

Expert Guide to the UK Subsidy Control Rules

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What are the UK subsidy control rules?

The UK subsidy legal framework is largely set out by the [Subsidy Control Act 2022](#) (the **Act**), which is supported by a secondary legislation and statutory guidance. The statutory guidance provides a useful overview of the UK regime: [Subsidy Control Statutory Guidance](#) (the **Guidance**). These rules are designed to ensure that the UK is meeting its domestic and international obligations, including pursuant to the post-Brexit EU-UK Trade and Cooperation Agreement (**TCA**) and the World Trade Organisation (**WTO**) and Free Trade Agreements to which the UK is a party.

Public authorities have a statutory duty to ensure that any subsidy they give complies with a prescribed set of subsidy control requirements and does not constitute a subsidy that is specifically prohibited.

Certain categories of subsidy require a mandatory referral to the Competition and Markets Authority (**CMA**)'s Subsidy Advice Unit (**SAU**). These are limited to subsidies or subsidy schemes of particular interest (**SSoPI**), in terms of having the potential to distort competition. Such subsidies cannot be given until the SAU has published its report on the proposed SSoPI. The SAU's report is not binding on the public authority. This contrasts with the EU's State aid rules, which generally prohibit government financial assistance unless it has been pre-authorised by the European Commission, or otherwise granted under one of the Block Exemptions. The post-Brexit approach adopted by the UK is consistent with the intention to adopt a more flexible and permissive approach compared to the EU's rules on State aid.



Who are the subsidy control rules aimed at?

The UK subsidy control rules are aimed at public authorities giving financial assistance to enterprises.

Similar to the position under EU State aid rules, the notion of “enterprise” is broad and is not limited to commercial companies, including any entities engaged in economic activity, irrespective of their legal status. It can therefore include public bodies, universities and charities to the extent they are engaged in economic activity. The determining factor is whether the entity in question carries out an economic activity consisting of offering “*products or services on a given market.*”



What constitutes a subsidy?

A subsidy is a form of financial support provided by a public authority to a business (an “enterprise”), which gives the enterprise an economic advantage that could not have been obtained on normal commercial terms. Subsidies are typically used to support a specific investment project by an enterprise or to incentivize specific economic activity in a particular sector or region. Subsidies can take on various forms, including grants, loans, tax breaks, equity investments, and the provision or procurement of goods or services or the utilisation of facilities if not on market terms. They can take the form of “standalone subsidies”, being grants or loans or other measures in respect of a particular enterprise or project, or as broader “subsidy schemes” supporting a particular public policy objective.

The Act provides for a “four-limb” test, for determining when any form of financial assistance constitutes a subsidy:

1. It is given **directly or indirectly** from **public resources by a public authority**;
2. It confers an **economic advantage** on an **enterprise** (e.g., on more favourable terms than offered on the open market);
3. It is **specific**, such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or services; and
4. It **has, or is capable of having**, an effect on competition or investment **within the UK**, or trade or investment **between the UK and another country** or territory.

As these four limbs are cumulative, if any of them are not fulfilled, the financial assistance falls outside the scope of the Act. Only when all four limbs are met will the financial assistance be considered a subsidy, and accordingly must be administered in line with the requirements of the Act.



How to undertake a subsidy assessment?

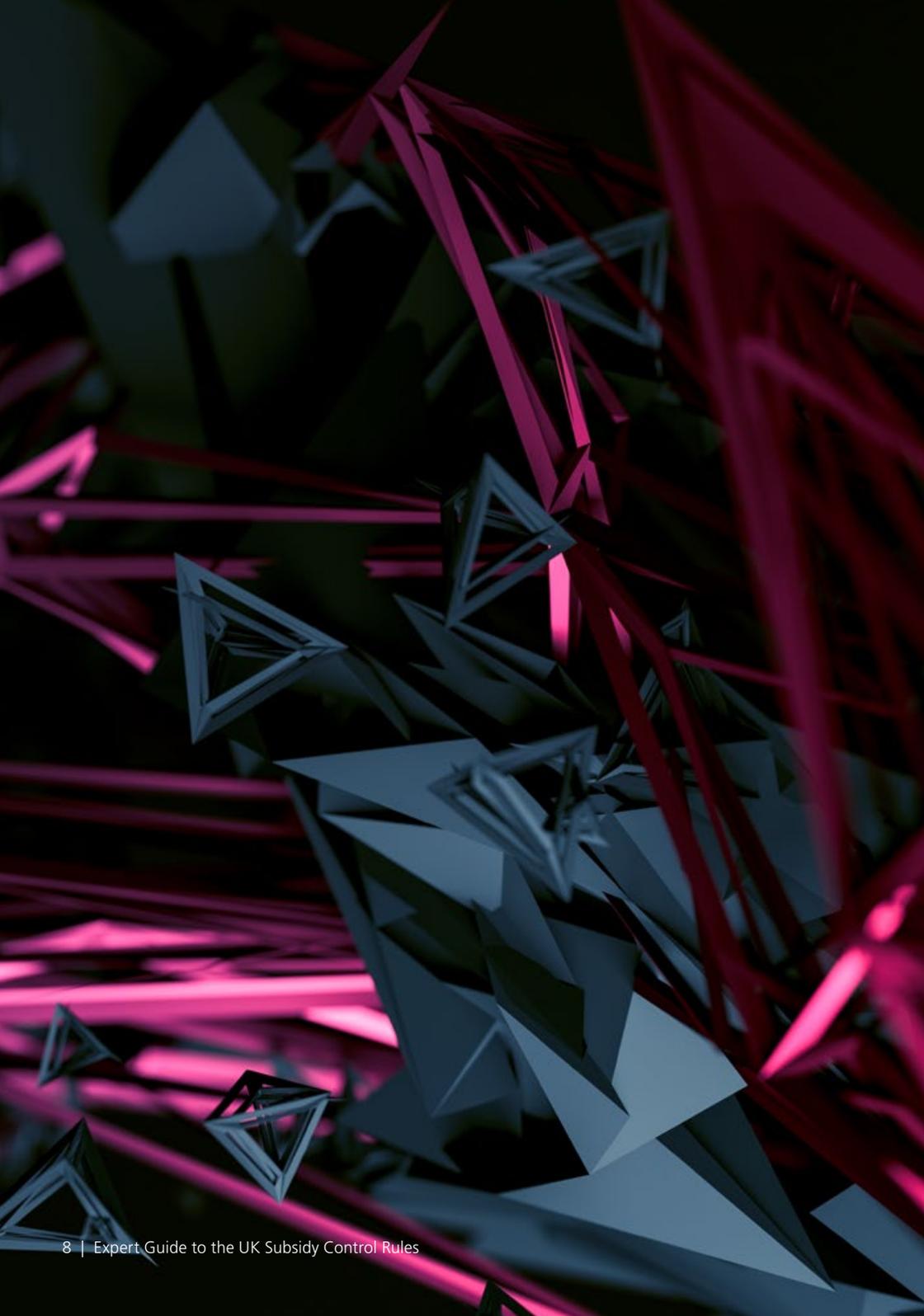
Where financial assistance fulfils the four-limbed subsidy test, the Act requires the public authority granting the subsidy to assess whether it is compliant with the requirements of the Act.

The Act makes provision for a number of different routes that can be applied by the public authority in question.

1. First, the Act makes provision for “streamlined routes” for granting subsidies. The streamlined routes are essentially block exemptions and subsidies which meet their requirements are automatically compliant with the Act with no need for further assessment.
2. Secondly, the Act also makes provision for the creation and use of “subsidy schemes” by public authorities.
3. Where neither of these options is deemed appropriate, the Act also includes a de minimis rule, which is termed “minimal financial assistance” (**MFA**).
4. Where none of these routes are considered appropriate, a detailed assessment of the seven subsidy control principles is required in order for the authority to satisfy itself that it is not awarding a subsidy unlawfully. Information on each route is provided in the subsequent sections below.

It is important to note that, as a general principle, public authorities have a certain degree of discretion when conducting the assessment. The depth of the analysis should however be commensurate with the size and potential impact of the subsidy or scheme on the market. The analysis can be less detailed if the subsidy is relatively low in value, or if the design of the subsidy does not have potentially distortive features (e.g., a subsidy below £100,000 is very small and need not be uploaded to the transparency database). Conversely, the analysis should be more extensive if the subsidy is larger and/or has a high potential to be distortive.

Specific rules apply if the subsidy meets the criteria of a Subsidy or Scheme of Interest (**SSoI**) or Subsidy or Scheme of Particular Interest (**SSoPI**). The processes for SSoI and SSoPI are set out below.



What are streamlined routes?

The UK Government introduced three [Streamlined Routes](#) for use by any UK public authority. These routes essentially represent the equivalent of an EU Block Exemption, offering authorities legal certainty and do not require the assessment of subsidies against the subsidy control principles, provided that they strictly comply with the conditions outlined within the routes. The three routes include:

1. [Research, development and innovation](#) and [Guidance](#);
2. [Energy usage](#) and [Guidance](#); and
3. [Local growth](#) and [Guidance](#).

Each of the three streamlined routes sets out its own project definitions, maximum amounts, subsidy ratios, eligibility criteria and limitation conditions. To assist public authorities in understanding and adhering to these routes, accompanying guidance has been provided for each.

In April 2025, the UK Government announced that it intended to explore the creation of two new Streamlined routes – one for Arts and Culture and another for Community Regeneration.

Step-by-step assessment for all streamlined routes:

- **Step 1:** Decide on subsidy amount and check if it falls within the streamlined route category, considering subsidy amount limits and ratios.
- **Step 2:** Review the Streamlined Route and guidance to confirm eligible enterprises (enterprise size to be determined based on the Companies Act 2006) and costs and adjust project plan accordingly.
- **Step 3:** Calculate permitted subsidy ratios. The subsidy ratio must be applied to all eligible costs that make up a project that the enterprise will be carrying out. The subsidy must be capped at either the maximum award amount or the limit indicated by the subsidy ratio, whichever is lower. For example, if a route has a maximum award amount of £1m and a subsidy ratio of 50%, then the maximum subsidy that could be provided to a project with £1.2m of eligible costs would be £0.6m.
- **Step 4:** Check if recipient has received other subsidies for the same project and follow cumulation steps if necessary.
- **Step 5:** Award subsidy and follow transparency requirements, including uploading to the subsidy database if over £100,000.



What are subsidy schemes?

The Act provides not only for standalone subsidies, but also for the establishment of subsidy schemes by public authorities.

A subsidy scheme typically comprises a set of rules that are established by a public authority to govern the provision of certain types of subsidies to eligible recipients in a specified sector and/or geographic area. These rules typically include information on the types of subsidies that are available under a scheme, the criteria for eligibility, the application process, the conditions that must be met to receive a subsidy under a scheme, the maximum amount of the subsidy and subsidy ratios, and the duration of the subsidy.

Whilst the public authority has broad discretion to develop subsidy schemes which meet its requirements, it must ensure that any subsidies given under a scheme are consistent with the seven subsidy control principles (see further below) by assessing compliance with the principles for all possible subsidies under a scheme in the round before it comes into effect.

Public authorities often establish subsidy schemes when they envisage awarding multiple similar subsidies for the same or similar activities. Establishing a subsidy scheme as opposed to awarding standalone subsidies can have several benefits. A scheme can provide a more structured and transparent way of granting subsidies, as well as a more efficient and effective way of administering them. Additionally, a scheme can help to ensure that subsidies are consistently targeted and directed towards specific, well-defined objectives and goals, and that they are awarded in a consistent and fair manner. Furthermore, a scheme can also allow for smaller payments to be made for specific activities which allows the beneficiary to keep its MFA allowance available for other projects (see below).



What is the exemption for “minimal financial assistance”?

A public authority may use the minimal financial assistance (**MFA**) route for the award of a low-value subsidy, subject to the condition that the recipient has not received funding exceeding £315,000 cumulatively in the preceding three fiscal years. There are also several factors to consider before providing an MFA subsidy. Although subsidies given as MFA are exempt from most of subsidy control requirements, two of the rules on prohibited subsidies still apply; namely the prohibition on giving subsidies related to goods for export performance and the prohibition on requiring domestic content.

Nevertheless, the transparency requirements (see below) apply to MFA where the amount of an individual subsidy exceeds £100,000.



What are the seven subsidy control principles?

Where none of the more straightforward routes set out above are available, or otherwise suitable, public authorities are required to carry out an assessment that adheres to the seven subsidy control principles when deciding to provide an individual subsidy (or make a subsidy scheme – see above).

Furthermore, in cases where a public authority is unable to provide a subsidy through any of the routes above, it must conduct a seven principles analysis as set out below and record its assessment and compliance. The seven subsidy control principles are as follows:

1. Subsidies should pursue a specific policy objective in order to remedy market failure (e.g., negative externalities, asymmetric information, etc.) or address equity rationale (e.g., reducing social or economic disadvantage, promoting employment, etc.).
2. Subsidies should be proportionate to the policy objective and limited to what is necessary (appropriate tools, e.g., loans, regulation, direct provision of good or service by the public authority, etc.).
3. Subsidies should be designed to change economic behaviour of beneficiary (as opposed to ‘do nothing’ scenario).
4. Subsidies should not normally compensate costs that would be funded in the absence of any subsidy.
5. Subsidies should be the least distortive means of achieving policy objective (should not prevent markets from being efficient e.g., allowing less efficient competitors to remain in the market, reducing beneficiary’s and its competitors’ incentives to innovate, etc.).
6. Subsidies should be designed to achieve the policy objective while minimising any negative effects on competition and investment within the UK.
7. Subsidies’ beneficial effects should outweigh any negative effects on competition, trade and investment within the UK and internationally.

The seven principles analysis is structured within the Guidance as a four-step subsidy control assessment:

- **Step 1:** Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use (Principles A and E).
- **Step 2:** Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change (Principles C and D).
- **Step 3:** Considering the distortive impacts that the subsidy may have and keeping them as low as possible (Principles B and F).
- **Step 4:** Carrying out the balancing exercise (Principle G).

In regard to subsidies or schemes which relate to energy and environment projects (i.e. that is, where the specific policy objective of the subsidy – or one of its objectives – relates to energy or the environment), public authorities must in addition consider the energy and environment principles set out in the Act (with further explanation in the Guidance) before deciding to award a subsidy or establish a subsidy scheme.



What are the rules applicable to SSols and SSoPIs?

SSoPI and SSol are those subsidies that are deemed to be more likely to create significant distortive effects on competition, investment and trade in the UK, or internationally. These are defined in secondary legislation with reference to whether they are aimed at sensitive sectors and in terms of the value of the subsidy.

In non-sensitive sectors, a SSoPI is a subsidy (or a subsidy scheme which allows for a subsidy) which is over £25m (or if they are over £1m and they cumulate to more than £25m with other related subsidies given over the previous 3 financial years).

In a sensitive sector (e.g., steel, aerospace), a SSoPI is a subsidy (or a subsidy scheme which allows for a subsidy) which is over £5m (or if they are over £1m and they cumulate to more than £5m with other related subsidies given over the previous three financial years). The sensitive sectors are currently defined as being:

- manufacture of basic iron and steel and of ferro-alloys
- aluminium production
- copper production
- manufacture of motor vehicles
- building of ships and floating structures
- manufacture of motorcycles
- manufacture of air and spacecraft and related machinery
- production of electricity

Other subsidies (or subsidy schemes which allow for a subsidy) of between £5m to £25m (individually or cumulatively) that do not meet the SSoPI criteria are SSol.

Public authorities must mandatorily refer SSoPI to the SAU before they give a subsidy or make a subsidy scheme.

A public authority may refer a SSol to the SAU, but is not required to do so. The SAU will determine whether to accept the referral and is at liberty to refuse such applications depending on other priorities.

The [Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit](#) provides specific timeframes for the referrals to the SAU. Generally, there is no established timeframe for pre-referral discussions, and public authority can contact SAU at SAU@cma.gov.uk to discuss referral application preparation. Referral requests should be submitted through the SAU's Public Authority Portal. The SAU will have then 5 working days to decide whether to accept the referral. If accepted, the SAU has 30 working days to issue a report that includes an evaluation of the assessment made by the public authority and may also include recommendations for improvements or modifications to the subsidy. This review term is extendable subject to certain conditions. The relevant authority is then subject to a 5 day standstill period following receipt of the report before proceeding any further.

The SAU's reports are non-binding in nature for both mandatory and voluntary referrals.



What types of subsidies are prohibited?

The Act prohibits certain categories of subsidies outright due to the greater risk they pose to significantly distort competition (regardless of whether they otherwise satisfy the seven subsidy control principles). These prohibitions are based on the UK's commitments under WTO rules and other international agreements (notwithstanding the fourth prohibition which is of a domestic character):

1. Unlimited guarantees (section 15): any subsidy that would guarantee an unlimited quantity of liabilities or debts; or guarantee a limited amount of liabilities or debts but over an indefinite period;
2. Export performance (section 16): any subsidy contingent upon export performance, e.g., subsidies to an exporter to cover the price difference between the UK and international market prices (unless it is a UK export finance short-term credit support);
3. Use of domestic over imported goods or services (section 17): any subsidy contingent on the requirement to use the 'local content';
4. Relocation of activities (section 18): any subsidies requiring the relocation of activities, unless the relocation is within the same area or is for the purpose of reducing economic or social disadvantages; and
5. Ailing or insolvent enterprises (sections 19-26): any rescuing and restructuring subsidies given to ailing or insolvent enterprises, unless the subsidy meets various prescriptive requirements e.g., a temporary liquidity support loan and the enterprise has a restructuring plan.



How can a decision to give a subsidy or make a scheme be challenged?

A party whose interests may be impacted by the award of a subsidy or establishment of a scheme is considered an interested party. An interested party can challenge the award of a subsidy or the establishment of a subsidy scheme in the CAT.

The CAT will apply judicial review principles in deciding whether a subsidy was granted (or a scheme was established) lawfully (i.e. it will assess whether the public authority's decision making was legal, rational and procedurally fair). When conducting its review, the CAT will consider whether the public authority carried out its duties that are specific to the subsidy control regime as set out in Chapters 1 and 2 of Part 2 of the Act (the substantive subsidy control requirements): most importantly, to consider the relevant subsidy control principles, and to be of the view that the subsidy was consistent with those principles before deciding to give the subsidy.

The deadline for bringing a challenge is generally one month from when the subsidy or scheme is uploaded to the database, or from when the interested parties knew or ought to have known of the subsidy decision it wishes to challenge. This deadline can be extended where the public authority receives a pre-action request for information under section 76 of the Act.

Note: Subsidies given under subsidy schemes (or streamlined routes) cannot be challenged for compliance with the requirements of the Act. This is because an assessment will already have been carried out in relation to the scheme (or streamlined route), and the eligibility criteria for the scheme or route guarantee that a subsidy that meets those criteria will comply with the subsidy control principles and prohibitions. A challenge would therefore have to be brought against the scheme itself at its creation, not against the subsequent subsidy. However, this protection only applies where the specific terms of a scheme (or a streamlined route) are met. If a subsidy does not in fact fall under that scheme (or streamlined route), then the public authority should have treated it as a standalone subsidy and conducted an assessment against the relevant principles and prohibitions. A subsidy which is ostensibly "under" a scheme or streamlined route could therefore be challenged in the CAT on this basis.



What are the risks of non-compliance?

If the CAT finds that a subsidy decision has not been given in compliance with the requirements in the Act, it may order remedies.

In England and Wales and Northern Ireland, these are very similar to those available to the High Court on an application for judicial review, with the addition of recovery orders, which are specific to subsidy control (consistent with the remedies under EU State aid rules). As provided for in section 72 and 74 of the Act, the CAT is required to either dismiss any claim or to grant the following kinds of relief:

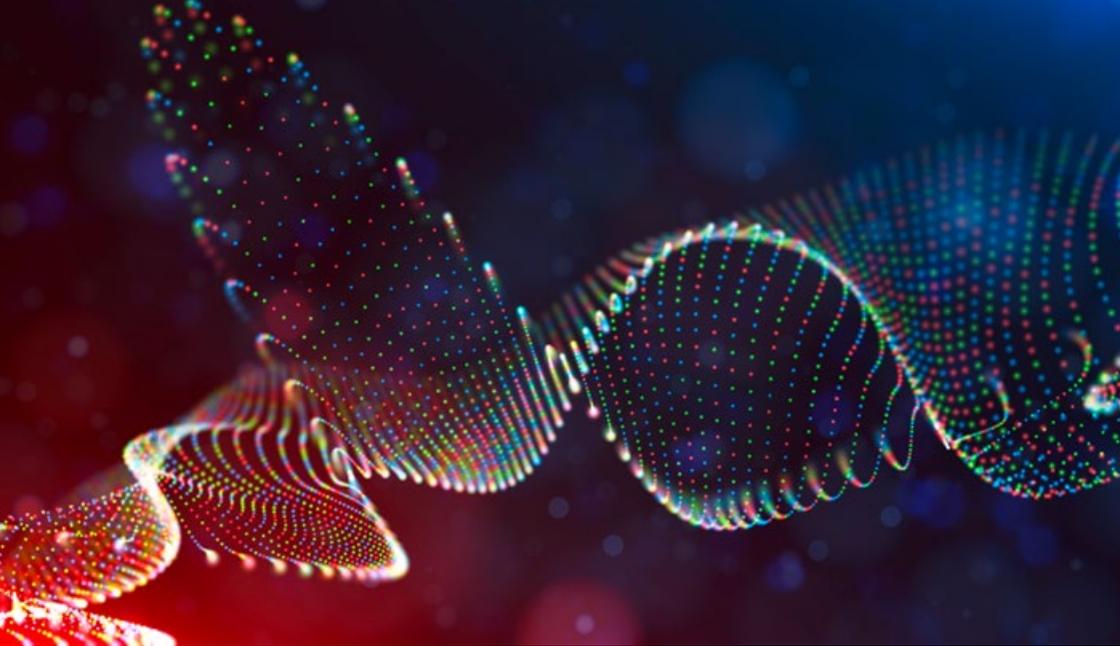
- a “mandatory order” requiring the authority to comply with its legal duties;
- a “prohibiting order” prohibiting the authority from giving the subsidy or from giving further subsidies under a scheme;
- a “quashing order” setting aside the authority’s decision to give the subsidy;
- a “declaration” clarifying a principle of law that was at issue in the case;

- an “injunction” directing the authority to do or refrain from doing a specified act, which may be required to be done on an interim basis (such as ordering the authority to refrain from giving a subsidy until the CAT has completed its review of the subsidy decision); and/or
- a “recovery order” as provided for specifically in section 74 of the Act, directing the authority to recover the subsidy amount given from the beneficiary (note: recovery may be ordered where there has been a breach of the substantive subsidy control requirements; it is not available in relation to a challenge on general public law grounds).

When reviewing a case in Scotland, meaning the public authority is located in Scotland, the CAT has largely the same powers, and is required to apply the same principles as the Court of Session would apply in an application to the supervisory jurisdiction of that Court. **Note:** One key difference though is that the relief that can be granted by the CAT includes restitution and damages in respect of the loss suffered as a result of an unlawful act or omission by a public authority. Whilst the TCA requires the UK to provide for effective remedies including the award of damages, the Guidance indicates that the CAT does not have the same power to make an award in damages in respect of an unlawful subsidy awarded by an authority located in the rest of the UK.

The principal remedy though is the issuing of a recovery order, which has been introduced as a specific remedy for the CAT in section 74 of the Act. A recovery order requires an authority to recover some or all of the subsidy from the beneficiary. It may set out how the subsidy is to be recovered, the amount and/or order interest. When a recovery order is made in respect of a scheme, the CAT may require that all or some of the subsidies under that scheme be repaid.

Since the Act came into force on 4 January 2023, four challenges have been brought before the CAT – two of which are still ongoing. Most of these have related to questions of whether or not financial assistance constitutes a subsidy for the purposes of the Act, but one (*Bristol Airport v Welsh Ministers*) is set to focus on the merits of the public authority’s assessment against the subsidy control principles.



Subsidy control – key points

1. Public authorities must self-assess their subsidies/subsidy schemes against the requirements of the Act, and be comfortable that they are not awarding subsidy unlawfully.
2. Any subsidies exceeding £100,000 must be recorded in the transparency database within 6 months of award. If a public authority needs access to the portal for uploading awards, they can contact subsidycontrol@businessandtrade.gov.uk. The public side of the database is available here: <https://www.gov.uk/guidance/view-subsidies-awarded-by-uk-government>.
3. Larger and more potentially distortive subsidies (e.g., SSoPI and SSol) require a more in-depth assessment by the public authority. For SSoPIs this assessment must be evaluated by the SAU pursuant to the Act's mandatory referral regime.
4. Subsidy decisions can be appealed in the Competition Appeal Tribunal (**CAT**) for judicial review.



How can CMS help?

CMS lawyers represent both public authorities and enterprises on all aspects of the subsidy rules. This includes:

- Assessment of the existence of a subsidy and its compatibility (including non-subsidy, subsidy, streamlined route, awards under schemes, MFA, and the seven principles analysis).
- Assessment and set up of subsidy schemes.
- Assistance assessing the requirements for SSoPIs and SSols and, where applicable, notification process to the SAU.
- Complaints to public authorities regarding subsidies
- Acting on bringing or defending subsidy challenges before the CAT and on subsidy law related judicial review proceedings

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