

2022 No. 1186

SUBSIDY CONTROL

The Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022

<i>Made</i>	- - - -	<i>14th November 2022</i>
<i>Laid before Parliament</i>		<i>15th November 2022</i>
<i>Coming into force</i>		<i>4th January 2023</i>

The Secretary of State, in exercise of the powers conferred by sections 82(1) and 87(2) of the Subsidy Control Act 2022(a) makes the following Regulations.

Citation, commencement, and extent

- 1.—(1) These Regulations may be cited as the Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022.
- (2) These Regulations come into force on 4th January 2023.
- (3) These Regulations extend to England and Wales, Scotland, and Northern Ireland.

Interpretation

- 2.—(1) In these Regulations—
- “the Act” means the Subsidy Control Act 2022;
- “credit rating” means a credit rating provided by a credit rating agency;
- “credit rating agency” has the same meaning as in regulation 2 of the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019(b);
- “Fitch” means Fitch Ratings Limited (registered company number 01316230);
- “Moody’s” means Moody’s Investors Services Inc. incorporated in the US state of Delaware (file number 0577904);
- “normal taxation regime” is to be interpreted in accordance with section 4(4) of the Act;
- “small loan” means a loan which meets the conditions in regulation 6(2) or (3);
- “small loan guarantee” means a loan guarantee which meets the conditions in regulation 7(2) or (3);
- “Standard and Poor’s” means Standard and Poor’s Financial Services LLC, incorporated in the US state of Delaware (file number 4621989).
- (2) For the purposes of these Regulations—

(a) 2022 c. 23.
(b) S.I. 2019/266.

- (a) a person has a strong, good or satisfactory level of creditworthiness if a credit rating of a description set out in the Table in Schedule 1 corresponding to that level of creditworthiness has been issued in respect of that person, and
- (b) a person may be treated as having a strong, good or satisfactory level of creditworthiness if no such credit rating has been issued in respect of that person but there are reasonable grounds to believe that that person's level of creditworthiness is at least equivalent to a person who would qualify as having a strong, good or satisfactory level of creditworthiness under sub-paragraph (a).

Gross Cash Amount and Gross Cash Equivalent Amount

3.—(1) These Regulations make provision about how the gross cash amount or the gross cash equivalent amount of a subsidy^(a) is to be determined for the purpose of—

- (a) section 33(8) of the Act (Duty to include information in the subsidy database),
 - (b) section 36(5) of the Act (Minimal financial assistance),
 - (c) section 38(5) of the Act (Services of public economic interest assistance),
 - (d) section 41(2) of the Act (Exemption for certain subsidies given to SPEI enterprises), and
 - (e) provision in regulations or schemes made under the Act.
- (2) In the provisions mentioned in paragraph (1)(a) to (e)—
- (a) references to a subsidy being provided in cash are to be taken to mean a subsidy which is given by means of a grant, and
 - (b) references to a subsidy provided otherwise than in cash are to be taken to mean a subsidy given by any other means.
- (3) Accordingly, in these Regulations—
- (a) references to the gross cash amount of a subsidy are to be taken to refer to a subsidy which is given by means of a grant, and
 - (b) references to the gross cash equivalent amount of a subsidy are to be taken to refer to a subsidy which is given by any other means.

General approach to determine the gross cash amount or the gross cash equivalent of a subsidy

4.—(1) Where a subsidy is given by means of a grant, the gross cash amount is to be determined by reference to the amount of cash made available under the grant.

(2) Where a subsidy is given by any other means (except in the form of a tax measure), the gross cash equivalent amount is to be determined by reference to the value of the benefit conferred by the subsidy on an enterprise^(b), taking into account the difference between—

- (a) the terms on which the subsidy is given, and
- (b) the terms on which financial assistance of the same kind might reasonably have been expected to have been available on the market to the enterprise.

(3) Where a subsidy is given in the form of a tax measure, the gross cash equivalent is to be determined by reference to the value of the benefit conferred by the subsidy on an enterprise taking into account the difference between—

- (a) the tax liability borne by an enterprise as a result of that tax measure, and
- (b) the tax liability that the enterprise would otherwise have borne under the normal taxation regime.

(a) “subsidy” has the meaning given by section 2(1) of the Subsidy Control Act 2022. (c. 23).

(b) “enterprise” has the meaning given by section 7 of the Subsidy Control Act 2022. (c. 23).

(4) When determining the gross cash amount or the gross cash equivalent of a subsidy under paragraphs (1) or (2)—

- (a) the determination must be made in accordance with generally accepted accounting practice, and
- (b) no deductions are to be made for taxes or other charges payable on the subsidy.

(5) Where it is appropriate to apply a discount rate to reflect the present value of a subsidy when it is given, the discount rate applied must be equal to 5.3% per annum.

(6) A determination made under paragraph (2) or (3) may be based upon a reasonable estimate of the maximum foreseeable gross cash equivalent amount if—

- (a) the subsidy is given in the form of a tax measure, or
- (b) it is not reasonably possible to calculate precisely the gross cash equivalent of the subsidy.

(7) Without prejudice to the generality of regulation 3(1), a determination made in reliance on paragraph 6 may be used, in particular, for the purpose of ascertaining—

- (a) whether a subsidy is a subsidy of interest or a subsidy of particular interest^(a),
- (b) the maximum amount of an individual subsidy that may be given under a subsidy scheme, or
- (c) whether a subsidy scheme allows for a subsidy of interest or a subsidy of particular interest to be given under it.

Supplementary provisions for determining the gross cash equivalent of certain subsidies

5. When determining the gross cash equivalent amount of a subsidy under regulation 4(2)—

- (a) where the subsidy is given by means of a small loan, regulation 6 may be applied;
- (b) where the subsidy is given by means of a small loan guarantee, regulation 7 may be applied;
- (c) where the subsidy is given by means of a loan to a person with a strong, good or satisfactory level of creditworthiness, the interest rate at which a loan of the same kind might reasonably have been expected to have been available on the market to that person may be determined in accordance with regulation 8;
- (d) where the subsidy is given by means of a guarantee which relates to a person with a strong, good or satisfactory level of creditworthiness, the premium at which a guarantee of the same kind might reasonably have been expected to have been available on the market may be determined in accordance with regulation 9.

Determining the gross cash equivalent of a small loan

6.—(1) Where a loan meets the conditions for a small loan set out in paragraphs (2) or (3) the gross cash equivalent of that loan may be determined to be equal to £315,000.

(2) A loan is a small loan if it is—

- (a) secured by collateral of a value of at least 50% of the amount of the loan,
- (b) of an amount which is not more than £1,575,000, and
- (c) for a term of not more than 5 years.

(3) A loan is a small loan if it is—

- (a) of an amount which is not more than £785,000, and
- (b) for a term of not more than 10 years.

(a) “subsidy of interest” and “subsidy of particular interest” have the meanings given in regulations made by the Secretary of State under section 11(1) of the Subsidy Control Act 2022.

(4) Where a small loan is for less than the amounts set out in paragraphs (2)(b) or (3)(a), or is given for a term of less than 5 or 10 years respectively, the gross cash equivalent of that loan may be determined to be the corresponding proportion of £315,000.

Determining the gross cash equivalent of a small loan guarantee

7.—(1) Where a loan guarantee meets the conditions for a small loan guarantee set out in paragraphs (2) or (3) the gross cash equivalent of that loan guarantee may be determined to be equal to £315,000.

(2) A loan guarantee is a small loan guarantee if—

- (a) it guarantees not more than 80% of the loan,
- (b) the amount guaranteed is not more than £2,350,000, and
- (c) the duration of the guarantee is not more than 5 years.

(3) A loan guarantee is a small loan guarantee if—

- (a) it guarantees not more than 80% of the loan,
- (b) the amount guaranteed is not more than £1,175,000, and
- (c) the duration of the loan guarantee is not more than 10 years.

(4) Where a small loan guarantee is for less than the amounts set out in paragraphs (2)(b) or (3)(b) or is given for a period of less than 5 or 10 years respectively, the gross cash equivalent of that loan guarantee may be determined to be the corresponding proportion of £315,000.

Determining the interest rate for a loan that might reasonably have been expected to have been available on the market

8. Where the subsidy is given by means of a loan to a person with a strong, good or satisfactory level of creditworthiness, the interest rate at which a loan of the same kind might reasonably have been expected to have been available on the market may be calculated by adding—

- (a) the relevant base rate, which is determined by identifying the period over which the loan is to be repaid, as set out in Table 1 in Schedule 2, and
- (b) the relevant mark-up rate in the third column of Table 2 in Schedule 2, which is determined by identifying—
 - (i) the person’s level of creditworthiness in accordance with regulation 2(2), and
 - (ii) the percentage loss that a public authority^(a) may experience if the person in receipt of the loan does not repay the loan, as set out in the second column of Table 2 in Schedule 2.

Determining the risk that a claim will be made when calculating the premium at which a guarantee might reasonably have been expected to have been available on the market

9. Where the subsidy is given by means of a guarantee which relates to a person with a strong, good or satisfactory level of creditworthiness, the premium at which a guarantee of the same kind might reasonably have been expected to have been available on the market may be determined by reference to the amount guaranteed multiplied by the risk that a claim will be made under the guarantee as set out in the Table in Schedule 3.

14th November 2022

Kevin Hollinrake
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

(a) “public authority” has the meaning given by section 6(1) of the Subsidy Control Act 2022 (c. 23).

SCHEDULE 1

Regulation 2

Table

Determining a person's level of creditworthiness

<i>Level of creditworthiness</i>	<i>Credit rating</i>
Strong	Aaa - A3 (issued by Moody's) AAA - A- (issued by Fitch) AAA - A- (issued by Standard and Poor's) or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.
Good	Baa 1 - Baa 3 (issued by Moody's) BBB+ - BBB- (issued by Fitch) BBB+ - BBB- (issued by Standard and Poor's) or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.
Satisfactory	Ba 1 - Ba3 (issued by Moody's) BB+ - BB- (issued by Fitch) BB+ - BB- (issued by Standard and Poor's) or any other credit rating that is commonly understood by credit rating agencies to denote an equivalent level of creditworthiness.

SCHEDULE 2

Regulation 8

Table 1

Determining the base rate for loans

<i>Length of loan</i>	<i>Base rate per annum</i>
One month	4.3%
Three months	4.3%
Six months	4.3%
One year	4.3%
Two years	4.3%
Five years	3.8%
Ten years	3.4%
25 years	3.1%

Table 2

Determining the mark up rate for loans

<i>Level of creditworthiness</i>	<i>Loss in the event of default</i>	<i>Mark up rate per annum</i>
Strong	None	1%
Good	None	1%
Satisfactory	Not more than 30%	1%
Satisfactory	More than 30% and not more than 60%	2.2%
Satisfactory	More than 60% (or not known)	3.4%

Table**Determining the risk that a claim will be made**

<i>Level of creditworthiness</i>	<i>Risk that a claim will be made</i>
Strong	0.1%
Good	1.0%
Satisfactory	7.5%

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out how the gross cash amount or the gross cash equivalent amount of a subsidy is to be determined for the purposes of certain provisions contained in, or made under, the Subsidy Control Act 2022 (“the Act”).

Regulation 3 sets out the provisions which these Regulations apply to. These are provisions contained in, or made under, the Act that apply to thresholds or other requirements which are based on the amount of a subsidy determined by reference to its gross cash amount or its gross cash equivalent. Regulation 3 also sets out which types of subsidy are to be valued by reference to their gross cash amount, and which types of subsidy are to be valued by reference to their gross cash equivalent.

Regulations 4 sets out the general approach to be applied when determining the gross cash amount of subsidies given by means of a grant, or the gross cash equivalent of subsidies given by other means (including those given in the form of a tax measure). Regulation 5 provides that the further supplementary provisions set out in regulations 6 to 9 may be applied when determining the gross cash equivalent of certain types of subsidies, namely small loans, small loan guarantees, and loans or guarantees which relate to persons with a strong, good or satisfactory level of credit worthiness.

Regulations 6 and 7 set out the conditions which a subsidy must meet to qualify as a small loan or a small loan guarantee and provides for such subsidies to be valued at or below £315,000.

Regulation 8 allows for the market interest rate of a loan to a person with a strong, good or satisfactory level of credit worthiness to be determined using the tables in Schedule 2.

Regulation 9 allows for the market premium for a guarantee relating to a person with a strong, good or satisfactory level of credit worthiness to be determined by reference to the table in Schedule 3.

A full impact assessment has not been produced for this instrument as the effect of this instrument on the costs of business, the voluntary sector and the public sector is covered by the impact assessment produced in relation to the provisions of the Act, a copy of which is available at <https://www.gov.uk/government/publications/subsidy-control-bill-2021-bill-documents>. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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