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Ideology and policy design after Brexit: explaining the UK subsidy regime

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ABSTRACT

Although states rarely regulate their own domestic subsidies, the UK Government after Brexit set up a UK-wide subsidy control regime. In force from early 2023, the UK Subsidy Control Act replaced the EU state aid rules that had been revoked by the UK Government in late 2020. While the obligation to address the regulation of subsidies was in the UK-EU Trade and Cooperation Agreement, the UK Government chose to go beyond these international obligations. This article explains why. It argues that the UK Government's decision was ideological, that is, it was driven by political ideas about sovereignty and unionism, ideas associated with a form of contemporary conservatism in the UK. This finding is significant as it sheds light on the importance of ideology in UK post-Brexit policy design, whilst also indicating how trade agreements might prompt the emergence of domestic subsidy control regimes.

KEYWORDS Brexit; state aid; subsidy control; policy design; UK internal market; ideology

While subsidies can be useful instruments of domestic industrial policy, subsidy *control* is only rarely found at state level. Yet the UK has recently set up its own bespoke regime. The Brexit context is important here. During the negotiations on the future relationship between the United Kingdom (UK) and the European Union (EU) in 2020, one of the most contentious items on the agenda was subsidy (or 'state aid') policy (McGowan 2023: 2). Indeed, the subsidy control provisions of the UK-EU Trade and Cooperation Agreement (TCA) were some of the last to be resolved in late December 2020. On 9 September that year, however, the Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma, had announced that the UK Government would launch a stakeholder consultation early in 2021 on 'whether the United Kingdom should go further than its existing international commitments in relation to

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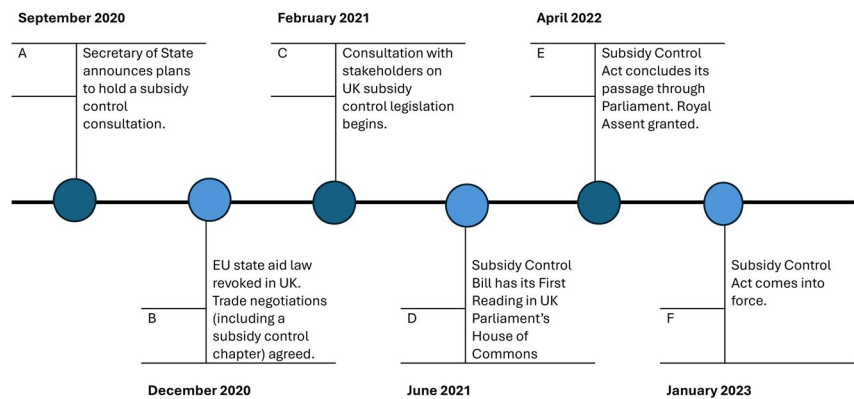


Figure 1. The path to the subsidy control act 2022.

subsidy control’ (Sharma 2020). This announcement began a process that led to the Subsidy Control Act (SCA) 2022 (see Figure 1).

The Subsidy Control Act came into force in January 2023. It requires public authorities who wish to grant subsidies or set up subsidy schemes to conduct a self-assessment. These assessments are based on seven subsidy control principles,¹ which, with certain adaptations, were imported from the Trade and Cooperation Agreement and which in turn were very similar to those in the EU state aid regime. While a new Subsidy Advice Unit (SAU), located in the Competition and Markets Authority (CMA) (2025), can offer advice, the only means of redress is through private enforcement in cases brought before the Competition Appeal Tribunal (CAT)² (Peretz 2022: 114–115). To facilitate that process the Subsidy Control Act includes strict transparency requirements.

Within the Act, certain types of subsidy are prohibited or are subject to conditions (UK Parliament 2022: chapter 2, section 16); others are exempt (Peretz 2022: 115). These categories of subsidy follow the EU rules closely. Subsidies likely to be especially harmful to competition, investment or international trade are labelled Subsidies and Schemes ‘of Interest’ (SSoIs) or ‘of Particular Interest’ (SSoPIs) and are dealt with more stringently (see Footnote 7). By contrast, small subsidies and those that contribute to positive policy goals (under so-called ‘Streamlined Routes’) do not require assessment in line with the subsidy control principles (see Footnotes 7 and 8). Once again, this approach is quite similar to that of the EU regime.

It is unsurprising that the UK subsidy control regime is in certain regards similar to the EU state aid rules. The EU regime, of which the UK was a member until it left the EU, was the model for the subsidy chapter of the UK-EU Trade and Cooperation Agreement. Indeed, the

Agreement sets out the UK's international (i.e. Brexit) commitments which in the years after the UK's departure from the EU were incorporated into the UK Subsidy Control Act. Building on these commitments, the UK regime includes some new elements however: institutional features that differ from the EU framework; and criteria relating to the UK internal market.

Our research question is: *Why did the UK Government design a subsidy control regime that went beyond its international commitments?*³ To answer this question, we undertook a qualitative analysis of official documents and other primary sources, an approach which serves 'to elicit meaning, gain understanding, and develop empirical knowledge' (Bowen 2009: 27). The documents used in this study comprised legal texts, media reports, political speeches, memoirs, as well as press releases, government statements, consultation documents, parliamentary debates and parliamentary committee reports. We undertook a systematic review of these sources to unpack key themes mapping onto our research question (Schreier, 2014: 170), reading 'through and beyond the data' (Mason, 2002: 149). The breadth and diversity of our sources and the rigour with which we reviewed them is reflected in the robustness of our analysis.

We begin with a short discussion of the academic literature, and by presenting our organising schema. The second section then examines the design *context*. The third section charts the policy design *process*. The fourth section then unpacks the novel *content* of the UK regime. The fifth section draws on this evidence to analyse subsidy control through the lens of three policy design rationales – technical, political and ideological. The article finds that two ideas – sovereignty and unionism – were important in the design of the new regime. These findings are significant because they go beyond existing accounts of subsidy control (McGowan 2023; Stephan 2024) to shed light on the role of ideology in post-Brexit policy-making, while offering clues to the conditions under which states might choose to develop their own subsidy control regimes.

Literature and organising schema

The UK's subsidy control regime sits within the post-Brexit policy landscape. As a sub-field of Brexit research, the study of UK policy and policy-making in the post-Brexit era is well on its way to becoming a research field in its own right (see Davies 2023).

In order to make sense of the UK's post-Brexit environment, researchers have tended to organise their inquiries around dichotomies such as alignment and divergence, Europeanisation and de-Europeanisation and engagement and disengagement. Armstrong (2018) predicts that the dynamics of alignment and divergence between the UK and the EU will

depend on the operation and interaction of different modes of governance. Wolff and Piquet (2022) identify four likely post-Brexit policy pathways: de-Europeanisation, disengagement, re-engagement and continued engagement. James and Quaglia (2023) identify both alignment and divergence in their study of UK financial services policy, finding change in this policy area to be characterised by ‘differentiated de-Europeanisation’. In the case of environmental policy, Burns *et al.* (2019: 284–286) present a complex picture in which divergence may be difficult due to devolved policy structures and the EU’s ability to impose standards on non-EU member states. Yet even so, they argue that de-Europeanisation is likely.

Research that throws light on the drivers of post-Brexit policy and policy-making is limited. Writing on trade policy, Garcia (2023) identifies a symbolic motivation behind the UK’s post-Brexit policy. Similarly, Heron *et al.* (2025: 1) explain trade policy after Brexit as a ‘desire to repeatedly perform sovereignty and independence from the European Union’. Diamond and Richardson (2023) explain post-Brexit policy-making through the policy frames of regaining national sovereignty, the retention of existing benefits, and a desire for de-regulation. Parsons (2024) highlights the significance of economic ideas rooted in Thatcherite neo-liberalism.

To date, most of the literature on subsidy control focuses on either the World Trade Organisation (WTO) or the EU regime (see Brown 2024; Hancher and Piernas Lopez 2021), with comparative or single country studies relatively rare (though see Sykes 2010). Recent research has analysed subsidy control clauses in free trade agreements (see, for example, Fröhlich 2022). But while there is a substantial body of legal commentary and analysis on the design of the UK regime (see, for example, Peretz 2021a, 2021b; and Biondi 2021), and some work on the impact and implementation of the policy (Stephan 2024), UK subsidy control remains largely neglected by non-lawyers. Indeed, only McGowan (2023) has analysed the origins of post-Brexit subsidy policy from a political science perspective, arguing that the UK has largely remained in the ‘orbit’ of the EU state aid regime.

Policy design is a useful body of literature to mine when studying policy developments after Brexit. This is because while policy design implies a certain level of intent, cognition or careful consideration in the making of a policy (Peters 2018: ix, 1), it also acknowledges the relevance of interests, values and ideas. The breadth of these concerns allows for a holistic discussion of the post-Brexit policy space.

Figure 2 sets out the organising schema used in this research. It begins by differentiating between *context*, *process* and *content*. Context is the background and environment within which the policy is designed. Process refers to how the policy came into being; whereas content unpacks the substantive aspects of the regime, seen through the lens of its goals and

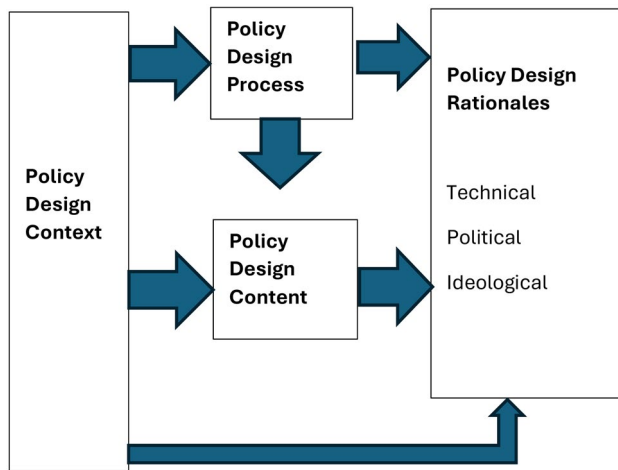


Figure 2. Organising schema.

rules, as well as its governance. The context informs both process and content, with the process also informing the content (expressed by the arrows in Figure 2). The context, process and content are then analysed through three design rationales – technical, political and ideological (see Peters and Fontaine (2022: 1).⁴ These three rationales are not mutually exclusive; nor do they sit in any *a priori* hierarchical relationship to each other.

First, a *technical* (or ‘technocratic’) rationale is a problem-solving, instrumental justification for a particular policy design. It is the product of rational decision-making which involves the input of expert knowledge and which rests on a solid evidence base. This rationale is inherited from a rather traditional and somewhat idealised view of policy design (Turnbull 2022), albeit one that continues to sit at the core of the policy design literature. Second, a *political* rationale justifies policy design as the product of contestation over interests and values (Cairney 2021). The focus on political explanations has become popular in recent years as an antidote to the more mechanistic approach traditionally associated with the policy design literature. While ‘[p]olicy designs may therefore reflect bargaining and compromise’ and are not only ‘pure reflections of a single idea, or a technocratic exercise’ (Peters and Fontaine 2022: 2), ideas may still be relevant. Our third design rationale acknowledges this, even if, as Bécharde *et al.* (2023) point out, very little is known about ideology’s role in policy design. For the purposes of this analysis, we understand political ideas to be normative, causal or a mix of the two. They can also be understood as the building blocks of an ideology, which we understand as a coherent, yet subjective, programmatic set of ideas that shapes our understanding

of the political and social world. Distinguishing between these rationales offers insights missing within the literature cited above.

In order to address these policy design rationales, however, we first turn to the context, process and content of the UK subsidy control regime.

The policy design context: subsidy control and the Brexit negotiations

Subsidies are forms of assistance provided by public authorities and agencies that are granted on non-commercial terms. They can be financial (such as grants or tax relief) or non-financial (such as the provision of advice and information below market price) (DBT 2025: 11); they can take the form of one-off support or can sit within wider schemes (Rickard 2018: 67). Subsidies can be important instruments of industrial strategy used to address market failures and to support public policy priorities in areas such as regional development and climate change mitigation (Rickard 2018: 66–67). They may also be used in more malign ways to reward political favours or to support failing and uncompetitive firms or sectors (Pope and Shearer 2021: 7).

It follows that subsidy *control* is a regulatory response to these positive and negative effects of subsidisation. It disincentivises and incentivises certain types of support, impacting not only trade, investment and competition but also a range of public policies. As such, it has a bearing on industrial policy in that it shapes how the market operates and evolves (see Stephan 2024: 174–178). While states have various means of controlling subsidies, until 2022 only the WTO and the EU had fully-fledged subsidy regimes (Sykes 2010). The WTO regime, of which the UK is a member, has been criticised for its weak enforcement mechanisms (Bargellini 2025: 1; Jozepa 2020: 8). By contrast, the EU state aid regime ‘constitute[s] a far more comprehensive system of subsidy regulation’ (Stephan 2024: 7). It aims to prevent subsidy races between Member States and support the integration of European markets. It covers both goods and services and rests on an a priori prohibition of aid, though most subsidies are subject to exemption.

As already noted, subsidy provisions are sometimes included in free trade agreements, where reference is made to controls on subsidies, to state-owned enterprises (SOEs) and to insolvent firms, amongst other issues (Fröhlich 2022). Indeed, as of 2022, 17% of regional trade agreements included provisions on countervailing measures or subsidies (OECD 2022: 13; see also <https://rtais.wto.org>). The UK-EU Trade and Cooperation Agreement is one such agreement.

Until the end of 2021 the UK had been an active participant in the EU state aid regime.

[T]he UK has traditionally been one of the most loyal Member States in terms of applying EU State aid rules and actually one of the most vocal of the supporters of State aid control. The UK has consistently stressed the importance of compliance with the EU State aid rules, which, according to the UK authorities, is essential to eliminate abuses of competition and to establish an open and competitive UK market. (Biondi and Righini 2019: 174)

This UK commitment to the EU rules went hand-in-hand with a re-evaluation of industrial support in the late 1970s following the rampant subsidisation of the previous decade (Wren 1996).

Yet, in the Brexit negotiations ‘[v]ery few areas of EU law have been subject to such heated debate’ (Biondi and Howard 2022: 391). Indeed, by late 2020, subsidy control had become one of the ‘biggest stumbling blocks’ in preventing an EU-UK settlement on the future relationship (Jozepa 2020: 5, 37). State aid control belonged to a package of measures referred to as level playing field (LPF) issues (see Ciuriak 2020). The rationale for their inclusion in any Brexit deal was that, without clearly enforceable rules, Brexit could cause the UK to diverge from the EU’s tough regulatory standards, allowing it to gain unfair access to the EU single market. ‘[I]t was crucial for the EU that the economic partnership be based on fair competition’ (Laffan and Telle 2023: 188). Moreover, the EU wanted to ‘make sure that future UK standards would correspond to EU standards as a “reference point”’ (De Rynck 2023: 215; European Commission 2020). To compromise on this point would risk damage to the EU single market because of the UK’s geographical proximity to and interdependence with the Union (Shipman 2024: 333).

For the UK, level playing field issues were controversial as they implied that the UK would have to continue to follow EU rules and be subject to rulings of the European Court, even after leaving the Union. ‘The UK was very determined to avoid any role for the Commission and the Court of Justice of the European Union (CJEU) over its public spending after its withdrawal’ (Bargellini 2025: 214). To compromise on this point would, as Prime Minister (PM) Johnson himself put it, run ‘...counter to the whole point of Brexit’ (Johnson 2020). This was especially significant given the Conservative Government’s new selective industrial strategy, which saw subsidies as a potential tool of economic management (Crafts 2022: 161-2).

Yet, until mid-2019, the UK PM Theresa May’s position on state aid control was largely in line with that of the EU. She accepted the need for a robust state aid regime, a common rulebook and continuous harmonisation (Biondi and Howard 2022: 391) and agreed that EU rules would be ‘retained’ after the UK’s exit from the EU (Jozepa 2020: 10).

After Theresa May stepped down on 24 July 2019, PM Boris Johnson’s primary goal was to ‘get Brexit done’. Johnson wanted a much less

intrusive state aid regime for the UK, one based on the WTO rules, making it ‘faster and easier’ than under the EU regime for the Government to intervene in failing industries (Johnson, quoted in Payne and Giles 2019). Yet, when it came to negotiating the Political Declaration (PD), the forward-looking document attached to the Withdrawal Agreement, the UK and EU agreed that any future commitment on the level playing-field ‘should prevent distortions of trade and unfair competitive advantages’, and ‘uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period’ (HM Government, 2019: section XIV, para 77). Moreover, ‘[t]he Parties should ... maintain a robust and comprehensive framework for [...] state aid’, relying on Union and international standards and appropriate mechanisms to ensure effective implementation, enforcement and dispute resolution’ (HM Government, 2019: section XIV, para 77). By early 2000, however, Johnson was once again informing Commission President Ursula von der Leyen that ‘there was no need for a level playing field’ (De Rynck 2023: 215; HM Government 2020), claiming that ‘developing domestic subsidy controls [...] [was] separate from a free trade agreement with the EU’ (Jozepa 2000: 3) and that any agreement reached would need to be based on the WTO rules, or on what Johnson liked to refer to as ‘Australian terms’ (Shipman 2024: 372).

Ultimately, each Party agreed to ‘maintain an effective system of subsidy control’ where subsidies have or could have a ‘material effect on trade and investment between the Parties’ (UK Parliament 2020a: Article 366(1)). Definitions of key terms and six principles (A to F), similar to those governing the EU regime, were approved, though the Parties were left to determine how to implement them as long as ‘the obligations... are implemented in its law in such a manner that the legality of an individual subsidy will be determined by the principles’ (UK Parliament 2020a: Article 366). The text confirmed the subsidies that were to be prohibited or subject to specific conditions (UK Parliament 2020a: Article 367), and those that would remain outside the scope of the Agreement (Article 364). It required the Parties to have an operationally independent authority or body to oversee subsidy control (UK Parliament 2020a: Article 371), though the nature of that authority was not specified. It also made transparency a requirement. In addition, a court or tribunal was required to review subsidy decisions, and new mechanisms for consultation and arbitration were also put in place (UK Parliament 2020a: Articles 370–375).

This agreement was possible because the EU had backed down on issues that were symbolically important for the UK (Usherwood 2021: 119), namely the jurisdiction of the Court of Justice of the EU (CJEU) over UK law and the implementation of a strict regulatory framework. This allowed the UK Government to claim the outcome as a victory. Yet,

since the UK had to agree to follow many EU-inspired rules, the deal was in many respects closer to the EU's preferences than it was to those of the UK (Usherwood 2021: 119–120; Shipman 2024: 334).

The next section explains the steps leading from the UK-EU Trade and Cooperation Agreement to the Subsidy Control Act 2022 (see Figure 1).

The policy design process: from TCA to SCA

Despite hints of a new UK subsidy control regime prior to the December 2019 General Election (Payne and Giles 2019), initial steps were taken only in late 2020.⁵ One reason for this delay was that the Government had decided that subsidy control would first need to be addressed in the context of the UK Internal Market Act (UKIMA) 2020.⁶ The inclusion there of two subsidy control provisions on the policy highlighted the Government's intention to link subsidy control to a UK internal market rationale. This decision had important implications for devolution as Article 52 of the UK Internal Market Act confirmed that subsidy control was to be a reserved (or excepted) matter. This meant that by the time the Act was adopted – without the consent of the devolved authorities (DAs) (Sargeant and Stojanovic 2021: 6)—the UK Government had already confirmed that it alone had the right to legislate. The Devolved Authorities, who argued that subsidy control was a devolved matter and that a centralised UK regime risked undermining devolution by stifling innovation and creating a 'race to the bottom' (Zglinski 2023: 557), seemed already to have lost the argument.

Also in late 2020, the UK Government decided to revoke the EU state aid rules in England, Scotland and Wales. This meant that as of 1 January 2021, the Trade and Cooperation Agreement chapter was the UK's only source of subsidy control (aside from the WTO framework). This was a puzzling decision, since the TCA had not been designed to work in place of domestic legislation. With no such legislation in the pipeline, there was no option but to make the Trade and Cooperation Agreement subsidy chapter directly effective (Peretz 2021b: 169) by means of the *European Union (Future Relationship) Act 2020*, which had been rushed through Parliament at the end of that year. This unsatisfactory interim solution created uncertainty for those granting and receiving subsidies (Peretz 2021b: 169). It also meant that the post-Brexit subsidy control regime was, for the next two-years, based exclusively on the UK's international commitments.

The plan to hold a UK consultation on subsidy control legislation had been announced by the Secretary of State on 9 September 2020 in a business statement put to the UK House of Commons (Sharma 2020). This commitment was also embedded in Article 53 of the UK Internal Market

Act 2020. However, by the time the consultation paper was drafted, early in 2021, it already seemed clear that the answer to this question would be a firm yes. Although the UK Government kept an ‘open mind’ on the more technical aspects of the UK regime (BEIS 2021a; Peretz 2021b: 170), the Government’s broad-brush preferences were already in place (BEIS 2021b). The Secretary of State’s forward to the consultation document set out the non-negotiable aspects of the policy: that it would involve ‘home grown solutions’, allowing the UK to ‘make our own policy choices’, securing ‘the integrity of the internal market’, while rejecting ‘command-and-control methods of economic management’, respecting the free market, promoting value for money and in short taking a ‘common sense approach’ (Kwarteng in BEIS 2021a: 3–4).

Respondents supported most of the Government’s proposals, with more than 70 per cent of stakeholders agreeing on the objectives, definition and scope, principles, exemptions, prohibitions and conditions, transparency arrangements and on a specialist forum to challenge subsidies. There was a wider spread of opinion on how to manage high risk subsidies, and on the role of the independent body and enforcement (BEIS 2021b: 49–52), but there was no clear constituency opposing the Government’s general approach.

There is nothing to suggest, therefore, that stakeholders’ opinions had any *major* impact on the Bill, other than to confirm the Government’s position (BEIS 2021b). However, the Government did refine certain ‘definitions’ in response to the consultation. On high-risk subsidies, the Government agreed to introduce two categories of subsidy: the aforementioned Subsidies and Schemes of Interest (SSoIs) and Subsidies and Schemes of Particular Interest (SSoPIs).⁷ For low-risk subsidies, they agreed to introduce Streamlined Routes for certain categories of subsidy. These, the Government very pointedly asserted, were nothing like EU-style block exemptions (BEIS 2021b: 42)⁸.

On 30 June 2021, the Subsidy Control Bill was introduced to the House of Commons for its first reading (UK Parliament 2021). The Bill worked its way through the Commons in late 2021 and the Lords in early 2022. During its passage, Opposition Members of Parliament (MPs) raised several recurring concerns. The first was the reliance of the regime on secondary legislation and guidance. MPs complained that this meant that parliamentary scrutiny would be limited because many specific components of the regime would only be detailed at a later date. ‘It is hugely concerning that the UK government are left to do so much in this Bill by guidance’ (Blackman 2021: column 472). This was viewed by MPs as an attempt to sideline Parliament.

A second related issue was that the legislation seemed devoid of specific policy goals. ‘Although the Bill may propose a quicker subsidy

regime, we want to understand further how the government plan for those subsidies to be used, what will be brought forward from the contributions to the government's consultation and the response to it, and how that will manifest in the guidance to come' (Malhotra 2021: column 114). More specifically, Labour Member of Parliament (MP) Seema Malhotra complained that the government did not have a clear industrial strategy: 'Labour is in favour of a subsidy system that backs British businesses and our economy, but it must operate in the context of a strong UK-wide industrial strategy, which for all intents and purposes is not nearly where it needs to be' (Malhotra 2021: column 108; see also Olney 2021: column 524). 'The key question, as we have heard again and again, is what is the Bill for? We have still not had an answer' (Onwurah 2021: column 693).

A third issue was devolution. The Devolved Authorities, already unhappy with their limited involvement in the legislative process, argued that the UK Government was using Brexit to undermine devolution in what has been described as a 'shameless power grab' (Dougan *et al.* 2022). MPs representing Scotland, Wales and Northern Ireland argued that the Devolved Authorities should have powers equivalent to those of the UK Secretary of State who, though ostensibly representing the UK, might also at times act as the *de facto* Secretary of State 'for England', reinforcing England's privileged position among the four UK nations (Randerson 2022). Indeed, the Devolved Authorities argued that under the new regime their rights would be similar to those of a local council (Bryan 2022). MPs also expressed concerns that existing devolved competences could be undermined by the new regime, through a process akin to 'creeping recentralisation' (Keating 2022: 9). Specific reference was made to the inclusion of agricultural subsidies in the Bill, as agriculture is a devolved policy area. As Plaid Cymru MP, Liz Saville Roberts, complained: 'This Bill will steamroll devolved competence. Does the Secretary of State agree that it reflects a new Conservative ideology, which is deliberately dismantling the power of devolved governments and their accountability as elected governments per se?' (Saville Roberts 2021: column 32).

After its progression through Parliament, the Bill received Royal Assent on 28 April 2022. A Conservative Party consensus on the need for new legislation and the Government's majority of 80 had ensured a smooth passage. The Act came into force on 4 January 2023 'with very few alterations' (McGowan 2023: 12; Peretz 2022: 114). The amendments that were accepted largely involved the strengthening of transparency and accountability. Other issues such as Opposition concerns over the exclusion of the Devolved Authorities, the omission of references to net zero, the inclusion of agriculture, and the inadequacy of the subsidy database were not accepted by the Government (House of Commons 2022).

In sum, the legislation agreed in the Subsidy Control Act 2022 was broadly in line with UK Government preferences at the outset of the process, with stakeholders and parliamentarians influencing its content only at the margins. Those Government preferences are unpacked in the next section.

The policy design content: the SCA

There are two novel features in the subsidy control legislation: a UK internal market agenda, and a permissive governance regime.

First, layered on top of the six principles agreed in the Trade and Cooperation Agreement, the Subsidy Control Act introduced a new, seventh, principle, relabelled as Principle F (see Footnote 1). Principle F requires [public authorities] to ‘assess the effects which are likely to arise from providing the subsidy’ (UK Parliament 2022: Schedule 1). This is a domestic test to ensure that the subsidy does not unduly favour one firm to the detriment of a competitor or new entrants to the UK market or unduly reduce competition within it. The Act also amended Principle F of the Trade and Cooperation Agreement principles to include reference to ‘material effects on competition and investment in the UK’. This provision became Principle G in the Act. In full, the amended version states that ‘[p]ublic authorities should assess the material effects on competition and investment in the UK [as well as on] international trade and investment and decide whether the benefits of the subsidy are greater than the harmful impacts of providing the subsidy’ (UK Parliament 2022: Schedule 1).

The Subsidy Control Act also included a provision on relocation which confirmed that subsidies are prohibited if granted on condition that an enterprise relocates all or part of its economic activities or if the effect of the subsidy is relocation. Similar provisions apply in the context of the EU Internal Market in its 2014 General Block Exemption Regulation and in other guidance. Although there was a reference here to the impact on ‘the United Kingdom generally’ this provision is usually understood to apply primarily to relocation across the four UK nations (UK Parliament 2022: Part 2, Chapter 2, section 18).

These provisions were justified by the UK Government on the grounds that they would prevent the emergence of new *intra-UK* trade barriers which might arise because of the prospect of post-Brexit regulatory divergence *within the UK* (Sargeant and Stojanovic 2021: 22). While the UK internal market had not been an issue during the UK’s membership of the EU, it was judged by the Government to be a ‘post-Brexit problem’ (Weatherill 2021a: 2), the consequence of EU powers transferring back to the devolved UK. Yet, from the Devolved

Authorities' perspective, these provisions were an unnecessary constraint that prioritised the integrity of the UK-wide market over devolution. Dunne (2024) argued that the UK Internal Market agenda was primarily designed to prevent an expansion of devolution after Brexit. Others put it even more strongly, concluding that the Government's approach revealed 'a deeper antipathy ... towards ... devolution itself' (Dougan *et al.* 2022: 676).

According to Zgliniski (2023: 541), 'The UK internal market is the fruit and the symbolic embodiment of the country's new post Brexit autonomy'. As Weatherill (2021b: 472) observed not long after the UK Internal Market Act came into effect: 'while internal markets have economic motivations and are built on legal rules, they involve political choices and have political implications'. Designing UK subsidy control (at least in part) around a new UK internal market objective provided the regime with new purpose. It shifted the focus of UK subsidy control from cross-border trade and defence of the EU single market (an EU preference) to a mix of EU and UK preferences. It did this by tying UK subsidy control to the UK Internal Market Act, so that the latter became 'a significant piece of the domestic legislation "jigsaw" on subsidies' (Wishlade 2021: 4). At the same time, and somewhat ironically, the UK understanding of its own internal market drew from the EU's own internal market principles, albeit shaped by a "muscular" unionism' and a rejection of any 'federal trajectory' (Zgliniski 2023: 562).

One of the most distinctive features of the new UK subsidy control regime was its system of governance. While there had certainly been support for the EU state aid regime in the UK (Biondi and Righini 2019), that support was not universal. The Subsidy Control Act was the product of a more critical take on the EU model. Indeed, the legislation was designed as the antithesis of the EU approach, which was said to have 'cumbersome procedures and overly rigid bureaucracy', the consequence of delays caused by the need to notify aid to the Commission for approval (Jozepa, 2020: 18, 21–22; see also McGowan, 2023: 11–12).

Although the rapid processing of large and controversial grants of aid was by no means a strength of the EU regime, these criticisms overstated the problem as most subsidies and schemes were exempt from notification under the EU's General Block Exemption Regulation. Moreover, UK Governments had failed to take full advantage of the opportunities arising from the state aid rules. As the Plaid Cymru (PC) MP, Liz Saville Roberts complained in 2021:

The Conservatives appear to be perpetuating a gift for blaming the EU for everything ... We must bear it in mind that the UK was known for underutilising EU state aid rules—we were ranked 22nd out of 28 member states in

2018—and it could be suggested that that was due to Conservative ideology rather than to any intrinsic problem. (Saville Roberts 2021: column 30)

As such, ‘... we are almost fixing a problem that did not exist in the terms that the Government think it did, irrespective of how much they want to make Brussels seem like the bad guys’ (Flynn 2021: column 304; see also Flinders and Hinterleitner, 2025: 447–448).

All the same, one of the key stated rationales for adopting an alternative approach was to speed up decision-making. As the Secretary of State, Kwasi Kwarteng, confirmed:

For the largest subsidies, or those that present the highest risk of distorting competition, it is worth recalling that the default process under the EU state aid regime could last between nine and 12 months, and that that often determined whether a project could happen or not. Under the new regime, a new body, the UK subsidy advice unit, must publish its report within 30 working days. (Kwarteng 2021: column 47)

In contrast to the EU approach, the UK regime would be ‘permissive’ in that it would start with the presumption that most subsidies granted by public authorities in the UK would be unproblematic (Scully 2021: column 716). One of the benefits of this approach was that it would allow public authorities to design new subsidies and schemes to suit their own circumstances.

Part of the Trade and Cooperation Agreement compromise was that although the UK was required to set up an ‘independent agency’ to oversee subsidy control, this body did not need to be a regulator in the European Commission sense. As such, the UK Competition and Markets Authority and the newly set up Subsidy Advice Unit (SAU) within it, was to serve merely as an advisory and monitoring body. As Kwarteng explained:

...the UK Government did not go to great lengths to secure autonomy from the European Union on subsidy control only to reimpose the same old EU rules months later. That is not what this is about. I hope Hon. Members will agree that outside the EU we will have the opportunity to do things differently. We did not leave the EU simply to settle back into the old ways of thinking and into the way things were done before. Those days are over. (Kwarteng 2021: column 87)

To that effect, the UK agency would not have enforcement powers.

Indeed, the regime’s effectiveness rested on private enforcement. Private enforcement was in turn reliant on transparency, a key tool of which was a database of all new subsidies and subsidy schemes. At its core, effectiveness depended on the willingness of public authorities and business to engage with the control process (sometimes referred to as ‘presumed compliance’). Kwarteng (2021: column 53) saw the benefits of this approach: ‘Clearly, transparency is at the centre of what we are trying to achieve. ...

This is an area that will give more flexibility while not diminishing accountability'. However, the very limited role for the Competition and Markets Authority and doubts over the functionality of the subsidy database raised concerns. If the transparency requirement failed, the new regime could end up as a subsidy free-for-all, with the only real constraint the financial capacity of the granting authorities.

Moreover, despite the permissive label, the Subsidy Control Act also gave the Secretary of State a privileged role within the UK regime. The Act includes 'call-in' powers allowing the Secretary of State to require a Competition and Markets Authority report in high-risk cases where a review of the subsidy would not otherwise be mandatory (UK Parliament 2022: Part 4, Chapter 1, Sections 55 and 58), including where a subsidy had already been granted (UK Parliament 2022: Part 4, Chapter 1, section 60). The Secretary of State is also allowed to direct the Competition and Markets Authority to issue a report covering a specific time period. The use of secondary legislation and statutory guidance to fill gaps in the primary legislation and which involves less scrutiny by Parliament, also enhances the role of the executive. For example, it is the Secretary of State who is responsible for identifying possible Streamlined Routes (UK Parliament 2022: Part 1, Section 10).

To sum up, this section discussed two key areas where the UK design decisions went beyond its international commitments, namely the protection of the UK Internal Market and the application of a permissive model of subsidy control. We now consider why the UK Government took this approach, addressing this question through the lens of our three policy design rationales: technical, political and ideological.

Policy design rationales: technical, political or ideological?

In designing the new subsidy regime, the UK Government claimed that replacing the EU state aid rules with a home-grown approach would improve the effectiveness of subsidy control in the UK (BEIS 2021a). It would make the approval of subsidy decisions faster and easier, a consequence of much tighter deadlines and the more permissive approach to the grant of (most) subsidies (Kwarteng 2021: column 47). These new features would encourage public authorities to generate innovative new subsidies, encouraging them to be more responsive to local needs, while providing value-for-money for UK taxpayers (Kwarteng in BEIS 2021a). Moreover, in reducing fragmentation within the UK internal market, the new regime would hold back the tide of intra-UK regulatory divergence which would otherwise harm the UK economy.

These (technical) arguments seem plausible. Yet they are convincing only if we accept that the EU regime was inefficient, and that the UK

approach would be an improvement on what came before. There is however ample evidence in the EU state aid literature to show that the EU regime worked well for the UK on the whole (Biondi and Righini 2019: 1740; Crafts 2022; Wishlade 2021: 18). Indeed, most state aid was approved quickly and smoothly. The fact that the UK Government led by Theresa May originally intended to retain EU state aid law after Brexit supports this argument (Biondi and Howard 2022: 391). Moreover, the UK model was not unproblematic, such as in regard to its weak enforcement mechanisms (Biondi 2024); and while the Government has claimed that the value of the UK Internal Market was ‘estimated at around 10% of the UK’s total GDP’ (DBT and Alexander, Douglas 2024), even the Government’s Impact Assessment did not specify how much of this is attributable to subsidy control (BEIS 2022: 20). Weatherill (2021a: 1) is sceptical, judging the UK internal market to be more of a political than an economic decision.⁹

Second, we see no evidence of a political rationale underpinning the design of the UK subsidy control regime (BEIS 2021b). Despite political disagreements over aspects of the draft legislation, some of it – as in the case of the devolution question – deeply felt (Saville Roberts 2021: column 32), there was broad party-political consensus on the need for subsidy control legislation. This point came through strongly in the parliamentary debates (for example, Malhotra 2021: column 108). Moreover, subsidy control was not an issue around which there was much political mobilisation by stakeholders or citizens (BEIS 2021b). Like parliamentarians, stakeholders proposed ways of improving the workings of the regime, and some of these proposals, such as on how to deal with high and low-risk subsidies, were accepted by the Government. Yet the Government only responded positively where proposed revisions did not undermine their broad approach, to the extent that the paper presented for consultation in February 2021 included much the same content as the Act that was approved just over a year later (BEIS 2021a; 2021b).

Third, there *is* evidence that ideology has shaped the UK subsidy control regime. We can see this in the prevalence of two ideas, *sovereignty* and *unionism*, in the Government’s narrative. On the first of these, the Government position reflects a zero-sum approach which implies taking back control of borders, trade and money. This attachment to sovereignty is found in the hostile attitudes of the UK Government towards the EU, with the EU approach to subsidy control presented as harmful to the UK: hence the need to ‘take back control’. The language used by Ministers when referring to the EU regime echoes the Brexit rhetoric deployed in the negotiations on the future relationship (Saville Roberts 2021: column 30). An example of this is when the Secretary of State, Kwasi Kwarteng (2021: col. 87), said that: ‘We did not leave the EU simply to settle back

into the old ways of thinking...’ It is also reflected in the way that differences are exaggerated and similarities between the EU and the UK model are played down, such as when an official document described the UK’s streamlined routes as nothing like the EU’s General Block Exemption Regulation (BEIS 2021b: 42). This speaks to the UK’s ability to craft its own decisions, allowing it to make policy that would fit with the UK’s preferred approach to economic management (Kwarteng 2021: column 87). It explains the permissive design of the UK subsidy regime, which follows a light-touch approach to rule-making, using framework legislation with its reliance on guidance, and on private enforcement and transparency requirements (Kwarteng 2021: column 53). This approach has been described by members of the Government as ‘simple’ and ‘nimble’ (Kwarteng and Scully 2021), and as a more appropriate model for the UK than the EU approach, which is stereotyped as regulatory, bureaucratic and unwieldy (DBT and Russell, Dean 2022).

Unionism is the second idea. This idea is expressed as a commitment to the union of England, Wales, Scotland and Northern Ireland as reflected in a commitment to the UK Internal Market Act 2020 (UK Parliament 2020b). It takes the form of a preference for centralised government control within the UK and is associated with a dislike of federalism and a suspicion of the benefits of devolution (Dunne 2024). The approval of the UK Internal Market Act 2020, without Devolved Authority support, which confirmed subsidy control as a reserved (excepted) matter, a decision which has been described as ‘arrogant and insensitive’ (Weatherill 2021b: 5), and Government decisions such as the inclusion of agriculture, a devolved competence, in the Subsidy Control Act, attests to the significance of this idea.

In sum, while evidence supporting a technical explanation for the UK’s expansive subsidy control regime is weak and inconclusive, and we find no evidence to back a political explanation, ideas held by the Conservative Government do offer a convincing account of the design of the policy. We elaborate on these findings in our concluding section.

Conclusion

We began this article by asking why the UK Government chose to design a subsidy control regime that went further than required by its international commitments. To answer this question, we examined the context within which the regime was designed, the policy process that led to the approval of the legislation, and the content of the Subsidy Control Act which differentiated it from the Trade and Cooperation Agreement subsidy chapter. We then considered whether that evidence supported the argument that one or more of our three policy design rationales were

important in informing the UK subsidy control regime. While the UK Government's stated aims rested on a technical rationale, the evidence supporting this justification is, at best, weak. We found no evidence for a political rationale. We did however identify two ideas that were important in providing an explanation of the design of the UK subsidy control regime. These ideas were sovereignty and unionism.

Based on this finding, we argue that the UK government went further than was necessary, that is, beyond what was required by its international commitments under the Trade and Cooperation Agreement, to design a bespoke UK subsidy control regime, not because there were practical problems to be addressed by this aspect of the legislation; nor because political pressure was put on the Government to do so; but rather, because of certain political ideas that had support from influential groups within the UK Conservative Party, ideas which became dominant within the Conservative Government under Boris Johnson. These ideas are associated with a form of contemporary conservatism which advocates the defence of traditional institutions, self-rule and centralised (UK) state control (see Hayton 2017). In line with Heron *et al.* (2025), we judge the policy design choices made by the Johnson Government to be performative, despite evidence (especially in respect of unionism) of what Dommett (2016) has called 'ideological quietism', that is, a tendency to hide ideological positions behind more technical arguments.

Thus, the significance of this research is not only that it increases our understanding of the design of the UK subsidy control regime. It also adds to the wider literature on post-Brexit policy and policy-making. It points to the importance of ideational rationales, to the role of ideology, in the design of post-Brexit policies and shows how ideas can at times be hidden behind more technical justifications for policy development. It also highlights the disjuncture between what Governments say and what they do (cf. support for UK market integration while approving the Northern Ireland Protocol?; committing to reduce regulation, while placing an unprecedented burden on public authorities). While we may not be surprised to learn that ideas and ideology were important drivers of elite attitudes to Brexit, this research shows how they continued to shape the design of UK subsidy control after the country's departure from the EU.

This research also suggests how trade agreements might be a trigger for states to introduce subsidy control beyond their international commitments. While we cannot generalise from this single case, we can speculate as to why other states (that is, states that are not leaving the EU) might do this – perhaps to remove societal demands for subsidisation, or to target subsidies to specific policy objectives. Although Brexit was the context within which the UK subsidy control regime was developed, this does not preclude a different set of drivers producing a similar effect elsewhere.

Notes

1. A) Subsidies should pursue a specific policy objective in order to (a) remedy an identified market failure, or (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns; (B) Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; (C)(1) Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. (2) That change, in relation to a subsidy, should be (a) conducive to achieving its specific policy objective, and (b) something that would not happen without the subsidy; (D) Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy; (E) Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means; (F) Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom; (G) Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including, in particular, negative effects on (a) competition or investment within the United Kingdom (b) international trade or investment (UK Parliament 2022: Schedule 1). In certain cases, the Act's Energy and Environment Principles will also apply (UK Parliament 2022: Schedule 2).
2. The Competition Appeal Tribunal is an independent judicial body which hears and decides cases involving competition or economic regulatory issues. Its remit was expanded in 2023 to cover subsidy control (see <https://www.catribunal.org.uk>).
3. This article acknowledges, but does not directly address, the special arrangements in place for Northern Ireland (NI) where EU state aid law continues to apply to goods and the wholesale electricity market (see Butler 2022).
4. Peters and Fontaine (2022: 1) refer to 'logics' rather than 'rationales'.
5. A bill manager was appointed by the Department for Business, Energy and Industrial Strategy (BEIS) in December 2020.
6. The UK Internal Market Act (UKIMA), which came into force at the end of 2020, was designed to regulate trade in goods and services across the four nations of the UK after Brexit (UK Parliament 2020b). See Weatherill (2021b) on why the UK Government felt an Internal Market Act was necessary.
7. Monetary thresholds and other criteria, such as the sensitivity of the sector, determine whether a subsidy or scheme is an SSoI or an SSoPI. While SSoIs *may* have distortive effects on competition or investment in the UK, SSoPIs are deemed *likely* to have distortive effects. Public authorities are either *advised* (SSoIs) to refer their subsidy or scheme to the Subsidy Advice Unit before it comes into force or *must* do so (for SSoPIs). A recent example of a SSoPI is the referral of a proposed subsidy to Teeside International Airport Limited by Tees Valley Combined Authority (case closed 18 July 2025) (CMA 2025). So far, no SSoI referrals have been submitted, though a hypothetical example can be found in the Statutory Guidance (DBT 2025: 118).
8. The UK's streamlined subsidy control routes and the EU's General Block Exemption Regulation are in fact quite similar in that they both allow categories of aid to be granted without prior approval.
9. 'Political' here incorporates what we understand in this article to cover both political *and* ideological.

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