



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 1

#### OVERVIEW AND KEY INTERPRETATION

##### *Overview etc*

#### **1 Overview and application of Act**

- (1) This Part defines “subsidy” and other key terms used in this Act.
- (2) Part 2 imposes requirements that apply to the giving of subsidies or the making of subsidy schemes (referred to in this Act as “the subsidy control requirements”)—
  - (a) Chapter 1 imposes duties to apply the subsidy control principles and energy and environment principles;
  - (b) Chapter 2 imposes prohibitions and other requirements;
  - (c) Chapter 3 provides for transparency requirements.
- (3) Part 3 contains exemptions from the subsidy control requirements—
  - (a) Chapter 2 contains exemptions relating to small amounts of assistance;
  - (b) Chapter 3 contains exemptions for natural disasters and other exceptional circumstances and emergencies;
  - (c) Chapter 4 contains other miscellaneous exemptions.
- (4) Part 4 provides for the functions of the CMA in relation to the application of the subsidy control requirements.
- (5) Part 5 contains provisions relating to the enforcement of the subsidy control requirements.
- (6) Part 6 contains miscellaneous and final provisions.
- (7) The exercise of any power conferred by legislation (whenever passed or made) is to be read as subject to the subsidy control requirements (except so far as a contrary intention appears in the case of an Act of Parliament).

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(8) In subsection (7) “legislation” means primary legislation or subordinate legislation.

*“Subsidy”*

**2 “Subsidy”**

- (1) In this Act, “subsidy” means financial assistance which—
- (a) is given, directly or indirectly, from public resources by a public authority,
  - (b) confers an economic advantage on one or more enterprises,
  - (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and
  - (d) has, or is capable of having, an effect on—
    - (i) competition or investment within the United Kingdom,
    - (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or
    - (iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.
- (2) For the purposes of this Act, the means by which financial assistance may be given include—
- (a) a direct transfer of funds (such as grants or loans);
  - (b) a contingent transfer of funds (such as guarantees);
  - (c) the forgoing of revenue that is otherwise due;
  - (d) the provision of goods or services;
  - (e) the purchase of goods or services.
- (3) Financial assistance given from the person’s resources by a person who is not a public authority is to be treated for the purposes of subsection (1)(a) as financial assistance given from public resources by a public authority if the involvement of a public authority in the decision to give financial assistance is such that the decision is, in substance, the decision of the public authority.
- (4) For the purposes of subsection (3), the factors which may be taken into account when considering the involvement of a public authority in the decision of a person to give financial assistance include, in particular, factors relating to—
- (a) the control exercised over that person by that public authority, or
  - (b) the relationship between that person and that public authority.
- (5) For the purposes of this Act, financial assistance is to be treated as given to an enterprise if the enterprise has an enforceable right to the financial assistance.
- (6) For further provision relevant to the interpretation of this section, see—
- (a) section 3 (financial assistance which confers an economic advantage);
  - (b) section 4 (financial assistance which is specific);
  - (c) section 5 (modification for air carriers);
  - (d) section 6 (meaning of “public authority”);
  - (e) sections 7 and 8 (meaning of “enterprise”).

### **3 Financial assistance which confers an economic advantage**

- (1) This section makes provision about determining whether financial assistance confers an economic advantage on an enterprise for the purposes of section 2(1)(b).
- (2) 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.

### **4 Financial assistance which is specific**

- (1) This section makes provision about determining whether financial assistance is specific for the purposes of section 2(1)(c).
- (2) Financial assistance is not to be regarded as being specific if the distinction in the treatment of enterprises is justified by principles inherent to the design of the arrangements of which that financial assistance is part.
- (3) For the purposes of subsection (2) as it applies to financial assistance given in the form of a tax measure, the following are examples of the principles that may be relevant in a particular case—
  - (a) the need to fight fraud or tax evasion;
  - (b) administrative manageability;
  - (c) the avoidance of double taxation;
  - (d) the principle of tax neutrality;
  - (e) the progressive nature of income tax and its redistributive purpose;
  - (f) the need to respect taxpayers' ability to pay.
- (4) Financial assistance given by a public authority in the form of a tax measure is not to be regarded as being specific unless—
  - (a) one or more enterprises obtain a reduction in the tax liability that it or they would otherwise have borne under the normal taxation regime, and
  - (b) that enterprise or those enterprises are treated more advantageously than one or more other enterprises in a comparable position under the normal taxation regime.
- (5) For the purposes of subsection (4), the normal taxation regime is to be identified from—
  - (a) the internal objective of the regime,
  - (b) the features of the regime (such as the tax base, the taxable person, the taxable event or the tax rate), and
  - (c) the fact that the public authority whose regime it is—
    - (i) is autonomous institutionally, procedurally, economically and financially as regards the regime, and
    - (ii) has the competence to design the features of the regime.
- (6) A special purpose levy is not to be regarded as being specific if—
  - (a) its design is determined by non-economic public policy objectives (such as the need to limit the negative impacts of certain activities or products on the environment or human health), and
  - (b) the public policy objectives are not discriminatory.

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- (7) The forgoing of an amount of special purpose levy which is otherwise due is not to be regarded as being specific if the provision enabling the forgoing of that amount satisfies the conditions in subsection (6)(a) and (b).

## 5 Section 2: modification for air carriers

- (1) For the purposes of this Act as it applies in relation to enterprises which are air carriers providing air transport services, section 2(1) is to be read as if for paragraph (d) there were substituted—

“(d) has, or is capable of having, an effect on—

- (i) competition between air carriers in the provision of air transport services within the United Kingdom, or
- (ii) competition between air carriers of the United Kingdom and air carriers of a country or territory outside the United Kingdom in the provision of air transport services.”

- (2) In this section, “air transport services” includes air transport services not covered under Title I (Air transport) of Heading Two (Aviation) of Part Two of the Trade and Cooperation Agreement.

*“Public authority”*

## 6 “Public authority”

- (1) For the purposes of this Act, “public authority” means a person who exercises functions of a public nature, but does not include—

- (a) either House of Parliament,
- (b) the Scottish Parliament,
- (c) Senedd Cymru, or
- (d) the Northern Ireland Assembly.

- (2) Subsection (1)(a) is not to be taken as applying to—

- (a) the Corporate Officer of the House of Commons,
- (b) the Corporate Officer of the House of Lords,
- (c) the House of Commons Commission, or
- (d) any other person who acts on behalf of either or both of the Houses of Parliament.

- (3) Subsection (1)(b) is not to be taken as applying to—

- (a) the Scottish Parliamentary Corporate Body, or
- (b) any other person who acts on behalf of the Scottish Parliament.

- (4) Subsection (1)(c) is not to be taken as applying to—

- (a) the Senedd Commission, or
- (b) any other person who acts on behalf of Senedd Cymru.

- (5) Subsection (1)(d) is not to be taken as applying to—

- (a) the Northern Ireland Assembly Commission, or
- (b) any other person who acts on behalf of the Northern Ireland Assembly.

## “Enterprise”

### 7 “Enterprise”

- (1) In this Act, “enterprise” means (subject to subsections (2) and (3))—
  - (a) a person who is engaged in an economic activity that entails offering goods or services on a market, to the extent that the person is engaged in such an activity, or
  - (b) a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity.
- (2) For the purposes of this section, an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic.
- (3) For the purposes of this section, a person or group of persons is not to be regarded as an enterprise by virtue only of being a shareholder or shareholders in a body corporate which is to any extent an enterprise.
- (4) In this section, “person” includes a body corporate, a partnership and an unincorporated association.
- (5) For further provision relevant to the interpretation of this section, see section 8 (persons under common control).

### 8 Persons under common control

- (1) For the purposes of section 7, a group of persons is to be treated as being under common control if the group—
  - (a) is a group of interconnected bodies corporate,
  - (b) consists of bodies corporate of which one and the same person or group of persons has control, or
  - (c) consists of one or more bodies corporate and a person who, or a group of persons which, has control of that or those bodies corporate.
- (2) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate as regards carrying on an economic activity that entails offering goods or services on a market is to be treated as having control of that body corporate for the purposes of subsection (1)(b) and (c), even if the person or group of persons does not have a controlling interest in that body.
- (3) For the purposes of this section, “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of which are interconnected with each other.
- (4) For the purposes of this section, any two bodies corporate are interconnected if—
  - (a) one of them is a body corporate of which the other is a subsidiary, or
  - (b) both of them are subsidiaries of one and the same body corporate;and “interconnected bodies corporate” is to be construed accordingly.
- (5) In this section—

“person” includes a body corporate, a partnership and an unincorporated association;

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“subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

*Other key terms*

**9 The subsidy control principles and the energy and environment principles**

- (1) Schedule 1 sets out the subsidy control principles.
- (2) Schedule 2 sets out further principles for subsidies in relation to energy and environment.

**10 Subsidy schemes and streamlined subsidy schemes**

- (1) In this Act, “subsidy scheme” means a scheme made by a public authority providing for the giving of subsidies under the scheme.
- (2) A subsidy scheme may be made—
  - (a) by a public authority that is not a primary public authority only for the giving of subsidies by that public authority;
  - (b) by a public authority that is a primary public authority for the giving of subsidies by other public authorities (in addition to the primary public authority so far as the scheme may provide).
- (3) In subsection (2), “primary public authority” means a public authority of any of the following descriptions—
  - (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a Northern Ireland department;
  - (e) any other public authority which, in the exercise of its functions, makes a scheme for the giving of subsidies by other public authorities.
- (4) In this Act, “streamlined subsidy scheme” means a subsidy scheme which—
  - (a) is made by a Minister of the Crown, and
  - (b) specifies it is made for the purposes of this Act as a streamlined subsidy scheme.
- (5) A streamlined subsidy scheme must be laid before Parliament after it is made.
- (6) If a streamlined subsidy scheme is modified after it is laid, the scheme as modified must also be laid before Parliament.
- (7) If, within the 40-day period, either House of Parliament resolves not to approve the scheme, or the scheme as modified, then, with effect from the end of the day on which the resolution is passed, the scheme, or the scheme as modified, is to be treated as not having been made.
- (8) Nothing in subsection (7)—
  - (a) affects any subsidies given under the scheme before the end of the day on which the resolution is passed, or
  - (b) prevents a further scheme being laid before Parliament.

- (9) In this section, “the 40-day period” means—
  - (a) if the scheme is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or
  - (b) if the scheme is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.
- (10) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.
- (11) A subsidy scheme or streamlined subsidy scheme may provide for the value of a subsidy to be determined by reference to its gross cash amount or the gross cash equivalent.

## **11 Subsidies and schemes of interest or particular interest**

- (1) In this Act—
  - (a) “subsidy, or subsidy scheme, of interest”, and
  - (b) “subsidy, or subsidy scheme, of particular interest”,have the meanings given in regulations made by the Secretary of State.
- (2) Regulations under this section defining “subsidy, or subsidy scheme, of interest” or “subsidy, or subsidy scheme, of particular interest” may make provision by reference (among other things) to—
  - (a) the value of the subsidy or the value of the subsidies given under the subsidy scheme, and
  - (b) the sector in which the expected beneficiaries of the subsidy or subsidy scheme operate, and any characteristics of that sector.
- (3) Provision under subsection (2)(a) may provide for the value of a subsidy to be determined by reference to its gross cash amount or the gross cash equivalent.
- (4) Regulations under this section are subject to the affirmative procedure.