

SCHEDULES

SCHEDULE 1

Section 9

THE SUBSIDY CONTROL PRINCIPLES

Common interest

- A Subsidies should pursue a specific policy objective in order to—
- (a) remedy an identified market failure, or
 - (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).

Proportionate and necessary

- B Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.

Design to change economic behaviour of beneficiary

- C (1) Subsidies should be designed to bring about a change of economic behaviour of the beneficiary.
- (2) That change, in relation to a subsidy, should be—
- (a) conducive to achieving its specific policy objective, and
 - (b) something that would not happen without the subsidy.

Costs that would be funded anyway

- D Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.

Least distortive means of achieving policy objective

- E Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.

Competition and investment within the United Kingdom

- F Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.

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Beneficial effects to outweigh negative effects

- G Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on—
- (a) competition or investment within the United Kingdom;
 - (b) international trade or investment.

SCHEDULE 2

Section 9

THE ENERGY AND ENVIRONMENT PRINCIPLES

Aim of subsidies in relation to energy and environment

- A Subsidies in relation to energy and environment shall be aimed at and incentivise the beneficiary in—
- (a) delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market, or
 - (b) increasing the level of environmental protection compared to the level that would be achieved in the absence of the subsidy.

Subsidies not to relieve beneficiary from liabilities as a polluter

- B Subsidies in relation to energy and environment shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of England and Wales, Scotland or Northern Ireland.

Subsidies for electricity generation adequacy, renewable energy or cogeneration

- C (1) Subsidies for electricity generation adequacy, renewable energy or cogeneration—
- (a) shall not undermine the ability of the United Kingdom to meet its obligations under Article 304 of the Trade and Cooperation Agreement (provisions relating to wholesale electricity and gas markets),
 - (b) shall not unnecessarily affect the efficient use of electricity interconnectors provided for under Article 311 of the Trade and Cooperation Agreement (efficient use of electricity interconnectors), and
 - (c) shall be determined by means of a transparent, non-discriminatory and effective competitive process.
- (2) But a non-competitive process may be used to determine a subsidy for renewable energy or cogeneration if appropriate measures are put in place to prevent overcompensation and—
- (a) the potential market supply is insufficient to ensure a competitive process,
 - (b) the eligible capacity is unlikely to have a material effect on any of the following—
 - (i) competition or investment within the United Kingdom,
 - (ii) trade between the United Kingdom and any country or territory outside the United Kingdom, and
 - (iii) investment as between the United Kingdom and any country or territory outside the United Kingdom, or

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- (c) the subsidy is given for a demonstration project.
- (3) Sub-paragraph (1)(c) is without prejudice to Article 304(3) of the Trade and Co-operation Agreement (capacity mechanisms in electricity markets).
- (4) In this paragraph and paragraph D, “subsidy for electricity generation adequacy” means a subsidy that provides an incentive for a capacity provider to be available in times of expected system stress.
- D Subsidies for electricity generation adequacy may be limited to installations not exceeding specified CO2 emission limits.
- E Subsidies for renewable energy or cogeneration shall not affect beneficiaries’ obligations or opportunities to participate in electricity markets.

Subsidies in the form of partial exemptions from energy-related taxes and levies

- F (1) 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.
- (2) “Levy” does not include network charges.

Subsidies in the form of compensation for increases in electricity costs

- 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.

Subsidies for the decarbonisation of emissions linked to industrial activities

- H Subsidies for the decarbonisation of emissions linked to industrial activities in the United Kingdom shall—
 - (a) achieve an overall reduction in greenhouse gas emissions, and
 - (b) reduce the emissions directly resulting from the industrial activities.

Subsidies for improvements of the energy efficiency of industrial activities

- I Subsidies for improvements of the energy efficiency of industrial activities in the United Kingdom shall improve energy efficiency by reducing energy consumption, either directly or per unit of production.

SCHEDULE 3

Section 78

SUBSIDIES PROVIDED BY PRIMARY LEGISLATION

Introductory

- 1 This Schedule provides for the application of this Act in the case of subsidies provided by means of primary legislation.
- 2 (1) In this Schedule—

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“appropriate authority” means—

- (a) in relation to a subsidy provided by means of an Act of Parliament, a Minister of the Crown or the Commissioners for Her Majesty’s Revenue and Customs;
- (b) in relation to a subsidy provided by means of an Act of the Scottish Parliament, the Scottish Ministers;
- (c) in relation to a subsidy provided by means of an Act or Measure of Senedd Cymru, the Welsh Ministers;
- (d) in relation to a subsidy provided by means of an Act of the Northern Ireland Assembly, the appropriate Northern Ireland department;

“appropriate court” means—

- (a) in relation to a subsidy provided by means of an Act of the Scottish Parliament, the Court of Session;
- (b) in relation to a subsidy provided by means of an Act or Measure of Senedd Cymru, the High Court in England and Wales;
- (c) in relation to a subsidy provided by means of an Act of the Northern Ireland Assembly, the High Court in Northern Ireland;

“devolved legislature”, in relation to devolved primary legislation, means—

- (a) the Scottish Parliament, in the case of an Act of that Parliament;
- (b) Senedd Cymru, in the case of an Act or Measure of Senedd Cymru;
- (c) the Northern Ireland Assembly, in the case of an Act of that Assembly;

“devolved primary legislation” means primary legislation that is not an Act of Parliament;

“promoter”, in relation to a Bill introduced in Parliament, means (subject to sub-paragraph (2)) the member of Parliament in charge of the Bill;

“promoter”, in relation to proposed devolved primary legislation, means (subject to sub-paragraph (2))—

- (a) in the case of a Bill introduced in the Scottish Parliament—
 - (i) the Scottish Ministers, or
 - (ii) where the member of the Scottish Parliament in charge of the Bill is not a member of the Scottish Government, that member of the Parliament;
- (b) in the case of a Bill or proposed Assembly Measure introduced in Senedd Cymru—
 - (i) the Welsh Ministers, or
 - (ii) where the member of the Senedd in charge of the Bill or Measure is not a member of the Welsh Government, that member of the Senedd;
- (c) in the case of a Bill introduced in the Northern Ireland Assembly, the member of the Assembly in charge of the Bill;

“proposed devolved primary legislation” means—

- (a) in the case of devolved primary legislation of the Scottish Parliament, a Bill for an Act of that Parliament;
- (b) in the case of devolved primary legislation of Senedd Cymru, a Bill for an Act of the Senedd or, in the case of a proposed Assembly Measure, a Measure of the Senedd;

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- (c) in the case of devolved primary legislation of the Northern Ireland Assembly, a Bill for an Act of that Assembly;
“proposed primary legislation” means—
- (a) a Bill introduced in Parliament or proposed devolved primary legislation, or
- (b) a proposal to introduce any such Bill or proposed devolved primary legislation;
- “subsidy proceedings” means proceedings before the appropriate court in connection with this Act in relation to a subsidy provided by means of devolved primary legislation.
- (2) Where a subsidy provided by means of primary legislation resulted from an amendment to the proposed primary legislation concerned, the “promoter” of the proposed primary legislation for the purposes of this Schedule, so far as relating to that subsidy, is the member who tabled or lodged the amendment.
- 3 (1) The definition of “subsidy” in section 2 applies for the purposes of this Schedule (so far as the context requires) as if the reference in subsection (1)(a) of that section to financial assistance given by a public authority were a reference to financial assistance provided by means of primary legislation.
- (2) Section 4 applies for the purposes of this Schedule as if—
- (a) the reference in subsection (4) of that section to financial assistance given by a public authority were a reference to financial assistance provided by means of primary legislation, and
- (b) the reference in subsection (5)(c) of that section to the public authority whose normal taxation regime it is were a reference to the legislature concerned.
- (3) The definition of “subsidy scheme” in section 10 applies for the purposes of this Schedule as if the reference in subsection (1) of that section to a scheme made by a public authority were a reference to a scheme made by primary legislation.
- 4 In this Schedule references to a subsidy provided by means of primary legislation—
- (a) include references to a subsidy given by a public authority under a duty imposed by that legislation;
- (b) do not include references to a subsidy given by a public authority under a power conferred by that legislation (but see section 1(7)).
- 5 In this Schedule—
- (a) references to a subsidy provided by means of primary legislation include references to a subsidy scheme made by that legislation;
- (b) references to a subsidy given by a public authority include references to a subsidy scheme made by the authority.

Application of principles

- 6 (1) Chapter 1 of Part 2 (application of principles) applies to subsidies provided by means of devolved primary legislation as it applies to subsidies given by public authorities.
- (2) For this purpose—
- (a) references in that Chapter to a public authority are to be taken as references to the devolved legislature in relation to the devolved primary legislation concerned;

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- (b) in subsidy proceedings before the appropriate court in connection with this paragraph, the requirements imposed by that Chapter on public authorities to consider and form a view are to be assessed by reference to the considerations and views of the promoter of the proposed devolved primary legislation.

Prohibitions etc and exemptions

- 7 (1) Chapter 2 of Part 2 (prohibitions and other requirements), and Part 3 (exemptions), applies to subsidies provided by means of devolved primary legislation as they apply to subsidies given by public authorities.
- (2) For this purpose—
 - (a) references in Chapter 2 of Part 2, and in Part 3, to a public authority are to be taken as references to the devolved legislature in relation to the devolved primary legislation concerned;
 - (b) in subsidy proceedings before the appropriate court in connection with this paragraph, the requirements imposed by Chapter 2 of Part 2 on public authorities to be satisfied of any matter are to be assessed by reference to the promoter of the proposed devolved primary legislation;
 - (c) sections 21 and 23 apply as if, for subsection (4) in each of those sections, there were substituted—
 - “(4) The condition in this subsection is that there has been, or there is a reasonable expectation that there will be, proper remuneration for the subsidy.”;
 - (d) section 29 applies as if, for subsection (6), there were substituted—
 - “(6) Where a subsidy is given to a SPEI enterprise by means of devolved primary legislation, there must be arrangements in place for—
 - (a) regular reviews to take place as to the use of the subsidy to ensure the condition that the amount of the subsidy is limited to what is necessary to deliver the SPEI services continues to be met, and
 - (b) the taking of steps to recover a subsidy to the extent that the condition ceases to be met.”;
 - (e) sections 37 and 39 are to be ignored.

Transparency

- 8 (1) Chapter 3 of Part 2 (which provides for the subsidy database) applies to subsidies provided by means of primary legislation as it applies to subsidies given by public authorities.
- (2) For this purpose—
 - (a) references in that Chapter to a public authority are to be taken as references to the appropriate authority;
 - (b) the references in section 33 to a subsidy given, or a subsidy scheme made, by the authority are to be taken as references to a subsidy or scheme provided by means of primary legislation.

CMA referrals

- 9 (1) Sections 56, 57 and 59 (voluntary referrals to the CMA) apply to subsidies in proposed primary legislation as they apply to subsidies to be given by public authorities.
- (2) For this purpose—
- (a) references in those sections to a public authority are to be taken as references to the appropriate authority and (if different) the promoter of the proposed primary legislation concerned;
 - (b) section 56 is to be read as if—
 - (i) in subsection (1), after “of interest”, there were inserted “or particular interest”;
 - (ii) in subsection (2)(c), after “of interest”, there were inserted “or particular interest”;
 - (c) section 57 is to be read as if—
 - (i) in subsection (1), after “section 56(2)” there were inserted “in respect of a subsidy, or subsidy scheme, of interest”;
 - (ii) in subsection (2), after “section 56(1)” there were inserted “in respect of a subsidy, or subsidy scheme, of interest”;
 - (iii) after subsection (2) there were inserted—
 - “(2A) The CMA must, before the end of five working days beginning with the day on which a request is received under section 56(1) in respect of a subsidy, or subsidy scheme, of particular interest, give notice to the appropriate authority—
 - (a) that the request complies with the requirements under section 56, or
 - (b) providing reasons as to why the request does not comply with those requirements.”;
 - (iv) in subsection (3), after “subsection (2)(a)” there were inserted “or (2A)(a)”;
 - (v) in subsection (5), after “subsection (2)(a)” there were inserted “or (2A)(a)”.

Recovery orders

- 10 (1) Section 74 applies in subsidy proceedings before the appropriate court as it applies to proceedings under Part 5 before the Competition Appeal Tribunal.
- (2) For this purpose—
- (a) section 74 is to be read as if, for subsection (1), there were substituted—
 - “(1) The appropriate court may make a recovery order if—
 - (a) in exercise of its powers, it determines that relief should be granted in respect of a subsidy provided by means of devolved primary legislation, and
 - (b) in reaching that determination the appropriate court finds that the giving of the subsidy, or the making of the subsidy scheme under which it was given, did not comply with a requirement of Chapter 1 or 2 of Part 2.”;

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- (b) subsection (2)(a) of that section is to be read as if, for the words from “a public authority” to “that subsidy”, there were substituted “the appropriate authority to recover a subsidy provided by means of devolved primary legislation”;
- (c) subsection (2)(b) of that section is to be read as if the reference to the public authority were a reference to the appropriate authority;
- (d) subsection (4) of that section is to be ignored.

Pre-action information

- 11 (1) Section 76 (duty to provide pre-action information) applies to subsidies provided by means of devolved primary legislation as it applies to subsidies given by public authorities.
- (2) For this purpose—
- (a) references in that section to a public authority are to be taken as references to the appropriate authority;
 - (b) the reference in subsection (1) of that section to a subsidy or subsidy scheme that the authority has given or made is to be taken as a reference to a subsidy or subsidy scheme provided by means of devolved primary legislation;
 - (c) subsection (2)(b) of that section is to be read as if—
 - (i) for the words “a review of a subsidy decision under section 70” there were substituted “relief in subsidy proceedings before the appropriate court”;
 - (ii) for “the decision” there were substituted “the subsidy or scheme in question”.

Time limits

- 12 The power under section 86 to make consequential provision includes power to make provision, in relation to subsidy proceedings before the appropriate court, corresponding or similar to provision made by section 71 in relation to proceedings under Part 5 before the Competition Appeal Tribunal.