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# The UK Subsidy Control Regime

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# Agenda

- Background to EU State aid regime and UK Subsidy Control Regime
- Subsidy Control Act 2022
- Subsidy Advice Unit
- What is a subsidy?
- Subsidy Control Principles
- Transparency Obligations
- Referrals to Subsidy Advice Unit
- Streamlined routes

# Subsidy Control Act 2022

- In force from 4 January 2023
- Subsidies allowed if compliant with requirements of the Act
- Establishment of Subsidy Advice Unit
- Provision for challenge in the Competition Appeal Tribunal

# Subsidy Advice Unit

- Part of the Competition and Markets Authority
- Functions set out in Part 4 of Subsidy Control Act 2022
- Responsible for review and monitoring of subsidies
- Provides advice on subsidies and schemes of interest and particular interest
- Evaluates assessments of compliance
- Monitors and reviews effectiveness of subsidy control legislation

# Subsidy

- Financial assistance given directly or indirectly from public resources of a public authority
- Confers an economic advantage on an enterprise
- Is specific insofar as it benefits one or more enterprises over one or more other enterprises with respect to production of goods or services
- Has or is capable of having an effect upon:
  - Competition and investment within UK
  - Trade between UK and another country or territory
  - Investment between UK and another country or territory

# Market Terms

- "Financial assistance is not to be treated as conferring an economic advantage on an enterprise unless the benefit to the enterprise is provided on terms that are more favourable to the enterprise than the terms that might reasonably have been expected to have been available on the market to the enterprise" – Section 3

# Prohibited Subsidies

- Unlimited guarantees
- Requirement to use domestic goods or services
- Contingent on export performance

# Subsidies subject to conditions

- Relocation of activities – Must lead to net reduction in disadvantage
- Ailing or insolvent enterprises – Must meet specific requirements
- Export credit insurance
- Operation or routes by air carriers

# Exemptions

- Set out in Part 3 of the Subsidy Control Act 2022
- Natural disasters
- National or global emergencies
- National Security
- Bank of England monetary policy
- Financial stability
- Legacy and withdrawal agreement subsidies
- Tax measures
- Large cross-border or international cooperation agreements
- Nuclear Energy

# Minimum Financial Assistance

- £315,000 per enterprise over three financial years
- Takes account of previous awards under State aid de minimis provisions and Article 364 of Trade and Co-operation Agreement
- Awards above £100,000 subject to transparency provisions

# Services of Public Economic Interest

- Services of public economic interest – Essential services provided to the public that would not be supplied by the market without the subsidy
- Subsidy for SPEI services must be limited to what is necessary and must be given in a transparent manner
- Threshold of £725,000 per enterprise over three financial years for services of public economic interest
- Includes social housing, medical care, transport in remote areas

# Subsidy Control Principles

- Authority must consider subsidy control principles before deciding to give a subsidy
- Authority must not give a subsidy unless satisfied it is consistent with subsidy control principles
  - Section 12 Subsidy Control Act 2022
- Must also consider energy and environment principles before giving a subsidy relating to energy and environment
  - Section 13 Subsidy Control Act 2022

# Subsidy Control Principles

- Must pursue a specific public policy objective to remedy market failure or address an equity rationale
- Must be proportionate to policy objective and limited to what is necessary to achieve it
- Must be designed to bring about change of economic behaviour of beneficiary
- Must not compensate for costs the beneficiary would have funded in the absence of the subsidy

# Subsidy Control Principles

- Must be an appropriate policy instrument for achieving a policy objective and the objective could not be achieved through less distortive means
- Must be designed to achieve the policy objective whilst minimising negative effects on competition or investment within United Kingdom
- Beneficial effects must outweigh any negative effects

# Energy & Environment Principles

- Subsidy must aim to deliver a secure, affordable and sustainable energy system and a well-functioning and competitive energy market or increase the level of environmental protection
- Subsidy must not undermine the polluter pays principle
- Subsidies for electricity generation adequacy, renewable energy or cogeneration must not undermine the UK's ability to meet its obligations relating to wholesale electricity and gas markets

# Energy & Environment Principles

- Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO2 emission limits.
- Subsidies for renewable energy or cogeneration must not affect beneficiaries' obligations or opportunities to participate in electricity markets.
- Subsidies in the form of tax or levy exemptions must not exceed the total amount of the tax or levy concerned.
- 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 must be restricted to sectors at significant risk of carbon leakage due to the cost increase.

# Energy & Environment Principles

- Subsidies for the decarbonisation of emissions linked to UK industrial activities must reduce greenhouse gas emissions overall and reduce the emissions directly resulting from the industrial activities
- Subsidies to improve the energy efficiency of UK industrial activities must improve energy efficiency by reducing energy consumption

# Transparency Obligations

- Details need to be uploaded to Government transparency database of:
  - Subsidy awards
  - Subsidy schemes
  - Must be uploaded within three months of decision to award subsidy
- Portal for uploading subsidy information: <https://manageuksubsidies.beis.gov.uk/>
- Subsidy database queries: [subsidydatabase@beis.gov.uk](mailto:subsidydatabase@beis.gov.uk)
- Search portal accessible to the public

# Subsidies of Interest

- Subsidies over £5 million individually or with related subsidies over three financial years
- Subsidy for relocation of activities
- Subsidy for restructuring

# Subsidies of particular interest

- Subsidies in sensitive sectors over £5 million
- Subsidies in sensitive sectors over £1 million and cumulatively over £5 million with other related subsidies over three financial years
- Subsidies in other sectors over £10 million
- Subsidies in other sectors over £1 million and cumulatively over £10 million with other related subsidies over three financial years

# Referrals to Subsidy Advice Unit

- Mandatory referrals – Subsidies of particular interest must be referred
- Voluntary referrals – Subsidies of interest may be referred
- Secretary of State may refer a subsidy or scheme to the SAU after subsidy has been made if Secretary of State considers that subsidy is not legally compliant or there is a risk of negative effects on competition or investment in the UK

# Referrals to Subsidy Advice Unit

- Must include:
  - Index of documents
  - Why the authority considers it is a subsidy or subsidy scheme of particular interest
  - Assessment of compliance
  - Evidence relevant to assessment of compliance
  - Any information the authority is required to upload to subsidy database
  - Confidential information must be clearly identified

# Submission of supporting documents

- Index must provide:
  - Document number
  - File name
  - Document title
  - Purpose of document
  - Date produced
  - Produced by
  - Brief description of the document's relevance to the assessment

# Submission of supporting documents

- Each document must have an individual number and title
- Authority must provide detailed description of confidential information and reasons for confidentiality
- Authority must provide details of:
  - Where in the assessment each principle is assessed
  - Which evidence documents are relevant to each part of the assessment

# SAU Approach to evaluation of compliance assessment

- SAU will consider:
  - How well does authority's assessment address the subsidy's compliance with legal requirements?
  - Has appropriate relevant evidence been identified and used in the assessment? Are the authority's analysis and conclusions generally consistent with that evidence?

# Arrangements for referrals

- Pre-referral discussions – Contact [SAU@cma.gov.uk](mailto:SAU@cma.gov.uk)
- Submission of request for a report to SAU's Public Authority Portal
- Preliminary assessment – SAU confirms whether it will produce a report
- Reporting period – 30 working days from notice to authority – but can be extended

# Arrangements for referrals

- SAU publishes information about the referral on its website
- Outcome of SAU communicated orally to authority subject to embargo
- Report published on SAU website

# Reports of Subsidy Advice Unit

- SAU will produce a report on a referred subsidy
- Authority must wait five working days after issue of report before giving a subsidy which has been the subject of mandatory referral

# Challenge

- Anyone whose interests may be affected by a subsidy may apply to the Competition Appeal Tribunal for a review
- Application must be made within one month of a subsidy being uploaded to the database
- Competition Appeal Tribunal will review whether subsidy decision was lawful
- Competition Appeal Tribunal may grant relief as under judicial review
- Competition Appeal Tribunal may order recovery of a non-compliant subsidy.

# Streamlined routes

- Established by UK Government
- Allow other authorities to give subsidies which comply with conditions in the routes
- Research development and innovation
- Energy Usage
- Local Growth

# Research development and innovation

- Objectives
  - Facilitate increased public investment in research
  - Encourage increased private sector investment and spend in research, development and innovation
  - Encourage business growth
  - Encourage collaborative research, development and innovation

# Research development and innovation

- Available for:
  - Feasibility Studies
  - Industrial research and experimental development projects
  - Small and medium-sized enterprise research, development and innovation support

# Energy Usage

- Objectives
  - Facilitate increased energy efficiency measures in buildings
  - Increase uptake of low-carbon heating sources
  - Encourage training and upskilling of workers
  - Improve the supply chain

# Energy Usage

- Available for:
  - Energy Demand Reduction
  - Green Heat Networks
  - Green Skills Training

# Local Growth

- Objectives
  - Encourage entrepreneurialism and diversity in the market
  - Improve access to finance
  - Promote participation in the labour market by underrepresented groups
  - Drive growth by increases in output, productivity and employment

# Local Growth

- Available for:
  - Support to small and medium-sized enterprises for business development projects
  - Support for the employment of workers with disabilities
  - Support for the employment of disadvantaged workers

# Further information

- Subsidy Advice Unit
- Statutory guidance for the United Kingdom Subsidy Control Regime
- Competition and Markets Authority guidance on the Subsidy Advice Unit
- BEIS subsidy control team: [subsidycontrol@beis.gov.uk](mailto:subsidycontrol@beis.gov.uk)

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# Thank You

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