



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 3

#### EXEMPTIONS

### CHAPTER 2

#### MINIMAL OR SPEI FINANCIAL ASSISTANCE

##### *General*

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

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

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***Changes to legislation:** There are currently no known outstanding effects for the Subsidy Control Act 2022, Section 40. (See end of Document for details)*

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

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**Commencement Information**

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

**Changes to legislation:**

There are currently no known outstanding effects for the Subsidy Control Act 2022, Section 40.