Transparency in the Subsidy Control Bill: Lowering the reporting threshold

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Summary

- The Subsidy Control Bill ('the Bill') could make it easier for public authorities to provide economically damaging subsidies – by moving away from the European Union's state aid process and reducing transparency requirements.
- The Bill outlines principles that public authorities must follow when granting subsidies and disclosure requirements for when subsidies are provided.
- The Bill only requires transparency (through publication in a database) if a subsidy is worth £500,000 or more pursuant to a pre-published scheme or £315,000 or more if not part of a scheme. It is estimated that this could allow £4 billion of subsidies to escape transparency.
- There is a significant risk that billions of pounds in subsidies will escape public scrutiny and challenge and be wasteful or distortionary. A lower threshold for transparency requirements could help reduce this waste and increase democratic accountability, enable affected businesses to contest decisions, and lessen rent seeking and corruption,

Introduction

The Subsidy Control Bill is intended to allow public authorities to deliver financial assistance to organisations for the benefit of taxpayers and to deliver on strategic interventions – such as research and development, net zero, and regional development – while avoiding distortion and other harmful economic impacts.[1] The new regime replaces the European Union (EU) state aid rules.

1. What can be subsidised

The Bill requires subsidies provided by public authorities to be consistent with a series of principles. These principles substantially replicate EU state aid controls, such as requirements that the subsidies benefit wider society, contribute to public policy objectives and are proportionate and necessary. There is a new prohibition on subsidies that displace economic activity between different parts of the UK, to avoid 'subsidy races' between public authorities attempting to attract the same business.

However, the Bill will not replicate conduct procedures and pre-approval processes under the EU's state aid rules. Under EU rules, subsidies are prevented by default unless justified and approved. Instead, under the proposed UK rules, subsidises will be allowed if a public authority considers them to be consistent with subsidy control principles. This shift in onus is intended to make subsidy control 'more flexible and less bureaucratic,' and simplify the process (Jozepa, Booth and Shalchi, 2021).

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[1] For the purposes of the Bill, 'subsidy' is broadly defined to include grants, tax reductions, favourable loans or in-kind benefits to private companies.

The Bill contains several exemptions from the regime's prohibitions and conditions. Amongst them, subsidies of up to £315,000 over three years to any single business – increased from €200,000 (£165,000) under EU de minimis rules – are exempt.

2. What must be disclosed

Transparency is a central feature of the subsidy control regime. The Bill requires the legal basis, policy objective, recipient enterprise name and subsidy amounts to be disclosed in a database. This allows the public to see what is being spent in their name and interested parties to see and challenge subsidies that that may affect them.

The Bill distinguishes between individual case-by-case subsidies and subsidy schemes, in which public authorities set out eligibility criteria that allow businesses to qualify for support. A public authority is expected to consider the subsidy control principles at a scheme level and disclose the details, such as the objective and total amount that may be awarded under scheme, in the subsidy database.

The UK's new subsidy control regime, by abandoning ex ante subsidy control (a hallmark of the EU state aid controls), is particularly reliant on democratic accountability to identify problematic spending. Yet the new regime could make it harder to identify, scrutinise and contest subsidies.

EU state aid law requires subsidies of €500,000 (£415,000) and above to be published online.

The proposed UK regime will only require disclosure of a subsidy worth more than:

- £500,000 paid under a 'scheme' (on the basis that a description of the scheme will already have been published); or
- £315,000 over three years to a single business outside a scheme.

These arrangements raise significant transparency issues. The Centre for Public Data estimates that over £4 billion of subsidies will not be disclosed each year because of these thresholds (CPD, 2022). Further, once a scheme is approved, it will be possible to hand out multiple subsidies to the same business with no further public disclosure. Theoretically, multiple subsidies of just less than £500,000 could be made to the same business within a scheme without the total amount ever being disclosed. It is possible some public authorities will voluntarily disclose subsides that do not meet the thresholds, while others will hold back information, thereby providing an incomplete and inconsistent picture of public handouts.

3. A proposed improvement to the Bill

All state subsidies should be disclosed.

This would improve transparency at negligible cost. Public authorities must already record and account for all subsidies. The Government's impact assessment estimated that requiring disclosure of all subsidies would cost just £20,000 per year (BEIS, 2021b) in total. This cost is minuscule in the scope of the billions spent on subsidies each year. It would take just a single additional inappropriate subsidy to be identified and repaid to pay for itself.

The increased transparency would:

- encourage public authorities to follow subsidy rules;
- make it easier for businesses to identify and challenge distortive subsidies;
- increase civil society's ability to assess the efficiency of public spending;
- help lessen the risk of rent seeking and corruption (Chen and Ganapati, 2021);
- remove the burden on smaller businesses to ensure they remain below the £315,000 subsidy threshold; and
- reduce the need for costly Freedom of Information requests to public authorities.

4. Picking more winners and losers

Business Secretary Kwasi Kwarteng claims the Bill will 'empower public authorities across the UK to deliver financial support - without facing burdensome red tape' (BEIS, 2021a). The reference to 'red tape' does not concern regulatory burdens on businesses but, rather, reducing limitations on the British state's ability to use taxpayer funds to pick winners and losers. The Government is expected to increase subsidies over the coming years (Collingridge, 2021), from the current level of around £8 billion a year.

Subsidies can keep alive unproductive businesses, preventing workers and capital being reallocated to more productive uses. They can unfairly prop up a firm at the expense of its competitors while discouraging innovation and responses to consumer demands. They can be entirely a waste of money by supporting projects that would have happened anyway. Subsidies encourage damaging rent-seeking for example in the form of firms seeking handouts from bureaucrats rather than innovating or improving customer service (Baumol, 1996; Gustafsson et al., 2019).

These are not merely hypothetical dangers. State subsidies have been handed out to favoured parties without necessarily providing value to taxpayers. The National Audit Office (NAO) analysed 107 business support schemes valued at £17 billion, led by the Department for Business, Energy, and Industrial Strategy (BEIS). Analysing more closely ten of these schemes, the NAO found that they:

> 'lacked measurable objectives from the outset or evaluations of their impact to know if they are providing the most value or if they should be discontinued. Without such analysis, the Department cannot know if its business support is providing value for money.' (NAO, 2020)

The one of the ten that had been fully evaluated, the Smart funding scheme, resulted in little difference in outcomes between businesses that were awarded and not awarded funding. The subsidies in question arose under EU rules which were insufficient to guarantee a good use of public money. Yet the proposals in the Bill provide for less supervision and less transparency than the EU rules, and cannot be expected to be more effective.

Conclusion

All subsidies bring a significant risk of distortion. An ideal subsidy control regime would make it extremely difficult, if not almost impossible outside of specific emergencies, for the state to subsidise private enterprise.

The Bill will allow public authorities in the UK to subsidise private enterprise for a range of purposes with fewer technocratic limitations compared to under EU rules. At the very least, the decentralised decision making necessitates greater accountability to ensure rules are followed.

Yet the Bill reduces transparency, which will be essential for such accountability. Lowering the threshold for disclosure of subsidies pursuant to schemes and requiring disclosure even of de minimis amounts would at least partly alleviate this problem.

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