



Agenda Item No: 7.3

Implementation of Subsidy Control Act 2022

To: Combined Authority Board

Meeting Date: 25 January 2023

Public report: Yes

Lead Member Cllr Edna Murphy (Governance)

From: Edwina Adefehinti – Interim Chief Officer(Legal and Governance) Monitoring Officer

Key decision: No

Recommendations: The Combined Authority Board is recommended to:

(a) note the commencement of the UK Subsidy Control Regime on 4th January 2023 and the implications of this for the Combined Authority;

(b) subject to (c) below, unanimously agree the delegation of authority to each of the Combined Authority's Executive Directors to sign off Subsidy Control Assessments on behalf of the Combined Authority in consultation with the Monitoring Officer and Chief Finance Officer, and to note that such delegation will be added to the Standing List of Delegations to Officers contained in the Constitution

(c) approve the delegation of authority to the Combined Authority's Chief Executive in consultation with the Mayor, the Monitoring Officer and Chief Finance Officer to sign off Subsidy Control Assessments for subsidies that are subject to referral to the national Subsidy Advice Unit, and to note that such delegation will be added to the Standing List of Delegations to Officers contained in the Constitution

A simple majority of all Members present and voting

1. Purpose

1.1 The new UK subsidy control regime will commence on 4 January 2023. This has the objective of assisting public authorities to provide funding arrangements which are tailored to local needs and support priorities such as driving economic growth and reaching net zero, whilst ensuring public money is used in an effective and efficient way. This report explains the key features of the

new regime and recommends initial steps that the Combined Authority should put in place to maximise the flexibilities offered.

2. Background

2.1 The As a result of leaving the European Union, the UK is no longer subject to EU State aid rules but remains subject to numerous international commitments on subsidy control. In 2020 the UK Government announced its intent to design and implement a new domestic subsidy control regime. This is now being enacted through the Subsidy Control Act 2022, which comes into force on 4th January 2023. The Government has identified the following as the principal aims of its subsidy control regime:

- To empower local authorities, public bodies, and central and devolved administrations to design subsidies that deliver strong benefits for the UK taxpayer.
- To enable public authorities to deliver strategic interventions to support the UK's economic growth and allow them to deliver their policy priorities, such as levelling up and achieving net zero.
- To provide certainty and confidence to businesses investing in the UK, by protecting against subsidies that risk causing distortive or harmful economic impacts, including to the UK internal market.
- To contribute to meeting the UK's international commitments on subsidy control.

2.2 A subsidy is where a public authority provides financial support to an enterprise that gives them an economic advantage, meaning equivalent financial support could not have been obtained on commercial terms. The most common form of subsidy provided by the Combined Authority is grant funding, although on occasion it will also provide sub-commercial loans and other non-commercial forms of financial assistance in order to support its strategic objectives. The purpose of the subsidy control regime is to prevent public authorities from giving financial advantages to enterprises in a way that could distort competition. Whilst this is similar in purpose to the EU State Aid regime, there are important differences, the most significant of which are the following:

- Subsidy control is a more permissive regime than State Aid, with very few categories of subsidy being subject to prohibitions. This provides increased flexibility for public authorities to fund projects that would otherwise be non-viable.
- The threshold below which subsidy control does not apply is £315,000, which is higher than the previous State Aid threshold of £200,000.
- There are detailed requirements for assessing, recording and publishing subsidies. Assessment is based on the "Subsidy Control Principles", which need to be satisfied for a subsidy to be lawful. The public authority will need to be able to evidence that each subsidy provided is in line with its policy objectives, is the minimum necessary to achieve its aims, provides additionality and has benefits that will outweigh any detriment to competition or trade.
- EU State Aid rules only applied to competition that affected trade across different countries in the EU, whereas subsidy control applies to internal competition within the UK as well as internationally.
- A new Subsidy Advice Unit has been set up as part of the Competition and Markets Authority. All subsidies over £10,000,000 in value have to be referred to the Subsidy Advice Unit, and certain categories of subsidies over £5,000,000 in value also have to be referred.

2.3 Statutory Guidance for the UK Subsidy Control Regime was published by the Government on 11th November 2022. The additional flexibilities that the Regime provides could have significant positives for the Cambridgeshire and Peterborough Region, as it will potentially allow schemes to be progressed which have viability challenges that prevented funding under the State Aid regime. The Regime will also support the Combined Authority's aim to achieve a return on investment where practicable, as income sharing provisions such as overage will commonly need to be

included in investment proposals to protect taxpayers money and satisfy the Subsidy Control Principles.

2.5 The UK Subsidy Control Regime is, however, likely to be administratively onerous for public authorities, particularly those such as the Combined Authority who invest in a range of projects across different sectors. Subsidy control will have a wider effect across the organisation than EU State Aid did, as the Combined Authority commonly funds transport projects where impact on EU competition was not a relevant consideration, however there will be a potential impact on internal competition within the UK. An understanding of subsidy control will therefore need to be developed widely across the Combined Authority and embedded into business plans and investment processes. Carrying out Subsidy Control Assessments, making Subsidy Advice Unit referrals and increased registration and transparency requirements will also have resource impacts for the Combined Authority.

2.6 Each Subsidy Control Assessment that is carried out will need to be formally signed off on behalf of the Combined Authority. This will usually take place subsequently to the approval of funding for the project by the Combined Authority, although officers will have satisfied themselves in principle that the proposed subsidy is likely to be lawful and in compliance with the Subsidy Control Principles prior to recommending Combined Authority approval. It is therefore requested that the Combined Authority's Executive Directors are given delegated authority to individually sign off Subsidy Control Assessments in consultation with the Monitoring Officer and Chief Finance Officer. This delegation will apply to all subsidies apart from those which are referred to the Subsidy Advice Unit. The Subsidy Control Assessments for these higher risk, higher value subsidies will require sign off by the Combined Authority's Chief Executive in consultation with the Metro Mayor and Monitoring Officer.

3. Financial Implications

3.1 There are no direct financial implications associated with this paper.

4. Legal Implications

4.1 The Subsidy Control Act 2022 represents a significant change to the approach that public authorities must take in investing public money and introduces new legal obligations in relation to this. Legal Services will make the required changes to legal agreements and processes to reflect this and will arrange for other Combined Authority teams to receive training and guidance in relation to the discharge of these obligations.

4.2 Failure by the Combined Authority to comply with its obligations under the Subsidy Control Act 2022 could result in legal challenge. The Competition Appeal Tribunal has jurisdiction to review subsidy control decisions. If the Tribunal finds that a subsidy has been awarded contrary to the requirements of the Act, then it may prevent the subsidy from being given or require its repayment. A subsidy control legal challenge would also be costly, result in delay to the relevant project, and have potential reputational risk for the Combined Authority.

4.3 The risk of legal challenge can be mitigated by ensuring that the correct processes are followed whenever the Combined Authority is considering granting a subsidy, and that advice is taken from Legal Services at an early stage in the project to ensure that the relevant factors for the Subsidy Control Assessment are included in the business case.

5. Public Health Implications

5.1 There are no public health implications to this report.

6. Environmental and Climate Change Implications

6.1 The UK Subsidy Control Regime places specific emphasis on assessing the impact that subsidies will have on the environment, and in particular in relation to achieving net zero targets. Subsidies which relate to energy or the environment have to satisfy additional principles to ensure that they incentivise recipients in the correct way towards achieving these aims.

7. Other Significant Implications

8. Appendices

8.1 Appendix A – UK subsidy control statutory guidance- 11 November 2022

8.2 Appendix B- Subsidy control rules: key requirements for public authorities- 11 November 2022

9. Background Papers

10. Conclusion

10.1 The Subsidy Control Act 2022 introduces a new UK Subsidy Control Regime that will have a significant effect on how the Combined Authority invests public money. The recommendations set out in this Report will ensure that the Combined Authority has a process in place for addressing this change that is agile and will minimise any potential delay to funding awards and projects, whilst also including the necessary checks and balances to ensure compliance with legal requirements. This will enable the Combined Authority to be well placed to realise the potential benefit of the UK Subsidy Control Regime of increased flexibility in how funding is applied to achieve the Combined Authority's policy objectives.