**Subsidy Controls**

A subsidy is where a public authority provides support to an enterprise that gives them an economic advantage, meaning equivalent support could not have been obtained on commercial terms. This could include, for example, a cash payment, a loan with interest below the market rate or the free use of equipment or office space.

There are two initial conditions which have to be met:

1. In order to constitute a subsidy, financial assistance must be granted to persons or bodies that constitute an enterprise.

Section 7(1) of the Subsidy Control Act 2022 states that an enterprise means a person, or group of persons under common control, who are engaged in an economic activity

1. The recipients are engaged in economic activity.

Economic activity essentially means offering goods and/or services on a given market and which could, at least in principle, be carried out by a private operator for remuneration. Usually, the question of whether or not an intended recipient engages in economic activity is straightforward – but not always. If you are in any doubt, you should seek advice from the Subsidy Control Team before concluding whether your proposed measure is / is not a subsidy.

If you meet both of the above conditions then you need to consider the following four questions. If you are able to answer ‘No’ to **any** of the questions then the assessment is complete and subsidy control procedures are not relevant. If you answer “yes” to **all** of the following 4 questions then it is likely that the support you intend providing is a subsidy:

1. **Is the financial assistance given, directly or indirectly, from public resources by a public authority?**
2. **Does the financial assistance confer an economic advantage on one or more enterprises?** *The financial assistance must confer an economic advantage, meaning that it is provided on favourable terms. Financial assistance will not confer an economic advantage if it could reasonably be considered to have been obtained on the same terms on the market.*
3. **Is the financial assistance specific? That is, has the economic advantage been provided to one (or more than one) enterprise, but not to others?** *This covers financial assistance that is provided to specific beneficiaries determined on a discretionary basis by the government, as well as assistance that benefits (directly or indirectly) only enterprises in a particular sector, industry or area, or with certain characteristics.*
4. **Will the financial assistance have, or is it capable of having, an effect on competition or investment within the UK, or trade or investment between the UK and another country or territory?** *To constitute a subsidy, the assistance must have a genuine effect that is more than incidental or hypothetical on competition or investment in the UK, or on international trade or investment.*

If your policy area provides subsidies, please ensure that you and your team read the [new subsidy control statutory guidance](https://www.gov.scot/publications/subsidy-control-guidance/pages/subsidy-control-act/). Failure to comply could cause the Scottish Government significant legal, financial and reputational damage. The Subsidy Control Team can provide support, and help you to determine whether a measure is subject to subsidy control rules. For more information, please contact the subsidy control team early in the policy development process and review the following documents:

* [Statutory Guidance for the United Kingdom Subsidy Control Regime](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117122/uk-subsidy-control-statutory-guidance.pdf)
* [Subsidy Control rules: quick guide to key requirements for public authorities](https://www.gov.uk/government/publications/subsidy-control-rules-key-requirements-for-public-authorities/subsidy-control-rules-quick-guide-to-key-requirements-for-public-authorities)
* [Subsidy control principles assessment template](https://www.gov.uk/government/publications/subsidy-control-principles-assessment-template)
* Further information on the Scottish Government [website](https://www.gov.scot/publications/subsidy-control-guidance/pages/subsidy-control-act/)