



# **Clearer, Fairer, Better**

## **The case for UK subsidy transparency**

*By Anna Powell-Smith*

*with an introduction by John Penrose MP*

### Summary

- The UK is currently establishing its post-Brexit subsidy regime via the Subsidy Control Bill, which covers how public authorities award money to correct economic disparities and support strategic goals like R&D and 'levelling up'.
- The new UK regime aims to be more flexible than the EU state aid regime it replaces, allowing authorities to award subsidies without pre-approval, and instead relying on active challenges to identify unlawful subsidies.
- However, the new regime does not contain modern requirements on data publication and transparency: it actually requires public authorities to publish less data, not more.
- This means that around half of all subsidies may eventually be missing from the UK's public subsidy database, making it harder for businesses to challenge subsidies, and increasing the risk of harmful or wasteful spending.
- We recommend that the Government should create a comprehensive public subsidy dataset, by requiring any subsidy over £500 to be included on the database. This will make it simpler for businesses to bring challenges; help deter cronyism; and create better evidence on which subsidies work.
- Importantly, it will not create new burdens for business, but actually reduce them, at what the Government's own estimates confirm will be minimal cost to public authorities. This is a simple, low-cost opportunity to create a modern and transparent subsidy regime, and should be embraced by the Government.



## Introduction

The Subsidy Control Bill is vitally important for the UK's economic future. Without it, we will leave the door open to political meddling, cronyism and economic distortions that will make our society and our economy less efficient, less fair and less attractive for international investors too.

The old EU regime avoided these pitfalls, but at the expense of being lumberingly bureaucratic and slow. So the new approach of pre-approval for anything that lives up to some sensible core principles, backed up by a nimble, digital, unbureaucratic and stably predictable regime, is a big and extremely welcome step forward. It should mean a more open, competitive economy with lower prices for hard-pressed families, and a fair platform for British firms to export from too.

But while the Bill gets a lot of things right, we may be about to make a pretty big and important error. For a pre-approval process to work properly – or at all – it has to be as clear and transparent as a mountain spring, so everyone can see that public money is only being dished out in line with the rules. If it isn't, then lobbyists and cronies can push for subsidies that aren't fair, safe in the knowledge that no one will ever be able to see what's happened.

To be fair, ministers get this. They've said the new system needs to have world-leading levels of transparency, to prevent these types of problems.

But as it stands, the Bill is less transparent than the old EU system it replaces, not more. It says that only subsidies over £500,000 have to be declared, when the old threshold was £415,000 (€500,000). So we will be able to check fewer subsidies in future, rather than more. And rather than being quick and nimble, it's lumberingly slow because declarations don't have to be made for months, long after the damage has been done. It also heaps burdens on businesses by making them keep records of all the subsidies they've had for years before, and declaring them each time too.

Fortunately, there's a simple and easy fix. If any public body that hands out a subsidy of more than £500 has to record it immediately on a single, easily checkable database, all these problems vanish overnight. It's a cheap, instant and practical solution that would deliver the Government's pledge of world-leading levels of transparency, and make sure we don't fluff or bodge a key element of our post-Brexit architecture either.

There's an old saying that politicians are terrible at picking winners, but losers are absolutely brilliant at picking politicians. It's just as true today as it has ever been, and it will be levelled at us unless we make these changes to the Bill. I urge every Parliamentarian to seize the moment.

**John Penrose MP**



## Part 1: Subsidies in the UK

### Subsidies and international agreements

Subsidies are financial contributions from public resources that benefit the recipient, such as grants, subsidised loans, and tax advantages.<sup>1</sup> Public authorities award subsidies to tackle economic issues and support strategic priorities like R&D and Net Zero. In the UK, they are awarded by central government departments, devolved administrations, local authorities, and other public bodies like research councils. In recent years, the UK has spent more than €8 billion per year on non-agricultural subsidies.<sup>2</sup> (The figures are in euros as the data was published via the EU.)

Because subsidies can distort international trade, the UK is subject to international agreements as well as domestic legislation. These can include requirements to report or publish subsidies:

- **The World Trade Organisation (WTO).** The UK is required to report its subsidies schemes to other WTO members.<sup>3</sup> However, the Institute for Government reports that ‘due to its state-to-state enforcement mechanism, [the WTO] does little in practice to restrict subsidies’.<sup>4</sup>
- **International trade agreements.** The UK is also covered by various trade agreements, which may include requirements to report or publish subsidies.<sup>5</sup>
- **European legislation.** Until 2021, the UK was subject to EC ‘state aid’ controls, under which any subsidy that could affect trade between member states required pre-approval by the EC. These have now been replaced by the UK/EU Trade and Cooperation Agreement (TCA) and a new domestic subsidy regime.<sup>6</sup>

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<sup>1</sup> GOV.UK Policy paper, *Overview of the subsidy control regime*, June 2021.

<https://www.gov.uk/government/publications/subsidy-control-bill-policy-papers/overview-of-the-subsidy-control-regime-a-flexible-principles-based-approach-for-the-uk>

<sup>2</sup> As reported to the EC, though smaller subsidies and certain pre-approved types of subsidy are not included in the reporting, meaning that the total is likely to be higher. EC State Aid Scoreboard, 2020.

[https://ec.europa.eu/competition-policy/state-aid/scoreboard\\_en](https://ec.europa.eu/competition-policy/state-aid/scoreboard_en)

<sup>3</sup> WTO, *Agreement on Subsidies and Countervailing Measures*.

[https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)

<sup>4</sup> Institute for Government, *Beyond state aid: The future of subsidy control in the UK*, September 2020.

<https://www.instituteforgovernment.org.uk/publications/state-aid>

<sup>5</sup> GOV.UK Collection, *The UK’s trade agreements*. <https://www.gov.uk/government/collections/the-uks-trade-agreements>

<sup>6</sup> GOV.UK International treaty, *UK/EU and EAEC: Trade and Cooperation Agreement [TS No.8/2021]*.

<https://www.gov.uk/government/publications/ukey-eu-and-eaec-trade-and-cooperation-agreement-ts-no82021>



## The new UK regime: the Subsidy Control Bill

The Government laid out a proposed new domestic subsidy regime in the Subsidy Control Bill in July 2021.<sup>7</sup> This new regime aims to be more flexible and less bureaucratic than the EU system.

In particular, instead of requiring subsidies to be pre-approved, as under the EC regime, the Bill now requires public authorities to consider a set of general principles before granting a subsidy, and not grant a subsidy unless they believe it complies with these principles.<sup>8</sup> Low-risk subsidies are exempted, including so-called 'minimal financial assistance' subsidies of under £315,000 over three years.

The new regime will be enforced via challenge. Interested parties, like the competitors of a business that is awarded subsidy, will be able to challenge any potentially unlawful subsidies – but only once they have been awarded.

The Government's stated goal for its new regime is to enable public bodies to design subsidies that benefit the taxpayer and support strategic priorities like levelling up, while providing confidence for business and avoiding 'distortive or harmful' subsidies.<sup>9</sup>

This new regime will be introduced at a time when subsidies, state aid and industrial policy are more prominent than for many years. The 2020 Spending Review announced 'the highest sustained levels of public sector net investment since the late 1970s'.<sup>10</sup> The Government has also made clear that it will be seeking to do more to support economic activity in particular regions and sectors, for example via the levelling up agenda or the introduction of free ports (as proposed by the current Chancellor in a 2016 paper for the Centre for Policy Studies). There is therefore a commensurate need to ensure that the subsidy regime is transparent, effective and minimises economic distortions.

## How the new subsidy regime uses data

Under the European regime, the UK (along with other EU members) was required to publish individual subsidies over €500,000 on a public online database.<sup>11</sup>

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<sup>7</sup> UK Parliament, *Subsidy Control Bill*. <https://bills.parliament.uk/bills/3015/publications>

<sup>8</sup> House of Commons Library, *Research briefing: Subsidy Control Bill*, September 2021. <https://commonslibrary.parliament.uk/research-briefings/cbp-9270/>

<sup>9</sup> UK Parliament, *Subsidy Control Bill: Explanatory Notes*, June 2021. <https://publications.parliament.uk/pa/bills/cbill/58-02/0135/en/210135en.pdf>

<sup>10</sup> GOV.UK Policy paper, *Spending Review 2020*, December 2020. <https://www.gov.uk/government/publications/spending-review-2020-documents/spending-review-2020>

<sup>11</sup> This data can be found at the EC State Aid Transparency Module <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>, as mandated by Commission



The Department for Business, Energy and Industrial Strategy (BEIS) has created a searchable online transparency database to meet the UK/EU TCA's requirements for the new UK regime.<sup>12</sup> But in the new regime, the Bill increases the threshold for declaration, replacing the €500,000 figure with £500,000. This is the equivalent, at current exchange rates, of raising it by roughly 20%.<sup>13</sup>

Specifically, it exempts from publication any subsidies awarded via a registered 'scheme' and under £500,000 in value.<sup>14</sup> Importantly, this threshold is not cumulative, so one business can receive repeated in-scheme subsidies below £500,000, none of which must be published.

It is important to note that this regime is not only less transparent than the one it replaces, but that the threshold for publication adopted has been the very highest proposed at the consultation stage. It equals the transparency thresholds set in the UK/EU TCA – but the relevant section is concerned with subsidies that could distort international trade, rather than domestic monitoring.<sup>15</sup>

### **The implications for the subsidy regime**

This arrangement undermines the Government's claims to be creating a more transparent replacement for the state aid regime. The new UK regime relies on challenge by interested parties, rather than pre-approval, to minimise harmful or wasteful spending. However, under these proposals, subsidies under £500,000 awarded within a scheme will not be published. So how will competing businesses be able to identify and challenge such subsidies?

This concern was raised by witnesses at the House of Commons Committee stage of the Bill.<sup>16</sup> Lawyer Alexander Rose from law firm DWF commented that better transparency will be vital to allow challenge:

*I struggle to see how an organisation could ever really know that it is going to be affected by that subsidy scheme unless it identifies the competitors who are going to get a subsidy and*

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Regulation (EU) No 651/2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710>

<sup>12</sup> GOV.UK, *Search for UK subsidies*. <https://searchforuksubsidies.beis.gov.uk>

<sup>13</sup> At exchange rates as of January 12, 2021, £500,000 is equivalent to €599,210.

<sup>14</sup> GOV.UK, *Overview of the subsidy control transparency obligations*, June 2021. <https://www.gov.uk/government/publications/subsidy-control-bill-policy-papers/overview-of-the-subsidy-control-transparency-obligations>

<sup>15</sup> Article 369, *UK/EU and EAEC: Trade and Cooperation Agreement*, as above.

<sup>16</sup> House of Commons, *Parliamentary Debates: Subsidy Control Bill*. [https://publications.parliament.uk/pa/bills/cbill/58-02/0135/PBC135\\_SubsidyControlBill\\_1st-11th\\_Compilation\\_19\\_11\\_2021.pdf](https://publications.parliament.uk/pa/bills/cbill/58-02/0135/PBC135_SubsidyControlBill_1st-11th_Compilation_19_11_2021.pdf)



*the amount... To my mind, the transparency database and the... schemes point are the two issues that will most damage the award of subsidies in future if not rectified.*

Professor Stephanie Rickard of the LSE commented that improved transparency would encourage authorities to comply with the principles, reducing the need for challenges:

*The benefits of transparency, and more of it, outweigh the costs. One of the benefits I would flag is that transparency can potentially ensure that granting authorities comply with the principles that are laid out in the Bill... Requiring more subsidies to be notified and to be put into the database for public scrutiny will help to ensure that the granting authorities are very careful in complying with the principles.*

Raising similar concerns, the editorial board of the Financial Times has warned that the new flexible regime could pose 'significant risk' and that 'on the altar of speed, [the Government] has sacrificed scrutiny'.<sup>17</sup>

### **The implications for the monitoring of subsidies**

Under the Bill's proposals, there will be no comprehensive database of subsidies. Although some subsidies will be published, in particular via the new BEIS portal, the lack of a single dataset will make it harder to monitor and evaluate spending overall.

This is particularly alarming given that evidence on the UK's subsidy spending is already poor.

In 2018, the UK reported that it spent more than £8 billion on subsidies. However, only around £4 billion in individual subsidies were detailed on the EC's transparency database. In other words, the recipients and purpose of subsidies of around £4 billion per year were not available for analysis.<sup>18</sup>

Concerningly, BEIS itself does not appear to hold this data. Its pre-Bill consultation appealed for data sources on smaller subsidies,<sup>19</sup> but apparently no sources were forthcoming, since the impact

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<sup>17</sup> Financial Times, *Editorial: The UK carves a risky new path on state aid*, July 2021.

<https://www.ft.com/content/e36703d6-dc98-43de-92bb-5cf59b06883f>

<sup>18</sup> This can be estimated by comparing the total value of all subsidies reported by the UK in the EU's State Aid Scorecard vs the sum value of subsidies reported on the Transparency Award Module.

<sup>19</sup> GOV.UK Consultation: *Subsidy control: designing a new approach for the UK*, March 2021.

<https://www.gov.uk/government/consultations/subsidy-control-designing-a-new-approach-for-the-uk>



assessment only used the EC data.<sup>20</sup> BEIS has confirmed that it does not monitor the use of smaller subsidies or hold data on them.<sup>21</sup>

The Bill's impact assessment states that 'as this is a major policy change, with the introduction of a significant new framework, the Department considers it appropriate to robustly monitor and evaluate the regime both in the short term and over multiple years'. But it is unclear how this will be possible in practice, if neither BEIS nor the new subsidy regulator hold data on around half of all subsidy spending.

Although some public bodies publish subsidies voluntarily, or in response to Freedom of Information requests, there is no central UK dataset of subsidies.<sup>22</sup> Even where data is published, data scattered across multiple locations, with inconsistent URLs and disparate formats, is effectively unusable for real-world monitoring and analysis. It is important to flag here that we are not just talking about the kind of emergency spending during the pandemic that has received such publicity recently, but the level of information available to the public, researchers, journalists and businesses about how public money is being spent within the economy, and where.

## Part 2: The case for comprehensive data on subsidies

### A low-cost, high-impact solution

We recommend that instead of the £500,000 figure, the Bill should require the inclusion on the transparency database of all subsidies of £500 or more, whether part of registered schemes or not, and whether or not they fall below the 'minimal financial assistance' threshold. As we outline below, this is far closer to the thresholds for declaring other forms of government spending, and indeed is identical to the requirement already imposed on local government.

In addition, subsidies should be added to the database within one month of award, to allow for timely challenge. Individual subsidies given under a subsidy scheme should also be challengeable, without the requirement for the broader subsidy scheme to be reviewed too.

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<sup>20</sup> GOV.UK, *Subsidy Control Bill: final impact assessment*.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/998054/subsidy-control-ia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998054/subsidy-control-ia.pdf)

<sup>21</sup> Parliamentary Questions, *Subsidies*, July 2021. <https://questions-statements.parliament.uk/written-questions/detail/2021-07-15/33879/>

<sup>22</sup> For example, Innovate UK publishes its subsidies via the UKRI gateway, <https://gtr.ukri.org/> while Invest Northern Ireland published its subsidies in response to an FOI request. <https://www.whatdotheyknow.com/r/dc911048-1186-4a40-838a-87b17593d15e>



This would create a near-comprehensive, near-real-time dataset of UK public subsidies that would support effective challenge, while maintaining the Bill's principles of increased flexibility and low burden for authorities.

Importantly, this would not create extra burdens on the business receiving the subsidies. In fact, it would reduce them. The Bill currently requires businesses to keep records of subsidies they receive, to support 'minimal financial assistance' restrictions.<sup>23</sup> If these records were routinely maintained on the database by public authorities, this requirement could be removed.

The extra cost for public authorities will be minimal, since authorities will naturally already keep their own records of subsidies, and the central database supports bulk data upload. Startlingly, the Government has assessed the cost for authorities of uploading all subsidies at just £20,000/year across the UK – though it somehow managed to argue that this added expense would still outweigh the benefits of better data.<sup>24</sup>

### The benefits of stronger data

Making available comprehensive subsidy data would create the following benefits:

- **Reducing and streamlining challenges.** The new, flexible subsidy regime depends on challenges by third parties to unfair subsidies. Clearly, businesses cannot challenge subsidies they do not know about. As Professor Rickard comments, better data would also reduce the likelihood of challenge, by reducing any temptation to award subsidies improperly.
- **Preventing harmful and distortive subsidies.** Smaller subsidies can be distortive at a local level, and can harm competition between firms.
- **Preventing cronyism.** Better transparency would help prevent cronyism and corruption under future governments of all colours. There is strong international evidence that fiscal

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<sup>23</sup> Clause 37 of the Subsidy Control Bill, as presented to the House of Commons.

<sup>24</sup> GOV.UK, *Subsidy Control Bill: final impact assessment*, sections 288-290, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/998054/subsidy-control-ia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998054/subsidy-control-ia.pdf). BEIS have not supplied the calculations underlying this estimate <https://questions-statements.parliament.uk/written-questions/detail/2021-09-16/50653/>





transparency reduces corruption.<sup>25</sup>

- **Improved awareness of schemes.** Increased reporting would improve public awareness of subsidies, increasing competition for schemes.
- **Stronger evidence base.** Better data would improve the evidence base on what works, allowing for more effective subsidy design in future.

Publishing this data would be an opportunity for the UK to live up to its aspiration to be a world leader in subsidy transparency, and build an effective and evidence-driven regime.

### Comparison with other public-sector transparency thresholds

The Bill's threshold for publication of £500,000 appears to have been set by reference to the thresholds in the UK/EU TCA, which is concerned with subsidies that could distort trade. However, it is worth pointing out that this is out of step with transparency thresholds for expenditure elsewhere in the UK public sector:

- Local authorities must publish all expenditure over £500 monthly, under the Local Government Transparency Code and associated legislation.<sup>26</sup>
- Central government departments and arms-length bodies must publish all expenditure over £25,000 quarterly, though only under non-statutory guidance.<sup>27</sup>
- Central government departments must publish all contracts worth over £10,000 online on the ContractsFinder database.<sup>28</sup>

By setting the threshold for publication at £500,000, the Bill is out of step with other public sector thresholds, which have undergone careful cost-benefit analysis.

(It is important to note that these expenditure datasets cannot be used to monitor subsidies. Firstly, they typically do not cover all forms of subsidy, such as subsidised loans. Secondly, expenditure

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<sup>25</sup> Chen, C. and Neshkova, M., *The effect of fiscal transparency on corruption: A panel cross-country analysis*, Public Administration 98.1, 2020. <https://doi.org/10.1111/padm.12620>

<sup>26</sup> Department for Communities and Local Government, *Local Government Transparency Code 2015*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408386/150227\\_PUBLICATION\\_Final\\_LGTC\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf)

<sup>27</sup> HM Treasury, *Guidance for publishing spend over £25,000*. <https://www.gov.uk/government/publications/guidance-for-publishing-spend-over-25000>

<sup>28</sup> Public Contracts Regulations 2015, <https://www.legislation.gov.uk/uksi/2015/102/made>



datasets are published across scattered locations, in diverse formats, making them effectively unusable for monitoring and analysis.)

Across the world, other countries voluntarily publish smaller subsidies, for example Spain, which already publishes all significant subsidies.<sup>29</sup>

### **The opportunities from better data**

As well as preventing harms, and creating stronger evidence, stronger data would also create a valuable resource for businesses and startups.

In time, BEIS could create a full database of subsidies and other spending, by requiring local authorities and central government departments to report all their published expenditure in a modified central database. This would not create significant extra burdens for departments or local authorities, but would greatly increase the value of existing published data.

### **Conclusion**

Creating a better and more transparent subsidy regime can be a real post-Brexit benefit, and can be realised for a startlingly low price – while removing a burden on businesses large and small. It makes the playing field fairer for firms of all kinds, and makes it harder for government to hand subsidies to favoured firms without proper scrutiny, thereby distorting competition. We urge the Government to take advantage of the opportunity.

### **About the Authors**

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<sup>29</sup> Gobierno de España, *Sistema Nacional de Publicidad de Subvenciones y Ayudas Públicas*. <https://www.infosubvenciones.es/bdnstrans/GE/es/index>



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