemption do not have to apply the subsidy control requirements if the total amount of minimal or SPEI financial assistance received by the intended beneficiary does not exceed £725,000 over a three financial year period.

140 However, under subsection (4) the transparency requirements do apply to subsidies given as SPEI assistance where the amount of subsidy is more than £100,000.

141 The definition of ‘minimal or SPEI financial assistance’ is set out at section 42(8). The three-year period is calculated as the two previous financial years and the elapsed part of the current financial year.

142 A public authority giving a subsidy through this exemption must confirm they are doing so to the subsidy recipient. A subsidy given through the SPEI assistance exemption must be given to an enterprise that is delivering a particular task in the public interest.

143 For subsidies given as cash, it is the gross cash amount that determines the value of the subsidy. Where a subsidy is given within this exemption through another means, such as a loan, the value of the subsidy must be expressed as a gross cash equivalent. The methodology for determining the gross cash equivalence of a subsidy may be set out in regulations, as provided for in section 82.

144 Subsidies relating to goods awarded through this exemption are not exempt from the prohibitions on subsidies contingent on export performance (section 16) and on use of domestic goods or services (section 17).

Section 39: Section 38 procedural requirements

145 Section 39 sets out the procedural requirements attached to subsidies given under Section 38, ‘SPEI assistance’.

146 Subsection (1) and (2) set out the requirements for a public authority before they award a subsidy under this exemption. Subsection (1) states that they must provide the intended recipient with a ‘SPEI assistance’ notification and subsection (2) sets out what should be

contained in that notification, including obtaining written confirmation from the enterprise that the amount it is receiving will not lead to it breaching the threshold set out in section 38(1). A public authority cannot award a subsidy until it has received such confirmation from the intended recipient of the subsidy (subsection (3)).

147 Subsections (4) and (5) sets out the details of the confirmation a public authority is required to give an enterprise receiving a subsidy as set out in section 39(3). Subsections (6) and (7) require the subsidy recipient to keep a written record about subsidies they have received through this exemption for at least three years from the date the subsidy was given.

Section 40: Mergers and acquisitions

148 In the case of mergers and acquisitions, all prior minimal or SPEI financial assistance subsidies granted before the merger or acquisition should be taken into account when calculating the sum total of exempted subsidy the 'single enterprise' has received.

149 Equally, where a 'single enterprise' separates into two or more enterprises, the enterprise taking over the activity in respect of which the minimal or SPEI financial assistance subsidy was granted should be allocated the subsidy value. Where that is not possible, the subsidy value is to be allocated proportionately between the new enterprises at the effective date of their separation.

Section 41: Subsidy database: exemption for certain subsidies given to SPEI enterprises

150 Section 41(1) provides an exemption from the transparency requirements for subsidies given to a SPEI enterprise for the purpose of the provision of SPEI services, where the subsidy is no more than £100,000.

Section 42: Chapter 2: supplementary and interpretative provision

151 Subsection (1) allows the Secretary of State to make regulations subject to the affirmative resolution procedure to:

- a. amend the value thresholds for the 'minimal financial assistance' and 'SPEI assistance' exemptions as well as the transparency threshold for subsidies given to SPEI enterprises;
- b. provide for a lower value threshold for the 'minimal financial assistance' and 'SPEI assistance' exemptions, and the transparency threshold for subsidies given to SPEI enterprises, in the case of particular descriptions of subsidy ;
- c. amend the transparency thresholds for 'minimal financial assistance' and 'SPEI assistance'; and
- d. amend the transparency thresholds for 'minimal financial assistance' and 'SPEI assistance' in the case of particular descriptions of subsidy.

152 The power under subsection (1)(a) may be used to increase the thresholds up to the amounts specified under subsection (2), which are the amounts currently specified in the TCA. This is without prejudice to section 31 of the Future Relationship Act 2020 which allows the Secretary of State to make regulations to amend legislation in response to changes in the TCA.

153 Subsections (4) and (5) provide that regulations that amend the transparency threshold amounts for 'minimal financial assistance' and 'SPEI assistance' may not specify an amount exceeding the thresholds specified in sections 36(1) and 38(1), which are the thresholds under which 'minimal financial assistance' and 'SPEI assistance' may be given.

154 Subsection (8) defines ‘minimal or SPEI financial assistance’. This sets out the different categories of subsidies that should cumulate as part of determining whether the value threshold for the ‘minimal financial assistance’ and ‘SPEI assistance’ exemptions have been breached.

Chapter 3: Emergencies etc.

Section 43: Natural disasters and other exceptional circumstances

155 Subsection (1) states that subsidies given to compensate damage caused by a natural disaster or other exceptional circumstances are exempt from complying with the subsidy control requirements. Subsection (5) states that for the purpose of this exemption subsidies are not exempt from the transparency requirements of the regime.

156 Subsection (2) clarifies that an exceptional circumstance cannot be only economic in nature.

157 The use of this exemption is restricted in that it can only be used when the Secretary of State has published a notice stating a particular emergency has occurred and therefore the ‘natural disasters and other exceptional circumstances’ exemption can be used to remedy that situation. A published notice must be laid in Parliament and may be withdrawn by the Secretary of State.

Section 44: National or global economic emergencies

158 Subsection (1) states that the provisions on prohibited and restricted subsidies in sections 15 to 29 do not apply to subsidies that are given in response to a national or global economic emergency. Subsection (2) clarifies subsidies given through this exemption must be temporary in nature as part of responding to the damage caused by such an economic emergency.

159 The use of this exemption is restricted in that it can only be used when the Secretary of State has published a notice stating a particular emergency has occurred and therefore the ‘national or global economic emergency’ exemption can be used to remedy that situation. A published notice must be laid in Parliament, and may be withdrawn by the Secretary of State.

Chapter 4: Other miscellaneous exemptions

Section 45: National security

160 This section makes clear that subsidies given to safeguard national security are not subject to the subsidy control regime. This section is without prejudice to our international commitments and must be considered in light of them.

Section 46: Bank of England monetary policy

161 This section sets out that the Bank of England’s monetary policy activities are not subject to the subsidy control regime.

Section 47: Financial stability

162 This section provides the power for HM Treasury to give financial stability directions for prudential reasons providing that one or more of the subsidy control requirements (such as transparency obligations) do not apply to the giving of a subsidy or subsidy scheme set out in the financial stability direction.

163 Subsection (2) establishes that a financial stability direction is a direction given by the Treasury, providing that certain subsidy control requirements set out in the financial stability direction do not apply to the giving of specified subsidies or the making of specified subsidy schemes. A financial stability direction may also disapply subsidy control requirements in relation to types of subsidies or subsidy schemes specified in the financial stability direction.

- 164 Subsection (3) establishes that the Treasury may only give financial stability directions where appropriate for prudential reasons. These prudential reasons can include, for example: (a) the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial services supplier, or (b) ensuring the integrity and stability of the financial system of the UK.
- 165 Subsections (4) and (5) establish that the Treasury must consult the Bank of England before giving a financial stability direction. A financial stability direction in relation to a subsidy given only by the Bank of England or a subsidy scheme made only by the Bank of England may only be given at the request of the Bank of England.
- 166 Subsection (6) establishes that a financial stability direction must be published in whatever manner the Treasury considers appropriate. Financial stability directions must also be laid before Parliament.
- 167 Subsections (7) establishes that the Treasury may delay the publication and laying in Parliament of a financial stability direction where doing so would have the effect of undermining the purpose for which the direction was given until such a time as the Treasury is satisfied that publication and laying in Parliament would not have that effect.
- 168 Subsection (8) sets out the definitions of “financial service supplier” and “specified”.

Section 48: Legacy and withdrawal agreement subsidies

- 169 This section makes provision for the disapplication of the subsidy control requirements in relation to certain legacy and withdrawal agreement subsidies.
- 170 Subsection (1) sets out those legacy subsidies for which the subsidy control requirements will not apply.
- 171 Subsection (2) sets out that the rules on transparency will apply to subsidies given under legacy schemes under subsection 1(a) except for those subject to the provisions of Part IV or Annex 2 of the WTO Agreement on Agriculture or relating to trade in fish and fish products, or the audiovisual sector.
- 172 Notwithstanding the application of transparency requirements, the subsidy control regime set out in this Act will not impose additional requirements on subsidies that are granted under schemes that were made in compliance with the relevant rules at the point the scheme was made, including:
- a. legacy schemes that were made under EU State aid rules before the end of the Implementation Period on 31 December 2020 (including schemes that were set up before the UK’s accession to the EU and were considered ‘existing aid’ for EU State aid purposes);
 - b. legacy schemes that were made between 1 January 2021 and the date on which this Act comes into force; and
 - c. subsidies given under Regulation (EC) No 1370/2007 (which is directly applicable as retained EU law in the UK² and operates analogously to a scheme set up under EU State aid rules.

² <https://www.legislation.gov.uk/eur/2007/1370/contents>

173 Nor will the requirements in this Act be imposed on subsidies or subsidy schemes that are subject to Article 10 of the Northern Ireland Protocol, or Article 138 of the Withdrawal Agreement, which covers (amongst other things) the application of EU State aid rules to subsidies given for programmes and activities already committed (European Union law applicable after 31 December 2020 in relation to the United Kingdom's participation in the implementation of the European Union programmes and activities committed under the MFF 2014–2020 or previous financial perspectives).

174 Subsection (4) omits Article 9 from the subsidies permitted in subsection (1)(b). Article 9 of Regulation (EC) No 1370/2007 states in accordance with the common market which England, Wales and Scotland are not a part of. The territorial extent of subsection 48(4) is limited to England, Wales and Scotland, see section 90.

Section 49: Tax measures

175 This section specifies that the subsidy control requirements do not apply to a tax measure which is permitted under Article 413 of the TCA. This Article specifies that if there is any conflict between that Agreement and any tax convention, then the tax convention shall prevail to the extent of the inconsistency and that the provisions on subsidy control in the Agreement do not apply to an advantage accorded pursuant to a tax convention.

176 Article 413 also specifies that the subsidy control provisions do not prevent the adoption, maintenance or enforcement of any non-discriminatory measure that aims at ensuring the equitable or effective imposition or collection of direct taxes or distinguishes between taxpayers who are not in the same situation.

Section 50: Large cross-border or international cooperation projects

177 This section excludes subsidies for large cross-border or international cooperation projects from the duty in Section 12 where the condition in subsection (3) is met. These projects typically include, for instance, efforts between two or more states to develop new technologies.

178 The condition in subsection (3) is that:

- a. the benefits of the project must not be limited to just that of the participating enterprises, sectors, or States; and
- b. the project must have wider positive effects that are not limited to the participating enterprises, sectors, or the UK.

179 Subsection (4) includes illustrative and non-exhaustive examples of large cross-border and international cooperation projects.

Section 51: Nuclear energy

180 This section excludes nuclear energy from the requirements in section 13.

Part 4: CMA: Referrals and functions

Chapter 1: Functions on referrals of subsidies and schemes

Section 52: Mandatory referral to CMA

181 This section deals with the making of mandatory pre-award referrals to the CMA. Public authorities must request a report from the CMA before giving:

- a. a subsidy, or subsidy scheme, of particular interest; or

- b. a subsidy or scheme which the Secretary of State has directed the public authority to refer to the CMA before it is given or made.

182 The public authority's request to the CMA (a 'mandatory referral request') must contain certain information including an assessment by the public authority as to whether the subsidy or scheme would be consistent with the requirements of Chapters 1 and 2 of Part 2 of the Act, and the reasons for that conclusion, together with any supporting evidence. The Secretary of State may make further provision by regulations as to the content and form of the request.

Section 53: CMA reporting period for mandatory referral

183 This section makes provision as to the period during which the CMA must report on a subsidy or scheme which is subject to a mandatory referral by a public authority. The CMA must generally publish its report on the subsidy or scheme before the end of the period of 30 working days beginning with the day on which the CMA notifies the public authority that its mandatory referral request contains the required information. If the public authority withdraws its mandatory referral request then the CMA will cease to have a duty to report.

184 The reporting period may be extended by agreement between the CMA and the public authority, or by the Secretary of State further to a request by the CMA (with the request having the effect of pausing the reporting period until the Secretary of State determines whether to grant the extension). The Secretary of State may also make regulations which amend the length of the reporting period and the period prior to that during which the CMA must determine whether the mandatory referral request contains the required information.

Section 54: Cooling off period following mandatory referral

185 This section makes provision as to the 'cooling-off' period that must elapse before a public authority may give a subsidy or make a scheme on which the CMA has published a report before the end of the reporting period. This ensures that the public authority must wait for a short period during which it may wish to reflect on the CMA's findings before deciding whether to give the subsidy or make the subsidy scheme.

186 The Secretary of State may extend the cooling-off period if the Secretary of State considers that the report has identified serious deficiencies in the public authority's assessment as to whether the subsidy or scheme would comply with the subsidy control requirements in Chapters 1 and 2 of Part 2. The cooling-off period may not be extended by more than 30 working days.

Section 55: Call-in direction

187 This section gives the Secretary of State a reserve power to direct a public authority to request a report from the CMA in relation to a proposed subsidy or subsidy scheme. A direction may be made in relation to a subsidy or scheme of interest (see section 11), or subsidy or scheme that the Secretary of State considers to be at risk of failing to comply with the requirements in Chapters 1 and 2 of Part 2, or of having negative effects on competition and investment within the United Kingdom.

Section 56: Voluntary referral to CMA

188 This section enables public authorities to request a report from the CMA on a subsidy or scheme of interest (a 'voluntary referral request'). The request must include the same information as is required in relation to a mandatory referral request. The Secretary of State may likewise make provision by regulations as to the content and form of the request.

Section 57: CMA reporting period for voluntary referral

189 This section makes provision as to the period within which the CMA must report on a subsidy or scheme of interest in cases where it decides to prepare a report further to a voluntary referral request. The CMA must publish its report before the end of the period of 30 working days starting from when the CMA notifies the public authority that it is willing to produce a report in response to the public authority's voluntary referral request (which it must do before the end of the period of five working days beginning with when it receives the request). It is for the CMA to decide at its discretion whether to produce a report further to a voluntary referral request. If the CMA decides to produce a report, it is not obliged to publish it if the public authority withdraws its request, or gives or makes the proposed subsidy or scheme before the CMA has reported.

190 The CMA and public authority may agree to a different reporting period, or to extend the reporting period. The Secretary of State may also make regulations which amend the reporting period, and the period within which the CMA must determine whether it will prepare a report in response to a request.

Section 58: Call-in direction following voluntary referral

191 This section makes provision as to the effect of a call-in direction made by the Secretary of State in respect of a subsidy or scheme of interest that a public authority has already voluntarily referred to the CMA.

Section 59: CMA report following mandatory or voluntary referral

192 This section makes provision as to the content of the report which is to be produced by the CMA further to a mandatory or voluntary referral. The CMA must contain an evaluation of the public authority's assessment as to whether it considers the subsidy or scheme would be consistent with the requirements of Chapters 1 and 2 of Part 2. The report may also include advice from the CMA about how that assessment might be improved, and how the proposed subsidy or scheme might be modified with a view to complying with the relevant subsidy control requirements. The Secretary of State may by regulations make provision as to the content and form of the report.

Section 60: Post-award referrals

193 This section makes provision as to the referral by the Secretary of State of subsidies or schemes after they have been given or made (a 'post-award referral'). A post-award referral may be made to the CMA at any time before the end of the period of 20 working days beginning with the day on which the subsidy or scheme was published on the database (or if information about the subsidy or scheme does not need to be published on the database, the date on which the subsidy or scheme was given or made).

194 The Secretary of State must at the same time as making a referral direct that the public authority provides certain information including any assessment undertaken by the public authority, before the subsidy or scheme was given or made, as to whether the subsidy or scheme would comply with the requirements in Chapters 1 and 2 of Part 2 (or in a case where the assessment is not provided, the reasons for that) (a 'post-award referral direction'). The public authority must provide the relevant information before the end of the period of 20 working days beginning with the day on which the post-award referral direction is given.

195 The Secretary of State may by regulations amend the periods mentioned above, and the form in which the relevant information must be provided by the public authority further to a post-award referral direction.

Section 61: CMA reporting period for post-award referrals

196 The CMA must publish a report on the subsidy or scheme before the end of the period of 30 working days beginning with the earlier of the day on which the required information is provided by the public authority to the CMA, or the day after the deadline expires for providing that information.

197 The reporting period may be extended by agreement between the CMA and public authority, or the CMA may in exceptional circumstances request an extension from the Secretary of State (with the request having the effect of pausing the reporting period until the Secretary of State determines whether to grant the extension). The Secretary of State may also make regulations that amend the length of the reporting period.

Section 62: CMA report following post-award referral

198 This section makes provision as to the content of the report which must be published by the CMA following a post-award referral (the 'post-award referral report'). The CMA must evaluate any assessment which the public authority has provided as to whether the subsidy or scheme would comply with the subsidy control principles, prohibitions and requirements. If an assessment was not provided then that fact must be stated in the report along with any reasons provided by the public authority as to why an assessment was not undertaken. The CMA may, if the subsidy or scheme is ongoing, provide advice about how the subsidy or scheme might be modified with a view to ensuring compliance with the principles, prohibitions and requirements. The Secretary of State may make further provision by regulations as to the content and form of the post-award referral report.

Section 63: Referrals in relation to subsidy schemes

199 This section excludes from Chapter 1 of Part 4 subsidies which are given under a subsidy scheme. It is instead the scheme which would be subject to referral to the CMA.

Section 64: Other exemptions

200 This section provides for the exemption of certain subsidies and subsidy schemes from some or all of the requirements of Chapter 1 of Part 4. Subsections (1) and (2) exempt from the requirements of Chapter 1 of Part 4 various subsidies or schemes where either the subsidy control principles, prohibitions and conditions do not apply, or it would otherwise be inappropriate for them to apply.

201 Subsection (3) confers a reserve power on the Secretary of State to exempt subsidies or schemes from the mandatory referral requirements of Chapter 1 of Part 4 where there are considered to be urgent and exceptional circumstances which mean that it is in the public interest that the subsidy or scheme can be given without delay. In the event that the Secretary of State exempts a subsidy or scheme for these purposes, the subsidy or scheme would still need to meet the subsidy control requirements under Part 2.

Chapter 2: General functions

Section 65: Monitoring and reporting on subsidy control

202 This section requires the CMA to undertake a periodic review of the effectiveness of the operation of this Act, and its impact on competition and investment within the UK. A report is required to be published by the CMA within the first three years of the implementation of the regime, and a second report three years after its first report. After the first two reports, the CMA is required to prepare a report each subsequent period of five years. The Secretary of

State may also direct that the CMA prepare a report in respect of a specified period, provided that the first two reports in respect of the first two relevant periods under subsection (3) have been prepared. The CMA must publish its reports and arrange for copies to be laid before each House of Parliament.

Section 66: CMA annual report

203 This section requires that the CMA's annual report include certain information as to the number and types of subsidies or schemes in respect of which it has prepared a report under Chapter 1 of Part 4.

Section 67: Information-gathering powers

204 This section applies sections 41 to 43 of the United Kingdom Internal Market Act 2020 for the purpose of assisting the CMA in carrying out any of its functions (monitoring and reporting on subsidy control). It confers a power on the Secretary of State to make regulations to make such further modifications to section 41 to 43 as are considered necessary for these purposes, with the exception of modifying the amounts in Section 43(6).

205 Section 41 to 43 of the United Kingdom Internal Market Act confer information-gathering powers on the CMA for the purposes mentioned in section 41(1) of that Act and deal with the enforcement of those powers. As provided in Section 41(2) and (3), the CMA will be able to give an information notice or require the production of a document by an individual, business or public authority. Section 42 establishes what action the CMA is able to take in response to non-compliance with the information requests described in the previous section.

206 Under Section 43 of the United Kingdom Internal Market Act, subsections (4) and (5) set out the conditions where financial penalties may not be imposed because more than 4 weeks have expired since the CMA exercised its relevant functions. This section modifies subsection (4) to make provision as to when the CMA is to be treated as having exercised its functions. Section 42(6) requires the CMA to publish its policy approach in relation to subsequent action should it decide that a request for information has not been adequately fulfilled.

207 If the CMA decides that a person has not fulfilled the request or has obstructed the production of documents, it is able to impose a financial penalty as described under Section 42(1) of the United Kingdom Internal Market Act. Section 43 sets out how the CMA will decide on appropriate financial penalties in cases of non-compliance with a notice. The CMA will be able to choose between a range of possible types of penalties and fix appropriate amounts having regard to their statement of policy on penalties and the facts of the case.

208 Sections 43(2) to (4) of the United Kingdom Internal Market Act state that the penalty can be a single, fixed amount, a daily rate or both. In any of these cases, the Secretary of State must specify maximum amounts through secondary legislation not exceeding £30,000 for a fixed amount and £15,000 for the daily rate, as stated in subsection (6). Those amounts cannot be modified by regulations made under this section.

Chapter 3: Subsidy Advice Unit

Section 68: Subsidy Advice Unit

209 The section requires the CMA to establish a new committee of its Board which is to be referred to as the Subsidy Advice Unit. The CMA is given the power to delegate its functions under or by virtue of this Act to the Unit, which must consist only of persons who are members of the CMA or its staff.

Section 69: References to subsidy control groups

210 This section enables the Subsidy Advice Unit to make a reference to the CMA Chair for the

constitution of a CMA panel group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (ERRA 2013). A CMA group must consist of at least three members of the CMA Panel (paragraph 38 of Schedule 4 ERRA 2013). The CMA may refer its subsidy control functions to that group. A reference must specify the subsidy control functions being referred, and (where relevant) the subsidy or scheme in respect of which the functions are to be carried out.

Part 5: Enforcement

Section 70: Review of subsidy decisions

- 211 This section enables interested parties to apply to the Competition Appeal Tribunal (CAT) for the review of a decision to give a subsidy or to make a subsidy scheme (a 'subsidy decision'). A person whose interests may be affected by a subsidy decision will be an interested party for these purposes. This might most typically be a competitor of the beneficiary or a trade association. However, depending on the nature of the subsidy, it could also extend to others, such as a local authority or devolved administration. The Secretary of State is expressly included as an interested party.
- 212 Interested parties must bring claims in line with the CAT's rules, including sending their notice of appeal within the time limits provided in new Part 5A of the Competition Appeal Tribunal Rules 2015 (as inserted by this Act).
- 213 This section also makes provision as to the principles that the CAT must apply when determining an application for a review of a subsidy decision. In proceedings in England and Wales or Northern Ireland, the CAT must apply the same principles as the High Court applies in judicial reviews. For proceedings in Scotland, the CAT must apply the same principles as the Court of Session would apply on an application to the supervisory jurisdiction of the Court.
- 214 Any application to the CAT to review a subsidy decision does not have the effect of suspending that decision unless otherwise directed by the Tribunal.

Section 71: Time limits for applications under section 70

- 215 This section amends the Competition Appeal Tribunal Rules 2015 to set out the time limits for applying to the CAT for the review of a subsidy decision.
- 216 Interested parties must send their notice of appeal to the CAT within one month of the relevant date. The relevant date in relation to a subsidy decision will vary depending on the circumstances.
- a. If an interested party makes a pre-action information request within one month of the transparency date, then the relevant date will be the date on which the public authority provides notice that it has provided the required information in response to the request.
 - b. If a post-award referral is made to the CMA in relation to a subsidy or scheme, the relevant date is the date on which the CMA publishes its post-award referral report.
 - c. If both a pre-action request and post-award referral is made, the time limit will run from whatever happens later: the notification in response to the pre-action request or the publication of the post-award referral report. This ensures that an interested party will be able to take into account any response to its pre-action request or the publication of the post-award referral report in deciding whether to bring an application to review a subsidy decision.

217 If neither a pre-action request nor post-award referral is made, the relevant date from when the one-month time limit will run is the 'transparency date', which is the date the transparency requirements are met through publication of the details of the subsidy or scheme on the subsidy database. A minor error or omission in an entry for the subsidy or scheme may be disregarded by the CAT for these purposes. If the subsidy is exempt from the requirement to publish information on the subsidy database, then the 'transparency date' is the date on which the interested party first knew, or ought to have known, about the subsidy decision in question.

218 The CAT may not extend the one-month time limit unless there are exceptional circumstances that merit such an extension.

Section 72: CAT powers on review: England and Wales and Northern Ireland

219 This section confers power on the CAT to grant certain forms of relief similar to the High Court on an application for judicial review in England and Wales or Northern Ireland.

220 Where it has jurisdiction, the CAT may grant a mandatory order (an order that the respondent does something); a prohibiting order (an order that the respondent stops doing something); a quashing order (an order setting aside a decision); a declaration; or an injunction. These remedies have the same effect as if made by the High Court. In determining whether to grant a remedy, the Tribunal must apply the same principles that would be applied by the High Court in deciding whether to grant relief on an application for judicial review.

221 The CAT may likewise refuse to grant relief in the same circumstances as the High Court may refuse to grant relief on an application for judicial review, namely where:

- a. there has been an undue delay in making the application, or the granting of the remedy sought would likely cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration; or
- b. if it appears to the CAT to be highly likely that the outcome for the interested party would not have been substantially different if the conduct complained of had not occurred (in which case the CAT must refuse relief unless there are reasons of exceptional public interest).

Section 73: CAT powers on review: Scotland

222 This section sets out that the powers of the CAT in proceedings in Scotland are the same as those as the Court of Session in an application to the supervisory jurisdiction of that Court and they should apply the same principles as the Court of Session would in these cases.

Section 74: Recovery orders

223 This section confers a power on the CAT to make a recovery order if it has granted relief in respect of a subsidy decision (e.g. a quashing order) and found that the decision was in contravention of the subsidy control requirements in Chapter 1 and 2 of Part 2 of this Act.

224 A recovery order requires a public authority to recover some or all of the subsidy from the beneficiary (or beneficiaries) in accordance with the terms of the order. A recovery order may provide for how the subsidy is to be recovered, the amount to be recovered, or require that the subsidy is recovered within a particular time or with the payment of interest. Where an order is made in respect of a subsidy scheme, the CAT may require that all or some of the subsidies under that scheme be recovered.

Section 75: Appeals against decisions of the CAT

225 This section provides the basis on which appeals can be made to the Court of Appeal in England and Wales or Northern Ireland or the Court of Session in Scotland. Appeals may be made on any point of law with permission either from the Tribunal or the relevant appellate court.

Section 76: Duty to provide pre-action information

226 This section imposes a duty on public authorities to provide certain information to interested parties about a subsidy or subsidy scheme. An interested party may request the information for the purpose of deciding whether to apply to the CAT for a review of a subsidy or scheme on the grounds that it failed to comply with the relevant subsidy control requirements. A request must be provided in writing and the interested party must state that they are considering applying for a review.

227 The public authority must respond to a request within 28 days. The public authority may impose such restrictions as it considers proportionate to protect commercially sensitive, confidential or legally privileged information, or information whose disclosure would otherwise be contrary to the public interest.

Section 77: Misuse of subsidies

228 This section confers a right on public authorities to recover subsidies that are used for a purpose other than that for which they were given. The right to recover is enforceable as if it were a contract right and it does not affect any other remedies that might be available to the public authority with respect to the award of the subsidy in question (for example, any remedies the public authority might have under contract law or the law of restitution).

Part 6: Miscellaneous and general

Chapter 1: Miscellaneous

Section 78: Subsidies and schemes in primary legislation

229 This section introduces Schedule 3, which applies the subsidy control provisions of this Act to financial assistance or schemes made directly by primary legislation. The subsidy control requirements only apply to primary legislation, be it legislation made in Westminster or by the Devolved Administrations, so far as provided for by Schedule 3 to the Act.

Schedule 3: Subsidies provided by primary legislation

230 Schedule 3 deals with the application of this Act in the case of subsidies provided by means of primary legislation. This may occur, for example, where an Act grants a subsidy or makes a scheme on its face, or places prescriptive spending provisions which would amount to a subsidy. This would not otherwise capture broad powers to grant financial assistance which are to be exercised at the discretion of a public authority.

231 The Schedule primarily deals with application to devolved primary legislation (i.e. Acts of the Scottish Parliament, Acts or Measures of Senedd Cymru, or Acts of the Northern Ireland Assembly). It is a constitutional principle that one Act of UK Parliament cannot bind future Acts of Parliament. This instrument does not purport to restrict the ability of the UK Parliament to pass Acts in the future that directly grant subsidies but does require Ministers (or HMRC Commissioners) to place any subsidy measures on the subsidy database.

232 Paragraphs 2 to 5 set out relevant definitions for the purpose of this Schedule.

- 233 Paragraph 6 applies Chapter 1 of Part 2 (principles) to subsidies or schemes provided by means of devolved primary legislation. In any proceedings, the appropriate court would be required to consider provisions by reference to the considerations and views of the promoter of the proposed legislation (that is, Ministers or other members of the devolved legislature introducing an Act, or members who lodge amendments amounting to subsidies). Court proceedings in relation to such cases would be heard in the Court of Session, High Court in England and Wales, or High Court in Northern Ireland, as relevant, rather than the Competition Appeal Tribunal as in Part 5 of the Act.
- 234 Paragraph 7 makes similar provision for Chapter 2 of Part 2 (prohibitions and other requirements) and Part 3 (exemptions), together with technical modifications to certain provisions in those Parts to ensure that they operate properly. The paragraph disapplies section 37 (minimal financial assistance procedural requirements) and section 39 (services of public economic interest assistance procedural requirements) for this purpose.
- 235 Paragraph 8 requires Scottish Ministers, Welsh Ministers or a Northern Ireland department (as relevant) to place subsidy measures, or modifications to subsidies and subsidy schemes, in primary legislation on the subsidy database (in conformity with Chapter 3 of Part 2). This also applies to Ministers of the Crown or the Commissioners for HMRC in relation to a subsidy measure or modification to a subsidy or subsidy scheme in an Act of Parliament.
- 236 Paragraph 9 enables voluntary referrals to the CMA in respect of subsidies of interest, or subsidies of particular interest, in proposed primary legislation (devolved or UK). Mandatory referrals (for subsidies of particular interest or following a Secretary of State call-in direction) do not apply in respect of subsidies in primary legislation.
- 237 Paragraph 10 applies (and makes modifications to) section 74 to enable the appropriate courts to make recovery orders, requiring Scottish Ministers, Welsh Ministers or NI Department (as relevant) to recover a subsidy provided by means of devolved primary legislation.
- 238 Paragraph 11 requires Scottish Ministers, Welsh Ministers or a Northern Ireland Department to provide pre-action information within the meaning of section 76 to interested parties ahead of any proceedings.
- 239 Paragraph 12 makes explicit that the power to make consequential provisions in section 86 includes power to make provisions for similar time limits for proceedings in the Court of Session or High Court, as in section 71 for proceedings in the CAT.

Section 79: Guidance

- 240 Section 79 describes the power the Secretary of State has in relation to issuing guidance on the application of this Act, including the meaning and effect of the principles.
- 241 This section gives the Secretary of State power to issue guidance on the practical application of the provisions in this Act, including the definition of a subsidy, the principles, prohibitions and other requirements, the transparency requirements, the exemptions, the mandatory referral provisions, the misuse of subsidy provision, and the duty to provide pre-action information.
- 242 Guidance would provide greater detail on how to apply elements of the definition of subsidy (for example with regard to establishing that financial assistance is given on commercial terms) and how the principles should be used to assess subsidies and subsidy schemes, including:
- a. methodologies that could be used for assessing benefits and distortive effects, including on UK competition and investment and on international trade;

- b. the level and type of analysis that could be considered proportionate depending on the type of subsidy (this would be linked to the Subsidies and Schemes of Interest and Particular Interest criteria);
- c. what kinds of features may be generally considered 'best practice' examples of subsidy design making a subsidy more likely to be consistent with the principles, such as fair and open competitions for subsidies; and
- d. what kinds of features might merit closer attention from a public authority to ensure that negative effects on other parties had been properly taken into account, such as subsidy races.

243 The guidance could, for example, be used to explain how subsidies might be given to support disadvantaged areas in a way that is consistent with the principles, by indicating characteristics or criteria that a public authority may choose to use when deciding whether an area could be considered disadvantaged and how that might be used to justify more ambitious or extensive subsidy interventions consistent with the principles. The guidance could also indicate that those kinds of interventions may not be consistent with the principles in more advantaged areas. This guidance will be nuanced and will reflect that different areas face different types and levels of disadvantage depending on their geographical, economic and social situation.

244 The Government would look to the Green Book: Central Government Guidance on Appraisal and Evaluation as an example of detailed guidance for authorities making spending decisions (albeit in the notably different context of spending control, rather than subsidy control) and would consider any relevant read-across as well as ensuring that the guidance was mutually compatible (to provide for situations where both Green Book and subsidy control guidance applied simultaneously, for central Government subsidies).

245 The section allows the Secretary of State to revise or review the guidance. The section also places obligations on the Secretary of State. The obligations are to publish the guidance, keep it under regular review and consult persons that the Secretary of State deems appropriate before issuing the guidance. The Secretary of State may launch a consultation on the guidance before the Act comes into force.

246 The final effect of the section is to oblige public authorities to have regard to the guidance when designing a subsidy scheme or giving a standalone subsidy.

Section 80: Disclosure of information

247 This section establishes that any duty or power to divulge information provided for in this Act does not override the provisions of data protection legislation.

248 The section also makes amendments to the disclosure of information provisions of the Enterprise Act 2002 and establishes that CMA functions under this Act are subject to absolute privilege (for the purpose of defamation law).

Section 81: Modifications to subsidies and schemes

249 This section establishes that changes to subsidies or schemes are regarded as being a new subsidy or scheme. Consequently, the public authority will have to comply with the subsidy control requirements.

250 However, in relation to transparency requirements modifications only need to be uploaded as modifications under section 33(5), not as new subsidies or schemes under sections 33(1) or (3). Where the modification is a 'permitted modification' as defined under subsection (3) it is only the transparency requirements that apply, as they apply to other modifications, unless the

kind of ‘permitted modification’ is otherwise exempt from subsidy control requirements, including from transparency requirements.

251 This section also explains the definitions of ‘legacy subsidy’ and ‘legacy scheme’ that are found in section 48.

Section 82: Gross cash and gross cash equivalent amount of financial assistance

252 This section gives the Secretary of State the power to set out a methodology for calculating the gross cash equivalent of a subsidy that is not provided in cash terms (for example, a loan or guarantee), in order to determine whether particular thresholds have been met for the purposes of sections 33, 36, 38 and 41 (thresholds for minimal and SPEI financial assistance and transparency requirements for subsidies granted under a scheme). This methodology would also apply to any provision regulations or schemes made under this Act. For example, we would expect to refer to this section in any regulations made under section 11 (Subsidies and Schemes of Interest and of Particular Interest), which make reference to the value of a subsidy.

Section 83: Minor amendment to the Financial Services Act 2021

253 This section makes consequential amendment to the Financial Services Act 2021, specifically in relation to the meaning of ‘insurance company’, ‘deposit taker’, and ‘insurer’ in that Act.

Chapter 2: General

Section 84: Financial provision

254 This section sets out that expenditure incurred under the terms of this Act is to be met from supplies provided by Parliament.

Section 85: Crown application

255 This section states that the Act applies in full to the Crown, except to Her Majesty in Her private capacity, Her Majesty in right of the Duchy of Lancaster, or the Duke of Cornwall.

Section 86: Power to make consequential provision

256 This section provides for the Secretary of State to make consequential provision by regulations (that is, to make necessary corrections to other law, in light of any consequences of this Act, intended or otherwise) to repeal or amend any primary or secondary legislation, or retained EU legislation. This power applies only to law in force before this Act is passed.

257 This section also explains what Parliamentary procedure applies to any regulations.

Section 87: Regulations

258 This section sets out various procedural matters that are relevant where regulations are made under powers in this Act.

259 It also provides that any power to make regulations under Part 4 to amend a provision of this Act cannot be exercised after the period of one year beginning with the day on which the CMA publishes its second report dealing with the effectiveness of the operation of this Act, and its impact on competition and investment within the UK (see section 65 (monitoring and reporting on subsidy control)).

260 The provisions of this section do not apply to regulations under section 91 (commencement).

Section 88: Directions

261 This section explains that any directions made under this Act must be made in writing, may be varied or revoked.

Section 89: Interpretation

262 This section sets out definitions for various terms used in this Act, whether these terms are defined elsewhere in the Act or in external sources of law.

Section 90: Extent

263 This section establishes that the Act applies to the entirety of the United Kingdom of Great Britain and Northern Ireland. The exception here (Section 48(4)) is for the omission of Article 9 in the application of Regulation (EC) No 1370/2007, which specifies that ‘common market’; this omission does not apply to Northern Ireland.

Section 91: Commencement

264 This section sets out what parts or sections of the Act come into force, and when. Some parts of the Act, listed in this section and including regulation-making power, come into effect on the day the Act is passed. The remaining parts of the Act come into force on a date specified by the Secretary of State in regulations.

265 The section also provides for the Secretary of State to make transitional regulations via statutory instrument.

Section 92: Short title

266 This section establishes the short title for the Act.

Commencement

267 Section 91 makes provision for certain powers enabling the making of regulations that came into force on the day of Royal Assent, 28 April 2022. The remaining provisions of this Act will come into force on days appointed by the Secretary of State by commencement regulations.

Related documents

268 The following documents are relevant to the Act and can be read at the stated locations:

- [Consultation – Subsidy Control: Designing a new approach for the UK.](#)
- [The Government Response to the Subsidy Control Consultation](#)
- [Subsidy Control: Designing a new approach for the UK Impact Assessment](#)
- [The Government’s Written Ministerial Statement on the Subsidy Control Bill](#)
- [The EU-UK Trade and Cooperation Agreement \(TCA\)](#)
- [The Protocol on Ireland/Northern Ireland to the Withdrawal Agreement \(Northern Ireland Protocol\)](#)
- [The WTO Agreement on Subsidies and Countervailing Measures \(ASCM\)](#)
- [Northern Ireland Protocol: the way forward](#)
- [Illustrative regulations, guidance and streamlined routes](#)

Annex A – Hansard References

269 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	30 June 2021	Vol. 698 Col. 281
Second Reading	22 September 2021	Vol. 701 Col. 336
Public Bill Committee	26 October 2021	1st sitting
	26 October 2021	2nd sitting
	28 October 2021	3rd sitting
	28 October 2021	4th sitting
	2 November 2021	5th sitting
	2 November 2021	6th sitting
	4 November 2021	7th sitting
	4 November 2021	8th sitting
	16 November 2021	9th sitting
16 November 2021	10th sitting	
18 November 2021	11th sitting	
Report and Third Reading	13 December 2021	Vol. 705 Col. 829
<i>House of Lords</i>		
Introduction	14 December 2021	Vol. 817 Col. 129
Second Reading	19 January 2022	Vol. 817 Col. 1710
Grand Committee	31 January 2022	1st sitting
	2 February 2022	2nd sitting
	7 February 2022	3rd sitting
	9 February 2022	4th sitting
Report	22 March 2022	Vol. 820 Col. 865
Third Reading	28 March 2022	Vol. 820 Col. 1279
Commons Consideration of Lords Amendments	20 April 2022	Vol. 712 Col. 169
Royal Assent	28 April 2022	House of Lords Vol. 821 Col. 383

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