

The Subsidy Control Act 2022

The UK's new State aid regime

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Overview

- Making a subsidy lawful
- Schedule 1 of Subsidy Control Act 2022 vs. Article 366 TCA
- Satisfaction of principles and evidence
- New procedures and CMA notifications – Subsidies of Interest (SoI) and Subsidies of Particular Interest (SoPI)
- Transparency publications



The Subsidy Control Principles

A subsidy must be consistent with the following principles (Schedule 1 SCA 2022):

A. Specific public policy objective

Subsidies should pursue a specific policy objective in order to:

- (1) Remedy an identified market failure; or
- (2) Address an equity rationale (e.g. local or regional disadvantage social difficulties or distributional concerns).

B. Proportionate and no more than necessary

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

The Subsidy Control Principles

C. Designed to change economic behaviour of beneficiary

(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:

- Conducive to achieving its specific policy objective; and
- Something that would not happen without the subsidy.

D. Avoid funding costs that would be covered anyway

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

The Subsidy Control Principles

E. Least distortive means of achieving policy objective

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

F. Minimise negative effects on competition and investment within the United Kingdom

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

G. Balancing test to ensure positives of achieving objective outweigh negative effects on competition

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; and
- (b) International trade or investment.



Satisfying the Principles

- Vague concepts rather than precise and measurable boundaries
- No guaranteed safe harbours yet (*see Streamlined Subsidy Schemes*)
- Margin of discretion
- Reasonableness and examination under public law
- Maintaining records and evidence
- Extensive guidance to be published in due course?

SoPI and SoI

On 26 January, Government published draft legislation – consultation ended 6 May.

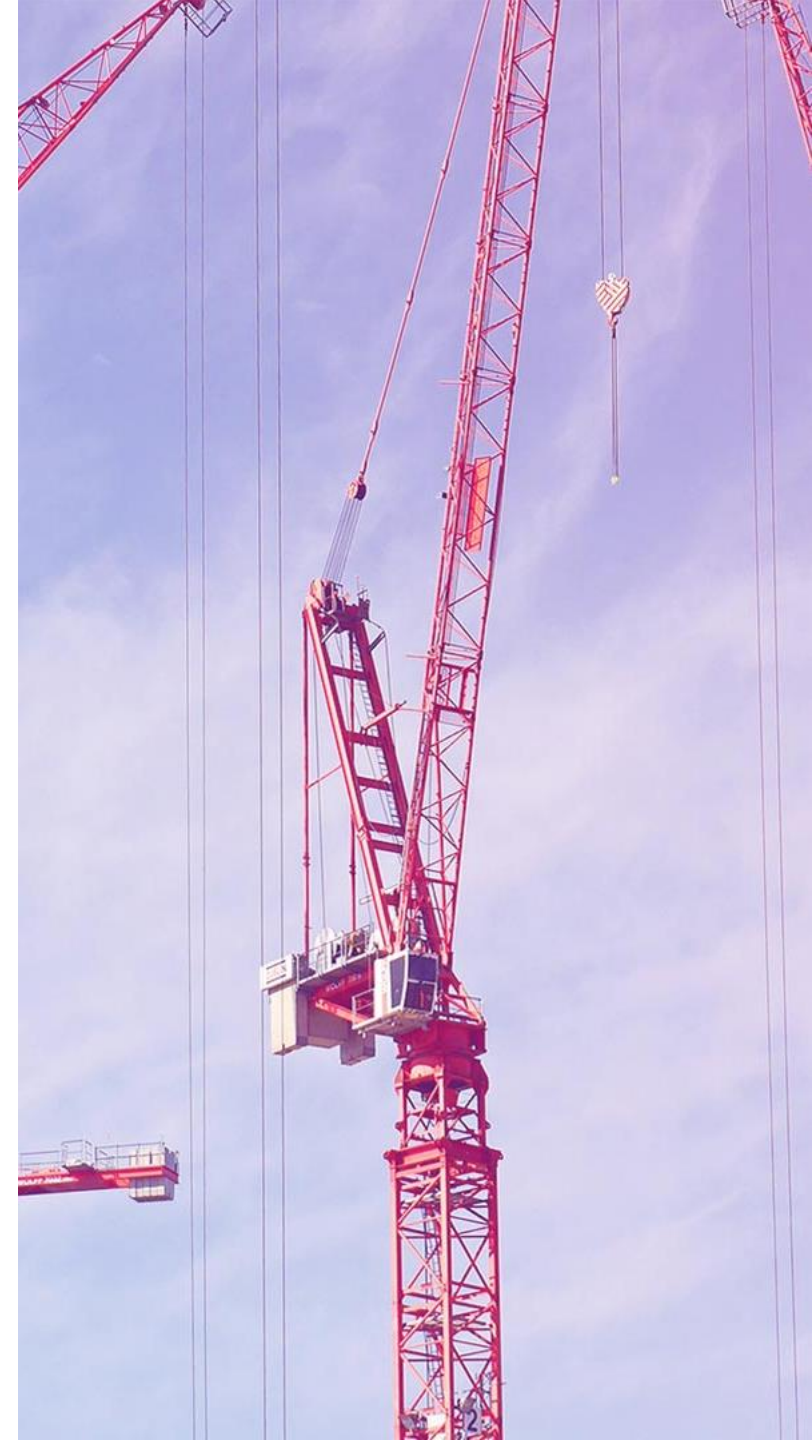
“Subsidy of Particular Interest” may arise (to be confirmed) where one of the following tests are met:

- the subsidy concerns a "sensitive sector" in excess of £5m per enterprise;
- regardless of the sector which the subsidy concerns, it is in excess of £10m per enterprise; or
- the subsidy is given "for restructuring ailing or insolvent enterprises, including insurance companies and deposit takers".

Sensitive sectors may include the manufacture of basic iron and steel, aluminium or copper production, motor vehicles or motorcycles, ships and floating structures, air and spacecraft and the production of electricity. Rules include provision for supply chain investment.

Anti-circumvention provisions: all subsidy to one project over 3 years

Excludes *Streamlined Subsidy Schemes*





Transparency Requirements

- Section 32 SCA – SoS to establish a National Transparency Database (expected to be the current site www.SearchforUKSubsidies.BEIS.gov.uk)
- May be implemented and maintained by CMA
- Publication within 3 months of award (NB. six months in TCA)
- Anything over £100,000 (previously excluded Small Amounts of Financial Assistance)
- Gross cash equivalent
- Includes re-publishing modifications
- Section 34 sets out minimum information to be included
- Individual awards and schemes
- Publication is the key trigger for challenge periods to start