

## UK Subsidy Control Regime – Information from the Department of Business and Trade, June 2023

Some NAVCA members have issues with application of the UK Subsidy Control Regime [the Regime], including for themselves or for local VCSE organisations. We have been able to raise the issues you have highlighted with officials from the Department of Business and Trade (DBT)<sup>1</sup>, who have provided some clarification on how the Regime should be operating. Information below should not be taken as legal guidance and must be read in conjunction with the formal guidance available online.

<https://www.gov.uk/government/collections/subsidy-control-regime>

Further guidance will be issued by DBT on small awards and responsibilities of beneficiaries.

### What is a subsidy?

Subsidy is defined as meaning financial assistance that meets **all of** the following characteristics:

- (a) is given, directly or indirectly, from public resources by a public authority; and
- (b) confers an economic advantage on one or more enterprises; and
- (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services; and
- (d) has, or is capable of having, an effect on: (i) competition or investment within the UK; or (ii) trade between the UK and a country or territory outside the UK; or (iii) investment as between the UK and a country or territory outside the UK.

The second test looks to see whether the funding advantages any body which is engaged in economic activity (at which point they will be regarded as an “enterprise”). The third test focusses upon whether the support is specific to particular organisations only. The final test checks whether the measure could affect competition and investment within the UK.

### Does the UK Subsidy Control Regime apply?

The Regime definition of **public authority** applies to any body which exercises functions of a **public nature**, whose funding originates from public funds, including all local authorities and the NHS.

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<sup>1</sup> BEIS previously had overall responsibility for subsidy control policy, but that responsibility has now passed to its successor department, DBT. While the transition is being completed you may still see references to BEIS, e.g., in some email addresses.

The regime is flexible and gives some discretion to public authorities, who are ultimately responsible for determining whether financial assistance qualifies as a subsidy and, if so, that any subsidy is consistent with legal requirements. The following information should be viewed in light of this flexibility, as some decisions may vary depending on the circumstances. In marginal cases it would be advisable for public authorities to seek guidance from DBT<sup>2</sup>.

The Regime does not apply to contracts awarded under usual tendering procedures.

It would apply if the contract contains elements that are preferential to the awarding public authority, for goods or services offered at below normal commercial rates.

Grants given to charities for direct charitable activity should be excluded from the Regime. e.g., a grant to cover the core cost of running the charity, or providing services that are of charitable purposes – such as advice to the general public or free training for charities.

If a grant is given to a charity to support economic activity i.e., an enterprise that is in a market with other providers, then this would be classed as a subsidy under the Regime.

If a grant is received from a public authority that includes both funding for core charitable activities and support for an enterprise, then only the amount supporting the enterprise would qualify under the Regime.

### **Where does responsibility lie?**

As noted above, the awarding public authority holds the responsibility for determining if the Regime applies. There will have to be some element of cooperation with the awarding public authority, in sharing information on other sources of funding the VCS organisation has received for the enterprise, but primary responsibility lies with the awarding public authority. We are aware that some VCS organisations have been asked to take formal legal advice to confirm if the Regime applies, this should not be happening. It is not the responsibility of the beneficiary to determine whether the grant falls under the Regime. If this happens, then the advice is to go back to the awarding public authority to challenge the necessity of this. If there is any uncertainty, the awarding public authority should contact the DBT subsidy control casework team for clarification.

A beneficiary may be asked to provide information on grants that it has received from other public authorities [i.e., from public funds] over the last three years, where there has been direct support for an enterprise, but not for direct charitable activities.

### **Minimal Financial Assistance**

Minimal Financial Assistance [MFA] allows public authorities to award low value subsidies without needing to comply with the majority of the subsidy control requirements. MFA has a financial threshold so no recipient can receive more than £315,000 over the applicable

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<sup>2</sup> DBT has a dedicated subsidy control casework team to offer support and guidance on the application of the regime to public authorities (not normally beneficiaries of a subsidy). They can be contacted via [subsidycontrol@beis.gov.uk](mailto:subsidycontrol@beis.gov.uk).

period. This is a three year period that includes the financial year in which the subsidy is awarded and the two previous financial years.

Money can be given outside the MFA rules, i.e., once the limit of £315,000 has been exceeded, the awarding public authority simply needs to go through the Regime process. The rigour of the assessment should be proportionate to the value of the money being given, as the smallest subsidies [in the hundreds or low thousands] are very unlikely to have any more than a notional effect on competition and investment. As such this would fail the fourth element of the subsidy test, i.e. it would not affect competition and investment within the UK. Therefore, the requirements of the Regime in order to give small sums of money to support economic activity should be limited once MFA is exceeded.