British Hydropower Association response to the BEIS Subsidy Control Consultation

March 2021

About the British Hydropower Association

The British Hydropower Association (BHA) is the UK trade body solely representing the interests of the UK hydropower industry, including tidal range and its associated stakeholders at regional, national, and global levels. The BHA is not government-funded, and anyone involved in, or with an interest in hydropower should be a member of the association.

Membership of the BHA is diverse and members include design and consulting engineers in all disciplines, developers/owners, contractors, operators, multi-scale generators, equipment and component manufacturers and suppliers, project managers, financiers and investors, insurers, and environmental specialists.

The BHA welcomes the opportunity to respond to this subsidy control consultation and to submit our specific views. Considering the high number of questions and various level of relevance for the hydropower industry, we have chosen to respond in a way that better shows the BHA's areas of priority.

Key principles for an efficient and reputable UK subsidy regime

The BHA maintains that support provided to enable the UK to meet its objective of achieving net zero carbon by 2050 should be included within any new subsidy regime and as such, should be exempt from Subsidy control constraints.

Specifically, we believe that any new subsidy regime should recognise the following -

- The need for more clarity with regard to the specificity of tax measures put in place by different devolved administrations.

- The need for clarity on the circumstances where a measure has or could have an effect on trade.

- Any support for renewable energy should focus on new developments whilst also ensuring that existing operational assets are able to continue running economically to 2050 and beyond.

- Support the UK's Net-zero ambition by 2050, maintain a competitive and dynamic market economy and create an attractive investment environment for clean energy and low carbon projects.

1. Categorisation of reliefs as a subsidy

1.1 The BHA is concerned that the existing arrangements fail to allow for the circumstances which apply to hydro scheme owners

1.2 In the specific case of non-domestic rates relief for small-scale hydro schemes, the prevailing scenario is that the burden of rates on Scottish and Welsh schemes is markedly higher, as a proportion of turnover. It should also be noted that the rates burden on small-scale hydro is materially higher than on comparable renewable energy technologies such as onshore wind and standalone solar PV.

1.3 The higher rates burden for hydro is an unintended consequence of valuation methodologies designed for quite different circumstances. The intervention of the Scottish and Welsh Governments by way of relief schemes is tacit acknowledgement of this unintended outcome and has been designed to adjust the rates burden to the level experienced by equivalent entities within the renewable energy sphere.

In time it is hoped that valuation legislation and methodologies will be updated however in the absence of such change, devolved Government intervention in the form of reliefs and grants remains necessary.

1.4 The BHA requests that BEIS provide more clarity in relation to tax measures in view of how crucial they are in allowing renewable generators to continue their operation.

2. Demonstration of trade distortion

2.1 The BHA proposes that new legislation should require that there must be demonstrable distortion to competition for a measure to be categorised as a 'subsidy' under the new rules.

2.2 Previous EU legislation effectively assumes that a subsidy automatically distorts competition. The prospects of challenging this effective assumption within the EU legislation are widely accepted to be very poor.

2.3 The BHA urges that future legislation is worded in a manner that facilitates situations where there is no demonstrable or realistic prospect of distortion to competition, to be exempted from Subsidy control rules. For instance, we consider that BEIS should provide further guidance on when measures would only have a local effect and by extension would not constitute a subsidy for the purposes of UK's international subsidy control commitments. Such guidance would also assist in determining any effects on trade or competition within the UK as well and as such run to protect both the UK's international reputation as well as its internal market, whilst allowing authorities to provide support where it is reasonable to do so, without having to worry about subsidy control implications.

2.4 In the specific case of non-domestic rates relief for small hydro operators, this ‘subsidy’ has zero impact upon the wholesale price of electricity, either locally, nationally, or internationally.

2.4.1 Equally, it has no impact upon investment decisions, since there is no certainty of reliefs continuing – as evidenced by the refusal of banks to factor such reliefs into their lending decisions.

3. Achieving net zero

3.1 For the UK to achieve its very challenging Net Zero targets, there will need to be massive investment in new renewable energy developments over the next decade and more. However, it is equally important that the existing renewable assets continue to generate for as long as possible.

3.2 This includes the substantial portfolio of small-scale wind, hydro and solar PV units installed under the Renewables Obligation and Feed-in Tariff regimes over the past two decades.

3.3 We appreciate the while the UK government has already put in place Renewable Obligation Certificates (ROCs) and Feed-in Tariffs (FIT) in compliance with its international subsidy control obligations, there are circumstances where additional interventions by UK Government or by one of the devolved administrations might fall foul of the Subsidy control rules.

3.4 An example of this regards reliefs and grants introduced by the Scottish and Welsh Governments respectively to address very high levels of non-domestic rates applicable to small-scale hydro schemes as the unintended consequence of a traditional valuation methodology being applied to new sectors where viability is dependent upon receipt of subsidy (ROCs or FIT)

3.5 The original subsidies were set at a level to achieve an approved rate of return, however their inclusion within the Rateable Valuation process subsequently produced tax burdens that materially and in many cases, significantly reduced the rates of return, often to the point where schemes became unviable.

3.5 In recognition of this, the Scottish and Welsh Governments responded with schemes to put small hydro schemes on a par with other technologies, notably onshore wind, however the categorisation of such interventions as ’subsidies’, or ‘State aid’ where put in place before 1 January 2021, meant that many schemes, including those which were part of portfolios, were unable to receive the reliefs or grants because of the De Minimis limits.

This situation will be eased slightly, but not resolved, with the raising of the De Minimus level to 325,000 SDR’s.

3.6 The treatment of such reliefs and grants as ’subsidies’ under the current subsidy control rules presents a real threat to the continued operation of small-scale hydro schemes within Scotland and Wales and is wholly at odds with the UK's aspiration to achieve Net Zero Carbon by 2050.

3.7 For the UK to meet its challenging Net Zero targets, it is essential that, as well as encouraging increased new investment in renewable energy, the continuing operation of existing assets is enabled and that any 'subsidies' paid to operators to achieve that objective be wholly exempted from subsidy control considerations through the development of safe harbour rules akin to the EU general block exemption regulations for both investment as well as operating subsidies.

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